

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

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MINUTES

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

JULY 23, 2004

I. General

On July 23, 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 8:30 a.m.

Board members present were as follows:

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

Staff members present were as follows:

Libby Chatfield
Becky Charles
Melissa Carte

II. Appeals – beginning at 9:00 a.m.

1.) Appeal No. 04-10-EQB (Weirton):

Appeal 04-10-EQB (Weirton) was filed with the Board on May 13, 2004 and was scheduled for hearing during the July 23, 2004, Board meeting. However, on June 30, 2004, the Appellee filed a Motion to Dismiss Appeal

Based Upon *Res Judicata* and/or Failure to Appeal. On July 15, 2004, the Appellant filed a Motion for Summary Judgment. Consequently, the Board conducted a hearing on the preliminary motions filed in the appeal. A transcript of the motions hearing is available in the Board's office for review. At the conclusion of the hearing the Board established a briefing schedule and will then rule on the motions during the August 11, 2004, teleconference. A new evidentiary hearing date, if necessary, will be scheduled at that time.

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 heard oral comments on the revisions to the aluminum criteria.

During the July 22, 2004, Board meeting, 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.

Beginning at 1:00 p.m. on July 23, 2004, the Board resumed the discussion of the aluminum criterion. Dr. Hackney presented a motion for the Board's consideration. The motion suggested suspending the current aluminum standard until the Board's next triennial review, and included a rationale which provided that the current aluminum criteria contained in the state's water quality standards is based on flawed science.

Federal law requires that some supporting rational and justification for all revisions to the State's water quality standards be submitted to the US Environmental Protection Agency, when a change to the standards is proposed. Liz Garland, of the WV Rivers Coalition questioned the Board's scientific justification for removing the criterion from the rule and suggested conducting the scientific study of aluminum before suspending or revising the criterion. Dr. Hackney stated that the Board's justification for revising the aluminum water quality criterion is that the criterion previously adopted by the Board was based on flawed scientific studies. Dr. Snyder noted that many surrounding states do not have a chronic dissolved aluminum standard.

Jenny Henthorn of Bowles, Rice, McDavid, Graff & Love stated that the characteristics of a stream such as pH and hardness, drive toxicity, although some species of aquatic life, specifically trout, are more sensitive to aluminum than others. However, if the Board would review the USEPA's criterion document and remove the two studies regarding the 87 ug/L standard which have been called into question, the criterion that USEPA calculated was 750 ug/L. We are not talking about going against USEPA science, we are saying that we need to add to USEPA science in the future but the 1988 criterion document says 750 if you exclude those two studies so that is the basis for the suspension in the mean time to use USEPA's own criterion document to do so.

Mr. Dan Ramsey, of the US Fish and Wildlife Service stated that he has reviewed studies which were conducted under conditions most similar to West Virginia and found that they have shown that a dissolved acute aluminum criterion of 750 mg/L is not protective of aquatic life. Suspending the current chronic aluminum criterion of 87 mg/L pending further scientific studies and relying entirely on the 750 mg/L acute aluminum standard is inappropriate. Further, he stated that retaining the current aluminum standard, even if it may be overprotective, until the scientific studies are completed and the data reviewed, would seem to be a more reasonable approach.

Also, Mr. Ramsey stated that the Board should not arbitrarily identify other states that do not have a chronic dissolved aluminum standard as a basis for removing West Virginia's chronic standard from the Water Quality Standards rule. West Virginia is a lightly buffered headwater state with low amounts of limestone, low hardness waters, acid participation, and which has many activities, such as coal mining, which turn soil and expose

minerals to the water. Many states do not have these same conditions and may not need a chronic dissolved aluminum standard.

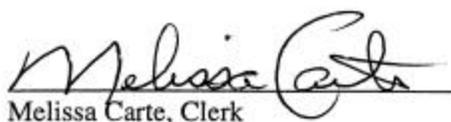
Dr. Hackney called the question on his original motion. However, since several amendments to the original motion were proposed, Dr. Hackney then withdrew the motion in order to allow for clarification and simplification. Whereupon, Dr. Simonton moved and Dr. Hackney seconded that the current chronic aluminum criterion of 87 mg/L be suspended in all but designated trout waters until July 4, 2007, and the motion carried unanimously 4 to 0.

In the interim the Board strongly encouraged the regulated industry, citizens groups, the state, and the USEPA to conduct valid studies that will aid in the formulation of a workable and protective standard, which the Board can then consider. Further, Dr. Snyder noted that the dissolved acute aluminum criterion of 750 mg/L will still apply in all waters. The results of the studies would need to be presented to the Board by spring 2006.

The Board directed Ms. Chatfield to begin to develop a rationale to justify the removal of the current dissolved acute aluminum criterion of 87 mg/L from the water quality standards rule, which can be submitted to the USEPA with the proposed rule package.

Whereupon, Dr. Hackney moved and Mr. Armbrrecht seconded that the July 23, 2004, Board meeting be adjourned, and the motion carried unanimously 4 to 0.

I hereby certify that the forgoing is a true and correct record of the proceedings of the meeting held on July 23, 2004, by the West Virginia Environmental Quality Board. These minutes were approved by the Environmental Quality Board on August 26, 2004.


Melissa Carte, Clerk