

**CONTINUING PLANNING PROCESS  
FOR  
WATER QUALITY MANAGEMENT**

**STATE OF WEST VIRGINIA**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**(2001 UPDATE)**

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**SECTION I – INTRODUCTION**

**A. CPP Requirements and History**

Under the 1972 federal Clean Water Act, Section 303(e)(1) requires each state to develop and maintain a Continuing Planning Process (CPP) describing the processes it uses to manage water quality programs. The Department of Environmental Protection (then the Division of Natural Resources) prepared and submitted the most recent CPP for the state of West Virginia's water quality management programs in December 1979. Subsequently reviewed and approved by the U.S. Environmental Protection Agency, that document fulfilled, at that time, the requirements of the Act.

During the 1980s and '90s the Division of Natural Resources, now the Department of Environmental Protection, revised many of the processes described in the CPP prior to 1979. Statutory changes were also enacted by the West Virginia Legislature, which affected and/or became part of the operational processes of the agency. Each of the operational modifications were developed and implemented in a full and open public forum with EPA review and approval, as appropriate. Section 303(e)(2) of the Clean Water Act requires EPA to review the state's approved CPP from time to time to ensure its consistency with the Act. While a formal review by EPA has not been conducted, continuing interaction between the state and the federal agency has taken place as programmatic and statutory modifications to water quality management processes occurred. In conjunction with deliberations on modifications to the state's water quality standards initiated in late 1999, DEP began a review of its programs, as reflected in the original document and subsequent operational changes, and to initiate the development of an updated CPP. To facilitate future updates, DEP will establish a structure and format for operational modifications constituting CPP revisions.

This CPP is not intended to represent a comprehensive state water quality management strategy. It is basically a description of the water quality management activities of the DEP and its partner agencies as they relate to the required federal CPP elements. Its utility is in providing EPA, affected industries and the general public with a guidebook to programs and processes, which independently and cooperatively serve to fulfill the respective agencies' water quality management responsibilities. For more information,

this CPP update provides references to many documents and other sources available to the public that describe water quality management program activities in greater detail.

The federal regulations at 40 CFR Part 130.5 describes nine specific processes that a state must include in its CPP document. These processes are: (1) developing effluent limitations and schedules of compliance at least as stringent as those required by Sections 301(b)(1) and (2), 306 and 307, and at least as stringent as any requirements contained in applicable water quality standards in effect under authority of Section 303 of the Act; (2) incorporating elements of any applicable area wide waste treatment plans under Section 208, and applicable basin plans under Section 209 of the Act; (3) developing total maximum daily loads (TMDLs) and individual water quality-based effluent limitations for pollutants in accordance with Section 303(d) of the Act and Section 130.7(a); (4) updating and maintaining Water Quality Management (WQM) plans, including schedules for revision; (5) assuring adequate authority for intergovernmental cooperation in the implementation of the state water quality management program; (6) establishing and assuring adequate implementation of new or revised water quality standards, including schedules of compliance, under Section 303(c) of the Act; (7) assuring adequate controls over the disposition of all residual waste from any water treatment processing; (8) developing an inventory and ranking, in order of priority of needs, for construction of waste treatment works required to meet the applicable requirements of Sections 301 and 302 of the Act; and (9) determining the priority of permit issuance. The regulations at 40 CFR Section 130.7(a) require that the process for incorporating public involvement in the development of the Section 303(d) list and the development of TMDLs also be included in a state's CPP document. The body of this CPP update focuses on these specific elements.

## **B. The State Water Quality Management Process**

Many state, interstate, federal and local agencies and organizations play a role in implementing West Virginia's water quality management programs. The following is a description of the involvement each entity has:

### **1. State agencies**

#### **a. West Virginia Department of Environmental Protection (DEP)**

##### **Division of Water Resources**

The Division of Water Resources (DWR) implements programs controlling surface water pollution caused by industrial and municipal discharges and oversees erosion control planning efforts. DWR also focuses on groundwater, wetlands protection and non-coal dams.

Significant portions of DWR's funding originates from grants and allocations designated to administer federally mandated water quality programs. Programs such as the National Pollutant Discharge Elimination System (NPDES), a Water Pollution Control Permitting

Strategy, and Underground Injection Control (UIC), a Groundwater Protection Permitting Plan, strive to meet Clean Water Act objectives. Federal financing and state matching dollars remain necessary to execute environmental programs. State funds include: general revenue, administrative penalties, applications and permit fees. The state revolving fund (SRF), mandated under the SRF Act, must maintain state capitalization to obtain federal seed or grant funds. The low-interest loan program focuses upon West Virginia communities desiring financial assistance to plan and construct sewer projects.

DWR operates six sections and shares operational control over Environmental Enforcement with the Division of Waste Management.

#### *Permits*

This section ensures compliance and enforces the state Water Pollution Control Act and the federal Clean Water Act. These programs regulate activities/facilities that construct, operate and maintain wastewater treatment systems that discharge pollutants into West Virginia waters.

#### *Construction Assistance*

This section, along with the West Virginia Water Development Authority, manages the clean water state revolving fund. It provides technical assistance and financial assistance through low-interest loans to municipalities and public service districts for the construction of wastewater treatment facilities.

In addition, new financial assistance programs are being developed to address pollution from nonpoint sources.

#### *Dam Safety*

This section protects lives and private and public property from the danger of a potential or actual dam failure. Dam safety reviews applications for the construction, modification or removal of non-coal dams under state jurisdiction for compliance with safety standards. The section inspects existing dams, dams under construction, and responds to emergency situations.

#### *Executive/Program Support Team*

This section oversees and supplies support to all DWR directed programs.

#### *Coordination and Development*

This section augments the agency's water quality protection efforts. Each program maintains an individual identity: quality assurance insures the quality of the agency's analytical needs through commercial laboratories and operates the state's laboratory certification program; support provides administrative oversight for all coordination and development programs and manages federal grants. Nonpoint source coordinates a multi-agency effort to control pollution originating from improper land uses; and groundwater manages and implements the state's groundwater and underground injection control programs.

### *Watershed Assessment/Strategic Planning*

Watershed Assessment provides current water quality information for more effective resource protection. This unit also manages the state activities related to development of the total maximum daily loads.

### *Environmental Enforcement*

This section also addresses issues for the Division of Waste Management. Environmental enforcement promotes compliance by giving assistance and/or enforcing conditions required of municipalities, solid waste facilities, industry and the public. Long-term, it plans to effectively promote and advance the lawful management of solid waste and wastewater treatment facilities. Personnel assigned enforce the Solid Waste Management Act, state Water Pollution Control Act and the Groundwater Protection Act.

### **LAWS/RULES**

*WV Code*, chapter 22, article 1 - Laboratory Certification

*WV Code*, chapter 22, article 11- Waters Pollution Control Act.

*WV Code*, chapter 22, article 12 - Groundwater Protection Act.

*WV Code*, chapter 22, article 13 - Natural Streams Preservation Act.

*WV Code*, chapter 22, article 14 - Dam Control Act.

*WV Code*, chapter 22, article 15 - Solid Waste Management Act.

*WV Code*, chapter 22C, article 2 - Water Pollution Control Revolving Fund Act.

*Regulation*, title 46, series 1, 12.

*Regulation*, title 47, CSR, series 10, 11, 11A, 26, 31, 34, 38D, 55, 56, 57, 58, 59 and 60.

*Federal Clean Water Act.*

*Federal Safe Drinking Water Act.*

### **Office of Abandoned Mine Lands and Reclamation**

A substantial number of acres of land in the United States have been disturbed by surface and underground coal mining. These unreclaimed acres impose social and economic costs to residents, as well as impair environmental quality. With public health, general welfare, safety and danger to property as its priorities, AML&R corrects hazardous conditions. The conditions are:

Old buildings, hazardous gases, refuse piles, abandoned equipment, subsidence, hazardous water bodies, mine drainage, clogged streams, mine entries (portals) and shafts, polluted water, mine fires, abandoned highwalls, cleaning plants and loadouts.

The Office of Abandoned Mine Lands and Reclamation (AML&R) reclaims the land and water impacted by past mining practices. To do this, the office uses funds derived from a federal tax on coal producers. Established Jan. 21, 1981, AML&R receives its authority from Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA). The mine sites abandoned before the passage of federal coal mining laws are to be reclaimed. This law enables AML&R to correct many mine-related problems, as specified in Public Law 95-87, section 403 (a), numbers 1,2,3.

AML&R operates nine sections:

### *Administration & Technical*

This section is responsible for the management of all grants, budgets and administration of AML&R.

### *Planning*

This section decides what sites AML&R should reclaim. It determines if sites are eligible and completes environmental assessments for each site.

### *Design*

This section administers various contracts with consulting firms to develop the most cost-effective and practical methods to abate the many types of problems associated with abandoned sites. This also incorporates in-house design, which address smaller AML sites.

### *Realty*

This section obtains the rights-of-entry for proposed reclamation projects.

### *Construction*

This section is responsible for the award of the AML construction contracts and provides inspection and oversight relating to construction.

### *Emergencies*

This section, in conjunction with the U.S. Office of Surface Mining (OSM), uses expedited bidding procedures to quickly correct emergency problems as specified in the Public Law 95-87, section 410. Additionally, all complaint investigations are handled in this section.

### *Special Reclamation*

This section reclaims land and maintains water quality on mining sites where the DEP has revoked operating permits and bonds. Funding comes from bond forfeitures and a special tax on all coal produced within West Virginia.

### *Stream Restoration*

This section provides chemical, physical and biological water quality monitoring and technical support for abandoned mine environmental projects, addressing affected water. It leads in the preparation of water quality feasibility studies, acid mine drainage (AMD) treatment and abatement plans, and Appalachian Clean Streams Initiative projects.

### *Stream Partners*

This section manages a grant program that encourages citizens to work in partnership with appropriate state agencies to restore and protect state waters. It was created in 1996. The Legislature appropriates \$100,000 annually from general revenue funds from four agencies for stream partners. The DEP, Division of Natural Resources, Division of Forestry and the state Soil Conservation Agency are the sponsors of this program.

### LAWS/RULES

*Title IV, Surface Mining Control and Reclamation Act of 1977 of Public Law 95-87.*

*WV Code, chapter 22, articles 1, 2 & 3A.*

*WV Surface Mining Reclamation regulation, Title 38, CSR-2D, Title 59-1.*

## **Division of Air Quality**

The Division of Air Quality (DAQ) develops and implements various regulations and related programs mandated by the federal Clean Air Act (CAA) and the state Air Pollution Control Act for protection of public health and prevention or mitigation of environmental degradation resulting from air pollutant emissions. DAQ monitors air quality and primarily regulates emissions of air pollutants from various sources.

DAQ operates five sections:

### *Permitting*

This section implements West Virginia's permit program established under the state's Air Pollution Control Act. This program includes review of applications, determination of permit applicability and issuance of permits for minor and major sources. The goal is to set forth the procedures for obtaining a permit to construct, modify, relocate and operate a new stationary source, a temporary or a general permit and for filing notifications of changes not otherwise subject to permit requirements. All applications must conform to the review procedures and conditions of the West Virginia Code and West Virginia permit regulations 45CSR13, 45CSR14, and 45CSR19.

### *Administrative Services*

This section provides administrative support to the Director, the deputy Director, and the assistant chiefs. It contains several subunits that provide specialized support in purchasing, budgeting, accounting, human resource functions, and facility and asset management.

### *Hazardous and Solid Waste Management (HSWMS)*

This section regulates air emissions from facilities that treat, store, and dispose of solid and hazardous waste as defined in the West Virginia Code and regulations. HSWMS oversees three main areas of responsibilities: permitting, which establishes permit applications for constructions, operations and closure/partial closure of the facility; compliance monitoring/assessments, which conducts unannounced site inspections to confirm compliance with the permit, state and federal rules, and this includes facility performance test observations during trial burn, stack tests, and for boiler and industrial furnaces' (BIF) certificate of compliance; and enforcement, which initiates enforcement action when facilities are determined to be violating the conditions of the permits or state and federal rules.

Air emissions from hazardous waste facilities such as incinerators, boilers and industrial furnaces are regulated under the Resource Conservation and Recovery Act (RCRA) and the CAA. Air emissions from solid waste facilities such as municipal waste landfills, medical waste incinerators, and municipal waste combustors are regulated under the federal Clean Air Act Amendments of 1990 (CAAA).

The HSWMS also is responsible for drafting rules for adopting changes and new requirements to maintain consistency with federal regulatory programs and for providing an ample measure of protection for human health and the environment



### *Planning*

This section develops and periodically reviews the state implementation plan (SIP). A state implementation plan is a federally enforceable strategy that details how a state plans to attain and maintain compliance with National Ambient Air Quality Standards (NAAQS) mandated by the CAA. A SIP consists of a state's regulations and legal agreements limiting the amount of pollutant discharges to the atmosphere. To insure that these regulations are sufficient to protect human health and welfare, a technical air quality demonstration often is required. This information then is used in air dispersion modeling analyses to determine the ambient concentrations of pollutants. The planning section prepares these demonstrations and develops the policies of DAQ.

### *Monitoring*

The air monitoring section includes field monitoring operations, and laboratory and data processing units. The air monitoring section, with ambient air quality sampling sites located throughout West Virginia, monitors air pollutants on either a continuous or periodic basis. The sampling sites are located to assess air quality levels based on exposure by population of industry emissions, determination of background levels, and other special purposes. Nearly all air monitoring equipment is located at permanent sites, in buildings or shelters that were designed for monitoring purposes. The air pollutants and parameters monitored are:

- 1) hazardous air pollutants (metals).
- 2) precipitation (rain/snow): pH, conductivity, total acidity, anions, and metals.
- 3) specific volatile organic compounds (VOC).
- 4) total suspended particulates (TSP).
- 5) particulate matter less than 10 microns (PM<sub>10</sub>).
- 6) particulate matter less than 2.5 microns (PM<sub>2.5</sub>).
- 7) water-soluble sulfates and nitrates.

The air monitoring section also collects meteorological data and analyzes particulate fallout. The monitoring network is periodically reviewed and revised to accommodate changing federal requirements. The data collected is used by the DAQ to implement programs to insure attainment of NAAQS for particulate matter, sulfur dioxide, ozone, carbon monoxide, nitrogen oxides, and lead. Air quality data collected by the air monitoring section is validated before being submitted to the EPA's aerometric information retrieval system (AIRS) national data bank in North Carolina. The data then is available for public use. The section's data coordinator uses this data to generate summaries and reports. Additionally, ozone data is submitted seven times a day to the national ozone mapping project. The air monitoring section has an active outreach program, interacting with the public at many levels.

### *Compliance and Enforcement*

This section assures those facilities that are subject to air pollution control requirements authorized by the West Virginia Code and implementing legislative rules, comply with the emission limits placed on the facility through a permit or a registration process.

This section conducts investigations of air pollution sources in West Virginia and addresses citizen complaints involving alleged air pollution violations.

#### *Small Business Ombudsman*

This position coordinates environmental compliance assistance and outreach programs targeted toward small business regulated under the CAA. In connection with the new Title V operating permits program, DEP established this position. It reports to the Secretary to preserve autonomy and effectiveness. The ombudsman ensures that the needs of small businesses are considered in developing and implementing air quality regulatory policy and procedures.

#### LAWS/RULES:

WV Code, chapter 22, article 5

State regulations, 45CSR 2,3, 5,6,7,7A,8,9,10,12,13,16,17,23,24,25,28,30A,31A,33,34

### **Division of Environmental Remediation**

The Division of Environmental Remediation (DER) was created in November 1997 to consolidate the agency's remediation programs. These include the brownfield, voluntary remediation, Superfund, leaking underground storage tank (LUST) and hazardous waste management cleanup programs. This organizational structure allows the division to focus its energy and technical talent solely on the remediation sciences and procedures used to restore contaminated sites. The division is committed to consistency among its cleanup programs.

The division is organized along a project management function, which focuses on oversight of site activities, and a technical support function, which provides specialized technical support.

DER operates four sections:

#### *Voluntary remediation (Brownfields)*

This section encourages voluntary remediation activities and brownfield revitalization. The Voluntary Remediation (Brownfields) and Redevelopment Act (VRRRA) is unique in that it is the only voluntary cleanup or brownfield law in the nation drafted as a negotiated consensus between environmentalists and industry representatives. The section is characterized by uniform, predictable processes with flexible cleanup standards based on future land use that are protective of human health and the environment. A certificate of completion is issued after the applicant has demonstrated that all applicable requirements have been met.

#### *Leaking Underground Storage Tanks*

This section provides oversight of the cleanup of releases of regulated substances from leaking underground storage tanks, piping, or overfill spills. This section also administers the federal and state leaking underground storage tank response funds that are used for state-led cleanups at sites where the responsible party is recalcitrant or does not have the financial means to respond to the leak. The program must verify insolvency claims and must pursue cost recovery from recalcitrant solvent responsible parties. The

agency received authorization from the EPA in 1997 to assume the regulatory lead as the implementing agency for the leaking underground storage tank program in West Virginia.

#### *Hazardous Waste Management*

This section administers the federal Resource Conservation and Recovery Act (RCRA). RCRA has provisions to require the investigation and cleanup of hazardous waste releases at RCRA facilities. It was Congress' intent for states to assume primary responsibility for implementing the hazardous waste cleanup requirements, with oversight from the federal government. DER is working with EPA to develop a practical, streamlined program to achieve cleanup goals while enhancing public participation and cost reduction.

#### *Superfund*

This section coordinates federal Superfund cleanups with the EPA and the U.S. Department of Defense. The Superfund section is where recent federal government efforts have focused on recognizing and supporting the successful state voluntary cleanup programs (brownfields).

#### LAWS/RULES

WV Code, chapter 22, articles 17,18,19,22

State regulations, 60 CSR 3, 33 CSR 30

### **Division of Mining and Reclamation**

The Division of Mining and Reclamation (DMR) provides protection to the environment through the enforcement of West Virginia's Surface Mining Control and Reclamation Act (West Virginia Code, chapter 22, article 3) and Surface Mining and Reclamation of Minerals other than Coal (West Virginia Code, chapter 22, article 4). DMR also has jurisdiction in all matters pertaining to coal and other mineral resources (West Virginia Code, articles 11, 12, 13, and 14 of chapter 22, and article 1 of chapter 22B).

DMR operates three sections:

#### *Program Management and Technical Support*

This section identifies the need for staff training and develops procedures, policies, application forms and checklists. It also handles personnel concerns, purchasing and accounting. It develops and maintains the applications and handbooks, and handles processing of assessments and the collection of monetary fines associated with permit violations. The small operator assistance program (SOAP) is also a part of this section.

#### *Permitting*

This section establishes the goals and guidelines of the permitting program and reviews all types of permit applications. Review teams in DMR's regional offices consist of engineers, geologists, environmental inspectors, and resource specialists. There are two sub-units within permitting that are responsible for specific application reviews: the hydrologic protection unit and the permit support unit.

#### *Inspection and Enforcement (I&E)*

This section establishes and enforces the goals and evaluation standards for inspection and enforcement activities. An annual training class is mandatory to ensure the law is understood and that the law, rules and regulations, and policies and procedures are enforced.

#### **LAWS/RULES**

*WV Code*, chapter 22, article 3 - *West Virginia Surface Mining Control and Reclamation Act*

*WV Code*, chapter 22, articles 11, 12, 13, 14- concerning mineral resources

*WV Code*, chapter 22B, article 1

*WV Code*, chapter 22, article 4- *Surface Mining and Reclamation of Minerals Other than Coal* title 38, series 2- *West Virginia Surface Mining and Reclamation Regulations* title 38, series 2B- *West Virginia Regulations for Mining and Reclamation of Minerals Other Than Coal*, series 2F- *Groundwater Protection Regulation-Coal Mining Regulations*.

#### **Office of Oil and Gas**

The Office of Oil and Gas (OOG) protects the environment while administering the process necessary for the development and enhancement of West Virginia's oil and natural gas reserves. In carrying out this responsibility, the office is subdivided according to primary functions: permits, regulatory assistance/compliance, and conservation and abandoned wells. The office provides technical advice to various government agencies, groups and organizations on oil and gas and sub-surface issues involving underground mineral resources and groundwater.

#### **LAWS/RULES**

*WV Code*, chapter 22, articles 6,7,8,9,10 and 21, chapter 22C.

*State regulation*, 38-CSR-1-6, 18,21, and 22.

#### **Division of Waste Management**

The Division of Waste Management (DWM) protects the public health and the environment by reducing the extent and duration of unpermitted releases. Through a technically sound compliance program, DWM works to ensure an economic advantage is not gained by non-compliance.

The Resource Conservation and Recovery Act (RCRA), established in 1976, is the federal law that regulates hazardous waste, underground storage tanks (UST), and some aspects of solid waste. The state has adopted companion laws and rules to regulate these entities.

The division employs more than 100 scientifically oriented people, such as geologists, engineers, chemists, technicians, and support staff. With headquarters in Charleston, it operates field offices in Fairmont, Romney, Parkersburg, Oak Hill, Wheeling, and Teays Valley.

DWM operates three sections, with joint control over environmental enforcement:

#### *Compliance Assurance and Emergency Response-*

This section conducts site inspections and enforcement and oversees regulatory requirements during construction, operation and closure of hazardous waste sites. In addition, this section responds directly to hazardous waste emergencies. Oversight is provided for all aspects of underground storage tank installations, closures, testing, spill detection, corrosion protection, and daily operations.

#### *Hazardous Waste Management*

This section imposes technical and financial assurance requirements on the generation, collection, transportation, treatment, storage and disposal of all hazardous waste.

#### *Solid Waste Management*

This section consists of the permitting unit and the environmental restoration unit. The permitting unit imposes technical and financial assurance on the collection, transportation, processing and disposal of all municipal wastes put in a landfill. The environmental restoration unit consists of an open dump cleanup program that reclaims hundreds of West Virginia's open dumps and a landfill closure assistance program that properly closes the state's unlined landfills. This section also participates in the Make-It-Shine campaign to coordinate and support volunteer cleanup efforts.

#### *Environmental Enforcement*

This section works in conjunction with the DEP's Division of Water Resources to promote compliance by providing compliance assistance and/or enforcing permit conditions required of municipalities, solid waste facilities, industry and the public. It works to advance the lawful management of solid waste and wastewater. It enforces the Solid Waste Management Act, the state Water Pollution Control Act, and the state Groundwater Protection Act.

#### LAWS/RULES

*WV Code*, chapter 22, articles 15, 16, 17, 18, and 19  
*Regulations*, 33 CSR 35, 36, 37, and 38

#### **Support Offices**

##### **Office of Administration**

The Office of Administration (OA) provides financial, personnel, procurement and property management services to all Department of Environmental Protection's (DEP) program offices.

