



BUREAU OF THE ENVIRONMENT
ENVIRONMENTAL QUALITY BOARD
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MINUTES
WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
MARCH 25 AND 26, 1999

I. General

The West Virginia Environmental Quality Board (the "Board") met on March 25 and 26, 1999, at 9:00 a.m. The hearing was held at 1615 Washington Street, E., Charleston, West Virginia. The portion of this meeting concerning Water Quality Standards was audio-taped and the Appeal Hearings portion was recorded and transcribed by a court reporter. Edward M. Snyder, Chair of the Environmental Quality Board called the meeting to order. The following Board members were present:

Edward M Snyder, Chair
Betsy Dulin, present on March 25th
Bob Jenkins, present on March 25th, by phone for contested case discussion on March 26th
David Samuel
Donald Tarter, Vice-chair, present on March 26th

Staff Members Present:

Libby Chatfield, Technical Advisor
Ann Holstein, Administrative Secretary
Becky Charles, Legal Counsel

II. Contested Cases

This portion of the meeting is not subject to the requirements of the Open Meetings Act. These items were the Board's deliberations for making decisions in quasi-judicial proceedings. W.Va. Code § 6-9A-2(4).

A. Appeal Decisions and Deliberations

1. **Monongahela Power Co.; Timberline Utilities; Franklyn Engler; Martin Jefferson; v. Office of Water Resources; Appeal Nos. 97- 08-EQB; 97-09-EQB; 97-10-EQB; 97-11-EQB; and 98-13-EQB.**

On March 25, 1999, the Board reviewed a draft final order prepared pursuant to its deliberations on February 22, 1999. The Board requested some changes to the order. On March 26th the Board reviewed the amended final order. Board member Bob Jenkins participated in the March 26th discussion by phone. After reviewing and discussing the draft order, Dave Samuel moved that the Board accept the order as written and amended by Bob Jenkins. Don Tarter seconded the motion which then passed by a unanimous vote. The Board's legal counsel was instructed to amend the order in accordance with the discussion.

The Board also discussed the Appellee's Motion to Strike Pleadings in these appeals. Dave Samuel moved that the Board deny the motion because it is common practice for parties to submit legal briefs along with proposed findings of fact and thus, the pleading was not untimely. Bob Jenkins seconded the motion which passed by a unanimous vote. The Board's legal counsel was instructed to write an order consistent with the Board's motion and discussion.

2. Doyle Coakley v. Office of Water Resources; Appeal No. 98-12-EQB

On March 25, 1999, the Board discussed the proposed Findings of Fact and Conclusions of Law submitted by the parties in this appeal. The Board discussed and reviewed the testimony and evidence submitted during the hearing. The Board requested its legal counsel to draft an order pursuant to their discussion. The draft order will be reviewed by the Board at a later date.

3. Monongahela Power Co. v. Office of Water Resources; Appeal No. 98-20-EQB and Ohio Power v. Office of Water Resources; Appeal No. 98-21-EQB.

On March 26, 1999, the Board discussed the Appellee's Motion for Stay of proceedings in this appeal. Bob Jenkins moved to grant a 90 day continuance of the proceedings but to deny the request that a stakeholder process conducted by the Appellee be treated as a settlement negotiation for the purpose of evidence for these appeals. Dave Samuel seconded this motion which passed by a unanimous vote.

4. Cookman Realty Corp. v. Office of Water Resources; Appeal No. 98-18-EQB

On March 25, 1999, the Board discussed the proposed Findings of Fact and Conclusions of Law submitted by the parties in this appeal. The Board discussed and reviewed the testimony and evidence submitted during the hearing. The Board requested its legal counsel to draft an order pursuant to their discussion. The draft order will be reviewed by the Board at a later date.

B. Appeal Hearings

1. Alan Sisler v. Office of Waste Management; Appeal No. 98-22-EQB

On March 25, 1999, the Board heard the evidence in this appeal. At the conclusion of the evidentiary hearing, the Board set a schedule for the parties' submission of proposed findings of fact and conclusions of law.

2. Valero Terrestrial Corporation v. Office of Waste Management and Lackawanna Transport Company v. Office of Waste Management, Appeal Nos. 98-10-EQB and 98-11-EQB.

On March 26, 1999, the Board heard the Appellee's Motion for Summary Judgment and the Appellant's Cross Motion for Summary Judgment. At the conclusion of the hearing, the Board set a schedule for post-hearing submissions by the parties.

III. Legislative Rules - 46 CSR 1(Water Quality Standards) and 46 CSR 12 (Groundwater Standards)

A. Update of legislative activity on proposed amendments to Water Quality Standards Rule.

Libby Chatfield reported on the amendments to the standards which had been passed by the Legislature during the 1999 session which recently adjourned. The Legislature approved the Board's proposed provisions regarding dissolved metals without change. Additionally approved was an amendment adopted by the Legislative Rule-Making Review Committee which removed section 8.5, from the rule. That section included new provisions for using fish tissue concentrations or "body burden" of certain chemicals to determine background concentrations instream. Finally, an amendment proposed by Weirton Steel Corporation which would exempt their discharge #4 from the application of the ½ mile rule, was approved.

The Board agreed to set the effective date of the rule for July 1, 1999 in the final promulgation of the rule.

B. Update on aluminum data

Libby Chatfield reported that a meeting has been scheduled for April 19th to discuss, among other things, the publications regarding aluminum sensitivity in several fish species by Dr. William Sharpe at Penn State. That meeting will be attended by Jennie Henthorn, Mike Arcuri, Ray Menendez and Dan Ramsey.

C. Update on antidegradation stakeholder group

Ms. Chatfield distributed a document entitled Summary of Comments Received on Antidegradation Implementation Procedures to the Board (see attachment #1.) She explained that the document was put together by the agency workgroup which developed the draft antidegradation implementation procedures. She indicated that the committee is still reviewing this summary.

Ms. Chatfield updated the Board on procuring a facilitator for the stakeholder group. She and Dr. Tarter have spoken with Dr. Tom Storch, Dean of the College of Science at Marshall University about serving in that role, and he has expressed interest in doing so. The Board agreed to reimburse him for expenses and to pay him an honorarium at end of process, budget allowing. Ann Holstein will look into payment of the honorarium, and report to the Board at the

next meeting.

The Board discussed a letter from Scott Goldman, dated March 24, 1999 (attachment #2), in which he proposed following the procedures used in the TMDL stakeholder group. That group was convened by Barbara Taylor, Chief of the Office of Water Resources. Ms. Chatfield reported that Ms. Taylor had delegated the task of establishing the committee to a subgroup of interested stakeholders. After discussion of this process, and review of a memorandum, dated March 25, 1999 from Ms. Chatfield on this issue (see attachment #3), it was suggested that Ms. Chatfield work with Dave Yaussy and a representative from the Environmental community, and others, to develop a list of committee members for the antidegradation implementation stakeholder group.

D. Review of Public A use category in other states

Libby Chatfield distributed a memorandum regarding the Board's review of the application of the public A use category in the waters of the state (attachment #4). The legislature has directed the Board to complete the review of the issue and finalize any changes by October of 1999 through state emergency rulemaking procedures.

The Board discussed the state implementation strategies outlined in a memo from Ms. Chatfield dated December 16, 1998 (attachment # 5) The Board indicated that they are interested in the protocols implemented in Virginia and Maryland. They requested that Ms. Chatfield do some further study of those states and provide more details of the implementation strategies at the April meeting.

One of the concerns which has been brought up with regard to changing the drinking water use category is ensuring the protection of people who draw water directly from streams to use for drinking water purposes. Don Kuntz, from the Bureau for Public Health, Environmental Health Division, who was present at the meeting, indicated that that number is fairly low, about 1000 (100?) residences, statewide. Mr. Kuntz also discussed the Bureau's development of a Source Water Assessment and Protection Plan pursuant to federal Safe Drinking Water Act requirements. He agreed to work with Ms. Chatfield on the Public A use category issue.

The Board agreed to hold a public hearing on the issue, and tentatively agreed to a date of July 15, 1999 at 7:00 p.m.. They discussed options for providing public notice and agreed to develop several alternatives to propose for public comment. Ms. Chatfield will work on development of that proposal.

E. Office of Water Resources' comments on Triennial Review

Ms. Chatfield reported that she and Randy Sovic continue to work on the comments filed by that agency, and will take them up at a future meeting.

F. Groundwater Standards - 46 CSR 12

Ms. Chatfield reported that Dave Watkins from OWR is unavailable for the meeting

today. Dr. Snyder suggested placing this item on the agenda for the April meeting for discussion.

G. Alaska Decision

Ms. Chatfield reported that Region 3, EPA is developing new procedures for review and approval of state promulgated Water Quality Standards regulations based on a federal District Court (Western District of Washington) ruling in Alaska Clean Water Alliance v. Clark (No. C96-1762). That ruling establishes that Water Quality Standards rules are not effective until USEPA reviews and approves them. USEPA is responding by developing a plan for acting on existing disapprovals in the standards, which will include the preparation of a docket of outstanding disapprovals. Ms. Chatfield reported that USEPA Region 3 intends to send a letter to the Board by April 15th outlining the existing disapprovals how they intend to act on them.

IV. Administrative Matters

A. On March 26, 1999, the Board approved, as submitted, the minutes of the February 22, 1999 Board meeting.

B. Budget Report and Personnel Matters

Ann Holstein presented a budget report (see attachment #6). The costs of paying for Margaret Chico-Eddy's unemployment was discussed. Mrs. Holstein submitted a report (see Attachment #7) to the Board on Margaret Chico-Eddy's unemployment and the impact this payment has on the Boards' budgets. Mrs. Holstein reported that Ms. Chico-Eddy's unemployment will preclude the hiring of a Clerk until July 1, 1999.

Ms. Chatfield informed the Board members that yearly employee performance evaluations were completed by the Chairs of the Environmental and Air Quality Boards in February 1999 and merit increases have been awarded.

C. Legislative Audit Update

Ms. Chatfield advised the Board that she had been working with staff from the Legislative Auditor's Office regarding the pre-performance review of the Board being conducted by that office. Mr. Paul Barnette from that office was in attendance at the Board meeting.

D. Update on Open Meetings Act

Becky Charles updated the Board on changes to the WV Open Governmental Proceedings Act. She advised the Board that she did not have the final version passed by the legislature but that the version she had would likely be very similar to the version that passed. She reviewed for the Board the provisions that would affect the Board's meetings. Among the issues discussed were the exemptions from open meetings and executive sessions; and the express allowance telephone conference meetings. Also, the new act will likely set up a committee within the ethics commission to issue advisory opinions concerning open meetings act issues.

At 3:00 p.m. on March 26, 1999, the Chair adjourned the meeting.

We hereby certify that the foregoing is a true and correct record of the proceedings of the meeting held on March 25 and March 26, 1999, by the West Virginia Environmental Quality Board.

Submitted this 30th day of April 1999.

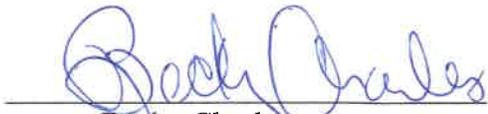
Approved by the Board as submitted on April 30, 1999.
Approved by the Board as amended on _____.



Libby Chatfield
Technical Advisor



Ann Holstein
Administrative Secretary



Becky Charles
Legal Counsel

March 25, 1999

SUMMARY OF COMMENTS RECEIVED ON ANTIDegradation IMPLEMENTATION PROCEDURES

This document includes a summary of comments received on the draft antidegradation implementation procedures which the Environmental Quality Board offered for public comment in June, 1998. Responses to the comments, prepared by the committee which drafted the proposal, are in bold text following each comment. A list of the commenters is included at the end of the document.

GENERAL COMMENTS

1. Thanks to Board for finally taking the step of creating an antidegradation implementation policy. Not only required by law but is also much needed to assure that waters of the state will be protected as we move into the 21st century. Second most praiseworthy aspect of currently proposed implementation policy is the fact that it appears to drive major permittees toward appropriate and detailed site specific and parameter by parameter evaluation and documentation. (WVHC)
2. EPA Region 3 Guidelines questions - See WVCW's comments about how those have been answered by the proposed implementation document.

The committee used antidegradation implementation questions developed by US Environmental Protection Agency, Region 3 ("EPA") as one of the reference documents in developing the draft implementation procedures. We believe that the questions outlined in that guidance have been addressed in the draft implementation document, or in the responses in this document.

3. Board should wait until EPA completes review of the national debate on antidegradation to result from the Advanced Notice of Proposed Rulemaking (ANPRM) before it adopts procedures that are "virtually certain to result in substantial permit delays." (WVCA, WVMA - see their comments, WVCC)

The committee is aware that EPA has issued an Advanced Notice of Proposed Rulemaking for the Water Quality Standards rule and recognize that the current antidegradation policy is one of the provisions of the rule upon which EPA has specifically requested comments. However, this action by EPA is the first step in conducting a review of the water quality standards rule - a review which may take months or years to complete. There is no way to anticipate the final outcome of that review. In light of the fact that EPA has conditionally approved West Virginia's Water Quality Standards rule pending completion implementation guidance, the committee believes that waiting for the completion of EPA's review is not advisable.

Further, the committee feels that the expeditious development of implementation procedures is important in providing guidance to the Division of Environmental Protection, Office of Water Resources (OWR) in implementing the current antidegradation policy in a consistent and effective manner.

