

**BUREAU OF THE ENVIRONMENT
ENVIRONMENTAL QUALITY BOARD**

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**MINUTES
WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
AUGUST 21, 2000**

I. General

On August 21, 2000, a quorum of the members of the Environmental Quality Board (hereinafter referred to as the "Board") met by teleconference. Chairman Ed Snyder called the Environmental Quality Board meeting to order at 3:00 p.m.

Other Board members present were as follows:

Dave Samuel
Charles Jenkins
Dr. Hackney joined the meeting at 4:35 p.m.

Absent were Board members:

Betsy Dulin

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

I. RULEMAKING

The Board continued its 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.

The Board began discussing section 46-1-7 (West Virginia Waters) of the proposed rule. These minutes reflect **only** the sections of the proposed Legislative rule which were amended by the Board during the August 18, 2000, Board meeting. The sections which are underlined indicate new language as it appears in the rule.

After discussion, Dr. Jenkins moved and Dr. Samuel seconded that section 7.2.c.4. of the rule read as follows and the motion passed unanimously 4 to 0:

7.2.c.4. Where, on the basis of natural conditions, the Board has established a site-specific aquatic life water quality criterion that modifies a water quality criterion set out in Appendix E, Table 1 of this rule. Where a natural condition of a waterbody is demonstrated to be of lower quality than a water quality criterion for the use classes and subclasses in section 6 of this rule, the Board, in its discretion, may establish a site-specific water quality criterion for aquatic life. This alternate criterion may only serve as the chronic criterion established for that parameter. This alternate criterion must be met at end of pipe. Where the Board decides to establish a site-specific water quality criterion for aquatic life, the natural condition constitutes the applicable water quality criterion. A site-specific criterion for natural conditions may only be established through the legislative rulemaking process in accordance with W.Va. Code §§29A-3-1 et seq. and must satisfy the public participation requirements set forth at 40 C.F.R. 131.20 and 40 C.F.R. Part 25. Site-specific criteria for natural conditions may be established only for aquatic life criteria. A public notice, hearing and comment period is required before site-specific criteria for natural conditions are established.

Upon application or on its own initiative, the Board will determine whether a natural condition of a waterbody should be approved as a site-specific water quality criterion. Before it approves a site-specific water quality criterion for a natural condition, the Board must find that the natural condition will fully protect existing and designated uses and ensure the protection of aquatic life. If a natural condition of a waterbody varies with time, the natural condition will be determined to be the actual natural condition of the waterbody measured prior to or concurrent with discharge or operation. The Board will, in its discretion, determine a natural condition for one or more seasonal or shorter periods to reflect variable ambient conditions; and require additional or continuing monitoring of natural conditions.

After discussion, Dr. Jenkins moved and Dr. Samuel seconded that section 7.2.d.8.1. of the rule read as follows and the motion passed unanimously 3 to 0:

7.2.d.8.1. Except that in the unnamed tributary of Daugherty Run, approximately one mile upstream of Daugherty Run's confluence with the Cheat River, a site-specific numeric criterion for iron of 3.5 mg/l shall apply and the following frequency and duration requirements shall apply to the chronic numeric criterion for selenium (5ug/l): the four-day average concentration shall not be exceeded more than three times every three years (36 months), on average. Further, the following site-specific numeric criteria shall apply to Fly Ash Run of Daugherty Run: acute numeric criterion for aluminum: 888.5 ug/l and manganese: 5 mg/l.

After discussion, Dr. Samuel moved and Dr. Jenkins seconded that section 7.2.d.9. of the rule read as follows and the motion passed unanimously 3 to 0:

7.2.d.9. Blackwater River - The Blackwater River below Davis, West Virginia shall be classified as a trout water, Category B2.

After discussion, Dr. Samuel moved and Dr. Jenkins seconded that section 7.2.d.16.2. of the rule read as follows and the motion passed unanimously 3 to 0:

7.2.d.16.2. Except that a socio-economic variance shall apply to that segment of Harmon Creek (0-97) from its confluence with the Ohio River to a point 2.2 miles upstream, which shall not have water use Category A designation, and which shall have the following instream criteria: Lead 14 ug/l, Daily Maximum, Zinc 181 ug/l, Daily Maximum, Temperature 100° F (monitored per Footnote 12 of the permit); Iron 4.0 mg/l, Monthly Average and 8.0 mg/l, Daily Maximum (monitored per Footnote 12 of the permit). Provided, however, that the criteria for Lead, Zinc, Temperature and Iron shall not apply, and instead the state-wide criteria for these parameters shall apply, unless: Weirton Steel Corporation (1) submits to the Office of Water Resources on or before January 31, 2001 a report setting forth the water quality of the discharge from Outlet 004 for these parameters during calendar year 2000; (2) offers further proposals for any appropriate reductions in the above excepted levels; (3) provides any appropriate additional engineering analysis of potential alternatives for reducing further the concentrations of said parameters in the discharge toward achieving statewide criteria; and (4) continues to submit to the Office of Water Resources on a semi-annual basis, summary reports on the water quality of the discharge from Outlet 004 and the efforts made by Weirton Steel Corporation during the prior six (6) months to improve the quality of said discharge. Additionally Weirton Steel must determine the water quality of Harmon Creek both immediately upstream of and below the discharge of outlet 004 at the Con Rail Bridge by sampling for Flow, pH, Total and Dissolved Lead, Total and Dissolved Zinc, Iron, Fluoride, Temperature, Turbidity, Oil and Grease and Hardness on at least a monthly basis and submit the results to the Office of Water Resources with the semi-annual report. These exceptions shall be in effect until action by the Environmental Quality Board to revise such exceptions or until June 29, 2004, whichever comes first.

