

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

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MINUTES

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

July 18, 2003

I. General

On July 18, 2003, a quorum of the members of the Environmental Quality Board (hereinafter referred to as the ABoard@) met at its 2nd floor conference room located at 1615 Washington Street, E., Charleston, West Virginia. Dr. Snyder, Chair, called the meeting to order at 9:00 a.m.

Board members present were as follows:

Ed Snyder, Chair
Edward C. Armbrrecht, Jr.
Cameron Hackney
Scott Simonton

Board members absent were as follows:

Bob Jenkins

Staff members present were as follows:

Libby Chatfield
Becky Charles
Melissa Carte

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

II. Administrative Matters

1. Election of the Board Chair and Vice Chair:

In accordance with section 22B-1-4(b) of the West Virginia code, at the first meeting of each fiscal year, the Environmental Quality Board members must elect a Chair and a Vice Chair. The July 18th 2003, Board meeting was the first meeting conducted in fiscal year 2004. Mr. Armbrecht moved and Dr. Simonton seconded that Dr. Snyder serve as the Chair of the Board and Dr. Jenkins serve as the Vice Chair of the Board, and the motion carried unanimously 4 to 0.

III. Rulemaking

1. Nutrient Criteria Committee:

The Board members were informed that the next Nutrient Criteria Committee meeting will be conducted on August 8, 2003.

2. Little Boyd Coal C. Remining Variance Application:

During October 2002, the Board received an application from Little Boyd Coal Company for a remining variance from water quality standards for several streams in Mingo County. After reviewing the initial application Board members expressed some concerns and requested that the company recalculate the data and revise the alternate criterion requested in the remining variance application in order to address those concerns. The Board members were informed that the company has not yet completed the revisions to the application but anticipate that it will be ready for review by the Board at the August Board meeting.

3. Triennial Review:

The Board completed the proposed revisions to the Water Quality Standards rule (46 CSR 1, "Requirements Governing Water Quality Standards") developed pursuant to its federally mandated triennial review. A public hearing to take oral comments regarding the proposed changes was

conducted on June 18, 2003, at 7:00 p.m. and the deadline for filing written comments with the Board was Monday, June 23, 2003, at 5:00 p.m.

At this meeting the Board reviewed all comments received in order to make final decisions regarding the proposed changes to the legislative rule. A summary of the comments received is attached to and made a part of these minutes as Exhibit "A". In addition to changes made based on comments submitted, some changes to the proposed rule were items identified by the Board.

The following information outlines the Board's decisions made and the actions taken on the proposed Legislative rule by the rule section:

46-1-1. General.

The Board did not propose any changes to this section.

46-1-2. Definitions.

Section 2.4

After discussion, Mr. Armbrrecht moved and Dr. Simonton seconded that the Board retain the phrase "or not" in this section of the rule and to change the term "water body" to "state water", and the motion carried unanimously 4 to 0. That section will now read in pertinent part that: "Designated uses are those uses specified in water quality standards for each state water or segment whether or not they are being attained."

Section 2.5

Dr. Hackney moved and Dr. Simonton seconded that the spelling of the word "Management" be corrected in this section, and the motion carried unanimously 4 to 0.

Dr. Hackney then moved and Dr. Simonton seconded that the Board's staff be given the authority to correct any typographical or numbering errors throughout the entire proposed rule without specific direction from the Board, and the motion carried unanimously 4 to 0.

Section 2.7

Dr. Simonton moved and Mr. Armbrecht seconded that the Board change the term “water body” to “state water” in this section of the rule, and the motion carried unanimously 4 to 0. The section will now read in pertinent part that: “Existing uses are those uses actually attained in a state water on or after November 28, 1975, whether or not they are included in the water quality standards.”

Section 2.19

Mr. Armbrecht moved and Dr. Simonton seconded that the Board update the reference to 40 CFR 136, as amended June 15, 1990, “Guidelines Establishing Test Procedures for the analysis of Pollutants Under the Clean Water Act”, to reflect the date of July 1, 2002, which is the most recent publication of that section (40 CFR 136), and the motion carried unanimously 4 to 0.

46-1-3. Conditions Not Allowable in State Waters.

Section 3.2.d.

In the proposed rule, the Board added a sentence to this section which provided that: “US Environmental Protection Agency’s organoleptic effect criteria may be used when applicable”. Dr. Hackney moved that the Board delete section 3.2.d. in its entirety from the rule but the motion did not receive a second.

Dr. Hackney requested that Ms. Chatfield revisit the issue of the Board’s procedural rule (46 CSR 7 “Procedural Rules Governing Reclassification of Waters Designated for Public Water Supply”) and the application of the Category A use designation. Dr. Hackney stated that the application of the Category A use designation may affect this provision of the rule.

Ms. Chatfield noted that the Board developed a procedural rule which creates an expedited procedure for the removal of a Category A designation, but which does not address the application of the Category A use designation. Further, Ms. Chatfield stated that in the procedural rule-making process, agencies have the authority to promulgate procedural rules without legislative review. The Board followed the guidelines established in the

Administrative Procedures Act for adopting procedural rules, held a public hearing and accepted written public comments on the procedural rule prior to its approval.