4. Current federal law requires only that states *identify* implementation methods for the antidegradation policy - not necessarily develop new ones. The ANPRM indicates that requirement of implementation policy would come about as a change to the current federal WQS requirements. Based on this, Board's action in proposing implementation guidance is premature pending EPAs national debate.(WVCA, WVCC)

These comments imply that rather than drafting antidegradation implementation guidance for the state, that the federal language allows instead, identification of existing implementation methods. This, in turn, implies that there is existing guidance available to adopt or identify. The committee knows of no existing guidance developed by the state or Region 3, EPA. Other states have developed implementation procedures and EPA Region 8 has a fairly extensive guidance document. The committee reviewed and drew from those documents in developing this draft of the antidegradation implementation procedures.

Even in the absence of a specific requirement for the state to draft implementation guidance, there are important reasons to do so. As noted above, implementation guidance is critical to the implementing agency in using the existing antidegradation policy in a fair and consistent fashion. Further, by developing the guidelines on our own we will be able to customize it to the needs of the citizens of West Virginia.

5. The fiscal note doesn't adequately describe/address the potential impact of the proposed changes. (WVCA WVCC)

The fiscal note recognized the potential for economic impact on permittees, but indicated that it was impossible to quantify at this time. A detailed assessment of the fiscal impact of the implementation of the antidegradation policy would be difficult to prepare accurately. What might be helpful would be to expand the fiscal note to provide a list of the additional requirements that could potentially be placed on permittees.

6. Comments regarding the "presumption that all waters will be considered tier 2 if not designated tier 3 or 2.5" Commenters concerned that there is no federal requirement for this presumption and that it automatically subjects new or modified discharges to the "detailed evaluation of alternatives set out in 4C.4.a." This is an unreasonable and unnecessary requirement that will impose substantial costs on industry either to prove that water quality is not better than that required or to make the evaluation demonstration. In either case, the Board has failed adequately to consider the costs of such a presumption.

(WVCA, WVCC - see their comments)

The "presumption" is based on the clean water act minimum use designation requirements that waters be protected for propagation and maintenance of aquatic life and for recreation in and on the water. (aka "fishable/swimmable") (It is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish and wildlife and provides for recreation in and on the water be achieved by July 1, 1983 - Federal Water Pollution Control Act §101(a)2.) It is the committee's belief that most of the waters of the state have water quality which is equal to or better than that which will support those two uses. Therefore most will be included in the tier 2, high quality water category.

The tier 2, high quality waters, category of protection is important in that it recognizes the value of the state's high quality waters and places a requirement on the state to make an informed decision about whether a proposed activity is socially and economically important enough to warrant lowering the water quality in the stream. Two demonstrations must be made by the applicant. One is a showing that there are no less degrading or non-degrading alternatives to the proposed activity. The other is a demonstration of the social and economic value of the activity. While these demonstrations will require some effort, and possibly a financial outlay by the applicant, the results will be sound background information upon which the OWR can make better-informed permitting decisions.

7. Oppose adoption of draft antidegradation policy, support WVMA and WVCC comments (Century Aluminum)
8. Any antidegradation procedure should take into account cumulative impacts rather than just site-specific impacts of pollutants. **(WV League of Women Voters)** Cumulative impacts not considered in this rule. The process is driven by individual permit applications and not by an overview of water quality in a given watershed. Problem when relying on de minimus level of degradation to trigger review. If individual multiple point source impacts fall below the suggested "significant" criteria, those individual activities can still be permitted without an antidegradation review. **(WVHC)**

The committee recognizes the importance of protecting the waters of the state from cumulative impacts from multiple discharges. However, there are other programs and mechanisms which more directly address that concern including total maximum daily loads (TMDLs) and the watershed assessment program. The main objective of the antidegradation provisions are protection of existing uses and to ensure a thorough review of individual permitting decisions, or any decision which could potentially lower water quality in a stream.

For example, tier 2 provisions require decisionmakers to carefully evaluate the impacts of each permitting decision. Before allowing a discharge, the evaluator must make several determinations: the existing quality of the stream, whether the new discharge will increase the instream concentration of a given regulated parameter and if it does, whether or not allowing the lowering of water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

This stepwise decision-making process for tier 2 waters will help assess cumulative impacts of point source discharges. If instream quality is determined carefully each time a new permit is issued on a stream, then any change in quality resulting from a permit issued on the stream in previous months will be identified. This should result in an ongoing assessment of cumulative impacts.

Further, there are aspects of the antidegradation provisions which inherently protect against cumulative impacts. Two tiers, 2.5 and 3 significantly limit new or increased discharges into the waters of the state.

9. The limit of cumulative impacts of multiple, new or expanded point sources or point sources that are associated with significant nps impacts - either above or below the 5% limit - are not outlined. The antidegradation review process is driven permit by permit and not by a overview of water quality in a given watershed and therefore is not ultimately protective of high quality waters. (WVRC)

See response to #8, above.

10. A major weakness in WV's regulatory program is that the Nonpoint Source Management Plan is deficient for protecting our waters. Until nonpoint source pollution is adequately regulated, nondegradation goals will be impossible to achieve. (WVCW)

The committee agrees with the commenter and included more specific provisions to address nonpoint sources in the committee's original draft of the rule. Upon review of that draft, the Board, citing concerns with regard to existing nonpoint source requirements and the Board's jurisdiction to include such specific requirements in the Water Quality Standards rule, amended the nonpoint source provisions. At that time the Board recognized the need to address nonpoint source pollution and expressed a willingness to join in any effort to look at the issue on a statewide basis. USEPA's efforts to address nonpoint source pollution, and specifically antidegradation requirements are scheduled to be completed soon. The committee supports including a "reserved" section in the antidegradation implementation procedures and revisiting the issue as soon as national and regional guidance is available from USEPA.

11. Need linkage between Best Management Practices (“BMPs”) and Water Quality Standards (WQS). Antidegradation guidance should provide a tool by which BMPs are evaluated in relation to their ability to achieve WQS and where those BMPs do not achieve standards, this guidance should be the impetus for review and improvement of BMPs currently in use. (WVHC)

The committee acknowledges the need for guidance regarding the application of the Water Quality Standards to nonpoint source activities. However, this is an issue that is broader than the implementation of the antidegradation policy. The committee recommends that a separate effort to address the regulation of nonpoint source activities be initiated. See also response to #10, above.

12. The implementation of the antidegradation policy has been desperately needed and the Board is to be applauded for its inclusion. (On the WQS generally - Overall a good set of rules except that it has become obvious that 208 voluntary BMPs must become mandatory.) (Don Brannon - Former WRB member)

The committee recognizes the commenter's concern regarding the voluntary nature of §208 Best management practices. However, many aspects of the nonpoint source program are beyond the scope of the antidegradation implementation guidance and must be addressed in an overall nonpoint source program. See also response to #10, above.

13. What is the protocol for decision-making and what specific obligations exist for OWR, EQB and other state and federal agencies?

Committee agrees that clarification of these roles would be helpful. Flow chart outlining these roles will be developed. In general, however, these procedures will not change the basic role of the EQB or OWR in implementing the antidegradation policy in the standards. The intergovernmental coordination procedures will establish a new role for the agencies described in that section, which will be the obligation to review information regarding impacts to high quality streams and provide comments to the OWR during the permit review process.

Agencies participating in the development of nonpoint source Best Management Practices need to be involved in this process above and beyond a simple notification process. The development of BMPs and their technical connection to WQS are critical. (WVRC)

See comments on application to nonpoint sources, above. (#10-13)

14. Commenter seeks answers to list of questions from Region 3 USEPA antidegradation guidance (WVRC)

See #2, above.

15. Promulgation as a rule of a detailed guidance document such as proposed will significantly diminish the Board's ability to effectively implement West Virginia's antidegradation policy. Recommend retaining as guidance. Support establishment of a broad-based stakeholder group to develop procedures. (VAP)

The committee recognizes that adopting as guidance would provide flexibility, but is persuaded that promulgating it as a rule will provide the greatest assurance of consistent implementation of the policy. Further, by going through the legislative rulemaking process the greatest opportunity for public participation will be provided.

16. Miscellaneous editorial corrections/typos, (VAP, p.4.)

Committee agrees to the corrections outlined.

17. Definitions should be added for the following terms: disturbed area, best management practices, ambient, increased discharge. (USEPA)

The committee agrees with the commenter that those definitions would help clarify the procedures.

18. The procedures should indicate where the findings of the antidegradation review will be documented. (USEPA)

The committee intended that for activities requiring NPDES permits, that an antidegradation review sheet would be developed during the preparation of a draft permit and would be attached to the draft permit issued to the applicant. The committee agrees that including a section addressing how decisions are documented would help clarify the procedures.

19. Please provide an explanation of how and where the state will provide a list of Tier 2, Tier 2.5 and Tier 3 waters. No list is needed for Tier 2 if it is the default. (USEPA)

The types of waters included in tiers 2.5 and 3 are included in the antidegradation policy in section 3 of the WQS rule. The committee recognizes the need for lists of specific tier 2.5 and 3 waters. Lists were being prepared but had not been completed at the time the draft was circulated. Those lists, once completed, are intended to be included either in the antidegradation policy itself or in the implementation procedures document.

20. Will a tier designation be considered a legislative action? What is the process for nominating a Tier 2.5 and Tier 3 water? Who approves the process and nomination? How is the public notified of the nomination process? What information, if any, does the person seeking the nomination need to provide? (USEPA)

The types of waters included in tiers 2.5 and 3 are included in the antidegradation policy in section 3 of the WQS rule. Designation of any new waters as tier 2.5 or 3 must be accomplished as an amendment to the standards, therefore would require legislative action. The Board will review all nominations and decide whether to submit a proposed amendment to the Legislative Rule Making Review Committee in support of such change. Any such proposal would be subject to the notice and hearing requirements of the State Administrative Procedures Act. The nomination process is identified in the antidegradation section of the Water Quality Standards rule - that would be where an interested party would learn that such a process exists. Once a nomination is received by the Board, we would schedule a discussion of the application, and identify that on the agenda for the next regularly scheduled Board meeting. Our meeting agendas are included in the Board meeting notices, which are published in the WV State Register, as well as circulated to a mailing list of interested parties.

Information to be submitted in a nomination should include the items outlined in The Board's Procedural Rules Governing Site-Specific Revisions to Water Quality Standards (46 CSR 6) section 3. Additionally, the draft implementation procedures include a list of qualification criteria which, if adopted, should be addressed in the nomination application as well.

21. The Board should clarify use designations as part of its antidegradation implementation. (See WVMA's comments, page 3)

The committee acknowledges this suggestion and in fact had numerous discussions about the human health and aquatic life use designations in developing this document. While clarification of the application of use designations is important in implementing the antidegradation policy, it has ramifications that go beyond antidegradation. For that reason, the committee acknowledges that the Board will address the use designation issue separate from the antidegradation implementation guidance. Note that the Board is subject to a legislative directive to review the application of the public A (drinking water) use category by October, 1999.

22. Tier 2.5 should be eliminated - such streams are protected against degradation even if important social and economic factors militate in favor of the degradation. Example: homes along a naturally reproducing trout stream may have septic fields indirectly discharging to the stream. Under 2.5 designation, those homes would be prevented from

combining their effluent, sending it to a package treatment plant located on the same stream, even if discharging a single effluent would have less effect on the stream than septic tanks. (WVMA - see further comments, page 5)

While the example provided identifies a circumstance that may need to be clarified in the implementation procedures, resolving it by eliminating Tier 2.5 seems to the committee to be extreme. In fact, the example provided by the commenter identifies exactly the type of scenario that led to the development of Tier 2.5. Tier 2.5 was created as an intermediate tier between High Quality Waters and ONRWs. One reason for its creation in 1994 was to address concerns about the prohibition on new or increased discharges in ONRWs. Discharges into tier 2.5 are allowed as long as they do not result in the lowering of water quality.

In the example provided, existing discharges from septic fields would be rerouted/consolidated to a package plant for treatment. In that case, while the ultimate discharge would be a "new" discharge, it would most likely not lower ambient water quality in the stream, but in fact, improve it. Nothing in the existing antidegradation policy or implementation procedures would disallow the type of consolidation identified by the commenter in the trout stream example.

23. Seeking extra measure of protection for headwater streams which are relatively unpolluted and in their natural state are suitable for the highest and best use, e.g. drinking water, without chemical treatment and relying only on the most basic treatment of settling or sediment filtering . . . Individuals and communities where relatively pristine and pure waters serve as the lifeblood of our existence, more protective measures must be afforded to protect our lifestyles from the pollution meted out by mining, timbering, oil and gas road building and pit and brine waste discharges and agriculture runoff. Somewhere, somehow, the Board has to be clear on what protective measures are to be meted out to those outlying, relatively isolated but pristine areas. (WVHC)

The committee acknowledges the commenter's concerns, but cautions that the policy decisions outlined in the comment may not be totally resolved in these procedures. We encourage the stakeholder group to try to address the outlined concerns and make recommendations to the Board in this regard. We also encourage the commenter to continue to pursue these issues with the Board during the triennial review of the WQS.

There some things that may be accomplished in this document to begin to address protection of the waters of concern to the commenter. Assuming those waters would fall into tier 2, High Quality Waters, implementation of the proposed antidegradation provisions could be instrumental in making informed, community-

based decisions about whether or not to allow activities with potential impact to the streams to take place.

Beyond protection under Tier 2, two other options for protecting those streams (or stream segments) exist. Those are nomination of waters as ONRWs (or proposal for adoption as waters of special concern - Tier 2.5). The first step would be to compile a list of the streams of concern and submit that list to the Board and the Office of Water Resources for review and discussion.

