

Nutrient Criteria Update:

Lakes – EPA deferred approval of lake nutrient criteria proposed in 2008, stating that warmwater criteria may not be protective enough

DEP proposed new criteria this year to be considered by the legislature during the 2011 session; EPA will have the ultimate right of approval once the legislature has approved the new rule

Streams – DEP proposed stream nutrient criteria for the Greenbrier River which will be considered by the legislature during the 2011 session

This year, DEP continued monitoring the state's most nutrient sensitive streams, including the Greenbrier, Tygart, Cacapon, and So. Branch Potomac rivers

Sometime before the end of the year, DEP should have a report available on this year's monitoring results

General Info:

In September of this year, the DEP attended a meeting of the Regional Technical Assistance Group (RTAG) at EPA Region III HQ in Philadelphia

RTAG is a group that has been around since the late 90's; it was formed by EPA to provide guidance to states and river basin commissions regarding development of nutrient criteria

The focus of the September meeting was on stream nutrient criteria

All states in Region III (WV, VA, PA, MD, DE, and D.C.) are in the process of developing stream nutrient criteria

Most states are looking at developing nutrient criteria on an ecoregional basis; other states in region have more variability in topography and ecology

With respect to nutrients, WV is essentially in one primary ecoregion, Ecoregion XI – Central and Eastern Forested Uplands

We've determined that the best approach to developing stream nutrient criteria in our state will be on a stream by stream basis, focusing on the most nutrient sensitive streams (Greenbrier, Tygart, So. Branch Potomac, Cacapon rivers)

There are so many variables affecting stream nutrients that a "one size fits all" approach will not be effective for WV streams

Nutrient sensitivity is generally determined by the degree of filamentous algae growth during the summer growing season

We've addressed the Greenbrier, although we still have to await final approval from the legislature and EPA

It is likely that nutrient criteria will be developed for other streams within the next few years

Two broad initiatives that will influence nutrient discharges in WV are the Chesapeake Bay Program and the Gulf Hypoxia Task Force

Chesapeake Bay Program will affect nutrient discharges in the Potomac and James watersheds in WV and the Gulf Hypoxia Task Force will ultimately have an impact on dischargers in the Ohio River watershed, which makes up most of the state

The Chesapeake Bay and Gulf initiatives serve to protect downstream uses in the Chesapeake Bay and Gulf of Mexico while stream specific criteria developed by the DEP will serve to protect instream uses within the state

The Chesapeake Bay initiative is much further along than the Gulf; WV has already received caploads for Total N and Total P as part of the Chesapeake Bay TMDL, which was completed by EPA earlier this year; DEP is currently working on a plan to achieve compliance with these caploads

The Gulf initiative is ongoing and there are currently no target caploads or timeline in place

Antidegradation (47-2-4)

In November 2009, DEP received a Tier 3 nomination for three streams in Preston County: Watkins Run, Fill Hollow, and Unnamed Tributary of Fill Hollow.

Tier 3 streams are defined as Outstanding National Resource Waters, and presently the list includes all streams within the boundaries of federally designated Wilderness Areas, all federally designated Wild and Scenic rivers, all streams in state parks which are high quality or naturally reproducing trout streams, all waters in national parks and forests which are high quality or naturally reproducing trout streams, all waters designated under the “National Parks and Recreation Act”.

In addition, there is a clause in 47-2-4 that provides the public the opportunity to nominate streams for Tier 3 consideration, provided certain steps are followed

Watkins Run, Fill Hollow, and Unnamed Tributary of Fill Hollow are the first streams nominated for Tier 3 protection via this process

The nomination packet can be viewed on the DEP’s web site on the Water Quality Standards home page

We had a 60-day public comment period in which we received a few dozen comments; we’ve prepared responses to the comments and these responses are currently being reviewed in house