

**BUREAU OF THE ENVIRONMENT**

**ENVIRONMENTAL QUALITY BOARD**

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

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD**

**APRIL 3, 2000**

**I. General**

On April 3, 2000, a quorum of the members of the Environmental Quality Board (hereinafter referred to as the "Board") hosted a telephone conference from its offices at 1615 Washington St. E., Charleston, West Virginia. The meeting was scheduled to begin at 8:00 a.m., however due to technical problems encountered by Ednet, the company providing the conference call service, the meeting could not be called to order by Dr. Snyder until 8:25 a.m.

Board members participating by telephone were as follows:

Ed Snyder, Co-Chair  
Don Tarter, Co-Chair  
Dave Samuel

Absent Board Members were as follows:

Charles Jenkins  
Betsy Dulin

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

## I. Rulemaking

### 1. Kempco Remining Variance Application:

Mr. Mike Mace of Mace Environmental, appeared before the Environmental Quality Board during the September 30, 1999, Board meeting, and this formal remining variance application was provided to the Board members just prior to the April 3, 2000, telephone conference. Because of the size of the application it has not been attached to these minutes as an exhibit (except see Exhibit "A") but is on file in the Board offices.

Mr. Lantz Rankin of Heritage Surveying and Mapping in Danville, WV, appeared representing the Little Boyd Coal Company (Kempco) to address any questions which the Board members had regarding the application for a variance from Water Quality Standards for remining activities. In this variance application, the Little Boyd Coal Company proposed alternate water quality criteria for both pH and manganese. As set out in Attachment 13-VIII.C of the application, the alternative limit for pH would be 3.72 U.S., which was reached by applying a direct 5% reduction to the lowest pH amount (3.7 U.S) obtained during the course of the baseline sampling. The alternative limit for manganese would be 7.07ppm, which was reached by applying a direct 5% reduction to the maximum numeric reading (7.44 ppm) obtained during the course of the baseline sampling. A copy of Attachment 13-VIII.C is attached to and made a part of these minutes as Exhibit "A".

The Company seeks to remine approximately five miles of pre-existing highwall at Lick Branch and Grapevine Creek in Mingo County and will include 600 to 700 acres of mining. Mr. Rankin stated that the proposed remining operation will provide for reclamation, placement and encapsulation of the primary acid forming strata and the redistribution of black shale material. In addition, three valley fills are proposed with this operation.

The Board members requested additional information regarding the amount of limestone present in the strata and the effect that it would have on the pH levels. Dr. Snyder stated that he is concerned about the Board advocating valley fills as a means of buffering in such a generic way and requested more specific data be provided regarding the composition of the fill materials in the proposed valley fills.

Further, the Board would like to obtain input from Ken Politan of the Mining and Reclamation office of the WV Division of Environmental Protection, and US Environmental Protection Agency, after they have had the opportunity to review the application. The Board will continue to discuss this remaining variance application during the April 21, 2000, Environmental Quality Board meeting.

2. Review and approval of the letter to be sent to the US Environmental Protection Agency regarding 46 CSR 1 - Requirements Governing Water Quality Standards:

The Board members reviewed a copy of the letter drafted by Ms. Chatfield to be sent to the US Environmental Protection Agency. This letter outlines a proposed schedule for the Environmental Quality Board to address the outstanding disapprovals to 46 CSR 1 - Requirements Governing Water Quality Standards as identified in letters from the USEPA dated June 4 and June 15, 1999.

WHEREUPON, Dr. Tarter moved and Dr. Samuel seconded that the Board approve the draft letter, and the motion passed unanimously 3 to 0.

## II. Appeals

1. Appeal #99-03-EQB (7-Eleven) - Appellee's Motion for Leave to File a Response Brief and Appellee's Motion to Amend Appellant's Exhibit No.2:

Ms. Charles presented the Appellee's Motion for Leave to File a Response Brief and Appellee's Motion to Amend Appellant's Exhibit No.2. The Board held an evidentiary hearing on the appeal on August 12 and 13, 1999. The parties filed their Proposed Findings of Fact and Conclusions of Law with the Board on March 3, 2000, and the Responses to such Findings of Fact and Conclusions of Law were due on March 17<sup>th</sup>, 2000. On March 17, 2000, counsel for the Appellant filed the Response Brief of 7-Eleven, Inc. Counsel for the Appellee opted not to file a Response Brief.

