WEST VIRGINIA CODE: §22-11-6

§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

(a) All persons affected by rules establishing water quality standards and effluent limitations shall promptly comply with the rules: Provided, That:

(1) Where necessary and proper, the secretary may specify a reasonable time for persons not complying with the standards and limitations to comply with the rules and, upon the expiration of that period of time, the secretary shall revoke or modify any permit previously issued which authorized the discharge of treated or untreated sewage, industrial wastes, or other wastes into the waters of this state which result in reduction of the quality of the waters below the standards and limitations established therefor by rules of the board or secretary;

(2) For purposes of both this article and sections 309 and 505 of the federal Water Pollution Control Act, compliance with a permit issued pursuant to this article shall be considered compliance for purposes of both this article and sections 301, 302, 303, 306, 307, and 403 of the federal Water Pollution Control Act and with all applicable state and federal water quality standards, except for any standard imposed under section 307 of the federal Water Pollution Control Act for a toxic pollutant injurious to human health. Notwithstanding any provision of this code or rule or permit condition to the contrary, water quality standards themselves shall not be considered effluent standards or limitations for the purposes of both this article and sections 309 and 505 of the federal Water Pollution Control Act and may not be independently or directly enforced or implemented except through the development of terms and conditions of a permit issued pursuant to this article. Nothing in this section, however, prevents the secretary from modifying, reissuing, or revoking a permit during its term. The provisions of this section addressing compliance with a permit are intended to apply to all existing and future discharges and permits without the need for permit modifications; and

(3) The Legislature finds that there are concerns within West Virginia regarding the applicability of the research underlying the federal selenium criteria to a state such as West Virginia which has high precipitation rates and free-flowing streams, and that the alleged environmental impacts that were documented in applicable federal research have not been observed in West Virginia and, further, that considerable research is required to determine if selenium is having an impact on West Virginia streams, to validate or determine the proper testing methods for selenium, and to better understand the chemical reactions related to selenium mobilization in water.

(4) The Legislature finds that the EPA has been contemplating a revision to the federally recommended criteria for several years, but has yet to issue a revised standard.

WV Legislature

(5) Because of the uncertainty regarding the applicability of the current selenium standard, the secretary is hereby directed to develop within six months of the effective date of this subdivision an implementation plan for the current selenium standard that will include, at minimum, the following:

(A) Implementing the criteria as a threshold standard;

(B) A monitoring plan that will include chemical speciation of any selenium discharge;

(C) A fish population survey and monitoring plan that will be implemented at a representative location to assess any possible impacts from selenium discharges if the threshold criteria are exceeded; and

(D) The results of the monitoring will be reported to the department for use in the development of state-specific selenium criteria.

(6) Within 24 months of the effective date of this subdivision, the secretary shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code which establish a state-specific selenium standard that protects aquatic life. Concurrent with proposing a legislative rule, the secretary shall also submit the proposed standard and supporting documentation to the administrator of the Environmental Protection Agency. The secretary shall also consult with and consider research and data from the West Virginia Water Research Institute at West Virginia University, the regulated community, and other appropriate groups in developing the state-specific selenium standard.

(7) Within 30 days of the effective date of this section, the secretary shall promulgate an emergency rule revising the statewide aluminum water quality criteria for the protection of aquatic life to incorporate aluminum criteria values using a hardness-based equation. Concurrent with issuing an emergency rule, the secretary shall also submit the proposed revisions and supporting documentation to the administrator of the Environmental Protection Agency.

(8) The secretary shall, within 90 days of receipt of any completed request for a site-specific water quality criterion, approve or deny the request. Any denial or approval of an application shall detail the specific basis for the denial or approval and any revisions needed to the application. Any denial or approval of a request may be appealed to the environmental quality board pursuant to §22-11-21 of this code.

(b) The secretary may issue water pollution control permits that contain water quality-based effluent limits that are adjusted to reflect credit for pollutants in the permittee’s intake water (net limits).

(c) The secretary may not set benchmarks for substances in, or conditions of, discharges of stormwater that are more restrictive than the acute aquatic life water quality criterion, the federal benchmark, the chronic aquatic life water quality criterion, or the ambient aquatic

WV Legislature

life advisory concentration.

(d) Upon request by an applicant for a permit issued in accordance with this article, the secretary shall establish effluent limits for stormwater that are developed in accordance with mixing zones that are appropriate for relevant conditions.

(e) The secretary shall promptly develop guidance for determining how benchmarks in permits issued pursuant to this article demonstrate the adequacy of stormwater best management practices.

WV Legislature