

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
**ENVIRONMENTAL QUALITY BOARD**

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**MINUTES**

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD**

**JUNE 28, 2004**

I. General

On June 28, 2004, a quorum of the members of the Environmental Quality Board (hereinafter referred to as the ABoard@) conducted a teleconference from its offices located at 1615 Washington St. 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  
Bob Jenkins, Vice Chair  
Cameron Hackney

Absent Board members were as follows:

Scott Simonton  
Edward C. Armbrecht, Jr.

Staff members present were as follows:

Libby Chatfield  
Becky Charles  
Melissa Carte  
Kathy Coleman

Dr. Jenkins announced that the July 28, 2004, Environmental Quality Board meeting would be his last meeting as a member of the Board. Dr. Jenkins term will expire on June 30, 2004, and he has chosen not to continue to serve as a member of the EQB.

## **II. Appeals – beginning at 9:00 a.m.**

The Board member's discussions involved in the decision making process regarding appeals are not subject to the WV Open Governmental Proceedings Act and were conducted in closed session. There are no minutes for this portion of the Board meeting.

## **III. Administrative Matters - beginning at 10:00 a.m.**

### 1.) Review and Approval of the May 5, 2004, Board meeting minutes:

Whereupon the minutes of the May 5, 2004, Board meeting were presented to the Board for consideration. After discussion, Dr. Jenkins moved and Dr. Hackney seconded that minutes of the May 5, 2004, Board meeting, as written, be approved, and the motion carried unanimously 3 to 0.

### 2.) Approve a Mission Statement and Description for the WV Environmental Quality Board to be included in the WV Department of Environmental Protection's Annual Report for fiscal year 2003 – 2004:

The Board members were provided with a copy of the Mission Statement and Description for the WV Environmental Quality Board which was included in the WV Department of Environmental Protection's (WVDEP) Annual Report for Fiscal Year 2002-2004. After reviewing the information Dr. Hackney moved and Dr. Jenkins seconded that the Board approve the use of the same Mission Statement and Description for inclusion in the WVDEP's Annual Report for Fiscal Year 2003 – 2004, and the motion carried unanimously 3 to 0.

### 3.) General Budget Report:

Ms. Coleman provided the Board with a budget update. As of May 31, 2004, which represents an eleven month period or 91.6% of the 2004 fiscal year, the Boards have spent 91.8% of the combined budgets. A copy of the budget report is attached to and made a part of these minutes as Exhibit "A".

The Board members were informed that in May 2004, the WVDEP assisted the Boards in submitting additional funding requests to the State Budget Office for fiscal year 2005 (\$30,000 for the AQB and 68,000 for the EQB). However, these requests were not addressed by the Legislature during the June interim meetings or special session.

#### **IV. Rulemaking**

##### 1.) Legislative Rule 46CSR1, “Requirements Governing Water Quality Standards”:

Federal law requires that supporting documentation for all revisions to the State’s water quality standards be submitted to the US Environmental Protection Agency with the rule package. The Board filed the rule package with the USEPA on June 7, 2004. However, because the Board did not propose the revision to section 6.2.d. of the water quality standard rule which outlines the application of the numeric water quality standard for manganese, the Board did not include any supporting documentation for that revision.

The West Virginia Coal Association provided the Board with a packet of information which includes a rationale for the new manganese provision at section 6.2.d. and a series of documents in support of its rationale. The Board forwarded this information, without recommendation, to the USEPA. Public notice has now been published in the State Register, on the Board’s website and sent to the Board’s extensive email list that the Board is accepting written comments and pertinent information regarding the revision to the manganese provision in the water quality standards from all interested parties. The deadline for written comments is July 2, 2004, at 5:00 p.m. As with the West Virginia Coal Association packet, the Board will forward the information, without recommendation, to the USEPA for their consideration.

