

# EMERGENCY RULE JUSTIFICATION

The DEP is proposing an emergency rule to address the one-half mile zone extending upstream from the intake of a water supply public and the exception that applies to the Ohio River in 47 CSR 2. This proposed rule change is found in paragraph 7.2.a.2 on page 9 of the rule.

The West Virginia water quality standards rule, 47 CSR 2 §7.2.a.2, establishes a segment extending upstream from the intake of a water supply public (Water Use Category A), for a distance of one half (1/2) mile that must be protected by prohibiting the discharge of any pollutants in excess of the concentrations designated for this Water Use Category in section 8, herein. This rule (half- mile rule) prohibits a mixing zone being granted for any discharge within one-half mile of a public water supply intake and was created as a additional protective zone for public drinking water supplies. The purpose of the Half-Mile Rule was to avoid placing a drinking water supplier in the unfair position of having additional water treatment costs due to discharges by unrelated point sources. 47 CSR 2 §7.2.a.2 also provides a temporary exception to the one-half mile zone until September 1, 2010 for the Ohio River main channel between river mile points 61.0 and 63.5 for the Category A water quality criterion for total iron.

The DEP proposes an emergency rule and a legislative rule revision to make a site-specific exception to the half-mile rule so that it shall not apply to the Ohio River main channel (between Brown's Island and the left descending bank) between river mile points 61.0 and 63.5. All mixing zone regulations found in section 5 of this rule will apply except 47 CSR 2 §5.2.h.6. The result of this exception is that it allows consideration of mixing zones in the identified section of the Ohio River in accordance with West Virginia mixing zone regulations found in Section 5, and as established in a permit by the Director of the West Virginia Division of Water and Waste Management. Additionally, because the use would be fully attained at the edge of the mixing zone, which would not be allowed to overlap the drinking water intake, this site-specific exemption from the half-mile rule maintains protection of the designated and existing drinking water use by meeting the protective criteria before the intake, thereby ensuring the protection of the designated water uses as set forth in 40 CFR Part 131.

Although the State, through the submittal of this revision, is exempting particular dischargers from the half-mile zone, the approval of the revision does not imply that any mixing zones should be permitted. 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 regulation in 47 CSR 2 §5. These regulations require that the mixing zones for human health criteria be sized to prevent significant human health risks, considering the exposure pathway, as per 47 CSR 2 §5.2.c ; see also "Water Quality handbook, Chapter 5, General Policies" pages 5-7, EPA Office of Water, EPA 823-B-94-005a (August 1994). In

general, this 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. Based on the above documents, the State can clearly allow through a permit, a limited mixing zone prior to a drinking water intake present in the specific stretch of the Ohio River, which would require that the human health criteria be met before the intake. Therefore the West Virginia WQS regulations, as modified by this revision, would still be fully protective of the public water supply use in this segment of the Ohio River while eliminating unnecessary treatment costs to the regulated community.

Substantial capital investments by ArcelorMittal Weirton, Inc., that would need to be made to adhere to limits which currently become effective September 1, 2010, can be avoided with this emergency rule. Given the financial performance of ArcelorMittal Weirton Inc. over the past several years and current economic conditions in the area, such investments with no environmental gain cannot be justified. An emergency rule is therefore justified as necessary to prevent substantial harm to the public interest.