§46-1-4A - Applicability

24. Clarification is needed concerning the agencies involved in antidegradation implementation. Without an updated state Continuing Planning Process (CPP) (document required in the Clean Water Act, to be developed by the state) we have no assurance of adequate authority for intergovernmental cooperation in the implementation of this guidance. Since the mission of many agencies may be impacted, and since these missions may at times be in conflict with each other we are concerned about authority for coordination. (WVRC) West Virginia should clarify who will be responsible for implementing these procedures. (USEPA) An implementation guidance should explain which agencies have roles in the implementation (WVMA - see p.6 of their comments for further elaboration)

As written, the implementation guidance addresses actions or activities to be carried out by the Office of Water Resources (and OMR). These procedures are intended only to elaborate on the implementation of the existing antidegradation policy, that is to serve as an additional tool for the agency personnel who currently use the WQS rule in developing permits and other agency directives. The committee suggests adding references to the agency or to its Chief.

The committee recognizes that the provisions of the CPP are intended to be used in implementing certain antidegradation provisions. However, the CPP is a document which was developed by the Office of Water Resources. The Board has no authority to amend the CPP. We suggest forwarding that concern to the OWR.

25. Meaningful nonpoint source criteria for antidegradation implementation are absolutely necessary for a successful program. Reliance on best management practices is a serious weakness of antidegradation implementation. Because BMPs are voluntary, there is no assurance they will be implemented. The fact that BMPs are not technically linked to the water quality standards isolates nonpoint source pollution from the jurisdiction of the standards and undermines EPA's mandated task of including cumulative effects in the antidegradation implementation document. An alternative approach to nonpoint source issues needed. At a minimum - compliance with antidegradation for nonpoint source discharges should be assumed **only where** monitoring data is available that verifies the

effectiveness of BMPs.

Again, the committee wrestled with these issues in developing the original draft of the implementation document. The prior document intended the application of antidegradation review procedures to nonpoint source activities. Before going out to notice on the original draft, the Board amended it to remove nonpoint source activities from the review process because of uncertainty about how this would be accomplished and because of the very issues identified by the commenter. The committee encourages further discussion of these issues in the stakeholder group. See also comments on nonpoint source issues, above.

26. The language of Section 4.A.1 may limit the applicability of this section. The EPA suggests that the following language be inserted: "The procedures herein are intended to apply, **but are not limited to**, activities that require . . ." (USEPA)

While the committee recognizes the commenters concern, they would prefer to review the list of activities to which the procedures would apply and include them all without the conditional clause. From the agency's perspective, the guidance must be clear with regard to whether a review is required for any given activity or permit application. The agency believes that the antidegradation policy and implementation guidance should apply to all activities which may affect water quality and urges clarification of the guidance to that effect.

27. This section should not embrace "all permits," many of which are unrelated to water - but should apply only to CWA-required permits -and limited to NPDES permits and activities requiring CWA sec. 401 certification. (WVCA)

The committee disagrees, see #26, above.

28. These procedures should be limited to those permits, certifications or licenses that authorize an increased discharge of pollutants to surface waters. The Board's water quality standards apply only to surface waters, groundwater is regulated under the GW Protection Act. See WVMA comments p. 6 for suggested change to this section.
29. The EPA believes that the language addressing Nonpoint sources in section 4A.2 is adequate for now. However, as a result of the recent Clean Water Action Plan, EPA is required, by 12/98, to develop guidance that more specifically defines expectations and procedures for states to follow to fully implement antidegradation policies relating to polluted runoff. Once that guidance is completed, EPA expects that WV will modify the procedures in accordance with this guidance.(USEPA)

The committee looks forward to EPAs guidance and would encourage review and update of any state implementation procedures as federal guidance becomes

available, but feels that antidegradation should apply to all activities which may affect the waters of the state.

30. Clarification is needed concerning the agencies involved in antidegradation implementation (WVCW)

See #24 above

31. What protocol for decision-making and what specific obligations exist for OWR, EQB and other state and federal agencies? (WVCW)

See #24 above for role of OWR. The EQB's role is limited to addressing applications for waters to be included in tier 3 and in dealing with any other amendments to the WQS rule related to the antidegradation policy or implementation procedures (assuming they are adopted as part of the WQS rule). Nothing in the policy changes the role of EQB in the implementation of the antidegradation policy.

32. Seeks clarification that extension of the antidegradation policy to valley fills and refuse disposal facilities does not prohibit the placement of such structures in the headwaters of streams. Commenter refers to EPAs "DRAFT" 1988 Policy for Instream Treatment and Filling by the Coal Mining Industry. To ensure the continued viability of not only the mining industry, but also of every project that fills a stream segment or wetland, as has the project to construct a new automobile engine plant in Putnam County, the Board must make a statement that the state water quality standards and antidegradation policy are to be construed as consistent with EPAs 1988 policy and do not prohibit valley fills, in-stream ponds, refuse disposal or other filling activities which are otherwise covered by NPDES or 404 CWA permits.(WVCA)

The committee believes that antidegradation should apply to all activities, and recognizes no basis for the exemption described by the commenter.

33. The antidegradation policy should have no application to use of Nationwide Permits issued by the Corps of Engineers which have already received certification from WV. The AD review process should be applied to Nationwide permits upon their expiration, or only when applicants seek individual permits from the COE and thereby require individual CWA 401 certification.(WVCA, WVCC - see their comments)

The committee agrees with the commenter. The committee intended that general permits would undergo antidegradation review upon their issuance and renewal. Coverages offered under the conditions of the general permit would not be required to undergo antidegradation review.

34. §4A.2 states that nonpoint source activities that are being conducted in accordance with Best Management Practices will be deemed to be in compliance with antidegradation requirements. The justification for this is presumably the limited impact on water quality that occurs when BMPs are implemented. The same is true of those activities for which general permits are issued, such as the stormwater general permit. Facilities that are in compliance with the general stormwater permit should also be deemed to be in compliance with the antidegradation provisions.

See response to # 33 above.

35. §4A.2. Agencies participating in the development of nonpoint source BMPs need to be involved in the antidegradation review process above and beyond a simple notification process. Development of BMPs and their technical connection to WQS are critical. (WVCW)

The committee agrees with the commenter regarding the need for clarification and elaboration on this issue.

36. §4A.2. Does wording of this section intend to imply that any nonpoint source activity that does not have a Best Management Plan is violating the antidegradation policy? If so, does Board have the authority to regulate such activities? (WVCA)

The language in this section means that any activities being conducted in accordance with existing State Best Management Plans are assumed to meet antidegradation requirements.

37. §4A.3. Recommend rewriting this section to assure consistency with the language and intent of the Voluntary Remediation and Redevelopment Act. (WVCW and WVRC- see comment letters for recommended language)

The language in this section is not intended to apply solely to the Voluntary Remediation and Redevelopment Act, but also to any and all groundwater remediation and cleanup activities.

38. Section 4A.3.a acknowledges that there is a potential for surface water impacts from this activity, yet this proposed action requires no antidegradation review. This appears to be contrary to the antidegradation policy. Please clarify the intention of this statement and why no review is required. (USEPA)

The committee agrees and agrees to clarify 4.a.3.a to read as follows:

"Where remediation efforts are being proposed for existing contaminated sites which do not constitute a new point source and where there is a

potential for increased surface water impacts from contaminated groundwater not associated with direct point sources, an antidegradation review will not be required."

39. Section 4A.3.b. only addresses "new" discharges. The state should ensure that "increased" discharges from these sites are also subject to antidegradation reviews. (USEPA)

Committee agrees with the commenter and proposes that the language of 4A.3.b. be changed to read as follows: Where remediation efforts are being proposed for existing contaminated sites and where there is a potential for surface water impacts from activities resulting in new or increased discharges from the treatment of contaminated groundwater, an antidegradation review will be required."

40. Please clarify the intent of 4A.3 and types of activities covered. Is the socio-economic justification process under 47-57.6.9.2 consistent with the socio-economic process required in these procedures? (USEPA)

See #35 above for discussion of activities covered.

The language of 47-57.6.2.i. (note - need to correct the citation) requires applicant to include "A statement of the nature and extent of the benefits of the proposed variance including but not limited to, benefits associated with economics, employment opportunities, health and safety and the environment" It is the committee's intent to ensure that the two processes are made consistent. At this time, no review has been undertaken pursuant to 47-57.6.9.2.

41. Section 4A.3.b should be limited to situations where there will be new or increased discharges as a result of treatment of contaminated groundwater. In some cases, the discharge of treated groundwater may result in lower levels of pollutants in the stream than were occurring as the result of seeps of untreated, contaminated groundwater. The "new discharge" would be more limited than the groundwater flow it replaced, yet would be subject to antidegradation restrictions. Suggest rewrite by replacing "new discharge" with "greater discharges of contaminants or discharges of new contaminants, from a point source." (WVMA)

Committee believes concern is resolved with changes in #38 above.

42. §4B.1. Example where further explanation about uses is needed. Who is to identify the uses and what criteria are to be used? Category D3 - does it apply? How will that be decided? Should default to B and C uses. (WVMA)

This section addresses tier two protection - which requires that existing uses and the level of water quality to protect those uses be maintained and protected. Existing

uses are defined in section 2.6 of the standards as those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

The provisions of 4B.1 outline how the agency will determine the existing uses on the stream. First, the applicable designated uses will be identified. (The current interpretation of the application of uses categories is that all uses apply to all waters unless specifically removed by the Board in the WQS). Additionally, agency personnel will determine whether any other uses, aside from the designated uses may apply to the stream. (Give examples of existing uses other than designated uses)

Section 4B.1.c provides that the agency will identify existing uses in the notice accompanying the draft permit and will specifically solicit comments on those uses. All comments on existing uses will be reviewed and verified by the agency before finalizing the permit.

Again, the committee intended that these determinations would be made by the agency using the WQS to prepare an NPDES permit or other agency directive. The committee encourages the Board to review the designated use provisions and to clarify the application of them to the waters of the state.

43. Sections 4B.1.a and 4B.1.b inadvertently refer to Section 6.2. Should be Section 6.(AEP)

Committee agrees that the citation incorrectly refers only to one use category. The correct reference should be to §§6.2 - 6.6, which includes all of the designated use categories.

44. §4B.1.a. In determining that water quality is not better than necessary to attain both fishable and swimmable uses, who carries the burden? Also, what criteria are to be used in making that determination?

The intent of this section is that the permittee/applicant will carry the burden to demonstrate that a water does not meet the fishable/swimmable criteria, and would be required to provide data to support that demonstration. The permitting agency would make the final determination regarding that use designation. Whether a use is being met will be determined based on whether the instream quality is in compliance with all applicable criteria established in the rule.

45. Normally, if a stream cannot meet its use designation it is classified as impaired and placed on the state's 303(d) list. Was it the Board's intent that streams which are classified as "impaired" under one set of rules be classified as "high quality water" for

purposes of antidegradation review? If so, why? Can a stream be classified as Tier 2 for one pollutant and Tier 1 for another pollutant?

Yes, tier 1 is a level of protection which may apply to all waters.

Using the "parameter by parameter" approach, a stream may be a high quality water but still not attain the quality for an individual parameter required by the use designation.

46. §4B.1.c. Who is responsible for publishing notice, agency or applicant? Applicant pays, but does agency approve the form? What is "the activity" - only those described in 4A.1? (WVMA)

The committee intended that the agency would publish the notice along with the draft permit and that the cost for that publication would be borne by the permittee/applicant. The activity referred to in this section means any activity subject to antidegradation review in §4A.1.

47. §4B.2. Who documents antidegradation review findings, where documented? Is there a right to appeal? Need greater explanation re use designations. (WVMA)

For activities subject to NPDES permits, antidegradation findings are to be documented by the agency personnel responsible for writing the permit. The intent is that they would be included as part of draft permit or fact sheet. Nothing in these procedures affects a permittee's right to appeal the permit, which has always been available. That right to appeal would include any permit provisions resulting from the agency's antidegradation review.

The antidegradation review is intended to be incorporated as all information used in developing draft/final permit.

48. §4B.2.a introduces "controls" which are to be applied as necessary to ensure WQS are met. Does this refer to NPDES and nonpoint source programs only? If so, unnecessary. If means something else, like TMDLs, should clarify. (WVMA)

Controls include any appropriate technologies available to achieve the water quality standards. These could in part could be driven by allocations developed through a TMDL.

Intended to refer to NPDES and NPS programs. Regarding necessity of including it here, intent is to provide guidance to permit writers and other agency personnel regarding stepwise procedures for antidegradation review.

49. 4B2.b. unclear. Appears to give OWR authority to use criteria from one use category to protect a separate use. Where's the authority for that? Passive voice makes hard to tell who decides that uses do not reflect the existing use of the water or chooses the related designated use for establishing criteria. (WVMA).

The authority resides in section 4.1.a. of the rule (Antidegradation policy - Tier 1) which states that existing "water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." Commenter implies that criteria adopted for certain use categories are mandated for only that use category - the criteria are actually values offered as guidelines from EPA. If agency personnel can justify using a certain criterion to protect a use, there is nothing in the standards or elsewhere that would forbid it.

50. §4B.2.b.1 suggests that the OWR can set limits in permits to protect Tier 1 waters without (numeric) criteria in the water quality standards. Only Board has the authority to do this. Under the proposed language, the Corps could set criteria for a pollutant as part of its Section 404 permit issuance and OWR could set a different one in developing an NPDES permit, and neither would be valid. (WVMA)

The agency has a statutory duty to ensure narrative criteria are met. The agency has the authority to develop a permit limit. The Board may establish that limit as a criterion in the standards. The Board does not have the authority to set limits in permits, only in the rule.

51. §4B.4. Trading should not be permitted either between point sources or between point and nonpoint sources of pollution. (WVCW, WVRC, WVHC)

The committee acknowledges the concerns expressed by several commenters regarding trading. It was not the committee's intention to allow trading in a cavalier fashion, but to consider it only where existing water quality is improved, or at the very least, maintained. The committee believes that trading could provide opportunities to improved existing conditions in certain circumstances, particularly where ongoing nonpoint source pollution is occurring unchecked.

