



MATTHEW G. BEVIN
GOVERNOR

CHARLES G. SNAVELY
SECRETARY

**ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION**

ANTHONY R. HATTON
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601

June 12, 2019

Dear Concerned Citizen:

Pursuant to the notification requirements in KRS Chapter 13A, the Kentucky Division of Water submits for your information proposed amendments to the following administrative regulations:

- 401 KAR 10:001 Definitions
- 401 KAR 10:026 Designation of uses of surface waters
- 401 KAR 10:029 General provisions
- 401 KAR 10:030 Antidegradation policy implementation methodology
- 401 KAR 10:031 Surface water standards

For Kentucky to maintain its delegation authority of the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131. These administrative regulations are being amended as part of the 2018 Triennial Review, to reflect the latest scientific developments, correct references to Kentucky statutes, and make grammatical changes that comply with current regulatory requirements.

The Kentucky Division of Water (DOW) filed these proposed amended regulations with the Legislative Research Commission (LRC) on June 12, 2019 and anticipates that the proposed amended regulations will be published in the Kentucky Administrative Register on July 1, 2019. When the proposed amended regulations are published in the Administrative Register they will be available on the LRC Regulation website at <https://apps.legislature.ky.gov/law/kar/TITLE401.HTM>. The proposed amended regulations will also be available on the Division of Water website at <https://eec.ky.gov/Environmental-Protection/Water/Regs/Pages/default.aspx>. Both websites can be accessed online through public libraries or any computer with Internet access.

401 KAR 10:001 Definitions for 401 KAR Chapter 10. The amendment:

- Adds six (6) definitions and clarifies twelve (12) definitions to align them with other KAR Chapters and for consistency
- Removes fourteen (14) terms that are no longer relevant nor used in Chapter 10. Those terms are primarily related to the KPDES program, and were not removed in 2008 when water quality standards were separated from the KPDES regulations and recodified from 401 KAR Chapter 5 to Chapter 10

401 KAR 10:026 Designation of uses of surface waters lists the types of designated uses for surface waters of the Commonwealth, provides and describes the process for redesignation of surface waters, and lists designated uses for specific surface waters of the Commonwealth that have been assigned. The amendments:



- Add references to CFR regarding affirmative findings for redesignation to align with federal requirements
- Add alternatives for examining economic and social impacts of unattainable uses
- Add re-examination of waterbodies that do not include specified uses every 5 years to determine if new information is available
- Adds designated uses for 57 basins, streams, or stream segments. The latter changes are being made pursuant to Section 3(2) of this regulation, and the automatic inclusion clause of 401 KAR 10:031 Section 8(1)(a)3, based on the presence of threatened or endangered species
- Revises Table B - Surface Water Intakes for Domestic Water Supply Use - by updating the table to reflect the current locations of domestic water intakes, removing the "Description" column, and adding columns for Wastewater and Public Water System Permit identification numbers, as well as location by latitude and longitude, to more accurately identify intake locations
- Revises Table C by adding waterbodies and receiving waters, boundary description, and latitude and longitude, and removing exceptions for redundancy, to more accurately identify locations
- Newly incorporates by reference the "Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development", EPA, February 1997, which is used to evaluate and consider economics during the process of establishing or revising water quality standards
- Newly incorporates by reference the CSO Control Policy of April 1994 which is used, in part, to develop and update CSO alternatives analyses

401 KAR 10:029 General provisions establishes general operating provisions for water quality regulations, provides for withdrawal of contaminated water, sample collection and methodology, and mixing zones. This regulation is used in conjunction with 401 KAR 10:030 to implement antidegradation requirements, and addresses water quality protection issues not covered in 10:026, 10:030, or 10:031 to form a complete protection program. The amendment:

- Clarifies that the purpose of 401 KAR Chapter 10 is to protect both existing and designated uses of surface waters of the commonwealth
- Formalizes the removal of mixing zones for bioaccumulative chemicals of concern which were phased out on September 8, 2014 and clarifies that dilution provisions are mixing zones

401 KAR 10:030 Antidegradation policy and implementation methodology implements the antidegradation policy of 401 KAR 10:029 by establishing procedures to control water pollution, providing categorization criteria, listing many surface waters assigned to specific categories, and providing for recategorization of water. The amendments:

- Revises Tables 1 and 2 to include waterbodies and receiving waters, latitude and longitude instead of river miles, and boundary descriptions for more accurate location of streams and stream segments
- Includes 29 additional streams or stream segments comprising approximately 114.35 miles of surface waters newly categorized as Exceptional Waters as a result of routine watershed monitoring and investigations of potential waters affected by permitted activities since the revisions to this administrative regulation in 2015
- Clarifies that surface waters that do not fully support any designated use shall be categorized as impaired, except for Outstanding or Exceptional waters, or those that are impaired only for mercury or methylmercury as it applies to fish consumption

401 KAR 10:031 Surface water standards establishes water quality standards for surface waters of the Commonwealth and the associated water quality criteria necessary to protect designated uses. The

amendments:

- Update the cadmium aquatic life criteria, establishes aquatic life criteria for carbaryl, establishes aquatic life criteria for selenium in fish tissue for specified fish, and allows application of the Copper Biotic Ligand Model for site-specific copper aquatic life criteria
- Remove the surface water temperature guideline table
- Remove the aquatic life selenium egg/ovary tissue criteria, removes the fecal coliform criteria for the primary contact recreational use, and removes the nitrite-nitrogen human health criterion for the main stem of the Ohio River
- Correct Table 1 Chemical Abstracts Service number and formatting errors in hardness-based Warm Water Aquatic Habitat criteria equations, corrects an error for chronic toxicity referring to the LC2s instead of the LC25, clarifies the protections for OSRWs and clarifies that the human health methylmercury fish or shellfish tissue criteria is based on wet weight
- Add a statement allowing the suspension of PCR and SCR criteria during CSO events for a specified time and duration
- Add compliance schedule availability that aligns with federal NPDES requirements
- Align exceptions to criteria requirements with federal public participation requirements
- Update the Water Quality Standards Handbook-Chapter 3 (EPA) to its 2017 version

A public hearing on these administrative regulations shall be held on July 23, 2019 at 6:00 p.m. Eastern Daylight Time at the Energy and Environment Cabinet, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments will receive the same consideration as verbal comments received at the hearing, and shall be accepted through July 31, 2019.

Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation, to: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, or email to: water @ky.gov (Subject line: "2018 Triennial Review").

Sincerely,



Peter T. Goodman, Director
Division of Water

PTG/cjc