On March 22, 2000, five days after the deadline for filing a Response Brief, counsel for the Appellee filed a Motion for Leave to File a Response Brief citing concern that the Board members, after reading the 7-Eleven Response brief, may be confused about several unspecified aspects of the Appellee's position and

contentions about the legal issue of *de novo*. In addition, counsel for the Appellee filed a Motion to Amend Appellant's Exhibit No. 2 which was subsequently withdrawn.

On March 24, 2000, counsel for the Appellant filed a response opposing the Appellee's Motion for Leave to File a Response Brief and noted that the Appellant would be available to answer any questions posed by the Board should the need arise. In addition, the Appellant noted that the Board is aided by counsel who can evaluate the legal issue of *de novo* and advise the Board on such matters.

The Environmental Quality Board members discussed the Appellee's Motion and the response of 7-Eleven. The Board determined that counsel for the Appellee did not demonstrate good cause to justify the filing of a Response Brief after the scheduled deadline. WHEREUPON, Dr. Tarter moved and Dr. Samuel seconded that the Board deny the Appellee's Motion for Leave to File a Response Brief, and the motion passed unanimously 3 to 0.

2. Appeal #00-01-EQB (Ripley) - Appellee's Motion to allow Videotape instead of Site Visit.

Ms. Charles presented the Appellee's Motion to allow Videotape instead of Site Visit filed in Appeal #00-01-EQB (Ripley). The appeal was filed on February 4, 2000, and was set to be heard on May 11, 2000. On March 3, 2000, the Appellee filed a Motion to Allow Videotape In Lieu of a Site Visit which requested that the Board allow into evidence a video taping of normal operations at the Appellant's alleged transfer station. The Appellant did not file a response to this motion. WHEREUPON, Dr. Samuel moved and Dr. Tarter seconded that the Environmental Quality Board grant the Appellee's Motion to Allow Videotape In Lieu of a Site Visit, and the motion passed unanimously 3 to 0.

3. Appeal #00-02-EQB (Ravenswood) - Appellee's Motion to allow Videotape instead of Site Visit.

Ms. Charles presented the Appellee's Motion to allow Videotape instead of Site Visit filed in Appeal #00-02-EQB (Ravenswood). The appeal was filed on February 7, 2000, and is set to be heard on May 11, 2000. On March 10, 2000, the Appellee filed a Motion to Allow Videotape In Lieu of a Site Visit which

requested that the Board allow into evidence a video taping of normal operations at the Appellant's alleged transfer station. The Appellant did not file a response to this motion. WHEREUPON, Dr. Samuel moved and Dr. Tarter seconded that the Board grant the Appellee's Motion to Allow Videotape In Lieu of a Site Visit, and the motion passed unanimously 3 to 0.

4. Appeal #00-04-EQB (Mon Co. Commission) - Appellant's Motion for 2 month Continuance.

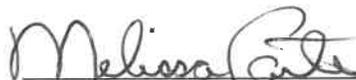
Ms. Charles presented the Appellant's Motion for 2 month Continuance filed in Appeal #00-04-EQB (Mon Co. Commission). The appeal was filed on March 2, 2000, and is set to be heard on May 11, 2000. On March 29, 2000, the Appellant filed a Motion for Continuance since the President of the Monongalia County Commission underwent surgery on March 31, 2000, and will be incapacitated and unable to attend any official proceedings or functions for approximately two months from the date of the surgery. On March 30, 2000, the attorney for the Appellee submitted a letter to the Board in which he stated that the Appellee does not oppose this Motion for a Continuance. WHEREUPON, Dr. Tarter moved and Dr. Samuel seconded that the Board grant a continuance in this appeal, and the motion passed unanimously 3 to 0. The Board elected to continue the hearing until the July 2000 Board meeting, the exact date of which has not yet been established.

### **III. Other Business**

The Board members decided not to accept the per diem payment for this telephone conference.

WHEREUPON, at 9: 05 a.m., Dr. Tarter moved and Dr. Samuel seconded that the April 3, 2000, Environmental Quality Board telephone conference be adjourned, and the motion passed unanimously 3 to 0.

