

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

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MINUTES

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

JULY 22, 2004

I. General

On July 22, 2004, a quorum of the members of the Environmental Quality Board (hereinafter referred to as the ABoard@) conducted a public meeting at its offices located at 1615 Washington St. E., Charleston, West Virginia. Dr. Snyder, Chair, called the meeting to order at 1:00 p.m.

Board members present were as follows:

Ed Snyder, Chair
Edward C. Armbrecht, Jr.
Cameron Hackney

Staff members present were as follows:

Libby Chatfield
Becky Charles
Melissa Carte

II. Appeals – beginning at 1:00 p.m.

The Board members' 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. Rulemaking

1.) Aluminum:

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 published a public notice seeking written comments from all interested parties and copies of all written comments were provided to the Board members. Also, during the June 28, 2004, Board meeting, the Board heard oral comments on the revisions to the aluminum criteria.

During the July 22, 2004, Board meeting, Pat Campbell of the WV Department of Environmental Protection’s (DEP) Division of Water and Waste Management provided an updated power-point presentation regarding the agency’s position on the current aluminum criterion in the Water Quality Standards rule which included a summary of their aluminum data. The agency contends that the existing science does not appear to be adequate for setting chronic criteria for aluminum and suggested possible interim measures which the Board could implement until additional studies are completed. A copy of the presentation is attached to and made a part of these minutes as exhibit “A”.

The Board discussed the scientific validity of USEPA’s recommended aluminum value of 87 ug/L, as well as the disparities between that value and the aluminum values adopted in states surrounding West Virginia. In order to allow Board members additional time consider WVDEP proposals, all comments received regarding aluminum, and a possible motion to suspend the current chronic aluminum standard of 87 ug/L in all but cold waters until additional scientific studies are completed, the Board decided to continue the discussion of the aluminum criterion during the July 23rd Board meeting.

2.) 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 sent the Board 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. The Board then solicited comments and pertinent information regarding the revision to the manganese provision in the water quality standards from all other interested parties. The Board members were informed that on July 16, 2004, the additional manganese information and comments were forwarded, without recommendation, to the USEPA for their consideration.

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

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. Board members have been requested to attend a July Legislative Interim Meeting on July 26, 2004. Dr. Snyder, Dr. Simonton and Mr. Armbrrecht stated that they will attend that interim meeting.

In addition, the Board discussed the addition of streams to the list of trout waters contained in Appendix A of the Water Quality Standards rule as proposed, based on information received from the WV Department of Natural Resources, in its 2003 - 2004 proposed legislative rule. The Legislature did not adopt those proposed changes to the list of trout waters. The Board members were informed that staff has sent letters to the WV Department of Environmental Protection and the WV Department of Natural Resources seeking additional input and data regarding the state's trout streams but have not yet received responses from those agencies.

4.) Update on the Nutrient Criteria Committee:

The Board members were provided with a copy of a Nutrient Criteria Committee (NCC) development summary containing an overview of the Committee's charge, and its accomplishments. The summary was prepared by members of the NCC and once approved by the Board, it will be circulated in an effort to expand public awareness of the Committee's efforts. It will also be updated periodically as activities are completed. After a review of the summary, Mr. Armbrecht moved and Dr. Hackney seconded that the Board approve the NCC Bulletin, and the motion carried unanimously 3 to 0. A copy of the NCC Bulletin is attached to and made a part of these minutes as Exhibit "B".

IV. Remining Variance Requests

1.) Catenary Coal Remining Variance:

The Board received an application for a variance from water quality standards for remining activities on behalf of Catenary Coal Company on September 11, 2003. The company is seeking a variance for the Left Fork of White Oak Creek and for Moccasin Hollow of White Oak Creek (near Leewood in the Cabin Creek and Sherman Districts of Kanawha and Boone Counties respectively). Linda Torre, of Decota Consulting appeared before the Board to discuss the remining project and the variance application currently before the Board.

Ms. Torre stated that the company has been issued a draft NPDES permit from the WVDEP's Division Mining and Reclamation and has accepted the limits contained in that permit. The NPDES permit requires monitoring for parameters such as flow, pH, selenium, iron, manganese, and aluminum. The company is currently preparing a public notice of the draft NPDES permit.

