



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

FEB 20 2018

Mr. Scott Mandirola, Director
Division of Water and Waste Management
West Virginia Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304

Dear Mr. Mandirola:

On June 2, 2016, the West Virginia Legislature approved revisions to the State's water quality standards rule (47CSR2 Requirements Governing Water Quality Standards). Those revisions were then signed by the Governor on June 7, 2016. The West Virginia Department of Environmental Protection's (WVDEP) General Counsel certified on June 8, 2016 that the regulations were duly adopted in accordance with State law. In accordance with Section 303(c)(2)(A) of the Clean Water Act (CWA), 33 U.S.C. §1313(c)(2)(A), and 40 CFR §131.20(c), WVDEP forwarded the amended regulation to the Environmental Protection Agency, Region III, on June 8, 2016, and we received it on June 9, 2016. Included in this submittal is a variance that applies to the Left Fork of Little Sandy Creek and Maple Run watersheds in Preston & Taylor Counties, West Virginia. The purpose of this letter is to approve the Left Fork of Little Sandy Creek and Maple Run variance pursuant to CWA §303(c) and the implementing regulation at 40 CFR §131.

West Virginia adopted the variance based on human-caused conditions which prevent the full attainment of the designated use and cannot be immediately remedied, or would cause more environmental damage to correct than leave in place (see 40 CFR 131.10(g)(3)). The regulation identifies: the discharges that will be addressed by the variance; the geographic area to which this variance will apply; interim instream criteria that will be in place during the term of the variance; a requirement for re-evaluation during each triennial review throughout the variance period; and an expiration date (i.e., July 1, 2025), absent any action by the WVDEP Secretary to review the variance. The variance applies to Maple Run and the Left Fork of Sandy Creek, and provides for interim criteria for iron, pH, and dissolved aluminum. All other applicable criteria continue to apply.

Along with the submittal of the variance, West Virginia provided information supporting the variance as well as information on restoration measures to be implemented throughout the watershed. West Virginia subsequently revised this supplemental information to provide more details about the implementation of the variance and submitted this information to the EPA on July 19, 2017.



The WVDEP, Division of Land Restoration's Office of Special Reclamation (OSR) looked at several options to determine the best approach for addressing the impaired conditions in the Left Fork of Little Sandy Creek and Maple Run. There are three bond forfeiture sites managed by OSR that are subject to this variance. An active treatment site has been constructed at one site, and three other active treatment sites are proposed but have yet to be constructed. OSR determined that due to the abandoned mine drainage in the watershed, these active treatment sites alone will not improve water quality to the point where designated uses are being achieved. WVDEP then decided that a combination of the active treatment with passive treatment (i.e., instream lime dosers), could address both abandoned mine drainage and the bond forfeiture mine discharges more effectively. EPA has determined that the variance can result in optimal water quality improvement given the constraints. When fully implemented, the combination of active and passive treatment restoration measures implemented during the term of the variance are expected to restore 9.2 miles of Little Sandy and 5 miles of Sandy Creek.

EPA has also determined that the variance term is warranted to allow for all restoration measures to be fully implemented and fully effective, including the construction and optimization of the active treatment sites and placement and optimization of both instream lime dosers. Due to the long-term, multifaceted acid mine drainage problem in the watershed, it is difficult to determine precisely how long it will take the water quality, and subsequently aquatic life, to be restored. The supplemental information includes plans for monitoring and assessment throughout the variance term. Based on that information, the variance will be re-evaluated during each triennial review throughout the variance term, and the WVDEP Secretary can remove or modify the variance should they find it is no longer needed or no longer effective. Any future new or revised variances would need to be submitted to EPA for review and approval in accordance with CWA Section 303(c).

Section 7(a) of the Endangered Species Act (ESA) states that each Federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. EPA has determined that West Virginia's adoption of this variance will have no effect on any ESA-listed species or critical habitat as there are no listed threatened or endangered aquatic species in the Left Fork Little Sandy Creek or Maple Run watersheds.

If you have any questions regarding this action, please do not hesitate to contact me or have your staff contact Denise Hakowski, at 215-814-5726.

Sincerely,



Catharine McManus, Acting Director
Water Protection Division

cc: Laura Cooper (WVDEP)
John E. Schmidt (USFWS)