After discussion, Dr. Samuel moved and Dr. Jenkins seconded that section 7.2.d.32.1 of the rule read be removed and the motion passed unanimously 3 to 0.

After discussion, Dr. Samuel moved and Dr. Jenkins seconded that the Board approve the cosmetic changes as suggested by the DEP and the motion passed unanimously 3 to 0.

The Board began discussing Appendix E of the proposed rule. The first table was renamed Appendix E, Table 1.

After discussion, Dr. Jenkins moved and Dr. Samuel seconded that aluminum should be measured based on dissolved concentrations, that the Board adopt a conversion factor of 1 and re-adopt the 87 chronic value, and the motion passed unanimously 3 to 0. This information is contained in section 8.1 of Appendix E, Table 1.

After discussion, Dr. Samuel moved and Dr. Jenkins seconded that the Board adopt the National Criterion for Ammonia in fresh water from USEPA's 1999 Update of Ambient Water Quality Criteria for Ammonia and the motion passed unanimously 3 to 0. This information is contained in section 8.21 of Appendix E, Table 1. A foot note "d" in that Table 1 was also adopted to read as follows:

The early life stage equation in the National Criterion shall be used to establish chronic criteria throughout the state unless the applicant demonstrates that no early life stages of fish occur in the affected water(s).

After discussion, Dr. Jenkins moved and Dr. Samuel seconded that the Board adopt section 8.9.2. and 8.9.3. (Trivalent Chromium) in Appendix E, Table 1 and the motion passed unanimously 3 to 0.

After discussion, Dr. Jenkins moved and Dr. Samuel seconded that section 8.14 (Hexavalent Chromium) in Appendix E, Table 1, be moved to section 8.9.1 of that table and the motion passed unanimously 3 to 0.

After discussion, Dr. Samuel moved and Dr. Jenkins seconded that the Board remove section 8.17.1 (manganese) in Appendix E, Table 1, and the motion passed unanimously 3 to 0.

After discussion, Dr. Jenkins moved and Dr. Samuel seconded that in Appendix E, Table 1, under section 8.22 (Organics), that the aquatic life values for Chloroform

(ug/l) and 1,1,2,2-tetrachloroethane be removed from the rule and the motion passed unanimously 3 to 0.

After discussion, Dr. Samuel moved and Dr. Jenkins seconded that section 8.22.1 and 8.22.2 (body burden) in Appendix E, Table 1, be removed and the motion passed unanimously 3 to 0.

After discussion, Dr. Jenkins moved and Dr. Samuel seconded that the values listed under the drinking water category and the recreation category in section 8.24.1 through section 8.24.5, be switched (they had been transposed) and adopted by the Board and the motion passed unanimously 3 to 0.

Whereupon Dr. Samuel moved and Dr. Jenkins seconded that the Board approve the proposed Legislative rule, as amended, and file such rule on September 1, 2000, and the motion passed unanimously 3 to 0.

After discussion, Dr. Jenkins moved and Dr. Samuel seconded that in response to public comment that the Board include the following statement in the fiscal note which is to be filed with the rule, and the motion passed unanimously 3 to 0:

The Board acknowledges that the adoption of the antidegradation implementation procedures in Appendix F of the proposed rule will have a significant fiscal impact to the Offices within the Division of Environmental Protection which prepares NPDES permits, applicants for new NPDES permits and others who may engage in activities subject to these changes, including nonpoint source activities, such as farming and logging, required to employ Best Management Practices. While we would like to be able to quantify these potential fiscal impacts, we regret that we are unable to do so at this time. Such quantification would require an economic analysis that is beyond the scope of duties and the financial capabilities of this Board.

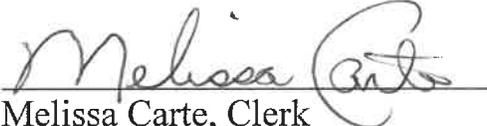
Whereupon Dr. Hackney joined the teleconference.

After discussion, the Board instructed Ms. Chatfield to forward to Commissioner Castle, the Commissioner of the Division of Environmental Protection, the concerns of the Rivers Coalition, regarding the content of the letter which the Commissioner must submit with the proposed rule when it is filed.

Whereupon, the Board opened the floor to public comment and Dr. Samuel left the meeting.

Whereupon, at 5:00 p.m., Dr. Hackney moved and Dr. Jenkins seconded that the August 21, 2000, emergency teleconference 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 teleconference held on August 21, 2000, by the West Virginia Environmental Quality Board. The minutes were approved by the Environmental Quality Board on Sept. 25, 2000.


Melissa Carte, Clerk