

FEBRUARY 11

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, February 11, 2001
5 p.m. to 8 p.m.
Senate Judiciary Committee Room, W-208

1. Approval of Minutes - January 7, and January 8, 2000.
2. Review of Legislative Rules:
 - a. Division of Human Services
Child Placing Agencies Licensure, 78CSR2
 - b. Board of Medicine
Licensing, Disciplinary and Complaint Procedures: Physicians, Podiatrists, 11CSR1A
 - c. Board of Medicine
Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistant, 11CSR1B
 - d. Registered Professional Nurses, Board of Examiners for
Disciplinary Action, 19CSR9
 - e. Governor's Committee on Crime, Delinquency and Correction
Law Enforcement Training Standards, 149CSR2
 - f. Department of Agriculture
Voluntary Farmland Protections Program, 61CSR26
WITHDRAWN - February 5, 2001
 - g. Division of Health
Radiological Health Rule, 64CSR23
 - h. DEP-Explosives and Blasting, Office of
Surface Mining Blasting Rule, 199CSR1
 - i. DEP-Mining and Reclamation, Office of
Rules for Quarrying and Reclamation, 38CSR3
 - j. Board of Embalmers and Funeral Directors
General Provisions, 6CSR1

- k. **Board of Embalmers and Funeral Directors**
Funeral Goods Sales, 6CSR2
- l. **Board of Embalmers and Funeral Directors**
Crematory Requirements, 6CSR3
- m. **Alcohol Beverage Control Commissioner**
Cigarettes Produced for Export; Imported Cigarettes, 175CSR8
- n. **Alcohol Beverage Control Commissioner**
Prohibiting sale of Tobacco Products in Vending Machines, 175CSR9
- o. **Office of Waste Management**
Yard Waste Composting Rule, 33CSR3
- p. **Office of Waste Management**
Hazardous Waste Management Rule, 33CSR20
- q. **Office of Waste Management**
Underground Storage Tanks, 33CSR30

3. Other Business

- a. **Governor's Committee on Crime, Delinquency and Correction**
Protocol for Law Enforcement Response to Domestic Violence, 149CSR3
- b. **Economic Development Authority**
General Administration of the West Virginia Capital Act: Establishment of the Application Procedures to Implement the Act, 117CSR1

Sunday, February 11, 2001

5 p.m. to 8 p.m.

Legislative Rule-Making Review
Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Anderson, Vice Chairman
Minard
Snyder
Unger
Minear

Mahan, Chairman
Wills, Vice Chairman
Cann
Kominar
Faircloth
Riggs
Absent

The meeting was called to order by Mr. Ross, Co-Chairman.

The minutes of the January 7 and 8, 2001, meetings were approved.

Debra Graham, Committee Counsel, stated that the rule proposed by the *Division of Human Services-Child Placing Agencies Licensure, 78CSR2*, had been removed from the agenda at the Committee's last meeting. Ann Burds, Director of Human Services, and Chuck Frasier, Commission on Children and Families, responded to questions from the Committee.

Mr. Anderson moved that the proposed rule be moved to the foot of the agenda. The motion was adopted.

Having voted on the prevailing side, Mr. Anderson moved that the Committee reconsider its action whereby it approved, as modified, the rule proposed by the *Governor's Committee on Crime, Delinquency and Correction-Protocol for Law Enforcement Response to Domestic Violence, 149CSR3*. The motion was adopted.

Ms. Pauley, Associate Counsel, explained that the proposed rule has no technical modifications.

Mr. Minard moved that the proposed rule be approved. The motion was adopted.

Having voted on the prevailing side, Mr. Anderson moved that the Committee reconsider its action whereby it approved, as modified, the rule proposed by the *Economic Development Authority-*

General Administration of the West Virginia Capital Act: Establishment of the Application Procedures to Implement the Act, 117CSRI.

Ms. Pauley explained that the proposed rule has no technical modifications.

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Ms. Pauley reviewed her abstract on the rule proposed by the ***Board of Medicine-Licensing, Disciplinary and Complaint Procedures: Physicians, Podiatrists, 11CSRIA***, stated that the Board has agreed to technical modifications and explained proposed modifications submitted by the Board.

