



BUREAU OF THE ENVIRONMENT  
**ENVIRONMENTAL QUALITY BOARD**

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**MINUTES**  
**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD**  
**MAY 17 & 18, 1999**

**I. General**

The West Virginia Environmental Quality Board ("the Board") met on May 17 and 18, 1999, at 9:00 a.m. The meeting was held at 1615 Washington Street, E., Charleston, West Virginia. The portion of this meeting concerning Water Quality Standards was audio-taped. Edward M. Snyder, Chair of the Environmental Quality Board called the meeting to order.

Board members present were:

Edward Snyder, Chair  
Charles Jenkins  
David Samuel

Staff members present were:

Libby Chatfield, Technical Advisor  
Ann Holstein, Administrative Secretary

**II. Administrative Matters**

**A. Minutes**

On May 17, 1999, the Board approved as submitted, the minutes of the April 30, 1999 Board meeting.

## **B. Budget Report**

Ann Holstein presented a budget report. Ms. Holstein and Edward Snyder continued discussions with the Board about budget concerns and the shortfall that is expected to occur in the next couple of years. The Board requested to meet with Director Michael Miano at the joint EQB/AQB meeting in June to facilitate a joint effort in obtaining additional funding in the future.

## **C. Legislative Audit Update**

Libby Chatfield updated the Board on the status of the preliminary performance evaluation being conducted by the Legislative Auditor's Office. Ms. Chatfield informed the Board that Mr. Paul Barnette, the research analyst working with the Board, had not filed his report in April as expected. The new deadline is now June, 1999. If this deadline was met, the Board can expect a draft report in the next couple weeks. Board members requested a copy of the draft report when received by staff.

## **D. Personnel Matters**

Ann Holstein and Libby Chatfield updated the Board on the hiring of a new Clerk of the Boards. The job description has been sent to the Division of Environmental Protection's staffing section who is going to aide the Board in filing the necessary forms with the Department of Personnel and the posting of the position.

## **III. Legislative Rules - 46 CSR 1 (Water Quality Standards)**

This portion of the meeting was recorded on audiotape.

### **A. Kempco Remining Variance**

Representatives of Kempco Coal Company appeared before the Board to present a preliminary proposal regarding a remining project in Logan County. The company intends to request a variance from water quality standards for the activity, pursuant to WVCode section 22B-3-4(c). The company provided preliminary information regarding instream monitoring, benthic sampling and provided the Board with an overview of the proposed project. The company intends to submit mining application to the DEP in July of this year. The Board agreed to hear an update from the company at the July meeting.

### **B. Public A Use category**

Libby Chatfield provided an update on information regarding Maryland's implementation of their drinking water use category waters, and distributed a map from the Maryland Department of the Environment which shows the location of waters designated as public drinking water supply.

Bill Toomey, from the WV Bureau for Public Health (BPH) discussed the WV Source Water Protection and Assessment Plan (SWAPP) which that office has prepared pursuant to the federal Safe Drinking Water Act requirements.

After discussion of the SWAPP and other options for designating Public A use category waters, the Board directed Libby Chatfield to draft a public notice document soliciting comments on at least three options for delineating A category waters. Those options include establishing the use category delineations based on the delineations to be completed by the BPH as part of the SWAPP process; retaining the stream wide application of the use category but authorize the OWR/DEP to conduct reviews upon request of permittees and to remove the use on a case-by-case basis where justified by the results of such review; and designating areas within five miles above known drinking water intakes. A public hearing on these issues is tentatively scheduled for July 15<sup>th</sup> at 7:00 pm. The Board also agreed to accept preliminary comments on this issue by June 2, 1999.

### **C. Antidegradation Implementation**

Ms. Chatfield updated the board regarding the members of the stakeholder group. The group will include the following members: Rick Herd from Allegheny Power Company representing point source industries, Bruce Brenneman from Westvaco representing nonpoint source industries, Margaret Janes and/or Pam Moe-Merritt of the Rivers Coalition representing the environmental community, Helen Gibbins from the League of Women Voters representing general public interest, Randy Sovic from Office of Water Resources of the Division of Environmental Protection representing point source regulatory agencies, Dave Miller, WV Department of Agriculture representing the nonpoint source regulatory agency and Dan Ramsey, US Fish and Wildlife Service, representing federal agencies.

Ms. Chatfield reported that she will meet on May 20th with Dr. Tom Storch, Dean of the College of Science at Marshall University who has agreed to serve as the facilitator for the stakeholder group.

### **IV. 46 CSR 12 Requirements Governing Groundwater Standards**

Ms. Chatfield reported that she is working with Dave Watkins from the OWR to seek information from other states regarding groundwater standards for microbiology parameters, as well as naphthalene. Dr. Jenkins reiterated his request for information on using naphthalene as an indicator for Deisel Range Organics. (DRO) An update on these issues will be provided at the July meeting.

## V. Contested Cases

*This portion of the meeting is not subject to the requirements of the Open Meetings Act. These items were the Board's deliberations for making decisions in quasi-judicial proceedings. W. Va. Code § 6-9A-2(4).*

### A. Appeal Hearings

#### 1. **Trus-Joist MacMillan v. Office of Water Resources; Appeal No. 99-01-EQB**

On May 18, 1999, Allyn Turner and David Yaussy presented a joint settlement agreement to the Board. There were a couple of items that needed to be worked out before giving the agreement to the Board. Ms. Turner raised the issue that the DEP would like to request that the Board retain jurisdiction of the appeal pending completion of all of the requirements of the agreed order. Mr. Yaussy had no objection to DEP's position on this issue. Mr. Yaussy had already signed the order but was waiting for authorization from his client to sign the order and as soon as authorization was received the order could be given to the Board for their approval.

#### 2. **WV Chamber of Commerce v. Office of Water Resources; Appeal No. 99-02-EQB**

On May 18, 1999, the Board heard the Appellee's Motion to Dismiss. The Board heard testimony from both sides. After the hearing the Board briefly deliberated but decided to postpone further deliberations until a later date. They suggested that a conference call be arranged for further deliberations.

### B. Appeal Decisions and Deliberations

#### 1. **Cookman Realty Group, Inc. v. Office of Water Resources; Appeal No. 98-18-EQB**

On May 17, 1999, the Board reviewed the Final Order prepared by the Board's attorney. David Samuel made a motion to accept the draft final order with direction given to the attorney to amend the following: #26 on page 9 and #33 on page 10 by omitting the word gasoline from the first sentence. Bob Jenkins seconded the motion that was carried unanimously.

Bob Jenkins made a motion to adjourn the meeting. Dave Samuel seconded the motion and the Chair adjourned the meeting.

We hereby certify that the foregoing is a true and correct record of the proceedings of the meeting held on May 17 & 18, 1999, by the West Virginia Environmental Quality Board.

Submitted this 25<sup>th</sup> day of June, 1999.

Approved by the Board as submitted on June 25, 1999  
Approved by the Board as amended on \_\_\_\_\_.

Libby Chatfield  
Libby Chatfield  
Technical Advisor

Libby Chatfield  
Anni Holstein  
Administrative Secretary