##### OA'S OBJECTIVES ARE:

- To provide technical assistance to program offices.
- Adhere to statutory and policy directives regarding internal financial and personnel management.
- Facilitate efficient use of available technology.
- Oversee management of inventory, facilities, records, and vehicles.
- Develop and oversee various internal policies and procedures.

The OA operates three sections:

#### *Fiscal Services*

This section prepares financial statements and other financial reports for the DEP. It maintains the central accounting system, compiles budget requests, expenditure schedules and working budgets, and oversees all DEP's financial transactions. This section also processes all payment transactions on behalf of DEP and ensures prompt payment to vendors and employees. It maintains records of payment, while providing assistance to offices within DEP and assisting in state and federal audits.

#### *Administrative Services*

This section provides mail services, centralized inventory records, vehicles, building maintenance, central coding of utility and telecommunications invoices, telecommunications, office leases, and purchasing throughout the agency.

#### *Human Resources*

This section provides personnel and payroll assistance to the Bureau of Environment and the offices within the DEP. These services include recruitment; implementation of an equal employment opportunity program; coordination of benefits; training and staff development; and serves as the official personnel and payroll record keeper.

This section provides expertise to both management and employees in the grievance procedure. It strives for an atmosphere of cooperation by ensuring that all employees have an effective procedure by which grievances can be fairly and objectively reviewed.

#### *Equal Employment Opportunity (EEO)*

This program, administered by SES, provides DEP with services to all persons without regard to sex, race, color, age, religion, ancestry, national origin, disability or other non-merit factors. It implements this program.

### **Office of Environmental Advocate**

The Office of Environmental Advocate (OEA) was created by the Legislature in 1994 to provide advice and support to citizens seeking resolution of environmental problems. The OEA assists citizens in obtaining and interpreting agency information and other technical data, and encourages citizen participation during public comment periods.

The environmental advocate attends open meetings, public hearings, proceedings and conferences to collect and distribute information about various environmental issues. The OEA works closely with other Department of Environmental Protection (DEP) offices to develop informational workshops, public forums, and town meetings to identify citizen concerns with regulations and policies.

#### **LAWS/RULES**

*WV Code*, chapter 22, article 20

*Regulation*, title 60, series 1, title 38, series 10

## **Information Technology Office**

The Information Technology Office (ITO) was created in 1993 to serve the expanding information management needs of the Department of Environmental Protection (DEP). ITO has a full-time staff of 37, is divided into four functional units, and serves the information management needs of approximately 800 DEP employees working at 23 different locations. While the majority of the ITO staff is located at the Nitro office, other staff is located at offices in Charleston, Oak Hill and Philippi.

ITO operates four sections:

### *Administration (ADM)*

This section's functions include project planning and management, help desk, IT purchasing assistance, Web authoring and forms development/conversion, and general office administration.

The help desk became fully functional in 1998 and consolidates all ITO user-assistance requests and sends them to the Nitro office. From this location, all 23 statewide locations are served. This facilitates the resolution of hardware, network, mainframe access, communications and software problems. It also effectively uses ITO's personnel resources.

### *Technical Applications and Geographic Information Systems (TAGIS)*

This section implements the geographic information system (GIS), the global positioning system (GPS), and volumetric estimation/three dimensional modeling technologies within the DEP. TAGIS also maintains the infrastructure for spatial analysis and modeling technologies within the Bureau of the Environment, including the DEP World Wide Web (WWW) site. This Internet site serves as a data warehouse for environmental spatial information in West Virginia.

### *Operations and Network Support (ONS)*

This section provides both technical and user support services to the various DEP offices, including local and wide area network support. These services consist of hardware and software standards development, program office assistance, site analysis and systems support.

### *Applications Development and Support (ADS)*

This section supplies process and data analysis, design, programming, data translation, end-user training and maintenance for legacy and/or customized computer applications.

ADS develops customized software programs to meet the day-to-day operational needs of these DEP offices: Abandoned Mine Lands and Reclamation, Administration, Air Quality, Environmental Enforcement, Environmental Remediation, Explosives and Blasting, Legal Services, Mining and Reclamation, Oil and Gas, Waste Management, and Water Resources. Software program development spans the spectrum of abandoned mine sites inventory to the prediction of the degree of watershed degradation associated with concentration and variations of acid mine drainage discharges.

In addition, ITO administrative and technical staff also serves on various statewide committees whose functions are aimed at technology development and implementation.

### **Office of Legal Services**

The Office of Legal Services (OLS) provides most legal services and litigation support to the agency. The office has 17 employees.

#### **LAWS/RULES**

WV Code, chapter 22, article 1-6(d)(7)

### **Public Information Office**

The Public Information Office (PIO) provides internal and external communication, educational, graphic and video services to the Department of Environmental Protection's (DEP) offices.

Internal communication services include writing and editing the DEP's twice-monthly employee newsletter.

External communication services include writing and releasing news releases, producing a monthly newsletter, developing promotional and educational materials, serving as a point-of-contact for the news media, producing presentation materials, and developing displays for fairs, trade shows and festivals.

The office implements Project WET (Water Education for Teachers), a national program designed to encourage teachers to incorporate water education into their lesson plans. Through facilitation of this program, the PIO is able to educate and increase awareness.

The office is also involved with processing requests for agency information and requests under the West Virginia Freedom of Information Act (FOIA).

Public notices, response to comments, and facilitating public hearings for NPDES permits and other issues are also handled by this office.

### **b. West Virginia Soil Conservation Agency**

The West Virginia Soil Conservation Agency (WVSCA) coordinates statewide conservation efforts. This is done in order to conserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, conserve wildlife, protect the tax base, protect public lands and protect and promote the health, safety, and general welfare of the people of West Virginia. The WVSCA is headed by the West Virginia Soil Conservation Committee, which consists of seven members, including the commissioner of the West Virginia Department of Agriculture, the Secretary of the DEP, the director of the West Virginia University (WVU) State Extension Service, the dean of the WVU College of Agriculture and Forestry and three members from the private sector appointed by the Governor.



**c. West Virginia Department of Agriculture**

The West Virginia Department of Agriculture is responsible for promotion of state agricultural products and commodities, economic development and the operation of state-owned farms and farmers' markets. It is also responsible for a wide range of agricultural and forest (both urban and rural) insect, plant disease and related organism activities, including detection, identification, survey, regulation and control, and for pesticide registration, regulation and associated activities. The commissioner also serves as chairman of the state Soil Conservation Committee.

**d. West Virginia Division of Forestry**

The Division of Forestry (DOF) is responsible for managing the state's forest land resources. There are three major programs within the DOF: Land Owner Assistance, Logging and Sediment Control and Fire. The Land Owner Assistance Program provides technical and sometimes financial resources to assist landowners in managing their forest lands. Woodland management planning, timber sales assistance, and tree planting assistance is provided to landowners. Proper management planning aids in protecting and improving soils and water, enhance wildlife habitat, protect endangered species, and can improve timber and wood product potential while maintaining the forest's ability for future health and productivity.

DOF regulates the logging industry through the Logging and Sediment Control Program. Logging operators are required to be licensed and are required to submit a notification form to DOF concerning harvesting operations. Field inspectors perform site visits to ensure compliance with all logging requirements. Through this program DOF also holds workshops and training to educate logging operators on best management practices and their importance.

The Fire Program is responsible for the prevention and suppression of forest fires. Prevention is encouraged through educational activities and public outreach.

**e. West Virginia Infrastructure and Jobs Development Council**

The West Virginia Infrastructure and Jobs Development Council (WV IJDC) was created in 1994 by the West Virginia Infrastructure and Jobs Development Act (WV Code 31-15A and 15B). The mission of the WV IJDC is threefold: (1) to provide a comprehensive and efficient system for (a) review of the water, wastewater and economic development needs of the state, and (b) coordination of available state and federal funds for such needs; (2) to allocate the funds available in the infrastructure fund to address the most critical infrastructure needs of the state and attract other sources of state, federal, local and private funding; and (3) to develop a revolving fund program available for infrastructure needs which will lead the state into the twenty first century.

The WV IJDC administers up to \$300 million in state issued general obligation bonds for infrastructure projects and has authority to issue revenue bonds to make more money available for such projects. The WV IJDC consists of 11 voting members (seven state agencies and four public members appointed by the Governor) that meet on a monthly basis to recommend project funding based upon review of submitted applications. The WV IJDC has created a “one-stop” method for publicly owned utilities and development authorities to access the various sources of state and federal funding.

**f. West Virginia Water Development Authority**

The Water Development Authority was created by passage of the Water Development Authority Act in 1974 (22C-1). Its mission is to provide communities effective financial assistance for development of water, wastewater and economic development projects that will protect state streams, improve drinking water quality and encourage economic growth. This is accomplished by administering and managing several revenue bond programs. The WDA also acts as fiduciary of the infrastructure fund for the WV IJDC and co-manages the DEP’s Water Pollution Control Revolving Fund and the Bureau for Public Health’s Drinking Water Treatment Revolving Fund. The WDA serves as an active member of the WV IJDC.

**g. WV Bureau for Public Health (Office of Environmental Health Services)**

The Office of Environmental Health Services (OEHS) is responsible for developing, administering and implementing a statewide comprehensive environmental health program that is designed to provide mandated services for the health and well being of state citizens. It has primacy for the federal Safe Drinking Water Act in West Virginia to assure that all public drinking water supplies provide a safe, reliable source of water that meet all applicable state and federal standards. It administers the state Drinking Water Treatment Revolving Fund and provides training and certification for water and wastewater treatment plant operators, managers, sanitarians, and water well and monitoring well drillers.

**2. County Agencies**

**a. Soil Conservation Districts**

The state’s 14 soil conservation districts are locally operating conservation units. The WVSCA provides administrative support and guidance in the development and implementation of conservation programs based on set resource priorities. Districts channel resources from all levels of government into action at the local level. The districts are governed by a board of supervisors who are local landowners elected from each county.

## **b. County Health Departments**

There are 55 separate county health departments each of which has environmental responsibilities associated with the installation of on-site sewage disposal systems and potable water supplies. Most county health departments, not all, issue permits for the construction of on-site sewage disposal systems that includes subsurface discharges as well as surface discharges. When a subsurface discharge is authorized by the county this usually consists of site and system approval considering the type of discharge, domestic versus commercial, and the number of residents or employees the system is going to serve. County health departments are responsible for the permitting the installation of potable water wells other than public supply water wells. The county is responsible for assuring that the installation of private water wells is adequate to protect public health and ground water aquifers from contamination and pollution. They are also responsible for the abandonment of these private potable water wells.

## **3. Interstate River Basin Organizations**

### **a. Ohio River Valley Water Sanitation Commission**

The Ohio River Valley Water Sanitation Commission (ORSANCO) was established in 1948 with the signing of the Ohio River Valley Water Sanitation Compact by the governors of the states of Indiana, West Virginia, Ohio, New York, Illinois, Kentucky, Pennsylvania, and Virginia. The compact was authorized by the United States Congress and the legislatures of the eight states. The compact established the ORSANCO as a corporate body consisting of three commissioners from each state, appointed in accordance with the laws of the state, and three representing the federal government who are appointed by the President.

ORSANCO is authorized to adopt standards of treatment for sewage and industrial waste, conduct surveys of pollution problems and make a comprehensive report for the prevention or reduction of pollution, draft recommendations on uniform legislation dealing with the pollution of rivers, streams and other waters within its jurisdiction, and consult and advise states, communities, municipalities, corporations, persons or other entities with regard to particular pollution problems.

Because the Commission operates under the authority of the compact, it does not specifically carry out requirements of state or federal laws unless directed to do so by the member states. Since the Ohio River is a boundary between states for 941 of its 981-mile length, the states have found it economical for ORSANCO to carry out certain activities mandated by the federal Clean Water Act on the river. Such activities include water quality monitoring and assessment of the results. The Commission carries out monitoring programs on the Ohio River and on lower reaches of its major tributaries and prepares the biennial assessment of water quality conditions required by Section 305(b) of the federal Act for the Ohio. While each state adopts its own water quality standards for the Ohio River, they consult with each other through the Commission in order to maintain compatibility among their

standards. The states look to the Commission for expertise on the water quality of the Ohio and utilize the Commission as a forum to report to each other on their individual efforts to abate pollution of the river.

#### *LAWS/RULES*

##### *OSANCO Pollution Control Standards*

#### **b. Interstate Commission on the Potomac River Basin**

The Interstate Commission on the Potomac River Basin (ICPRB) is an interstate compact commission established by Congress in 1940 that helps the Potomac basin states and the federal government to cooperatively address water quality and related land use problems in the Potomac basin. Represented by appointed commissioners, the ICPRB includes the states of Maryland, Pennsylvania, Virginia, and West Virginia, the District of Columbia, and the federal government.

The goals of the Commission include:

Coordinating basin-wide interstate and regional efforts to improve and protect water quality and related resources; providing liaison with citizen and governmental groups; creating an informed and active constituency for basin water related issues; providing technical assistance to assure water related issues are addressed through sound science and credible technological methods; and continuing national and international roles as a partner and facilitator with other regional basin groups in fostering cooperation.

#### **c. Ohio River Basin Commission**

The Ohio River Basin Commission (ORBC) was created on September 1, 1981 for the purpose of maintaining communication and cooperation among the states of Illinois, Indiana, Kentucky, Maryland, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia on matters related to water and related land resources of the Ohio River Basin. It is organized and operated for scientific and educational purposes.

It is responsible for providing a forum for the Ohio River Basin states to study, discuss, and develop regional policies and positions on common interstate issues, encouraging coordinated and cooperative action by the Ohio River Basin states, federal government, and other agencies in the planning, development, conservation and management of the water resources of the basin, providing representation before Congress and the federal government on regional issues affecting member states, and investigate, study, review and provide training in various areas related to water and related land resources of the basin.

#### 4. Volunteer Monitoring

West Virginia encourages and supports volunteer monitoring as an integral part of comprehensive statewide water quality protection. The West Virginia Save Our Streams (WVSOS) is a DEP-sponsored volunteer stream monitoring program whose goal is to promote water quality awareness through citizen participation and education. Volunteers fill out a stream quality survey that emphasizes the watershed approach to stream management. They record stream conditions, land uses and macroinvertebrate (bug) diversity. Volunteers use a kick seine net to catch aquatic bugs. By identifying and counting the different types of bugs, the stream's health can be determined. Volunteers mail their surveys to the Citizen Monitoring Coordinator at DEP's Division of Water Resources. The survey becomes part of the statewide database that records the water quality of the state's streams. A copy is sent back to the volunteer who can also track the water quality trends for their local stream.

Volunteer activities can also include:

Community stream cleanups

Habitat improvement and stocking fish

Installing best management Practices (BMPs) throughout the watershed

Stream bank restoration

Educating the local community through schools, scouts, etc.

#### 5. Boards and Commissions

##### a. Environmental Quality Board

The five members of the Environmental Quality Board (EQB) are appointed by the governor and confirmed by the West Virginia Senate. The EQB performs two statutorily mandated functions. One function is to issue legislative rules setting water quality standards for West Virginia's surface and groundwaters.

The second function is to hear appeals from permitting and enforcement decisions made by the DEP's Division of Waste Management and Division of Water Resources. Citizens and the regulated community may file appeals with the board. The board maintains records of the pleadings, subpoenas witnesses, holds hearings and rules on the matters before it.

##### *LAWS/RULES*

*WV Administrative Regulations, Title 46, Series 1 and 2*

*ORSANCO Pollution Control Standards*

##### b. Oil and Gas Conservation Commission

The Oil and Gas Conservation Commission (OGCC) regulates the drilling of deep wells in West Virginia. The OGCC approves drilling permits and conducts hearings on matters relating to the exploration for or the production of oil and gas from deep wells. Hearings

are held to determine the optimum spacing of wells as well as to pool the interests of royalty owners and operators of a drilling unit. Additionally, the OGCC conducts hearings on matters of using lands for the secondary recovery of oil and/or natural gas.

#### LAWS/RULES

*WV Code*, chapter 22C, article 9

*Regulation*, title 39, series 1

#### c. Surface Mine Board

The Surface Mine Board (SMB) consists of seven members representing different segments of industry by reason of previous employment or affiliation. They have experience in and represent coal mining, agriculture, forestry, engineering, water pollution control, advocacy of environmental protection or the general public.

The SMB conducts hearings on appeals presented to the board by any party that believes it is aggrieved by a decision of the Secretary of the DEP. Aggrieved parties may be coal companies, landowners, environmental groups or individual citizens. Decisions that may be appealed include permits issued, permit applications denied, notices of violation and failure to issue notices of violation for alleged violation of laws or regulations.

#### d. Solid Waste Management Board

The Solid Waste Management Board (SWMB) develops solid waste management plans, issues solid waste facility bonds, and provides program implementation and technical assistance to West Virginia's 50 county and regional solid waste authorities (SWAs) and other government entities. It provides service to the areas of solid waste management, including 15 cities mandated by the Legislature to establish source separation and curbside recycling programs.

The SWMB is an independent agency within the Bureau of Environment. The board usually meets monthly, although it's only required to meet quarterly. In addition to the executive director, the board has 14 full-time staff positions.

The board is comprised of seven members. Five members are appointed by the governor and confirmed by the state Senate, and the other two members are ex-officio representatives from the DEP and the Department of Health and Human Resources (DHHR).

#### LAWS/RULES

*WV Code*, chapter 22C, article 3

*WV Code*, chapter 22C, article 4

*WV Code*, chapter 20, article 11

*WV Code*, chapter 22, article 16

*Rules*, title 54, series 1-5

*Federal regulations*, title 40, part 256

e. Air Quality Board

The seven member Air Quality Board, two members from industry, three from the public, the Commissioner of the Bureau for Public Health and the Commissioner of Agriculture, serves as an appellate board to permitting and other actions taken by the Division of Air Quality.

LAWS/RULES

WV Code, chapter 22B, article 2

**C. Program Funding**

The following is a discussion of the state agencies receiving EPA grants, identifying the grant source, responsible agency, grant period, current funding level and purpose. The budget periods for most federal grants are based on federal fiscal years (10/1 through 9/30). Funding levels and availability of some of the specific grants listed varies from year to year depending on appropriations and the results of negotiations.

1. DEP (Division of Water Resources)

a. Section 106 Water Pollution Control Grant

Responsible agency: Division of Water resources

Grant period: 10/1/00 – 9/30/01

Funding level: \$1,600,000, State match: \$820,000

Purpose: To provide annual assistance to the state in implementing the various water quality control programs including enforcement, permitting, monitoring, and TMDL development.

b. Section 104(b) – Watershed Management

Responsible agency: Division of Water Resources

Grant period: 5/1/00 – 9/30/01

Funding level: \$439,710

Purpose: To support the state's Watershed Management Framework, West Virginia Watershed Network newsletter, and provide in-kind support for EPA TMDL development

c. Section 604(b) – Water Quality Management Planning

Responsible agency: Division of Water Resources

Grant period: 10/1/00 – 9/30/01

Funding level: \$207,715

Purpose: To provide support for various water quality management planning functions and wasteload allocation development.

- d. Section 319 – Nonpoint Source Implementation
  - Responsible agency: Division of Water Resources
  - Grant period: 10/1/00 – 9/30/02
  - Funding level: \$2,000,000, State match: \$800,000
  - Purpose: To support the implementation of the state's nonpoint source programs for agriculture, construction, forestry and abandoned mine lands.
  
- e. Section 104(b) – Pollution Prevention Incentives
  - Responsible agency: Division of Water Resources
  - Grant period: 7/1/00 – 6/30/01
  - Funding level: \$80,000, State match: \$80,000
  - Purpose: To support promotion of pollution prevention through use of alternative waste treatment technologies, industrial chemicals, waste reduction, etc.
  
- f. Section 106 Groundwater
  - Responsible agency: Division of Water Resources
  - Grant period: 10/1/00 – 9/30/01
  - Funding level: \$208,365
  - Purpose: To support groundwater protection activities of state and to promote wellhead protection
  
- g. Safe Drinking Water Act – Underground Injection Control
  - Responsible agency: Division of Water Resources/Office of Oil and Gas
  - Grant period: 10/1/00 – 9/30/01
  - Funding level: \$156,200, State match: \$52,067
  - Purpose: To maintain permitting programs for protection of underground sources of drinking water.
  
- h. Section 205(g) Construction Assistance Management Grant
  - Responsible agency: Division of Water Resources
  - Grant period: 10/01/96 – 09/30/01
  - Funding level: \$774,954 (no state match required)
  - Purpose: To provide program funding for managing the federally delegated construction grants program and special appropriated grants from Congress.
  
- i. State Revolving Fund Capitalization Grants
  - Responsible agency: Division of Water Resources
  - Grant period: 10/01/00 – 09/30/03
  - Funding level: \$20,921,868 (20% State match required - \$4,184,373)



Purpose: To provide funds for constructing municipal wastewater and other pollution control projects to correct existing water quality problems.

2. DEP (Office of Abandoned Mine Lands Reclamation)

a. Section 104(b) Watershed Management

Responsible agency: Office of Abandoned Mine Lands Reclamation

Grant period: 10/1/00 – 9/30/01

Funding level: \$175,000

Purpose: To support reclamation projects and TMDL development in streams affected by abandoned mine drainage.

**D. Program Coordination Mechanisms**

1. Statutory Coordinating and Advisory Committees and Boards

a. West Virginia Department of Environmental Protection Advisory Council

Organization type: statute

Purpose: This seven member council, with the Secretary of DEP serving as chair, advises the Secretary on program and policy development, problem solving and other appropriate subjects. It also provides a forum for the resolution of conflicts between constituency groups and strives for consensus on the development of overall environmental policy. It is responsible for providing a report to the Legislature each year on the DEP's performance during the previous year.

Authority/Mandate: WV Code Chapter 22-1-9.

b. Groundwater Coordinating Committee

Organization type: statute

Purpose: This committee is comprised of the Secretary of the Department of Environmental Protection (chairman), the Commissioner of Agriculture, the Commissioner of the Bureau of Public Health, the Chairman of the Environmental Quality Board, and the Director of the Division of Water Resources. The purpose of this committee is to consult, review, and make recommendations to the Secretary on the implementation of the Groundwater Protection Act. This task is accomplished by requiring the submittal to the committee of each groundwater regulatory agencies rules, permits, directives, policies or any other regulatory device used to implement the Groundwater Protection Act.

Authority/Mandate: WV Code Chapter 22-12-7

c. Monitoring Drillers Advisory Board

Organization type: regulation

**Purpose:** This Board is comprised of members from the Division of Water Resources, the Office of Oil and Gas, the Division of Environmental Remediation, the Office of Environmental Health Services, the West Virginia Geologic Survey, the Division of Highways, and four members who represent the monitoring well drilling industry. The Board is chaired by the Groundwater Program Manager. The purpose of the Board is to advise the Secretary of the Department of Environmental Protection on matters related to the certification of monitoring well drillers, design standards for the construction and abandonment of monitoring wells, and enforcement.  
**Authority/Mandate:** 47CSR59

d. Water Well Drillers Advisory Board

**Organization type:** regulation

**Purpose:** This Board is comprised of members from the Office of Environmental Health Services, local Health Departments, the Division of Water Resources and members who represent the water well drilling industry. The purpose of this Board is to make recommendations to the Commissioner of the Bureau for Public Health on construction criteria for the design, installation and abandonment of privately owned water wells.