Mr. Minard moved that the Committee approve the proposed modifications. The motion was adopted.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley explained the rule proposed by the ***Board of Medicine-Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistant, 11CSR1B***, and stated that the Board has agreed to technical modifications.

Mr. Kominar moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley reviewed her abstract on the rule proposed by the ***Board of Examiners for Registered Professional Nurses-Disciplinary Action, 19CSR9***, stated that the Board has agreed to technical modifications and responded to questions.

Mr. Cann moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley explained the rule proposed by the ***Governor's Committee on Crime, Delinquency and Correction-Law Enforcement Training Standards, 149CSR2***. She and Donald Davidson, Law Enforcement Training Coordinator, responded to questions from the Committee.

Mr. Snyder moved that the proposed rule be approved. The motion was adopted.

Joseph Altizer, Associate Counsel, reviewed his abstract on the rule proposed by the ***Division of Health-Radiological Health Rule, 64CSR23***.

Mr. Wills moved that the proposed rule be approved. The motion was adopted.

Mr. Altizer explained the rule proposed by the ***Office of Explosives and Blasting-Surface Mining Blasting Rule, 199CSRI***, distributed copies of the Office's proposed modifications, stated that the Agency has agreed to technical modifications and responded to questions. Mike Mace, Chief of the Office of Explosives and Blasting; Darcy White, Assistant Chief of the Office of Explosives

and Blasting; Belinda Shaffer, Coal Company owner; and Elaine Kirky; representing the West Virginia Organizing Project; addressed the Committee and responded to questions.

Mr. Minard moved that the Committee approved the proposed offices modifications. The motion was adopted.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Having voted on the prevailing side, Ms. Minear moved that the Committee reconsider its action whereby it approved, as modified, the rule proposed by the *Office of Explosives and Blasting-Surface Mining Blasting Rule, 199CSR1*. The motion was adopted.

Ms. Minear moved to modify paragraph 3.2.a.5 by removing the word "fumes". The motion was adopted.

Ms. Minear moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the *Office of Mining and Reclamation-Rules for Quarrying and Reclamation, 38CSR3*, and stated that the Agency has agreed to technical modifications. Mike Clouser, West Virginia Crushed Aggregates Council, and Rocky Barton, Assistant Chief of Northern Operations for the Agency, responded to questions from the Committee.

Mr. Snyder moved that the rule be approved as modified. The motion was adopted.

Ms. Pauley explained the rule proposed by the *Board of Embalmers and Funeral Directors-General Provisions, 6CSR1*, and stated that the Board has agreed to technical modifications.

Mr. Anderson moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley reviewed her abstract on the rule proposed by the *Alcohol Beverage Control Commissioner-Cigarettes Produced for Export; Imported Cigarettes, 175CSR8*, and stated that the Commissioner has agreed to technical modifications.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley explained the rule proposed by the *Alcohol Beverage Control Commissioner-Prohibiting Sale of Tobacco Products in Vending Machines, 175CSR9*, and stated that the Commissioner has agreed to technical modifications.

Mr. Wills moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the *Office of Waste Management-Yard Waste Composting Rule, 33CSR3*, stated that the Agency has agreed to technical modifications and responded to questions. Dick Cooke, Assistant Chief of the Office of Waste Management, and Mary Ann Mawl, representing the Jefferson Solid Waste Authority, responded to questions from the Committee.

Mr. Cann moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer explained the rule proposed by the *Office of Waste Management-Hazardous Waste Management Rule 33CSR20*.

Mr. Anderson moved that the proposed rule be approved. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the *Office of Waste Management-Underground Storage Tanks, 33CSR30*.

Mr. Snyder moved that the proposed rule be approved. The motion was adopted.

The meeting was adjourned.