In addition to the NPDES permit, the company is seeking a variance from water quality standards for remining activities from the Board. The variance application seeks alternate criteria for the Left Fork of White Oak Creek and also Moccasin Hollow. Mr. Politan, of the WVDEP's Division of Mining and Reclamation stressed that these alternate limits must be met **during** the remining operation.

According to the handout supplied by Ms. Torre, in the Left Fork of White Oak Creek the company is seeking alternate criteria for Iron of 2.46 mg/L maximum with a rolling average of 1.42 mg/L ; Manganese limits of 19.62 mg/L maximum with a rolling average of 5.48 mg/L; and for pH, a limit of 4.55 SU minimum with a rolling average of 5.17 SU. In Moccasin Hollow the company is seeking alter criteria for Iron of 2.46 mg/L maximum with a rolling average of 1.42; Manganese limits of 16.2 mg/L maximum with a rolling average of 7.80 mg/L; and for pH, a limit of 4.35 SU with a rolling average of 4.55 SU. These limits represent a ten percent improvement over the average historic values.

After discussion, Dr. Hackney moved and Mr. Armbrecht seconded that the Board tentatively approve the remining variance application and the motion carried unanimously 3 to 0. The Board scheduled a public hearing on the matter for September 15, 2004, at 6:00 p.m. Ms. Chatfield will prepare an Information Sheet and draft Order prior to that hearing. In addition Ms. Chatfield will meet with Mr. Politan to review the draft Order and provide clarification as necessary.

V. Administrative Matters

1.) Review and Approval of the June 28, 2004, Board meeting minutes:

Whereupon, the minutes of the June 28, 2004, Board meeting were presented to the Board for consideration. After review, Dr. Hackney moved and Mr. Armbrecht seconded that the minutes of the June 28, 2004, be adopted as written, and the motion carried unanimously 3 to 0.

2.) Election of Board Chair:

Each year, during the first Board meeting conducted after the beginning of the new fiscal year, the Board members elect individuals to serve as the Board Chair and Vice Chair. Mr. Armbrecht moved and Dr. Hackney seconded that Dr. Snyder be elected to serve as the Board's Chair during current 2005 fiscal year, and that Dr. Simonton be elected to serve as the Board's Vice Chair during the current 2005 fiscal year, and the motion carried unanimously 3 to 0.

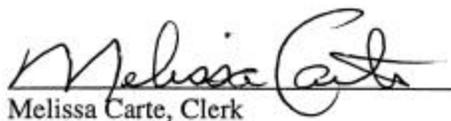
3.) General Budget Report:

The Board members were informed that the June 30th year-end budget report will be provided in August. Throughout the month of July, Ms. Coleman will be processing all fiscal year 2004 invoices before closing out the budget year.

Whereupon, Dr. Hackney moved and Mr. Armbrrecht seconded that the July 22, 2004, Board meeting be adjourned, and the motion carried unanimously 3 to 0.

*Reconvening at 6:00 p.m. on July 22, 2005, the Board conducted a public hearing regarding the Board's proposed amendment to the current water quality standards rule which was filed with the Secretary of State's Office on June 22, 2004. The proposed amendment to the Board's legislative rule provides that Subsection 4.1.c of the rule, titled "Tier 2.5 Protection" is amended to add two streams as Waters of Special Concern, also known as Tier 2.5 streams. The amendment adds the following language to the rule: "In addition to the Waters of Special Concern outlined in 60 CSR 5 – "Antidegradation Implementation Procedures", Appendix A, the following streams are classified as Waters of Special Concern: 4.1.c.1. Watkins Run (Preston County) and; 4.1.c.2. Fill Hollow Creek – both forks (Preston County)". A transcript of the public hearing, as well as the written comments received, are available in the Board's office for review.

I hereby certify that the forgoing is a true and correct record of the proceedings of the meeting held on July 22, 2004, by the West Virginia Environmental Quality Board. These minutes were approved by the Environmental Quality Board on August 26, 2004.


Melissa Carte, Clerk