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WV DEPARTMENT OF ENVIRONMENTAL PROTECTION
DWWM – DIRECTORS OFFICE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Mr. Scott G. Mandirola, Director
Water and Waste Management Division
West Virginia Department of Environmental Protection
Charleston, West Virginia 25304

JUN 16 2010

Dear Mr. Mandirola:

On April 16, 2010, the West Virginia Department of Environmental Protection (WVDEP) sent a complete package in support of a revision to its Requirements Governing Water Quality Standards (WQS rule) to the U.S. Environmental Protection Agency (EPA). On May 3, 2010, EPA received the package, which included a legal certification that the revision was duly adopted in accordance with state law and became effective as an emergency rule on March 5, 2010. The State submitted this revision for EPA review pursuant to § 303(c)(1) of the Clean Water Act (CWA) and 40 C.F.R. Part 131.

This revision to the West Virginia WQS rule concerns exempting a segment of Ohio River between mile points 61.0 and 63.5 from West Virginia's one-half mile rule. The revision consists of the addition of a sentence to Section 7.2.a.2[1] of West Virginia's WQS rule, which states:

> All mixing zone regulations found in Section 5 of this rule will apply except 47 CSR 2 §5.2.h.6. Whether a mixing zone is appropriate, and the proper size of such zones, would need to be considered on a site-specific basis in accordance with the EPA approved West Virginia mixing zone regulations in 47 CSR 2 §5. The revision also consists of the deletion of a Weirton Steel Corporation variance that will expire on September 1, 2010.

The half-mile rule in essence prohibits the application of mixing zones near the area of drinking water intakes. The newly-adopted revision allows the consideration of a mixing zone in accordance with West Virginia mixing zone regulations at § 46-1-5 on the specified stretch of the Ohio River, which includes a drinking water intake. Whether a mixing zone is appropriate for a particular pollutant in that particular segment of the Ohio River and what would be the proper size for such zone would be determined by WVDEP in accordance with the EPA-approved mixing zone regulations. Those regulations require that mixing zones for human health criteria be sized to prevent significant human health risks, considering the exposures pathways. See Water Quality Handbook, Chapter 5 - General Policy's p.5-7, EPA Office of Water, EPA 823-B-

[1] Section 7.2.a2 of the West Virginia regulations, which is known as the half-mile rule, establishes that "[e]ach segment extending upstream from the intake of a water supply public (Water Use Category A), for a distance of one half (.) mile or to the headwater, must be protected by prohibiting the discharge of any pollutants in excess of the concentrations designated for [public water supply use]."

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94-005a (August 1994). In general, that means that a drinking water intake should not be within a mixing zone; but rather the human health criteria should be met before the intake. The documentation submitted by the state shows that the state could allow through a permit a limited mixing zone prior to the drinking water intake present in the specified stretch of the Ohio River that would require that the human health criteria be met before the intake. The West Virginia regulations, as modified by the revision, are still protective of the public water supply use.

Under West Virginia law, an emergency rule such as this one expires no later than 15 months after it becomes effective. See West Virginia Code § 29A-3-15. WVDEP has informed EPA that it intends to seek a legislative rule which would adopt this revision permanently. If that does not occur, upon the expiration of this revision, this exception to the half-mile rule would expire, with the result that the half-mile rule would apply to this stretch to the Ohio River. Thus, it would result in a more stringent application of mixing zones than what EPA is approving with this revision. Such limitation in the application of mixing zones is within the state's discretion.

As part of this approval, EPA has reviewed the "Known and Potential Distribution of Federally-listed Endangered, Threatened, and Candidate Species in West Virginia" (updated as of March 2010) as to the location of Federally-listed threatened and endangered species in West Virgina and found that there are no endangered species in the stretch of the Ohio River affected by the revision. Therefore, EPA has determined that its action will have no effect on Federally-listed endangered or threatened species in West Virginia.

If you have any questions concerning this letter please contact Ms. Cheryl Atkinson at (215) 814-3392.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division

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