

**BUREAU OF THE ENVIRONMENT
ENVIRONMENTAL QUALITY BOARD**

1615 Washington Street, East, Suite 301
Charleston, West Virginia 25311-2126
(304) 558-4002
Fax: (304) 558-4116

**MINUTES
WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
AUGUST 17, 2000**

I. General

On August 17, 2000, a quorum of the members of the Environmental Quality Board (hereinafter referred to as the "Board") met at its offices located at 1615 Washington St. E., Charleston, West Virginia. Chairman Ed Snyder called the Environmental Quality Board meeting to order at 8:30 a.m.

Other Board members present were as follows:

Dave Samuel
Charles Jenkins

Absent were Board members:

Cameron Hackney
Betsy Dulin

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

II. ADMINISTRATIVE MATTERS

1. Election of Board Officers:

The Board discussed the selection of officers. Dr. Snyder agreed to accept the nomination for chairman and Dr. Samuel agreed to act as the Board's vice-chair. Whereupon, Dr. Jenkins moved and Dr. Samuel seconded that Dr. Snyder be the chairman of the Environmental Quality Board. The motion passed unanimously 3 to 0.

2. Review and approval of the June 30th, 2000, meeting minutes:

The minutes of the June 30, 2000, Environmental Quality Board meeting were presented to the Board for consideration. The minutes were revised to correct two typographical errors.

Whereupon, Dr. Samuel moved and Dr. Jenkins seconded that the minutes of the June 30, 2000, Board meeting, as revised, be adopted, and the motion passed unanimously 3 to 0.

3. Administrative Matters:

The Board discussed the EQB objectives and long range goals for 2000/2001. The goals include establishing an annual plan and master calendar, developing a web site, updating the procedural rules and creating a brochure.

4. Joint Meeting with the Air Quality Board:

The Board scheduled a joint meeting with the Air Quality Board on October 20, 2000. The purpose of the meeting is to discuss personnel matters, such as the upcoming evaluations, and the budget.

III. Appeals

1. 00-01-EQB (Ripley) - Appellant's Motion to Withdraw:

Ms. Charles presented the Appellant's Motion to Withdraw Appeal #00-01-EQB (Ripley). Whereupon, Dr. Jenkins moved and Dr. Samuel seconded that the Board accept the Appellant's Motion to Withdraw, and the motion passed unanimously 3 to 0.

2. 00-02-EBQ (Ravenswood) - Appellant's Motion to Withdraw:

Ms. Charles presented the Appellant's Motion to Withdraw Appeal #00-02-EQB (Ravenswood). Whereupon, Dr. Jenkins moved and Dr. Samuel seconded that the Board accept the Appellant's Motion to Withdraw, and the motion passed unanimously 3 to 0.

3. 00-09-EQB (Barazi) - Agreed Order/Stay:

Ms. Charles presented the Agreed Order for a Stay between the parties of Appeal #00-09-EQB (Barazi). Whereupon, Dr. Samuel moved and Dr. Jenkins seconded that the Board accept the Agreed Order for a Stay in Appeal #00-09-EQB (Barazi).

4. 99-09-EQB (McClung) and 99-11-EQB (Knouse) - Appellants' request for an extension of the agreed deadline to implement the terms of the Settlement Agreement which was approved by the Board on June 30, 2000.

Ms. Charles presented the Appellants' request for an extension of the agreed deadline to implement the terms of the Settlement Agreement. During the June 30, 2000, meeting the Board approved a settlement agreement between the parties of this appeal. That agreement contained certain deadlines for the filing of easements and releases. However, the parties of the Settlement Agreement have requested an extension in order to fully execute and file all documents.

Whereupon, Dr. Samuel moved and Dr. Jenkins seconded that the Board grant the extension as requested by the parties of the Settlement Agreement, and the motion passed unanimously 3 to 0.

5. 99-10-EQB (Mason) - Final Ruling by the Board:

Ms. Charles presented the draft Final Order in Appeal #99-10-EQB (Mason) to the Board. After reviewing the proposed order, Dr. Jenkins moved and Dr. Samuel seconded that Board adopt the draft Final Order in Appeal #99-10-EQB (Mason) and the motion passed unanimously 3 to 0.

IV. ADMINISTRATIVE MATTERS

The members of the Environmental Quality Board met with Robert Foster, Tom Hansen and Jean Neely who are members of the Air Quality Board. The purpose of this meeting was to discuss budget matters. The Board members discussed the request for supplemental appropriations for the fiscal year 2001. The Boards must obtain additional funding in order to continue to fulfil its responsibilities during this fiscal year.

In addition, the Board members discussed the fiscal year 2002 budget and the improvement package which must be submitted to the State's budget office by September 1, 2000. The Boards will be seeking additional funding in the fiscal year 2002.

V. RULEMAKING

1. 46 CSR 1 - Requirements Governing Water Quality Standards

The Board began a review of the written comments received during the public comment period regarding the proposed amendments to 46CSR1, Requirements Governing Water Quality Standards. The proposed rule must be finalized, approved and filed with the WV Secretary of State's office by September 1, 2000.

These minutes reflect **only** the sections of the proposed Legislative rule which were amended by the Board during the August 17, 2000, Board meeting. The sections which are underlined indicate new language as it appears in the rule.

The Board began by discussing section 46-1-4A (applicability) of the rule.

