



WEST VIRGINIA RIVERS

February 5, 2019

The Honorable Charles Trump, Chair, Senate Judiciary Committee

RE: Comments concerning DEP Water Quality Standards Rule

Chairman Trump:

In response to your interest in keeping the record open regarding the DEP Water Quality Standards rule, we respectfully submit this outline of concerns on behalf of our members, as well as the members of the co-signing organizations.

First, we have concerns about the process in which your committee handled the water rule (introduced as SB 167). The bill came to you after the Senate Energy, Industry and Mining Committee took testimony from topical experts and industry groups and unanimously supported the inclusion of 60 WVDEP-recommended updates to the human health criteria in the water quality standards.

Once the bill came to your committee, you called together a stakeholder meeting in which I was instructed by your staff to limit public participation – a request we honored. However, that meeting on the evening of January 28 ended up including in the realm of 30 or more industry representatives. We appreciated your apology relating it was not your intent to set up the meeting dynamic in the way it turned out, and your stated commitment that we would be afforded the opportunity to bring forth scientific experts when the committee would take up the bill. It turned out we were not afforded that opportunity. As a result, you and your committee did not take sworn testimony from public health experts or WVDEP.

Further, the assertions made by industry representatives at the off-the-record stakeholder meeting were not provided in a public setting, under oath. Given that statements made by only a few industry representatives from the Kanawha Valley have resulted in the committee retracting standards based on the best available science to protect drinking water sources across the entire state, it is the Legislature's responsibility to document these claims on the record and under oath. We hope that this occurs as the rule is considered in the House of Delegates.

We had only a few hours' notice before the bill ran in your committee, and then were advised by your staff that concerns/testimony would only be accepted in writing, and after your committee had already voted on a committee substitute for the bill. Our concern about this process is that it limits public transparency and debate, and sidesteps the venue

for each of your committee members to have the opportunity to question scientific experts as well as representatives from impacted industries, under oath, before a committee vote.

Our position on the policy remains consistent: We support updating human health protections according to the best available science. The committee substitute that left your committee keeps our state water quality standards that limit the amount of toxins and cancer-causing chemicals in our drinking water sources largely based on science conducted prior to 1985.

WVDEP and EPA recommend that West Virginia update its standards to adequately protect human health based on better, more up-to-date science that is now available. Though the recommended updates from EPA were released in 2015, the Trump Administration has indicated it stands behind those recommendations. In July 2018, the Trump EPA wrote a letter to WVDEP that said:

“EPA is pleased that West Virginia is updating its current human health criteria to be consistent with EPA’s recommendations, as well as adding several criteria.”

That July 2018 letter from EPA went on to recommend that West Virginia consider the adoption of 33 additional updates.

EPA informed us that least three other states (Texas, Montana and Washington) have adopted these updates, and that the requests for EPA approval from neighboring states Pennsylvania and Virginia to update their standards are imminent.

Delaying action on these updates, which is the effect of the committee substitute, leaves West Virginia residents at risk. Decades of scientific study and analysis led the development of these recommended updates. We support their adoption now, and as new science emerges, support the DEP and Legislature in revisiting and further updating our water quality standards to keep our waters safe for public use.

Finally, it is important to recognize the hundreds of hours WVDEP spent analyzing the science and facilitating an extensive public comment process. We participated and provided input at every step of the way. Over 600 individual citizens submitted comments in support of the updates to the human health criteria. But it was not until the rule came to the Legislature that the WV Manufacturers Association indicated they wanted to begin their own commissioned study. The WVMA was aware, over three years ago, that this proposal was coming. It could have initiated its study much earlier within the parameters of the public comment process. Conceding to this stalling tactic impairs the government’s ability to protect public health.

Signed,

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