

**47 CSR 2. REQUIREMENTS GOVERNING WATER QUALITY STANDARDS
HARMONIC MEAN AMENDMENT
OHIO RIVER MP 68.0-70.0**

RESPONSE TO COMMENTS

On March 18, 2011, the West Virginia Department of Environmental Protection (DEP), Division of Water & Waste Management (DWWM) commenced a 45-day public comment period and subsequently held a public hearing on May 3, 2011 to accept oral comments on the harmonic mean flow amendment to Legislative Rule 47 CSR 2. The harmonic mean flow amendment was submitted by the West Virginia legislature during the 2011 session, after the DEP had submitted its agency approved rule. The amendment is specific to the Ohio River and applies between mile points 68.0 and 70.0. At the time of the May 3rd public hearing, the DEP announced that the public comment period regarding this amendment would be extended until 5:00 p.m. on Monday, June 6, 2011. Six commenters submitted written comments regarding the proposed revision to 47 CSR 2, and one commenter provided verbal comments. DWWM addresses these comments below.

1. COMMENTER: Law Office of Vincent Trivelli, PLLC on behalf of the West Virginia Building and Construction Trades Council and the Affiliated Construction Trades Foundation.

COMMENT A. Consultant Studies

The commenter states that none of the studies conducted by three separate engineering firms on the Mountain State Carbon facility appear to have concluded that the final effluent limits could not be met, nor did Mountain State Carbon claim that cost to do so would be excessive.

RESPONSE A. As stated in the notice, this comment period pertains specifically to the design flow revision completed by West Virginia legislature during the 2011 session. This comment speaks to specific studies and limits pertaining to the Mountain State Carbon NPDES permit which is not under consideration at this time.

COMMENT B. Repair of Wastewater Treatment Equipment

The commenter believes there are a number of steps that Mountain State Carbon could take that would enable them to meet relaxed final effluent limitations. Studies conducted by Mountain State Carbon and its consultants concluded that a significant portion of the work needed to comply with effluent limitations for PAHs related to repair or replacement of the wastewater treatment facility. Therefore, there is no need to modify West Virginia's water quality standards for the main stem Ohio River to allow Mountain State Carbon to meet its effluent limitations.

RESPONSE B. See Response to Comment 1. A.

2. COMMENTER: West Virginia Rivers Coalition

COMMENT A. Amendment Adopted "After the Fact"

The commenter states that contrary to the provisions of the federal Clean Water Act and WV Department of Environmental Protection rules, the Legislature adopted this amendment without conducting the required 45-day public comment period and without a public hearing. In essence, the current public comment period provided by WVDEP is "after the fact" and meaningless. The commenter feels there was a blatant disregard of the legal process established for making changes to water quality standards.

RESPONSE A. One of the amendments to the Water Quality Standards Rule passed by the West Virginia Legislature during the 2011 legislative session revised section 8.2.b and 8.2.b.1. The revision was not proposed by the DEP and therefore the agency did not receive any comments on this section during its initial public comment period on the rule. In accordance with applicable state and federal requirements, DEP provided public notice soliciting comments regarding this revision and conducted a public hearing on May 3, 2011. In addition, written comments were accepted through June 6, 2011. The public comments and the agency's written response to the comments will be submitted to the USEPA as required.

COMMENT B. Harmonic Mean vs. 7Q10 Flow

The commenter states that USEPA has found that a stream's harmonic mean flow is almost always 2.5 times the stream's 7Q10 flow. Therefore, it is assumed that this rule change will legalize the discharge of significantly greater levels of carcinogens into the Ohio River.

RESPONSE B. USEPA's *Technical Support Document for Water Quality-based Toxics Control* supports use of the harmonic mean flow as the correct critical condition and recommends it as the design flow for carcinogens. It was determined that the harmonic mean flow was appropriate for evaluation of human health impacts that are of concern due to long-term exposures. The agency believes that for this section of the Ohio River, the use of harmonic mean flow as the critical condition is acceptable and consistent with guidance and regulation.

3. COMMENTER: Larry B. Dadisman

COMMENT A. Continued Environmental Degradation

The commenter states that it would be a great loss to allow any additional environmental degradation by changes to the Rule 47CSR2.

