



**BUREAU OF THE ENVIRONMENT
ENVIRONMENTAL QUALITY BOARD**

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**MINUTES
WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
OCTOBER 15, 1999**

I. General

On October 15, 1999, a quorum of the members of the Environmental Quality Board (hereinafter referred to as the "Board") met at its offices at 1615 Washington St., E., Charleston, West Virginia. Ed Snyder, Co-Chair, called the Environmental Quality Board meeting to order at 9:00 a.m.

The Board members also present were as follows:

Don Tarter, Co-Chair
David Samuel
Bob Jenkins

The absent members were as follows:

Betsy Dulin

Whereupon the Board addressed the issues set forth in the Agenda as follows:

I. Rulemaking

1. 46 CSR 1 - Requirements Governing Water Quality Standards

A. USEPA recommendations from June 1999 letters to Board:

Section 7.2.c.4. "natural background" exception to application of numeric criteria. The exception allows the use of the natural background concentration of a parameter as the numeric criterion if the natural background concentration exceeds the established numeric criterion for the parameter. This provision has been disapproved by EPA because it automatically establishes site specific criteria equivalent to background without 1) demonstrating that designated and existing

uses are protected, 2) providing a procedure to ensure that natural background concentrations are determined accurately and reproducibly, 3) providing an opportunity for public review and comment on the criteria adjustments and 4) limiting the natural background policy to aquatic life.

After discussion, the Board decided to give the public and industry the opportunity to provide the Board with additional input on whether the natural background exemption should be removed and will then make a decision at the November 29, 1999, Board meeting.

Section 7.2.d.8.1. Site -specific criterion for selenium for Fly Ash Run. This disapproves one of several site-specific criteria approved by the Board for Allegheny Power Company's discharge into Fly Ash Run from the Albright Power Station. EPA's concern is that bio-accumulation of selenium may be occurring in aquatic life in the stream.

The company is working with the EPA in an attempt to reach an agreeable selenium value protocol. EPA is currently reviewing this proposal and all indications are that the EPA will approve this protocol. Upon that approval the Board will adopt the values that are a result of this testing.

Appendix E, Section 8.1. Lack of chronic aluminum criterion. EPA has disapproved the removal of the chronic aluminum value from the rule. OWR has submitted the data collected over the past year which demonstrates violations of the chronic and acute criteria in streams throughout the state. Benthic data has also been collected. Efforts to correlate the benthic data and aluminum data to determine the impact of the high aluminum values on aquatic life have been unsuccessful.

Mary Quo is currently reviewing the handout received from Century Aluminum during the September 30, 1999, Board meeting and will continue the dialogue with Ms. Chatfield regarding the aluminum criteria. The Board took no further action.

Appendix E, Section 8.22 Aquatic life criteria for chloroform and 1,1,2,2- tetrachloroethane. EPA is disapproving the revision of acute and chronic criteria for these criteria because the values adopted represent lowest observed effect levels (LOEL) rather than EPA criteria. Because EPA has not developed aquatic life criteria for chloroform, removal of the disapproved values is appropriate.

Ms. Chatfield informed the Board that she is continuing to work with Mary Quo of the EPA on this issue and the Board took no further action.

Appendix E, Section 8.24. Numeric criteria for phenol. EPA disapproved the revised aquatic life criteria because they represent the LOEL rather than EPA recommended criteria. Further, they disapproved the removal of the total phenolic materials which they are concerned will remove protection of against organoleptic (taste and odor) effects. They recommend adoption of criteria for a number of phenolic material which protect against those effects.

Ms. Chatfield compiled a list of numbers for new phenol criterion and presented it to the Board. That list is attached to and made a part of these minutes as Exhibit "A". Whereupon, Dr. Tarter moved and Dr. Samuel seconded that the Board remove the LOEL values and retain the EPA's Human Health Criteria for phenol; 2-Chlorophenol; 2,4-Dichlorophenol; 2,4-Dimethylphenol; 2,4-Dinitrophenol; Pentachlorophenol and 2,4,6-Trichlorophenol; and the motion passed unanimously 4 to 0.

Section 8.22.2. Body Burden provisions. EPA is following up on their disapproval of the body burden provisions in November 1995. They reiterate in this letter that the existing body burden values for the 6 parameters are not consistent with the in-stream criteria. The Board took no action on this issue.

Appendix E, section 8.15. Iron criteria. This outstanding disapproval addresses our chronic aquatic life iron value of 1.5 mg/l in warmwater streams and the human health criterion of 1.5 in Public A streams. EPA's recommended values are 1.0 mg for warmwater streams and .3 mg in Public A streams.

