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EXCLUSIVE FEATURED

# On chemicals in the water, who speaks for the health of the people?

By Erin Beck The Register-Herald  
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Rebecca McPhail, president of the WV Manufacturers Association, spoke during the West Virginia Press Association Legislative Lookahead at the Culture Center in Charleston. Rick Barbero/The Register-Herald

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State lawmakers will be voting this legislative session on a regulation that dictates how much of certain pollutants, including cancer-causing chemicals, are allowed in West Virginia waterways.

Previously, the West Virginia Department of Environmental Protection had proposed a regulation that would have updated standards for pollutants known to have human health effects, specifically targeting 56 pollutants. For two-thirds of the pollutants, the proposal would have required lower amounts of those pollutants in rivers and streams.

But in a late November meeting, following a request by the West Virginia Manufacturers Association, a group of state lawmakers rejected the WVDEP proposal, choosing to leave the standards at current levels instead.

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The Clean Water Act, a federal law, requires states to review water quality standards every three years.

In 2015, the federal Environmental Protection Agency recommended that West Virginia update water quality standards for 94 pollutants known to have human health effects. The standards specify concentrations of pollutants, such as pesticides, allowed in rivers and streams.

The EPA had changed the way it calculates the standards, taking into account that people were eating more fish and drinking more water. Those are two of the ways people are exposed to the list of pollutants, along with recreation. The EPA also took into consideration a higher national average for body weight, based on the assumption that larger bodies can handle more exposure to pollutants.

Last year, the DEP proposed a rule that addressed 56 pollutants. Of those, standards regulating two-thirds of the pollutants would have allowed for less pollution in the water, while standards regulating one-third of the pollutants would have allowed for more pollution.

During a Nov. 27 meeting, a joint committee comprised of members of the House of Delegates and state Senate rule-making review committees, considered whether to approve the proposal.

Outgoing Cabell County Delegate Kelli Sobonya, a Republican who was chair of the House rule-making review committee, called on Rebecca McPhail, president of the West Virginia Manufacturers Association, to speak.

"We do have some concerns among our membership," McPhail said, before telling lawmakers that they wanted the DEP to consider that West Virginians drink less water, eat less fish and are heavier than the national average. She also said she had concerns about accuracy when testing for low levels of pollutants.

Sobonya asked Scott Mandirola, a deputy secretary at the DEP, if he agreed to the request to make no changes.

"If this committee believes that that is necessary to gather more information, we will gladly gather more information and review this further," Mandirola said. "We're agreeable to that."

Sen. Mark Maynard, a chairman of the committee, prevented Mandirola from offering an environmental perspective.

Del. Larry Rowe, D-Kanawha, had asked Mandirola, who formerly served as director of the DEP Division of Water and Waste Management, whether he thought it would be a "good idea" to accept the Manufacturers Association's request.

"That's really a policy decision," Maynard said. "He's just here to give you his information that he has. That's speculation."

Del. Barbara Fleischauer, D-Monongalia, sighed before noting that West Virginians eat less fish because of a fish consumption advisory.

"I mean, we had the biggest water crisis in the whole country," she said. "We're not going to listen to the Trump EPA about making sure we test for chemicals in water?"

Rowe and Fleischauer voted against the Manufacturers Association's request during the meeting.

"It's pretty clear that this decision is being made at a policy level by folks here in the Legislature and the head of the agency," Rowe said. "Not included in the discussion are any of the scientists who have been involved in developing these standards."

Rowe was referring to Austin Caperton, a former coal industry consultant and coal company executive whom Gov. Jim Justice named to head the DEP in January 2017.

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The rule must still be approved by the full Legislature, which convened Wednesday.

Angie Rosser, executive director of the West Virginia Rivers Coalition, noted that if the full Legislature agrees to make no changes, state law will be based on science from the 1980s. She called it "reverse logic" to allow more pollution in the water because of ways West Virginians are already healthier – because they're more likely to be overweight, drink less water, and eat less fish.

"We should be protecting our water sources more so that we could be healthier, so that we could eat more nutritious food, drink water out of the tap, lose some weight," she said . "We want to make the rivers safe again. It's our inherent right to be able to go fishing and eat fish out of the rivers."

Rosser also noted the DEP had received hundreds of public comments before it reached its decision.

"What changed now?" she said. "What changed since they filed that final rule with the secretary of state where they had the 56 updates and now it's being characterized that they agreed to take them out and study them more?"

"And the only thing I see that's changed is an industry lobby group getting up there and saying, 'We're not comfortable with this.' "

Evan Hansen, an environmental scientist and new Democratic delegate representing Monongalia County, said the Manufacturers Association "cast doubt" on standards that had been through an exhaustive public comment process and internal process. Hansen is also a consultant who has done work for the West Virginia Rivers Coalition.