RESPONSE A. DEP believes the use of harmonic mean flow as the critical condition for this section of the Ohio River will continue to protect and maintain designated uses.

COMMENT B. Short Notice for Public Comment

The commenter disagrees with the short notice for public comment and feels it should be extended.

RESPONSE B. DEP acknowledges there was confusion following the March 18, 2011 notice concerning the public comment period and hearing. Based on this and similar submitted comments, DEP extended the comment period to June 6, 2011.

4. COMMENTER: Melanie Climis

COMMENT A. *Request for Comments Made "After the Fact"*

The commenter questions why the DEP is asking for comments regarding a change in water quality standards after the change has already been made.

RESPONSE A. See Response 2. A.

COMMENT B. *Citizen Rights to Clean Water*

The commenter feels that the new rules pose even more of a health and safety hazard to West Virginians and that clean water is a right for all citizens, a right which is being abrogated by inadequate standards.

RESPONSE B. DEP acknowledges and agrees that clean water is a right for all citizens (and visitors) to West Virginia. However we believe this specific change will not pose more of a health and safety hazard and still protect designated uses. DEP continually reviews water quality standards and requests the commenter submit comments pertaining to specific criteria deemed inadequate during the next public comment review period associated with changes of the Rule Governing Water Quality Standards – Legislative Rule 47 CSR 2.

5. COMMENTER: Don Garvin

COMMENT A. *Issue Could Have Been Handled Other Ways*

The commenter states that the amendment was adopted out of the blue and that it could have been handled other ways. The variances could have been discussed in a public forum.

RESPONSE A. DEP acknowledges this design flow revision was not known until after the start of the 2011 legislative session. As stated in Response 2.A. the revision was not proposed by the DEP but introduced by West Virginia legislature during the February 21, 2011 Senate Judiciary Committee meeting. As allowed by state code, revisions to Rules can be made during legislative session. State code considers all legislative session open to the public and allow for public participation.

COMMENT B. *The Public Hearing is Pointless*

The commenter feels that it's too late to object since the change has already been made. There has been no discussion of the cumulative impact of the carcinogens affected by this amendment. The regular DEP and EPA process was bypassed by the legislature.

RESPONSE B. See Response 2. A.

COMMENT C. *Other Language was amended out of the Rule*

The commenter expresses concern about language that was left out of the rule, specifically narrative standards for water withdrawals, limits for Greenbrier River nutrients, and limits for total dissolved solids.

RESPONSE C. As stated in the notice, this comment period pertains specifically to the design flow revision completed by West Virginia legislature during the 2011 session. We respectfully request the commenter resubmit comments pertaining to water withdrawals, nutrients, the total dissolved solid limit or any other issue with the Water Quality Standards Rule during the next public comment review period associated with changes of the Rule Governing Water Quality Standards – Legislative Rule 47 CSR 2.

COMMENT D. *Desire for the DEP to Return to Its Regular Process*

The commenter trusts that the DEP will get back to doing these things in the public eye and with public discussion.

RESPONSE D. DEP respectfully disagrees that this process was not completed in the “public eye” As stated in Response 2.A. the revision was not proposed by the DEP but introduced during the 2011 West Virginia legislative session, as is allowed by state code. The revision was introduced February 21, 2011 during the Senate Judiciary Committee meeting and included in all subsequent legislative hearings which are open to public participation. Upon the completion of the 2011 legislative session and in accordance with applicable state and federal requirements, DEP provided public notice March 18, 2011 soliciting comments regarding this revision and conducted a public hearing on May 3, 2011. As stated in Response 3. B. DEP recognized there was confusion with the initial notice and per the request of commenters, increased the comment period to June 6, 2011.

6. COMMENTER: Don Gasper

COMMENT A. *Suggestions for Selenium, TDS, and Conductivity*

The commenter states that water quality standards should address selenium and total dissolved solids. Suggests that setting a limit on conductivity alone might solve the problem and eliminate confusion. Recommends a limit of 500 umhos/cm for conductivity. Commenter also recommends that DEP make certain that every bit of concentrated brine fluid from oil and gas operations be deposited in certified wells.

RESPONSE A. See Response 5. C.