52. §4B.4. Trades between point and nonpoint sources is problematic because point sources have regulatory oversight, public notification, monitoring requirements - nonpoint source activities do not. (WVRC)

Again, the committee sees the possibility that a trading situation may be an opportunity for regulation of nonpoint source activities through an NPDES permit. Burden would be on permittee to assure nps requirements/limits are met. See comment #52, above.

53. §4B.4. (?) Should not be exempt from antidegradation review as in 4C2.a.2 and 4C.3 (WVCW)

It was not the committee's intent to exempt trades in tier 1 waters from an antidegradation review. However, if the agency determines that the trade will result in improvement in or at least maintenance of, existing quality, the activity may be allowed.

54. Strongly object to the language "or other appropriate measures" as it makes the basis of trades discretionary, without any clearly defined, scientifically sound criteria. Allows a clear way out of antidegradation constraints for point source discharges and seriously threatens the intent of the antidegradation provisions of the CWA. (WVCW)

Committee recognizes concern. The intent was not to weaken the criteria for justifying a trade, but to allow the agency some discretion in choosing methodology to serve as basis for trade. Partly based on concerns/comments that Total Maximum Daily Loads will only work where water not meeting prescribed uses. The committee struggled over the appropriate terminology to use. The intent was to make clear that some sort of technical evaluation and documentation equivalent to TMDL procedure would be required to be done by the applicant requesting the trade. No intent to allow trades indiscriminately. Can work on developing some specific criteria to be used for basis for trading.

55. Trades on non-TMDL waters - other appropriate measures may be only method available for trades in higher quality waters that the antidegradation policy is supposed to protect - allows a clear way out of antidegradation constraints for point source discharges and threatens the antidegradation provisions. (WVRC)

Not committee's intention to remove from antidegradation review process. See comment above. It is the committees position that a TMDL or its equivalent can and must be done to justify a trade. Need to clarify decisionmaking process for trades - maybe should be done separately from antidegradation.

56. Clarify when trading would be allowed in a tier 1 situation. See WVCA, p11. (several assumptions rolled into their comment that need to be addressed.)

Again, the intent of the committee that trades could be allowed on Tier 1 waters where the trade would result in improvement or at least maintenance of existing water quality. The committee suggests that the stakeholder group address this issue and clarify this language, if necessary.

57. §4B.4. Believe that "other appropriate measures" should be better defined or left out until the OWR has experience with trading. (LWV)

See comments in # 51-56 above. Committee recognizes need for clarification. However, some level of discretion on the part of the agency may be necessary because it is difficult to anticipate and address every situation which may arise.

58. Trading is an excellent idea. Need more in procedures to document basis. What is a new or expanded source? Are trades allowed with nonpoint sources? How determine baseline for trading? Basing on TMDLs problematic - time, and TMDLS not done on all waters. Concerned that trading not be required as a condition of each increase in pollutant loading from a point source. Should be option when the use could be impacted by the increase, and offsetting reductions are needed to protect the existing uses or designated uses or as an option to antideg review. Should consider trading among (different) pollutants in addition to trades to the same pollutant. (WVMA)

See comments above. Again, committee recognizes need for clarification of trading provisions in the guidance. The committee's position generally regarding trading among different pollutants is that it should not be allowed.

59. §4B4 needs clarification re: trading in Tier 1 waters (WVCC - see comments)

See responses above.

60. §4B.4. Trading with upstream and downstream sources should be allowed as long as the antidegradation goals for each waterbody type are achieved. Also, address situation where applicant is involved in a trade but is not financing or implementing controls. Suggest: "A determination may be made that a proposed activity will not compromise the antidegradation goals for the waterbody based upon the specifics of any upstream and/or downstream trading undertaken by the project applicant." (VAP)

Committee's concern regarding this comment is that if a trade is authorized, the state would need assurance that the activity proposed (to offset the discharge) actually happens. Terms and conditions should be included in the permit to assure the activity occurs.

61. WV should explicitly state that all waters in WV are provided Tier 1 protection. (USEPA)

Committee agrees and recommends amending the procedures to clarify that.

62. §4B.1 does not clearly identify how an existing use is determined. Please clarify how the state intends for this language to determine existing uses. The following example is intended to provide the state with one possibility: "Existing uses can be established by: 1) demonstrating that a use has actually occurred on or after November 28, 1975, or 2) by demonstrating that although a use has not occurred, the water quality is suitable to allow

such a use to occur, unless there are physical problems which prevent the use from being attained." (USEPA)

Intent is that DEP staff will review information available regarding existing uses being made of the stream in the permit review stage. The committee discussed developing a questionnaire to be circulated to appropriate DEP inspectors to assist in determining existing uses. The committee decided against putting that level of detail in the rule, but fully intends to do some site-specific review in making the determination regarding existing uses being made of streams. Committee recognizes need for greater clarity regarding establishing existing uses. The suggestions provided by the commenter are helpful - may need more detail.

63. In section 4B.2.b., the procedure for correcting a situation in which the designated use is less than an existing use is not consistent with 131.10(i) which states, "Where existing water quality standards specify designated uses less than those which are presently being attained, the state shall revise its standards to reflect the uses actually being attained." Section 4B.2.b.11 appears to be reflective of this regulation, therefore, section 4B.2.b should be revised and combined with 4B.2.b 1. In addition, please ensure that this regulation is clear and consistent. (USEPA)

The committee believes that both steps outlined in 4B2.b. and 4B.2.b.1 are necessary. However, they could be combined in one section. Additional language should probably be added requiring that the Board propose the appropriate change to WQS rule at the earliest opportunity.

TIER 2 - HIGH QUALITY WATERS

64. In section 4C.1, please clarify the procedures or methods the state plans on using to provide a list of Tier 2 waters, and where it will be listed. This is not necessary if Tier 2 is the default. (USEPA)

The committee's intent regarding designation of high quality (tier 2) waters, is that if information regarding the "fishable/swimmable" status of the water is available, the committee will review it to determine whether a water is a tier 2. If no such information is available, tier 2 will be the default, that is the state will assume that the water is better than necessary to support the fishable/swimmable use, and will treat the water as a tier 2 for antidegradation implementation purposes.

65. Section 4C.1.a appears to be an "all or nothing" approach to designating waters as high quality. For example, if a water did not attain the fecal coliform standard, thus exceeding the "swimmable" use standard, and the copper criterion, thus exceeding the "fishable" use standard, that water would not qualify for protection under tier 2 even though that water may be of high quality and have sufficient assimilative capacity for all other relevant

parameters. During development of these procedures, did the state consider using a parameter-by-parameter approach for designating Tier 2 waters? If so, why was this approach discarded in favor of the current approach? The EPA would like to discuss this further with the state. EPA is concerned that this approach may exclude the majority of waters in West Virginia from Tier 2 protection. (USEPA)

It was not the committee's intent that this section be interpreted as adoption of the waterbody by waterbody approach vs. parameter by parameter approach. The language should be to clarified to reflect that.

Regarding the commenter's concern that the "default" approach may exclude a majority of waters in WV from Tier 2 protection, that is not what the committee intended, in fact the committee intended that most of the waters not otherwise designated would fall into tier 2.

66. Under 4C1 and 46 CSR 1-4.1.b.2, streams are high quality waters if either the fishable or swimmable use is attained. The reason for this requirement is not clear. Under CWA, goal is fishable and swimmable, and no reason a stream should be designated high quality if not both. Boards approach, streams can be listed on both the 303d list and on Tier 2 list of HQ streams. If steam is to be HQ, that designations should mean that it is achieving basic Clean water Act goals.

Re: comment about 303d list and Tier 2 designation: The standard for determining whether a water is impaired as defined by the 303d list ("state shall identify waters within its boundaries for which the effluent limitations required by 1311(b)(1)(A) and (B) are not stringent enough to implement any water quality standard applicable to such waters.") is different from the standard for determining whether a water warrants a tier 2 level of protection for antidegradation.

The following is provided in EPA, Region VIII's antidegradation implementation guidance document "The primary overall reason is that the threshold used to conclude "impairment" for purposes of (305b) assessments may be substantially lower than is appropriate for identifying non-high quality or tier 1-only waters. Region believes that tier 2 should be applied to a very large majority of state waters. In order to preserve high levels of water quality for parameters where existing quality is better than standards, the threshold of impairment for excluding waters from tier 2 (based on chemical-specific information) should be higher than for purposes of assessments made under 305b. Under 305 b, a segment may appropriately be listed as "impaired" based on very limited data and the impairment may be based on a single violation or the potential effects of a single parameter. Also, to support the antidegradation analysis, the applicant may provide new data not available at the time of the 305b assessment that should be considered. Rather than focusing on theoretical impairments resulting from single

parameters, the region believes that high quality waters should be identified based on an integrated assessment of the most recent chemical, physical and biological data. Information from previous assessments (305b) should be considered in implementing antidegradation, but they should not be the sole basis for concluding that a particular segment is not a high quality water.)

67. §4C.1.a. Presumption that all waters other than tiers 2.5 and 3 are "high quality" should be deleted. (WVCA)

The definition of a high quality stream is found in the WQS rule at section 2. High quality streams are those streams which have water quality which meets or exceeds the "fishable/swimmable" requirements of the Clean Water Act. That means that if a stream supports maintenance and reproduction of aquatic life and supports recreation in and on the water, then the stream meets the minimum CWA requirements. The members of the committee believe that it is accurate and appropriate to assume that most of the streams in the state fall into this category. Because of this assessment, the committee decided that the most efficient way of identifying tier 2 waters was to assume that a stream is tier 2 unless there is information provided that indicates otherwise. Where there is no information, the assumption will be that the water is tier 2. This default method is a pragmatic approach that is supported in the USEPA Region 8 guidance and is supported by Region 3.

Additionally, see comments above.

68. §4C1.a. Presumption of high quality inappropriate, designations should be based on monitoring data to support the designation. Recommend the following: "All waters not designated as waters of special concern (2.5) or ONRWs and in which the quality of the waters exceed water quality standards, shall be designated as Tier 2 waters." (VAP)

The language proposed by the commenter still does not address the issue at the heart of the parameter by parameter or waterbody by waterbody approach.

69. §4C.2.a - who will make the determination that a proposed activity does not result in significant degradation of the water. Presumably OWR, but what if there is a conflict? Further, parameter by parameter approach to determining use attainment should be reconsidered in favor of an overall stream assessment. It is the use that should be protected, not only the criteria. (WVMA)

The determination regarding significant degradation will be made by the agency. If a conflict regarding the significant degradation determination occurs, it may be handled in the same manner as any other conflict in the permit - which are commenting on the draft permit and filing an administrative appeal of the final

permit.

The committee intended that the parameter by parameter approach be used. However, we recognize that such clarification is needed in this draft.

70. 4C.2.a 1 defines significant degradation as that which increases the ambient concentration of any parameter more than 5% at critical flow conditions. The 5% is too low and should be at least 10%. Also, the increase should be that which will occur outside a mixing zone. If determine degradation in light of existing loads, suggest changing the section by deleting the "5%" and replacing with "10% outside any mixing zone". See other questions about determination of ambient concentrations, see page 12 of WVMA's comments. (WVMA)

Committee's consensus that 5% is appropriate as de minimus allowance. That de minimus allowance is intended to apply to the ambient waters, which would not include the mixing zone. The 5% value is recommended in USEPA Region 8 Guidance Antidegradation Implementation Guidance Document. It was chosen by the committee after consideration of other comments and opinions indicating that a true antidegradation policy should allow zero degradation.

71. 4C.2.a.1.A. EPA recommends WV consider basing the "de minimus" calculation on the remaining assimilative capacity. By basing this calculation on an increase above the ambient concentration, very small additional loads in very clean waters are significant while it requires much larger loads to be significant in more polluted waters. (See USEPA's comments, enclosure 1, page 3 for examples)

Although there was not total consensus on this issue, some committee members expressed serious concerns about the suggestion that the de minimus allowance apply only to the remaining assimilative capacity. In some instances the committee believes that this will not result in sufficient protection of the water and that such a methodology runs counter to a goal of protecting existing water quality. EPA's final suggestion proposing the use of the most protective of either the assimilative capacity vs. the instream concentration may better ensure protection of the waters of the state. The committee recommends that the stakeholder group review the alternative approaches in more detail.

72. §4C2.a.1.a. states that "any proposed activity that would increase the ambient concentration of any parameter more than 5% at critical flow conditions shall be considered significant degradation. Should be clarified such that only those regulated parameters with water quality standards adopted within 46CSR 1 are considered during an antidegradation review process.(AEP)

The committee supports the USEPA Region 8 guidance on this issue which suggests

otherwise. That document provides that: "Antidegradation can and should apply to any parameter of concern, regardless of whether a numeric standard has been adopted. For a parameter such as phosphates, for which the narrative standards are likely to be the basis for control actions, antidegradation should still be applied."

73. §4B2a.1.a. How will the "ambient concentration " at "critical flow conditions" of each individual parameter be determined at each location? If a measurement of ambient pollution concentrations at 7Q10 flow conditions are required, how is this to be performed? It appears that this section could require a huge undertaking requiring years of data collection at an unwarranted and prohibitive expense just to document ambient stream conditions at critical flow conditions. Arguably, no decisions could even be made regarding antidegradation until this data is collected. Without the background data at critical flow conditions, how will decisions be made regarding what pollutant additions could cause an increase in ambient concentrations of more than 5%? This section should be changed to establish a criterion for significant degradation based upon the assimilative capacity of the stream, not on an arbitrary determination of ambient pollutant concentrations at critical flow conditions. (AEP see their comments at p5 and 6 re: language from other states)

The technical subgroup of the committee developed an implementation process to be used to define ambient conditions. That document did not include a requirement to sample at critical flow.

