



West Virginia Oil and Natural Gas Association

March 26, 2010

Mr. Randy Huffman  
Secretary of the West Virginia  
Department of Environmental Protection  
601 57<sup>th</sup> Street, S.E.  
Charleston, WV 25304

Re: Implementation of Narrative  
Water Quality Standards

Dear Secretary Huffman:

You have invited comment with regard to “the process of establishing a protocol for implementing and enforcing the state’s narrative water quality criteria.” That narrative criteria, found at 47 C.S.R. 2, Section 3, describes conditions that are not allowed in state waters, and for which there are no numeric limits established. On behalf of the West Virginia Manufacturers Association and the West Virginia Oil & Natural Gas Association, we would like to provide the following response.

As a preliminary matter, we believe that any approach to implementing the narrative criteria that converts narrative statements of condition to numerical limits, or that imposes significant new burdens on the regulated community, should not be done through administrative fiat. We assume that, after considering the comments provided to the agency, there will be a rule or amendment forthcoming, with specific implementation procedures. Such a proposal would allow the public to offer its thoughts on the Department’s preferred approach.

The WVMA and WVONGA believe that the Department of Environmental Protection has, on the whole, done a good job of interpreting the narrative water quality standards. Narrative standards exist because there are some stream conditions that do not lend themselves easily to use of numeric values. That is particularly true when one considers aquatic life, where there are natural fluctuations in both the size of the entire community and the predominance of certain species, seasonally and from year to year. Any attempt to develop a criterion to protect something as broad and vague as aquatic life must take into account this variability.

To the extent that the DEP is looking more closely at implementation of the narrative criteria, we would like you to consider a tiered approach. For our members, many of whom are located on larger watercourses, narrative criteria for protection of aquatic life traditionally have been evaluated using whole effluent toxicity testing. For existing facilities, we believe that

{R0468641.1}

Mr. Randy Huffman  
March 26, 2010  
Page 2

effluents that achieve a reasonable TU<sub>a</sub> or TU<sub>c</sub> limit at the edge of an existing or calculated zone of initial dilution or mixing zone, as appropriate, should be presumed to be nontoxic and to not be significantly affecting water quality. Where a facility does not meet the TU<sub>a</sub> or TU<sub>c</sub> limit at the appropriate boundary, a Toxicity Identification Evaluation and/or Toxicity Reduction Evaluation would be appropriate.

For other facilities and activities, such as those who cannot meet that toxicity standard, are not currently operating, or are located on very small streams, a different approach may be called for. In those circumstances, the use of assessment methods that provide a reasonable evaluation of how a discharge may influence the aquatic life use would be appropriate. These methods might include a biological assessment and criteria development, an ecological risk assessment, or a similar weight-of-evidence approach that evaluates all available chemical, physical, and ambient toxicity characteristics, and instream biological index scores. Such assessments are widely accepted as protective. They are scalable and might consist of several suitable evaluations including, but not limited to, a literature review, comparisons to ecological benchmark values, toxicity testing, or stream data development such as benthic and/or fish studies, as appropriate. Evaluators would use a weight-of-evidence approach to determine whether the narrative criteria are jeopardized, with the assessment following an EPA approved and widely-accepted methodology. The ultimate criterion would be attainment of the beneficial use; i.e., a finding that the appropriate beneficial use is being maintained, rather than a narrow focus on any individual species or other environmental component that may only suggest - at best - a deviation from the expected condition.

We would emphasize that achieving narrative criteria should never focus on a single species or biological effect, to the exclusion of an overall stream health analysis. We oppose any approach that would treat *any* shift in the biotic community as a violation of the narrative standards. Care should be taken to avoid treating every change as significant, or as degradation of the stream environment.

Thank you for the opportunity to offer these comments. We look forward to an ongoing conversation with the Department about this matter.

Very truly yours,



Nicholas DeMarco, President  
West Virginia Oil & Natural Gas Association

ND/shb

cc: David L. Yaussy, Esq.