



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

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WATER RESOURCES

Ms. Allyn G. Turner, Director
Division of Water Resources
West Virginia Department of Environmental Protection
1201 Greenbrier Street
Charleston, WV 25311

Dear Ms. Turner:

Thank you for your letter dated November 26, 2001, submitting to the United States Environmental Protection Agency Region III (EPA) for approval, West Virginia's most recent Continuing Planning Process (CPP) document. The updated CPP reflects the significant evolution in West Virginia's water quality programs since the CPP document was last updated in 1979. The West Virginia Department of Environmental Protection (WVDEP) is to be commended for its excellent work over the past three years in revising and updating the CPP document. EPA has reviewed the document, and based on its review, EPA finds the CPP document to be consistent with Section 303(e) of the Clean Water Act (CWA), 33 U.S.C. 1313(e) and its implementing regulations. CWA directs the states to submit and EPA to approve an initial CPP and instructs EPA to review the CPP from time to time, thereafter, to ensure consistency with Section 303(e). As you are aware, EPA previously approved West Virginia's submission of a CPP and has reviewed subsequent revisions. Nevertheless, based on the authority provided in CWA Section 303(e), and to resolve any lingering ambiguity as to the status of West Virginia's CPP, EPA approves the CPP submitted November 26, 2001.

The CPP document provided on November 26, 2001, references numerous West Virginia statutes, regulations, guidance, memoranda and other documents. We are pleased to learn that WVDEP intends to convert these source documents to electronic file format which will be made available on CD and/or on the internet.

It is important to understand the purpose of a CPP and the effect of EPA's determination that the revised and updated CPP provided on November 26, 2001, is consistent with the requirements of the CWA. The CPP is developed by each state pursuant to Section 303(e) of the CWA. Pursuant to Section 303(e) of the CWA, each state was required to submit a CPP to EPA. The purpose of the CPP is to describe the processes used by a state in making water quality decisions. It should serve as a roadmap or guide to assist EPA and the public in understanding how decisions impacting the quality of West Virginia's waters are made. Although a single CPP document is not required, the CPP should facilitate management of the programs which implement water quality controls. EPA's determination that the CPP is consistent with the requirements of the CWA, represents a determination by EPA that the CPP adequately identifies the processes for making water quality decisions in West Virginia which are listed in



Section 303(e) and its implementing regulations. EPA's determination that the CPP is consistent with the requirements of the CWA does not represent approval or disapproval of any specific substantive decision made by West Virginia pursuant to the processes described in the CPP.

Section 303(e) instructed the states to submit CPPs to EPA by February 15, 1973. *Id.* 1313(e)(2). EPA had 30 days from the date of submission to approve or disapprove the CPP. *Id.* The CWA further provides that EPA "shall review each State's CPP from time to time ... for the purpose of insuring that such planning process is at all times consistent" with the CWA. The documents articulating a state's CPP should be submitted once and then updated as necessary. 47 *Fed. Reg.* 46668, 46670 (Oct. 19, 1982).

The document submitted on November 26, 2001, is the latest revision of West Virginia's approved CPP. On March 27, 1973, EPA proposed interim regulations setting forth the necessary elements of a state's CPP. 38 *Fed. Reg.* 8034 (March 27, 1973). On June 3, 1974, EPA published final regulations implementing Section 303(e). 39 *Fed. Reg.* 19634 (June 3, 1974). In the Preamble, EPA stated that: "Following the publication of the interim regulations of March 27, 1973, and prior to the publication of these final regulations, every State received EPA approval of a State continuing planning process." *Id.* On July 16, 1975, EPA published a Notice of Intent to amend the regulations implementing Section 303(e) of the CWA. In connection with this notice, EPA stated: "Following the publication of the interim regulations of March 27, 1973 and publication of the final regulations of June 3, 1974, all States, with the exception of the State of Illinois, received EPA approval of a State continuing planning process." 40 *Fed. Reg.* 29882 (July 16, 1975). The Preamble introducing the final regulations published November 28, 1975 noted that "[a]ll States have a continuing planning process which has been approved previously by EPA; these amended regulations, however, will necessitate revision of the States continuing planning process." 40 *Fed. Reg.* 55334 (Nov. 28, 1975). In 1979, West Virginia undertook a revision of its CPP. The 1979 revision was the most recent version of West Virginia's CPP prior to the document provided on November 26, 2001.

