

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

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MINUTES

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

NOVEMBER 20, 2003

I. General

On November 20, 2003, a quorum of the members of the Environmental Quality Board (hereinafter referred to as the ABoard@) met at the Rowlesburg Veterans of Foreign Wars building which is located at the corner of Church Street and Main Street in Rowlesburg, Preston County, WV. Dr. Snyder, Chair, called the meeting to order at 1:00 p.m.

Board members present were as follows:

Ed Snyder, Chair
Bob Jenkins, Vice Chair
Edward C. Armbrecht, Jr.
Cameron Hackney

Board members absent from the meeting were as follows:

Scott Simonton

Staff members present were as follows:

Libby Chatfield
Melissa Carte

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

I. Administrative Matters

1.) Review and Approval of the October 30, 2003, Board meeting minutes:

The minutes of the October 30, 2003, Environmental Quality Board meeting have been completed but staff and Board members have not had sufficient opportunity to review the draft of the proposed minutes. The Board members opted to postpone the discussion of the minutes of the October 30, 2003, Board meeting, until the December 10, 2003 Board meeting.

2.) Budget Report:

The Board members reviewed the budget report provided by Ms. Coleman. A copy of the report is attached to and made a part of these minutes as Exhibit "A". As of October 31, 2003, the Boards have spent 33.12% of the combined budgets which represents a four month period or 33.33% of the fiscal year.

The WV DEP has been awarded a grant from the USEPA and that the DEP has proposed to use a portion of that funding to support the Environmental Quality Board in the development of nutrient criteria. Toward that end, the Board will receive a total of \$60,000 to be utilized by the Nutrient Criteria Committee (NCC). Although Ms. Coleman will provide the Board with a separate report which reflects the budget for the Board's Nutrient Criteria Committee, Mr. Armbricht requested that in addition, Ms. Coleman add a sentence to EQB's budget report which also reflects the total expenditures of the Nutrient Criteria Committee.

3.) Calendar of Events for December:

The next meeting of the Environmental Quality Board is scheduled for December 10, 2003, at 1:00 p.m. and will continue on December 11, 2003, at 9:00 a.m. Also, the Board Chairs are scheduled meet in December to finalize the 360 staff evaluations.

4.) Website Update:

The Boards' websites have been online for approximately one year. Staff has identified some areas of the sites which could be improved, such as: expanding the available space for title and description on the "Statutes and Regulations" page; listing the Board meeting dates in chronological order on the "Calendar" page; adding printer friendly PDF versions of the appeal form and certificate of service form in order that they can be completed online; increasing the number of attachments which can be posted for each item listed on the "Current Issue and Topics" page; adding a page for remaining variance information; as well as several other improvements. The staff has received a price quote of \$1,300 for all of these proposed upgrades.

The Board determined that the website is a valuable tool for disseminating information to all interested parties and the general public. After discussion, Dr. Hackney moved and Dr. Snyder seconded that the Board authorize the expenditure of \$1,300 to upgrade the websites and directed staff to prioritize the improvements as necessary.

5.) Discuss conducting a Joint Meeting with the Air Quality Board:

The Board members determined that since there are no specific budgetary issues which need to be addressed by the Boards at this time and given the current status of the Boards' budgets, it would not be fiscally responsible to conduct a joint meeting of the Air Quality Board and the Environmental Quality Board. The Board members directed the EQB Chair to discuss and resolve any routine budgetary items with the Chair of the Air Quality Board. If specific areas of concern arise which cannot be resolved by the Boards' Chairs or if significant budget cuts are implemented, a joint meeting of the Boards can be scheduled at that time.

6.) Other Board Meeting Dates:

It was determined that a quorum could not be obtained for the January 8, 2004, EQB meeting. After discussion, the meeting date was changed to January 29, 2004.

II. Rulemaking

1.) Nutrient Criteria Committee:

The next Nutrient Criteria Committee (NCC) meeting is scheduled for December 9, 2003, in Moorefield, WV. The Committee has been advised that the WV DEP has been awarded a grant from the USEPA and that the WVDEP has proposed to use a portion of that funding to support the Environmental Quality Board in the development of nutrient criteria. Toward that end, the Board will receive a total of \$60,000 to be utilized by the NCC. Of that total, \$10,000 is to be used to support the travel and logistics of the Committee members and the remaining \$50,000 is to be utilized for contractual assistance to include the hiring of experts in the field and the collection and analysis of relevant data. The funds may be expended during the period of 9/01/03 through 9/30/05.

Joe Hankins is the Chair of the NCC's budget committee and the Board members encourage the Budget Committee to meet prior to the next NCC meeting. The principal charge for the NCC's budget committee is to establish a plan for the expenditure of the grant monies by identifying the needs of the Committee as well as potential contractors to be used in the collection of data and other required services.

