

WV DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

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WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

MEETING MINUTES

FEBRUARY 10, 2005

I. General

On Thursday, February 10, 2005, a quorum of the members of the Environmental Quality Board (hereinafter referred to as the "Board") conducted a public meeting at the Board offices located at 601 57th Street, S.E., Charleston, Kanawha County, West Virginia. Dr. Snyder, Chair of the Board called the meeting to order at 9:00 a.m.

Board Members present were as follows:

Dr. Snyder, Chair
Dr. Simonton, Vice Chair
Ted Armbrecht
Dr. Hackney

Staff Members Present were as follows:

Melissa Carte, Clerk of the Board
Kathy Coleman, Administrative Secretary
*Wendy Radcliff, the attorney assigned by the State Attorney General's office to assist the Board was present during the meeting.

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

I. Rulemaking

1.) Aluminum Study:

In response to a legislative directive, the Board previously began a review of the current aluminum criteria contained in the Water Quality Standards rule and opted to suspend the chronic aquatic life aluminum criterion of 87 ug/liter from all waters of the state except trout streams, until July 4, 2007. This will allow time for the Board to work with all interested parties to develop and implement appropriate scientific studies to evaluate the aquatic life impacts of dissolved and total aluminum concentrations in state waters. The Board has now established a procedure for conducting the study. For phase one of the study, the Board created a Technical Review Committee comprised of one representative from the USEPA, WVDEP, the Division of Natural Resources (DNR), industry and the environmental community and chaired by Dr. Simonton.

This Technical Review Committee approved the Request for Proposal (RFP) which outlined the scope of the aluminum study. The approved RFP has now been sent to various vendors and six vendor proposals have been submitted. The Technical Review Committee will conduct a telephone conference to review the various vendors' proposals and approve a list of four final candidate companies, one of which will be selected by the industry groups to collect and analyze the aluminum data.

Ken Ward of the Charleston Gazette Newspaper expressed concerns that the Board's Technical Review Committee should follow the requirements of the Open Governmental Proceedings Act by providing public notice of the meetings, allowing the public to attend the meetings of the Technical Review Committee, and also to provide written minutes of such meetings. In addition as a representative of the Charleston Gazette, he formally notified the Board that the newspaper wants to go on the record that it believes that the Technical Review Committee has already conducted one meeting that violates that law.

Dr. Simonton stated that the Technical Review Committee will conduct a meeting to review and comment of the vendors' proposals as soon as possible. After discussion the Board determined that pursuant to W. Va. Code §6-9A-11, the Board would request an Advisory Opinion from the WV Ethics Commission's Committee on Open Governmental Meetings

regarding the application of the Open Governmental Proceedings Act to a Committee created by the Board.

2.) Update on WV Legislative Rule Making Review Committee (LRMRC) action on Manganese and Mercury:

The WV LRMRC is currently reviewing two criterion, manganese and mercury, contained in the Board's Water Quality Standards Rule. Dr. Snyder stated that he appeared before the LRMRC on February 8th to provide a brief presentation regarding previous Board actions on mercury.

In addition he provided the members of the LRMRC with information regarding Board actions on manganese. The Legislature requested in a letter dated January 13, 2005, that the Board conduct an additional public comment period regarding the change to the manganese criterion in the Water Quality Standards rule. During the January 14, 2005, Board meeting the Board members unanimously agreed to establish an additional public comment period. The Notice of the public comment period was filed with the Secretary of State's office on January 19, 2005, for publication in the State register. It was also posted on the Board's website, distributed to the Board's email list of approximately 175 people, and will be published in the newspaper on two separate occasions prior to the public hearing.

The public hearing is scheduled for February 23, 2005 beginning at 6:30 p.m. Written comments will be accepted until 5:00 p.m. on March 24, 2005. The Board will meet on March 31, 2005, to review and respond to the comments. These comments and the Board's response will be provided to the legislature as soon as possible after that meeting.

In addition, the Board sent a letter to Donald Welsh, Regional Administrator, USEPA Region III, informing him of the Board's additional action regarding the public comment period for manganese and requested that the USEPA provide an outline of further steps that the Board could take to facilitate a decision by the agency on the proposed revision to manganese.

Dr. Snyder stated that he also discussed with the members of the LRMRC the fact that instead of adopting the "five mile rule" as currently contained in the Water Quality Standards rule the Board had previously established a expedited variance process to provide relief from the manganese criterion to dischargers.