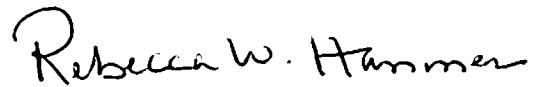
Since at least 1998, in cooperation with EPA and in response to certain conditions placed upon EPA's grant of funds to West Virginia pursuant to Section 106 of the CWA, WVDEP has been working on a revision and update to West Virginia's CPP. On June 15, 2001, WVDEP published in seventeen newspapers statewide a notice of the availability of a draft revised and updated CPP and requested the public's comments. In addition, WVDEP provided EPA with a draft revised and updated CPP. WVDEP received comments from EPA and from two environmental groups, and has incorporated changes and provided responses to those comments.

The enclosed narrative describes the way in which the revised and updated CPP provided November 26, 2001, is consistent with each element of Section 303(e) of the CWA and its implementing regulations, 40 C.F.R. 130.5.



Thank you again for providing this updated and revised CPP. You and your staff are to be commended for the quality of the work reflected in the document. If you have any questions, please feel free to contact Thomas Henry of the Water Protection Division at (215) 814-2682.

Sincerely,

A handwritten signature in black ink that reads "Rebecca W. Hammer". The signature is written in a cursive style with a large initial 'R'.

Rebecca W. Hanmer, Director
Water Protection Division

Enclosure



**DECISION RATIONALE
WEST VIRGINIA CONTINUING PLANNING PROCESS
FOR WATER QUALITY MANAGEMENT
February 2002**

Introduction

On November 26, 2001, the West Virginia Department of Environmental Protection (WVDEP) submitted to the Environmental Protection Agency (EPA) a document entitled "Continuing Planning Process for Water Quality Management" (CPP) developed pursuant to Section 303(e)(1) of the Clean Water Act. This document will set forth EPA's rationale for determining that the CPP document is consistent with Section 303(e) and its implementing regulations. Our review of the CPP determined that the following nine requirements were met:

1. The 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 the authority of section 303 of the Act.
2. The process for incorporating elements of any applicable area wide waste treatment plans under Section 208, and applicable basin plans under Section 209 of the Act.
3. The process for 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 40 C.F.R. 130.7(a).
4. The process for updating and maintaining Water Quality Management (WQM) plans, including schedules for revisions.
5. The process for assuring adequate authority for intergovernmental cooperation in the implementation of State Water Quality Management program.
6. The process for establishing and assuring adequate implementation of new or revised water quality standards, including schedules for compliance, under Section 303 of the Act.
7. The process for assuring adequate controls over the disposition of all residual waste from any water treatment processing.

8. The process for 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.
9. The process for determining the priority of permit issuance.

Discussion

1. **The 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 the authority of section 303 of the Act.**

The revised and updated CPP document submitted November 26, 2001 describes the processes for developing both technology-based and water quality-based effluent limits. WVDEP has included a discussion of the process for developing effluent limitations in National Pollutant Discharge System (NPDES) permits issued by WV 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. The CPP document discusses how the process for developing permits is consistent with Sections 301 (b)(1) and (2), 306 and 307 of the Clean Water Act and certain applicable state and EPA guidance. In addition, the CPP document also describes development of effluent limits and schedules of compliance corresponding to water quality based limits and the State's Nonpoint Source Management Program.

2. The process for incorporating elements of any applicable area wide waste treatment plans under Section 208, and applicable basin plans under Section 209 of the Act.