**Public hearing transcript and
submitted comments to WVDEP**

BEFORE THE WEST VIRGINIA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF:

RULE CHANGE TO 47CSR2

RECEIVED

MAY 18 2011

WATER QUALITY STDS

TRANSCRIPT OF PROCEEDINGS had or testimony adduced in the above-entitled matter, on the on the 3rd day of May, 2011, commencing at 6:05 p.m. and concluding at 6:16 p.m., at the Office of the Department of Environmental Protection, 601 57th Street, S.E., Charleston, Kanawha County, West Virginia, pursuant to notice to all interested parties.

BEFORE: KATHY COSCO, Public Information Officer

NANCY MCNEALY
CERTIFIED COURT REPORTER
Post Office Box 13415
Charleston, West Virginia 25360-0415
(304) 988-2873 FAX (304) 988-1419

 **ORIGINAL**

I N D E X

Reporter's Certificate.....Page 9

1 MS. COSCO: All right, we'll go ahead and get
2 started. Good evening. My name is Kathy Cosco, and I am
3 with the West Virginia Department of Environmental
4 Protection's Public Information Office. Welcome to the
5 public hearing to take comments related to revisions made
6 during the past legislative session that changed subsection
7 8.2.b by adding the following language to the rule, "For
8 the Ohio River between river mile points 68.0 and 70.0 the
9 critical design flow for determine effluent limits for
10 carcinogens shall be harmonic mean flow."

11 With me tonight is Scott Mandirola and some
12 other staff members from the DEP's Water Quality Standards
13 Program. The purpose for tonight's meeting is to give you
14 the opportunity to share your comments on the record. It
15 is not a forum to engage the DEP in open discussion or
16 debate on the changes made to the rule.

17 The comments we receive and the responses to
18 those comments will be submitted to the Environmental
19 Protection Agency for their final approval of the triennial
20 review of the state's water quality standards.

21 At this time, Scott Mandirola has a couple
22 of things to share with you, then we'll begin taking your
23 comments. Scott, if you'll come up.

24 MR. MANDIROLA: Originally, the comment period

1 is supposed to end tonight, but what I would like to do is
2 due to some confusion we've received and comments over when
3 it began, we're going to not end the comment period to
4 night but allow comments to be received through June 6th,
5 and we're going to go back out and it will be noticed in
6 the *State Register* again this Friday to make sure. We
7 heard some comments from folks that they weren't aware of
8 it. We're also going to put it back out on our DEP e-mail
9 list so that no one feels as if they didn't get an
10 opportunity to comment on this.

11 Okay, so it's going to be open for comment,
12 for written comment through June 6th at 5 p.m., close of
13 business on June 5th or 6th, excuse me. Okay?

14 MR. GARVIN: Is there another -- will you have
15 another public hearing too or?

16 MR. MANDIROLA: We hadn't planned on that, no.

17 MR. GARVIN: Okay.

18 MR. MANDIROLA: Normally, we close the comment
19 period at the close of the public hearing.

20 MR. GARVIN: Right.

21 MR. MANDIROLA: But what we're going to do
22 because people have stated that they weren't -- they didn't
23 understand it was out to notice, we're going to go ahead
24 and leave out to notice and re-notice it in the *State*

1 Register this Friday, so that it will be back out through
2 June 6th, okay?

3 MS. COSCO: Okay, I will call you up in the
4 order we have your name on the sign-in sheets. Please
5 state your name and where you live or if you are with any
6 groups or organizations. To ensure that we successfully
7 achieve the purpose of this meeting, we ask everyone to be
8 respectful and considerate of each other and keep your
9 comments on the topic so that our here together is used
10 efficiently.

11 Because there's only a few people, I'm not
12 going to put any limits on the amount of time that you get
13 to speak but do try to stick to the point and stay on the
14 topic, please. So our first speaker is Don Garvin. Can
15 you come up?

16 MR. GARVIN: My name is Don Garvin. I'm from
17 Buckhannon, West Virginia. I'm a legislative coordinator
18 for the West Virginia Environmental Council. As we
19 normally do with water quality rules, we put together a
20 group comment letter; that should have been received by you
21 today. But now that there's the extension, that's not a
22 problem, we can always resubmit them.