**Authority/Mandate:** 64CSR19

e. Interagency Wellhead Protection Committee

**Organization type:** Support for wellhead protection activities

**Purpose:** This committee is led by the Office of Environmental Health Services and was formed out of the necessity to coordinate wellhead protection strategies among members from the Department of Agriculture, the Department of Environmental Protection and several of its offices, the Office of Environmental Health Services. It consults, reviews, and implements groundwater protection strategies in designated wellhead protection areas.

**Authority/Mandate:** General Health Authority 16-1-1 et.seq.

f. Source Water Advisory Committee

**Organization type:** Support for Source Water Protection Program

**Purpose:** This committee is led by the Office of Environmental Health Services and was formed as a federal EPA requirement to attain primacy status for the Source Water Protection program. The committee is comprised of members from the Department of Agriculture, the Department of Environmental Protection, the Office of Environmental Health Services, the Department of Highways, local health departments, and the public at large. The committee consults and advises the Office of Environmental Health Services on the development and implementation of a Source Water Protection program.

**Authority/Mandate:** General Health Authority 16-1-1 et.seq.

g. Sewage Advisory Board

Organization type: statute

Purpose: The Board is comprised of members from the Department of Environmental Protection, local health departments; members who represent the on-site sewage disposal installers, and the public at large. The purpose of this committee is to consult and advise the Commissioner of the Bureau for Public Health on matters relating to the design and installation of on-site sewage disposal systems and the review of current regulations pertaining to the certification of installers, as well as the review and acceptance of new on-site sewage products for marketing in West Virginia.

Authority/Mandate: 64CSR9

h. Oil and Gas Inspector Hearing and Examining Board

Organization type: statute

Purpose: The Board is comprised of members from the Office of Oil and Gas, the Division of Water Resources, members who represent the oil and gas drilling industry and the public at large. The purpose of this Board is to act as an examining and appointing authority for the hiring of oil and gas inspectors. The Board also acts as a third level review for any administrative actions taken against oil and gas inspectors.

Authority/Mandate: WV Code Chapter 22C, Article 7

i. Infrastructure Council Coordinating Committees

1. Water Technical Review Committee
2. Sewer Technical Review Committee
3. Funding Committee
4. Consolidation Committee

Organization Type: Support for WV Infrastructure and Jobs Development Council

Purpose: These various committees carry out the statutory responsibilities of the WV IJDC under the Infrastructure Act. These committees contain representatives from the DEP, Bureau for Public Health, Public Service Commission, Development Office, Housing Development Fund, Water Development Authority, in addition to the public members of the IJDC. The DEP Secretary, or his designee, serves as Chairman of the Sewer Technical Review Committee and participates as a member of the other committees. Every proposed water and sewer project must receive a positive recommendation from the appropriate review committees prior to full approval by the Council itself. The IJDC is a coordinating mechanism for all State agencies that have responsibility for infrastructure projects.

Authority / Mandate: WV Code 31-15A

j. Water Development Board

Organization Type: statute

Purpose: To provide financial assistance for development of water and sewer systems that will protect streams, improve drinking water quality and encourage economic

growth by providing necessary infrastructure. The Board is comprised of 7 members including the DEP, Bureau for Public Health, Development Office and 4 members appointed by the Governor. The Board supervises a staff of 6 employees who work for the Water Development Authority.

Authority / Mandate: WV Code 22C-1

## 2. Ad hoc committees

### a. West Virginia Watershed Management Framework

**Purpose:** The WVWMF was organized by resolution of the Governor in 1997 and consists of 10 state and federal agencies. Its primary purpose is to work together to identify watersheds of mutual concern and to develop management strategies to address remedial and or protection activities. The Framework members share information and resources to promote environmental protection at the watershed level with local stakeholder input.

### b. Nonpoint Source Coordinating Review Board

**Purpose:** The DEP Division of Water Resources chairs the state NPS Coordinating Review Board, whose purpose is to coordinate the activities and programs of the various nonpoint source participating agencies involved in the implementation of the state's Nonpoint Source Program. The DEP's Office of Abandoned Mine Land and Reclamation, the West Virginia Soil Conservation Agency, the West Virginia Division of Forestry, and the West Virginia Division of Wildlife Resources are board members.

### c. Total Maximum Daily Load (TMDL) Stakeholder Committee

**Purpose:** To advise and make recommendations to the Secretary of DEP on the development of a state TMDL Program. This 22-member committee is composed of representatives of industry, municipalities, sportsman groups, environmental groups, land resource interests, and government.

## 3. Other Committees

### a. Environmental Crimes Workshop (DEP, EPA, US Attorney, Coast Guard, FBI)

### b. Spill and Emergency Response (DEP, Office of Emergency Services, Division of Natural Resources, Department of Health and Human Resources, Department of Highways, and EPA)

### c. Polymer Alliance Zone: Environmental Issues Committee

The PAZ is the result of an Executive ORDER (No. 1-96) of the Governor to partner the private sector, education and government in developing a positive and efficient business climate for the polymers industry in the current three county areas of Jackson, Wood and Mason.

This is a project level decision made before any financial assistance is obtained through the SRF. In accordance with SRF regulations an environmental review is performed on each proposed municipal wastewater project. This review process almost always results in a finding that significant adverse environmental impacts will not result from the proposed project when completed, so an environmental impact statement will not be prepared. The FONSI is then published for a 30-day public comment period. If no significant comments are received, the proposed project as described in the engineering report will then be approved so funding can be pursued.

### 3. Watershed Management Framework

As the focus of water quality protection has begun to shift to watersheds, public involvement in that effort has increased. Through the Watershed Management Framework process, the initial step in watershed priority determination is called Scoping and Screening. To facilitate identification of potential problem sites and water quality impairments, watershed meetings are held with citizens and stakeholders in the watershed. Citizen input has proven invaluable in targeting monitoring resources and providing direction to the Framework agencies in developing management strategies to address problems. Stakeholders are also invited to participate in project development and in watersheds where state and federal resources become available to remediate impacts.

### 4. NPDES Permits

Through DEP's Public Information Office, NPDES permits, once completed in draft form, are sent to public notice for a period of thirty (30) days. Draft permits are published as Class I legal ads (once in a daily/weekly paper in the county in which the facility is located. If the permit is related to a solid waste landfill, the notice is published twice as a Class II legal ad (two consecutive weeks). The public has the opportunity to provide written comments or to request a public hearing. The Director of the Division of Water Resources has the discretion on whether a public hearing is held. Comments are responded to by permit writers prior to permit issuance. Explanation is provided as to actions taken to issue, deny or modify in response to comments. Permit public notices are sent to the Division of Culture and History, the U.S. Fish and Wildlife Service and the appropriate agency in other states in instances where border waters are involved.

## PUBLIC PARTICIPATION

Program	PN Period	Public Hearing	Public Meeting			
NPDES Permitting	30 - Day*	As required**				
303(d) Listing	30-Day *	N/A	N/A			

The focus of the EIC is to 1) identify key environmental issues facing industries within the current zone and 2) suggest positive courses of action to institute change.

d. ORSANCO Committees

Technical Committee

Biological Water Quality Subcommittee

Stream Quality Criteria Conflicts Subcommittee

Monitoring Strategy Subcommittee

NPDES Coordinating Subcommittee

Public Information Program Advisory Committee

Nonpoint Source Workgroup

Source Water Assessment Workgroup

TMDL Coordinators Workgroup

305(b) Coordinators Workgroup

Power industry Advisory Committee Subgroup on Temperature criteria

Ohio River Users Workgroup on Guidelines for Delineating Mixing Zones

Emergency Response Coordinators

Congressional Liaison Committee

Executive Committee

Pollution Control Standards Committee

Program and Finance Committee

Water Quality Review Committee

e. West Virginia Soil Conservation Committee

e. Fish Advisory Coordinating Committee

f. Impoundment Task Force

g. ASIWPCA Committees (Groundwater, Nonpoint Source, State Revolving Fund)

j. Environmental Quality Board's Stakeholder Group for the development of Antidegradation Implementation rules.

k. Region III Regional Technical Assistance Group for the development of Nutrient criteria.

**E. Public Participation Processes**

1. Intended Use Plan / Priority List

Every fiscal year, the State Revolving Fund (SRF) develops an annual Intended Use Plan (IUP) and Project Priority List (PPL) that serve as the basis for the award of the federal capitalization grant. The draft documents are released in the spring and a public hearing is usually held in July to solicit public comments. After holding the hearing record open for two weeks, the documents are then finalized and submitted to the EPA Region III office in September. Final EPA approval is obtained by the start of the federal fiscal year October 1.

2. Finding of No Significant Impact (FONSI)

UIC	30 - Day*	As required **				
305 (b) Report	N/A	N/A	N/A			
TMDL	30-Day*	**	**			

\*All go to public notice except certain activities applying for general permits.

\*\*At option of Director unless significant issues arise during public notice.

## SECTION II – IMPLEMENTATION OF THE CPP ELEMENTS

### A. **Element 1 – Process for developing effluent limitations and schedules of compliance at least as stringent as those required by Sections 301(b)(1) and (2), 306 and 307, and at least as stringent as any requirements contained in applicable water quality standards in effect under authority of Section 303 of the Act.**

The development of effluent limitations in NPDES permits issued by West Virginia is in accordance with Title 47, Series 10 (47CSR10 and 47CSR30) of the Legislative rules of the Department of Environmental Protection, Division of Water Resources, which is consistent with the NPDES program regulations of the EPA at 40 CFR Parts 122-125. These rules incorporate by reference the federal effluent limitation guidelines and standards of Chapter 1, Subchapter N of 40 CFR. Permits are also issued consistent with Sections 301(b)(1) and (2), 306 and 307 of the federal Clean Water Act and certain applicable state and EPA guidance. NPDES permit requirements also incorporate applicable requirements of the Ohio River Valley Water Sanitation Commission (ORSANCO).

The types of effluent limitations developed for NPDES permits include the following:

1. **Technology-based limitations**

Section 301 of the CWA and implementing regulations require a minimum degree of treatment be delivered by all dischargers on a nationwide basis. WVDEP 47 CSR10 rules incorporate the required technology-based treatment requirements.

2. **Other Effluent Standards**

As DEP is a member of ORSANCO, DWR must impose in permits the various effluent standards promulgated by this interstate agency.

3. **Water Quality-based Limitations**

Where technology-based limitations above are insufficient to protect water quality standards, water quality-based effluent limitations must be determined and established in the permits. DEP 47CSR10 rules incorporate the required water quality-based requirements.

4. Best Management Practices (BMPs)

For stormwater discharges associated with industrial activities including construction activities and where specific numerical effluent limitations may not be applicable, compliance with narrative BMPs constitute best available technology for meeting effluent limitation requirements.

Effluent limitations in NPDES permits must represent the more stringent of the above listed requirements as applicable. In addition to 47CSR10, the Environmental Quality Board's water quality standards at 46CSR1 and 46CSR12, the agency's following documents should be referenced: "Water Quality Standards/Mixing Zone Implementation Guidance" and "Implementing Water Quality Standards for Dissolved Metals in WV/NPDES Permits."

Applicable schedules of compliance with effluent limitations are incorporated into NPDES permits in accordance with 40CFR Part 122 and 47CSR10. Pertinent requirements are:

1. New Dischargers and New Sources

For new dischargers and new sources, NPDES permit requirements are effective upon issuance of the permit. The point sources must achieve the relevant effluent limitations upon commencement of the discharge. Some of these effluent limitations could be water quality-based, if necessary to protect water quality standards.

2. Existing Unpermitted Dischargers

For any existing dischargers that have never received valid NPDES permits, the same requirements are applicable as for new dischargers and new sources. The applicable effluent limitations are established in the permit and are effective upon issuance of the permit. Some of the effluent limitations could be water quality-based, if necessary to protect water quality standards. Where certain effluent limitations cannot be met immediately, enforcement action must be initiated. This generally consists of the issuance of an administrative order issued concurrently with the permit and which contains a schedule of actions leading to compliance with the limitations.

3. Existing Permitted Dischargers

For existing permitted dischargers up for reissuance or modification, the effluent limitations imposed are the more stringent of technology-based,



water quality-based or previous requirements (in consideration of anti-backsliding) which are necessary to protect water quality standards.

- a. Technology-based requirements are effective upon issuance of the permit. For any parameters for which the discharger cannot meet the required effluent limitations, the agency must initiate enforcement action. This generally consists of an administrative order issued concurrently with the permit that contains a schedule of actions leading to compliance with the limitations.
- b. Water quality-based effluent limitations for water quality standards established after July 1, 1977 are included in the permit along with a schedule of compliance for achieving those limitations.
- c. For water quality-based effluent limitations for water quality standards established up to July 1, 1977, an enforcement action is required, generally in the form of an administrative order issued concurrently with the permit. The order contains a schedule of actions leading to compliance with those limitations.

Nonpoint source impacts to water quality are managed through the state's Nonpoint Source Management Program developed originally under Section 208 of the federal Clean Water Act and more recently updated under Section 319. Programs have been developed for agriculture, logging, construction, and abandoned mines with provisions to address other categories, such as hydrologic modifications, urban runoff and failing septic systems. DWR, through agreements with other state agencies, leads the implementation of the programs. Each program was originally based on four key elements: technical assistance, financial assistance, education, and research. Enforcement of water quality standards, where applicable, was and is available to encourage compliance. Logging and construction activities, initially non-regulatory, became subject to state and federal regulations passed in the early '90's. While operators are subject to compliance with operational requirements (generally best management practices), they are also subject to applicable water quality standards enforced by OEE inspectors. Water quality impacts from agricultural operations are similarly subject to water quality standards, however, the implementation protocol for agriculture calls for voluntary compliance with appropriate best management practices on the part of the operators. Each cooperating agency maintains a compilation of best management practices that are periodically updated to insure applicability. The Nonpoint Source Management Plan, which identifies each cooperating agency and its current operational structure and initiatives can be found on DWR's website.

**B. Element 2 – Process for incorporating elements of any applicable areawide waste treatment plans under Section 208 and applicable basin plans under Section 209 of the Act.**

The 1972 federal Clean Water Act contained many planning requirements and provisions including basin plans under Section 303(e), requirements for developing total maximum daily loads in watersheds not meeting water quality standards, water resource plans under Section 209 and areawide waste treatment plans under Section 208. Initially, primary emphasis was focused by the United States Environmental Protection Agency on Section 208. Under Section 208, states were encouraged to designate areawide waste treatment management planning agencies who would then have three years in which to develop areawide waste treatment plans. The plans would address a whole spectrum of potential water quality management issues, including the identification of treatment works needed to meet municipal and industrial needs for the next twenty years, the establishment of construction priorities, the establishment of regulatory programs, the identification of needed management agencies to finance, construct, and operate the waste treatment works, and finally processes to identify and control agricultural, silviculture, mining, construction, irrigation and residual waste related to sources of pollution. Under Section 208, once areawide plans were developed, certified by the Governor, and approved by USEPA, all NPDES permits and all federal treatment plant construction grants were to be issued and awarded in accordance with the plan.

In West Virginia, the responsibilities for developing 208 plans were originally housed in the Governor's Office of Federal/State Relations. Policy advisory committees (PACs) were established through the eleven Regional Planning and Development Councils with a statewide PAC serving as oversight for the program. Federal funding for Section 208 became available in 1976, four years after authorization. With the advent of federal funding, one areawide 208 plan was developed by the Region III Planning and Development Council, which covered the Boone, Kanawha, Cabell and Putnam county area. While the elements of 208 were contained in the document, the regulatory structures needed to implement it were statutorily contained in state agencies, specifically the Department of Natural Resources' Division of Water Resources. At the time, the primary focus of the DWR was initiating a statewide permitting program for point source industrial and municipal dischargers and the implementation of the construction grants program for funding construction of municipal sewage treatment facilities.

Shortly after the completion of the initial 208 areawide plan, the 208 program was transferred to the DWR. As DWR assumed the responsibility for Section 208, it became clear that the concept of areawide planning would require development and integration of point source authorities, nonpoint source management strategies and enforcement controls all at the local political jurisdictional level. The functionality of such an effort seemed to conflict with the progress being made at the state level on controlling point sources and in promoting construction of municipal sewage treatment. In fact, other forms of planning, such as facilities' plans required under the construction grants program, level B Water Resources Planning Act basin plans under Section 209, and Section 303 water quality standards and implementation plans were well underway within the DWR by that time. While the concept embodied in the Section 208 of the Act intended to focus all planning, and specifically wastewater treatment planning, under the auspices of an areawide political jurisdiction, the competition for limited federal and state planning resources resulted in a statewide process which focussed on water quality

planning at the watershed, or basin, level. Water resource management plans focusing on water quantity issues were developed under Section 209, while basin plans under Section 303 identified water quality issues of concern at the watershed level. Those planning efforts were completed in the mid to late 1980s. Recent efforts at updating the concept of watershed management plans and continuing the activities initiated in the '80s are described in Element 4.

The following Section 209 Level B basin plans were developed by the Division of Water Resources:

Comprehensive Survey of the Bluestone River Basin Volume 1: Inventory (1976)  
Comprehensive Survey of the Coal River Basin Volume 1: Inventory (1978)  
Comprehensive Survey of the Elk River Basin Volume 1: Economic Base Study (1969)  
Comprehensive Survey of the Elk River Basin Volume 2: Economic Base Study (1970)  
Comprehensive Survey of the Greenbrier River Basin Volume 2 Part 2: Economic Base Study (1973)  
Comprehensive Survey of the Greenbrier River Basin Sub-Basin Volume 1: Inventory (1968)  
Comprehensive Survey of the Guyandotte River Basin Volume 3 – Problems, Concerns, Opportunities, and Solutions (1988)  
Comprehensive Survey of the Little Kanawha River Basin Volume 1: Inventory (1974)  
Comprehensive Survey of the Little Kanawha River Basin Volume 3: Problems, Concerns, Opportunities, Alternative Solutions and Suggested Plan (1985)  
Streamflow Characteristics of the Monongahela River Volume 2 Part A (1973)  
Comprehensive Survey of the Monongahela River Volume 1: Inventory (1973)  
Economic Base study of the Monongahela River Volume 2 Part B (1974)  
Comprehensive Survey of the New River Basin Volume 1: Inventory (1976)  
Ohio River Basin Plan (1988)  
Comprehensive Survey of the Pocatalico River Basin Volume 1: Inventory (1977)  
Streamflow Characteristics of the Potomac River (1971)  
Comprehensive Survey of Potomac River Basin Volume 1: Inventory (1973)  
Potomac River Basin Volume IV: Preferred Plan (1981)  
Comprehensive Survey of the Potomac River Basin Volume 3: Problems, Resource Base, Projections, Needs, and Alternative Plans (1981)  
Comprehensive Survey of the Potomac River Basin Volume IV: Preferred Plans (1989)

Subsequent to the elimination of federal grants the agency was unable to support continued development of these plans. Single copies of the reports reside in the agency's files and are accessible to agency staff and the public upon request. While much of the information contained in the reports is outdated, they are used occasionally in the development of watershed management plans through the Watershed Management Framework as described in Element 4.

Nationally, the federal emphasis on Section 208 faded in the late '70s. For West Virginia, a positive result of the program was the development of various activities to address nonpoint source impacts to water quality. Using 208 funds, DWR developed

programs to address agriculture, construction, forestry and abandoned mine land impacts to water quality. Through partnerships with other state agencies, DWR initiated assessments to identify water quality impacts from the nonpoint source categories and promoted management practices to control those impacts. Generally non-regulatory in nature, the nonpoint source programs eventually became institutionalized within the partner agencies and even evolved in some cases to become statutory responsibilities. Under Section 319 of the 1987 amendments to the federal Clean Water Act, a significant increase in funding and focus resulted in a substantial increase in the nonpoint source implementation activities of the existing state programs. The integration of Section 319 and watershed management planning is discussed in Element 4.

**A. Element 3 – Process for developing total maximum daily loads (TMDLs) and individual water quality based limitations for pollutants in accordance with Section 303(d) of the Act and Section 130.7(a) of this Regulation.**

The West Virginia Department of Environmental Protection's Division of Water Resources is charged with the protection, restoration and enhancement of the state's waters. With this comes the responsibility for total maximum daily load (TMDL) development in West Virginia.

TMDLs are being established in accordance with the schedule set forth in the settlement of a 1995 lawsuit, *Ohio Valley Environmental Coalition, Inc., West Virginia Highlands Conservancy, et. al. v. Browner, et. al.*

The consent decree established a rigorous schedule for TMDL development, setting a number of final and interim deadlines for TMDL development. Among other things, the consent decree requires EPA to develop TMDLs for 44 priority waters identified on West Virginia's 303(d) list by September 30, 2002, if the State failed to do so. In addition, the consent decree set deadlines developing TMDLs for waters impacted by acid mine drainage (AMD). Pursuant to the consent decree and subsequent negotiations, EPA completed TMDLs for 109 streams impacted by AMD by March 30, 2001. The state or EPA must complete an additional 250 TMDLs for AMD impacted waters by March 30, 2006 and establish TMDLs for all remaining AMD-impacted waters by March 30, 2008.

Since the settlement of the lawsuit and the resulting consent decree, the EPA has been developing TMDLs on streams listed on the 303(d) list of impaired streams. Due to a lack of human and financial resources, the DEP has not taken the lead on TMDL development. The agency, however, has provided onsite logistical and technical support to EPA during the TMDL development process. This support has included the collection and generation of water quality information for model calibration, assistance for EPA and its consultants with data interpretation, allocation distribution recommendations, arrangement of public hearings and meetings, creation of press releases, fact sheets and public notices and logistical support for the majority of public meetings held to date. Though the activities do not necessarily reflect financial support of TMDL development, they do demonstrate significant manpower dedicated to fulfilling the TMDL development obligation.

It is EPA's view that the primary responsibility for development and implementation of TMDLs should be with the individual states. EPA has an obligation to provide technical support and review of TMDLs in all of the Region III states. As EPA has entered into additional settlements in other Region III states, EPA's resources for establishing TMDLs must extend beyond West Virginia. In light of the foregoing, EPA has strongly supported the State in undertaking the responsibility for developing and implementing TMDLs.

DEP recognizes the value of having TMDLs developed in state, though lacks the financial resources to do so. To that end, the DEP has taken steps to begin the process of moving TMDL development from a federal responsibility to a state program.