I hereby certify that the forgoing is a true and correct record of the proceedings of the meeting held on April 3, 2000, by the West Virginia Quality Board. The minutes were approved by the Environmental Quality Board on April 21<sup>st</sup>, 2000.

  
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Melissa Carte, Clerk

## Attachment 13-VIII.C

### Description of Determination of Proposed Water Quality Limits

No request for alternative limits for Iron are being requested.

The alternative limit for manganese was reached by applying a direct 5% reduction to the maximum numeric manganese reading obtained during the course of the baseline sampling:

$$7.44 \text{ ppm} \times (1.00 - 0.05) = 7.07 \text{ ppm proposed alternative manganese limit}$$

The alternative limit for pH was reached by applying a direct 5% reduction to the highest hydrogen ion amount (lowest pH) obtained during the course of the baseline sampling:

Step 1 - Determine numeric value for hydrogen ion

$$pH = -\log [H^+]$$

$$3.7 = -\log [H^+]$$

$$3.7 / -\log = -\log [H^+] / -\log$$

$$10^{3.7} = [H^+]$$

$$[H^+] = [1.99526 \times 10^{-4} M]$$

Step 2 - Determine 5% reduction of numeric value

$$(1.99526 \times 10^{-4} M) \times (1.00 - 0.05) = (1.89550 \times 10^{-4} M)$$

Step 3 - Determine pH of the reduces numeric value

$$pH = -\log [H^+]$$

$$pH = -\log [1.89550 \times 10^{-4} M]$$

$$pH = 3.72$$

*3.72 = proposed alternative limit for pH*



## ENVIRONMENTAL QUALITY BOARD

1615 Washington Street, East, Suite 301  
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April 3, 2000

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

Bradley M. Campbell, Regional Administrator  
US Environmental Protection Agency, Region III  
1650 Arch Street (3RA00)  
Philadelphia, Pennsylvania 19130

RE: West Virginia Water Quality Standards

Dear Mr. Campbell:

By this letter we wish to provide you with a proposed schedule for addressing the outstanding disapprovals in the Water Quality Standards as identified in letters from your agency to the Board, dated June 4 and June 15, 1999.

The Board has made significant progress in addressing many of the items of concern during the last several months. We believe that we can develop resolutions to the remaining issues in our next two full meeting days. Once we address all of the issues, we will prepare a package of the proposed amendments to the Water Quality Standards rule and publish a notice of a 45 day public comment period and a public hearing to accept comments on the proposed amendments. After the close of the comment period, we will review the comments received and revisit the proposals in light of those comments. If changes are warranted based on the public input, those will be made.

The proposed rule will then be filed with the Legislative Rulemaking Review Committee of the West Virginia Legislature. The deadline for filing proposed changes to rules for consideration in the 2001 legislative session is September 1, 2000. Upon approval by that Committee, the proposed rule will then be considered during the 60-day session of the Legislature which begins in mid-February, 2001. Upon passage of the rule by the Legislature, the Board will carry out the final promulgation to complete the legislative rulemaking process.

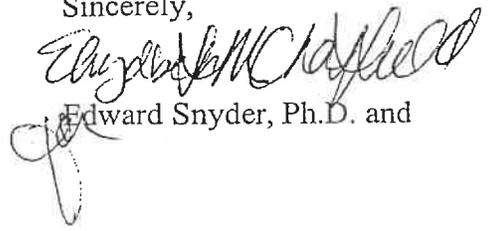
As stated above, we believe that it will take two full meeting days for the Board to address and resolve the remaining issues. Due to some significant budget constraints, we are not certain when we will be able to hold those meetings. Although we hope to be able to meet in April and May to finalize our Water Quality Standards proposal, it is possible that we will not be able to meet again until the next fiscal year, which begins July 1, 2000.

We appreciate the assistance of your staff in the resolution of these issues. We will continue to keep you apprised of our progress on these matters. If you have questions or

Exhibit "B"

comments about this proposed schedule, please contact the Board's Technical Advisor, Libby Chatfield at 304-558-4002.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward Snyder".

Edward Snyder, Ph.D. and

A handwritten signature in black ink, appearing to read "Donald Tarter".

Donald Tarter, Ph.D.  
Co-Chairs

cc: Mike Castle, Commissioner, WV Bureau of the Environment