23 There was an interesting article by Ken Ward
24 on the West Virginia Legislature's blog that described some

1 of the history of this issue and in that regard, we
2 attached it to our comments. The comments were filed by
3 Shanda Minney for West Virginia Rivers Coalition and were
4 signed onto by the Environmental Council, Highlands
5 Conservancy, Citizen Action Group, League of Women Voters
6 and the Appalachian Center for the Economy and the
7 Environment. I won't repeat those.

8 I wanted to add a couple comments of my own.
9 There's been no hearing on this change. There's been no
10 public discussion. This was an amendment adopted by the
11 legislature out of the blue. There are other ways that
12 this issue could have been handled. The variances could
13 have been discussed. There are different options that in a
14 public forum could have been discussed and could have
15 helped the company that this amendment was proposed for,
16 and it was proposed for one or two companies as I
17 understand it.

18 As for the loosening of the flow regime from
19 7Q10 to harmonic mean flow for these 16, I believe is what
20 Scott told me, polycyclic aromatic hydrocarbons. There's
21 been no discussion or consideration of the interaction of
22 these compounds, no discussion of cumulative impact of
23 these carcinogens and that's because this was done by the
24 legislature instead of the regular process that DEP goes

1 through and that the Clean Water Act calls for and DEP's
2 own rules call for. So at this point it's too late for us
3 to say -- well, we're going to say we object to the change
4 but it's already been done, and therefore I guess this
5 public hearing is pointless, but maybe it's pointless to
6 EPA and that's -- I am hoping that EPA will disallow this
7 legislative rules change.

8 I do want to go off point a little and say I
9 was not at the legislature this past session due to some
10 health problems and what concerns me more than the adoption
11 of this amendment into the rule was what they amended out
12 of the rule. They amended out the language adding
13 excessive water withdrawals from the narrative standards as
14 proposed by DEP. They amended out the limits for nutrients
15 for the Greenbrier River. The first time we've had a
16 proposal for nutrients on any river and they amended out
17 the limits for total dissolved solids which the state
18 desperately needs.

19 I realize that DEP did not propose the
20 amendment for the two mile section of the Ohio River and I
21 trust we will get back to doing these things in the public
22 eye and with public discussion. Thank you.

23 MS. COSCO: Thank you, Don. The next
24 individual express in speaking is Lou Baker.

1 MR. BAKER: No comments at this time.

2 MS. COSCO: No comments at this time. Is
3 there anyone else who'd like to change theirs? Well, if
4 there are no further comments, if you have written comments
5 that you brought with you that you would like to submit in
6 addition to what you've -- well, Don, you've already said
7 you'd submitted yours -- please hand them to me at the
8 conclusion of this meeting.

9 If nobody has any questions or comments,
10 then this concludes the public hearing on legislative
11 changes to Rule 47CSR2. Again, just a reminder, the public
12 comment period on the rule will end at 5 p.m. on I believe
13 it's Monday, June 6th. Thank you very much for your
14 interest and your time in coming out this evening.

(WHEREUPON, the hearing was concluded.)

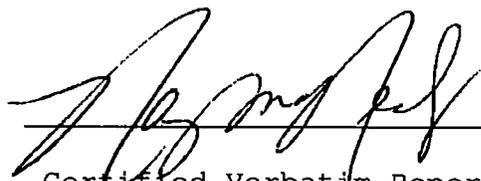
REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

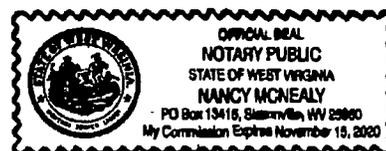
I, **NANCY MCNEALY**, Certified Verbatim Court Reporter and Notary Public of West Virginia, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

Given under my hand this 8th day of May,
2011.

My commission expires November 15, 2020.



Certified Verbatim Reporter



RECEIVED

MAY 18 2011

WATER QUALITY STDS

GLORIA SHAFER
WATER QUALITY STANDARDS
WVA DEP
CHARLESTON W.V.