In January 1999, the DEP established a TMDL stakeholder committee to provide guidance to the agency on issues related to 303(d) listing, TMDL development and TMDL implementation. Comprised of representatives of coal and non-coal industry, municipal organizations, sportsmen associations, environmental advocacy groups, agriculture and forestry, this 22-member committee has completed deliberations on issues related to 303(d) listing and is currently proceeding with discussions related to TMDL development.

A significant component of TMDL development will be the state's ability to support, with financial and technical expertise, the selection and use of appropriate models to ensure that TMDLs will restore a stream's ability to meet water quality standards upon implementation. The stakeholder committee works on the premise that TMDL development and implementation by the state will provide more opportunity for stakeholder participation in decisions that can and will affect both environmental and economic interests within West Virginia.

During the 2000 and 2001 sessions of the West Virginia Legislature, the DEP developed and submitted a strategy for TMDL program assumption with accompanying budget requirements. The strategy was partially funded by both sessions of the Legislature which enabled the DEP to begin to build the capacity to assume program responsibility, possibly as early as 2003. The strategy is available at DEP's website under the Division of Water Resources' webpage.

The strategy addresses TMDL implementation only as a function of scheduling in relation to other programmatic activities being managed by DEP. NPDES permitting has moved to a watershed schedule, the state Nonpoint Source Program has also adopted the watershed schedules of the Watershed Management Framework (See Element 4). Specific TMDL implementation activities will be dependent on the pollutants, loadings and contributors to the problem. To implement TMDLs, the various programmatic authorities and procedures applicable to water quality issues in TMDL streams will be identified and used to effect load reductions.

In addition to making recommendations to the DEP Secretary on 303(d) listing and TMDL development, the stakeholder committee worked to get funding for the creation of

DEP's TMDL program. The group was successful in its initial funding efforts, securing an appropriation of \$195,000 from the 2000 Legislature.

This appropriation enabled the DEP to hire a core staff of professionals to oversee the transition of TMDLs from EPA to the state. In August 2000, an assistant chief was named to the newly formed Watershed Assessment/Strategic Planning Section (WASP) of the Division of Water Resources. The assistant chief is working with EPA, state water quality program staff and the TMDL stakeholder committee to create a TMDL process which will reflect the requirements of TMDL regulations, provide for the achievement of water quality standards, and ensure that adequate stakeholder participation is achieved in the development and implementation of TMDLs.

To build on WASP, a technical analyst and an environmental resources specialist were added to the core group. The technical analyst will be trained in TMDL modeling and the appropriate science in order to oversee and approve consultant development of TMDLs. He will also work with other DEP offices to solicit water quality data and other information pertinent to the TMDL development process. The technical analyst will work closely with contractors in the TMDL model and later in wasteload allocations. The environmental resources specialist serves as the public participation specialist for stakeholder involvement during all stages of TMDL development. Stakeholders include not only the external public, but also the agency's internal public, such as agency personnel outside of WASP.

With the initial groundwork laid by creating the Watershed Assessment/Strategic Planning Section, and with the recommendation and funding efforts by the DEP-sponsored TMDL stakeholder committee, the DEP intends to build its TMDL program. In the agency's action plan outlining its short and long term goals to the EPA, the DEP aims to ramp-up its TMDL program over a period of two years, assuming that adequate funding will be appropriated for the state to assume primacy over TMDLs. The DEP intends to continue work with the stakeholder committee to increase funding and build a program based on their recommendations to the DEP Secretary. Full assumption of the TMDL program is projected to be in 2003.

With 2003 not far away, a significant amount of work lies ahead of the Division of Water Resources, the TMDL stakeholder committee and the West Virginia Legislature. Funding remains a primary issue. For the state to assume complete primacy over TMDLs, funding must be increased according to the work that lies ahead.

In the meantime, the Watershed Assessment/Strategic Planning Section will continue its monitoring and assessment efforts, compiling comprehensive water quality data to use in 303(d) listing, 305(b) reporting and TMDL development.

The Watershed Assessment Program works to collect and interpret water quality and biological information within the state's 32 watersheds on a five-year rotation. The program also provides direction to the water quality control efforts of other agencies and measures the effectiveness of these agencies in managing and protecting the water

resources of the state. The program's specific objectives are to provide current, accurate chemical water quality and biological information on the state's surface water; to rank the state's watersheds in order of severity of existing or potential pollution including the evaluation of the potential for cleanup; and to support stakeholders in the implementation of management and control measures in priority watersheds.

Approximately 600 sites are sampled annually, for a total of 3,000 one-time assessments during the five-year cycle. Several protocols are employed in site selection:

1. Probabilistic sites: These assessments are conducted in association with the U.S. Environmental Protection Agency in Corvallis, Ore., and were initiated in 1997. A computer randomly chooses a minimum of 30 sites within each watershed. The data attained at these sites can be subjected to statistical analysis to provide an overall characterization of the watershed. This analysis can be used to predict the probability (hence the term "probabilistic sampling") of a condition occurring within the watershed. (Note: watersheds having fewer than 30 streams are not subjected to probabilistic sampling.)

2. Impaired streams: All streams identified in the Waterbody System (a data management tool used in the preparation of the 305(b) report) as "severely impaired", and all streams on the 303(d) list are sampled.

3. Reference sites: These sites are relatively pristine streams and are used to evaluate the quality of all other streams. These sites must meet a number of water quality, biological, habitat, and land use criteria before they can be used as references.

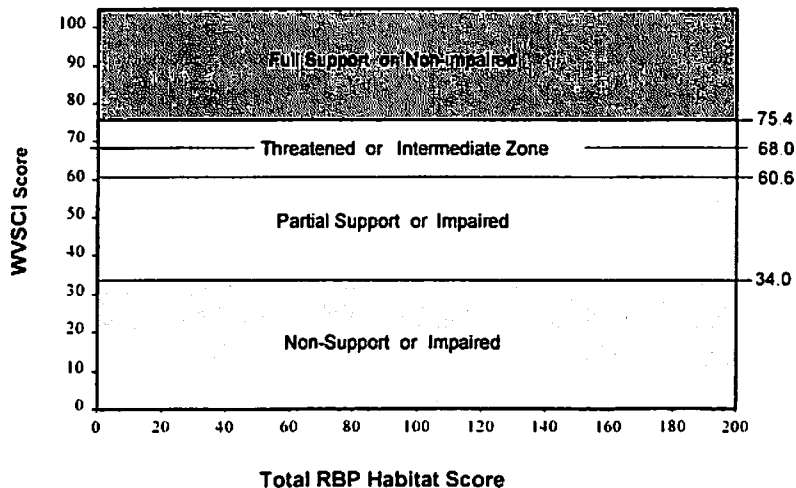
4. Collaborative sites: These sites are selected to support research conducted by other state and federal agencies, as well as watershed associations and volunteer monitoring groups. Specific concerns expressed during public outreach meetings are included in this category.

5. Spatial trend sites: Each stream exceeding 15 miles in length is subjected to multiple assessments. The stream is sampled near the mouth and at regular intervals progressing upstream. The number of sites is dependent on the length of the stream: 15-30 miles = two sites; 30-50 miles = three sites; 50-100 miles = four sites; and >100 miles = five sites. Data from these sites provide information on linear trends.

6. Miscellaneous: After all sites in the preceding categories have been identified, additional sites are selected to attain the objective of 600 sites per year. A percentage of streams in each of the following categories are chosen to fill in data gaps: slightly and moderately impaired streams; unimpaired streams; high quality streams (as identified by the West Virginia Division of Natural Resources); and unassessed streams.

Sites are sampled once during the five-year cycle. Reference sites may be subjected to more frequent sampling to provide seasonal data. During assessments, each site is sampled for temperature, pH, dissolved oxygen, conductivity, fecal coliform bacteria, and benthic macroinvertebrates. Field crews are instructed to take additional water quality samples when impacts such as mine drainage, nutrient loading or other pollutants are suspected. Reference and probabilistic sites are subjected to intensive water quality analyses: hot acidity, alkalinity, sulfates, chlorides, total suspended solids, total Kjeldahl nitrogen, total phosphates, nitrate-nitrite as nitrogen, magnesium, manganese, aluminum, copper, iron, zinc, and calcium. A detailed habitat assessment is also completed at each location. The habitat evaluation includes the rapid bioassessment protocols (RBP) presented in EPA's "Rapid Bioassessment Protocols for Use in Wadeable Streams and Rivers". Stream flow measurements may also be obtained at designated sites.

The data is evaluated through the preparation of a stream assessment chart. This chart considers the biological and habitat conditions of each stream and compares them to those of the reference sites. The framework for these assessments is the West Virginia Stream Condition Index (WVSCI). Stream scores are plotted within this chart and the results are used for overall watershed assessments, 305(b) reporting and 303(d) listing. Streams falling numerically above 75.4 are considered fully supporting (for 305(b) reporting) or non-impaired (for WAP reporting). The condition of streams in the area between 60.6 and 75.4 may be fully supporting or threatened (305(b)). Water quality data must be evaluated to determine if a stream in this range is threatened or fully supporting. Often best professional judgment cannot be avoided. Between 34.0 and 60.6 lie streams that are partially supporting (305(b)) or impaired. Streams listed as below 34.0 are non-supporting (305(b)) or impaired. All streams falling below 60.6 are subject to inclusion on the 303(d) list.



In addition to the Watershed Assessment Program's sampling efforts, the Ohio River Valley Water Sanitation Commission is responsible for water quality monitoring as well, though only for the Ohio River and a few select tributaries. ORSANCO operates



programs to improve water quality in the Ohio River and its tributaries. including: setting wastewater discharge standards; performing biological assessments; monitoring for the chemical and physical properties of the waterways; and conducting special surveys and studies.

ORSANCO's year-round sampling program provides information to identify spatial and periodic trends. Bacteria are monitored to ensure contact recreation safety. The Organics Detection System is used to detect chemical spills and identify violations of water quality criteria.

The ORSANCO water quality monitoring network consists of 31 sites, including 15 in West Virginia. Water quality samples are collected bi-monthly. Bacteria samples are collected year round and especially during contact recreation season (May through October). Organic detection samples are collected daily.

The bi-monthly water quality samples assess flows, analyze temperature, pH, conductivity, dissolved oxygen, suspended solids, sulfate, total hardness, total phosphorus, ammonia nitrogen, nitrate/nitrite, chlorides, phenolics, cyanide, magnesium, cadmium, copper, iron, lead, manganese, mercury, zinc, arsenic, and aluminum. Bacteria such as fecal coliform and E. coli are also monitored.

Electronic databases are used for data management and summarized every six months. Exceedances of ORSANCO's water pollution control standards are noted in a report. This information is used in the preparation of the state's 305(b) report and 303(d) list.

#### **B. Element 4 – Process for updating and maintaining Water Quality Management (WQM) Plans, including schedules for revision.**

The discussion in Element 2 describes the water quality and quantity management planning conducted by the state from the inception of the 1972 Act through the mid 1980's. The basin plans produced by those activities contained enough specificity in regard to identified water quality problems, water quantity issues and land use assessments that the information is still valid in most cases. The documents were not, however, plans in the true sense of the word. While there were recommendations that programs and processes be applied to address certain problems, a definable plan was not developed which prescribed actual actions and activities to achieve objectives.

Water Quality Management Plans developed for major state river basins include:

Water Quality Management Plan for the Big Sandy Tug Fork River Basin (June 1976)

Big Sandy Tug Fork River Basin Plan (1986)

Water Quality Management Plan for the Guyandotte River (June 1976)

Water Quality Management Plan for the Kanawha River Basin (1975)

Water Quality Management Plan for the Little Kanawha River Basin (May 1976)

Water Quality Management Plan for the Monongahela River Basin (April 1976)

Monongahela River Basin Plan (1982)  
Water Quality Management Plan for the Ohio River Basin (June 1976)  
Ohio River Basin Plan (1988)

Most of these publications are single file copies available for in-house review by the public.

During the early 1990s national emphasis began shifting from comprehensive water quality management to a more defined watershed specific focus. Federal and state government began to acknowledge that dwindling resources would require a shift in operational processes that had been in effect since the early 1970s. The DWR did, in fact, reorganize its monitoring activities in 1995 to initiate a watershed monitoring process that would result in a comprehensive statewide assessment of the state's water quality on a five-year cycle. As of the end of fiscal year 2000, the DWR completed the first round of the five-year assessment cycle. To take advantage of the availability of new and more comprehensive water quality data, the permitting programs of both the DWR and DEP's Division of Mining and Reclamation incorporated the watershed assessment cycle into their permit issuance/reissuance schedules.

In 1997, the DWR was instrumental in initiating the state's Watershed Management Framework (WMF), the first truly comprehensive attempt to develop proactive watershed management plans for the state's watersheds. Ten state and federal agencies and the Governor signed a Resolution of Mutual Intent in May 1997, committing them to work together to identify priority watersheds where their respective authorities, responsibilities and resources could be mutually applied to address both remediation and protection needs.

In February 1998, with the initiation of the federal Clean Water Action Plan initiative, the state used the relationships established through the WMF to respond to the requirements of the CWAP and to take advantage of increased federal funding to address remediation needs. By October 1998, the framework partners had identified eight major watersheds as part of the Unified Watershed Assessment (UWA) and began developing smaller scale watershed management strategies (or watershed restoration action strategies) to effect water quality improvements.

Watershed Restoration Action Strategies developed through the Watershed Management Framework include:

Blue Creek of the Elk River  
Greens Run of the Cheat River  
Sovern Run of the Cheat River  
Little Sandy Creek of the Elk River  
North Fork of the South Branch of the Potomac River  
Paint Creek of the Kanawha River  
Spring Creek of the Little Kanawha River  
Upper Buckhannon River

## Finks and Pecks Run of Tygart Valley River

These documents were developed in conjunction with applications for federal assistance under the Section 319 Nonpoint Source Program. Copies of the reports will be available on the Division's website.

Essential to the development of the UWA and the operations of the WMF is the availability of water quality data generated by the DWR's watershed assessment cycle. The WMF process is also based on the concept of a five-year rotating cycle and uses water quality data as one of the critical elements in establishing priority watersheds. The complete process is described in the Watershed Management Framework document. As each group of watersheds is assessed and the data made available, the WMF partners begin the framework process on that set of watersheds. Year one represents the scoping and screening phase where priority watersheds are selected based on water and land use data. Year two refines the selection by generating more specific water and land use data linked to sources of impairment. Year three identifies resources and regulatory authorities that can be applied to the identified sources. Year four produces a watershed management strategy to address impairment or stimulate increased protection. Year five is the implementation phase where all partners with authorities, interests and resources work together to implement the management plan.

In 2000, the state's nonpoint source management plan was updated to incorporate the WMF process and schedule. Subsequent Section 319 nonpoint source grants available for remediation projects will be developed in conjunction with the priority setting and watershed management plan development process of the WMF.

The WMF also incorporates as part of its priority selection criteria the state's list of impaired waters under Section 303(d). In 2000, the schedule for TMDL development under Section 303(d) was merged with the WMF process.

### **E. Element 5 – Process for establishing and assuring adequate authority for intergovernmental cooperation in the implementation of the state WQM program.**

In 1994 the West Virginia Legislature created the West Virginia Department of Environmental Protection for the purpose of consolidating environmental regulatory programs into a single state agency. It gave the Secretary the power and duty to perform any and all acts necessary to carry out the purposes and requirements of the state's Water Pollution Control Act. The West Virginia Code, Chapter 22-1-1(b) states "It is the policy of the state of West Virginia, in cooperation with other governmental agencies, public and private organizations, and the citizens of this state, to use all practicable means and measures to prevent or eliminate harm to the environment and biosphere, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations." Further, in Article 11 of that same Chapter (entitled the Water Pollution Control Act) the Secretary of the Department of Environmental Protection shall "... encourage voluntary cooperation by all persons in the conservation, improvement and development of water

resources and in controlling and reducing the pollution of the waters of this state, and to advise, consult and cooperate with all persons, all agencies of this state, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article...”

Intergovernmental cooperation is therefore a statutory mandate for the state in the implementation of state water quality management program. To effect that charge DEP has established a variety of procedures ranging from memorandum of agreements, interagency agreements, technical procedural documents, standing and ad hoc intergovernmental committees, interstate commissions and interpersonal relationships.

Most of these procedures were developed for specific purposes and have involved a limited number of cooperating agencies. Details of intergovernmental relationships can be found in Section D. Program Coordination Mechanisms and in the further descriptions provided below.

The most frequently referenced intergovernmental review process involves the West Virginia Development Office's (WVDO) role as Single Point of Contact for all federal grants provided to the state water quality agency. This process began in the early '70's as federal appropriations began flowing to the state through grants. The A-95 Intergovernmental Review involves review of federal grant applications by the state's eleven Regional Planning and Development Councils (RPDCs). The intent is to ensure that federal funds are being used by the agency to address water quality/environmental issues fairly and equitably across the state. The RPDCs represent the local governmental entities that may have concerns and/or interests which could be affected or addressed by the actions of the state agency. All federal grants must be reviewed and approved through this process, including notification to the federal agency by the WVDO that such review has occurred, prior to award.

In 1987, the Governor designated the WVDEP's Division of Water Resources as the lead agency for the development and implementation of the state's nonpoint source programs. DWR entered into management agreements with the West Virginia Soil Conservation Agency to implement the agriculture and construction categories; the West Virginia Division of Forestry to implement the logging category; and prior to consolidating with the DWR in the 1994 creation of DEP, the Office of Abandoned Mine Lands and Reclamation for the abandoned mine drainage category. These agencies participate in the Nonpoint Source Coordinating Review Board (See Section D.) and also are members of the Watershed Management Framework.

The federal National Pollutant Discharge Elimination System (NPDES) permitting program is a major element of the state water quality management program for improving and protecting the state's surface waters. Under Section 402 of the federal Clean Water Act, the EPA has the responsibility to issue NPDES permits but may authorize qualifying state environmental protection agencies to perform that function. In West Virginia, the Division of Water Resources has been authorized to issue NPDES permits. To qualify, the state demonstrated that it has the legal authority, the program mechanisms and the

staffing to carry out the responsibilities. Minimum requirements for authorization are described in the federal regulations at 40 CFR Part 123.

NPDES program responsibilities were authorized to West Virginia in 1982. At that time, an agreement between the Environmental Protection Agency (EPA) and the then Department of Water Resources of the Department of Natural Resources was executed. The MOA describes specific DWR and EPA responsibilities for implementing the NPDES program, including permit review and issuance procedures, enforcement procedures and responsibilities, information reporting procedures and provisions for periodic EPA review of DWR's implementation of the NPDES program. All NPDES functions eligible for authorization are being implemented by the Division of Water Resources including the municipal pretreatment program, general permit authority and permitting of federal facilities.

The MOA is a partnership between DWR and EPA to assure the successful and effective administration and enforcement of the NPDES program. In this partnership, EPA is to provide to DWR, on a continuing basis, technical, expert, legal and other assistance on permit matters as requested. DWR has primary responsibility for implementing the NPDES program for West Virginia and has the primary responsibility to establish state NPDES program priorities that are consistent with national goals and objectives.

The MOA represents a complete description of the scope of the procedures for responsibilities. The 1982 agreement was signed with the understanding that it does not represent specific annual commitments. These commitments are negotiated between DWR and EPA annually based on priorities and available resources.

Chapter 22, Article 15 of the Code of West Virginia as well as implementing rules, 33CSR1, require only a single permit for the disposition of solid waste. Therefore, industrial solid waste facilities are issued Solid Waste/NPDES Water Pollution Control Permits by the DWR. Since the disposal of commercial solid waste is regulated by the DEP Division of Waste Management (DWM), a MOA, dated 12/21/1994, was entered into between the two offices whereby the DWR prepares the NPDES portion of the permit which becomes an integral part of the solid waste permit issued by DWM.

Sewage sludge management is also addressed in Chapter 22, Article 15. The code requires a NPDES permit to regulate sewage sludge produced by publicly owned treatment works (POTWs). NPDES permits include pertinent requirements for such disposal when the permits are issued or reissued or through permit modification. DEP-DWM rules at 33CSR2 provides for regulation of these sludges. This process is also addressed in the above referenced MOA. To assist the DWR in reviewing and developing the sewage sludge land application proposals, DWR has entered into a MOU with the West Virginia Soil Conservation Agency (WVSCA) dated 6/2/99. The WVSCA provides the DWR technical review of each proposal that results in specific terms of the subsequently issued permit.

Although the Department of Health and Human Resources (DHHR) is not involved in permitting waste treatment facilities for POTWs which obtain funds from the federal government, they are involved in permitting those activities for POTWs and private sewage facilities which are carried out without those funds. As such, the DWR and DHHR entered into a MOU, dated 5/2/83, with the intent of expediting the reviews for these facilities by conducting concurrent reviews.

The Office of Oil and Gas (OOG) of the DEP has authority under Chapter 22, Article 6 to issue a permit for the discharge of a pollutant into waters of the state, but only through the Director of the DWR which implements the NPDES program. Therefore, the OOG and DWR entered into a MOA, dated 3/25/94, in order to jointly issue a permit for the stripper oil well subcategory of wastes.

The Division of Water Resources administers a storm water permitting program that addresses storm water runoff during construction activities, as well as for certain existing industrial activities. Because the Jefferson County Planning Commission was regulating construction activity prior to DWR's permitting program to address the associated storm water, the two (2) agencies entered into a Memorandum of Understanding on March 15, 1993, wherein the Commission acts as an agent for the DWR in addressing this activity.

The provision of financial assistance to public entities for the planning, design and construction of municipal wastewater facilities has been a significant factor in water quality improvements since the early 1970s. Beginning in 1972, the major financial assistance program was the Federal Construction Grants Program. From 1972 to 1990 over \$675 million in federal grants were awarded to 455 municipal projects throughout the state. This represents over \$1 billion in total project costs in these communities over the life of this program. The 1987 Water Quality Act amendments phased out the grants program and provided the opportunity for West Virginia to establish a revolving fund loan program using, in part, funds appropriated by the U. S. Congress, supplemented by state funds. In West Virginia, the DEP and the Water Development Authority (WDA) jointly administer the wastewater revolving fund program. DEP has the primary responsibility for management and administration of the program while the WDA acts as a bond bank for the program, entering into loan agreements and servicing the loans for DEP. These responsibilities are outlined in an interagency agreement last revised and dated September 10, 1998. From 1991 to 2000, over \$269 million in SRF money has been loaned to 128 sewer projects representing a total project cost of \$428 million.

The DEP participates on the West Virginia Infrastructure and Jobs Development Council as one of seven state agencies with four public members who coordinate the review of all proposed infrastructure projects. Meetings are held on a monthly basis with most of the daily work done by established committees.

The DEP has also entered into an operating agreement with EPA dated September 26, 1990 to comply with requirements of the Clean Water Act and federal regulations concerning program implementation. The DEP's regulations for program implementation

are contained in Title 47, Series 31 and were promulgated under the authority contained in WV Code 22C-2.