Because of some of the concerns that were raised during the public comment period the Board opted, after finalizing the procedural rule, to send the procedural rule to the WV Legislative Rule-Making Review Committee (LRMRC) for comment. The LRMRC expressed some concerns regarding the rule in a letter to the Board. The Board responded to the LRMRC's concerns in a letter dated April 14, 2003, and sought additional guidance from the Committee. The Board is very interested in any response that may be provided by LRMRC. The Board did not withdraw the procedural rule and the rule has been in effect since February 7, 2003.

Ms. Chatfield explained that the application of the Category A use designation does not have an impact on this section of the rule since the criteria established in this section are narrative criteria which apply to all waters of the state and that these criteria are not limited to a particular designated use. These are broad "free from" criteria which are intended to address situations where the individual chemical criteria may not be effective. The taste and odor narrative criterion in section 3.2.d. would apply to all waters regardless of the designated use.

Dr. Simonton stated that the proposed sentence is too broad and expressed concern that the narrative criteria may be used by the WV DEP as a water quality standard. Dr. Simonton moved and Dr. Hackney seconded that the Board remove the proposed sentence (US Environmental Protection Agency's organoleptic effect criteria may be used when applicable) from the Agency Approved version of the rule, and the motion carried unanimously 4 to 0. Section 3.2.d. of the rule will now read "Taste or odor that would adversely affect the designated uses of the affected waters;" which is the language currently in effect.

46-1-4. Antidegradation Policy.

Section 4.1.a.

After discussion, Mr. Armbrrecht moved and Dr. Simonton seconded that the Board retain the phrase "or not" in this section and to change the term "water body" to "state water", and the motion carried unanimously 4 to 0.

That section will now read in pertinent part that: “Existing uses are those uses actually attained in state waters on or after November 28, 1975, whether or not they are included as designated uses within these water quality standards.”

Dr. Simonton moved and Dr. Hackney seconded that the staff review the rule and change the term “water body” to “state water” to be consistent throughout the rule without specific direction from the Board, and the motion carried unanimously 4 to 0.

Section 5.2.b.

After discussion, Dr. Simonton moved and Mr. Armbrrecht seconded that the Board retain the language as proposed in this section, which provides in pertinent part that “the size of the zone shall be determined using alternatives 2 through 4, outlined in 4.3.3 of USEPA’s Technical Support Document...” in the Agency Approved version of the rule, and the motion carried unanimously 4 to 0.

The Board also discussed a comment received regarding the use of the word “shall” versus the word “may”. The Board opted to retain the language as it is currently in the rule (the rule currently uses the word “shall” in this section) but indicated that it may discuss the wording issue with the Division of Water and Waste Management in the future.

Section 5.2.k.

The Board initially proposed adding a reference to additional subsections within this section of the rule. After discussion, Mr. Armbrrecht moved and Dr. Simonton seconded that the Board retain the proposed language in that section of the Agency Approved version of the rule, and the motion carried unanimously 4 to 0. That section will now read in pertinent part that “the permittee shall provide documentation that demonstrates to the satisfaction of the Director that the mixing zone is in compliance with the provisions outlined in subsections 5.2.b, 5.2.c, 5.2.d., 5.2.e, 5.2.f., 5.2.g, and 5.2.h, herein.”

46-1-6. Water Use Categories.

No comments were received on the proposed changes to this section of the rule.

46-1-7. West Virginia Waters.

Section 7.1

The Board proposed the removal of sections 7.1.a. through 7.1.e. regarding the list of Major River Basins and their Alpha Numeric System from the rule. After discussion, the Board opted to proceed with the proposed removal of the language from the Agency Approved version of the rule.

Section 7.2.a.2.

After discussion, the Board opted to retain the proposed language of this section in the Agency Approved version of the rule. This section provides an exemption from the ½ mile zone discharge restriction to Weirton Steel until September 1, 2010, for iron and also requires a written report regarding the status of its drinking water plant and the issues pertaining thereto to the Board on or before March 1, 2007.

Section 7.2.b.

After discussion, the Board opted to retain the proposed language of this section in the Agency Approved version of the rule. This proposal deletes a reference to section 7.2.c.5 and instead now references section 7.2.c.4 of this rule. The proposed change will allow for a natural background exemption within a troutwater for any parameter.

Section 7.2.c.5.

After discussion, the Board opted to move this section of the rule to section 7.2.d.9.1. in the Agency Approved version of the rule as proposed. In addition, Dr. Simonton moved and Dr. Hackney seconded that the Board add the phrase “Except that” to the beginning of the section, and the motion carried unanimously 4 to 0. That section will now read in pertinent part that “Except that in the upper Blackwater River from the mouth of Yellow Creek to a point 5.1 miles upstream, when flow is less than 7Q10, the naturally occurring values for dissolved oxygen...”.

Section 7.2.d.

The Board received general comments from the USEPA requesting that the Board review the site-specific variances included in this section and remove those that are no longer applicable such as sections 7.2.d.6.1., 7.2.d.20.3 and 7.2.d.21. Since the Board did not include this change in the proposed rule which went out for public comment, the Board opted to revisit the issue after the completion of the triennial review.

Section 7.2.d.16.2.

After discussion, the Board opted to retain the proposed language in the Agency Approved version of the rule. This section extends the socio-economic variance for Weirton Steel at Harmon Creek until July 1, 2007, and removes the alternate criteria for zinc.