74. Concern re: recommendation that an antidegradation review is triggered only when there is a "significant" level of degradation expected from a proposed activity. Any measurable degradation should trigger a review. High quality headwater streams are particularly at risk in this scenario. reliance on "significant" levels of degradation may slow the decline in water quality but will not fully protect waters of particular sensitivity. Also areas where residents use surface water springs and creeks . (WVHC)

The committee acknowledges this concern and spent a great deal of time deliberating on this issue. Ultimately, the committee chose to allow a de minimus amount of degradation and to establish the trigger for antidegradation review at 5%, which is the recommended value in USEPA's region 8 guidance document. The agency may in the future be able to develop a tracking system to assist in addressing cumulative impact from the 5% de minimus contributions.

75. 4C2.a.1.A. Antidegradation review is triggered only if greater than 5% increase in a pollutant is anticipated. Reliance on any significant degradation is not sufficiently protective. If any measurable degradation is predicted, an antidegradation review should occur. (WVCW, WVRC)

See comments at #74, above.

76. This section seemingly requires that an antidegradation analysis is required when **any** parameter will be increased more than 5%, even if there is not a numeric criterion for the parameter. This is unduly restrictive. (Discussion of application of manganese limits in light of the interpretation above) (See: WVCA comments p.12)

See # 72, above.

77. In section 4C.2.a.1.A.1, average daily flow is used for municipal facilities in order to represent "critical conditions". However, municipal NPDES permits are developed using a "design flow" which more accurately represents the critical flow condition. (USEPA)

The committee acknowledges the commenters concern and agrees to change the language in that section to "average design flow."

78. §4C.2.a.1.A.2 does not explain who approves the alternative models that may be used to predict changes in the water quality due to precipitation-induced discharges. If it is a permit issuing agency, that fact should be noted and some basic guidance provided as to what models are appropriate. (WVMA)

The committee intended that any appropriate models will be considered and will make that decision on a case-by-case basis.

79. 4C.2.a.1.A. Use of 5% above ambient concentration as (deminimus) will result in many needless decisions to require Tier 2 review and may result in denial of proposed activities that would cause little or no real waterbody degradation.(See VAP comments p.2 for elaboration.)

The procedures required for a tier 2 review are intended to assist the agencies in making informed decisions about whether to allow a new or increased discharge into a stream. If it is determined after review of the impact and assessment of the importance of the activity causing the impact, that lowering the water quality is appropriate, then the activity will be allowed. It is likely that if it is determined that the activity would cause "little or no real waterbody degradation" as commenter states, that the decision would be to allow the discharge, rather than deny it. Again, the intent is to assist the agency in making well informed decisions. The time invested during this review will be worthwhile in the long run.

Numerous other commenters have taken the position that any deminimus allowance is inconsistent with the basic premise of antidegradation. The proposal herein is an attempt to strike a balance on the issue.

80. §4C.2.a.1A2. EQB should abandon the proposed approach for significant degradation determinations where the proposed activity involves a "precipitation induced" discharge - use BMPs instead. Concerns about using for stormwater discharges. (see VAP comments p. 3)

In proposing this provision, the committee was attempting to provide a mechanism for determining the impact of precipitation induced discharges and ensure that such discharges do not degrade stream quality. This method has been used in mining permits issued by the DEP.

81. Our interpretation of section 4C.2.a.2 is that these parameters are exempt from an antidegradation review. If the intent of this section is otherwise, please clarify the exact intent and how this will be applied to antidegradation reviews. (USEPA)

The committee determined that "significant contribution" for the five parameters listed, fecal coliform, temperature, DO, pH and turbidity, would be difficult or inappropriate to address by a percent change (ie: 5% de minimus) It is the committee's intent that discharges in compliance with the levels defined in sections A-E would not be considered to result in significant degradation.

82. AEP - 4C2.a.2 defines circumstances that shall not cause "significant degradation." This section should be expanded to include other de minimis activities that do not result in significant lowering of water quality including: normal operational variability, including intermittent increased discharges due to wet-weather conditions; changes in intake water pollutants not added by the discharger; changes that result from increasing the production hours of the facility (i.e.: adding a second shift); (changes that result from increasing the rate of production; new or improved monitoring data; new or improved analytical data, new or modified water quality criteria or values, new or modified effluent limitations guidelines, pretreatment standards or control requirements for POTWs); bypasses that are not prohibited pursuant to 40 CFR 122.41(m) and applicable state NPDES rules; new or increased discharge of a substance used to treat zebra mussels or other nuisance species in an intake water pipe or structure if such discharge will not cause adverse effects on human health and aquatic life; new or increased discharges of a substance that will result only in a short term, temporary lowering of water quality (12 months or less); any source discharging to limited quality waters, and any source that discharges to Tier 1 waters; any increase in the discharge of a regulated pollutant resulting from a change of fuel used by the discharger, provided the discharger was capable of accommodating the new fuel on the effective date of the policy; new or increased discharges of a substance, when the facility withdraws intake water containing the pollutant from the same body of water, and the new or increased discharge of the pollutant is due solely to the presence of the pollutant in the intake; a new or increased discharge of a parameter, if such discharge is necessary to accomplish a reduction in the discharge of another pollutant or pollutant parameter and the director/chief determines that the action will result in a net

improvement in water quality in the waterbody if, a) the new or increased pollutant is determined to be significantly less toxic than the decreased pollutant, and b)the applicant demonstrates that all reasonable and cost-effective methods for avoiding such discharge have been taken; (See more on pages 2 and 3 of AEP's comments)

While the committee agrees that some of the decisions/actions listed may not be subject to antidegradation review, it does not agree with the commenter's proposal to exempt these categories of decisions from the outset. The agency intends that the agency would consider these decisions during the permit review process on a case-by-case basis.

83. §4C2.a.2.a. (Temperature - de minimus) This section is not consistent with federal antidegradation provisions at 40 CFR 131.12(4) It should be amended to recognize that permittees which either currently have or successfully apply for a variance in accordance with Section 316 of the CWA are also exempt from antidegradation review. Alternate language proposed: "Temperature: Provided that the temperature of a discharge complies with the temperature criteria in Section 446-1-8.28 (Appendix E of this rule) or is otherwise consistent with section 316(a) of the Clean Water Act. (AEP see more at p7 of their comments)

Antidegradation policy (4.1.e.) states that "All applicable requirements of section 316(a) of the Federal Act shall apply to modifications of the temperature water quality criteria provided for in these rules.

Further clarification of this issue is pending based on response from EPA.

84. Please provide the rationale used to justify that any reduction of less than 0.4 ppm at maximum DO sag based upon an appropriate wasteload allocation model will not cause significant degradation. Based on the rationale discussed above, the EPA suggests that the state consider a percentage of the assimilative capacity of DO in this situation. (USEPA)

The value of 0.4 ppm represents 5% of the initial dissolved oxygen assumed in typical dissolved oxygen modeling procedures (95% of DO saturation values at temperatures between 21 and 27°C)

85. The .4 ppm maximum dissolved oxygen sag is too slight to be a reasonable criteria as it is within the range of normal DO variation. Due to organic loading that occurs during flood events, and effects of drought periods - greater level of degradation should be allowed as long as aquatic life protected. (WVMA)

See #84 above.

86. §4C.2.a.1.a Should apply only to existing numeric criteria. I.e.: not manganese, now that criterion has been removed. (WVCC)

See comments at #72 and #76 above.

87. §4C.2.a.2.F. Trades should not be exempt from antideg review. Object to "or other appropriate measures" language.

See comments above. The committee intended that appropriate measures be equivalent to TMDL procedures.

88. §4C.2.a.2.F. allows trading to avoid significant degradation, which is a good idea but suffers from the same problems in comment III.B.10 above. Also requirement of "appropriate margin of safety" is undefined and could be interpreted in an onerous fashion. (WVMA)

See comments on trading (#above). The appropriate margin of safety language comes from the TMDL and is intended to be interpreted in that context.

89. §4C.2.a.2.F. Appears that the intent of this section is to allow a mitigation project located upstream or downstream of a proposed permitted activity to offset the impact of the proposed permitted activity for the purpose of determining if the activity will cause significant degradation. Support use of mitigation projects to avoid Tier 2 review and suggest that it be expanded to allow trading across watersheds. Request clarification that use of a trade to avoid Tier 2 review not be held up pending a TMDL. Also question why TMDL would be required in water complying with WQS. (WVCA, WVCC)

While TMDLs are required to be used where waters are found to be out of compliance with WQS, there is no reason that a TMDL or equivalent procedure should not be used in conducting a trade as defined herein. The committee did not intend that mitigation projects could be used to "avoid tier 2 review", but that if the result of a trade was maintenance or improved water quality that the antidegradation review would reflect the impact to existing water quality. The committee does not support trading across watersheds to "avoid tier 2 review."

90. Any determinations or decisions made as part of 4c.3, 4C5,b and 4C.6.d should be preliminary determinations and be included as part of the public participation process and the appropriate comment period should be provided. (USEPA)

The committee agrees and fully intends that the results of all antidegradation assessments be published along with the draft permit, and be subject to all of the public notice and comment opportunities that draft permits provide.

91. §4C.4, 5, and 6. Sections 4 and 5 contain no criteria for evaluating the reasonableness or cost-effectiveness of less degrading alternatives. Sections 5 and 6 must be integrated so that the antidegradation review evaluates less degrading alternatives simultaneously with the economic effect of imposing these alternatives. (See WVCA comments p. 13.)

The committee recognizes the need for clarification of this section and agrees that determinations of reasonableness and cost effectiveness should be spelled out in the guidance if they are to be used in reviewing less-degrading or non-degrading alternatives.

92. §§4C4 and 4C.5 require analysis of alternatives to significant degradation of water body. Further guidelines needed re: how analysis conducted. The "no build" scenario is always an alternative, as is very expensive pollution control equipment such as reverse osmosis. Some element of reasonableness and cost-effectiveness must be introduced into the eval of alternatives. EPA has stated "where less-degrading alternatives are more costly than the pollution controls associated with the proposal, state should determine whether the costs of the less-degrading alt are reasonable" Always a less degrading option, but must be feasible from an economic and engineering standpoint. (WVMA, WVCC)

See # 91, above.

93. 4C.5.a. and b. (less degrading or non-degrading alternatives examination) As currently drafted, a proposed activity could be denied under this section before any consideration is made regarding the accommodation of important economic or social development. We submit this is beyond DEP's or any other state agency's regulatory authority to deny an activity on a Tier 2 stream exclusively because "mutually acceptable resolutions are not reached. To correct this possible legal quandary, these sections need to be integrated into one section so the antidegradation review considers the alternatives and the economic/social importance of the activity simultaneously, not independently.

Again, the committee recognizes need for clarification of this section. The scenario identified by the commenter is likely not going to happen often. In most cases, after determining that reasonable alternatives are available, the agency and the applicant will agree to the appropriate option, then the antidegradation review will continue, based on the option chosen. The committee's intent in including the language regarding failure of a mutually acceptable resolution to be reached was to avoid a prolonged review if a less/non degrading alternative was available, but the applicant was unwilling to agree to adopt it. In that case, a preliminary decision could be made by the agency which could be put out for public notice and comment. After the public review, the agency could alter its decision or decide to deny the activity. The committee encourages the stakeholder group to discuss this tier 2 review process with this option in mind.

94. What criteria applied to determine whether a less or nondegrading alternative will be required. WV Code prohibits OWR from specifying the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant. This limits OWRs authority to require particular control method as a permit condition. Any decision to deny permission to conduct an activity regarding antidegradation must be appealable. (Corps decisions) (WVMA)

The committee recognizes that clarification is warranted here. Region 8 guidance includes a list of criteria to be considered, and other state guidance does as well. The committee encourages the stakeholder group to review them. Regarding the appealability of a decision on this issue, any permit issuance or denial may be appealed to the Environmental Quality Board. Nothing in this guidance abrogates that right.

95. §4C.5.b gives agencies a veto over projects if less or non-degrading alternative exists. Insert "cost effective and reasonable" before "less-degrading"

The committee intended that any alternatives considered should be reasonable and cost-effective. If those terms are included in the guidance, some criteria should be included to guide the agency in making such determinations.

96. In § 4C.5.b., does a finding a less or non-degrading alternative complete the review or does the alternative itself need to be addressed by a separate antidegradation review? In addition, please specify the decision criteria which will lead to choosing one alternative over another and the authority with whom this power resides. (USEPA)

Once the agency and the applicant agree to a non/less degrading alternative, then the agency would go to the next steps of the antidegradation review, which would include the determination of necessity to accommodate important economic or social development in the area. The agency would not go back to the beginning of section 4C and start all over with the review - unless the chosen alternative would result in no significant degradation to the stream, then further review would be unnecessary. See also, #94 above.

97. §4C.6. When considering socio-economic benefits of an applicant's activity which would result in degradation, the socio-economic benefit of not degrading the water should also be considered. The impact on drinking water supplies whether for individuals or public water supplies should be one of the socio-economic benefits of clean water. Source water protection for public water supplies is encouraged under the federal 1996 Safe Drinking Water Amendments. (LWV)

The committee agrees that the socio-economic benefit of retaining the existing quality of the water is the basis for comparing the socio-economic benefits of the

activity resulting in the discharge, and recommends that the stakeholder group consider this comment in their review.

98. §4C.6. Public participation should be an integral part of the process rather than at the end. Those who live downstream should be notified as well as those who live in the area of impact. (LWV)

The committee agrees with the commenter. Currently, permit decisions are advertised in local newspapers and in the agency publication, In DEPth. While there are no specific efforts to target downstream residents of permit activities, the agency continues to work toward improvement of dissemination of this type of information. Members of the public concerned about decisions which may affect waters of concern to them are encouraged to contact the agency to obtain this type of information.