##### 2.) Proposed Legislative Rule for the 2005 Legislative Session:

The West Virginia Environmental Quality Board received a nomination in November 2002 for reclassification of two streams in Preston County from Tier 2 – High Quality Waters, to Tier 2.5 – Waters of Special Concern. In reviewing the application, the Board considered the qualification criteria outlined in 60 CSR 5 – “Antidegradation Implementation Procedures”,

conducted a site visit to observe the two streams and held a public hearing in Preston County. Upon completion of the review, the Board determined that both of the nominated streams - Fill Hollow Creek (both forks) and Watkins Run - warrant classification as Waters of Special Concern, or Tier 2.5 streams.

Classifying these streams as Waters of Special Concern or Tier 2.5 streams will require revisions to the legislative rule: 46 CSR 1, Requirements Governing Water Quality Standards through the legislative process during the 2005 legislative session. The Board members were informed that the staff filed the proposed rule change to the legislative rule along with a Notice of Public Comment Period with the Secretary of State's office on June 22, 2004, as directed by the Board. A public hearing was scheduled on July 22, 2004, beginning at 6:00 p.m. and written comments will accepted at the Board office until Friday, July 30, 2004, at 5:00 p.m.

## 2.) Legislative Follow-up of Water Quality Standards Provisions:

a. After the conclusion of the 2004 legislative session, the Joint Legislative Committee on Government and Finance assigned various study topics to select House-Senate panels for review during the upcoming interim meetings. A study of the state's water quality standards was assigned to the Legislative Rule-Making Review Committee.

During the most recent interim meetings, one committee agenda item was a presentation by the USEPA. Cheryl Atkinson of USEPA, Region III provided an introduction to water quality standards to the committee, describing the basis elements of water quality standards and how USEPA Region III addresses and reviews those standards. The Board members have been asked to attend the next Interim Committee meetings which will be held on July 25<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup>, 2004. A formal agenda for those meetings has not yet been established.

b. One unresolved issue included in the Board's 2004 proposed Legislative rule was the addition of several streams to the list of trout streams contained in Appendix A of the Water Quality Standards rule. These streams were proposed to be added based on information that the Board received from the WV Division of Natural Resources. Although the Legislature did not adopt those proposed changes to the list of trout waters, the West Virginia Independent Oil and Gas Association (IOGA) has submitted a "Proposal for

Adding/Deleting West Virginia Waters as Trout Streams” for the Board’s consideration.

Charlie Burd, Executive Director of the Independent Oil and Gas Association of West Virginia appeared before the Board to discuss IOGA’s proposal for adding streams to the current list of trout waters contained in Appendix A of the Water Quality Standards rule. He feels that the current proposed protocol provides the opportunity for public input by dividing the list of trout waters into geological regions and conducting public hearings in each particular area. Also the proposal would allow the administrative costs and the cost of the public hearings to be spread out over a period of time rather than require the expenditure of all of the funds at one time.

Dr. Hackney supported the IOGA proposal, stating that conducting public hearings would allow the Board to receive comments from landowners who would be affected by the use designation, to say whether they are actually taking trout from the streams or not and voice their justification.

Ms. Charles stated that there is a clear definition of a “Trout Stream” currently contained in the Water Quality Standards rule. Since “Trout Stream” is a designated use and not an antidegradation category, the review by the Board will be very different than the review just conducted on the Tier 2.5 nomination application. The only criteria which the Board can address when proposing streams be added to the list of trout streams contained in Appendix A of the Water Quality Standards rule is whether the stream meets that definition. The question of whether trout are being removed from the stream, current land uses or public opinion are not factors for consideration.

Dr. Jenkins stated that clearly some streams currently on the list are trout streams and an extensive review process would not be necessary on those particular streams. Further, Ms. Chatfield stated that the IOGA proposal calls for the collection of data. The Board does not have the staff resources or funding available for such an expansive project. The streams were proposed to be added to the Trout Stream list in Appendix A of the rule was based on information that the Board received from the WV Division of Natural Resources. After discussion, the Board opted to request that the WV Division of Natural Resources provide the Board with the information that they used in developing the list of streams that they provided to the Board.