Section 7.2.d.19.1.

After discussion, Mr. Armbrrecht moved and Dr. Simonton seconded that the Board add the description from section 7.1.e.2. for the Kanawha River main stem Zone 1 to this section, and the motion carried unanimously 4 to 0. That section will now read “Kanawha River Zone 1 – main stem, Zone 1, from mile point 0, at its confluence with the Ohio River, to mile point 72 near Diamond, West Virginia.”

Section 7.2.d.19.3.

After discussion, Dr. Simonton moved and Dr. Hackney seconded that the Board add the phrase “Except that” to the beginning of the section, and the motion carried unanimously 4 to 0. In addition, the Board approved the change to the unit of measure for chlorides to ug/L as proposed. That section will now read “Except that in Ward Hollow of Davis Creek, the following site-specific numeric criterion for chloride shall apply for Category A and Category B1 (chronic aquatic life protection; 310,000 ug/L).”

Section 7.2.d.20.

After discussion, Dr. Simonton moved and Mr. Armbrecht seconded that the Board add the description from section 7.1.e.3. for the Kanawha River Zone 2 and Tributaries to this section, and the motion carried unanimously 4 to 0. That section will now read “Kanawha River Zone 2 and Tributaries, the main stem of the Kanawha River from mile point 72 near Diamond, West Virginia, and all its tributaries from mile point 0 to the headwaters.”

Section 8.1.a.

After discussion, Mr. Armbrecht moved and Dr. Simonton seconded that the Board retain the reference to the specific date of the most recent updated version of 40 CFR 136, “Guidelines Establishing Test Procedures for Analysis of Pollutants Under the Clean Water Act” which is July 1, 2002, and also to incorporate an additional reference to 47 C.S.R.10, §7.2 – WV/NPDES Rules for Coal Mining Facilities, in the last sentence of the section, and the motion carried unanimously 4 to 0.

Section 8.1.b.3.

The Board opted to retain the proposed language in this section in the Agency Approved version of the rule. This action corrects the reference to the Director of the Division of Water and Waste Management of the Department of Environmental Protection.

46-1-9. Establishment of Safe Concentration Values.

The Board solicited and received written comments regarding its consideration of the adoption of the Great Lakes Initiative Standard for determining whether a substance is bio-accumulative. After a review of the comments the Board took no further action on the matter and instead agreed to continue to discuss the issue outside of this triennial review schedule.

Appendix A. Category B-2 – Trout Waters.

The current definition of “Trout waters” in the Appendix A of the Board’s rule provides that trout waters are streams or stream segments which sustain

year-round trout populations, excluded are those streams or stream segments which receive annual stockings of trout but which do not support year-round trout populations.

Initially, the Department of Environmental Protection requested that the Board review the streams listed in Appendix A of the rule since the list was incomplete and outdated. The Board solicited input from the WV Department of Natural Resources (DNR) and they provided recommended additions to the list of trout waters. This list included identified trout waters and also some streams which are stocked with brown fingerling trout since DNR data indicates that those populations carry over during the year and therefore fit the definition of a trout water as contained in the Board's rule. These streams and stream segments were included in the Board's proposed rule.

During the public comment period on the proposed rule, the DNR reviewed the information and provided the Board with an amended list of trout waters for inclusion in Appendix A by deleting all duplicate listings and adding the stream codes. After discussion, Mr. Armbricht moved and Dr. Simonton seconded that the Board adopt the amended list of trout waters as submitted by the DNR during the public comment period, and the motion carried unanimously 4 to 0.

Appendix B.

Initially, the Board proposed deleting Appendix B which is a list of known waters used as public water supplies (but which does not exclude any waters described in section 6.2 of the rule) from the rule since it is incomplete and outdated. Dr. Hackney moved and Dr. Simonton seconded that the Board retain the list of Category A waters contained in Appendix B of the rule. After discussion, Mr. Armbricht offered an amendment to Dr. Hackney's motion which incorporates additional language regarding the Category A waters identified by the WV Bureau for Public Health. Dr. Hackney accepted the amendment and the motion carried unanimously 4 to 0. The first sentence of Appendix B will now read: "This list contains known waters used as public water supplies and is not intended to exclude any waters as described in section 6.2, herein, nor any additional waters identified by the WV Bureau for Public Health as public water supplies."

Appendix C. Category E-3 – Power Production

After discussion, the Board opted to delete Appendix C which contained a listing of Category E-3 – Power Production facilities from the rule as proposed.

Appendix D. Category C – Water contact Recreation

After discussion, the Board opted to delete Appendix D which contained a list of waters known to be used for water contact recreation from the rule as proposed.

Appendix E. Table 1.

General.

After discussion, Dr. Simonton moved and Dr. Hackney seconded that the Board include a notice in Appendix E which clarifies that all units of measure in the appendix are in micrograms per liter (ug/L) unless otherwise expressed, and the motion carried unanimously 4 to 0. In addition, because the Board deleted some of the other appendices from the rule, Appendix E (and all references to the appendix within the rule) will be changed to Appendix C. Also, the Board agreed to retain the new CAS column and to delete the “All Other Uses” column from the appendix as proposed.

