



## ENVIRONMENTAL QUALITY BOARD

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1615 Washington Street, East, Suite 301  
Charleston, West Virginia 25311-2126

Telephone: (304) 558-4002  
Fax: (304) 558-4116

Telephone: 1-800-480-4598  
E-Mail: clerk@mail.wvnet.edu

### MINUTES WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD July 13, 1998

#### I. General

The West Virginia Environmental Quality Board (the "Board") met on July 13, 1998, at 9:00 a.m. The meeting was held at 1615 Washington Street, E., Charleston, West Virginia. Donald Tarter, Vice-Chair of the Environmental Quality Board, called the meeting to order. Board members present included:

Donald Tarter, Vice-Chair,  
Charles R. Jenkins  
David Samuel

Staff Members Present:

Becky Charles, Legal Counsel  
Libby Chatfield, Technical Advisor  
Margaret Chico-Eddy, Clerk of the Boards  
Ann Holstein, Administrative Secretary

#### II. Administrative Matters

##### A. Minutes

David Samuel made a motion to accept the minutes of June 4 & 5, 1998. This motion was seconded by Don Tarter. The motion carried by a unanimous vote.

David Samuel made a motion to accept the minutes of the June 17, 1998 conference call. This motion was seconded by Don Tarter. The motion carried by a unanimous vote.

##### B. Election of Officers

Bob Jenkins nominated Ed Snyder as Chair of the Environmental Quality Board. The nomination was seconded by David Samuel. The nomination carried by a unanimous vote.

Bob Jenkins nominated Donald Tarter as Vice-Chair of the Environmental Quality Board. The nomination was seconded by David Samuel. The nomination carried by a unanimous vote.

**C. Legislative Audit**

Becky Charles discussed with the Board the issues brought up during the last Air Quality Board (AQB) meeting pertaining to legislative audits. The Board requested this issued be placed on the agenda for the joint meeting in August.

**D. Board Appointments**

Becky Charles informed the Board that Betsy Dulin's term expired on June 30, 1998. Becky Charles sent a memo to Betsy explaining the laws concerning terms of office. Becky found that members may legally continue to serve and vote, until they are reappointed or replaced.

**E. Ethical Considerations**

Becky Charles informed the Board that they need to be cautious about recommending attorneys and consultants to individuals that may contact them.

**F. Tom D. Jarrell, Appeal No. 98-03-EQB**

Becky Charles briefed the Board on the Jarrell case and an evidentiary hearing.

David Samuel made a motion to Dismiss the appeal. The motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

**G. Non-Lawyer Representation Rule**

Becky Charles has written language regarding non-lawyer representation of parties she shared the comments of some AQB members with the Board. The new language will be entered into the proposed procedural rule for both Boards. Becky Charles is to put together a clean copy for the Board and the issue will be discussed at the joint meeting.

**H. Budget Report**

Ann Holstein presented the Board with a current budget report. The Board requested adding a section on budget/funding strategy to the joint meeting agenda.

**I. Personnel Matters**

Ann Holstein gave an update on her maternity leave schedule. She plans on leaving during the first or second week of September and will return in the middle of October. Libby Chatfield will have signature authority while Ann is off.

Margaret Chico-Eddy asked the Board for a medical leave of absence for a four-week period of time. David Samuel made a motion to allow Margaret Chico-Eddy a medical leave of absence for four weeks beginning July 16, 1998. The motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

**J. Merit Increase Document Review**

The Board reviewed the document and plans to review it again in two years.

**K. Robert Sowa, Appeal No. 98-02-EQB**

Bob Jenkins made a motion to dismiss the appeal without prejudice as requested by the parties. The motion was seconded by David Samuel. The motion carried by a unanimous vote.

**L. Review of Administrative Law Course**

Becky Charles discussed her recent course at the National Judicial College in Reno, Nevada. The Board wanted her to talk more about this at the joint meeting.

**M. Water Quality Standards**

Members of the WV Rivers Coalition and West Virginian's for Clean Water met with the Board to discuss the Water Quality Standards Rule. Discussions with the Board included: antidegradation implementation, non-point source, dissolved metals, inter-agency review, trades issues, citizen appeals and Category A.

Wendy Radcliff addressed the Board by introducing a new coalition of environmental groups named WV Citizens for Clean Water.

Margaret Janes discussed concerns about the antidegradation implementation document, including the limitations on its application to non point source activities, allowing trading between non point sources and point sources, and the allowance of up to 5% degradation over background concentrations as "deminimis" contributions.

Jim Kotcon addressed the proposal to allow the use of dissolved metals concentrations. He expressed concern that the Board had failed to include language approved by the metals committee regarding sediment monitoring. Libby Chatfield acknowledged Mr. Kotcon's concern and stated that it was an oversight which would be corrected in the final version of the rule. Dr. Samuel stated that the Board fully supported the work of the metals committee.

Cindy Rank addressed the Public A use category issue, expressing a need for the Board to consider the situations in the rule where people rely on water from rivers and streams which are treated only with filtration. Ms. Rank also raised the question about how the public would be notified about antidegradation implementation decisions. Libby Chatfield responded that the decisions about antidegradation implementation will be made by DEP staff preparing permits and that notice of them will be published with the draft permit. Another avenue of review available to the public is through the appeal process.

**N. Update on Remining**

**1. MEPCO Remining Variance Application**

David Samuel made a motion to approve the proposed remining limits for iron, manganese and pH and the proposed language on upstream contributions and will approve going to notice on the variance limits. The motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

**2. Ali Co.**

Libby Chatfield informed the board that the company cannot show improvements in stream and that they have asked for "monitor only" limits. Libby met with DEP and EPA on this issue. The EPA has approved the NPDES permit and indicated that they would support a variance using existing background concentrations as the alternate criteria for pH and manganese.

**3. D & L Coal**

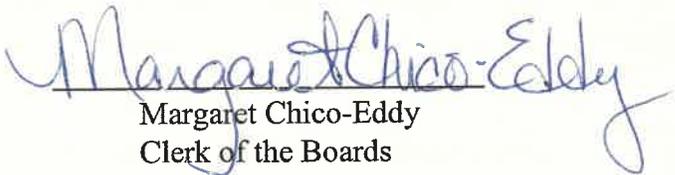
Bob Jenkins made a motion to go out to public notice on this variance. The motion was seconded by David Samuel. The motion carried by a unanimous vote.

**O. Executive Session**

Don Tarter made a motion for the Board to go into an executive session. The motion was seconded by David Samuel. The Board went into an executive session to discuss personnel matters.

I hereby certify that the foregoing is a true and correct record of the proceedings of the meeting held on March 4, 1998 by the West Virginia Environmental Quality Board.

Submitted this 19th day of August 1998.

  
Margaret Chico-Eddy  
Clerk of the Boards