



WEST VIRGINIA RIVERS

July 5, 2018

WV Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304
Attn: Laura Cooper

Re: 2019 Triennial Review of Water Quality Standards, 47CSR2

Dear Ms. Cooper,

West Virginia Rivers Coalition, on behalf of our members and the undersigned organizations, respectfully submit the following comments on the WV Department of Environmental Protection's (WVDEP) proposed changes to Rules Governing Water Quality Standards (47CSR2) as part of the 2019 Triennial Review.

Subsection 5.2.h.5, Overlapping Mixing Zones

WVDEP added language to give the Secretary discretion to allow overlapping mixing zones for human health criteria. In its January 26, 2018 letter to WVDEP, EPA recommended that before allowing overlapping mixing zones for human health criteria in an NPDES permit, "WVDEP evaluate the cumulative effects of multiple mixing zones within the same waterbody." The letter goes on to state that, "The potential additive or synergistic effects of certain pollutants could result in the designated use of the waterbody as a whole not being protected." Language should be added to the rule that addresses this issue and requires an evaluation of the cumulative effects of multiple discharges and synergistic effects of pollutants on human health as a condition of the Secretary's approval of overlapping mixing zones.

The proposed language requires compliance with "all guidelines and conditions of this subsection." We request that WVDEP clarify in the rule, or at least in response to comments so that it is a matter of public record, its interpretation of "this subsection." Our assumption is that "this subsection" refers to the entire Section 47-2-5 on mixing zones. This assumption appears to be in line with EPA's comment in their January 26,

2018 letter that a discharger seeking an overlapping mixing zone must still meet all the other requirements in 47-2-5.

House Bill 2506 requires additional signage be displayed at overlapping mixing zones, but the proposed revisions to this rule do not address this requirement. The relevant portion of the bill reads: “At locations where mixing zones are allowed to overlap, the Secretary shall require permittees to indicate on their required signage an indication that mixing zones overlap in a particular vicinity.”

The intent expressed by members of the WV Legislature in including this signage provision in House Bill 2506 is to help protect public health. Mixing zones are areas where safe levels of pollutants harmful to human health are allowed to be exceeded. For this reason, it is ill-advised to come into contact with the water or consume fish harvested in this area. The public must be notified about these risks in order to make informed decisions about their use of the water in these areas through highly visible signage spanning the entire vicinity of the overlapping mixing zone.

WVDEP needs to detail in its rulemaking how this signage requirement is to be implemented, including specific language that must be posted. We recommend the signage should include this statement: “This area has high concentrations of pollutants harmful to human health. Contact with water or consumption of fish in this area can cause severe health effects.”

The signage should also include a graphic depicting the toxicity of the water for individuals that cannot read English.

Subsection 8.2.b, Critical Design Flow for Human Health Criteria

The proposed rule changes the critical design flow to the harmonic mean, which would result in an increase in the amount of pollutants discharged in certain NPDES permits. We are concerned that this change does not take into account pollutants for which criteria are based on short-term exposures. For example, EPA has documented that nitrate affects people with short-term exposures and that harmonic mean flow would not be advisable for that pollutant. Federal Register (65 FR 66450).

We recommend that the rule require the appropriate critical design flow for pollutants that affect people over the short term such as nitrate. Also, if and when additional scientific findings document short-term exposure issues for other pollutants, WVDEP should require the appropriate critical design flow for those pollutants as well.

Human Health Criteria

EPA updated its National Recommended Water Quality Criteria for human health for 94 chemical pollutants to reflect the latest scientific information and EPA policies, including updated fish consumption rate, body weight, drinking water intake, health toxicity values, bioaccumulation factors, and relative source contributions. It is important to update these criteria to ensure that WV's Water Quality Standards reflect current science and protect applicable designated uses.

We have requested WVDEP provide us a copy of West Virginia-based fish consumption data that has been referenced by other stakeholders in this Triennial Review process, but to date have not yet received those documents from the agency. Once provided and reviewed, we may choose to submit an addendum to these comments. Our assumption at this point is the West Virginia studies are not as extensive or comprehensive as the EPA studies, so we support WVDEP in relying on use of EPA's default consumption rates.

It is also of relevance that there is a statewide fish consumption advisory for all waterbodies within West Virginia, and that many of our river segments have advisories that recommend severely limiting consumption or not consuming fish at all due to contamination. As pointed out in the current edition of the West Virginia Sport Fish Consumption Advisory Guide, the state's rural and sporting heritage, along with a low per capita income, provides for a resident population with a particular inclination and incentive to catch and keep fish for food. WVDEP's approach to updating human health criteria based on EPA's default consumption rates gives the state's residents a better chance at recovering these rivers and streams so that it is once again safe to eat the fish. This is the vision we should all work towards so that West Virginians may reclaim their right to use their rivers as a source of nutritious food and personal sustenance.

We note while 94 pollutants were updated, WVDEP is choosing to only adopt new criteria for 56 of the recommended pollutants. WVDEP should be proactive and adopt all 94 recommended criteria so that West Virginia has criteria in place should any of the additional pollutants be used in the state. There is no cost in adopting all of EPA's recommended criteria, and the benefit is that protective permits can be written if and when one of these pollutants is proposed to be discharged. Neighboring states, such as

Kentucky and Pennsylvania, have chosen to take this proactive approach. West Virginia should as well.

Notwithstanding the number of pollutants for which EPA's criteria are adopted, we fully support WVDEP's adoption of these new human health criteria as recalculated by EPA—whether they result in criteria that are lower or higher than West Virginia's existing criteria. West Virginia water quality criteria should be based on the best, most recent science available, and it is to be expected that the criteria will be refined periodically as new data and information become available. We commend WVDEP for handling all pollutants in an even-handed way.

Thank you for the opportunity to have these comments considered.

Signed,

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West Virginia Rivers Coalition

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