#### General Authority References

The West Virginia Legislature, among other findings in West Virginia Code, Chapter 22, Article 1-1 (a) has affirmed that restoring and protecting the environment is fundamental to the health and welfare of individual citizens, and our government has a duty to provide and maintain a healthful environment for its citizens.

To achieve the Legislative findings and assure adherence to the policy, included in a number of purposes of Chapter 22 of the code is the coordination of state programs with the efforts of other governmental entities, public and private organizations, and the general public; to improve the quality of the environment, the public health and public enjoyment of the environment, and the propagation and protection of animal, aquatic and plant life, in a manner consistent with the benefits to be derived from strong agricultural, manufacturing, tourism and energy-producing industries and to cooperate with appropriate federal agencies to meet environmental goals.

The Legislature has established the Department of Environmental Protection (DEP) to promote the general welfare of the state of West Virginia without sacrificing social and economic development. The DEP is further designated as the lead regulatory agency for West Virginia for all purposes of federal regulation relating to all activities regulated under Chapter 22 with the Secretary as the chief executive officer of the department.

The Secretary has the responsibility under 22-1-6 (c) for the conduct of the intergovernmental relations of the department, including assuring: (1) That the department carries out its functions in a manner which supplements and complements the environmental policies, programs and procedures of the federal government, other state governments, and other instrumentalities of this state; and (2) that appropriate officers and employees of the department consult with individuals responsible for making policy relating to environmental issues in the federal government, other state governments, and other instrumentalities of this state concerning differences over environmental policies, programs and procedures and concerning the impact of statutory law and rules upon the environment of this state.

An Environmental Protection Advisory Council has been created which meets at least quarterly at the call of the Secretary, as ex-officio member and chair. Of the members participating on the Council are representatives of local government and public service districts. One of the duties of the council is to address DEP's performance in accomplishing the purposes of Chapter 22 including those noted above.

#### Specific Program Authority References

In relation to the Abandoned Mine Lands and Reclamation Act in 22-2-9, the Secretary, among other general powers and duties, is authorized to engage in cooperative projects

with other agencies of the United States, any state, county, municipal agency or subdivision thereof. Additionally, all departments, boards, commissions and agencies of the state shall cooperate with the Secretary by providing technical expertise, personnel, equipment, materials and supplies to implement and administer the provisions of Article 2.

In recognition of the level of State and Federal cooperation and support needed to achieve water quality goals, the Division of Water Resources signed a Memorandum of Understanding (MOU) in 1991 with the West Virginia Division of Natural Resources, West Virginia Division of Energy (now the WVDEP), West Virginia State Soil Conservation Committee, the U.S. Office of Surface Mining, U.S.EPA, and the U.S. Soil Conservation Service (now the U.S. Natural Resources Conservation Service). The purpose of the MOU was to establish a cooperative demonstration to resolve acid mine drainage impacts, using their combined existing authorities and programs in establishing a national pilot project in the Middle Fork River watershed. Through this act of cooperation water quality goals were met and the Middle Fork River has been restored to a productive trout fishery.

As part of the Secretary's vested authority under the Surface Coal Mining and Reclamation Act (22-3) he/she is authorized to enter into a cooperative agreement with the secretary of the United States Department of the Interior to provide for state regulations of surface-mining operations on federal lands within West Virginia consistent with section 523 of the federal Surface Mining Control and Reclamation Act of 1977, as amended. Additionally, the Secretary of DEP and the Director of the Office of Miners' Health, Safety and Training must cooperate with respect to each agency's programs and records to effect an orderly and harmonious administration of the provisions of this article, and may reasonably compensate them for such services. Also, he or she . The Secretary of DEP may avail himself or herself of any services which may be provided by other state agencies in this state and other states or by agencies of the federal government may receive any federal funds, state funds or any other funds, and enter into cooperative agreements, for the reclamation of land affected by surface mining. DEP and the U.S. Office of Surface Mining are party to a cooperative agreement that outlines the administrative process to address surface mining on federal lands. Primary regulatory authority for mining in West Virginia was granted by OSM on 1/21/1981. That approval has been amended as necessary to reflect operational changes and therefore remains current. Other agreements with such agencies as the Division of Culture and History, the Division of Forestry and the Division of Natural Resources also ensure compliance with applicable state and federal laws and regulations during mining operations.

Specific examples of agreements with other state agencies for services provided in support of the agency's mission are:

1. Ground Water protection related agreements with the Offices of Mining and Minerals, and Oil and Gas. Financial resources are made available to these offices from the Groundwater Protection Fund to support their ground water protection efforts for those facilities and activities over which they have direct jurisdictional and regulatory authorities. (Annually)



2. Agreement between the Division of Water Resources and the West Virginia State Soil Conservation Agency for the implementation of the state's agriculture and construction categories of the Nonpoint Source Program. (6/1994)
3. Agreement between the Division of Water Resources and the West Virginia Division of Forestry for the implementation of the state's silviculture category of the Nonpoint Source Program. (11/1989)
4. Contract with the Bureau for Public Health to train, test and certify potential monitoring well drillers. Financial resources are made available to the Office of Environmental Health Services through the Groundwater Protection Fund. (7/1/1999)
5. Contracts with eleven local health departments to gather locational data on all septic systems and water wells installed in their individual counties. Financial resources are made available through the Groundwater Protection Fund. (Barbour – 7/1/1999, Cabell – 7/1/1997, Hardy – 1/1/2001, Lewis – 7/1/1997, Lincoln – 9/1/1999, Mingo – 1/1/2001, Morgan – 1/1/2001, Raleigh – 1/1/2001, Upshur – 7/1/1998, Tyler – 7/1/1998, and Wetzel – 7/1/1998)
6. Financial resources are made available to the Office of Environmental Health Services to support their Wellhead Protection Program through the Division of Water Resources' federal 106 Ground Water grant. There is also a Memorandum of Understanding between the Office of Environmental Health Services and the Department of Environmental Protection to prioritize inspections and protection efforts in delineated Wellhead Protection Areas. (10/1/1998)
7. Contract with the United States Geologic Survey through a joint funding agreement to sample and analyze ground water from the Division of Water Resources' Ambient Ground Water Monitoring Network. Financial resources are made available through the Groundwater Protection Fund. In addition, the Division has entered into a joint funding agreement with the USGS for direct services to monitor ground water levels throughout the state. (10/1/2000)
8. Agreement between the Division of Water Resources and the Department of Agriculture for ground water protection efforts relative to the use and application of pesticides and fertilizers. Financial resources are made available through the Groundwater Protection Act. (7/1/1993)
9. Memorandum of Understanding between the Division of Water Resources and the Office of Oil and Gas to authorize the Office of Oil and Gas to regulate underground injections from Class 2 and 3 wells. Financial resources are made through the Division of Water Resources' federal Underground Injection Control grant. (10/1/1994)
10. Contract with the Department of Agriculture to sample and analyze ground water for pesticide and fertilizer impacts. Financial resources were made available through the Division of Water Resources' federal 106 Ground Water grant. (complete)
11. Contract with the Office of Environmental Health Services to conduct underground injection inspections, enforcement and permitting of Class 5 wells in Source Water Protection Areas where the public water supply is predominantly ground water. (7/1/2000)

12. Contract with the Environmental Quality Board to support their efforts in the promulgation of Ground Water Quality Standards. Financial resources are made available through the Groundwater Protection Fund. (7/1/1999)

Among other authorities offered in 22-3-4 of the Act, the Secretary has the authority to 1) promulgate rules to implement the provisions of 22-3 provided that notice of public hearing is published as required in 29A-3-1 of WV Code; and 2) appoint such advisory committees as may be of assistance to the Secretary in the development of programs and policies: provided, that such advisory committees shall, in each instance, include members representative of the general public. As an example, the Secretary appointed a stakeholder advisory committee in January, 1999 to assist in developing a state Total Maximum Daily Load Program. The Committee is composed of 22 members representing industry (both coal and non-coal), manufacturers, municipalities, forestry, agriculture, environmental groups and sportsmen groups. Other examples of such advisory groups are included in Section D.

Prior to the issuance of any permits the Secretary must ascertain from the Commissioner of the Division of Labor whether the applicant is in compliance with section fourteen [21-5-14], article five, chapter twenty-one of this code. Upon issuance of the permit, the Secretary must forward a copy to the commissioner who must assure continued compliance under such permit. Currently, when DEP's Division of Mining and Reclamation completes a permit, permit transfer or operator approval a hard copy of the permit is sent to the Division of Labor for review. Once DOL responds, approvals are either granted or denied based on the status of the applicant.

Additionally, prior to the issuance of any permit, the Secretary must ascertain from the Commissioner of the Bureau of Employment Programs whether the applicant is in compliance with the provisions of section five [23-2-5], article two, chapter twenty-three of this code. Through a similar process to that noted with DOL, the Bureau of Employment Programs, Worker's Compensation Division is provided with hard copies of permits, permit transfers and operator approvals. Once the applicant's compliance status is confirmed, approvals are issued or denied.

Reclamation plan requirements as part of a surface mining permits under 22-3-10 must include a statement of the use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such uses to existing land use policies and plans. Additionally, the comments of any owner of the surface, other state agencies and local governments, which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation is required.

Coordination is required between the Secretary of DEP and the State Tax Commissioner under 22-3-11 as related to fees collected upon the tonnage of clean coal mined.

In addition to other required general performance standards applicable to surface mines, any permit issued by the Secretary must 1) ensure that all prime farmlands are mined and

reclaimed in accordance with the specifications of soil removal, storage, replacement and reconstruction established by the United States Secretary of Agriculture and the Soil Conservation Service pertaining thereto and 2) ensure that explosives are used only in accordance with existing state and federal law and the rules which include written notice to local governments and residents who may be affected.

In cases where an industrial, commercial, woodland, agricultural, residential or public use is proposed for the postmining use of the affected land, the Secretary may grant a permit for a surface-mining operation where, among other requirements, the Secretary provides the county commission of the county in which the land is located and any state or federal agency which the Secretary, in his or her discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use. In relation to notification to seek release from bonding, 22-3-23 requires permittees to submit copies of letters of the permittee's intention to adjoining property owners, local government bodies, planning agencies, sewage and water treatment authorities or water companies in the locality in which the surface-mining operation is located.

Chapter 22 Article 4-1 mandates cooperation between the Secretary of DEP and the Director of the Office of Miners Health Safety and Training with request to each agency's programs and records so as to effect orderly and harmonious administration of surface mining and reclamation of minerals other than coal.

Any water pollution control permit or order issued pursuant to 22-6-7 (Powers and Duties of the Secretary; Penalties - Offices of Oil and Gas, Oil and Gas Wells, Administration, Enforcement), for the purpose of implementing NPDES permits, must be issued by the Director of the DWR of the department in consultation with the Chief of the Office of Oil and Gas and shall be appealable to the Environmental Quality Board (EQB). To provide for implementation, a Memorandum of Agreement was entered into between the DWR and the Office of Oil and Gas on 3/25/1994. An example resulting from this agreement is the General NPDES Water Pollution Control Permit for stripper oil well wastes effective 4/17/1994.

Chapter 22 Article 6-9 commits the DEP to consult with the state Bureau of Public Health and local health departments when compiling lists of names of water testing laboratories capable and qualified to test water supplies in accordance with standard methods. DEP's Laboratory Certification Program, which certifies laboratories performing analyses for all regulatory applications except potable water under the Safe Drinking Water Act, coordinates with the BPH to provide a list of certified drinking water laboratories.

Article 11-2 of Chapter 22, the Water Pollution Control Act (WPCA) declares that public policy of the State is to maintain reasonable standards of purity and quality of the water of the state consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, aquatic and plant life; and (3) the

expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development.

Through Chapter 22 Article 11-7, the Division of Water Resources (DWR) is designated as the water pollution control agency for the state for all purposes of federal legislation and it is the mission statement of the DWR to “enhance and preserve the physical, chemical, and biological integrity of surface and ground water, considering nature and the health, safety, recreational and economic needs of humanity.”

Chapter 22 Article 11-7 further authorizes the DWR to cooperate with the United States Environmental Protection Agency (USEPA) and other agencies of the federal government, other states, interstate agencies, and other interested parties in all matters relating to water pollution. In 1997, the Division of Water Resources initiated a Watershed Management Framework, bringing together 10 state and federal agencies, including EPA, under a Resolution of Mutual Intent to coordinate efforts for water quality protection. Participating in the Resolution were the Governor, the Regional Administrator of EPA Region III, the DEP, the United States Geologic Survey, the West Virginia Soil Conservation Agency, the United States Office of Surface Mining, the West Virginia Division of Forestry, the United States Forest Service, the West Virginia Bureau for Public Health, and the United States Natural Resources Conservation Service. Subsequent to the initiation of the process, other agencies have chosen to participate including the West Virginia Division of Highways, the United States Corps of Engineers, the West Virginia University Cooperative Extension Service, the United States Farm Service Agency, and the West Virginia Department of Agriculture. Through the Framework, the agencies hope to reduce duplication, encourage consensus-based environmental priority setting and leverage state and federal resources.

Chapter 22, Article 11-4 describes the general powers and duties of the Secretary of the DEP subject to grants of authority to the Director of the DWR and the Environmental Quality Board (EQB) including among other duties:

- 1) To perform any and all acts necessary to carry out the purposes of the WCPA and the Federal WPCA as amended, relating to the state’s participation in the National Pollutant Discharge Elimination System (NPDES) program.
- 2) To encourage voluntary cooperation by all persons in the conservation, improvement and development of water resources and in controlling and reducing the pollution of the waters of this state.
- 3) To encourage the formulation and execution of plans by cooperative groups or associations of municipal corporations, industries, industrial users, and other users of waters of the state, who are or may be the source of pollution of such waters, for the control and reduction of pollution.
- 4) To develop a public education and promotion program to aid and assist in publicizing the need for, and securing support for, pollution control and abatement.
- 5) In cooperation with the college of engineering at West Virginia University and the schools and departments of engineering at other institutions of higher education operated by this state, to conduct studies, scientific or other investigations, research,

experiments and demonstrations in an effort to discover economical and practical methods for the elimination, disposal, control and treatment of sewage, industrial wastes, and other wastes, and the control and reduction of water pollution, and to this end, the Secretary may cooperate with any public or private agency and receive, on behalf of the state, and for deposit in the state treasury, any moneys which such agency may contribute as its part of the expenses.

6) To cooperate with interstate agencies for the purpose of formulating, for submission to the Legislature, interstate compacts and agreements relating to: (A) the control and reduction of water pollution; and (B) the state's share of waters in watercourses bordering the state.

7) To adopt, modify, repeal and enforce rules (A) Implementing and making effective the declaration of policy contained in the code; (B) preventing, controlling and abating pollution; and (C) facilitating the state's participation in the "National Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as amended.

Chapter 22, Article 11-4 also authorizes and empowers the Secretary to investigate and ascertain the need and factual basis for the establishment of public service districts as a means of controlling and reducing pollution from unincorporated communities and areas of the state, with the assistance of the public service commission, the financial feasibility and projected financial capability of the future operation of any such public service district or districts, and to present reports and recommendations to the county commissions of the areas concerned, that such county commissions create a public service district or districts. When the situation is appropriate, DEP staff advises county commissions of this provision in the statute in an informal manner. Generally, DEP has received very positive results from county commissions and the public service districts (PSD) within the counties. This is demonstrated by PSDs extending sewer service in unsewered/improperly sewerred areas, as well as assuming permitting responsibilities for abandoned systems on a more limited basis. When necessary, DEP has taken a more formal approach with county commissions in implementing this provision of law.

Chapter 22, Article 11-5 requires cooperation with the Division of Natural Resources in enforcing the provisions of law prohibiting the disposal of litter in, along and near state waters. On a day-to-day basis, DEP inspectors work with DNR law enforcement officers on stream littering as well as stream "clean-up" initiatives. Financial assistance through its solid waste assessment fees to DNR can be provided in support of this effort.

Chapter 22, Article 11-8 (d) provides that for water pollution control and national pollutant discharge elimination system permits issued for activities regulated by the Division of Mining and Reclamation and the Office of Oil and Gas, the Director of the Division of Water Resources may delegate functions, procedures and activities to the respective chiefs of those offices. Permits for such activities are issued under the supervision of and with the signature and approval of the Director of the Division of Water Resources who reviews and approves all procedures, effluent limits and other conditions of such permits.

The Director of the DWR must forward information being considered for confidential treatment as part of a NPDES application form to the regional administrator of the USEPA for concurrence under 22-11-9

In the making of investigations and determinations under 22-11-11 (Procedures concerning permits required under article; transfer of permits; prior permits) as to any application solely pertaining to sewage, the Secretary consults with the Director of the Office of Environmental Health Services of the State Bureau of Public Health. In making such investigation and determination as to any application pertaining to any activity specified in 22-11-8(b)(7) (operating of disposal wells for the injection or reinjection underground of industrial wastes), the Secretary consults with the Director of the State Geological and Economic Survey and the chief of the Office of Oil and Gas. All such persons cooperate with the Secretary and assist him or her in carrying out the duties and responsibilities imposed under the provisions of Article 11, and the rules of the Secretary and Board. Such cooperation includes, but not be limited to, a written recommendation approving or disapproving the granting of the permit and the reason or reasons for such recommendations, which recommendation and the reason or reasons therefore must be submitted to the Secretary within the specified time period prescribed by rules of the Secretary.

Upon completion of a draft permit for Underground Injection Control pertaining to solely sewage discharges, the draft permit is sent to the Director of the Office of Environmental Health Services with a document requesting their recommendations for the approval or disapproval of the draft permit and the reasons for such approval or disapproval. This same procedure is followed for the injection of industrial waste except the draft permit is sent to the Director of the West Virginia Geologic Survey and the Chief of the Office of Oil and Gas for their recommendations for approval or disapproval and the reasons for such approval or disapproval. The draft permit is sent to these agencies through the normal public comment period. They have approximately 30 days to submit their written recommendations for consideration. After the 30 day period and no written recommendations are received it will be assumed that neither of the agencies has any objections to the draft permit. Once all the public comments on the draft permit are received the permit is either issued without modifications or with modifications. If the draft permit has undergone major modifications then the public notice process begins again.

Chapter 22, Article 11-19 (Emergency Orders) provides that the Secretary may, with the concurrence in writing of the Commissioner of the Bureau of Public Health, without notice or hearing, issue an order or orders requiring the immediate cessation or abatement of any discharge, release, escape, deposit or disposition, and the cessation of any drilling, redrilling, deepening, casing, fracturing, pressuring, operating, plugging, abandoning, converting or combining of any well when the Secretary finds that any discharge or release etc. constitutes a clear, present and immediate danger to the health of the public or to the fitness of a private or public water supply. Obviously, this statutory provision hinges on action by the Bureau of Public Health in declaring a situation a public health threat. When appropriate, DEP does enlist the cooperation and assistance of the state

and/or county health agencies in determining public health threats. If factually supported, this statutory provision is utilized.

Chapter 22, Article 11-25 (civil liability; natural resources, gamefish and aquatic life fund, use of funds) provides for individual or joint civil actions by the DEP and/or WV Division of Natural Resources for any loss of game fish or aquatic life resulting in any person's or persons' failure or refusal to discharge any duty imposed upon such person by this article or 22-6-7.

The Secretary may request, and, upon request, is entitled to receive from any agency of the state or any political subdivision, or from any other person who engages in a commercial use or controls any of the water resources of the state, such necessary information and data as will assist in obtaining a complete picture of the water resources of the state and the existing control and commercial use as provided in 22-11-28 which allows the Secretary to provide to the Legislature a biennial report on the quality of the state's waters.

Every two years during preparation of the 305(b) water quality status assessment, water quality data is solicited from a variety of state, interstate, and federal agencies, as well as local governments and state colleges and universities. Among those solicited are:

- WV Department of Environmental Protection
- WV Division of Natural Resources
- WV Bureau for Public Health
- U. S. Geological Survey
- U. S. Army Corps of Engineers
- U. S. Forest Service
- U. S. Environmental Protection Agency
- National Park Service
- Ohio River Valley Water Sanitation Commission
- Interstate Commission on the Potomac River Basin Commission
- West Virginia University
- Marshall University
- Other state small colleges and universities
- Local public water supplies

The agencies listed above are generally very cooperative in providing water quality data if such data is available. A mailing list of agency contacts is maintained by the Division of Water Resources and updated every two years prior to preparation of the 305(b) report. Data is solicited well in advance of the reporting deadline in order to give the cooperating agencies adequate time to respond to the request.

It is also the public policy of the state of West Virginia in 22-12-2 to maintain and protect the state's groundwater so as to support the present and future beneficial uses and further to maintain and protect groundwater at existing quality where the existing quality is better than that required to maintain and protect the present and future beneficial uses.

The DEP is designated in 22-12-6 to be the lead agency for groundwater and is to perform certain duties among which include:

- 1) Coordination with other agencies to develop a uniform groundwater program.
- 2) Participation with the Bureau of Public Health and the Department of Agriculture in the data management system.
- 3) To engage in voluntary cooperation with the Bureau of Public Health and the Department of Agriculture all persons in the maintenance and protection of groundwater, and to advise, consult and cooperate with all persons, in the furtherance of the purposes of Article 12. To this end and for the purposes of all agencies of this state, universities and colleges, the federal government or other states, and with interstate agencies encourage, participate in, conduct or cause to be conducted, studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, and receive and spend funds as appropriated by the Legislature, and from such agencies and other officers and persons on behalf of the state.

Chapter 22, Article 12-5 (a) further provides that the Secretary may designate other agencies with their concurrence as groundwater regulatory agencies. The Division of Water Resources along with the Bureau for Public Health have entered into a Memorandum of Understanding (dated 1/27/2000) to oversee a variety of wells which are not classified as potable or public water supply wells, underground injection control wells, monitoring wells, or boreholes. This policy was developed to clarify responsibilities regarding permitting, construction, and abandonment of these wells to protect the quality of the states groundwater.

Chapter 22-12-7 provides for the continuation of the Groundwater Coordinating Committee consisting of the Commissioner of the Bureau of Public Health, the Commissioner of Agriculture, the Chair of the Environment Quality Board, the Director of the Division of Water Resources and the Secretary of the Department of Environmental Protection who shall serve as its chair.

The DEP Division of Water Resources is the lead agency in the Groundwater program. Soon after the Groundwater Protection Act was passed an inter-agency groundwater committee was established to coordinate the various responsibilities identified by the Act. Made up of representatives from all the programs within DEP and representatives from the Bureau for Public Health Office of Environmental Health Services, the Department of Agriculture's Pesticide Division and a representative from the local health departments, the committee is to address ground water issues relative to their specific programs and to set up a mechanism for intra-departmental and inter-departmental communication to coordinate ground water strategies and implementation processes. This committee is also used to coordinate the development and publication of the Groundwater Biennial Report to the West Virginia Legislature.



