

MINUTES OF THE STATE WATER RESOURCES BOARD

The Water Resources Board met on March 10, 1983 at 9:00 a. m. with all members present (Ailes, Plass, Hamner, Scott and Samuel).

By proper motion and vote the following actions were taken:

Board adopted unanimously the Regulations Implementing the Authorization by Rule Provision of the Regulations for the West Virginia Underground Injection Control Program. (Mr. Plass moved, Mr. Scott seconded)

Motion was entered for continuance by the parties in the Rayle Coal Company Case - Order entered - (motion made by Mr. Plass, seconded by Dr. Hamner) Mrs. Watson to advise in a few weeks if it will be heard or a Consent Order will be entered.

The Board then went into Executive session with discussion on the Emergency Adoption and the board's participation in the Hazardous Waste Regulations - a motion was duly made by Dr. Hamner and seconded that their participation be withdrawn. Motion carried.

Next meeting of the Board scheduled for March 29, 1983.



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25306

JOHN D. ROCKEFELLER IV
Governor

March 10, 1983

DAVID C. CALLAGHAN
Director
WILLIS H. HERTIG, JR.
Deputy Director
BRENT T. WAHLQUIST
Deputy Director

DIRECTOR'S POSITION ON
RULEMAKING AUTHORITY UNDER
CHAPTER 20, ARTICLE 5E

MEMORANDUM TO: Members of the State Water Resources Board

FROM: David C. Callaghan, Director
Department of Natural Resources

The Department of Natural Resources is designated as the lead agency for hazardous waste management, WV Code §20-5E-4, and the director is the chief executive officer of the department. Under WV Code §20-5E-5(b), the director is charged with the responsibility of ensuring that the administration and enforcement of the Act are integrated with the appropriate provisions of other state laws and that duplication is avoided.

In the area of rulemaking, the director is specifically granted "overall responsibility" for promulgating rules and regulations and is required to consult with various agencies in promulgating rules covering at least eleven (11) subject areas. WV Code §20-5E-6. Some of these specific subject areas include:

- 1) Standards for generators concerning record keeping, labeling of containers, use of a manifest and submission of report;
- 2) Establishing performance standards for treatment, storage and disposal facilities as necessary to protect the public health and safety and the environment; these performance standards can distinguish between new and existing facilities, including issues such as retrofitting.
- 3) Performance standards must include criteria for location, design, construction, operating methods, techniques and practices applicable to such facilities;
- 4) Rules specifying terms and conditions under which the chief shall issue, modify, suspend, revoke or deny permits under the Act;

- 5) Closure of the facility, post closure monitoring and maintenance.

In addition, the director is given "loop-hole" closing authority to promulgate rules as are necessary to effectuate the purposes of the Act. WV Code §20-5E-6 (a) (12). Consequently, the director's rulemaking authority covers all aspects of the design, construction and performance of a treatment, storage and disposal facility and, therefore, most of the areas covered by the proposed rulemaking on land disposal which you have been discussing.

In my view, the State Water Resources Board's rulemaking authority is a basic prerequisite to the regulations that the director must promulgate. Our regulations must be governed by the basic policy decisions made by the Board in such areas as standards of quality for waters to be maintained, the quantity and quality of discharges to be allowed, and a policy with regard to waters already degraded. These policies will guide the department in designing regulations necessary to meet the Board's standards and requirements for discharges.

Under Section 7 (i) of the Act, the Board is required to promulgate rules and regulations governing discharge of hazardous wastes into the waters of the state and rules governing permit issuance, modification, etc., of such discharges.

Consequently, I believe that the Board is empowered to and should properly promulgate rules and regulations governing permit issuance, modification, suspension, revocation or denial relating to discharges to waters from treatment, storage and disposal facilities. Therefore, the department looks to the Board to set policy in such areas as:

1. When permits may or may not allow discharge.
2. When permits should be modified to require remedial action.
3. Discharges to waters already degraded.
4. Other policy determinations that the Board may make to assure that discharges are compatible with state water management objectives.

This outlined demarcation of rulemaking authority, in my opinion, conforms with the Article, allocates authority efficiently, and avoids duplication of rulemaking. I ask for your concurrence with this proposal.

DCC/fd



STATE OF WEST VIRGINIA
STATE WATER RESOURCES BOARD

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JOHN C. AILES
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Romney, West Virginia

Dr. David E. Samuel
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Morgantown, WV

February 24, 1983

WILLIAM PLASS
21 Grandview Drive
Princeton, WV

Robert B. Scott
601 Davis Avenue
Elkins, WV

FRANCES E. HUNTER
Board Secretary

WATER RESOURCES BOARD TO MEET

The State Water Resources Board has scheduled a meeting for March 10, 1983, to be held in conference room located at 1205 Greenbrier Street, Charleston, West Virginia, at:

9:00 a. m. - Adoption of Regulations Implementing the Authorization by Rule Provision of the Regulations for the West Virginia Underground Injection Control Program

Possible Adoption of the Underground Injection Control Program Regulations

Hear Appeal No. 172 - Rayle Coal Company v Chief, Division of Water Resources

Continuation of Development of Hazardous Waste Regulations Under 20-5E

Other Board Business Deemed Necessary at This Time

The meeting is open to the public pursuant to Chapter 6, Article 9A, of the Code of West Virginia, 1931, as amended. Seating capacity of the conference room is 50.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 2/24/83
Administrative Law Division