"This is a highly technical issue," he said. "Ask a legislator if they know about these laboratory detection levels and no one will know what you're talking about, so they threw it on the legislators, and of course the legislators had nothing to say about it because they didn't even know what Rebecca was saying."

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Michael McCawley, an environmental health professor at West Virginia University School of Public Health, as well as a professor at WVU's Cancer Institute, took a look at the list of pollutants and saw many carcinogens.

"Technically, there is no level of carcinogen that is without some risk for causing cancer," he said.

McCawley, who spent nearly 30 years at the National Institute for Occupational Health and Safety, explained why the EPA allows human exposure to those cancer-causing pollutants, anyway.

"Politics, in a sense," he said, adding that sometimes the level is set at the lowest level that technology is capable of testing for or at the lowest level that industry can withstand. He also said the EPA considers what level will cause the low risk of cancer EPA believes most people would accept.

McCawley noted that the DEP could have drawn up a proposal that only strengthened its water quality protections, and opted not to change the standards that would allow for more pollution. He said that while the EPA says heavier bodies can handle exposure to more pollutants, it doesn't consider that overweight bodies are more likely to already have other health problems – like inflammation, which can lead to cancer.

He also noted, however, that if companies have to cut jobs, people out of work would be more susceptible to health problems.

Maya Nye, a clean water advocate and a doctoral student at WVU's School of Public Health in the Department of Occupational and Environmental Health Sciences, predicted more harmful effects to smaller bodies, as well.

She said "...these changes will impact vulnerable populations the most, such as economically disadvantaged populations, because their bodies are exposed to more toxic substances than the general population, their health is typically already compromised, and they have less access to adequate health care and social systems that support healthy living."

"Children, especially poor children, are considered vulnerable populations because their bodies are still developing."

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During the 45-day public comment period, which began in May of 2018, citizen groups and individuals had asked the DEP to implement all 94 standards.

The West Virginia Coal Association urged them against it. So did the West Virginia Manufacturers Association.

At the time, the DEP defended its proposal.

In its response to the Manufacturers Association, the DEP wrote that it had "extensively evaluated" a national study and found the national averages were "technically valid and appropriate for use in the calculation of human health criteria in West Virginia." It did incorporate state-specific data on lower fish consumption in the state, based on a 2008 study.

In its response to another public comment, it also addressed testing accuracy: "Permittees will not be penalized if a standard is set lower than analytic instrumentation is capable of detecting nor will they be expected (or permitted) to submit results that are not within technological capabilities of that instrumentation."

In an interview, McPhail responded to environmental groups' concerns by bringing up straight pipe sewage in the rivers. She said that growing up in West Virginia, her parents told her not to drink the water from the tap or swim in the rivers for that reason.

"I'd love to work with the Rivers Coalition and see how we can address that issue that's impairing the majority of the streams in the state," she said.

McPhail also said the committee's decision in November wasn't based on an agreement between the Manufacturers Association and the DEP.

It was an agreement between lawmakers and the DEP.

Jake Glance, DEP spokesman, denied requests to interview policy experts at the DEP and required questions in writing.

He said, in an email, that the rule-making review committee "asked us to withdraw those changes to receive more public comments and to gather more information. We are going to schedule a hearing to do that for some point in January."

Policy experts at the EPA were also unavailable for comment, as the federal government has been shut down for more than three weeks.

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Outgoing Chairwoman Sobonya; outgoing Vice Chairwoman Cindy Frich, R-Monongalia; Del. Jim Butler, R-Mason; and Del. Geoff Foster, R-Putnam; voted for the Manufacturers Association's request during the meeting. So did Senate Co-chair Mark Maynard, R-Wayne; Senate Vice Chair Ryan Weld, R-Brooke; and Sen. Patricia Rucker, R-Jefferson.

McPhail said that lawmakers on the committee had notified the Manufacturers Association about the meeting. She said they "just presented what we had had already laid out, frankly, in the comments that we submitted back during the public comment period."

No lawmakers or staffers notified advocates for public health or clean water, although the meeting is listed on the secretary of state's website.

"It is duly upon interested constituents and residents of WV and the nation to stay abreast of the happenings of the Legislature," Sen. Maynard, who required questions and answers to be submitted in writing, said in an email. "The environmental groups will have a second chance when the rule goes through the actual bill process. If they feel updating and allowing certain contaminants to have higher thresholds will be better for the water quality, then they can lobby to get the updates instated.

"The only point I am making is that the public will have another opportunity to provide input once the bill goes through the actual bill process," Maynard said, in response to further questioning.

Sobonya did not respond to several requests for comment.