3.) Remining Variance Application:

The Board has received an application for a variance from Water Quality Standards for remining activities from Central Appalachia Mining (CAM). CAM now operates the Little Boyd Coal Company remining site 1 and remining site 2 for which the Board previously granted variances. Lantz Rankin, Heritage Technical Consultants, appeared before the Board on behalf of Central Appalachia Mining and provided the Board with an overview of the company's compliance with the criteria (pH and manganese) granted by the Board in the variance for the remining site 1. He stated that there is no chemical treatment of the waters occurring at the site and that compliance is currently being achieved through the materials handling and isolation of materials. The remining project at site 2 has not progressed to the point that improvement in the water quality in that area can be demonstrated.

The proposed remining project at site 3 will remine a large portion of the Thacker Creek watershed located near Edgerton in Magnolia District of Mingo County of West Virginia. The Board began a preliminary review of the application. The Board is in the process of hiring a technical advisor (Rick Herd) to assist in the review of the remining variance application. In addition, the complete application will be forwarded to the USEPA for comment as well.

Ms. Carte, Clerk of the Board, stated that currently the Board is not receiving the Discharge Monitoring Reports and other data directly from the various companies which currently have remining variances as required in the Board Orders. These reports are available from the WVDEP's Division of Mining and Reclamation however, they do not contain all of the information required by the Board, such as the rolling averages and trend analysis.

Mr. Politan, of the WVDEP's Division of the Mining and Reclamation stated that his office will begin to contact the companies regarding the submission of these reports directly to the Board. Also, these reporting requirements have been included as a "term and condition" in the companies WVPNDES permits.

II. Appeals

1.) Appeal No. 04-03-EQB (Hominy) and Appeal No. 04-06-EQB (Hominy): *Doren Burrell, the attorney assigned by the State Attorney General's office to assist the Board was present during the evidentiary hearing in Appeal 04-03-EQB and Appeal 04-06-EQB.

Appeal No. 04-03-EQB (Hominy) was filed with the Board on March 3, 2004, and Appeal 04-06-EQB (Hominy) was filed with the Board on April 22, 2004. Prior to the first scheduled date of the evidentiary hearing the parties indicated that the issues raised in the appeals were questions of law that could be argued through written legal briefs. The parties filed briefs and responses, and the documents were distributed to the Board members. After reviewing the briefs of the parties the Board determined that there were issues of fact which need to be resolved and that arguing the appeal through these legal briefs would not be appropriate. The Evidentiary Hearing in Appeal No. 04-03-EQB and No. 04-06-EQB was then conducted during the February 10, 2005, Board meeting. A transcript of the hearing is available in the Board office for review.

*Dr. Hackney left the meeting prior to the conclusion of the evidentiary hearing conducted in this appeal.

2.) Appeal No. 04-09-EQB (PKC)

Appeal No. 04-09-EQB (PKC) was filed on May 5, 2004, by PKC and is in regards to an Order issued by the Division of Water and Waste Management which revokes the company's Solid Waste Facility permit. The Evidentiary Hearing in this appeal was scheduled to be conducted during the February 10, 2005, Board meeting. However, on February 7, 2005, the parties submitted Consent Order which resolves the issues of the appeal without the need for an evidentiary hearing.

After a review of the Consent Order, Dr. Simonton moved and Mr. Armbecht seconded that based on the Consent Order, the Board issue a Dismissal Order for Appeal No. 04-09-EQB and remove the appeal from the Board's docket of pending appeals, and the motion carried unanimously 3 to 0.

3.) Appeal No. 04-17-EQB (MUB)

Appeal No. 04-17-EQB (MUB) was filed by Morgantown Utility Board on July 30, 2004, and is regarding certain terms and conditions contained in WVNPDES Permit No. WV0023124. The evidentiary hearing in this appeal was scheduled to be conducted during the February 10, 2005, Board meeting, however the parties submitted, for the Board's consideration, a draft Consent Order that resolves the issues of the appeal without the need for an evidentiary hearing.

After a review of the proposed Order, Dr. Simonton moved and Mr. Armbrrecht seconded that the Board approved the Consent Order and the motion carried unanimously 3 to 0. Appeal No. 04-17-EQB will be removed from the Board's docket of pending appeals.