Chapter 22-12-8 requires that every state, county or local government body which reviews or issues permits, licenses, registrations, certificates or other forms of approval, or renewal for activities or practices which may affect groundwater quality first submits to the Secretary for review and approval an application for certification with the Secretary overseeing and coordinating the implementation of this article by each of the groundwater regulating agencies through this groundwater certification program. All groundwater regulatory agencies as designated including all Offices within the Department of Environmental Protection through the Groundwater Protection Act have been given interim groundwater certification pending the development of a certification process whereby all agencies regulations and permitting processes will be examined to determine if these regulations and processes are in compliance with the Groundwater Protection Act. All proposed regulations and permits will be examined before promulgation or issuance for their compliance with the Act.

Under the Dam Control Act (22-14-4), the Secretary, among other powers and duties is to cooperate and coordinate with agencies of the federal government, this state and counties and municipalities of this state to improve, secure, study and enforce dam safety technology within this state. The DWR Dam Safety Section is cooperating on a continuing basis with the Office of Emergency Services (OES) to review and implement Monitoring and Emergency Action Plans (EAP) for high hazard potential dams in the state. Dam Safety participated in Federal Emergency Management Agency (FEMA) workshops to study dam safety technology regarding the state of practice for spillway gates and in seepage/piping issues.

In 22-15-2, among other findings, the Legislature finds that disposal in West Virginia of solid waste from unknown origins threatens the environment and the public health, safety and welfare, and therefore, it is in the interest of the public to identify the type, amount and origin of solid waste accepted for disposal at West Virginia solid waste facilities.

Chapter 22-15-5 (b) vests the Secretary with the primary responsibilities for the permitting and regulating of solid waste. As part of the Secretary's powers, duties, and responsibilities under 22-15-5, he/she may coordinate with the Commissioner of the Division of Highways to conduct at weigh stations or other adequate site or facility, inspections of solid waste in transfer.

Chapter 22-15-10 (e) provides that upon request by the Secretary, the Commissioner of the Bureau of Public Health must provide technical advice concerning the disposal of solid waste or carcasses of dead animals within the state.

Chapter 22-15-10 (f) requires that the Secretary consults with the Solid Waste Management Board, and may then modify the applicable permit in order to reduce the total monthly tonnage of out of watershed waste the facility is permitted to accept by an amount that shall not exceed the total monthly tonnage necessary to ensure the disposal needs of the watershed in which the facility is located.

22C-2-3 requires that the Secretary consult with the Water Development Authority to promulgate rules relating to the Water Pollution Control Revolving Fund.

Further intergovernmental coordination occurs through various interstate compacts provided in 22C-11 and 12.

Section B.3 of this document includes a listing of the formal interstate commissions and compacts in which the DEP participates. Among those compacts are the Interstate Commission on the Potomac River Basin, the Ohio River Valley Water Sanitation Commission and the Ohio River Basin Commission. DEP also occasionally participates in ad hoc interstate activities for example, the Division of Water Resources through the Office of Environmental Enforcement participates and co-chairs an Ohio River Focus Group with the state of Ohio and ORSANCO regarding spill responses, emergencies and other water quality issues which may affect the Ohio River.

#### Governor's Executive Authority

Occasionally, it is necessary for the Governor to exercise executive authority to create a process to deal with situations that may involve overlapping authorities among state agencies. One such example is the fish consumption advisory process.

The development of formal fish consumption advisory protocols has a convoluted history. Until the year 2000, there was no legal mandate for any agency in West Virginia to monitor fish tissue for contaminants and issue consumption advisories to protect consumers of wild caught fish. The advisory program had its beginnings in the late 1970's, when the Department of Natural Resources' (DNR) Division of Water Resources (DWR) collected a number of whole-fish samples to evaluate tissue contamination. This effort was initiated from a water pollution perspective. Certain pollutants can accumulate in fish tissue. Fish tissue analyses can indicate the presence of low-level contaminants that may not be detectable through direct analysis of the water. High concentrations of chemicals observed in the whole fish samples prompted DWR biologists to begin examining edible portions of fish (fillets) to determine public safety. In the 1980's, the state began issuing fish consumption advisories based on Food and Drug Administration (FDA) Action Levels. The Bureau for Public Health (BPH), Department of Natural Resources-Division of Fisheries (DNR) and DWR, were all involved in preparing press releases, but DWR served as the primary decision-maker.

As scientific assessment methods improved, EPA began to encourage the states to adopt risk-based consumption advisories. The FDA protocols were developed to protect consumers of supermarket fish, which are collected from many different waterbodies. Risk-based advisories, however, are designed to protect subsistence-level anglers, who may consume fish from the same stream on a regular basis. The EPA procedural manuals offered guidance on deriving advisories, but did not specify precise consumption levels. It was up to the individual states to determine such factors as risk level, average meal size and other variables.

In the 1990's the Ohio River Valley Water Sanitation Commission (ORSANCO) began seeking a consistent consumption advisory for the Ohio River. Six states border the Ohio River, and the state's advisories often conflicted with one another. The Ohio River states agreed to adopt risk-based advisories for PCBs (polychlorinated biphenyls) following protocols established by the Great Lakes Fish Consumption Advisory Task Force. West Virginia issued its first risk-based advisory for the Ohio River in 1996. This event established a risk-based consumption advisory procedure that could be applied throughout the state. However, the Great Lakes Task Force only addressed PCBs; no protocols for assessing risks from other contaminants had been developed.

In 1998 DWR sponsored a meeting with DNR and BPH to discuss the movement toward risk-based advisories and to encourage and interagency effort to formalize fish monitoring and the issuance of advisories. Although there was currently no mandate or funding for any state agency to monitor fish tissue contaminants, DWR had continued to collect and analyze fish tissue. Sample collection was primarily opportunistic, often coinciding with DNR fish population studies. As a result, there was no consistent statewide monitoring protocol. DWR indicated to the meeting attendees that the minimal existing contaminant data suggested the need for restricted consumption in several streams if risk-based principles were applied. The three agencies acknowledged the need for a formalized fish advisory workgroup.

Later in 1998 DWR secured a grant for a West Virginia University (WVU) researcher to develop risk-based consumption levels for ~40 contaminants of concern, including dioxin, chlordane and mercury. The results of the WVU study, which was completed in 2000 and are presented in "West Virginia Sport Fish Consumption Advisory Guidelines", suggested the need for information throughout the state.

On September 11, 2000, the Governor signed an executive order (#16-00) requiring DEP, DNR, and BPH to develop an interagency agreement to establish the purpose and objectives for a fish consumption advisory program and to define each agency's roles and responsibilities. The order mandates the creation of a technical committee. The BPH is designated as the lead agency for preparing and issuing consumption advisories and BPH is to serve as the primary public and media contact in issues relating to fish consumption. BPH, with the assistance of technical committee members, will perform risk assessment and develop consumption advisory recommendations. Finally, the three agencies will work cooperatively to establish a system for fish collection, sample analysis, and data management.

The interagency agreement, which created the West Virginia Fish Consumption Advisory Technical Committee (hereafter referred to as the Committee), was finalized and signed by the DNR and DEP Secretaries and the BPH Commissioner on November 8, 2000. The Committee consists of two members from each agency and is chaired by the Commissioner of the Bureau for Public Health or his designee. Meetings will be held biannually, or more frequently as necessary. The Committee will implement advisories based upon, but not limited to, the protocols contained in "West Virginia Sport Fish Consumption Advisory Guidelines" and develop methods for communicating advisories.

Fish tissue collection efforts will be sequenced with the West Virginia Watershed Management Framework assessment cycles where practicable.

**F. Element 6 - Process for establishing and assuring adequate implementation of new or revised water quality standards, including schedules of compliance, under Section 303 (C) of the Act.**

West Virginia's Water Quality Standards are developed by the Environmental Quality Board<sup>1</sup> with input from appropriate state and federal agencies, as well as individuals and organizations representing various interests throughout the state. The standards are promulgated as a legislative rule that is published in the Code of State Regulations (46 CSR 1, Requirements Governing Water Quality Standards). All steps in this promulgation, which are described below in detail, are conducted in compliance with the West Virginia Administrative Procedures Act (WV Code §29A-3-1 et seq.) and the Open Governmental Proceedings Act (WV Code §6-9A-1 et seq.).

Federal law addressing state review of the Water Quality Standards is found in Section 303(c) of the Clean Water Act, which provides the following:

The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administration.

Regulations to implement section 303(c) are found at 40 CFR 131.20 They further describe the requirements and procedures for developing, reviewing, revising and approving water quality standards by the states.

**WV Procedures for Conducting Review of Water Quality Standards**

In conducting its triennial review of the standards, the Board begins by publishing a notice of such review in the West Virginia State Register, and distributing that notice to its mailing list. The Board's mailing list includes citizens, members of the environmental and regulated communities and their organizations, and local, state and federal agencies. The list is revised and updated upon request from interested parties and when the Board

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<sup>1</sup>The Environmental Quality Board's authority for promulgating Water Quality Standards is found in section 22B-3-4(a), which provides in pertinent part: "In order to carry out the purposes of this chapter and chapter twenty-two . . . of this code, the board shall promulgate legislative rules setting standards of water quality applicable to both the surface waters and groundwaters of this state. Standards of quality with respect to surface waters shall be such as to protect the public health and welfare, wildlife, fish and aquatic life, and the present and prospective future uses of such waters for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof."

determines that notice to a particular party is appropriate. Those on the mailing list receive notices of the Board's meetings, public hearings, and notices of the availability of information related to filing of legislative and procedural rules.

That notice announces that a review will be conducted, and identifies issues that the Board intends to review, including recommendations by the US Environmental Protection Agency (USEPA). Further, the notice solicits suggestions for additional review issues from interested parties. A deadline for receipt of comments is identified in the notice.

Upon closure of the preliminary comment period, the Board reviews the comments and suggestions received and begins discussions of the proposed issues. These discussions and decisions occur during the Board's regularly scheduled meetings which are open to the public and notice of which is published in the West Virginia Register. Input from the public during these meetings is encouraged.

After deliberating on the comments and suggestions received, the Board prepares a proposed revised version of the standards. The Board establishes a comment period for submission of written comments and schedules a public hearing on the proposed revisions. Notice of the public comment period and public hearing on the proposed changes is published in the West Virginia Register, the Charleston Newspapers and other local papers where local issues arise. The notice and the proposed revised document are sent to parties on the Board's mailing list and are made available for review at the Board Office. The Board is in the process of constructing a website; until its completion the documents related to the proposed rulemaking are posted temporarily on the Department of Environmental Protection's Division of Water Resources Website.

After conducting the public comment period and public hearing, the Board reviews the comments received and makes its final decisions regarding the proposed revisions to the standards. This also occurs at noticed meetings that are open to the public. The revisions are submitted to the Legislative Rule Making Review Committee of the State Legislature. That committee reviews the proposal in a public meeting, and then forwards the proposed rule, with any pertinent committee recommendations, to the Legislature. The rule is then considered by the Legislature as a bill, which may be amended during the legislative process. Upon passage of the bill by the Legislature, it is signed by the Governor. The Board then conducts the final promulgation of the revisions by filing the final version of the rule with the Office of the Secretary of State, and establishing an effective date of the rule, as provided in the WV Administrative Procedures Act.

Within 30 days of the final promulgation by the Board, the revised rule is submitted to USEPA, Region 3, for that agency's review, in accordance with 40 CFR 131.20. After such submission, the Regional Administrator shall notify the State within 60 days that the revisions are approved, or within 90 days that the revisions are disapproved. The Administrator's review and actions shall be based on the requirements of the Clean Water Act as described in 40 CFR §§131.5 and 131.6.

Note that USEPA has recently promulgated a rule, known as the "Alaska Rule" that specifies that new and revised standards adopted by States and authorized Tribes after May 30, 2000 become the applicable standards for Clean Water Act purposes only when approved by USEPA. This means that while the rule may have an "effective date" based on Board's final promulgation according to State law<sup>2</sup>, the changes are not effective for the purposes of implementation by the Department of Environmental Protection until they have been approved by USEPA. Generally the agency does not implement, for any purpose, a water quality standard without EPA approval.

The Board has a history of timely completion of the federally mandated triennial review of its WQS rule. The Board conducted a review of the entire rule in 1997, resulting in a proposal that was submitted to the legislature for consideration in the 1998 session. Most recently, the Board provided notice of a triennial review in January 2000, and received preliminary comments through March of 2000. Proposed revisions were submitted to the Legislature on September 1, 2000, although the amendments address, for the most part, items disapproved by USEPA including new procedures for implementing the antidegradation policy in Section 4 of the rule. Also revised in the current proposal are the aquatic life criteria for ammonia. Although the proposed revisions address a number of important issues, the Board recognizes that many additional suggestions received were not addressed in this review. Therefore the Board intends to extend its review of the comments received and will likely propose further revisions for consideration in the 2001 legislative session.

#### Processes for Assuring Adequate Implementation of New or Revised Water Quality Standards

The Division of Water Resources' primary mechanism to implement surface water quality standards is through the issuance of National Pollutant Discharge Elimination System (NPDES) Water Pollution Control Permits for point source facilities. In addition to addressing technology-based treatment requirements in these permits, the agency makes a determination if those requirements are protective of water quality. If they are not, then more stringent effluent limitation requirements are imposed in the permits to assure that protection. The agency also reviews to assure that any permit issued or modified will have no adverse impact to the water quality of any stream for the parameters for which a total maximum daily load (TMDL) exists. Element 1 addresses the documents used in developing water quality-based effluent limitations.

The State Groundwater Protection Act requires that for any activities or practices which may affect groundwater quality, that groundwater certification be obtained from the Secretary and that for any permit issued, that certification becomes a condition of the permit. The legislative rules promulgated pursuant to this Act require the development and submission of a groundwater protection plan (GPP) with the filing of a permit

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<sup>2</sup>Prior to promulgation of the Alaska Rule, the date established as the "effective date" in the WQS rule was the date that WVDEP began implementing the WQS changes in, for example, the NPDES permitting program.

application. A satisfactory review of the GPP and its incorporation into a final permit constitutes the required groundwater certification and the assurance of requirements to protect groundwater quality from point source activities.

All NPDES permits issued require self-monitoring of effluent discharges and/or groundwater monitoring wells, as appropriate and the submission of such reports relative to that monitoring to the agency. This information is reviewed for compliance with the permit conditions and thusly water quality.

The Division of Water Resources carries out administrative and civil actions where information exists documenting violations of the statutes, rules, permits and water quality standards.

Permitted facilities are generally provided a notice regarding violations and given some time to comply and respond to the notice before additional enforcement action is initiated. Failure to do so could lead to an order issued to stop pollution or take remedial action.

Facilities without permits would generally promptly be issued orders to stop pollution or take remedial action and be required to file an application for a permit.

In either of these situations, administrative orders may also be issued to require remedial action, establish schedules of compliance and assess penalties. The filing of a civil action in court could also result in these instances.

The DEP's Environmental Enforcement group is also involved in enforcement activities for various violations and also initiates criminal actions, notices, administrative actions and civil actions as warranted.

**G. Element 7 – Process for assuring adequate controls over the disposition of all residual waste from any water treatment processing.**

DEP rules at 47CSR11 require the proper disposal of wastes from water treatment plants. These wastes include those emanating from sanitary facilities, laboratories, clarification facilities, softening facilities and filter backwash. Under the West Virginia Water Pollution Control Act, Chapter 22, Article 11, such wastewaters are industrial wastes and are regulated as any other industrial wastes, subject to technology-based and water quality-based effluent limitations. Water treatment facilities may be allowed to direct their wastewater to municipal sewer systems that have the capability of treating the wastewater. The municipal sewer system must obtain approval from the DEP to accept this wastewater, unless it operates its own pretreatment program.

The water plant sludges, termed residual wastes, are regulated under the West Virginia Solid Waste Management Act, Chapter 22, Article 15 and DEP rules at 33CSR1.

The solid wastes generated and recovered from treatment basins, ponds, lagoons or impoundments must be placed in approved landfills.

**H. Element 8 – Process for developing an inventory and ranking, in order of priority needs for construction of waste treatment works required to meet the applicable requirements of Section 301 and 302 of the Act.**

West Virginia initiated a process for ranking public wastewater treatment facilities with passage of the federal Water Pollution Control Act amendments of 1972. This legislation authorized a federal construction grants program to assist public entities with the cost of meeting state and federal water pollution control requirements. In 1987 the U. S. Congress enacted the Water Quality Act amendments that phased out the construction grants program and authorized the establishment of state revolving loan programs. In 1994, the Legislature passed the Infrastructure and Jobs Development Act to coordinate all state and federal funding of infrastructure projects. As a result, the state inventory and ranking process was modified to be consistent with the requirements of that statute.

The Department of Environmental Protection maintains an inventory of identified public wastewater treatment facility needs called a “Project Priority List” (PPL). This list identifies entities that are asking for financial assistance from the State Revolving Fund (SRF). The West Virginia Infrastructure and Jobs Development Council maintains a list of all pending, unfunded wastewater projects regardless of funding sources. The DEP PPL are ranked in accordance with an EPA approved rating system that meets federal guidelines. When SRF funds become available each fiscal year, an Intended Use Plan (IUP) is developed that includes the annual PPL. Projects are then identified for possible funding commitments during the fiscal year based upon readiness to proceed. The IUP and PPL are subjected to the public participation process by holding a required public hearing to solicit public comments. When new information relating to the priority rating factors is presented, project ratings are reviewed and, where appropriate, revised.

In addition to an annual ranking of projects desiring funding, a comprehensive inventory of all existing facilities and those needed in the future is completed every three years under the IJDC. The 1999 report states that 72 percent of the state’s population is served by a public water system and approximately 50 percent are served by a central wastewater system. In order to meet current water and wastewater needs of the citizens in West Virginia, \$878 million is needed for community water systems and \$1.8 billion for central wastewater systems. On the federal level, DEP participates in the Clean Water Needs Surveys (CWNS) that are conducted to assess national costs of compliance with the CWA. These federal surveys include costs for nonpoint source correction of pollution problems as well as point sources. A 2000 CWNS is currently being performed and finalized in a report to Congress.



*References: West Virginia Water Pollution Control Revolving Fund Act, WV Code 22C-2; West Virginia DEP / EPA Operating Agreement for the Clean Water Revolving Fund; Interagency Agreement between DEP / WDA; Infrastructure Act, WV Code 31-15A;*

### **I. Element 9 – Process for determining the priority of permit issuance**

The DEP implemented a watershed management approach to protect waters of the state. The thirty-two hydrologic regions of the state were divided into five groups in order to provide for a five-year cycle for the assessment of the streams in each group and to maintain the five-year cycle for NPDES permit issuance. In year five of the cycle, permit issuance for a watershed group ensures that the agency can take advantage of the latest data available from the assessment conducted in the earlier years of the cycle. To synchronize permit issuance with the appropriate watershed groups, more permits have been issued for shorter terms than five years while others have been administratively extended for one to three years.

Some of these permits have been extended, as provided by the statute, whereby they are in effect in excess of five (5) years. EPA considers a permit “backlogged” if it has not been reissued by its original expiration date. While converting permitting activities to conform with the watershed permitting approach EPA has encouraged, it is necessary that some permits be issued for terms less than five (5) years and some must be extended beyond five (5) years in order to reconcile their subsequent issuance with the applicable watershed year. The agency has provided EPA a schedule along with a strategy that provides information indicating that by the end of calendar year 2002, the number of permits in effect in excess of five (5) years will be less than the 10%, which is within the timeframe of EPA’s goal.

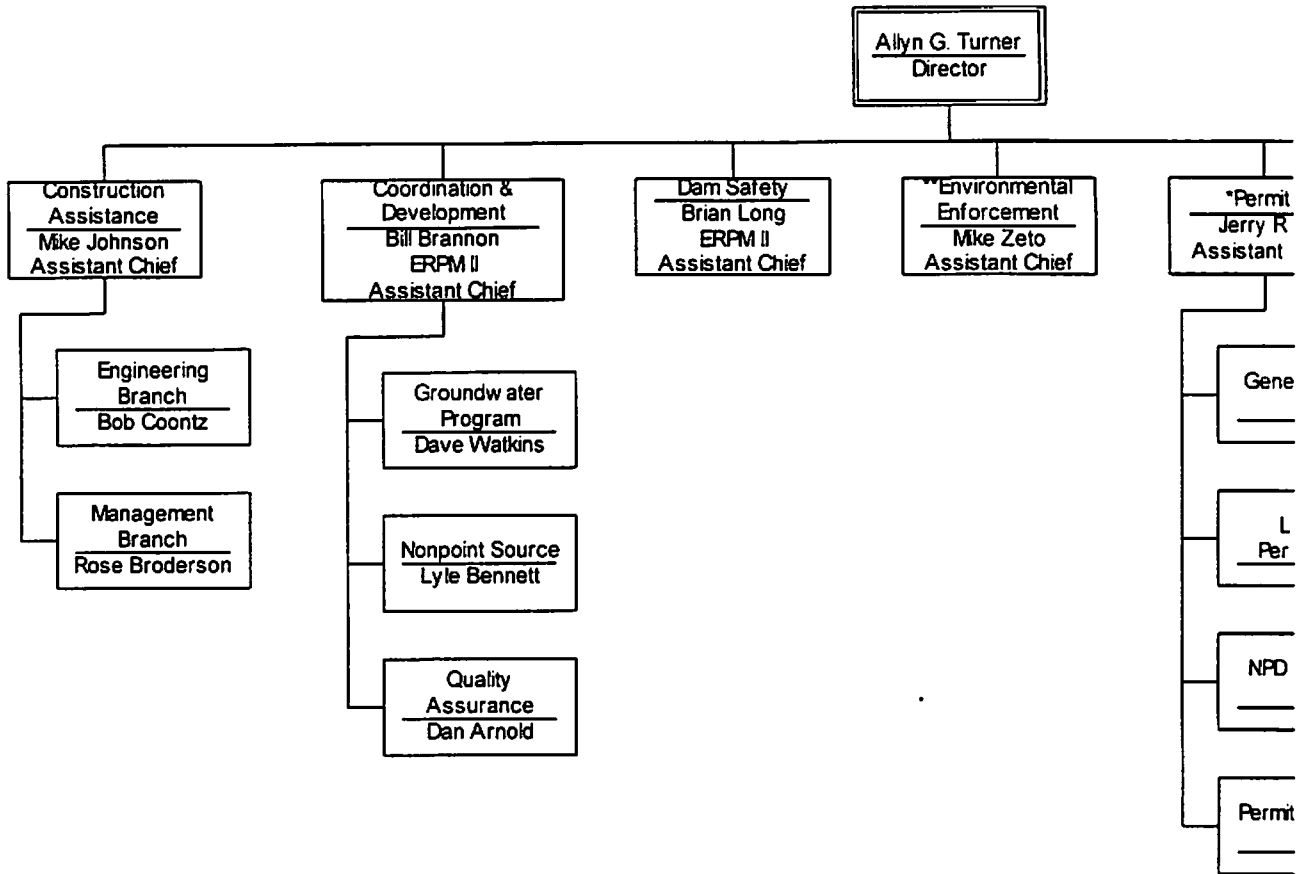
As a result of going to the watershed approach to permitting, a schedule for permitting can be prepared over a period of years, allowing workloads to be identified and permitting activities scheduled. Therefore, the DEP process for determining permit issuance priority is in accordance with this schedule. Workloads are assigned to staff in consideration of having some available time in order to process permit applications for new facilities, which receive a high priority. Allowances are also provided in scheduled workloads to provide for the processing of permit modifications.