DEAR Ms SHAFER

MAY 15 2011

IT WOULD SEEM WATER QUALITY STANDARDS SHOULD ADDRESS SELENIUM - AND TOTAL DISSOLVED SOLIDS. IT WOULD BE AS EXACT TO SET THIS LIMIT ON CONDUCTIVITY ONLY. CONDUCTANCE IS NEARLY THE SAME IN EVERY RESPECT AND IT IS EASILY MEASURED. YOU COULD DO US ALL A SERVICE TO ELIMINATE CONFUSION BY ELIMINATING FURTHER^{OR} CONSIDERATION OF T.D.S.

A LIMIT OF 500 MICROMHOS/CM. SUGGESTS ITSELF FOR PROTECTION. THIS LIMIT IS RESTRICTIVE AS SOME COAL MINES HAVE TREATED WATER 4X THIS AMOUNT AND OTHERS HAVE UNTREATED SEEPS WITH SIMILAR LEVELS. GAS WELL BRINE/FLOW-BACK ALSO MAY BE OF HIGH CONDUCTANCE AND BECOME MORE-SO IF RECOVERED AND REUSED. WE MUST BE CERTAIN THAT EVERY BIT OF THIS VERY CONCENTRATED BRINE IS VARIABLY DEPOSITED INTO CERTIFIED WELLS.

IT TAKES A LOT OF WATER TO DILUTE IT ENOUGH, BUT DO CONSIDER THAT WE HAVE LAKES, ETC.; DILUTION FOR T.D.S., WHEN CONDUCTANCE, IS STRAIGHT-FORWARD. THE CONSTITUANTS OF T.D.S. MUST BE CONSIDERED. DILUTION BECOMES A GREATER PROBLEM AT SUMMER LOW FLOWS.

CONSOLE MAY SCALE-UP EXPERIMENTAL TREATMENT TO REDUCE T.D.S. WITH THEIR 200 MILLION SYSTEM.

BEST WISHES
DON GASPER, FISH BIOLOGIST
W.VA. D.N.R. - RETIRED
4 RITCHIE ST. BUCKHANNON, WV 26201

The Law Office of Vincent Trivelli, PLLC
178 Chancery Row
Morgantown, West Virginia 26505
Phone (304) 291-5223 • Toll Free 1-866-266-5948
Fax (304) 291-2240 • E-mail: vmtriv@westco.net

May 3, 2011
(via electronic mail to dep.comments@wv.gov)

Gloria Shaffer
Water Quality Standards Program
WV Department of Environmental Protection
601 57th Street, S.E.
Charleston, WV 25304

Re: Rule 47CSR2 Revision

Dear Ms. Shaffer:

Attached please find a letter from Bruce A. Bell, Ph.D., P.E., BCEE, of Carpenter Environmental Associates, Inc. that was developed during the legislative session and which relates to the above-referenced rule change.

Please accept this letter on behalf of the West Virginia State Building and Construction Trades Council, AFL-CIO, and its division the Affiliated Construction Trades Foundation (ACT) as comment regarding the above rule revision.

The letter raises serious concerns and speaks for itself.

Should you have any question regarding the attached, please feel free to contact me at 304 291-5223.

Thank you for your consideration of the attached.

Yours truly,


Vincent Trivelli

Cc: Steve White, Director, ACT



Massachusetts Office
42 Nelson Lane
Marston Mills, MA 02648

Main Office
307 Museum Village Road
Monroe, New York 10950

Sender's Phone: 845-781-4844 EXT 306
Sender's Email: b.bull@cea-enviro.com

Phone: 774-521-3284
Fax: 508-530-2952

Phone: 845-781-4844
Fax: 845-782-5591

February 8, 2011

Law Office of Vincent Trivelli, PLLC
178 Chancery Row
Morgantown, WV 26505

Re: Mountain State Carbon, LLC
CEA No. 21103

Dear Mr. Trivelli,

Carpenter Environmental Associates, Inc. (CEA) has reviewed the West Virginia Department of Environmental Protection (DEP) Consent Order, Order No.: 7160, dated January 31, 2011 to address the question you asked: is it necessary to revise the design flow for carcinogens to harmonic mean flow in the main stem of the Ohio River in order to enable Mountain State Carbon, LLC to comply with final effluent limitation contained in the Consent Order? Before directly addressing your question, I would note that the use of harmonic mean flow results in less protective discharge limits to waters used for drinking water than does current regulations. The proposed change applies only to the main stem of the Ohio, which means that people who rely on the main stem of the Ohio for drinking water would be at greater risk for cancer from all carcinogens than West Virginians who rely on other surface waters for their drinking water.