In addition, the NCC is moving forward on lake criteria and the discussion has narrowed to the parameters that they are going to utilize as well as the data collection needs. The Committee should be able to provide a preliminary report regarding the progress and status of the lake criteria to the Board at the next EQB meeting.

Also at the November NCC meeting, the members discussed the Board's concerns regarding Committee member attendance. Tom Brand, the Chair of the NCC has agreed to contact the members who have not attended the NCC meetings on a regular basis.

The Board members were provided with a letter from Mr. Charles Wilfong, who is the President of the WV Farm Bureau. Mr. Wilfong stated that Mr. Rodney Branson, who is the current representative for the agricultural community on the Board's Nutrient Criteria Committee (NCC), has

requested that he be removed from the NCC because of the time commitment required. In this letter Mr. Wilfong requested that the Board appoint Mr. Robert Williams, Executive Secretary of the WV Farm Bureau to replace Mr. Branson on the Committee. After discussion, Dr. Hackney moved and Mr. Armbrecht seconded that the Board remove Rodney Branson from the NCC and appoint Robert Williams to the Committee, and the motion carried unanimously 4 to 0.

Further, Mr. Armbrecht moved and Dr. Hackney seconded that the Board appoint a representative from the US Army Corp. of Engineers to the NCC, and the motion carried unanimously 4 to 0.

III. Appeals

Appeal #03-14-EQB (Broadway Industrial Park) was filed with the Board on September 19, 2003, and is set for hearing during the December 11, 2003, Board meeting. On November 6, 2003, the Appellee filed a Motion for a More Definitive Statement and the Appellant filed a response to that motion on November 17, 2003. However, Ms. Charles, who is the Board's legal counsel has not yet had the opportunity to review the Appellant's response and has requested that the Board delay action on the matter until a later date. After discussion, the Board decided to delay ruling on the Appellee's Motion for a More Definitive Statement and determined that the Board's Chair could rule on that particular motion.

IV. Other Business

The Board members reviewed a letter received from Stewart Calwell and John Skaggs of the Calwell law firm. The letter states that the firm has been retained to represent concerned citizens in Chauncey, WV regarding the findings of a USEPA report on a site which was a former power plant operated by a coal company but which is presently occupied by an individual engaged in the sales of used cars. It has been a long-standing practice to pump water from the basement of the powerhouse into the adjacent waterway, which is Island Creek.

Mr. Calwell states that the USEPA reports high levels of dioxins in the basement water and concludes that the owner is presently discharging this material into Island Creek. The law firm is seeking information regarding any permits issued which authorizes such discharge and requests that the

Board take actions deemed appropriate to enforce applicable rules and regulations.

After discussion, the Board members directed Ms. Chatfield to draft a letter which explains the role of the Environmental Quality Board and which also clarifies that the Board is not a regulatory agency and would not have initial jurisdiction over the issues outlined in the letter. Instead the Board would act as a quasi-judicial body responsible for hearing and resolving appeals regarding the issuance or denial of a permit, particular permit conditions, or enforcement actions rendered by the WV Department of Environmental Protection's Division of Water and Waste Management.

V. Tier 2.5 Nomination

The Board received a nomination to classify Watkins Run and both forks of Fill Hollow Creek as Waters of Special Concern, also known as "Tier 2.5" streams. The streams are tributaries of the Cheat River and are located in southern Preston County. During the May Board meeting, the Board members deemed the nomination application to be complete and pursuant to 60 CSR 5 (Antidegradation Implementation Procedures), provided a Notice of the Board's consideration of the nomination to the general public and to property owners located adjacent to those streams.

During the November 20, 2003, Board meeting, at approximately 2:00 p.m., the Board members departed from the Rowlesburg VFW to conduct a site visit of the streams that are the subject of the Tier 2.5 nomination. The public was invited to attend this site visit. Dr. Hackney left the meeting prior to the conclusion of the site visit.

Board members Jenkins, Snyder and Armbrecht then reconvened at 6:30 p.m. at the Rowlesburg VFW to conduct a public hearing regarding the application. The purpose of the meeting was to take comments on the nomination it has received for the designation of Watkins Run and both forks of Fill Hollow Creek as Waters of Special Concern, also known as "Tier 2.5" streams. Oral and written presentations were accepted at the meeting. A transcript of the public hearing will be available for review in the Board's office or on the Board's website.

Whereupon, Mr. Armbrecht moved and Dr. Jenkins seconded that the November 20, 2003, Environmental Quality Board meeting be adjourned and the motion carried unanimously 3 to 0.

I hereby certify that the forgoing is a true and correct record of the proceedings of the meeting held on November 20, 2003, by the West Virginia Environmental Quality Board. These minutes were approved by the Environmental Quality Board on _____.



Handwritten signature of Melissa Carte in cursive script, written over a horizontal line. Below the signature, the text "Melissa Carte, Clerk" is printed in a standard font.