### **SECTION III – RELATED DOCUMENTS**

*CD and appropriate copies of documents attached to final EPA submission*

- A. Division of Water Resources Organization Chart
- B. List of Office of Environmental Enforcement District Locations (see website)
- C. List of Division of Mining and Reclamation District Locations (see website)
- D. Copies of Statutes and Regulations referenced in the body of the CPP can be obtained electronically through the West Virginia Secretary of State’s website at <http://www.wvsos.com/csr/>
- E. Intergovernmental Cooperation/Coordination
- F. List of newspapers publishing the CPP public notice
- G. Response to Comments

# DIVISION OF WATER RESO



Revised June 11, 2001

\*Field Offices in: Fairmont  
Oak Hill

\*\*Field Offices in: Fairmont  
Oak Hill  
Romney  
Teays Valley

Further information on DEP Offices can be obtained by accessing the website at [www.dep.state.wv.us](http://www.dep.state.wv.us)

### Intergovernmental Coordination/Cooperation

The agencies listed below work cooperatively with the Department of Environmental Protection either through the coordination mechanisms cited in this document, or by statute.

West Virginia:            Division of Natural Resources  
                                  Division of Forestry  
                                  Development Office  
                                  Bureau for Public Health  
                                  Department of Environmental Protection (all offices)  
                                  Soil Conservation Agency  
                                  Infrastructure and Jobs Development Council  
                                  Water Development Authority  
                                  West Virginia University  
                                  Division of Labor  
                                  Bureau of Employment Programs  
                                  State Tax Commission  
                                  Division of Highways  
                                  State Geologic and Economic Survey  
                                  Solid Waste Management Board

United States:            Geologic Survey  
                                  Department of Interior  
                                  Department of Agriculture – Natural Resource Conservation  
                                  Service, Farm Service Agency  
                                  Environmental Protection Agency  
                                  Fish and Wildlife Service  
                                  Army Corps of Engineers  
                                  Forest Service

Interstate Commission on the Potomac River Basin  
Ohio River Valley Sanitation Commission  
Ohio River Basin Commission

For antidegradation reviews, the intergovernmental coordination requirements in 46 CSR 1 Section 4.1.b will be accomplished by providing notice, the results of the socioeconomic review and requesting comments from those agencies listed above, as appropriate and relevant.

Permit public notices and fact sheets are sent to the Division of Culture and History, the U.S. Fish and Wildlife Service, all appropriate U.S. Army Corps of Engineers districts and appropriate agencies in West Virginia and in instances where border waters are involved, agencies in other states.

Intergovernmental coordination relative to nonpoint source activities that may impact water quality is achieved through ongoing relationships established through the State's Nonpoint Source Program and the West Virginia Watershed Management Framework. DEP is advised of and participates in development, review and updates of best management practices, designed to minimize water quality impacts during such land use operations as agriculture, logging, hydrologic modifications, and construction. Remedial projects developed to address nonpoint source impacted streams and watersheds are identified and implemented through the state's Watershed Management Framework. Oftentimes developed in conjunction with United States Department of Agriculture Environmental Quality Incentives Projects (EQIP), the Office of Surface Mining's Appalachian Clean Streams Initiative, the state DEP's Abandoned Mine Lands Program, or other sources, Framework partners combine resources with federal 319 Nonpoint Source grants to achieve improved water quality in streams where impacts exist.

Public Notice for Continuing Planning Process Document

**Published June 12, 2001**

**The notice was published in the following newspapers:**

1. The Journal (Martinsburg)
2. Weirton Daily Times
3. Williamson Daily News
4. The Parkersburg News
5. Point Pleasant Register
6. W.VA Daily News and Valley Ranger (Lewisburg)
7. The Inter-Mountain (Elkins)
8. Bluefield Telegraph
9. Times West Virginian (Fairmont)
10. The Herald-Dispatch (Huntington)
11. The Welch Daily News
12. Charleston Newspapers
13. Clarksburg Exponent/Telegram

14. The Dominion Post (Morgantown)
15. The Wheeling News-Register and Intelligencer
16. Moundsville Daily Echo
17. The Register-Herald (Beckley)

### **Response to Comments**

The West Virginia Department of Environmental Protection, Division of Water Resources submitted to public review a draft document entitled Continuing Planning Process for Water Quality Management on June 12, 2001 for a thirty day comment period. The notice was distributed statewide in 17 newspapers (See list included in CPP List of Related Documents). Only comments from two parties were received which will be addressed in the following response. In addition to the public comment, the US Environmental Protection Agency reviewed the draft prior to notice and provided input. All comments received are included as attachments to this document.

**Comments received:**

- West Virginia Rivers Coalition, July 10, 2001
- Mid-Atlantic Environmental Law Center, July 10, 2001
- U.S. Environmental Protection Agency, May 17, 2001

**General comments:**

**West Virginia Rivers Coalition general comment:**

To summarize the two main points in the introductory section: The commenters noted that several significant environmental initiatives had been developed subsequent to the publication of the previous Continuing Planning Process (CPP) document, i.e. antidegradation, total maximum daily loads, mixing zones and other water quality based protections. The CPP, commenters suggested, should be used to comprehensively coordinate the recent initiatives "to work in concert to assure compliance with water quality standards in all water bodies at all times."

Secondly, the commenters expressed concern that the CPP should be used to more effectively assure that nonpoint source pollution does not cause violations of water quality standards.

The CPP was updated to reflect the current status of the agency's programmatic operations. It defines and describes the institutional processes upon which the agency relies to fulfill its statutory and regulatory responsibilities. The initiatives cited by the commenters are admittedly operational imperatives that must be absorbed and incorporated into the functions that the agency traditionally manages. The agency has

reflected that activity, in a broad sense, in the CPP document. The CPP is intended to describe the operational framework for strategically addressing water quality management, not serve as the strategic plan of operations. Ongoing developmental activities, such as creation of a state-led total maximum daily load initiative, and implementation guidance for the recent antidegradation rules, must be incorporated into the existing operational framework not recreate it. Obviously, some changes will be necessary to effectively absorb new initiatives that in fact, may eventually become the mechanisms to effect the “comprehensive coordination” cited by the commenters. The agency asserts that strategic planning for water quality management is inherently a fluid process that should rely on the framework reflected by the CPP but should not be driven by it.

In regard to the comment relating to nonpoint source pollution, the agency has developed, through interagency agreements noted in the body of the CPP, programs dealing with major nonpoint source pollution contributors. The programs are based on non-regulatory processes such as education, financial assistance, technical assistance and research although enforcement is sometimes necessary. In some cases, such as logging and construction, statutory authorities have been established over the course of the twenty plus year implementation process that provide for more regulatory control of nonpoint issues. While there is contention that the non-regulatory nature of some nonpoint source implementation strategies are not as effective in addressing protection of water quality standards as necessary, the agency responds by noting that significant progress has been made through the existing processes, particularly in certain major agricultural areas of the state, and that TMDL implementation strategies have focused nonpoint program resources on target streams. Additionally, heightened awareness of nonpoint source issues at both the state and national levels has increased the emphasis by cooperating agencies and cooperation by affected industries. Modifications to and adjustments in nonpoint source implementation strategies have been made and will continue to be made in response to program improvements deemed necessary by the involved agencies.

**Mid-Atlantic Environmental Law Center general comment:**

The general comment requests incorporation of, attachment to or more specific access to documents cited in the CPP.

Because of the voluminous nature of the documents cited, the agency intends to make references available through internet sites, DEP’s web page and attachment via CD.

**Element 1**

**West Virginia Rivers Coalition comments:**

The initial comment criticizes the agency’s record of adhering to NPDES responsibilities in regard to development of water quality based effluent limits. The CPP reflects the process the agency uses to perform that responsibility embodied primarily by referencing rules and guidance documents. In that regard, the agency believes it has fulfilled the

requirement to address Element 1 appropriately. Criticism of the record of the agency's implementation of the rules is not pertinent for inclusion in the CPP nor is incorporating a plan to correct deficiencies. The agency would point out that improvements have been made and are continuing in the NPDES mining program.

The science is lacking that would support linking BMP implementation effectiveness to achievement of water quality standards in water quality limited segments (WQLS). Because BMP's (best management practices) are designed to be applicable to specific situations and applied either singularly or in combination to achieve the "best" fit for the site or situation, establishment of effluent limits for BMPs is not appropriate. Pollutants traditionally controlled by BMPs in NPDES permits, such as sedimentation on construction sites, do not have associated water quality standards. Permits requiring BMPs attempt to limit pollutants through either technological or operational means, such as proper site housekeeping, detention ponds, or material pile covers.

Untreated or inadequately treated sewage in small communities is a pervasive problem statewide. The Watershed Management Framework (described in Element 4) provides the mechanism to coordinate not only local stakeholder involvement in watershed planning but also resource agencies as well. Bacteria from many sources is a chronic source of impairment to state streams. Specific attribution of bacterial pollution to sewage sources, animal wastes, or wildlife is difficult, but the agency does intend to include streams on the state 303(d) list impaired by bacteria provided that data of sufficient quantity and quality is available

**Mid-Atlantic Environmental Law Center comments:**

The initial comment notes that the section only recites the regulations governing the state's permitting process. Indeed, the text generally only references rules and processes used by DEP in the permitting process. The agency preferred to reference the documents and their availability elsewhere rather than incorporate those documents in the body of the CPP.

Commenters point out that this Element should also include references to nonpoint source controls and BMP development processes. While arguably nonpoint source activities and controls will play an integral part of TMDL implementation strategies, references to effluent limitations and schedules of compliance, etc. are regulatory processes not applicable to West Virginia's approach to nonpoint sources. It would be appropriate, however, to reference the state's Nonpoint Source Management Plan in this section which does contain programmatic implementation procedures for each of the state's identified priority nonpoint source categories. Each nonpoint source category has developed and updates periodically its individual BMPs. TMDL implementation plans developed to date for West Virginia waters have referenced appropriate nonpoint source management programs as being the mechanism for implementation. *The document will be modified to include reference to the various nonpoint source programs and the website address where the Nonpoint Source Management Plan for West Virginia (2000) can be reviewed.*

The final comment presumably requests specific compliance schedule deadlines. As noted in the CPP discussion each situation is guided by state and federal rules. Any more specificity than is provided in the document would generally be permit specific.

Element 2

**Mid-Atlantic Environmental Law Center comment:**

In response to the request for a list and use of Section 209 Level B basin plans the agency will include the following in Element 2 of the CPP:

*“The following Section 209 Level B basin plans were developed by the Division of Water Resources:*

*Comprehensive Survey of the Bluestone River Basin Volume 1: Inventory (1976)*

*Comprehensive Survey of the Coal River Basin Volume 1: Inventory (1978)*

*Comprehensive Survey of the Elk River Basin Volume 1: Economic Base Study (1969)*

*Comprehensive Survey of the Elk River Basin Volume 2: Economic Base Study (1970)*

*Comprehensive Survey of the Greenbrier River Basin Volume 2 Part 2: Economic Base Study (1973)*

*Comprehensive Survey of the Greenbrier River Basin Sub-Basin Volume 1: Inventory (1968)*

*Comprehensive Survey of the Guyandotte River Basin Volume 3 – Problems, Concerns, Opportunities, and Solutions (1988)*

*Comprehensive Survey of the Little Kanawha River Basin Volume 1: Inventory (1974)*

*Comprehensive Survey of the Little Kanawha River Basin Volume 3: Problems, Concerns, Opportunities, Alternative Solutions and Suggested Plan (1985)*

*Streamflow Characteristics of the Monongahela River Volume 2 Part A (1973)*

*Comprehensive Survey of the Monongahela River Volume 1: Inventory (1973)*

*Economic Base study of the Monongahela River Volume 2 Part B (1974)*

*Comprehensive Survey of the New River Basin Volume 1: Inventory (1976)*

*Ohio River Basin Plan (1988)*

*Comprehensive Survey of the Pocatalico River Basin Volume 1: Inventory (1977)*

*Streamflow Characteristics of the Potomac River (1971)*

*Comprehensive Survey of Potomac River Basin Volume 1: Inventory (1973)*

*Potomac River Basin Volume IV: Preferred Plan (1981)*

*Comprehensive Survey of the Potomac River Basin Volume 3: Problems, Resource Base, Projections, Needs, and Alternative Plans (1981)*

*Comprehensive Survey of the Potomac River Basin Volume IV: Preferred Plans (1989)*

*Subsequent to the elimination of federal grants the agency was unable to support continued development of these plans. Single copies of the reports reside in the agency's files and are accessible to agency staff and the public upon request. While much of the information contained in the reports is outdated, they are used occasionally in the*



*development of watershed management plans through the Watershed Management Framework as described in Element 4.”*

### Element 3

#### **West Virginia Rivers Coalition comments:**

#### **Mid-Atlantic Environmental Law Center comments:**

As both comments are similar, DEP’s response is applicable to both. Comments relate to the lack of a West Virginia developed plan for TMDL development and implementation. As noted by both, there is an acknowledgement that USEPA has done and continues to do TMDLs for the state. While DEP has, to a degree, been involved in the development of every TMDL developed for West Virginia waters, the lead responsibility, due to inadequate state resources, has been the USEPA’s. *During the 2000 and 2001 sessions of the West Virginia Legislature, the DEP developed and submitted a strategy for TMDL program assumption with accompanying budget requirements. The strategy was partially funded by both sessions of the Legislature which enabled the DEP to begin to build the capacity to assume program responsibility, possibly as early as 2003. The strategy is available at DEP’s website under the Division of Water Resources’ webpage.*

*The strategy addresses TMDL implementation only as a function of scheduling in relation to other programmatic activities being managed by DEP. NPDES permitting has moved to a watershed schedule, the state Nonpoint Source Program has also adopted the watershed schedules of the Watershed Management Framework (See Element 4). Specific TMDL implementation activities will be dependent on the pollutants, loadings and contributors to the problem. To implement TMDLs, the various programmatic authorities and procedures applicable to water quality issues in TMDL streams will be identified and used to effect load reductions.*

Additionally, the commenter stated several specific examples relating to processes for TMDL development. Given the uniqueness of each TMDL and uncertainty of funding, this type of information is more appropriate for including in the TMDL itself versus in the CPP.

### Element 4

#### **Mid-Atlantic Environmental Law Center comment:**

Element 4 of the CPP describes the DEP’s position in regard to development and update of Water Quality Management Plans. As noted, resource constraints in the 1990’s inhibited the planning capabilities of the agency. Previous water quality management plans for the state’s major drainage basins were last updated in the late 1980’s. To accommodate the new initiative to address water quality issues on a watershed basis, the state initiated the Watershed Management Framework process in 1997, intended not to replace the water quality management planning of previous years but to fill the void with

a more comprehensive, multi-agency effort on a smaller scale. The following information will be added to the CPP to reflect the commenters concern:

*Water Quality Management Plans developed for major state river basins include:*

*Water Quality Management Plan for the Big Sandy Tug Fork River Basin (June 1976)*

*Big Sandy Tug Fork River Basin Plan (1986)*

*Water Quality Management Plan for the Guyandotte River (June 1976)*

*Water Quality Management Plan for the Kanawha River Basin (1975)*

*Water Quality Management Plan for the Little Kanawha River Basin (May 1976)*

*Water Quality Management Plan for the Monongahela River Basin (April 1976)*

*Monongahela River Basin Plan (1982)*

*Water Quality Management Plan for the Ohio River Basin (June 1976)*

*Ohio River Basin Plan (1988)*

*Most of these publications are single file copies available for in-house review by the public.*

*Watershed Restoration Action Strategies developed through the Watershed Management Framework include:*

*Blue Creek of the Elk River*

*Greens Run of the Cheat River*

*Sovern Run of the Cheat River*

*Little Sandy Creek of the Elk River*

*North Fork of the South Branch of the Potomac River*

*Paint Creek of the Kanawha River*

*Spring Creek of the Little Kanawha River*

*Upper Buckhannon River*

*Finks and Pecks Run of Tygart Valley River*

*These documents were developed in conjunction with applications for federal assistance under the Section 319 Nonpoint Source Program. Copies of the reports will be available on the Division's website.*

Element 5

**West Virginia Rivers Coalition comment:**

Intergovernmental cooperation is the focus of this comment. Element 5 of the CPP details DEP's statutory and procedural processes developed to involve appropriate state, federal and local agencies in the water quality management activities of the state. While it is true that intergovernmental relationships may occasionally suffer from conflicting missions and priorities, the intent is well established and documented.

**Mid-Atlantic Environmental Law Center comment:**

In response to the comment regarding cooperation with the US Fish and Wildlife Service, the agency notes that that agency receives copies of pertinent NPDES permits and U.S. Army Corps of Engineers 404 permits and that the West Virginia Division of Natural Resources, Wildlife Resources Section, also works closely with the DEP.

Element 6

**Mid-Atlantic Environmental Law Center comment:**

The CPP in Element 6 references the state's conformance to applicable state and federal rules regarding compliance with Section 303( c ) of the federal Clean Water Act. Procedural responses to specific approval/disapproval issues would be handled as the case requires. The agency notes that a reference to the US Fish and Wildlife Service receipt of public notices for all NPDES permits is included in the section entitled **Intergovernmental Coordination/Cooperation**.

Element 7

**Mid-Atlantic Environmental Law Center comment:**

Commenters request a more detailed description of processes controlling disposition of residual wastes from water treatment plant processing. Specific operational details involving individual situations are handled on a case-by-case basis in conformance to the rules cited.

Element 8

**Mid-Atlantic Environmental Law Center comment:**

Commenters request specifics of the Project Priority List development process.

The development of the Project Priority List is guided by 40 CFR 35.2015 (2/17/84) that contains the specifics requested by the commenter. The agency has been involved in internal discussion regarding updating the process by incorporating the concept of integrated priority listing which would address nonpoint source needs.

Element 9

**Mid-Atlantic Environmental Law Center comment:**

Commentors request a companion schedule for TMDL development which complements the permitting schedule referenced. In response, DEP would refer commenters to the TMDL development document located on DEP's website referenced in Element 3 above.

EPA Comments:

General comments:

P.1. –Changes made prior to public notice

P.3. - Coordination and Development is a section of the Division of Water Resources. The programs referenced are individual entities within the section implementing specific programmatic responsibilities.

P.17-18 - ORSANCO's involvement in TMDLs and water quality monitoring are explained in Element 3 and in the TMDL strategy reference to be incorporated into the document in that same Element.

P.27-28 - Opportunities for public involvement have been identified in the table added to this section.

Element 2

This Element describes historical actions to respond to Sections 208 and 209. Planning under both sections has evolved into the activities of the state Watershed Management Framework described in Element 4.

Element 3

The TMDL budget proposal and strategy to be included in the document information is offered in response to this comment.

P.32-33 - All recommendations made by EPA in this section were made prior to public notice.

Element 4

Additional information on Section 319 Nonpoint Source Management Plan availability has been provided in text of document.

P.38 – Reference removed from document prior to public notice.

Element 5

This section is intended to represent statutory and procedural relationships that require and encourage intergovernmental involvement in water quality management in West Virginia. The agency decided that the approach presented here would be most appropriate. Operational relationships among agencies, such as DNR and Mining and Reclamation, are either embodied in statutes or agreements referenced.

Copies of referenced agreements, including mountaintop removal and the Memorandum of Understanding between the Divisions of Water Resources and Mining and Reclamation, will be made available on CD.

P. 40 - Change made prior to public notice.

P.50-51 - The agency decided this was an appropriate location for this reference.

#### Element 6

As noted in Elements 2 and 4, water quality management planning has evolved into the Watershed Management Framework. There are no current plans to update the existing water quality management plans.

#### ***Mailing list???***

To clarify the phrase “effective date” in the context of the discussion the agency has added the following to the document: *“Generally the agency does not implement, for any purpose, a water quality standard without EPA approval.”*

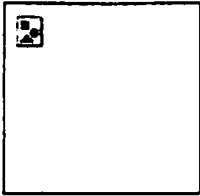
#### Element 9

In response to the comment regarding permit “backlogs”, the agency included the following in the document:

*Regulated WV facilities are covered by WV/NPDES permits. Some of these permits have been extended, as provided by the statute, whereby they are in effect in excess of five (5) years. EPA considers a permit “backlogged” if it has not been reissued by its original expiration date. While converting our permitting activities to conform with the watershed permitting approach EPA has encouraged, it is necessary that some permits be issued for terms less than five (5) years and some must be extended beyond five (5) years in order to reconcile their subsequent issuance with the applicable watershed year. WV has provided a schedule to EPA along with a strategy that provides information and a schedule indicating that by the end of calendar year 2002, the number of permits in effect in excess of five (5) years will be less than the 10%, which is within the timeframe of EPA’s goal.*

## Comment Letters Received

*(These letters were scanned for inclusion in the CPP document. Some loss of letterhead and signature integrity occurred during the scanning process. In all cases the body of the letters are intact.)*



WEST VIRGINIA RIVERS COALITION

801 N. Randolph Avenue Elkins, West Virginia 26241 (304) 637-7201 [www.wvrivers.org](http://www.wvrivers.org)

July 10, 2001

Allyn Turner, Director  
W. Va Department of Environmental Protection Division of Water Resources  
1201 Greenbrier St.  
Charleston, WV 25311

RE: Comments on 2001 Update of the West Virginia Continuing Planning Process

Dear Director Turner:

We appreciate the time and effort made by the W. Va. Department of Environmental Protection -Division of Water Resources (DWR) to update the West Virginia Continuing Planning process (CPP). Since the state's first and only CPP was drafted in the late 1970's, many changes have occurred in the oversight and make-up of West Virginia's water programs. The original CPP is especially dated by the fact that it was submitted by the W. Va. Department of Natural Resources, which no longer oversees the state's water quality program. In light of the initiation of Total Maximum Daily Loads (TMDL's), antidegradation implementation, mixing zones and other water quality based (WQB) Clean Water Act (CWA) protections, we believe the emphasis on the state's CPP should be enhanced and expanded.

In addition to state issues, recent federal consideration -both at EPA and in Congress- of implementing TMDL's under Clean Water Act § 303(e) also may serve to expand the current interpretation of the role of CPP's in all state water protection programs.