NOTE: In these minutes, the section numbers referenced in the discussion of Appendix E, Table 1 reflect the sections as listed in the Board’s **Proposed** Legislative Rule.

6. Ammonia

After discussion, the Board retained the proposed change to the Ammonia criteria. This change is actually to footnote d as referenced in the criteria. Footnote d was revised to include the word “present” in the text. The footnote will now provide: “The early life stage present 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).”

Also, the Board confirmed the removal of the Unionized Ammonia Human Health criterion of 50 ug/L (section 8.2 of the currently effective rule) from the Agency Approved version of the Legislative rule.

9.a. Arsenic

In the Board's proposed Legislative rule the Board proposed changing the Human Health Category A and Category C values for Arsenic from 50 ug/L to 10 ug/L. After discussion, Dr. Hackney moved and Dr. Simonton seconded that the Board retain the current Human Health value for Category A and Category C of 50 ug/L (rather than the proposed value of 10 ug/L) in the Agency Approved version of the Legislative rule. The motion carried unanimously 4 to 0.

9.b. Arsenic (dissolved)

In the Board's proposed Legislative rule the Board proposed changing the Aquatic Life values for dissolved Arsenic (section 8.4.1. in the currently effective rule) from 360 to 340 (acute) and from 190 to 150 (chronic). After discussion, the Board agreed to retain the proposed change (Aquatic Life Acute criteria of 340 ug/L and Chronic criteria of 150 ug/L) in the Agency Approved version of the Legislative rule.

12. Benzene

In the Board's proposed Legislative rule, the Board proposed changing the Benzene Human Health value (section 8.22 in the currently effective rule) for Category A from 0.66 to 2.2 and for Category C from 71 to 51. After discussion, the Board opted to retain the proposed change (2.2 ug/L for Category A and 51 ug/L for Category C) in the Agency Approved version of the Legislative rule.

18. Beryllium

In the Board's proposed Legislative rule, the Board proposed removing the Beryllium Aquatic Life values (section 8.6 in the currently effective rule) from the rule and to change the Beryllium Human Health Category A value from .0077 ug/L to 4 ug/L. After discussion, the Board agreed to retain the proposed change (delete the Aquatic Life values and adopt a Human Health

Category A value of 4 ug/L) in the Agency Approved version of the Legislative rule.

26. Butylbenzyl Phthalate

In the Board's proposed Legislative rule, the Board proposed adopting a Butylbenzyl Phthalate Human Health Category A value of 1,500 ug/L and a Category C value of 1,900 ug/L. After discussion, the Board opted to retain these proposed values in the Agency Approved version of the Legislative rule.

27.a. Cadmium

After discussion, the Board opted to retain the Board's format for calculating the Human Health Category A value for this criteria by including the table with the criteria (in the parameter box) and inserting an "X" in the applicable column (Human Health Category A).

27.b. Cadmium

After discussion, Dr. Simonton moved and Mr. Armbrrecht seconded that the Board follow the USEPA format for calculating the Aquatic Life Chronic value for Cadmium by inserting the Chronic value of 0.25 in the use designation box and adding a footnote which states that the value (0.25) was calculated using a hardness value of 100 mg/l and which also includes a sentence stating that "criteria values for other hardness shall be calculated from the following" and include that equation. The motion carried unanimously 4 to 0.

27.c. Cadmium

After discussion, Mr. Armbrrecht moved and Dr. Simonton seconded that the Board follow the USEPA format for calculating the Aquatic Life Acute value for Cadmium by inserting the Acute value of 2.0 in the use designation box and adding a footnote which states that the value (2.0) was calculated using a hardness value of 100 mg/l and which also includes a sentence stating that "criteria values for other hardness shall be calculated from the following" and include that equation. The motion carried unanimously 4 to 0.

30. Chloride

In the Board's proposed rule the Board did not propose a change to the currently effective Chloride Human Health values (section 8.8 of the currently effective rule) for Category A (250 mg/L) and Category C (250 mg/L). However, the Board did receive a comment requesting that the Board remove the Human Health values since they are not reflective of criteria developed by USEPA and the Clean Water Act but rather are secondary drinking water values established under the Safe Drinking Water Act. After discussion, Dr. Hackney moved and Dr. Simonton seconded that the Board remove the Chloride Human Health values for Category A and Category C from the Agency Approved version of the Legislative rule, and the motion carried unanimously 4 to 0.

43.a. Copper

In the Board's proposed rule the Board proposed a Copper Human Health Category A value of 1300 ug/L. After discussion, the Board opted to retain the proposed Copper value (1300 ug/L) in the Agency Approved version of the Legislative rule.

43.b. Copper

After discussion, Dr. Hackney moved and Mr. Armbrrecht seconded that the Board follow the USEPA format for calculating the Aquatic Life Chronic value for Copper by inserting the Chronic value of 9.0 ug/L in the use designation box and adding a footnote which states that the value (9.0 ug/L) was calculated using a hardness value of 100 mg/l and which also includes a sentence stating that "criteria values for other hardness shall be calculated from the following" and include that equation. The motion carried unanimously 4 to 0.