99. §4C.6.a. (Social/economic importance evaluation) Would encourage the board to clarify that increased production alone, without accompanying social and economic benefit to the community as a whole would not justify degradation (WVCW, WVRC)

The committee agrees that the socio-economic benefit of the activity must be broader than just benefit to the discharger, but must go to the community in the area. Refer to EPA's Economic Guidance for Water Quality Standards.

100. What will trigger the applicant to be required to submit the information listed in section 4C.6.b? Furthermore, who has the authority to require this information? At what point during the review would the applicant be required to submit this information?(USEPA)

If the information necessary to make the appropriate decisions is not provided by the applicant in the permit application, the agency may make a request at any point during permit application review. The DEP is authorized to request such information.

101. Implications of 4C.7 are unclear. Are Tier 1 implementation procedures in addition to the Tier 2 protections? We believe that the Tier 2 protections are more extensive than Tier 1, so that a Tier 1 analysis is not needed for a Tier 2 water. (WVMA)

Tier 1 protection and review applies to all waters. It is the baseline level of protection and applies to existing uses in all waters of the state, even if the water falls into another antidegradation category.

102. Information demonstrating important social or economic development appears to be excessive. Is benefit to the community enough or must benefit outweigh proposed degradation? How determined? By whose standards is the value of the stream

degradation measured? (WVMA)

The committee recognizes that clarification of this step would be helpful. We provided a reference to USEPAs Interim Economic guidance for Water Quality Standards to assist the agency in this step of the review process. We encourage the stakeholder group to refer to that document in their review of this step of the antidegradation evaluation.

103. §4C.8.a. (intergovernmental coordination) The intent of the WPCA goes beyond simple notification of the listed agencies. Request outline of the process for assuring adequate authority for intergovernmental cooperation in the implementation of the antidegradation implementation policy.(WVCW WVRC)

Committee recognizes commenter's concern. Without guidance from the State Continuing Planning Process, the committee attempted to construct a procedure for contacting and receiving input from other agencies. Committee would welcome further suggestions from the commenter.

104. Question the adequacy of the intergovernmental coordination as outlined in Appendix G-1. (WVHC)

Committee recognizes that further clarification of the intergovernmental coordination requirements would be helpful. Again, the intent of the federal antidegradation provisions appears to be that states would use the existing Continuing Planning Process document to accomplish this step. However, as has occurred in many states, West Virginia has not prioritized the update of that document. The committee attempted to recreate the content of the intergovernmental coordination provisions of the CPP in this effort, but encourages the stakeholder group to expand on our efforts.

105. Under section 4C.8.c., please specify the duration of the public comment period and the manner in which the public comment and findings will be advertised. (USEPA)

The committee's intent is that the notice would be made a part of the draft NPDES permit and would therefore be subject to the draft permit notice requirements.

106. In section 4C.8.c.2, a description of the surface water which is subject to the antidegradation review should be included in the review sheet. (USEPA)

The committee agrees.

107. §46-1-4D What procedures or methods are used to designate a "water of special concern"? Can Tier 2.5 waters be nominated in the same manner as Tier 3 waters? Does

the state plan on providing a list of waters which are designated Tier 2.5? (USEPA)

The description of the types of waters in that category is provided in the Antidegradation policy in Section 3 of the rule. The committee would support the development of a list of specific waters to be included for tier 2, 2.5 and 3 waters in the guidance document, with the condition that if a water was inadvertently omitted from such list, that the agency would retain the ability to protect it according to the appropriate category at the time that the omission was discovered. The committee would have no objection to allowing nomination of waters into the tier 2.5 category in the manner provided for tier 3 waters.

108. Urge elimination of Tier 2.5. If not, sections 4D2.a and b. forbid any degradation of those waters. This prohibition should extend only to significant degradation, not de minimus effects. Significance should be determined in the same fashion as for Tier 2. (WVMA)

See response at # 109, below.

109. 4D.2.a. (Tier 2.5) This language appears to provide a higher level of protection than that afforded to Tier 3 streams. At a minimum, some consideration for short term projects and de minimus activities in tier 2.5 streams must be provided. Incorporating language similar to that found in 4E.2.a - f should also be added to section 4D.2. (AEP)

The intent of this section is to allow discharges, even permanent ones, as long as they do not lower water quality conditions. Short term, temporary activities could be allowed in a tier 2.5 stream if such activities do not result in lowering of ambient water quality in the stream. In tier 3 streams, no new or increased discharges are allowed unless they are short term or temporary.

The stakeholder group may want to consider including one or more of the options in the Region 8 guidance (p.12 - under "No Change in Water Quality Allowed") for determining when water quality is lowered)

110. The state should ensure that the information required in the antidegradation review sheet of section 4D.3.b is included in the public notice. The use of "may" in this section introduces an aspect of subjectivity which gives the impression that this information may not be required in all situations. (USEPA)

The committee agrees with the commenter that "may" should be changed to "shall" in this section.

111. §4D.2.c. (Trading) protocol seriously threatens the State's most pristine waters and should not be allowed especially in tier 2.5 and 3 waters.(WVCW)

See trading comments, above.

112. §4D.2.c. How is "an appropriate margin of safety" determined? This phrase should be better defined" (LWV)

The committee intended that that term be used as it is described in the requirements for developing Total Maximum Daily Loads.

113. See trading comments for Tier 2 from WVMA.

46-1-4E

114. How does the state intend to protect Tier 3 waters? (USEPA)

See sections 4E.2 and 4E.6 of the rule.

Note that a typographical error occurred in section 4E.6. That section should read "If it is determined that the criteria in §4E.2 will not be met, the agency shall deny the activity.

115. What procedures or methods will be used to designate at Tier 3 water? Does the state plan on providing a list of Tier 3 waters?

The description of tier 3 waters occurs in the antidegradation policy in section 3 of the WQS rule.

For nominating new waters into this category, procedures are outlined in 46 CSR 6 which is cited in 4E.9. Such a change would go through the legislative rulemaking process, as does any amendment to the water quality standards. The committee encourages the stakeholder group to create a list of tier 3 streams in the final guidance document.

116. Do all of the factors included in section 4E.2 have to be met for an activity to be allowed? The last sentence of this section should be clarified to indicate a framework of how these decision criteria will be applied. The EPA suggests the use of the following language in the last sentence to clear up any ambiguity: "after consideration of the following factors." ((USEPA)

The committee agrees with this suggestion and supports amending the draft accordingly.

117. §4E.2. An increase of 5% in ambient concentration should not be used as a "general" criterion to gauge the risk associated with an activity in ONRWs - it is a meaningless measure of water quality degradation. Suggested proposed modifications. (See VAP comments - p.3)

The committee disagrees with the commenter. This value is consistent with available federal guidance.

118. §4E.3. (Trading) The point for non-point trading protocol seriously threatens Tier 3 waters and should not be allowed.(WVCW)

See other comments on trading above.

119. The state should ensure that the information required in the antidegradation review sheet of section 4E.4.b is included in the public notice. (USEPA)

The committee agrees, but believes the rule as written accomplishes that.

120. The language, "will be based on the factors listed above" should be added to the end of section 4E.4.d in order to better clarify how the determinations are made. (USEPA)

The committee agrees to the change suggested by the commenter.,

121. Section 4E.6 should be moved so that it directly follows section 4E.3.

The committee agrees that reorganization of this section would make it clearer but suggests that 4E.6 should be moved to follow 4E2, rather than 4E3.

122. It appears that section 4E.7 attempts to provide consistency with 40 CFR section 131.10(b) which states, "In designating uses of a water body and the appropriate criteria for those uses, the state shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters." Please explain how the state plans on implementing that policy. (USEPA)

The language of 4E.7 essentially extends the ONRW protection outlined in this section to all upstream waters. As written, any request for a discharge into a water above an ONRW would be analyzed according to the requirements of section 4E.

123. Language of 4E.7 should be modified to state that no discharge upstream of an ONRW shall cause a measurable impact to the water quality of streams designated as ONRWs. (AEP)

Because of the limited number of tier 3 waters, (those which occur in existing federally designated Wilderness Areas) it is likely that the entire watershed would be covered by tier 3 protection. It is the committee's position that this extra protection is warranted for tier 3 waters, which is the protection level for the most pristine waters in the state.

124. Commend affording Tier 3 protection to all upstream segments of ONRW. Suggest that same requirement included for Tier 2.5 waters. (WVHC)

The committee considered this extended protection for tier 2.5 waters, but determined that it was not practical due to geographical boundaries used in categorizing these waters. However, the committee would encourage further exploration of this issue in the stakeholder group.

125. Section 4E.9 should include an appropriate contact and address of the person who will receive the petitions.

The committee agrees that an address for receipt of petitions should be included both in this document and in 46 CSR 6

126. Section 4E.9 requires applicants to nominate ONRWs and the procedure for nominating them is the same as for that developing site-specific criteria. Believe appropriate because requires legislative approval. Must consider upstream inhabitants who will be tremendously affected by an ONRW designation downstream. (WVMA)

The committee recognizes the commenter's concern. See response at #.

WVHC - WV Highlands Conservancy
WVCA - West Virginia Coal Association
WVCW - West Virginians for Clean Water
LWV - League of Women Voters
VAP - Virginia Power
WVRC - West Virginia Rivers Coalition
USEPA - EPA Region 3
WVMA - West Virginia Manufacturers Association
WVCC - WV Chamber of Commerce
AEP - American Electric Power

STATE OF WEST VIRGINIA
SOURCE WATER ASSESSMENT
AND
PROTECTION PROGRAM

West Virginia Department of Health and Human Resources
Bureau for Public Health
Office of Environmental Health Services
Environmental Engineering Division

February 4, 1999

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March 25, 1999

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Dr. Ed Snyder, Chair
Environmental Quality Board
1615 Washington Street, East
Charleston, West Virginia 25311



Re: Development of Antidegradation Stakeholder Group

Dear Dr. Snyder:

Please allow me this opportunity to comment on the Environmental Quality Board's ("EQB") current development of a stakeholders' group to consider the water quality standard for antidegradation. We greatly appreciate the efforts that the EQB and, specifically, Libby Chatfield, have placed in the development of the stakeholder process. In furtherance of the development of such stakeholder group, I offer the following comments.

I invite the EQB to consider the efforts that Barbara S. Taylor, Chief, Office of Water Resources, Division of Environmental Protection ("Chief") has undertaken during her creation of the TMDL Stakeholder Group. The Chief determined it was important to encourage as many participants in the Stakeholder process that represent different interests, as opposed to limiting the number of participants in order to get a "perfect balance". Chief Taylor recognized that all "industry" stakeholders do not represent the same interests. For instance, Chief Taylor recognized that individuals representing large chemical companies and individuals representing oil and gas interests may have opposite views, even though both individuals are considered to represent "industry". Similarly, individuals representing watershed associations and individuals representing fishing and hunting interests, may have contrasting views, even though both individuals are considered to be representing "environmental" interests. In order to assist you as you develop the stakeholder process, I am enclosing some introductory documents which Chief Taylor prepared while developing the TMDL Stakeholder Group.

Dr. Ed Snyder, Chair
Page 2
March 25, 1999

Accordingly, I urge you to "open" the Stakeholder Group to include as many participants as necessary in order to provide a frank and honest discussion and debate during the development of a water quality standard for antidegradation.

Thank you for allowing mem to express these concerns. If you have any questions or concerns, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott D. Goldman", written in a cursive style.

Scott D. Goldman

SDG/vlr

cc: Rebecca Charles, Esquire
Elizabeth M. Chatfield, Esquire



DIVISION OF ENVIRONMENTAL PROTECTION

10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
DIRECTOR

January 6, 1999

Mr. David Flannery
WV Chamber of Commerce
P.O. Office Box 553
Charleston, WV 25322

Dear Mr. Flannery:

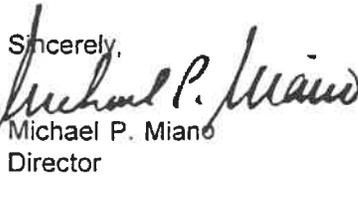
You are cordially invited to attend a Total Maximum Daily Load (TMDL) informational meeting to be sponsored by West Virginia Division of Environmental Protection on Tuesday, January 19, 1999, from 1:00 PM to 4:00 PM at the University of Charleston, Geary Student Union, Art Gallery, Charleston, West Virginia. This is the first in a series of meetings focussing on creating a process for TMDL development in West Virginia. The stakeholder process will be concluded by May 15, 1999.

A TMDL is a measurable, action-oriented analysis of how to attain water quality standards for water bodies where standards are not being met. The purpose of a TMDL is to distribute allowable loads among different contaminant sources so that the necessary control actions can be taken and water quality standards achieved. TMDLs provide an estimate of pollutant loadings from all sources and predicts the resulting pollutant concentrations. The TMDL determines the allowable loads and provides the basis for establishing or modifying controls on pollutant sources in order to restore the water quality of our streams, rivers, and lakes.

The objective of this meeting is to inform all those that may be interested in the process and to solicit participation in the stakeholder process from other agencies, industries, environmental groups, municipal governments, citizens, and any other interested parties. The stakeholder group will be tasked with providing recommendations to DEP for implementation of a State led TMDL program, under Section 303(d) of the Clean Water Act. Stakeholders will have the opportunity propose measures to better define various components of the TMDL process, including public participation, listing of impaired waters, data collection and modeling, and appeal procedures. Important to the stakeholders and to the DEP, is to identify obstacles to the success of the TMDL program, including funding, and to find mechanisms to overcome those obstacles.

