

ENVIRONMENTAL QUALITY BOARD

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WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

MEETING MINUTES

MAY 5, 2005

I. General

On Thursday, May 5, 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
Dr. Cameron Hackney
Mr. Ted Armbrecht

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.) Legislative Rule 46 CSR 1:

The Board members reviewed the draft “Final Filed” version of Legislative Rule 46 CSR 1 (Requirements Governing Water Quality Standards) as prepared by staff to ensure compliance with the directive of the Legislature. Dr. Simonton moved and Mr. Armbrecht seconded that the Board establish an effective date for the legislative rule of June 30, 2005, and the motion carried unanimously 4 to 0. Mr. Armbrecht then moved and Dr. Simonton seconded that the Board approve the rule for final filing with the WV Secretary of State’s office, and the motion carried unanimously 4 to 0.

2.) Union Carbide Variance Request:

In 2002 Union Carbide Corp. requested a variance from the Board. The Board reviewed the application, approved the site-specific criteria change and included that proposed change to the water quality standards rule in the triennial review packet. The site-specific criteria was approved during the legislative session and then provided to the USEPA for review and approval.

The US Environmental Protection Agency rejected the new criteria for chlorides in Ward Hollow that was contained in Section 7.2.d.19.3 of the Water Quality Standards rule. After discussions with the company and the USEPA during the March 10, 2005, Board meeting it was determined that the company should file a new application for a site-specific variance for chlorides (not a site-specific criteria change). Consequently prior to the May 5, 2005, Board meeting, the company submitted the new application for a site-specific variance for chlorides for the Board’s review.

During the May 5, 2005, Board meeting, the Board members completed the review of the application. The technical analysis was previously completed during the Board’s initial consideration of the company’s original application. Dr. Hackney moved and Dr. Simonton seconded that the Board propose an amendment to the Water Quality Standards rule providing the site-specific variance to Union Carbide, and the motion carried unanimously 4 to 0. The Board will proceed with the rule-making process by establishing a public comment period on the proposed amendment to the Water Quality Standards rule, and conducting a public hearing regarding the proposed

amendment on June 29, 2005, at 6:30 p.m. Written comments will be accepted through June 30, 2005 at 5:00 p.m.

The Board will file the Notice of Public Comment Period and Notice of Public Hearing with the Secretary of State's office as soon as possible in order to begin the rulemaking process. However, on July 1, 2005, the rulemaking authority will be transferred from the Board to the WV Department of Environmental Protection (WVDEP). Consequently the WVDEP will assume responsibility for completing the rulemaking process.

Dr. Snyder stated that he discussed the Union Carbide site-specific variance application with Secretary Timmermyer and recommended that the WVDEP continue the variance process after the WVDEP assumes all rulemaking responsibilities on July 1, 2005. Secretary Timmermyer indicated that the WVDEP supports the variance proposal.

3.) Continuation of Board Committees:

The Board Chair provided an overview of his discussions with the Secretary of the Department of Environmental Protection (WVDEP) regarding their continuation of the Board's Aluminum Technical Review Committee and the Nutrient Criteria Committee once the WVDEP assumes rule-making responsibilities on July 1, 2005.

A.) Aluminum:

In response to a legislative directive, the Board 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. In arriving at its decision, the Board agreed that additional scientific data was needed to fully evaluate the impacts of aluminum to aquatic life. The date for lifting the suspension of the chronic value was established to provide the Board time 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. In order to proceed with the Aluminum study the Board created a Technical Review Committee which is comprised of one representative from the USEPA, WVDEP, the Division of Natural Resources (DNR), industry and the environmental community and is chaired by a member of the Board.

Dr. Snyder stated that he discussed the Aluminum Committee with Secretary Timmermyer and recommended that the WVDEP continue the Committee after the WVDEP assumes all rulemaking responsibilities on July 1, 2005. Secretary Timmermyer stated that she would review the work plan of the Committee and would consider the Board's recommendation.

B.) Nutrient Criteria Committee:

The US Environmental Protection Agency directed that all states must adopt nutrient criteria for the various water body types and ecoregions by the end of 2004. In response, the Board created a Nutrient Criteria Committee that includes stakeholders such as point source industries, nonpoint source industries, municipal water treatment facilities, sewage treatment facilities, the environmental community, the general public, and various State and Federal agencies. The Committee is charged with reviewing and analyzing existing data, identifying the additional information needed, and using such information to provide recommendations regarding development of nutrient criteria in the water quality standards (46 CSR 1 –Requirements Governing Water Quality Standards).

Dr. Snyder stated that he discussed the NCC with Secretary Timmermyer and recommended that the WVDEP continue the NCC after the WVDEP assumes all rulemaking responsibilities on July 1, 2005. Secretary Timmermyer stated that she would review the work plan of the NCC and would consider the Board's recommendation.

4.) Application for Category A Use Determination:

Huntington Alloys Corporation is seeking a determination that the Category A Use Designation does not apply along the segment of Pats Branch that flows beneath its facility. On April 7, 2005, the company submitted an application seeking a site-specific revision to 46 CSR 1 ("Requirements Governing Water Quality Standards"). The Board members considered potential future actions by the Board on the request since the Board does not currently employ a technical advisor and also in light of the fact that rule-making authority will be transferred from the Board to the WVDEP on July 1, 2005.