During the September 30, 1999 meeting, the Board voted unanimously to retain the current criteria. Ms. Chatfield clarified that the Board intended to retain a criterion of 1.5 for both the Human Health and the Aquatic Life.

B. Discussion and Decision on Manganese:

Appendix E, Section 8.17.1. Effluent limitation language for manganese. This language was proposed by the Legislature in 1998 in an effort to address the coal industry's concerns about the application of the human health manganese criterion in NPDES permits. EPA's concerns are that it allows relief from effluent limits for manganese, which is inappropriate for the water quality standards rule. It also allows the DEP, upon a showing by an applicant, to remove the Category Public A use from a stream. EPA's position is that only the Board, through the rulemaking process, can remove a designated use from a stream.

After lengthy discussions with industry representatives, the Board directed Ms. Chatfield to include an exemption from the manganese criterion in the Proposed Emergency Rule which is scheduled to be filed with the West Virginia Secretary of State's office on October 18, 1999. Leonard Knee, of Bowles, Rice, McDavid, Graff & Love, PLLC, presented the Board with the proposed exemption language. This exemption will appear in 6.2. Category A -- Water Supply, Public at 6.2.a. Whereupon, Dr. Samuel moved and Dr. Tarter seconded that the manganese exemption read as follows: "The manganese human health criteria shall not apply where the discharge point of the manganese is located more than five mile upstream from a known drinking water source." and the motion passed unanimously 4 to 0.

Whereupon, Dr. Jenkins moved and Dr. Snyder seconded that the Board schedule a conference call between the Board members, the DEP and the EPA to discuss the proposed manganese exemption, and the motion passed unanimously 4 to 0. The conference is to be scheduled for Wednesday, November 3rd at 2:00 p.m. or Thursday, November 4th at 1:00 p.m.. Proper notice of the meeting will be published and the conference call will be open to the public. The Board may reconsider the proposed manganese exemption during the next Board meeting which is currently scheduled for November 29, 1999.

C. Blackwater River Use Removal:

Mindy Yeager, representing the Blackwater River Watershed Association, presented a Use Redesignation for the Blackwater River Upstream of Davis application packet to the Board. This packet is attached and made a part of these minutes as Exhibit "B". Also attached to Exhibit "B" are comments received from Bill Turner and Evan Hansen regarding the Blackwater Use Removal. During her presentation, Ms. Yeager informed the Board that the upper reaches of the Blackwater River (above Davis) have been designated as Category B2 - Trout Waters and are subject to water standards for the protection of cold water species. However, a Use Attainability Analysis was conducted for the Upper Blackwater River using historical data, recent data, and field investigations. The Blackwater River Watershed Association maintains that the Upper Blackwater River is found to support a healthy warm water fishery indicative of a low gradient blackwater system.

They contend that natural conditions in the stream prohibit the establishment of year round trout populations. These natural conditions include oxygen demand from bog plant and algae species, elevated temperatures due to (natural) lack of stream shading, low stream gradient, and beaver ponds. Although the stream is currently designated as a Category B2 aquatic life use designation, the Watershed Association asks that the stream segment be designated as a warm water fishery based on the applicability of the following conditions (46-1-6.1):

1. Naturally occurring pollutant concentrations prevent the attainment of the use;
2. Dams, diversions or other types of hydrologic modification preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such a modification in a way that would result in the attainment of the use;
3. Physical conditions related to the natural features of the water body, such as the lack of proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic live protection uses.

The Blackwater Association is seeking relief from the TMDL which is based on cold water criteria. Ray Church, of the Blackwater Association informed the Board that the areas surrounding the upper reaches of the Blackwater River are suffering from economic hardships due to the current TMDL.

The Board informed the Association that with issues such as use removals and variances, the Board has an established procedure of working with the DEP and the EPA during the development of the date to ensure that all of the information needed is acquired accurately, prior to making a final decision in the matter. Because of the time constraints, the Board would be unable to address the issue before the year 2000 Legislative Session. Although the Board agreed to further study the matter, obtain public comments and pursue any appropriate course of action during the 2001 Legislative session, the Blackwater River Watershed Association indicated to the Board that they may approach the members of the Legislature during the upcoming 2000 Legislation session.

D. Update on antidegradation stakeholder group meetings:

Antidegradation policy: EPA is following up on their conditional approval of November 1995 of this section by proposing that the Administrator use her discretionary authority to promulgate an antidegradation implementation protocol. The Board's filing of proposed antidegradation implementation procedures with the Legislative Rule-making Review Committee on August 6th is the most recent action taken to address this issue. Further, the Board has convened a stakeholder group to review the proposed document and provide additional recommendations regarding this proposal.

