REGION 3
PHILADELPHIA, PA 19103

November 6, 2026

Mr. Jeremy Bandy, Director
Division of Water and Waste Management
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, West Virginia 25304

Dear Mr. Bandy:

The U.S. Environmental Protection Agency (EPA) has completed its review of West Virginia's revisions to its *Requirements Governing Water Quality Standards*, 47CSR2 submitted to the EPA via electronic mail on March 27, 2026. The West Virginia Department of Environmental Protection (WVDEP) submitted revisions to its water quality standards (WQS) regulations at W. Va. Code 47-2.8.27.1, in Appendix E, Table 1, revising the whole-body fish tissue selenium concentration for waters where WVDEP concluded that sturgeon are residents (hereinafter referred to as "sturgeon waters") and for waters where WVDEP concluded that sturgeon are not residents (hereinafter referred to as "non-sturgeon waters"). WVDEP revised the whole-body concentration for selenium in fish from 8.0 micrograms per gram dry weight (µg/g dw) to 8.5 µg/g dw in sturgeon waters and 9.5 µg/g dw in non-sturgeon waters. WVDEP also revised footnote g of Appendix E, Table 1 to define sturgeon waters as the "the entire Ohio River mainstem and the Kanawha River mainstem extended upstream to the Kanawha Falls at rivermile 95.8".

A final adoption notice was published in the *West Virginia State Register* [Vol. XLIII, No. 9] on March 6, 2026, and the WVDEP General Counsel certified on March 20, 2026 that the amendment was duly adopted in accordance with State law. Subsequently, in accordance with Clean Water Act (CWA) Section 303(c)(2), 33 U.S.C. §1313(c)(2), and federal regulation at 40 C.F.R. §131.20(c), the WVDEP submitted its revised WQS regulation to the EPA via electronic mail on March 27, 2026.

EPA hereby approves the submitted WQS revisions. *See* 33 U.S.C. § 1313(c); 40 C.F.R. Part 131. The revised fish whole-body concentration value for sturgeon waters is consistent with EPA's CWA Section 304(a) recommended criterion element for whole-body[1], while the recalculated concentration for non-sturgeon waters is derived from the CWA Section 304(a) recommended criterion element for whole-body using EPA's guidance for species recalculation procedures.[2] Regarding the scope of sturgeon

[1] *2021 Revision to: Aquatic Life Ambient Water Quality Criterion for Selenium – Freshwater 2016*
[2] *Revised Deletion Process for the Site-Specific Recalculation Procedure for Aquatic Life Criteria – 2013;* EPA-823-R-13-001

waters in revised footnote g of Appendix E, Table 1, WVDEP stated the "determination of the presence or absence of sturgeon in West Virginia waters is based upon surveys conducted by the WVDEP, West Virginia Department of Natural Resources (WVDNR) and fishing records from anglers." WVDEP also stated that "[i]f, at any time, a water designated as a non-sturgeon water is found to contain or support naturally occurring sturgeon the designation of that waterbody can be changed to sturgeon water and the appropriate selenium whole-body fish tissue criterion will apply."[3]

Regardless of whether or not EPA is required to conduct Endangered Species Act consultation on approvals of WQS, EPA nevertheless prepared a biological evaluation of the effects of EPA's approval of the revised selenium criterion element on federally listed species and critical habitat. EPA concluded that its approval is not likely to adversely affect listed species or their habitat. EPA initiated informal consultation with the U.S. Fish and Wildlife Service (FWS) on October 8, 2026, with the transmittal of its biological evaluation. The FWS West Virginia Field Office concurred with EPA's conclusion on November 6, 2026.

If you have any questions, please contact me or have your staff contact Jennifer Fulton, Chief of the Clean Water Branch at (304) 234-0248 or Fulton.Jennifer@epa.gov.

Sincerely,

GREGORY VOIGT

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For

Catharine McManus, Director
Water Division

[3] WVDEP Response to Comments on Proposed Rule, July 2025