



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

SEP 18 2014

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

Dear <sup>Scott</sup> Mr. Mandirola:

Recently the State of West Virginia completed the triennial review of its water quality standards regulation. The review resulted in the revision of several provisions of the regulation. In this letter, the U.S. Environmental Protection Agency (EPA) is taking action on those water quality standards revisions in accordance with the Clean Water Act (CWA) Section 303(c).

On March 8, 2014, the West Virginia Legislature adopted the revisions to the State's water quality standards regulation, and the Governor signed the revisions on April 1, 2014. The West Virginia Department of Environmental Protection's (WVDEP) General Counsel certified on June 24, 2014 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 24, 2014, and we received it on July 14, 2014.

Based on EPA's review of the submission and supporting documentation, EPA finds that the new or revised provisions of West Virginia's regulation are consistent with CWA Section 303(c) and its implementing regulations at 40 CFR §131. Enclosure 1 to this letter includes all the new or revised provisions that EPA is approving in this action, as well as a brief rationale for our approval. On a separate table in Enclosure 1 are several revisions that EPA does not consider to be new or revised water quality standards subject to review under CWA Section 303(c), and we therefore do not have to take a 303(c) action on those provisions. Those provisions are mostly revisions to regulatory citations or corrections, and therefore do not change the desired condition or level of protection of surface waters in the State.

Under Section 7 of the Endangered Species Act (ESA), 42 U.S.C. §1536, EPA has the obligation to determine if the Agency's approval of these modifications to the State's water quality standards regulation will adversely affect Federally-listed threatened and endangered



species and their critical habitat in West Virginia. To fulfill our obligation, EPA prepared an evaluation of the new and revised provisions of West Virginia's regulation, included here as Enclosure 2, and made a finding that our approval of the new and revised provisions which impact aquatic species either may affect, but is not likely to adversely affect threatened and endangered species, or will have no effect. The U.S. Fish and Wildlife Service (USFWS) concurred with this finding on September 11, 2014 (Enclosure 3)

EPA would like to commend WVDEP's water quality standards staff for the completion of this review of West Virginia's water quality standards regulation. My staff is prepared to assist WVDEP as you embark on the next triennial review. We anticipate that WVDEP will address the issues of ammonia criteria and bacteria criteria for the protection of recreational uses. We also look forward to your continued efforts to establish nutrient criteria.

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,



Jon M. Capacasa, Director  
Water Protection Division

Enclosures

cc: Kevin Coyne (WVDEP)  
John E. Schmidt (USFWS)



## Enclosure 1

### Summary of West Virginia's New and Revised Water Quality Standards 2014 Triennial Review

Citation	Description	EPA Approval Rationale
2.2	Revise definition of "Cool water lakes"	Definitions in of themselves are not water quality standards subject to EPA's CWA Section 303(c) action. How the terms are used in the description of designated uses, criteria or antidegradation provisions could constitute a change to water quality standards subject to EPA's review under CWA Section 303(c) action. WVDDEP made this revision to be inclusive of lakes that support cool water fish species regardless of whether these waterbodies are managed by the WV Division of Natural Resources and to exclude lakes which do not have the capacity to support year-round trout populations.
2.2.a	Add definition of "Warm water lakes"	Definitions in of themselves are not water quality standards subject to EPA's CWA Section 303(c) action. How the terms are used in the description of designated uses, criteria or antidegradation provisions could constitute a change to water quality standards subject to EPA's review under CWA Section 303(c) action. WVDDEP added this definition to address EPA's request that WV have a definition for both cool water and warm water lakes in the definition section of the water quality standards rule to assist in the application of the lakes nutrient criteria.
7.2.d.8.1	Add Category A (Water Supply, Public) use exception to unnamed tributary of Daugherty Run and Fly Ash Run	The West Virginia Department of Environmental Protection (WVDDEP) has determined that (1) Public Water Supply is not an existing use in this stream; (2) is not a use specified in CWA Section 101(a) (i.e., "fishable/swimmable"); and, (3) the use is not attainable due to "natural, ephemeral, intermittent, or low-flow conditions." All other uses (water contact recreation and aquatic life use) still apply.
7.2.d.19.3	Delete Union Carbide variance for chlorides in Ward Hollow of Davis Creek	This chloride variance is being removed because chloride levels in Ward Hollow are now meeting water quality standards. The previously approved statewide chloride criteria found in 47CSR2 Appendix E Table 1 now applies in this stream.
7.2.d.29.1	Add site-specific dissolved zinc criteria in Marr Branch (New River basin)	The site-specific criteria is based on EPA's recalculation procedure. EPA has reviewed the supporting information and finds that it is consistent with EPA's guidance.

8.3.a.3	Delete "A lake shall not be considered impaired based upon an average total phosphorus concentration in excess of the criterion established in section 8.3.a.2, unless the chlorophyll a criterion established therein is also exceeded."	Deleted per EPA's recommendation when this provision was disapproved by EPA on December 16, 2011. WVDEP has determined that classification of lakes as impaired is to be made by assessment of total phosphorus and chlorophyll-a independently.
Appendix E, Table 1 8.6	Revise human health beryllium criterion from 0.0077 µg/l to 4 µg/l	Revised criterion is based on the Maximum Contaminant Level Goal (MCLG) under the Safe Drinking Water Act. EPA finds it to be scientifically defensible and protective of the State's Category A designated use.
Appendix E, Table 1 8.12.1	Delete site-specific dissolved oxygen criterion for Kanawha River	Dissolved oxygen levels in the Kanawha River mainstem are meeting the statewide dissolved oxygen minimum criterion of 5 mg/l found in 47CSR2 Appendix E Table 1. The less stringent site-specific dissolved oxygen criterion of 4 mg/l is being removed and the previously approved statewide dissolved oxygen criterion now apply.
Appendix E, Table 1 8.29.2	Delete site-specific temperature criteria for Bluestone R., Bluestone Lake, East River, New River, Gauley R. and Greenbrier River	Temperature levels in these waterbodies are meeting the statewide temperature criteria for the protection of Category B2 (Trout Waters) found in 47CSR2 Appendix E Table 1. The less stringent site-specific temperature criteria are being removed and the previously approved statewide temperature criteria now apply.

EPA is not taking action on the following revisions to West Virginia's water quality standards regulations as they are not considered a change to water quality standards (i.e., designated uses, criteria or antidegradation provisions).

Citation	Description	EPA Comment
8.3.a.2	Revise provision to be more streamlined	This revision combines into one sentence reference to the use of the narrative criteria at 467CSR2 3.2 to determine impairment for nutrients in lieu of sampling for phosphorus or chlorophyll-a, instead of addressing them individually. Use of narrative criteria to determine impairment previously approved.
Appendix E, Table 1 8.23 Organics	Correct spelling of Indeno(1,2,3-cd)Pyrene	Correction, does not revise the criteria