II. Administrative Matters

1. Review and approval of meeting minutes:

The minutes of the September 15, 1999, Board meeting were presented to the Board for consideration. Whereupon, Dr. Tarter moved and Dr. Samuel seconded that the minutes of the September 15, 1999, Board meeting, as written, be adopted and the motion passed unanimously 4 to 0.

2. Results of audit of Environmental and Air Quality Board Purchasing Card:

The Auditor's office reviewed the p-card files. Since the files were in such disarray, the Auditor's office has opted to review the files for October through February and at that time they will issue a report on the p-card use. If the report is satisfactory for that period they will allow the continued use of the p-card.

3. Personnel matters:

The Board noted that Ms. Holstein did not appear at her unemployment hearing. The Board can now fill the secretarial position. Ms. Chatfield stated that she will complete the job description and provide it to DEP for approval. Then Board will then begin the process of advertising, interviewing, and filling the vacancy.

4. Budget Report:

Ms. Chatfield provided the Board with an Environmental Quality Board and Air Quality Board budget report compiled by Randy Taylor of DEP. This report indicates that the Board should not use the Ground Water Account for the remainder of the fiscal year, except for Ms. Chatfield's salary. A copy of this report is attached to and made a part of these minutes as Exhibit "C". This information has also been forwarded to Andy Gallagher.

Ms. Chatfield stated that she will attempt to develop a complete budget report which delineates prior expenditures in addition to projected expenses in conjunction with the average cost of Board meetings.

5. Meeting Dates:

The Board scheduled meetings for December 16th and 17th, January 12th, February 11th, and March 31st.

6. Board Member Appointments:

The Board was informed that, to date, there has been no information provided regarding member appointments.

III. Appeals

1. Appeal #99-06-EQB (Monongahela Power):

On October 13, 1999, the parties to this Appeal filed a Joint Motion for Continuance in order that they may complete settlement negotiations. The Continuance was granted and the hearing, if needed, has been rescheduled for November 29, 1999.

2. Appeal #99-07-EQB (Lignetics):

Ann Bradley, representing the Appellant, appeared before the Board and informed the Board that the parties have reached an oral agreement on all the major issues contained in the appeal. They will provide a written settlement agreement by November 5, 1999.

3. Appeal #98-09-EQB (Wright):

The Board directed Ms. Charles to communicate with the parties of this appeal, via certified mail, to determine whether the parties feel that the issues of the appeal have been resolved. The letter is to contain a deadline for response. If no response is received within the allotted time frame, the Board will dismiss the Appeal.

IV. Other Business

1. Freedom of Information Request:

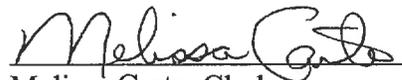
The West Virginia Rivers Coalition requested a copy of the packet submitted to the Board by The Blackwater River Watershed Association. Since the Coalition is a nonprofit organization, the Board will provide the copies if the Coalition supplies the copy paper.

2. E-Mail:

The Board directed Ms. Carte to send separate E-mails to the Board members and to "cut and paste" the Notice rather than send it as an attachment to the E-mail.

WHEREUPON, Dr. Snyder moved and Dr. Samuel seconded that the ^{Oct. 15}~~September 30~~, 1999, meeting of the Environmental Quality Board be adjourned and the motion passed unanimously 4 to 0.

I hereby certify that the forging is a true and correct record of the proceedings of the meeting held on October 15th, 1999, by the West Virginia Environmental Board. These minutes were approved by the Environmental Board on November 29th, 1999.


Melissa Carte, Clerk



ENVIRONMENTAL QUALITY BOARD

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MEMORANDUM

TO: Board Members
FROM: Libby Chatfield
DATE: October 15, 1999
RE: Phenol/Phenolic materials criteria

For discussion at the October meeting, the following is a list of phenolic materials and the human health and aquatic life criteria listed in EPA's National Recommended Water Quality Criteria Document dated April 1999 (EPA 822-Z-99-001.) All are expressed in ug/l.