In addition, the Board directed staff to provide the WV Department of Environmental Protection's Division of Water and Waste Management and the WV Division of Natural Resources with a copy of the IOGA proposal. Because of those agencies interest in ensuring that an accurate list of trout streams is included in the water quality standards, and because the protocol outlined in the IOGA proposal requires data collection, the Board will solicit comments or suggestions regarding such protocol from those agencies. The Board will also request that the agencies' review and compare the data which they currently have available.

### 3.) Update on the Nutrient Criteria Committee:

Ms. Chatfield provided the Board with a brief update from the Nutrient Criteria Committee (NCC). The NCC is moving forward with the development of lake criteria and the field study is set to begin in early July, 2004.

Also, during the June 11, 2004, Board meeting the Board members were informed that the US Environmental Protection Agency (USEPA) published a "Request for Assistance" (RFA) relating to funding which may be available for development of nutrient criteria for the upcoming fiscal year. For Region III there is \$80,000 in funding available and the NCC members had been considering various options for the submission of a proposal, including supporting joint efforts of the US Department of Agriculture and Pennsylvania, a multi-state proposal, and a proposal from the US Geological Survey and the Cacapon Institute. The deadline for submission of the application in response to the USEPA's RFA was June 24, 2004.

After consideration of the various proposed projects, the NCC opted to support a joint proposal between the State of Pennsylvania and the US Geological Survey. The proposal is to continue work that had been approved under the prior grant on periphyton studies. The collaborative effort will include various testing sites in West Virginia.

Further, the Board members were provided with a letter from the USEPA, Region III which provides that the USEPA concurs with the final nutrient criteria plan proposed by the Board as submitted on May 21, 2004, for the development of nutrient criteria. Evelyn S. MacKnight, Chief of the USEPA Region III Office of Watersheds stated that the Board's plan "seems reasonable, scientifically defensible and consistent with EPA guidance."

4.) Aluminum: **Oral Comments beginning at 11:00 a.m.**

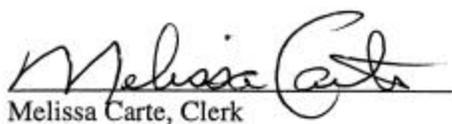
House Bill 4193 provides that “the Environmental Quality Board shall, in cooperation with the regulated community and the department of environmental protection, propose for promulgation an emergency and legislative rule to revise the aquatic life aluminum criterion in the Water Quality Standards rule by October 1, 2004.” The Board “broadened” its discussion to include others beyond the regulated community. The Board published a public notice seeking written comments from all interested parties, and these written comments are due at the Board office by 5:00 p.m. on Friday, June 25, 2004.

During the June 28, 2004, Board meeting, the Board heard oral comments on the revisions to the aluminum criteria from all interested parties. Presentations were made by Jenny Henthorne, representing the WV Manufacturers Association, the WV Coal Association and the WV Chamber of Commerce; Ann Blankenship, representing WV Oil and Gas Association; Cindy Rank representing the WV Highlands Conservancy and Friends of the Little Kanawha; and Liz Garland representing the WV Rivers Coalition, the Ohio Valley Environmental Coalition, Friends of the Cheat, Coal River Mountain Watch, and the WV Environmental Council. In addition, John Wirts of the WV Department of Environmental Protection’s Division of Water and Waste Management provided a PowerPoint presentation providing information on aluminum concentrations in streams and rivers throughout the state.

An audio tape of the oral comments and an electronic version of the WVDEP’s PowerPoint presentation are available at the Board office for public review.

Whereupon, Dr. Hackney moved and Dr. Jenkins seconded that the June 28, 2004, 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 June 28, 2004, by the West Virginia Environmental Quality Board. These minutes were approved by the Environmental Quality Board on July 22, 2004.



Melissa Carte, Clerk