

MINUTES  
WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD  
October 21, 1994

I. General

The West Virginia Environmental Quality Board (the "Board") met on October 20, and 21, 1994, at 9:00 am. the meeting was held in the conference room located at 1615 Washington Street, East, in Charleston, West Virginia. Chairman Charles R. Jenkins called the meeting to order. Board members present at the meeting included:

Dr. Charles R. Jenkins, Chairman  
Dr. Donald Tarter  
Dr. Edward M. Snyder  
Sarah Lee Neal

II. Evidentiary Hearing

An evidentiary hearing was held on October 20, 1994, in appeal nos. 591A & 595A, Monty Fowler and Affiliated Construction Trades Foundation V. Mark A. Scott, Chief, Office of Water Resources, Division of Environmental Protection.

III. Board Meeting

A. Organizational Meeting

The Board held an organizational meeting on October 21, 1994.

1. Resignation of Legal Counsel

Legal counsel Britt Bernheim gave the Board her resignation notice effective December 9, 1994. The Board gave their regrets in accepting the resignation, but wished Britt well in her new endeavors. Legal Counsel and Board decided to begin a search for Britt's replacement henceforth.

2. Apple Grove, Appeal Nos. 591A & 595A

The Board discussed the scheduling of submissions of Findings of Fact and Conclusions of Law.

3. Go-Mart, Appeal No. 589

The Board considered the proposed Order resolving a Motion to Dismiss appeal no. 589. The Board voted unanimously to dismiss the appeal with amendments to the proposed Order.

4. Busch, Appeal No. 568

The Board considered the proposed final order in appeal no. 568. The Board voted to affirm the Office of Waste Management, and to issue the proposed final order with any drafting modifications that counsel feels are necessary.

B. Rulemaking of Air and Environmental Quality Boards 46 CSR 4

Ms. Bernheim presented to the Board for its consideration and adoption a Proposed Set of Agency Responses to written public Comments and the amended Procedural Rule, 46 CSR 4, for final filing with the Secretary of State. The Board considered these materials in the following manner:

a. Written Responses to Public Comments Submitted by the Law Firm of Robinson & McElwee

1. Section Numbering.
2. Form for filing the Notice of Appeal to be an addition to the rules.
3. Time for filing the Notice of Appeal.
4. Grounds for Notice of Appeal filed by third party Appellants.
5. Appeal of Air Quality by third parties to the Air Quality Board not enlarged on.
6. Public Notice of recordation of Informal Proceedings.
7. Presentation during evidentiary hearing.
8. Finding of Fact and Conclusion of Law, added section 6.10.
9. Ruling of the Boards immediately following evidentiary hearings.
10. Authority to rule on motions.
11. Conducting hearings of appeals in claims of confidentiality by the Air Quality Board, amended for both boards in any hearing.
12. Ex parte contacts were amended.

b. Responses to Comments Prepared by the West Virginia Coal Association

1. Time for filing third party appeals.
2. Service on permit holders.
3. Duplicate provisions, proposed rule has been deleted.
4. Authority to rule on dispositive motions.
5. Time for responding to motions. Section 5.3 has been amended to incorporate the suggestion.
6. Presentation of evidence and argument, can not read

- that the Boards conduct a formal hearing.
7. Service of Notice of Hearing.
  8. Presentation pertaining to Burden of Proof, and the rules will be amended to incorporate the existing language of 46 CSR 4.18(a).
  9. Hearing examiners should be entitled to question witnesses except in the absence of the Board, will not be amended.
  10. Findings of Fact and Conclusions of Law.

Technical Advisor Libby Chatfield offered the following comments to the Board: Language in Section 6.8, Section 6.2 "Commission" was found and needs changed, also Section 6.5 "Demonstration" needs changed. There was no objection by the Board to the changes presented. The Board also gave Ms. Bernheim authority to clear up any drafting errors in the proposed rules. Ms. Neal moved to adopt 46 CSR 4 as amended and the agency responses, motion was seconded by Mr. Tarter. The amended Procedural Rule 46 CSR 4 and agency responses to comments were adopted for filing with the Secretary of State by a unanimous vote of those present.

#### C. Administrative Business

Ms. Bernheim informed the Board on progress in the Administrative Office, in which staff has been cleaning out the files, updating the docket book and reorganizing the order books.

#### D. International Mill Service, Appeal No. 523

Ms. Chatfield presented a draft Final Order resolving appeal no. 523. The Board discussed the point sources in deciding to uphold the Chief in this appeal. Chairman Jenkins wished to review the draft of the final order and instructed that Mr. Samuel be faxed copy of the draft final order that was presented to the Board in this case. The Board decided to review the drafted final order and call Ms. Chatfield with comments and changes.

#### E. Legislative Rule Making Review Committee

Ms. Chatfield presented the Board with a draft letter on proposed rules to the Legislative Rule Making Review Committee. The letter to Senator Joe Manchin and Delegate Brian Gallagher proposed the following:

1. Deleting section 46-1-1.5.

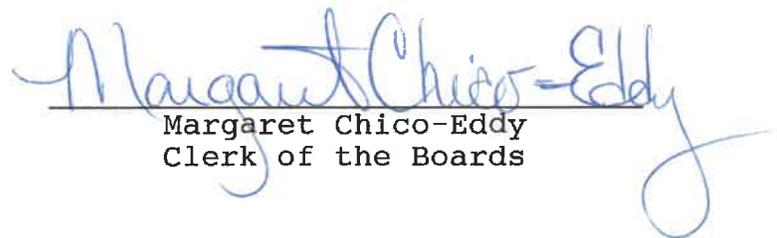
2. Moving the second sentence in section 46-1-2.6 to proposed 4.1.b.B, which includes a list of high quality waters.
3. The Board proposed striking the comma and the word "and" after the word "herein" at the end of 4.1.b.A and replacing them with a period. The Board proposed adding a sentence as subsection (c) of 4.1.b.B.
4. To clarify the requirements of the sizing of the zone of initial dilution in a mixing zone, the Board proposed inserting a sentence after the third sentence in subsection 46-1-5.2.b.
5. The Board proposed adding a sentence to the end of section 46-1-6.4.
6. On page 16 of the proposed rules the Board felt that item number after "D(a)" should be "E", not "5".
7. Due to changes proposed in 46-1-8.2.a., the language of 46-1-8.2.b is redundant, and the Board proposed deleting 8.2.b and reorder 8.2.
8. The Board proposed updating section 46-1-9, by adding categories B3 and B4.
9. Appendix A made reference to section 2.14, which the Board proposed should be changed to 2.16, due to renumbering of section 2.
10. Appendix E, 46-1-8.1., the Board proposed a site specific numeric criterion for aluminum for Opequon Creek which differs from the numeric standards for aluminum in appendix E. The Board proposed additional language in the first column after "Not to exceed:".

#### F. Remining Variances

The Board discussed obtaining authority from the Legislature to grant variances. The EPA wants the Board to have the authority pertaining to variances, and would help lobby the Legislature.

I hereby certify that the foregoing is a true and correct record of the proceedings of the meeting held on October 21, 1994, by the West Virginia Environmental Quality Board.

Submitted this 17th day of November, 1994.

  
Margaret Chico-Eddy  
Clerk of the Boards