	<u>Aquatic Life</u> <u>Acute /Chronic</u>	<u>Human Health</u> <u>Category A</u>	<u>Human Health</u> <u>Category C</u>	<u>Organoleptic</u>
Phenol		21,000	4,600,000	300
2-Chlorophenol		120	400	0.1
2,4-Dichlorophenol		93	790	0.3
2,4-Dimethylphenol		540	2300	400
2,4-Dinitrophenol		70	14,000	
Pentachlorophenol	19 /15	0.28	8.2	30
2,4,6-Trichlorophenol		2.1	6.5	2
2-Nitrophenol		-	-	
4-Nitrophenol		-	-	
3-Methyl-4-Chlorophenol		-	-	3000
3-Chlorophenol				0.1
4-Chlorophenol				0.1
2,3-Dichlorophenol				0.04
2,5-Dichlorophenol				0.5
2,6-Dichlorophenol				0.2
3,4-Dichlorophenol				0.3
2,4,5-Trichlorophenol				1
2,3,4,6-Tetrachlorophenol				1
2-Methyl-4-Chlorophenol				1800
3-Methyl-6-Chlorophenol				20

Evan Hansen
2921 Halleck Road
Morgantown, WV 26508
Phone: 304/291-8205
Fax: 304/291-0979

October 14, 1999

Libby Chatfield
West Virginia Environmental Quality Board

Sent by fax to: 304/558-4116

Dear Ms. Chatfield:

Please consider these comments in your review of the Blackwater River Use Removal at the October 15, 1999 meeting of the Environmental Quality Board and at subsequent meetings in which this issue may be raised.

While I have not yet reviewed the Use Attainability Analysis recently submitted for the Blackwater River, I have been made aware of the issues raised by the analysis. I am concerned that this attempt to weaken water quality standards may be based on unsound science and may contradict the requirements of the Clean Water Act.

The Upper Blackwater River is, indeed, a trout stream and now supports a cold water fishery. Angler friends of mine have recently caught these fish in the Blackwater. I assume that this point is not open to debate, even if scientific fish counts have not been completed recently.

Regarding the science used in the analysis, I question whether the temperature readings are truly representative. Temperature varies within a stream, and, even in warm weather, cold water species survive by seeking out cold pockets in the stream. Any analysis used to determine the temperature of a stream and its ability to support a cold water fishery must include temperature measurements in these cold pockets. The fact that the river continues to support cold water species proves that the temperature is satisfactory for their survival.

Regarding the Clean Water Act, this law protects existing uses. Section 131.12(a)(1) states that "Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." Clean Water Act regulations state that "States may not remove designated uses if...they are existing uses...unless a use requiring more stringent criteria is added." Given that the Upper Blackwater is currently, and has historically been, a coldwater fishery, it must continue to be designated as a coldwater fishery.

Thank you for considering my comments.

Sincerely,


Evan Hansen

Subject: Manganese Standard / Upper Blackwater R.

Date: Tue, 12 Oct 1999 18:22:16 -0400

From: Bill Turner <wturner@crandallpyles.com>

Reply-To: wturner@crandallpyles.com

Organization: CPH&T Lewisburg

To: "Chatfield, Libby" <chatfe@mail.wvnet.edu>

I urgently request the EQB to hold the line on manganese standards and abide by the current drinking water standard. By way of example, I would refer you to the Buckhannon River. The Buckhannon water treatment plant is adding potassium permanganate to make the manganese laden water potable. This is a subsidy of treatment costs and responsibility to everyone who is using the Buckhannon water supply versus treatment by the discharger who is creating it (the coal industry).

As regards the Upper Blackwater River, I also urge the EQB to uphold the CWA and regulations, which protect existing stream uses! Clean Water Act regulations at 40 CFR state that "States may not remove designated uses if...they are existing uses, as defined in Section 131.3, unless a use requiring more stringent criteria is added." Additionally, at 131.12(a)(1) they state flatly that "Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

Thanks for your consideration, Bill Turner

Libby,

I have finished the information of the Air Quality and Environmental Quality Boards that represents the fiscal position of the boards at September 30, 1999 and a projection for the remainder of the year. I assumed that this is the type of the information that you wanted. If this is not, please let me know. I have this format and information saved and can update it each month if you want.

Some understanding of the numbers as reflected:

Fund 3275-- This fund has a number of problems. Cash--If my projections are correct, fund 3275 will be out of cash before the end of the fiscal year. This projection was made without spending any more than has already been spent on expenditures from office expenses (object code 020) to equipment (object code 171). **Spending Authority**-The current budget amount is set at \$ 50,000. My projection reflects a total spending of \$ 54,770.99. Without an increase in the spending authority (which can be done up to a total of \$ 53,695.60), fund 3275 will be unable to use this fund for the entire fiscal year.

Fund 0270--Perhaps because the boards are not fully staffed at the time of this projection this fund reflects an estimated balance left over in some of the activities at the end of the fiscal year. Please be made aware that I projected that the boards will spend the entire amount appropriated in the unclassified activity. This action will be necessary because of the condition of Fund 3275.

