



ENVIRONMENTAL QUALITY BOARD

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Governor

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MINUTES

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD September 20, 1996

I. General

The West Virginia Environmental Quality Board (the "Board") met on September 20, 1996, beginning at 8:30 a.m. 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 Jenkins, Chairman
Dr. Donald Tarter
Dr. Edward Snyder, Vice Chairman
Sarah Lee Neal

Members not present:

Dr. David Samuel

II. Board Meeting

A. Administrative Issues

1. Minutes

The Board approved the minutes from the August 7 & 8, 1996 meeting. Sarah Lee Neal moved to accept the minutes as presented and Edward Snyder seconded the motion.

2. Budget

A new budget layout was presented to the Board by Ann Holstein.

B. Rulemaking 46 CSR 1

1. Body Burden Committee

Libby Chatfield discussed progress to date on establishing an inter-agency committee to

review the body burden criteria in the Water Quality Standards. Ms. Chatfield provided a list of participants, a list of existing literature and a brief outline of the issues to be resolved. The Board discussed a request from David Flannery on behalf of the WV Chamber of Commerce, that the Chamber is included on the committee. Concerns were discussed regarding how granting this request would upset the existing balance on the committee between the WV Manufacturer's Association and the Ohio Valley Environmental Coalition. The Board agreed that if another environmental group is willing to participate, they would grant Mr. Flannery's request.

2. Aluminum Criteria

The Board heard presentations from Mike Arcuri and Randy Sovic of the Office of Water Resources of the Division of Environmental Protection regarding the numeric criteria for aluminum in the Water Quality Standards. Mike indicated that because of high background levels of aluminum, for the most part thought to be from natural sources, many streams are showing violations of the aluminum criteria and are included on the 305(b) report which states are required to report to US Environmental Protection Agency (USEPA). Randy outlined several situations where permittees or permit applicants were having trouble meeting the aluminum criteria.

Dan Ramsey, from US Fish and Wildlife Service in Elkins, expressed concerns about changing the values because of the potential impacts on aquatic life. He questioned whether the background aluminum is all natural, and indicated that some non-point sources might be contributing. One commenter indicated that changing the rule to allow aluminum to be reported as the dissolved fraction, rather than as total aluminum, might provide some relief. Questions arose regarding how aluminum is regulated in other states, particularly Kentucky and Maryland, whose geology is similar to that of West Virginia.

The Board indicated that they would continue to review the issue and would apprise the US EPA Region 3 of the comments received. If necessary, amendments could be considered in the upcoming triennial review.

3. Ammonia Criteria

Tim Albright, of E.I. du Pont de Nemours and Co., made a presentation to the Board regarding the numeric criteria for ammonia in the Water Quality Standards. He indicated that the new ammonia values, when implemented with the new mixing zone provisions, would be very difficult to meet. The Board responded that the Office of Water Resources (OWR) is currently working on mixing zones implementation guidance and suggested that might be a place to work on the issue. Staff from OWR indicated that Mr. Albright's concerns may be resolved by using the updated values published by the EPA since the ammonia criteria were adopted in the standards.

The Board again indicated that they would continue to study the issue and, if warranted, consider amendments in the upcoming triennial review.

C. **Appeals**

1. Weirton Steel, Appeal No. 587

During a status report before the Board, counsel for the State and Weirton Steel stated that settlement negotiations should be complete by October 18, 1996 at 5:00 p.m. If no settlement is reached by that date, the Board will set an evidentiary hearing for November 25 - 26, 1996.

2. Monty Fowler, et al., Ohio Valley Environmental Coalition & Affiliated Construction Trades Foundation, Appeal Nos. 591B, 594 & 595B

Affiliated Construction Trades Foundation (ACT) filed a Motion to Reconsider the EQB's order of August 13, 1996. Don Tarter made a motion to deny ACT's motion and Edward Snyder seconded the motion. The motion carried by a unanimous vote.

The Division of Environmental Protection (DEP) filed a Motion to Strike ACT's Motion to Reconsider. Sarah Lee Neal made a motion to deny DEP's motion on the basis it was moot because the Board had now denied on another basis ACT's Motion to Reconsider Don Tarter seconded the motion. The motion carried by a unanimous vote.

The Division of Environmental Protection (DEP) filed a Motion for Clarification. The Board ruled on various issues contained in the motion, except for clarifying the Board's summary judgement order. Other issues contained in the DEP's motion were denied.

Affiliated Construction Trades Foundation (ACT) filed a Motion for Summary Judgement. Edward Snyder made a motion to deny ACT's motion and Sarah Lee Neal seconded the motion. The motion carried by a unanimous vote.

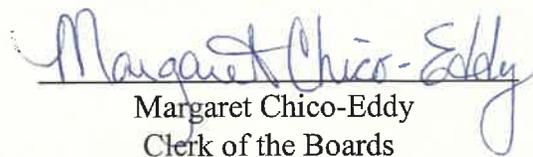
Becky Charles brought to the Board's attention a Motion to Leave to File Amicus Curiae brief by the West Virginia Manufacturers Association (WVMA).

The Division of Environmental Protection (DEP) filed a Motion to Reconsider Discovery. The Board reconsidered one issue, but denied the rest of the motion. Edward Snyder made a motion to deny DEP's motion and Sarah Lee Neal seconded the motion.

Affiliated Construction Trades Foundation (ACT) filed a Motion for Discovery. The Board set out a schedule for the DEP to respond to the motion, the Board would rule on this issue on September 27, 1996 and any responses would be due on September 30, 1996, by 5:00 p.m.

I hereby certify that the foregoing is a true and correct record of the proceedings of the meeting held on September 20, 1996 by the West Virginia Environmental Quality Board.

Submitted this 31 day of October 1996.


Margaret Chico-Eddy
Clerk of the Boards