Mr. Dave Yaussy appeared before the Board on behalf of the company. Mr. Yaussy stated that it is important to the Board to move forward on the Use Removal application at this time in order for the Use Removal to be considered by the legislature during the 2006 legislative session

The Use Removal application was filed with the Board on April 9, 2005. In order to proceed with the rulemaking process, the Board must review the application to determine whether it is complete, then in concert with the USEPA evaluate the data and information in order to determine whether a Use Removal is warranted based on the requirements contained in 46 CSR 1.6. If the Board determines that the Use Removal is appropriate it must establish a 45-day public comment period; prepare the amendment to the rule (strike-through and underline version); prepare a Summary of the Proposed Changes; prepare a Statement of Circumstances; prepare a Fiscal Note and complete a Notice of Public Comment period form and file all documents with the Secretary of State's office and the Legislative Rulemaking Review Committee. In addition the Board must conduct a public hearing after a 30-day public notice.

After the conclusion of the public comment period, the Board, or the appropriate rulemaking authority, must review and respond to all comments received and complete an "Agency Approved" rule packet. In order to be considered during the 2006 legislative session, the Agency Approved rule must be filed with the Secretary of State's office and the Legislative Rule Making Review Committee by July 29, 2005.

Dr. Simonton stated that he would be willing, in conjunction with the WVDEP, to review the technical aspects of the Use Removal application. The Board could consider his findings during the May 27th Board meeting and proceed to public notice if it is determined to be appropriate.

Mr. Yaussy stated that in addition to the current Use Removal application pending before the Board, the company will be seeking a site-specific variance for the copper numeric criterion, possibly through an emergency rule later in year. He suggested that instead of using the emergency rule process Board could include the copper variance request in with the current Use Removal application. However, the company has not submitted any information regarding the request for a variance from the copper numeric criterion to the Board.

After discussion the Board opted not to consider including the variance from the copper numeric criterion in conjunction with the current Use Removal application. Whereupon, Dr. Hackney moved and Dr. Simonton seconded that Dr. Simonton, in consultation with the WVDEP, review the technical aspects of the Use Removal application, and that the Board consider his findings during the May 27th Board meeting and proceed to public notice if it is determined to be appropriate. The motion failed 2 to 2 with Dr. Snyder and Mr. Armbrrecht voting against the motion, stating that the Use Removal application has not been subjected to a full technical review and that the Board members have not had the opportunity to adequately review the application in an open forum.

5.) Application for a Variance from Water Quality Standards for Remining Activities:

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. The proposed remining site 3 will remine a large portion of the Thacker Creek watershed located near Edgarton in Magnolia District of Mingo County of West Virginia. The Board members determined that it will not take any future action on the application since the Board does not currently have a technical advisor to review the application and also in light of the transfer of rule-making authority from the Board to the WVDEP. The applications will be forwarded to the WVDEP for consideration and appropriate action.

II. Administrative Matters

1.) Review and Approval of the March 31, 2005, Board meeting minutes:

The minutes of the March 31, 2005, EQB meeting were presented to the Board for approval. After review Mr. Armbrrecht moved and Dr. Simonton seconded that the minutes of the March 31, 2005, Board meeting be approved as written, and the motion carried unanimously 4 to 0.

2.) Review and Approval of the April 7, 2005, Board meeting minutes:

The minutes of the April 7, 2005, EQB meeting were presented to the Board for approval. After review, Mr. Armbrrecht moved and Dr. Simonton

seconded that the minutes of the April 7, 2005, Board meeting be approved as written, and the motion carried unanimously 4 to 0.

3.) General Budget Update:

Ms. Coleman provided the Board members with a general budget update. As of April 30, 2005, the Boards have spent 59% of the combined budget which represents a ten month period, or 83% of the fiscal year. A copy of the Budget Report is attached to and made a part of these minutes as Exhibit "A".

Ms. Coleman stated that the Board will have a carry forward balance at the end of fiscal year 2005 because the Board did not hire a technical advisor, hired only a part-time attorney (without benefits), and the appropriation provided to the Board by through the Governor's contingency fund.

Ms. Coleman stated that the legislature approved the proposed budget appropriations for the Board that includes an increase of \$52,403 in general revenue funding for Environmental Quality Board. She is in the process of preparing the fiscal year 2006 expenditure schedules and will provide them to the Board members prior to the next Board meeting.

Also, Ms. Coleman provided a current cost analysis and projection of building expenses. For fiscal year 2006, the total debt service and projected operating costs for the Air Quality Board and Environmental Quality Board total \$47,094, which is an increase of \$21,952 over previous yearly operating costs.

4.) Purchasing Card Report:

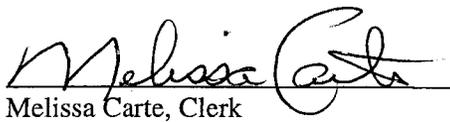
Ms. Coleman provided the Board members with the quarterly purchase card report which details the purchases by authorized staff members for the months of January through March 2004. After review, Mr. Armbricht moved and Dr. Simonton seconded that the Board approve the purchasing card report, and the motion carried unanimously 4 to 0. A copy of the Purchase Card Report is attached to and made a part of these minutes as Exhibit "B".

5.) Schedule Future Board Meeting dates:

The Board scheduled future meeting dates for June 29th (Public Hearing at 6:30 p.m.), June 30th, July 15th, and August 25th, 2005.

Whereupon, Dr. Simonton moved and Mr. Armbrecht seconded that the May 5, 2005, Environmental Quality 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 May 5, 2005, by the West Virginia Environmental Quality Board. These minutes were approved by the Environmental Quality Board on May 27, 2005.


Melissa Carte, Clerk