After discussion, Dr. Samuel moved and Dr. Jenkins seconded that section 4A.1 of the rule read as follows, and the motion passed unanimously 3 to 0:

4A.1. The antidegradation implementation procedures herein are intended to apply to new and expanded regulated activities that have the potential to affect existing water quality. The specifics of the review called for in the regulation will depend upon the existing and designated uses of the waters or segments of waters that would be affected, the level of protection (tier) assigned to the applicable waters or segment of water, and the extent to which water quality would be degraded.

After discussion, Dr. Jenkins moved and Dr. Samuel seconded that the second paragraph of section 4.1.b. of the rule read as follows, and the motion passed unanimously 3 to 0:

In addition, the Board and the Director shall assure that all new and existing point sources shall achieve the highest established statutory and regulatory requirements applicable to them and shall assure the achievement of cost-effective and reasonable best management practices (BMPs) for non-point source control. BMPs that have been implemented, applied or installed at a specific site should be evaluated to determine whether the BMPs are sufficient to reduce or minimize

impacts to water quality. Where appropriate, the Director may require application or implementation of BMPs sufficient to prevent violations of water quality standards. If BMPs are demonstrated to be inadequate to reduce or minimize water quality impacts, the Director may require that more appropriate BMPs be developed and applied or, alternatively, may require that the activity causing the pollution cease.

After discussion, Dr. Samuel moved and Dr. Jenkins seconded that the Board add a section 4A.3 to the rule to read as follows and the motion passed unanimously 3 to 0:

4A.3. The procedures outlined herein shall be performed by the Director when reviewing all activities subject to this rule.

The Board began discussing 46-1-4B (Tier 1) of the proposed rule.

After discussion, Dr. Samuel moved and Dr. Jenkins seconded that section 4B.1. of the rule read as follows, and the motion passed unanimously 3 to 0:

4B.1. The following procedures shall be performed by the Director when reviewing all activities subject to Tier 1 protection.

In addition, section 4B.1.c. was moved and renumbered as 4B.1.a.1., and section 4B.1.d was renumbered as 4B.1.c.

After discussion, Dr. Jenkins moved and Dr. Samuel seconded that section 4B.2.a. of the rule read as follows, and the motion passed unanimously 3 to 0:

4B.2.a. Where designated uses or existing uses of the waterbody are impaired there shall be no further degradation of water quality with respect to the parameters of concern that are causing the impairment. To ensure the designated uses and existing uses are maintained and protected, the Director shall not allow lowering of water quality of a parameter of concern that interferes with the attainment of the designated or existing use.

After discussion, Dr. Samuel moved and Dr. Jenkins seconded that the section 4B.2.b. of the rule read as follows, and the motion passed unanimously 3 to 0:

4B.2.b. Where uses are not impaired and a determination is made that the designated uses appropriately protect the existing uses of the water, controls shall be applied as necessary to ensure that existing uses are protected and maintained. If a use is impaired the activity shall conform with the requirements of section 4B.2.a.

After discussion, Dr. Jenkins moved and Dr. Samuel seconded that section 4B.2.c. of the rule read as follows, and the motion passed unanimously 3 to 0:

4B.2.c. Where the Director determines that the designated uses do not appropriately protect the existing uses of the water the Director shall determine whether numeric criteria for a related designated use would maintain water quality sufficient to protect the existing use.

After discussion, Dr. Jenkins moved and Dr. Samuel seconded that section 4B.4. of the rule read as follows, and the motion passed unanimously 3 to 0:

4B.4. Trading. A proposed activity that will result in a new or expanded discharge in a water subject to Tier 1 protection may be allowed where the applicant agrees to implement or finance upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity from the same parameters. The basis of the trade will be documented through a Trading Assessment Procedure. Such documentation shall include an appropriate margin of safety, which, after taking into account the uncertainties associated with any proposed nonpoint source controls, as well as variability in effluent quality for point sources shall ensure that improvement in water quality occurs as a result of the trade. A trade may be made between more than one stream segment with an 8-digit Hydrologic Unit Code watershed where removing a discharge in one stream segment directly results in improved water quality in another stream segment, provided that no degradation results to any stream segment within the 8-digit Hydrologic Unit Code watershed. In addition, (1) The effluent trade must be for the same form of the parameter; (2) Dischargers cannot claim offsets for water quality improvements that are required or will occur irrespective of the proposed new or expanded discharge; and (3) Offsets must be enforceable.

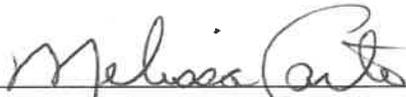
The Board began discussing section 46-1-4C (Tier 2) of the rule.

After discussion, Dr. Samuel moved and Dr. Jenkins seconded that section 4C.1.a. of the rule read as follows, and the motion passed unanimously 3 to 0:

4C.1.a. All waters not included in Tiers 2.5 and 3 will be considered high quality waters unless it can be demonstrated that the water quality is not equal to or better than necessary to attain both fishable (Category B) and swimmable (Category C) uses and are therefore more appropriately categorized as Tier 1. If either the fishable or swimmable use is attained, the water is a high quality water.

Whereupon, at 5:30 p.m., Dr. Samuel moved and Dr. Jenkins seconded that the August 17, 2000, meeting of the Environmental Quality Board be adjourned until Friday, August 18th at 8:30 a.m., 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 meetings held on August 17, 2000, by the West Virginia Environmental Quality Board. The minutes were approved by the Environmental Quality Board on Sept. 25, 2000.



Melissa Carte, Clerk