43.c. Copper

After discussion, Dr. Simonton moved and Mr. Armbrrecht seconded that the Board follow the USEPA format for calculating the Aquatic Life Acute value for Copper by inserting the Acute value of 13 in the use designation box and adding a footnote which states that the value (13) was calculated using a hardness value of 100 mg/l and which also includes a sentence

stating that “criteria values for other hardness shall be calculated from the following” and include that equation. The motion carried unanimously 4 to 0.

61. Diethyl Phthalate

In the Board’s proposed Legislative rule the Board adopted a Diethyl Phthalate Human Health Category A value of 17,000 ug/L and Category C value of 44,000 ug/L and included a reference to a USEPA footnote. However the text of the footnote was not included in the proposed rule. After discussion, Dr. Simonton moved and Mr. Armbrecht seconded that the Board retain the Diethyl Phthalate Human Health values as proposed but to remove the reference to the USEPA footnote, and the motion carried unanimously 4 to 0.

63. Dimethyl Phthalate

In the Board’s proposed Legislative rule the Board adopted a Dimethyl Phthalate Human Health Category A value of 270,000 ug/L and Category C value of 1,100,000 ug/L and included a reference to a USEPA footnote. However the text of the footnote was not included in the proposed rule. After discussion, Dr. Simonton moved and Mr. Armbrecht seconded that the Board retain the Dimethyl Phthalate Human Health values as proposed but to remove the reference to the USEPA footnote in the Agency Approved version of the rule, and the motion carried unanimously 4 to 0.

64. Di-n-Butyl Phthalate

In the Board’s proposed Legislative rule the Board adopted a Di-n-Butyl Phthalate Human Health Category A value of 2,000 ug/L and Category C value of 4,500 ug/L and included a reference to a USEPA footnote. However the text of the footnote was not included in the proposed rule. After discussion, Dr. Simonton moved and Mr. Armbrecht seconded that the Board retain the Di-n-Butyl Phthalate Human Health values but remove the reference to the USEPA footnote in the Agency Approved version of the rule, and the motion carried unanimously 4 to 0.

76.a. Fecal Coliform

In the Board's proposed Legislative rule, the Board proposed amending the fecal coliform standard to provided that if a sample tested for fecal coliform shows noncompliance, then further testing of the sample for E. Coli can be allowed to determine compliance with the criterion. After discussion, Dr. Hackney moved and Dr. Simonton seconded that the Board remove this additional proposed language (retaining only the language from section 8.13 of the currently effective rule) from the Agency Approved version of the Legislative rule, and the motion carried unanimously 4 to 0.

79. Fluoride

In the Board's proposed Legislative rule, the Board retained the currently effective Fluoride Category D value (section 8.14.1 in the currently effective rule) of 2.0 mg/l. After discussion, Dr. Simonton moved and Mr. Armbrecht seconded that the Board convert that value to micrograms per liter (2,000 ug/L) in the Agency Approved version of the Legislative rule, and the motion carried unanimously 4 to 0.

81. Halomethanes

In the Board's proposed Legislative rule, the Board retained the currently effective Halomethane criterion for Human Health Category A and Category C (section 8.22 of the currently effective rule). A commenter stated that the Board does not need to retain that generic criterion since there are now new individual Halomethanes criteria that have been adopted by the USEPA. After discussion, Dr. Simonton moved and Mr. Armbrecht seconded that the Board strike the generic Halomethane criterion from the Agency Approved version of the Legislative rule and the motion carried unanimously 4 to 0.

92.a. Lead

In the currently effective rule, the Human Health Category A value for Lead is 50 ug/L (section 8.16 of the currently effective rule). In the Board's proposed Legislative rule, the Board proposed a Human Health Category A value for Lead of 15 ug/L. After discussion, Dr. Hackney moved and Dr. Simonton seconded that the Board retain the current Human Health value for Category A of 50 ug/L (rather than the proposed value of 15 ug/L) in the

Agency Approved version of the Legislative rule. The motion carried unanimously 4 to 0.

92.b. Lead

After discussion, Dr. Simonton moved and Mr. Armbrecht seconded that the Board follow the USEPA format for calculating the Aquatic Life Chronic value for Lead by inserting the Chronic value of 2.5 ug/L in the use designation box and adding a footnote which states that the value (2.5 ug/L) was calculated using a hardness value of 100 mg/l and which also includes a sentence stating that “criteria values for other hardness shall be calculated from the following” and include that equation. The motion carried unanimously 4 to 0.

92.c. Lead

After discussion, Dr. Simonton moved and Mr. Armbrecht seconded that the Board follow the USEPA format for calculating the Aquatic Life Acute value for Lead by inserting the Acute value of 65 ug/L in the use designation box and adding a footnote which states that the value (65 ug/L) was calculated using a hardness value of 100 mg/l and which also includes a sentence stating that “criteria values for other hardness shall be calculated from the following” and include that equation. The motion carried unanimously 4 to 0.

93. Malathion

In the Board’s proposed Legislative rule, the Board inadvertently omitted the USEPA’s recommended Aquatic Life, B2 Chronic value of 0.1 ug/L for Malathion. After discussion, Dr. Simonton moved and Mr. Armbrecht seconded that the Board include that value (0.1 ug/L in the Aquatic Life B-2 Chronic Category) in the Agency Approved version of the Legislative rule and the motion carried unanimously 4 to 0.