Fund 0550-- Again because of the staffing as stated in Fund 0270, a small balance remaining is reflected at the end of the fiscal year. Also, if you will notice the unemployment has been reflected in this Fund.

Please contact me with any suggestions or changes that you think would more accurately reflect the position of these Funds. Also, please contact me on a budget amendment on fund 3275. This could increase your spending authority as mentioned above.

Thank you

8-Oct-99



**REPORT ON REVENUES AND EXPENSES
ENVIRONMENTAL/AIR QUALITY BOARDS**

FUND 3275- NON-APPROPRIATED SPECIAL FUND

Beginning Cash at 07/01/99	3,695.60
INCOME:	
Transfer from Water Resources per agreement	50,000.00
Payments for FOIA copies	<u>53.50</u>
Total income for FY 2000	<u>50,053.50</u>
TOTAL INCOME	53,749.10
EXPENDITURES:	
Salaries (July-Sept.)	9,745.50
Increment	255.50
Benefits (FICA match)	1,119.03
Other (FY 1999 obligations pd in 2000 FY)	8,494.85
Other (FY 2000 obligations less credits as applied)	<u>(593.75)</u>
TOTAL EXPENDITURES	<u>19,021.13</u>
BALANCE AT 09-30-99	34,727.97
 Projected Salaries and Benefits for remainder of fiscal year:	
Monthly \$ 3,248.5 for nine months	29,236.50
 Benefits:	
PEIA 11 mo. @ \$ 3.18	
PERS 11mo. @ \$ 332.88	
FICA match 9 mo. @ 244.90	
Work Comp/ qtr.3 qtr. @ 175.48	
Personnel Fees/qtr.3 qtr. @ 28.72	<u>6,513.36</u>
Projected Excess or (deficit) @ 06/30/2000	<u>(1,021.89) 2</u>
Current Spending Authority (Budget)	50,000.00
Current and Projected Expenditures For yr 2000	<u>54,770.99</u>
Overspend Budget	<u>(4,770.99) 1</u>

- 1.STATE BUDGET OFFICE WILL NOT ALLOW AGENCIES TO OVERSPEND THEIR BUDGETS
- 2.STATE AUDITORS OFFICE WILL NOT ALLOW AGENCIES TO OVERSPEND THEIR CASH IN THE FUND

**REPORT ON REVENUES AND EXPENSES
ENVIRONMENTAL/AIR QUALITY BOARDS**

FUND 0270- APPROPRIATED GENERAL REVENUE FUND

Beginning FY 2000 APPROPRIATION

Activity 001-Personal Services		64,819.00	
Salaries (July-Sept)	13,128.54		
Projected Salaries (Oct.-June)	39,375.00	<u>52,503.54</u>	
Projected Balance			12,315.46
Activity 004-Increment		523.00	
Increment	367.00	<u>367.00</u>	
Projected Balance			156.00
Activity 010-Benefits		23,858.00	
Benefits (July-Sept.)	1,850.16		
Projected Benefits (Oct.-June)	10,474.00	<u>12,324.16</u>	
Projected Balance			11,533.84
Activity 099-Unclassified		30,106.00	
Expenditures (July-Sept.)	9,185.74		
Projected Expenditures (Oct.-June)	20,920.26	<u>30,106.00</u>	
Projected Balance			

REPORT ON REVENUES AND EXPENSES
 ENVIRONMENTAL/AIR QUALITY BOARDS

FUND 0550- APPROPRIATED GENERAL REVENUE FUND

Beginning FY 2000 APPROPRIATION

	BUDGETED	July-Sept Spent	Oct-June Projection	Projected Balance
Object Code 001-Personal Services	55,082.00	7,986.36	23,959.08	23,136.56
Object Code 002-Personal Services w/o Deductions	-	1,200.00	3,600.00	(4,800.00)
Object Code 004-Increment	228.00	-	309.27	228.00
Object Code 010-Personnel Fees	500.00	-	309.27	190.73
Object Code 011-FICA Match	3,400.00	634.83	1,832.86	932.31
Object Code 012-Insurance	5,000.00	549.82	6,048.02	(1,597.84)
Object Code 014-Wrk Comp	1,000.00	232.98	598.94	68.08
Object Code 015-Unempl. Comp.	-	3,513.03	10,545.00	(14,058.03)
Object Code 016-Retirement	5,200.00	272.71	2,999.81	1,927.48
Total Personal Services & Benefits	70,410.00	14,389.73	49,992.98	6,027.29
Other Expenditures (020-171)	9,318.00	3,269.72	9,809.16	(3,760.89)
TOTAL BUDGET & EXPENDITURES	79,728.00	17,659.45	59,802.14	2,266.41