The revised and updated CPP submitted November 26, 2001 identifies the water quality management plans developed pursuant to Sections 208 and/or 209 plans in the State, and how the information contained in such plans and other watershed plans is utilized by state or local governments. Under Section 319 of the 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 under Element 4.

In addition, the CPP describes the WVDEP's efforts to implement a watershed management approach (called the Watershed Management Framework) to protect the waters of the State. The Watershed Management Framework is discussed throughout the CPP, as it provides an integrated approach to water quality protection from data collection through implementation. The 32 hydrologic regions of the State were divided into five groups in order to provide a five-year cycle for the assessment of streams in each group and to maintain the five-year cycle for NPDES permit issuance. In the early years of the cycle, resources are concentrated on data collection. Subsequently, regulatory and other authorities are identified to facilitate correction of water quality impairments or increase protection of existing water quality. In the fifth year of each cycle, resources are focused on implementation, including NPDES permits.

3. The process for 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 40 C.F.R. 130.7(a).

The revised and updated CPP document submitted November 26, 2001 reflects that the process for developing TMDLs in West Virginia is evolving. The document describes West

Virginia's Watershed Management Framework, which utilizes a watershed management approach for collecting water quality data from the State's 32 hydrologic regions on a five-year rotation. The Watershed Management Framework is intended to assure the availability of sufficient water quality data to enable the development of supportable TMDLs and water quality based effluent limits. The Watershed Management Framework also includes identification and implementation of regulatory and other mechanisms for achieving water quality standards. West Virginia's NPDES permit schedule has been reconciled with the Watershed Management Framework. The revised and updated CPP document also describes the sampling performed by the Ohio River Valley Water Sanitation Commission (ORSANCO) and how that data is used. As part of Element 1, the CPP document describes the process for determining when water quality-based effluent limits should be established.

With respect to TMDL development, the revised and updated CPP submitted November 26, 2001 describes the current status of TMDL development and the State's plans for the future. Currently, TMDLs for waters in West Virginia are established by EPA pursuant to the schedule provided in a Consent Decree entered in *Ohio Valley Environmental Coalition, Inc., et al. v. Browner, et al.* (Nos. 2:95-0529, 2:96-0091) (S.D.W.Va.), because West Virginia has lacked the necessary resources to establish TMDLs for its waters. As described in the CPP document, the State recognizes the importance of TMDL development and has commenced efforts to take the lead for establishing TMDLs for the State's waters.

The CPP document describes the TMDL stakeholder committee established in January 1999 to provide guidance to WVDEP on issues related to Section 303(d) listing, TMDL development and TMDL implementation. The stakeholder committee is comprised of

representatives of coal and other industries, municipal organizations, sportsmen associations, environmental advocacy groups, agriculture and forestry. The CPP document also describes the stakeholder committee's successful efforts to secure funding from the West Virginia Legislature to support the hiring of core staff at WVDEP to implement a TMDL program, and the formation of the Watershed Assessment/Strategic Planning Section (WASP) within the WVDEP's Office of Water Resources, which will support data collection efforts, Section 303(d) listing and TMDL development. The document references the TMDL strategy submitted to the West Virginia Legislature.

With respect to TMDL implementation, the CPP documents notes that implementation will be specific to individual TMDLs and will depend upon the pollutants, loadings and pollutant sources identified in each TMDLspecific TMDLs. Implementation will be accomplished through water quality related activities administered by WVDEP, including the NPDES and Nonpoint Source Program. The document notes that these programs have moved to a schedule consistent with the Watershed Management Framework.

The CPP document describes how the Watershed Management Framework 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 was reconciled with the Watershed Management Framework process.