100. Mirex

In the Board’s proposed Legislative rule, the Board proposed an Aquatic Life Chronic value for Mirex of 0.001 ug/L. After discussion, the Board agreed to retain that proposed criterion in the Agency Approved version of the Legislative rule.

104. Nitrosamines

In the Board's proposed Legislative rule, the Board proposed a Human Health Category A value for Nitrosamines of 0.0008 ug/L and a Category C value of 1.24 ug/L. After discussion the Board opted to retain the proposed criterion in the Agency Approved version of the Legislative rule.

The Board also proposed Human Health Category A and Category C values for several other nitrosamines (see sections 105 through 110 of the proposed rule). After discussion, the Board opted to also retain those proposed nitrosamine values in the Agency Approved version of the Legislative rule.

Section 8.21 Nitrites

In the Board's proposed Legislative rule, the Board proposed removing the Nitrite criterion from the water quality standards rule (section 8.21 of the currently effective rule). However, the Board received extensive comments from the US Fish and Wildlife Service based on scientific data and literature review requesting that the Board re-instate those Nitrite values because of the potential impacts to aquatic life. After discussion, Mr. Armbrecht moved and Dr. Simonton seconded that the Board include the Nitrite values (as micrograms per liter) in the Agency Approved version of the Legislative rule and the motion carried 3 to 1, with Dr. Hackney voting against the reinstatement of the Nitrite values.

115. Pentachlorophenol

After discussion, Dr. Simonton moved and Mr. Armbrecht seconded that the Board follow the USEPA format for calculating the Aquatic Life Chronic value for Pentachlorophenol by inserting the Chronic value of 15 ug/L in the use designation box and adding a footnote which states that the Aquatic Life values are expressed as a function of pH and include the corresponding equation. The motion carried unanimously 4 to 0.

After discussion, Dr. Simonton moved and Mr. Armbrecht seconded that the Board follow the USEPA format for calculating the Aquatic Life Acute value for Pentachlorophenol by inserting the Acute value of 19 ug/L in the use designation box and adding a footnote which states that the Aquatic Life values are expressed as a function of pH and include the corresponding equation. The motion carried unanimously 4 to 0.

116. pH

In the Board's proposed Legislative rule, the Board proposed removing the language regarding pH which provided that higher values for pH which were due to photosynthetic activity may be tolerated. After discussion, Dr. Hackney moved and Mr. Armbrecht seconded that the Board reinstate that language in the Agency Approved version of the rule, and the motion carried unanimously 4 to 0.

118. Phthalate esters

In the Board's proposed Legislative rule, the Board included a Phthalate Esters Aquatic Life Chronic value of 3.0 ug/L. After discussion, Dr. Simonton moved and Mr. Armbrecht seconded that the Board remove that criterion and corresponding values from the Agency Approved version of the Legislative rule, and the motion carried unanimously 4 to 0.

119. Polychlorinated Biphenyls (PCBs)

In the Board's proposed Legislative rule, the Board inadvertently did not propose adopting the USEPA's most recent recommended PCBs values for Human Health Category A and Category C of 0.000064 ug/L. After discussion, Dr. Hackney moved and Dr. Simonton seconded that the Board incorporate those PCBs values (Human Health Category A and Category C of 0.000064 ug/L) in the Agency Approved version of the Legislative rule, and the motion carried unanimously 4 to 0.

120. Polynuclear Aromatic (PAHs)

In the Board's proposed Legislative rule, the Board proposed adopting Human Health Category A and Category C values for PAHs. After discussion, Dr. Simonton moved and Dr. Hackney seconded that the Board remove the proposed criterion from the Agency Approved version of the Legislative rule, and the motion carried unanimously 4 to 0.

122.a. Radionuclides

In the Board's proposed Legislative rule, the Board proposed the adoption of the federal Safe Drinking Water Act's Maximum Contaminate Levels (MCLs) for this criterion. However, the Board inadvertently proposed

outdated values. After discussion, Mr. Armbrecht moved and Dr. Simonton seconded that the Board propose the adoption of the USEPA's most current 2003 recommended values for radionuclides and include language from the USEPA document. The motion carried 3 to 0, with Dr. Hackney abstaining from the vote.

124. Selenium

In the Board's proposed Legislative rule, the Board proposed a Selenium Human Health Category A value of 50 ug/L. After discussion, Dr. Hackney moved and Dr. Simonton seconded that the Board propose the adoption of a Selenium Human Health Category A value of 170 ug/L which is the USEPA's most current recommended value, and the motion carried unanimously 4 to 0.

125.a. and 125.b. Silver

In the Board's proposed Legislative rule, the Board included a Silver Human Health Category A value as well as values for both Aquatic Life Acute and Chronic categories. However, the USEPA does not have recommended values for Human Health or Aquatic Life Chronic. After discussion, Dr. Hackney moved and Dr. Simonton seconded that the Board propose only the Aquatic Life Acute value in the Agency Approved version of the Legislative rule. In addition, the Board will follow the USEPA format for calculating the Aquatic Life Acute value for Silver by inserting the Acute value of 3.2 in the use designation box and adding a footnote which states that the value (3.2) was calculated using a hardness value of 100 mg/l and which also includes a sentence stating that "criteria values for other hardness shall be calculated from the following" and include that equation. The motion carried unanimously 4 to 0.