The Consent Order, as issued, allows Mountain State Carbon, LLC a number of opportunities to obtain relaxed effluent limitations for the polynuclear aromatic compounds (PAH) that are of issue in the Consent Order. The Consent order contains final effluent limitations that are not based on the application of WV mixing zone regulations. Application of mixing zone regulations could result in significantly less stringent effluent limitations. The Consent Order specifically, not only allows but requires, that by July 31, 2011 the Mountain State Carbon, LLC submit an application for a major permit modification including all information required for all pollutants for which the applicant is requesting new limits based on mixing zone.

Mountains State Carbon's discharge permit required that the company evaluate translators and real-time water quality management in addition to mixing zones. Translators account for the different biological availability of pollutants as a result of site specific receiving water quality and can result in a site-specific variance to water quality standards. Real-time water quality management involves changing the volume of effluent released in response to river flow, which can result in relaxed effluent limitations. Translators and real-time water quality management along with mixing zones offer the

possibility of higher (relaxed) effluent limitations. Mountain State Carbon did not provide such information to the satisfaction of DEP. It can do so now.

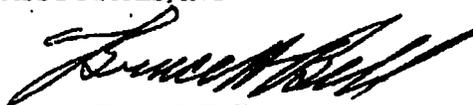
Mountain State Carbon hired three separate professional engineering consultants and conducted several studies of its facility to evaluate possible operation changes, pollution source elimination, and wastewater treatment improvements. None of these studies appear to have concluded that the final effluent limits could not be met nor did Mountain State Carbon claim that cost to do so would be excessive.

The studies conducted by Mountain State Carbon and its consultants concluded that a significant portion of the work needed to comply with effluent limitations for PAH is repair or replacement of wastewater treatment equipment that the company failed to properly maintain. Two of five decanters required for wastewater treatment were out of service awaiting repair or replacement at the time of the Consent Order. Both of the two ammonia saturators for wastewater treatment were out of service awaiting repair or replacement at the time of the Consent Order. Better operation and maintenance was also required.

There is no need to modify West Virginia's water quality modifications for the main stem of the Ohio River in order to allow Mountain State Carbon to meet its effluent limitations. There are a number of steps that Mountain State Carbon could have taken and can still take that may well result in relaxed final effluent limitations. A significant portion of the work required to meet the final effluent limitations contained in the Consent Order is required just to repair or replace equipment that wasn't maintained.

Sincerely,

CARPENTER ENVIRONMENTAL
ASSOCIATES, INC.



Bruce A. Bell
President, Ph.D., P.E., BCEE



WEST VIRGINIA RIVERS COALITION

329 Davis Avenue, Suite 7 • Elkins, WV 26241 • (304) 637-7201 • www.wvrivers.org

Scott Mandirola
Division of Water and Waste Management
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

VIA EMAIL

May 3, 2011

Re: 2011 Legislative Revisions to 47CSR2, "Requirements Governing Water Quality Standards"

Dear Mr. Mandirola,

West Virginia Rivers Coalition submits these comments on behalf of its 2,200 members and in collaboration with the organizations listed on the signatory page of this document. Each and every signatory and its members have a vested interest in the quality of West Virginia's waters, and believe that strengthening water quality standards are critical to the future health of our water resources and future economic development opportunities in the state.

The following comments address the West Virginia Department of Environmental Protection's revisions of 47CSR2, Requirements Governing Water Quality Standards.

During the 2011 Regular Session of the West Virginia Legislature, an amendment to 47CSR2, the Water Quality Standards Rule, was passed as outlined below. Contrary to provisions of the federal Clean Water Act and WV Department of Environmental Protection rules, the Legislature adopted this amendment without conducting the required 45-day public comment period and without a public hearing.

In essence, then, this current public comment period provided by WVDEP is "after the fact" and meaningless. The Legislature has already acted. We oppose this blatant disregard of the legal process established for making changes to water quality standards.

Sections 8.2.b. and 8.2.b.1: Criteria for Toxins

Specifically, the amended rule would change the critical design flow from 7Q10 to harmonic mean flow for carcinogens along two miles of the Ohio River. This change would allow permittees to discharge more carcinogens to the Ohio River.