We believe the current role of a CPP extends far beyond a simple description of DEP programs. A critical missing ingredient in the relatively new WQB protections here in West Virginia is comprehensive coordination of how TMDL's, antidegradation, mixing zones, National Pollutant Discharge Elimination System (NPDES) permits in Water - Quality Limited Segments (WQLS's), best management practices (BMP's), 404 permits and other protections will work in concert to assure compliance with WQS in all water bodies at all times. We believe that this is a major role for any adequate CPP and that DWR has missed an opportunity to use this portion of the CWA as intended. We strongly

encourage DWR to reconsider using the CPP for coordinating and strengthening the interaction among these programs.

We also believe that to meet all elements required in a CPP, DWR must assure that nonpoint sources (NPS) of pollution do not cause violations of Water Quality Standards (WQS). We believe current programs are failing to adequately control NPS pollution. As nonpoint sources of pollution continue to dominate the landscape, DWR must embrace any and all means to control effectively this route of pollution. In fact, DWR has a statutory obligation to do so. The Secretary of the Department of Environmental Protection has a non-discretionary duty under the Water Pollution Control Act to assure compliance with Water Quality Standards from all sources. Thus, if a discharger is using improper Best Management Practices or if those practices are not sufficient to prevent WQS violations, then the Secretary must assure, pursuant to the state's Water Pollution Control Act, that the discharger applies the proper BMP's, updates the BMP's or adopts some other effective practice to assure compliance with the WQS. If these remedial measures fail, the Secretary must direct such an operator to cease the activities that are causing such violations. W.Va. Code Section 22-11-15. Additionally, the Director may then seek civil and criminal penalties. W.Va. Code Sections 22-11-22, 22-11-24.

The federal Environmental Protection Agency also considers the CPP vital to the implementation of TMDL's designed to control nonpoint sources of pollution. See *New Policies for Establishing and Implementing Total Maximum Daily Loads*. ("The continuing planning process established by section 303(e) of the CWA provides a good framework for implementing TMDLs, especially the nonpoint source load allocations.").

Additionally the courts have commented on CPPs for NPS control. In *Pronsolino v. Marcus*, 91 F.Supp. 2d 1337 (N.D.Cal. 2000) the court noted the important role the CPP plays in combating NPS pollution. *Id.* at 1345 ("[The CPP] covered 'all navigable waters' and was to address 'adequate implementation' of all water-quality standards, had to include plans incorporating TMDLs, and had to address 'nonpoint sources of pollution.' A wild river, therefore, polluted only by logging in its watershed, was clearly meant to benefit from the continuing planning process."). As DEP takes over TMDL development, effective NPS control will make or break the program.

Below, we offer general comments on some of the required elements of a CPP

#### Element 1

WVDEP has failed to issue water quality-based effluent limits in many situations. This has been especially true of mining NPDES permits that discharge into WQLS. The failure to issue water quality-based permits when NPDES permits are granted either in a WQLS or where there is a potential for a technology-based permit to cause a violation of standards is clearly illegal. This practice must be corrected and the updated CPP should reflect a plan to correct all such permits immediately.

Development of BMPs related to NPDES permits also must be linked to WQS where discharge into a WQLS occurs or where there is a reasonable potential to violate standards.

DEP should create a plan in conjunction with local communities to identify untreated sewage discharges and possibilities for sewage treatment. We encourage DEP to list accurately any stream impaired by bacteria via sewage pollution on the next 303(d) list.

### Element 3

The description of the TMDL program in the CPP update focuses on data collection and the takeover of the process from EPA by the WVDEP. While we are pleased that WVDEP has made efforts to address TMDL's, we believe CPP requirements focus on implementation of TMDLs and meeting WQS. As we have seen in the past, TMDL's written by the state or EPA without realistic and enforceable implementation plans are merely paper exercises. We encourage DEP to directly address implementation and create an action plan for on-the-ground cleanup of the hundreds of impaired streams in the state. In particular, the action plan should address statewide funding deficiencies and problematic aspects of intergovernmental coordination between agencies with disparate missions and budgetary priorities. This is even more crucial as the state begins to tackle the hundreds of streams impaired by acid mine drainage and streams impaired significantly by nonpoint sources.

### Element 5

WVDEP must provide for adequate cooperation among agencies and branches of agencies to insure water quality standards will be met. This is a critical focus of an effective CPP. In West Virginia, we have a number of examples where interagency cooperation has fallen short of the mark.

In the case of mining NPDES permits, technology-based discharge permits have routinely been issued in WQLS's. This is counter to statements made in DEP's 2001 CPP that the most restrictive permit -WQB or technology-based -must be issued. We question why this practice has been allowed to continue. As previously stated, all such permits should be re-evaluated and issued with WQB permits prevailing.

In the South Branch of the Potomac where TMDL's have been developed for fecal coliform and millions of dollars have been spent on attempting to clean up agricultural runoff, failure to provide adequate authority for intergovernmental cooperation has plagued cleanup efforts. Enforcement, bad actor site identification, and water quality monitoring all have been affected by intergovernmental conflicts.

There are many examples of agencies with different missions and priorities clashing. In most instances the primary mission of the agency prevails -agriculture, mining, timber harvest, or development -and water quality protection takes a back seat to those missions. Voluntary cooperation within the Watershed Management Framework rarely serves to resolve the most critical and sensitive issues.

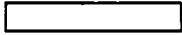
We urge DWR to reconsider this issue. DWR has a legal mandate via W.Va. Code § 22-11-15 to assure WQS are met from all sources, point source discharges and diffuse nonpoint sources.



We appreciate the opportunity to comment on the updated CPP. We look forward to working with you in the future to assure that all aspects of the state's water program not only are in compliance with federal mandates, but also best serve the interests of all West Virginians.

**Sincerely,**

**Jeremy P. Muller**  
**Executive Director**



**MID-ATLANTIC ENVIRONMENTAL LAW CENTER**

*Defending the Mid-Atlantic*

**July 10, 2001**

West Virginia Department  
of Environmental Protection

Division of Water Resources

1201 Greenbrier Street

Charleston, WV 25311-1088

Re: Comments to the West Virginia Continuing Planning Process for Water Quality Management. .

The following comments on the proposed Continuing Planning Process (CPP) for the State of West Virginia are submitted by the Mid-Atlantic Environmental Law Center on behalf of the American Canoe Association.

The American Canoe Association (ACA) is a not-for-profit corporation dedicated to the preservation and protection of America's natural areas, focusing primarily on rivers, streams, lakes, coastal waterways and their surrounding environments. There are approximately 50,000 ACA members nationwide. ACA members routinely recreate in and along West Virginia's waterways. These members also frequent West Virginia's waterways to observe and enjoy numerous migratory and indigenous flora and fauna species, including threatened and endangered species. Members of ACA consume fish caught recreationally in those waters and they participate in a number of water quality-related activities in or on those waters, including but not limited to canoeing, kayaking, fishing, hunting, boating, sightseeing, hiking, camping, birdwatching, health-related activities, water quality monitoring, education, various scientific endeavors, and aesthetic and spiritual enjoyment.

**BACKGROUND**

CWA section 303( e) and its implementing regulation (40 C.F .R. § 130.5) set forth a clear process that all the states must follow to establish and maintain a CPP. 33 U.S.C. § 1313(e). In short, each state must submit plans for all navigable waters within such State which include, but are not limited to: (1) effluent limitations and schedules of compliance at least as stringent as those required by section 1311(b)(1), 1311(b)(2), 1316, and 1317 of the CWA, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section; (2) the incorporation of all elements of any applicable area-wide waste management plans. ..and applicable basin plans; (3) total maximum daily load for pollution in accordance with subsection (d) of the CWA; (4) procedures for revision; (5) adequate authority for intergovernmental cooperation; (6) schedules for compliance, for revised or new water

quality standards; (7) controls over the disposition of all residual waste from any water treatment processing; and, (8) an inventory and ranking, in order of priority, of needs for construction of waste treatment works. Ibid.

## COMMENTS

### General Comments

The content of all referenced documents should be incorporated into the body of the CPP, or attached to the CPP. If the referenced documents are too voluminous to be attached, information should be provided as to where they may be found on the Internet or how they may be obtained by the public. For example, this office does not have access to all of the attachments referenced in the CPP, thereby making it difficult to conduct a thorough review of the CPP.

### **Section II -Implementation of the CPP Elements.**

**Element 1 -Process for developing effluent limitations and schedules of compliance at least as stringent as those required by Section 301(b)(1) and (2), 306 and 307, and at least as stringent as any requirements contained in applicable water quality standards in effect under authority of Section 303 of the Act:**

This Element is nothing more than a recitation of the various regulations that describe West Virginia's permitting process. To meet the minimum requirements of CWA section 303(e), this Element should include a detailed description of the processes West Virginia utilizes (1) to determine when water quality based effluent limits (WQBELs) need to be incorporated into a discharge permit and (2) to establish the WQBELs and any necessary compliance schedules.

This Element also needs to more thoroughly address controls on nonpoint sources of pollution. EPA considers the CPP vital to the implementation of TMDLs designed to control nonpoint sources of pollution. See New Policies for Establishing and Implementing Total Maximum Daily Loads (TMDLs) ("The continuing planning process established by section 303( e) of the CWA provides a good framework for implementing TMDLs, especially the nonpoint source load allocations."); see also Pronsolino v. Marcus, 91 F.Supp. 2d 1337, 1345 (N.D.Cal. 2000) (noting the important role the CPP plays in combating nonpoint source pollution). Therefore, this Element needs to describe the process for establishing and updating the list of Best Management Practices (BMPs) that may be utilized for controlling nonpoint sources of pollution.

Finally, this Element should describe the compliance schedule deadlines according to type of discharger involved, such as, new dischargers and new sources, existing unpermitted dischargers, and existing permitted dischargers.

**Element 2 --Process for incorporating elements of any applicable areawide waste treatment plans under Section 208 and applicable basin plans under Section 209 of the Act:**

This Element needs to list which section 209 Level B basin plans have been developed in West Virginia and explain the process for incorporating these plans into the State's water quality management program.

**Element 3 -Process for developing total maximum daily loads (TMDLs) and individual water quality based limitation for pollutants in accordance with Section 303( d) of the Act and Section 130.7(a) of this Regulation:**

Although this Element contains a detailed description of West Virginia's monitoring and assessment program, it lacks any discussion of the process that the State will use to develop TMDLs. ACA recognizes that EPA has taken the lead in TMDL development in West Virginia, however, ACA questions whether the State has even considered the planning and processes required to establish an effective TMDL program.

Accordingly, ACA suggests that this section of the CPP describe the processes West Virginia will use to: (1) prioritize waters for TMDL development; (2) develop sources of funding for TMDLs; (3) develop models for TMDL development; (4) account for seasonal variation in TMDLs; (5) provide a margin of safety in TMDLs; (6) allocate the TMDL between point sources (wasteload allocations) and nonpoint sources (load allocation); and, (7) incorporate the TMDL into water quality management plans or the CPP. EPA's regulations (40 C.F.R. 130.7(a)) provide a minimum list of items that must be addressed under this section. ACA suggests that this list be addressed in this Element.

**Element 4 -Process for updating and maintaining Water Quality Management (WQM) Plans, including schedules for revision:**

This Element fails to identify any process for updating and maintaining WQM Plans. The importance of updating WQM Plans cannot be overstated. EPA has described State updates to " WQM Plans as the "first step" to establish TMDLs. Guidance for Water Quality-based Decision: The TMDL Process at 16. Yet inexplicably, this Element utterly fails to (1) identify which WQM Plans have already been developed; (2) describe the process that will be used to either develop plans for those watersheds that do not have WQM Plans or to update those Plans that have been developed; or, (3) establish any schedule to develop/revise WQM Plans. West Virginia must revise this Element to address these deficiencies. ACA suggests that -at a minimum -West Virginia update its WQM Plans during each five-year rotating basin cycle.

**Element 5 -Process for establishing and assuring adequate authority for intergovernmental cooperation in the implementation of the state WQM program:**

This Element should include information on the cooperation between West Virginia and the federal and state wildlife agencies to ensure that the effects of water quality on threatened and endangered species are considered in all State decisions.

**Element 6 --Process for establishing and assuring adequate implementation of new or revised water quality standards, including schedules of compliance, under Section 303(c) of the Act:**

This Element needs to incorporate a section to describe the process West Virginia will utilize to resolve any EPA disapproval of revised or new water quality standards (WQSs). Specifically, the Element should include the procedures for the data collection and analysis needed to resolve any disapproval action. Also, in keeping with EPA's revision to 40 C.F.R. Part 131 to reflect the court's ruling in Alaska Clean Water Alliance v. Clark, 1997 446499 (W.D. Wash. 1997) (State revised water quality standards will not be effective until after EPA has reviewed and approved them), this Element needs to describe West Virginia's process for working with the EPA regional office to assure WQSs are approvable within the time frame set out in CWA section 303(c)(3).

This Element does not speak to compliance with the Endangered Species Act (ESA). The CPP should incorporate into this Element a requirement that: West Virginia will notify the U.S. Fish and Wildlife (FWS) of the initiation of the triennial water quality standards review; West Virginia will provide FWS with an opportunity to participate early in the triennial review process; and that mutually agreed to changes resulting from Section 7 ESA consultations will be included in revisions to State water quality standards and implementation procedures.

**Element 7 -Process for assuring adequate controls over the disposition of all residual waste from any water treatment processing:**

This Element needs to more fully describe the process for assuring adequate controls over the disposition of all residual waste from any water treatment processing. Specifically, describe under which conditions water treatment plants "may be allowed to direct their wastewater to municipal sewer systems."

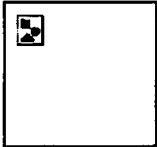
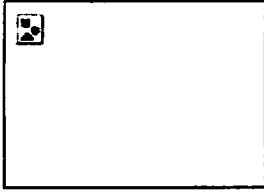
**Element 8 --Process for developing an inventory and ranking, in order of priority needs for construction of waste treatment works required to meet the applicable requirements of Section 301 and 302 of the Act:**

This Element needs to identify and describe the components of the referenced "EPA approved rating system" that West Virginia utilizes to determine the priority needs of public wastewater treatment facilities.

**Element 9 -Process for determining the priority of permit issuance:**

The watershed management approach described in this Element should also include a process for coordinating the development of TMDLs and their associated wasteload allocations (WLAs) into the five-year permit cycle. For TMDLs that are developed outside of the five-year cycle, the State should "reopen" the permit to implement the WLA within one year of EPA- approval or promulgation of the TMDL.

ACA appreciates the opportunity to provide these comments for your review. Please contact me at 302.477.2086 if you should have any questions regarding this submission.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

Allyn G. Turner, Chief  
Office of Water Resources  
West Virginia Department of Environmental Protection 1201 Greenbrier Street  
Charleston, West Virginia 25311

Dear Ms. Turner:

The Environmental Protection Agency (EPA) would like to thank you for the opportunity to review the draft of the *State of West Virginia Division of Environmental Protection Agency Continuing Planning Process for Water Quality Management (CPP) 2001 update*. The purpose of this letter is to set forth EPA's preliminary comments on West Virginia's draft revision dated March 19, 2001. EPA reviewed this draft, to determine whether it is consistent with Section 303(e) of the Clean Water Act (CWA), 33 U.S. Section 1313 (e), and implementing regulations at 40 CFR 130.5. Our comments on this version primarily request clarifications or more detailed description, although there were existing programs and process that were omitted or described incompletely ( see enclosure).

EPA finds this to be a significantly improved document. The Department updated and expanded the description of the interrelationships of the laws, regulations and policy documents listed in the existing CPP. More detail has been added to clarify West Virginia's programs and processes, and to better show how the contents are consistent with the CPP requirements. EPA appreciates the opportunity to review the revised document prior to the public review process. Comments on the draft revision are enclosed for your consideration.

If you have any questions, please contact me at 215 814-5752 or Carol Ann Davis of my staff at 215 814-5738.

Sincerely,



Thomas Henry, Program Manager TMDL Support Unit

Enclosure

Cc: Michael O. Callaghan, Director WVDEP

Patrick Campbell, WV DEP

**EP A Comments on WV DEP  
Revision to the CPP, May 15,2001**

p.1 – We believe that there was a CPP prior to 1979. In order to reflect this, please change the following sentence: “The Division of Environmental Protection (then the Division of Natural Resources) prepared and submitted *the most recent CPP* for the state of West Virginia’s water quality management programs in December 1979. Subsequently reviewed and approved by the U.S. Environmental Protection Agency, that document fulfilled, at that time, the requirements of the Act.”

Also, change reference in second paragraph from “the original document” to “the CPP prior to 1979”.

p. 3 -Is Coordination and Development a "section"? What do the references to "quality assurance," "nonpoint source," and "groundwater" mean? These sound like sections?? What is the reference to "each program" -what is meant by a "program?"

pp. 17-18 – A discussion of ORSANCO’s role in TMDL development should be included here.

pp. 27-28 -Discussion of public participation process is somewhat unclear. Items 1-3 all seem to discuss the public participation process for capital spending; item 4 appears to discuss something different -public participation for NPDES permits. This leaves out public participation for water quality standards, 303(d), 305(b), TMDLs, etc. It would be better to limit discussion here to capital expenditure only, move the discussion in item 4 to the portion of the CPP discussing permitting and to discuss public participation for other programs in the portions of the CPP that discuss those programs specifically. It also would be useful to include a general discussion of the Open Governmental Proceedings Act and the West Virginia Administrative Procedures Act here.

**Element 2**

pp. 31-32,- This is generally a good discussion and the cross reference is useful. The State should consider whether there is any need to discuss planning in connection with the State Revolving Fund here. Also, are these regional planning concepts still being done for other purposes?

**Element 3**



Generally there is a need to discuss, or cross-reference the discussion, of the process for developing the 305(b) and 303(d) lists a cross reference to Element 4 is needed, re: How priorities are established for monitoring needs and TMDL development? Also there is a need to discuss how TMDLs (whether established by EPA or by state) will be incorporated into 303(e) or other water quality plans? List of EPA-developed or approved TMDLs would be helpful.

pp.32-33 – It is our view that the development of TMDLs is not new to EPA. We therefore suggest that the sentence “TMDL development is new to the state, as well as the U.S. Environmental Protection Agency’s Region III” be deleted. The remainder of the paragraph should be revised as follows: “TMDLs are being *established in accordance with a schedule set forth in the* settlement of a 1995 lawsuit, *Ohio Valley Environmental Coalition, Inc. West Virginia Highlands Conservancy, et. al. v. Browner, et. al.*” *[delete remainder of this paragraph].*

p.33 – We suggest that the first sentence of first full paragraph be changed as follows: “The consent decree established a rigorous schedule for TMDL development, *setting a number of final and interim deadlines for TMDL development. Among other things, the consent decree requires EPA to develop TMDLs for 44 priority waters identified on West Virginia’s 303(d) list by September 30, 2002, if the State failed to do so. In addition, the consent decree set deadlines developing TMDLs for waters impacted by acid mine drainage (AMD). Pursuant to the consent decree and subsequent negotiations, EPA completed TMDLs for 109 streams impacted by AMD by March 30, 2001. The state or EPA must complete an additional 250 TMDLs for AMD impacted waters by March 30, 2006 and establish TMDLs for all remaining AMD-impacted waters by March 30, 2008.*

We suggest a revision to the paragraph beginning “Recent discussion ... “as follows: “*It is EPA’s view that the primary responsibility for development and implementation of TMDLs should be with the individual states. EPA has an obligation to provide technical support and review of TMDLs in all of the Region III states. As EPA has entered into additional settlements in other Region III states, EPA’s resources for establishing TMDLs must extend beyond West Virginia. In light of the foregoing, EPA has strongly supported the State in undertaking the responsibility for developing and implementing TMDLs.*”

#### **Element 4**

We believe a more detailed discussion of Section 319 and CWAPs is warranted. Also there is a need to discuss mining reclamation activities and how they fit into water quality management plans. This could either be discussed or cross-referenced to the discussion on source water assessment plans.

p. 38 -Is the sentence that notes that there is recent data for 7,860 miles of state's approximately 32,000 miles accurate? WV has just completed the first round of the Watershed Monitoring, so each watershed will have data produced from this effort. This should be included.

## Element 5

We found this section to be somewhat confusing as it varied between lists and descriptions. Some lists ended abruptly. It also was somewhat repetitive. It appears that each agency's authorities were discussed in the first section of the CPP. We suggest that, to the extent there is discussion of authority, re: water quality programs in this section, that discussion should be moved to the earlier agency-by-agency discussion. In this section, the discussion should be limited to intergovernmental cooperation. It might be best to start with how DEP interacts with other agencies, and then list and describe all statutory/regulatory provisions and agreements. Other agencies can be addressed in a similar fashion. The section should include a list of all applicable MOUs, interagency agreements, etc. and how to obtain copies. The final CPP submitted to EPA should include a copy of each of the referenced MOU' s, agreements, etc.

There was very little discussion of how DEP works with DNR. Can this be expanded where appropriate?

Is there an MOU with the federal agencies on mountaintop removal? This needs to be referenced.

We recommend the inclusion of a significant discussion either here or elsewhere about how NPDES permits are issued for mining operations. The significant interplay between the OWR and Office of Mining and Reclamation should be discussed somewhere.

p. 40 -Please note that the NPDES program has not been "delegated" to West Virginia. West Virginia is "authorized" to administer the NPDES program in West Virginia. There is a significant legal difference between "delegation" and "authorization" and the terms should not be used interchangeably.

pp. 50-51 -- The discussion of Section 305(b) should probably go in Element 3.

## Element 6

There is a need to describe how changes in standards are incorporated into water quality management plans.

p. 56 -Please describe how the Board develops its mailing list, who's on it, etc.

p. 57 -The discussion of the Alaska Rule needs some clarification. What is meant by an "effective date" for purposes of State law? Essentially, WV needs to define how Water Quality Standards Section 303(d) will be treated in light of the Alaska Rule. It is true that, under the Alaska Rule, new Water Quality Standards are not the "applicable" water quality standards for purposes of the CWA until approved by EPA. Thus, the state is not *required to* develop water quality-based limits or list a water on a 303(d) list based on the new standard until it is approved by EPA. However, where the new standard is *more* stringent than the current standard, the standard can be applicable for purposes of state law because federal law requires only that state law not be *less* stringent than federal law. EPA will not object to permit limits based on standards that are more stringent than the "applicable" standard. A new standard that is less stringent than the current standard

could not be applicable under state law because state law would then be less stringent than federal law.

#### **Element 9**

West Virginia should discuss specifically the NPDES permit backlog in the state and how it is being addressed.

#### **Section III**

Index of State documents.

There should be an Index of Documents for all documents, not just those not available on the Web Site. This list should include all documents referenced in the CPP -Laws, Regulations, Guidance Policy, MOUs, Agreements, WQM Plans, CWAPs, Stakeholder Agreements, Written State Procedures, etc. Any final CPP submitted to EPA should include a copy of each referenced law, regulation, guide, etc.