Your involvement in this process is critical to assist the DEP in making the most informed and sound decisions regarding development of strategies, policy, or regulations to achieve compliance with the Clean Water Act provisions associated with TMDLs. As alternatives may potentially require legislative solutions, it is imperative that this effort be concluded within the time frame imposed by the rule-making process. Therefore, your participation in the stakeholder process for determining TMDL strategies is important and essential. If you have any questions, please call Bill Brannon from our Office of Water Resources (304) 558-2108. I look forward to seeing you on January 19.

Sincerely,


Michael P. Miano
Director

MPM/kbp

cc: Barbara S. Taylor, OWR-Chief



News Release

Division of Environmental Protection
West Virginia

Release: February 8, 1999
For Information: (304)558-3614

TMDL Advisory Committee Named

The first meeting of a 22-member steering committee created to provide recommendations to the Division of Environmental Protection (DEP) to shape the state's total maximum daily load (TMDL) program will be held Tuesday, February 9. The meeting will be held at the University of Charleston in the Geary Student Union from 1 p.m. to 4 p.m. The TMDL workgroup will be facilitated by the National Institute for Chemical Studies (NICS) and the Canaan Valley Institute (CVI).

The DEP's Office of Water Resources launched the TMDL stakeholder group in mid-January with a workshop open to any interested party. Members from environmental groups, state and federal governments and industry groups were encouraged to attend. Sixty-two people attended the workshop. Following the workshop, DEP worked with the facilitators from NICS and CVI and a subgroup representing industry and the environmental community to complete the organizational structure of the TMDL workgroup and selected 22 individuals to participate in the smaller, diverse advisory committee.

Members of the workgroup will be charged with developing recommendations relative to the development and implementation of TMDLs on nearly 500 West Virginia streams. The committee will focus on stream listing criteria on the biennial impaired streams list, TMDL stream selection criteria, development and implementation strategies, funding, appeal processes and judicial review, and legislative issues. The committee will meet on a regular basis until May 1999. A package of recommendations will be handed to the DEP director by May 15, 1999. After review of those recommendations, the DEP will structure and implement an appropriate TMDL strategy. The level of funding available to the agency will determine the degree to which the recommendations will be implemented.

A TMDL is the maximum amount of a pollutant a stream can accept and still maintain water quality standards. The Clean Water Act requires that streams and other waters exceeding water quality standards undergo the TMDL process. A 1995 lawsuit settlement, *Ohio Valley Environmental Coalition, Inc., West Virginia Highlands Conservancy, et.al. v. Browner, et.al.*, requires the DEP and the U.S. Environmental Protection Agency to develop TMDLs on waters listed on the state's list of impaired streams. Because of the enormity of the task and limited funds, the Office of Water Resources has enlisted the help of stakeholders.

The workgroup is made up of four representatives of industry, three representing mining and oil and gas, four members from forestry and agriculture, five from the environmental community, two state government representatives, two representing watershed associations or sportsmen and two representatives from municipal associations. The work group is as follows:

Jason Heath, ORSANCO

Roger Anderson, West Virginia Division of Natural Resources

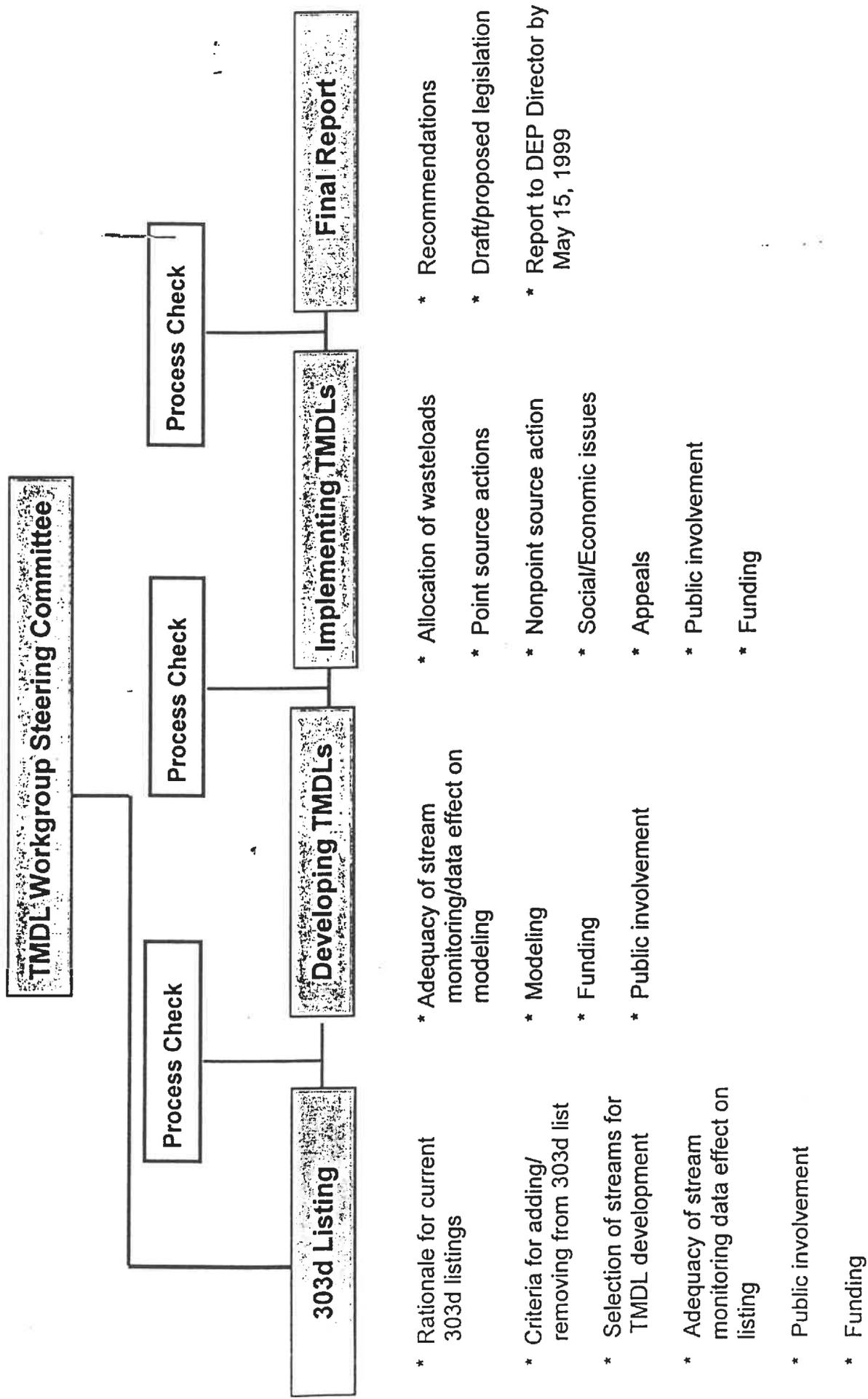
**** MORE ****

TMDL Stakeholder Group

NAME	REPRESENTING	COMPANY	ADDRESS	PHONE	FAX	E-MAIL
1. Jason Heath	State Government	ORSANCO	5735 Kellogg Avenue Cincinnati, OH 45228	(513) 231-7719	(513) 231-7761	JHEATH@ORSANCO.ORG
2. Roger Anderson	State Government	WVDNR	P.O. Box 67	(304) 637-0245	(304) 637-0245	randerson@dnr.state.wv.us
3. Randall Lewis*	municipal/sewer/ PSD	Rural Water Association	P.O. Box 225 Teays, WV 25569	(304) 757-0985	(304) 757-8668	rlewis@newwave.net
4. Michael Saffel	municipal/sewer/ PSD	WV Municipal Water Quality Association	P.O. Box 3780, Charleston, WV 25337	(304) 425-9599	(304) 425-8279	mesaffe@inetone.net
5. David M. Flannery	Industry	Jackson & Kelly	P.O. Box 553 Charleston, WV 25322	(304) 340-1017	(304) 340-1130	dflannery@jacksonkelly.com
6. L. Eli McCoy	Industry	Potesta & Associates	2300 MacCorkle Avenue, SE, Charleston, WV 25304	(304) 342-1400	(304) 343-9031	emccoy@gateway.net
7. William Samples	Industry	Wheeling- Pittsburgh Steel Corp.	1134 Market Street Wheeling, West Virginia 26003	(304) 234-2274	(304) 234-2613	sampleswr@wpsec.com
8. Richard Herd	Industry	Allegheny Power Service	800 Cabin Hill Drive Greenburg, PA 15601	(724) 838-6813	(724) 838-6888	rherd@alleghenypower.com
9. Roger Sherman	Agriculture/Forestry	Westvaco Corporation	P.O. Box 577 Rupert, WV 25984	(304) 392-6373	(304) 392-6058	rlsherm@westvaco.com
10. William Gillespie	Agriculture/Forestry	Gillespie Forestry Services	P.O. Box 8 Charleston, WV 25321-0008	(304) 346-5849		
11. Richard Hannah	Agriculture/forestry	WV Farm Bureau	1 Red Rock Road Buchannon, WV 26201	(304) 472-2080	(304) 472-6554	wv-farm@msys.net

NAME	REPRESENTING	COMPANY	ADDRESS	PHONE	FAX	E-MAIL
12. Rodney Branson	Agriculture/forestry	WV Poultry Association	HC83, Box 27A, Baker, WV 26801	(304) 897-6296	(304) 897-5242	branson@hardynet.com
13. Bruce R. Leavitt	Mining/Oil & Gas	Consolidation Coal company	1800 Washington Road, Pittsburgh, PA 15241	(412) 831-4523	(412)831-4571	bruceleavitt@consol.com
14. Ben Greene	Mining/Oil & Gas	WV Mining & Reclamation Association	1624 Kanawha Blvd., E., Charleston, WV 25311	(304) 346-5318	(304) 346-5310	wvnmra@newwave.net
15. Robert L. Radabaugh	Mining/Oil & gas	Radabaugh Environmental Services	P.O. Box 143, Sand Fork, WV 26430	(304) 462-7006	(304) 462-7314	
16. Perry McDaniel	Environmental	Crandall, Pyles, Haviland & Turner	P.O. Box 3465, Charleston, WV 25334	(304) 345-3080	(304) 345-3083	pircdaniel@crandalloyles.com
17. Margaret Janes	Environmental		HC 67, Box 27AA, Mathias, WV 26812	(304) 897-5731	(304) 897-7110	mjpaws@aol.com
18. Pam Moe-Meritt	Environmental	West Virginia Rivers Coalition	801 N. Randolph Avenue, Elkins, WV 26241	(304) 637-7201	(304) 637-7201	www.wv.rivers.org
19. Vivian Stockman	Environmental		Otto route, Box 105A, Spencer, WV 25276	(304) 927-3265		vivian@wvadvventures.net
20. Evan Hansen	Environmental		6 Beech Street, Morgantown, WV 26505	(304) 291-2138		buckwbeat@imgjxx.net
21. Dave Bassage	Waterbed/Sportsmen		Rt. 1, Box 112, Bruceston Mills, WV 26525	(304) 329-3621	(304) 329-3622	dave@cbest.org
22. Don Garvin	Waterbed/Sportsmen		P.O. Box 666, Buckhannon, WV 26201	(304) 472-8716	(304) 472-8658	dsgr@aol.com

* Jim Wesolowski alternate to Randall Lewis -- City of St. Albans - (304) 722-3355 ph \ (304) 722-3324 fax



- * Rationale for current 303d listings
- * Criteria for adding/removing from 303d list
- * Selection of streams for TMDL development
- * Adequacy of stream monitoring data effect on listing
- * Public involvement
- * Funding

- * Adequacy of stream monitoring/data effect on modeling
- * Modeling
- * Funding
- * Public involvement

- * Allocation of wasteloads
- * Point source actions
- * Nonpoint source action
- * Social/Economic issues
- * Appeals
- * Public involvement
- * Funding

- * Recommendations
- * Draft/proposed legislation
- * Report to DEP Director by May 15, 1999



ENVIRONMENTAL QUALITY BOARD

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MEMORANDUM

TO: Environmental Quality Board Members
FROM: Libby Chatfield
DATE: March 25, 1999
RE: Water Use Category A, Public Drinking Water Supply

This memorandum is intended to assist you in your deliberations the application of the Public Drinking Water Supply water use category (Category A). I have summarized some of the options and compiled several issues to be addressed in considering each option.

Introduction

The federal Clean Water Act (sections 101(a), (a)(2) and 303(c)) provide that water quality standards should provide, wherever attainable, water quality for the protection and propagation of fish, shellfish and wildlife and recreation in and on the water ("fishable/swimmable") and "consider the use and value of State and Tribal waters for public water supplies, propagation of fish and wildlife, recreation, agricultural and industrial purposes and navigation." Our water quality standards have included a drinking water use designation since their inception.

During the 1998 legislative session, the water quality standards rule was authorized until October 1999, with the condition that the Board review the designation of category A waters and analyze the need for distance prohibitors above public drinking water intakes. Any changes to the rule resulting from that review may be promulgated by emergency rule.

Current Application

The current application of the Category A, Public Drinking Water Supply use designation is to all streams in the state unless the use has been specifically removed by the Board through the legislative rulemaking process¹. These waters are protected by the application of numeric criteria developed for the protection of human health through drinking water and consumption of

¹ Category A has been removed from portions of the following streams: Kanawha River, Harmon Creek and Little Scary Creek.

fish. For the most part, our human health criteria are consistent with values developed by USEPA pursuant to the federal Clean Water Act.

This current interpretation of the application of Category A has been challenged by a number of regulated industries because the numeric criteria for the Category A are in many cases more stringent than the aquatic life criteria. They maintain that application streamwide is overprotective and that protection of the waters closer to the point of the drinking water intake is sufficiently protective of human health, and will provide relief from the more stringent drinking water criteria.