4. The process for updating and maintaining Water Quality Management (WQM) plans, including schedules for revisions.

The revised and updated CPP submitted November 26, 2001 identifies water quality management plans developed for major river basins in West Virginia. In addition, the discussion

in Element 2 describes the water quality and quantity management planning conducted by the State from 1972 through the mid-1980's and the gradual change in emphasis, consistent with national policy, from a comprehensive water quality management to a watershed-specific focus. The CPP document describes WVDEP's implementation of the Watershed Management Framework, in which data collection and permitting are conducted on a watershed-by-watershed basis. Data collection and permitting are conducted on the State's 32 hydrologic regions on a five-year rotation. In year three of the rotation, resources and regulatory authorities are identified; in year four a watershed management strategy is developed to address impairments or to increase protection, and in year five the management strategy is implemented. The cycle would then commence again with the collection of additional data to measure the success of implementation and allow for updating of management strategies. The CPP document also describes incorporation of the State's nonpoint source management plan into the Watershed Management Framework process.

In addition, the document identifies Watershed Restoration Action Strategies developed as part of the Unified Watershed Assessment and the Watershed Management Framework for eight watersheds.

5. The process for assuring adequate authority for intergovernmental cooperation in the implementation of State Water Quality Management program.

The revised and updated CPP submitted November 26, 2001 describes the roles of WVDEP and other state government agencies in protecting the quality of West Virginia's waters and the means for assuring intergovernmental cooperation. In 1994, the West Virginia Legislature created the WVDEP for the purpose of consolidating environmental regulatory

programs in a single state agency. The CPP document describes the various offices and programs within WVDEP which have responsibility for some aspect of water quality. In addition, the document describes the responsibilities of other state agencies, and identifies the various procedures, memoranda of agreement, interagency agreements, technical procedural documents, standing and ad hoc intergovernmental committees, interstate commissions and other means for facilitating intergovernmental cooperation.

6. The process for establishing and assuring adequate implementation of new or revised water quality standards, including schedules for compliance, under Section 303 of the Act.

The revised and updated CPP submitted November 26, 2001 includes a discussion on the triennial review requirements and process, the latest status of the most recent triennial review, and the public process. West Virginia's Water Quality Standards are developed by the Environmental Quality Board 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 in the CPP document, 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.).

Water quality standards are implemented through the NPDES permit program, the Groundwater Protection Act, and the Nonpoint Source Management. Under Element 1, the CPP document describes the circumstances under which a water quality based effluent limitation will be developed and included in an NPDES permit. The CPP document also describes how the the

Groundwater Protection Act and Nonpoint Source Management program can be used to protect water quality.

7. The process for assuring adequate controls over the disposition of all residual waste from any water treatment processing.

The revised and updated CPP submitted November 26, 2001 cross-references the relevant statutes and regulations governing the process for developing, regulating and/or ensuring compliance with water quality standards regulations by treatment plants, including W.V.Code 22-11 and 2-15 and CSR 33-1 and 47-11. Under Element 5, the CPP document discusses the intra-governmental process for sewage sludge management.

8. The process for 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.

The current CPP describes the state's process for developing inventory of needs, the ranking process and the application process for grants and loans. In 1994, the Legislature passed the Infrastructure and Jobs Development Act to coordinate all state and federal funding of infrastructure projects. 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). In addition, the West Virginia Infrastructure and Jobs Development Council (IJDC) maintains a list of all pending, unfunded wastewater projects regardless of funding sources. The wastewater treatment facility needs on the 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.

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.

Under Element 6, the CPP document discusses the intra-governmental process for inventory and ranking for construction of water treatment projects.

9. The process for determining the priority of permit issuance.

The updated and revised CPP submitted November 26, 2001 describes WVDEP's implementation of the Watershed Management Framework, which is now the primary process for scheduling NPDES permit issuance and re-issuance. The 32 hydrologic regions of the State were divided into five groups corresponding to a five-year cycle for the assessment of streams in each group and for NPDES permit issuance. In early years of each cycle, data is collected; in year five, permit issuance for sources in a watershed group utilizes the data collected in the earlier years. In order to synchronize permit issuance with the five-year cycle devised under the

Watershed Management Framework, a number of permits were issued for terms shorter than five years, while other permits were administratively extended.