

ENVIRONMENTAL QUALITY BOARD

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WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

MEETING MINUTES

MARCH 31, 2005

I. General

On Thursday, March 31, 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

Board Members participating telephonically were as follows:

Dr. Simonton, Vice Chair

Dr. Hackney

Absent Board Members were as follows:

Ted Armbrecht

Staff Members Present were as follows:

Melissa Carte, Clerk of the Board

*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:

II. Manganese

One of the amendments to the Water Quality Standards rule (46 CSR 1 – “Requirements Governing Water Quality Standards”) passed by the West Virginia Legislature during the 2004 legislative session revised the last sentence of section 6.2.d, which outlines the application of the numeric water quality standard for manganese. The new language provides: “The manganese human health criterion shall only apply within the five-mile zone immediately upstream above a known public or private water supply used for human consumption.”

The Board is required by federal law to submit revisions to the Water Quality Standards rule to the US Environmental Protection Agency (USEPA) after such revisions have become effective under state law. The Board forwarded the revisions to USEPA on June 7, 2004. Federal law also requires that supporting documentation for such revisions be sent to USEPA. However, the Board did not propose the revision to section 6.2.d, and did not receive any comments or recommendations on this section during its public comment period on the rule.

At the request of the Legislature the Board then submitted to the USEPA, information which was compiled by the West Virginia Coal Association as well as all other interested parties. The Board did not review or discuss these comments and did not make a recommendation to the USEPA regarding the information submitted.

On December 27, 2004, the Board received a letter from the Donald Welsh of USEPA, Region III, which stated that the review of the revised Water Quality Standards has been completed but that the USEPA “is deferring action on the addition of the Manganese Five Mile Rule sentence in section 6.2.d. while the USEPA evaluates and collects additional information sufficient to finalize a decision.”

The WV Legislative Rule Making Review Committee then requested that the Board establish an additional public comment period on the revision to section 6.2.d of the Water Quality Standards rule outlined above and the Board unanimously agreed. The Board provided public notice soliciting comments regarding manganese and conducted a public hearing regarding

the revision to section 6.2.d of the Water Quality Standards rule on Wednesday, February 23, 2005. Written comments were accepted at the Board office until 5:00 p.m. on March 24, 2005.

During the March 31, 2005, the Board members met to discuss the written and oral comments received and any Board action to be taken on the manganese “5 mile” rule. Dr. Snyder stated that in addition to the comments received during the public hearing, the Board received a total of six written comments.

Dr. Hackney noted that the WVDEP supports the manganese “5 mile” rule and that it is consistent with other surrounding states. He stated that he has concerns regarding the Category Use Designation for all waters of the state as well as the manganese issue. It takes a very high concentration of pH to treat manganese in the water, and the resulting alkalinity can be more detrimental to the waters than the manganese. He supports retaining the technical limits for manganese and the implementation of the “5 mile” rule.

Dr. Snyder stated that the Board has long recognized that manganese, as it relates to the coal industry, is a difficult issue. However the Board has consistently maintained that the Category A Use Designation applies to all waters of the State unless variances are granted by the Board. In order to address the problem and provide relief to the manganese producer, the Board established an expedited variance process. Rather than expose all waters of the State to a higher manganese standard (except those located within five miles of a public water supply intake), this process allows the Board to review the data for each specific site to determine whether a variance is warranted, and determine where the public water supply intakes are located downstream of the manganese discharge point, as well as who would be impacted by the higher manganese limit.

Dr. Snyder stated that although the implementation of the “5 mile” rule will provide relief to the discharger or producer of the manganese, it places the burden and cost of treatment directly on citizens and those who remove water from the streams of the state. Further, when the amount of manganese in the water is increased, the manganese can accumulate in the sediment during times of low flow. When the discharge or flow increases the manganese is then mobilized in the sediment thus increasing significantly the amount of manganese in the stream. The Board has never endorsed removing the burden of treatment from the producers of a pollutant and

placing it on the individuals who are going to be using the water by requiring them to expend more resources to clean the water for use. Dr. Snyder stated that he does not endorse the “5 mile” manganese standard and believes that the variance process is an acceptable compromise.

Dr. Hackney stated that the Board did not agree unanimously to the variance process and that he supports the “5 mile” rule. He stated that classifying all waters of the state as Category A waters puts an undue burden on industries.

Dr. Snyder acknowledged that Dr. Hackney did not support the variance process and stated that this is an example of why having a Board conduct the rulemaking activities is important. The diversity of Board members allows for varying views and input regarding water quality standards than a single agency may provide when establishing the standards.

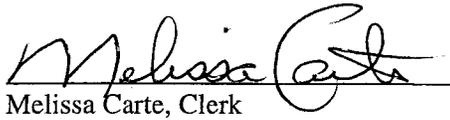
Dr. Snyder stated that one commenter expressed concerns regarding the process used to solicit public comments regarding the legislature’s amendment to the manganese standard in the Water Quality Standards rule. Dr. Snyder stated that he would address those comments and explain the Board’s role in the process.

Dr. Simonton stated he would assist Dr. Snyder in preparing a written response to the comments which will be distributed to all Board members for review. The public comments and the Board’s written response will then be forwarded to the WV Legislative Rule-Making Review Committee and submitted to the USEPA.

Dr. Simonton moved and Dr. Hackney seconded that the Board forward the comments regarding the manganese “5 mile” rule and the Board response to such comments to the WV Legislative Rule-Making Review Committee and to the USEPA without recommendation or endorsement from the Board, and the motion carried unanimously 3 to 0.

Whereupon, Dr. Hackney moved and Dr. Simonton seconded that the March 31, 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 March 31, 2005, by the West Virginia Environmental Quality Board. These minutes were approved by the Environmental Quality Board May 5, 2005.


Melissa Carte, Clerk