126. Solids Dissolved and Salinity

In the Board's proposed Legislative rule, the Board proposed the adoption of a Dissolved Solids and Salinity Human Health Category A value of 250,000 ug/L. After discussion, Dr. Hackney moved and Dr. Simonton seconded that the Board remove the proposed value from the Agency Approved version of the Legislative rule, and the motion carried unanimously 4 to 0. The Board will, however, continue to review the criteria for possible inclusion in the next triennial review.

128. Dioxin

After discussion, the Board opted to retain the proposed Dioxin Human Health Category A value of 5.0 E-9 ug/L and the Human Health Category C value of 5.1 E-9 ug/L in the Agency Approved version of the Board's Legislative rule.

129.b. and 129.c. Temperature

After discussion, Dr. Simonton moved and Mr. Armbrecht seconded that the Board retain the river names contained in these sections but to replace the alphanumeric codes with the appropriate description as found in the rule, and the motion carried unanimously 4 to 0.

134. Toluene

In the Board's proposed Legislative rule, the Board inadvertently listed Toluene as a carcinogen. After discussion Dr. Simonton moved and Dr. Hackney seconded that the Board retain the Toluene Human Health Category A value of 6,800 ug/L and the Category C value of 200,000 ug/L but remove the carcinogen designation ("b" footnote) in the Agency Approved version of the Legislative rule, and the motion carried unanimously 4 to 0.

137. Tributyltin (TBT)

After discussion, the Board opted to retain the proposed TBT Aquatic Life B1,B4 Acute (0.46 ug/L) and Chronic (0.063 ug/L) values in the Agency Approved version of the Legislative rule. Mr. Armbrecht moved and Dr. Simonton seconded that the Board also add those values to the Aquatic Life B2 Acute and Chronic categories, and the motion carried unanimously 4 to 0.

144.a. Turbidity

Although the Board did not propose a change to the Turbidity standard in the proposed Legislative rule, during the public comment period the Board did solicit comments regarding the removal of the Turbidity exemption for surface mining activities. After, discussion, Mr. Armbrecht moved and Dr. Simonton seconded that the Board retain the Turbidity exemption in the

Agency Approved version of the Legislative rule, and the motion carried unanimously 4 to 0. Mr. Armbrecht requested that in light of the variety of comments received that the WVDEP evaluate Turbidity and sedimentation effects from exempted activities and suggested that the Board review the validity of the Turbidity exemption based on the results of such evaluation and continue to consider the issue outside of the triennial review process.

146. a. Zinc

After discussion, Dr. Simonton moved and Dr. Hackney seconded that the Board follow the USEPA format for calculating the Aquatic Life Chronic value for Zinc by inserting the Chronic value of 120 ug/L in the use designation box and adding a footnote which states that the value (120 ug/L) was calculated using a hardness value of 100 mg/l and which also includes a sentence stating that “criteria values for other hardness shall be calculated from the following” and include that equation. The motion carried unanimously 4 to 0.

146.b. Zinc

After discussion, Dr. Simonton moved and Mr. Armbrecht seconded that the Board follow the USEPA format for calculating the Aquatic Life Acute value for Zinc by inserting the Acute value of 120 ug/L in the use designation box and adding a footnote which states that the value (120 ug/L) was calculated using a hardness value of 100 mg/l and which also includes a sentence stating that “criteria values for other hardness shall be calculated from the following” and include that equation. The motion carried unanimously 4 to 0.

Hardness Based Criteria

After further discussion, Dr. Simonton moved and Dr. Hackney seconded that all hardness based criteria be reviewed to ensure that the values in the equations are consistent with those published by USEPA in the “National Recommended Water Quality Criteria 2002, Appendix B – Parameters for Calculating Freshwater Dissolved Metals that are Hardness-Dependent”, and the motion carried unanimously 4 to 0.

Fiscal Note

The Board then discussed the information which will be included in the Fiscal Note which must be filed in conjunction with the Agency Approved version of the proposed Legislative rule. The Board determined that the revisions and additions to the numeric criteria may result in the need for adjustment to limits in NPDES permits and more stringent permit limits. The revisions may also affect requirements and numeric limits established in other regulatory programs. However, variances from numeric criteria on two streams will provide relief to those dischargers and are anticipated to lower costs of meeting their permit limits.

Also, it is anticipated that these updates will result in maintaining and improving where necessary, the quality of the state's streams and rivers, which will benefit all citizens. Updating the criterion will also ensure continued protection, helping to avoid potential future clean-up costs and will also enhance interests such as the tourism industry which are important to the state's economy.

Agency Approved Rule

Dr. Hackney stated that Dr. Simonton needed to leave the meeting and requested that the Board address whether to move forward with the proposed Legislative rule. Whereupon, Mr. Ambrecht moved and Dr. Simonton seconded that the Board approve the proposed Legislative rule as amended and file the Agency Approved version with the Legislature for consideration during the 2004 Legislative session. The motion carried 3 to 1, with Dr. Hackney voting against the motion.

Whereupon, Dr. Simonton left the meeting.

Appendix E.

The Board then continued to discuss some additional potential changes to Appendix E of the proposed Legislative rule.