Based on a review of 60 randomly selected streams across the country, USEPA has found that a stream's harmonic mean flow is almost always greater than 2.5 times that stream's 7Q10 flow. In fact, USEPA allows permitting authorities to estimate a stream's harmonic mean flow as three times the 7Q10 flow. (USEPA, Technical Support Document for Water Quality-based Toxics Control, 1991)

We therefore assume that this rule change will legalize the discharge of significantly greater levels of carcinogens into the Ohio River, and strongly oppose this "already adopted" rule change.

Sincerely,

Shanda Minney
Executive Director
West Virginia Rivers Coalition
329 Davis Ave., Suite 7
Elkins, WV 26241
(304) 637-7201
sminney@wvrivers.org

Don Garvin
Legislative Coordinator
West Virginia Environmental Council
2206 Washington Street East
Charleston, WV 25311
(304) 395-0078
DSGJr@aol.com

Cindy Rank
Mining Chair
West Virginia Highlands Conservancy
HC 78 Box 227
Rock Cave, WV 26234
(304) 924-5802
clrank@hughes.net

Julie Archer
Project Manager
WV Citizen Action Group
1500 Dixie Street
Charleston, WV 25311
(304) 346-5891
julie@wvcag.org

Susan Watkins
President
League of Women Voters of WV
309 Mount View Drive
Charleston, WV 25314

Margaret Janes
Senior Policy Analyst
Appalachian Center for the Economy
and the Environment
5640 Howards Lick Road
Mathais, WV, 26812
(304) 897-6048
mjanes@hardynet.com

Enclosure

<http://blogs.wvgazette.com/watchdog/2011/05/02/cancer-creek-water-quality-changes-are-back/>

'Cancer Creek' water quality changes are back

May 2, 2011 by Ken Ward Jr.

Every few years, it seems, industry lobbyists in West Virginia come back with their proposal to greatly weaken the state's water quality standards by changing the way pollution limits are calculated.

This past legislative session, they succeeded in slipping through what one industry lawyer, Dave Yaussy described — perhaps hopefully — on his West Virginia Environmental Law blog as "the Camel's Nose Under the Tent Flap."

The change in question mandates the use of the so-called "harmonic mean," or average flow to calculate the level of cancer-causing chemicals that can be discharged into a two-mile section of the Ohio River near the town of Follansbee. Previously, the pollution for this part of the river would have been based — like that in the rest of our rivers and streams in West Virginia — on the seven lowest consecutive "flow days" over the last 10 years, or the 7Q10 flow. As Dave Yaussy explains:

"In issuing NPDES permits the West Virginia DEP usually uses a very conservative critical design flow referred to as the 7Q10, or the lowest 7 day consecutive flow that recurs at least once every 10 years. It's a pretty low flow, meaning that the dilution available is low, and that means NPDES permit discharge limits are lower as well, because there's less water to mix with. Even though the flow in the river, and therefore the amount of water available for mixing, is higher 99% of the time, the low 7Q10 flow is used to set limits in order to protect water quality even during drought periods."

Industry doesn't like the tougher standards. They've been trying for years to get them changed, and their efforts back in the mid-1990s — driven in large part by a huge pulp and paper mill proposed for Mason County — prompted the Affiliated Construction Trades Foundation to name the change the "Cancer Creek Bill. "
(subscription required)

Industry lobbyists succeeded, at least in a little way, this year. The change from harmonic meant for a small section of the Ohio was added to the state's water quality standards in the Senate Judiciary Committee.

Last week, the state Department of Environmental Protection announced it would

be holding a public hearing on this proposal ... but the thing is, as West Virginia Environmental Council lobbyist Don Garvin told me, it's not really a proposal, at least not as far as state government goes. The Legislature already approved it. WVDEP is holding a hearing because federal regulations require public hearing and comment on such changes to water quality standards. Without the hearing, the rule change would likely be thrown out by the U.S. Environmental Protection Agency.

Interestingly, the WVDEP public notice for the hearing tomorrow night doesn't provide much of an explanation for the hearing or for the rule change. The notice simply says: "Revisions made during the past legislative session added language to Rule 47CSR2 that addresses the critical design flow for determining effluent limits for carcinogens on the Ohio River between mile points 68.0 and 70.0."