Others argue that applying the use designation to the entire stretch of all streams is appropriate to protect the waters of the state for use as drinking water supplies in the future. This is supported by federal interpretation of use categories as goals for the waterbodies of the state. Additionally, application streamwide ensures protection of the segment of the population who draw their drinking water directly from the stream and provide only minimal treatment before using it. Making a determination regarding the extent of this type of use will be important in developing a final recommendation on this issue.

Implementation in other states

There are a range of implementation strategies in states surrounding West Virginia, ranging from strategies similar to our current method (Kentucky, {in Maryland and Delaware criteria apply streamwide, but only a portion of the state's waters are designated}) to establishing protective zones above known intakes (Virginia) to requiring the standards to be met at the drinking water intake (Illinois and Indiana). Most states reviewed use EPA's human health criteria for water and organisms to protect drinking water category waters. See attached memo.

Options and factors to consider

1. Retain existing application
 - Assures protection of all waters of the state for potential sources of drinking water in the future. This is consistent with federal interpretation of designated uses which identifies designated uses and the numeric criteria to protect the uses as goals for the waterbody.
 - Maintains high quality of waters for current users who are not tied in to traditional water treatment facilities, but take drinking water directly from the stream. Determination of the extent of this type of use is important in the final decision on this issue.
 - Provides maximum assurance of meeting numeric criteria at drinking water intakes.

- Application to all streams more costly for dischargers due to the more stringent numeric criteria which apply to the Category A waters.
 - Alternative applications of the use category (i.e. application for a prescribed distance upstream from known intakes) could provide regulatory relief to dischargers outside of the protective zone while maintaining sufficient protection of human health.
2. Limit application of use to the intake or within some distance above it.
- Would provide regulatory relief to dischargers outside of the zone for parameters which have more stringent criteria for the public A category.
 - Removes current use designation from portions of all rivers to which that protection currently applies
 - Assumes that application of the use category for a designated distance (5 miles is normally suggested) will ensure that the criteria will be met at the intake.
 - Will potentially result in lower water quality in segments between the designated segments.
 - Does not ensure protection of those persons currently drawing drinking water directly from streams.
3. Retain category streamwide, but only on streams with known drinking water intakes
- Would require stream-by-stream review of drinking water use/intakes - or use of Bureau for Public Health's existing lists.
 - Would remove existing protection from some waters, but retain for some.

Questions for Further Study

- Does this policy decision warrant specific public notice and comment opportunities statewide? Are public hearings for discussion on this change in the protection of the state's drinking water warranted?
- What segment of the population draws water directly from streams to use for drinking water and household use?
- Can the benefits of the regulatory relief requested by dischargers by removing the

use category be quantified?

- Will removal of use category to all but portions upstream of intakes result in greater risk to the public from spills or other such occurrences? Will it assure that criteria will be met at the intake?
- How will a change in the application of the use category affect the permitting process? (i.e., how will the OWR address discharges just outside the 5 mile zone?)
- What type of justification or explanation will be required by EPA if the use category is removed from waters of the state.



ENVIRONMENTAL QUALITY BOARD

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 E-Mail: clerk@mail.wvnet.edu

MEMORANDUM

TO: Board Members
FROM: Libby Chatfield
DATE: December 16, 1998
RE: Public Drinking Water Supply Use Category: Review of implementation in surrounding states

As you recall, the Legislature has directed the Board to review the application/implementation of the public drinking water supply ("Public A") use category. At our last meeting, I reported that I was compiling a summary of how surrounding states implement the drinking water use category in their WQS.

VIRGINIA

In Virginia, the drinking water use category is designated on a stream-by-stream basis. Some streams are designated Public drinking water for the entire stream reach. Some streams have only portions designated - most of the public water supply designations are five miles above the drinking water intakes. Human health criteria apply throughout the designated portion of the streams.

In 1997 the Virginia Department of Environmental Quality asked the state health department to recommend streams for Public Water Supply designations. The health department provided information regarding the location of new intakes and removal of out of service intakes. They also provided specific recommendations regarding language to be used to describe the public water supply. The DEQ accepted those recommendations and included the new language in the WQS rule.

(NOTE: VA also sought similar input from their Game and Fisheries Department regarding trout streams.)

Virginia uses EPAs human health criteria for water and fish for this category.

KENTUCKY

Have adopted EPA's drinking water criteria. Use the criteria for all permits to protect all waters for drinking water use, which is a use assigned to all the waters of the state. Five mile exclusionary zone - (NEED to find out what may or may not occur in that zone) Implementation of public drinking water supply category appears to be very similar to WV's.

DELAWARE

Delaware's waters are designated as public drinking water supplies on a stream-by-stream basis. The designation applies to all waters above a public drinking water supply intake. DE uses the more stringent of either EPA's human health criterion (based on protecting for water and fish ingestion) or EPA's MCL (Safe drinking water Act Maximum contaminant levels). The computed criterion is based on a 1E-06 risk level. The criteria are required to be met everywhere above the intake. An evaluation of fate and transport of contaminants released well above intakes is made. A rough estimate of the waters protected by this designation is 25%.

MARYLAND

Public drinking water designation done on stream/watershed basis. Of 20 watersheds listed in the WQS rule, about 10 watersheds are wholly or partially designated. Appears that all designated streams are protected for the entire reach. Designated waters protected by EPA's drinking water / fish consumption values. Criteria apply under ambient conditions, not just at drinking water intakes.

INDIANA

Indiana's water quality standards include a drinking water use category - the use applies to waterbodies with public water supply intakes, and the criteria apply at the point of intake, not throughout the stream. The NPDES permit is calculated to assure compliance with the criteria at the point of intake. IN has about 62 public water supply intakes on surface waters. For all waters outside the Great Lakes Basin, IN applies EPA ambient water quality criteria for Human Health.

ILLINOIS

Illinois's water quality standard include a water supply intake water use category. The criteria apply only at the point of intake, not throughout the stream. Mixing zones are not allowed to include (overlap) the public water supply intake. About 83 water bodies in the state have at least one intake. The criteria uses are derived from USEPA HHC using Illinois' fish consumption value.

PENNSYLVANIA

In PA, public water supply is a statewide protected use, meaning that it is applicable to all surface water bodies in the state. However, human health water quality criteria for TDS (total dissolved solids), No₂-No₃, phenolics and fluoride are only applicable at existing or planned PWS intakes.

PA uses EPA's human health criteria for almost all parameters.

The criteria must be met instream in the discharge plume at the smallest of the following times/distances below the discharge:

1. At a travel time of 12 hours at design flow (7Q₁₀ for non-carcinogens or harmonic mean for carcinogens) from the point of discharge
2. At the point of complete mix
3. At the nearest downstream PWS intake.

During PA's current triennial review they are seeking input on whether current statewide public water supply use protection should be modified so that PWS is only protected at existing or planned PWS intakes.

Line Item	EOB Annual Budget	July 1998	Aug. 1998	Sept. 1998	Oct. 1998	Nov. 1998	Dec. 1998	Jan. 1999	Feb. 1999	March 1999	April 1999	May 1999	June 1999	July 1999	YTD Expenditures	(+/-) Balance	% of Budget
Salaries	\$63,609.00	\$5,409.90	\$8,634.74	\$4,378.90	\$4,552.86	\$4,998.90	\$4,832.91	\$4,924.65	\$4,662.58						\$42,385.44	\$21,223.56	66.63%
Annual Increment	\$443.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00						\$0.00	\$443.00	0.00%
Personnel Fees	\$500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00						\$0.00	\$500.00	0.00%
Social Security	\$5,200.00	\$408.59	\$646.37	\$328.10	\$364.38	\$378.17	\$333.35	\$379.66	\$358.08						\$3,196.70	\$1,803.30	63.93%
Pub. Emp. Insurance	\$7,500.00	\$0.00	\$460.40	\$415.60	\$415.60	\$0.00	\$831.20	\$0.00	\$0.00						\$2,122.80	\$5,377.20	28.30%
Workers Comp	\$1,200.00	\$0.00	\$0.00	\$0.00	\$386.36	\$0.00	\$0.00	\$329.85	\$0.00						\$716.21	\$483.79	59.68%
Pension/Retirement	\$8,826.00	\$0.00	\$513.96	\$474.88	\$415.98	\$0.00	\$829.20	\$419.09	\$0.00						\$2,653.11	\$6,172.89	30.06%
Per Diem	\$0.00	\$0.00	\$0.00	\$1,000.00	\$100.00	\$400.00	\$1,400.00	\$600.00	\$0.00						\$3,500.00	(\$3,500.00)	ERR
Office Expense	\$0.00	\$0.00	\$121.42	\$0.00	\$93.00	(\$245.75)	\$0.00	\$62.08	(\$33.25)						(\$2.50)	\$2.50	ERR
Printing/Binding	\$0.00	\$0.00	\$360.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00						\$360.00	(\$360.00)	ERR
Renal Expense (Bldg.)	\$0.00	\$0.00	\$767.50	\$0.00	\$0.00	\$0.00	\$0.00	\$767.50	\$0.00						\$1,535.00	(\$1,535.00)	ERR
Utilities	\$7,210.00	\$0.00	\$0.00	\$0.00	\$11.00	\$22.95	\$0.00	\$0.00	\$16.50						\$50.45	\$7,159.55	0.70%
Telecommunications	\$1,000.00	\$0.00	\$0.00	\$0.00	\$307.66	\$51.58	\$0.00	\$373.87	\$0.00						\$733.11	\$266.89	73.31%
Contractual/Professional	\$0.00	\$0.00	\$0.00	\$0.00	\$190.00	\$2,852.50	\$1,801.00	\$0.00	\$0.00						\$4,843.50	(\$4,843.50)	ERR
Travel	\$10,666.00	\$0.00	\$0.00	\$2,015.82	\$1,069.18	\$867.46	\$2,328.66	\$994.56	\$0.00						\$7,275.68	\$3,390.32	68.21%
Computer Services	\$1,200.00	\$0.00	\$1.00	\$0.00	\$91.00	\$0.00	\$0.00	\$97.67	\$0.00						\$189.67	\$1,010.33	15.81%
Renials (Machine)	\$2,500.00	\$0.00	\$0.00	\$0.00	\$618.82	\$0.00	\$0.00	\$335.70	\$11.95						\$966.47	\$1,533.53	38.66%
Association Dues	\$110.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00						\$0.00	\$110.00	0.00%
Clothing/Household/Suppl	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00						\$0.00	\$0.00	ERR
Advertising	\$0.00	\$0.00	\$119.14	\$119.16	\$33.23	\$0.00	\$0.00	\$0.00	\$0.00						\$271.53	(\$271.53)	ERR
Maintenance Contracts	\$500.00	\$0.00	\$42.87	\$0.00	\$0.00	\$0.00	\$0.00	\$21.44	\$0.00						\$64.31	\$435.69	12.86%
Miscellaneous	\$2,000.00	\$0.00	\$475.75	\$0.00	\$0.00	\$103.00	\$0.00	\$0.00	\$0.00						\$578.75	\$1,421.25	28.94%
Training/Development	\$500.00	\$0.00	\$0.00	\$0.00	\$149.67	\$57.50	\$0.00	\$0.00	\$0.00						\$207.17	\$292.83	41.43%
Postal & Freight	\$750.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$533.63	\$0.00						\$533.63	\$216.37	71.15%
Computer Supplies	\$500.00	\$0.00	\$0.00	\$190.00	\$0.00	\$95.00	\$0.00	\$0.00	\$0.00						\$285.00	\$215.00	57.00%
Credit Card (Supplies)	\$1,500.00	\$0.00	\$602.71	\$0.00	\$4.00	\$0.00	\$108.59	\$0.00	\$0.00						\$715.30	\$784.70	47.69%
Office & Comm. Equipment	\$0.00	\$0.00	\$0.00	\$0.00	\$131.23	\$0.00	\$0.00	\$105.31	\$0.00						\$105.31	\$144.69	42.12%
Books/Periodicals	\$250.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00						\$0.00	\$250.00	ERR
Other Equipment	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00						\$0.00	\$500.00	0.00%
Credit Card Purchases-Equi	\$500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00						\$0.00	\$500.00	0.00%
Computer Equipment	\$500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00						\$0.00	\$500.00	0.00%
Computer Software	\$117,264.00	\$5,818.49	\$12,745.86	\$8,922.46	\$8,933.97	\$9,581.31	\$12,454.91	\$9,945.01	\$5,015.86						\$73,417.87	\$43,846.13	62.61%

REPORT ON CLERK HIRING STRATEGIES

On 3/4/99, I went to Nitro to work with Judy Smith on processing WV11's (merit increases awarded by the Boards) and while there I inquired on how to handle the process of hiring a new clerk and paying Margaret Chico-Eddy's unemployment.

Since state agencies do not pay into unemployment compensation, all unemployment paid out to employees is handled on a reimbursement schedule. Every quarter we will receive an invoice from unemployment for the previous 3 months. We will process this invoice just like any other invoice. (Thru the Auditor's office)

Since we do not pay into unemployment, there are no monies available for this reimbursement from the EQB side. The AQB budget is all unclassified monies and as long as we don't spend over the total dollar amount, we aren't restricted to certain dollar amounts in each activity. (Miscellaneous, salaries, benefits). The only way to get the money to pay the unemployment invoice is to delete the Clerk's position from both Boards and do an amendment to our existing budget moving these monies down where we can access them for use. Therefore, since we are deleting the Clerk position from both Boards, we will not be able to hire a new Clerk until July 1, 1999.

Sometime next month, I should receive the Personnel Service Worksheets for FY2000. I will add the clerk position back into both budgets at that time.

I have talked with the Chairs of both Boards and received verbal approval to complete these steps. I have started this process by completing the necessary WV11's and turning them in to Judy Smith of Employee Staffing & Services at the DEP office in Nitro.