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McCawley, the WVU environmental health professor, said that West Virginians ultimately decide which is most important to protect — industry or health — when they vote for the lawmakers who make those decisions.

But stakeholders, including the DEP, have to share information, McCawley said, for people to see clearly what's happening.

He referenced "The Lorax," a Dr. Seuss character who said he spoke for the trees, "for the trees have no tongues."

"If the story is about the Lorax 'who speaks for the trees,' who speaks for the health of the people and who speaks for the environmental health of the people?" he said.

If no one does, "then you've muddied the waters, literally," he added.

As of Friday, "The Lorax" was available to read on the DEP website, at: <http://dep.wv.gov/WWE/Programs/nonptsources/Documents/TheLorax.pdf>.

Email: [ebeck@register-herald.com](mailto:ebeck@register-herald.com) and follow on Twitter @3littleredbones



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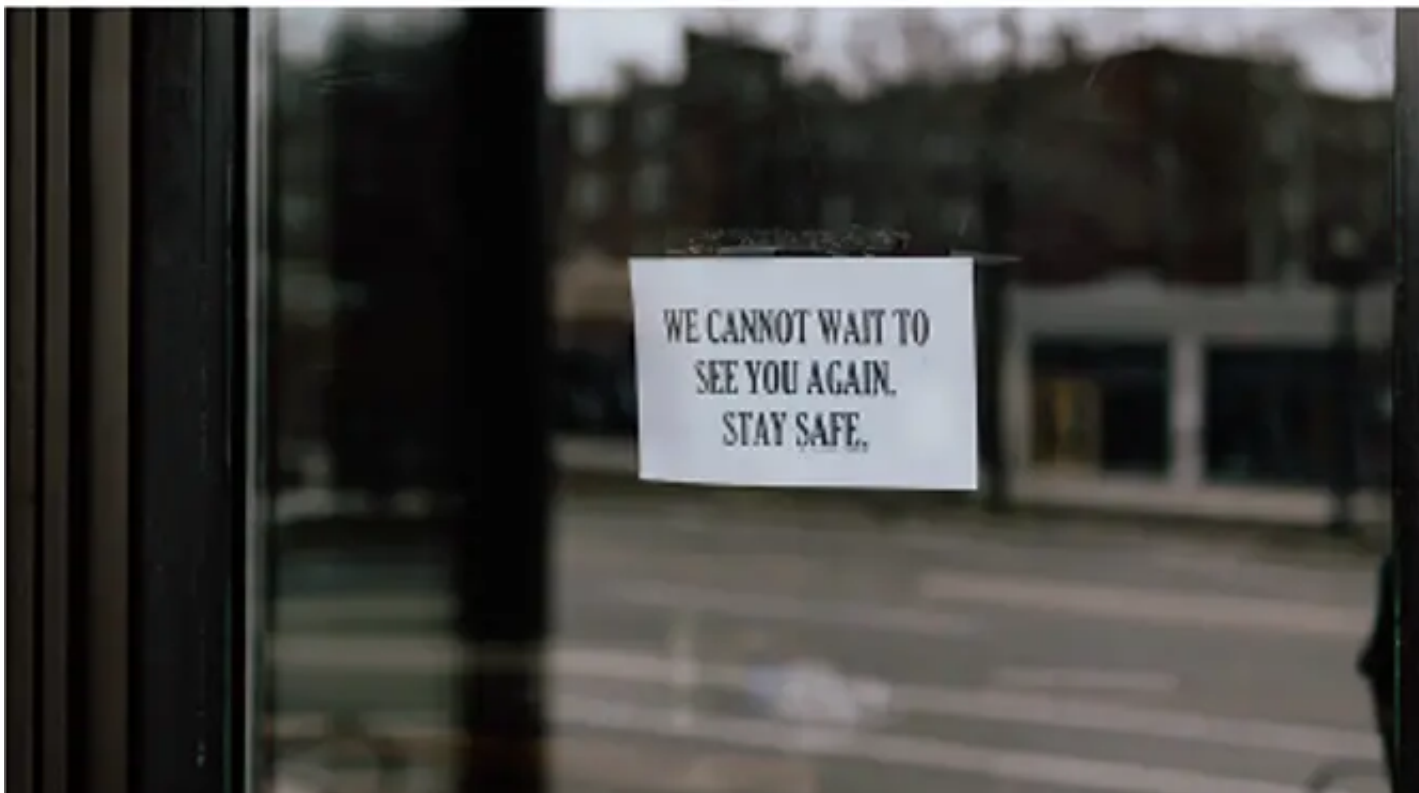
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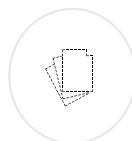


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