But Scott Mandirola, WVDEP's water division director, explained to me that lawmakers inserted the language at the request of Mountain State Carbon, which operates a coke plant in that area, and has been having trouble meeting fairly new U.S. Environmental Protection Agency limits for cancer-causing polycyclic aromatic hydrocarbons, or PAHs.

Now, industry officials have their arguments for making the change to harmonic mean. They say, for example, that surrounding states use that method, and they note that EPA's recommended standards are based on using harmonic mean. But for years, West Virginians have enjoyed a tougher pollution standard for facilities along the Ohio River — and around the state, giving additional protection from cancer-causing pollution. Business leaders like to argue that this standard is holding back job creation, and hampering existing industry.

So does Mountain State Carbon really need the change lawmakers have provided?

WVDEP's Scott Mandirola said his agency doesn't know for sure. Already, as part of a deal with the state, the company has agreed to spend \$2 million to improve its pollution treatment. Until those changes are up and running, there's no way to know if the company could meet its limits based on a 7Q10-flow calculation, Mandirola said.

"It's a little up in the air," Mandirola said. "It's debatable whether they can or can't meet it the way the permit is now."

Tomorrow's meeting is at 6 p.m. at the DEP headquarters in Kanawha City ... Written comments will be accepted until the end of the hearing. They can be emailed to the agency via dep.comments@wv.gov

Arcuri, Michael

From: Keller, Linda B
Sent: Thursday, May 05, 2011 11:08 AM
To: Arcuri, Michael
Subject: FW: Revisions made to Rule 47CSR2, "Requirements Governing

From: Cosco, Kathy **On Behalf Of** DEP Comments
Sent: Tuesday, May 03, 2011 9:42 AM
To: Shaffer, Gloria J; Keller, Linda B
Subject: FW: Revisions made to Rule 47CSR2, "Requirements Governing

From DEP Comments

From: L DADISMAN [mailto:ldadisman@yahoo.com]
Sent: Saturday, April 30, 2011 3:52 PM
To: DEP Comments
Subject: Revisions made to Rule 47CSR2, "Requirements Governing

Larry B. Dadisman
912 Greendale Dr.
Charleston, WV 25302-3224

Gloria Shaffer
Water Quality Standards Program
WV Department of Environmental Protection
601 57th St., S.E.
Charleston, WV 25304

April 30, 2011

Re: Revisions made to Rule 47CSR2 , "Requirements
Governing Water Quality Standards."

Dear Ms. Shaffer

The Ohio River is a very important and enormous source of water to an

area of over half our state and it would be a great loss to allow any added environmental degradation to be continued or enhanced by changes to the Rule 47CSR2 which lacks dearly in strength and expansion of protections over our precious waters.

I disagree with the short notice of the hearing and notification on an important matters such as our water quality standards, it should be extended to allow interested parties to make comments.

Sincerely,
Larry B. Dadisman

Arcuri, Michael

From: Keller, Linda B
Sent: Thursday, May 05, 2011 11:09 AM
To: Arcuri, Michael
Subject: FW: water quality comments

From: Mandirola, Scott G
Sent: Monday, April 25, 2011 8:56 AM
To: Keller, Linda B
Subject: FW: water quality comments

fyi

From: Cosco, Kathy On Behalf Of DEP Comments
Sent: Tuesday, April 19, 2011 3:28 PM
To: Coyne, Kevin R; Mandirola, Scott G
Subject: FW: water quality comments

From: dancesynergy@earthlink.net [mailto:dancesynergy@earthlink.net]
Sent: Friday, April 08, 2011 10:34 PM
To: DEP Comments
Subject: water quality comments

My first comment is a question: Why are you asking for comments for a change in water quality standards AFTER changing those standards? The legislation passed should be rescinded on a procedural call.

The changes that have been made in the 2011 legislative session gut the previous – and inadequate – rules governing water quality standards. The new rules pose even more of a health and safety hazard to West Virginians. Since when is clean water a luxury? It is a right for all West Virginians, a right which is being abrogated by inadequate standards.

Melanie Climis
Martinsburg, WV
dancesynergy@earthlink.net