4.) Appeal No. 04-22-EQB (Webster Co. Solid Waste)

Appeal No. 04-22-EQB (Webster Co. Solid Waste) was filed on August 9, 2004, and is in regards to an Order issued by the DEP which revokes the facilities Solid Waste Permit No. SWF-7810/WV0109541. The Evidentiary Hearing is Appeal No. 04-22-EQB was scheduled to be conducted during the February 10, 2005, Board meeting. On February 10, 2005, the parties of Appeal No. 04-22-EQB appeared at the Board meeting at 1:00 p.m. as scheduled, and were prepared to present their evidence regarding the issues of the appeal. However, at that time the Board was continuing to conduct an evidentiary hearing in Appeal No. 04-03 and Appeal No. 04-06. That evidentiary hearing began at approximately 10:00 a.m. and extended beyond the time allotted on the meeting agenda. In order to allow ample time for the parties of both appeals to present their evidence, the Board decided to continue the evidentiary hearing in Appeal No. 04-22-EQB until the next scheduled Board meeting.

5.) Appeal No. 04-23-EQB (Federal Bureau of Prisons)

Appeal No. 04-23-EQB (Federal Bureau of Prisons) was filed by the Federal Bureau of Prisons on August 31, 2004, and is regard to certain terms and conditions contained in WVNPDESWV0040401 issued to the City of Glenville. The Evidentiary Hearing was scheduled to be conducted during the February 10, 2005, Board meeting. However, on February 9, 2005, the

parties submitted a proposed Agreed Order Withdrawing Appeal to the Board for consideration.

After a review of the proposed Order, Dr. Simonton moved and Mr. Armbrecht seconded that the Board approved the Agreed Order Withdrawing Appeal and the motion carried unanimously 3 to 0. Appeal No. 04-23-EQB will be removed from the Board's docket of pending appeals.

6.) Appeal No. 04-25-EQB (Stewards of the Potomac Highlands)

Appeal No. 04-25-EQB (Stewards of the Potomac Highlands) was filed on September 22, 2004, and is in regards to a decision of the Director of Water and Waste Management to allow discharges onto neighbor's land under an NPDES permit and not require direct connections and velocity dissipation devices between construction drainage and waters of the state. The Evidentiary Hearing was scheduled to be conducted during the February 10, 2005, Board meeting. However, on February 7, 2005, the parties submitted, via fax, a proposed Agreed Dismissal Order which resolves the issues of the appeal without the need for an evidentiary hearing, for the Board's consideration.

Prior to ruling on the proposed Agreed Dismissal Order the Board reviewed a Motion to Intervene in the Appeal which was filed by the Jefferson County Citizens for Economic Preservation on February 4, 2005. The Board noted that prior to the receipt of the Motion to Intervene, the Appellant and the Appellee had notified the Board's staff that a settlement had been reached and that the written agreement was being circulated for signatures of the parties. Further, the Motion to Intervene was filed with the Board four months after the original appeal was filed and only six days prior to the scheduled hearing date.

The WV Division of Highways (WVDOH), whose registration under the General Permit WV0115924 (Storm Water Associated with Construction Activities) is the subject of the appeal, did not intervene in the appeal. However, WVDOH representatives present at the Board meeting stated that the WVDOH does not oppose the Agreed Dismissal Order.

After discussion, Mr. Armbrecht moved and Dr. Simonton seconded that the Board deny the Jefferson County Citizens for Economic Preservation's

Motion to Intervene in the appeal, finding that it was not timely filed, and the motion carried unanimously 3 to 0.

The Board members then discussed the parties proposed Agreed Dismissal Order. After the review of the proposed Order, Dr. Simonton moved and Mr. Armbrrecht seconded that the Board approved the Agreed Dismissal Order, and the motion carried unanimously 3 to 0. Appeal No. 04-25-EQB will be removed from the Board's docket of pending appeals.

III. Administrative Matters

1.) Review and Approval of the January 14, 2005, Board meeting minutes:

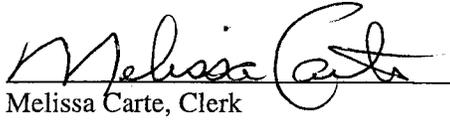
Whereupon, the minutes of the January 14, 2005, Board meeting were presented to the Board for consideration. After review, Mr. Armbrrecht moved and Dr. Simonton seconded that the minutes of the January 14, 2005, Board meeting be approved as written, and the motion carried unanimously 3 to 0.

2.) Monthly Budget Report:

A copy of the monthly budget report was provided to the Board members in the packet of information mailed to the Board members prior to the February meeting. The Board members did not have any questions regarding the report.

Whereupon, Mr. Armbrrecht moved and Dr. Simonton seconded that the February 10, 2005, 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 February 10, 2005, by the West Virginia Environmental Quality Board. These minutes were approved by the Environmental Quality Board March 10, 2005.


Melissa Carte, Clerk