24. Bis(2-Ethylhexyl) Phthalate

In the Board's proposed Legislative rule, the Board included a reference to a USEPA footnote but did not include the text of that footnote in the rule.

After discussion, Dr. Hackney moved and Mr. Armbrrecht seconded that the Board remove the reference to the footnote from the Agency Approved version of the Legislative rule, and the motion carried unanimously 3 to 0.

41. Chromium VI (dissolved)

In the Board's proposed Legislative rule, the Board included a Chromium VI (dissolved) Aquatic Life B2 Chronic value of 7.2 ug/L (x CF⁵). However, in order to be consistent with the USEPA recommended value, the Chromium VI (dissolved) Aquatic Life B2 Chronic value should be 11 ug/L (x CF⁵). Dr. Hackney moved and Mr. Armbrrecht seconded that the Board adopt the USEPA value of 11 ug/L (x CF⁵) in the Agency Approved version of the Legislative rule, and the motion carried unanimously 3 to 0.

47. 4,4'-DDT

In the Board's proposed Legislative rule, the Board included Human Health Category A and Category C values for 4,4'-DDT. However, the Board inadvertently omitted the USEPA's corresponding footnote which provides that this criterion applies to DDT and its metabolites (i.e., the total concentration of DDT and its metabolites should not exceed this value). After discussion, Dr. Hackney moved and Mr. Armbrrecht seconded that the Board adopt this footnote and include it in the Agency Approved version of the Board's Legislative rule, and the motion carried unanimously 3 to 0.

69. alpha-Endosulfan

In the Board's proposed Legislative rule, the Board included Human Health and Aquatic Life values for alpha-Endosulfan. However, the Board inadvertently omitted the USEPA's corresponding footnote which provides that the value was derived from data for endosulfan and is most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan. After discussion, Dr. Hackney moved and Mr. Armbrrecht seconded that the Board adopt this footnote and include it in the Agency Approved version of the Board's Legislative rule, and the motion carried unanimously 3 to 0.

70. beta-Endosulfan

In the Board's proposed Legislative rule, the Board included Human Health and Aquatic Life values for beta-Endosulfan. However, the Board

inadvertently omitted the USEPA's corresponding footnote which provides that the value was derived from data for endosulfan and is most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan. After discussion, Dr. Hackney moved and Mr. Armbrrecht seconded that the Board adopt this footnote and include it in the Agency Approved version of the Board's Legislative rule, and the motion carried unanimously 3 to 0.

80. Guthion

In the Board's proposed Legislative rule, the Board inadvertently omitted the Aquatic Life, B2 Chronic value of 0.01 ug/L for Guthion. After discussion, Mr. Armbrrecht moved and Dr. Hackney seconded that the Board include that value (0.01 ug/L in the Aquatic Life B-2 Chronic Category) in the Agency Approved version of the Legislative rule and the motion carried unanimously 3 to 0.

95.a. Mercury

In the Board's proposed Legislative rule, the Board included the appropriate Mercury values for the Aquatic Life B1, B4 and B2 Acute (1.4 ug/L) and Chronic (0.77 ug/L) categories but inadvertently omitted the conversion factor with the corresponding footnote. After discussion, Mr. Armbrrecht moved and Dr. Hackney seconded that the Board add this information (x CF⁵) in the use designation boxes in Table 1 of Appendix E, and the motion carried unanimously 3 to 0.

145. Vinyl Chloride

In the Board's proposed Legislative rule, the Board included the Vinyl Chloride Human Health Category C of 525 ug/L. However, the USEPA has updated their recommended value to 530 ug/L. After discussion, Dr. Hackney moved and Mr. Armbrrecht seconded that the Board include the Vinyl Chloride Human Health Category C of 530 ug/L in the Agency Approved version of the Legislative rule, and the motion carried unanimously 3 to 0.

Dr. Hackney moved and Mr. Armbrrecht seconded that the Board adopt the USEPA footnotes as appropriate. Mr. Armbrrecht then offered an amendment to the motion to provide staff with the ability to make additional technical changes to the rule as necessary. These changes will be presented

to the Board Chair for approval prior to the filing of the Agency Approved version of the rule with the Legislative Rulemaking Review Committee. This amendment to the original motion was accepted by Dr. Hackney, and the amended motion carried unanimously 3 to 0.

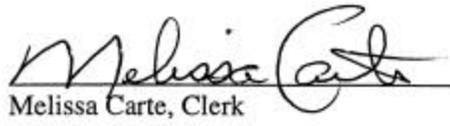
IV. Additional Administrative Matters

1. Review and Approval of the June 19, 2003, Board meeting minutes:

The minutes of the June 19, 2003, Board meeting were presented to the Board for consideration. Dr. Hackney stated that he would like the minutes to be revised to reflect the discussion conducted by the Board regarding the Category A Procedural Rule and the Legislative process. The minutes will be revised and presented to the Board for consideration during the August Board meeting.

Whereupon, Dr. Hackney moved and Mr. Armbricht seconded that the July 18, 2003, Environmental Quality Board meeting 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 July 18, 2003, by the West Virginia Environmental Quality Board. These minutes were approved by the Environmental Quality Board on _____, 2003.


Melissa Carte, Clerk