FEBRUARY INTERIM ATTENDANCE
Legislative Interim Meetings
February 11, 12 and 13, 2001

Sunday, February 11, 2001

5:00 - 8:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member


Senate

Ross, Chair	<input checked="" type="checkbox"/>
Anderson, Vice Chair	<input checked="" type="checkbox"/>
Minard	<input checked="" type="checkbox"/>
Snyder	<input checked="" type="checkbox"/>
Unger	<input checked="" type="checkbox"/>
Minear	<input checked="" type="checkbox"/>

House

Mahan, Chair	<input checked="" type="checkbox"/>
Wills, Vice Chair	<input checked="" type="checkbox"/>
Cann	<input checked="" type="checkbox"/>
Kominar	<input checked="" type="checkbox"/>
Faircloth	<input checked="" type="checkbox"/>
Riggs	<input checked="" type="checkbox"/>

I certify that the attendance as noted above
is correct.



Staff Person

Terri Anderson

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review
Please print or write plainly.

Date 2-11-01

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Deborah Lewis Rodehorst	101 See Dr.	Bd. of med.	
Mary Anne Maul	1425 Quarrier #2	WVFC Sierra, JC SWA	✓

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review Date 2-11-01
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.



Office of Explosives and Blasting
#10 McJunkin Road
Nitro, West Virginia 25143
304-759-0595
304-759-0587

West Virginia Division of Environmental Protection

Bob Wise
Governor

Randy Huffman
Acting Director

February 9, 2001

Senator Mike Ross, Co-Chairman
Delegate Virginia Mahan, Co-Chairman
Legislative Rule-Making Review Committee
West Virginia State Capitol Building
Room MB-49
1900 Kanawha Boulevard
Charleston, WV 25305-0610

Re: "Surface Mine Blasting Rule", Title 199, Series 1

Dear Senator Ross and Delegate Mahan:

The Division of Environmental Protection, Office of Explosives and Blasting, respectfully requests an opportunity to include the attached proposed amendments to the Surface Mine Blasting Rule, when it is filed with your committee and the Secretary of State's Office as a modified rule. The attached also provides an explanation of the reason for each proposed amendment. The proposed rule was filed with the Office of the Secretary of State and with your Office on August 29, 2000 as an "Agency-Approved Rule".

Each of these amendments is a very minor change. They clarify confusing language, correct grammatical errors, and errors made when copying duplicate language from existing statute and rule. The proposed amendments also affect technical clean up recommended by Counsel Joseph Altizer.

We appreciate your consideration and will be pleased to answer any questions.

Sincerely,

Mike Mace
Chief

Attachment

**REPLACEMENT LANGUAGE TO CORRECT AND MODIFY
PROPOSED REVISION TO 199-1**

OEB request

Page 5. In order to insure the rules met the requirements of Chapter 22, Article 3A, language was copied from the statute to subdivision 3.2.a. However, in paragraph 3.2.a.5 the first word was inadvertently changed from "reduce" to prevent. To correct this error, OEB would like to replace paragraph 3.2.a.5 with the following.

3.2.a.5. Reduce noticeable dust and fumes from blasting from traveling outside the permit area.

OEB request and recommendation from counsel to clarify

Page 6. Language from the surface mining reclamation rules has been slightly modified to incorporate notification of residents within 0.7 mile of blast sites, and added to replace confusing portions of this subdivision. Replacing the confusing language makes 3.3.a as follows.

3.3.a. At least ten (10) days but not more than thirty (30) days prior to any blasting operations which detonate five (5) pounds or more of explosives at any given time, the operator shall publish a blasting schedule in a newspaper of general circulation in all the counties of the proposed area. Copies of the schedule described in subdivision 3.6.a. of this rule shall be distributed by Certified Mail to local governments, public utilities and each resident within one half mile of the blasting sites, and seven tenths (0.7) of a mile of the blasting sites for all surface coal extraction permits larger than those defined in accordance with W. Va. Code §22-3-13a(a)(1) and 2. Unless blasting will occur on drainage structures and roads, such structures will be exempt for the purpose of measuring the notification area. A list of residents, utilities and owners of man-made structures within the notification area shall be made a part of the blasting plan, and shall be updated on an annual basis. The operator shall republish and redistribute the schedule at least every twelve (12) months and revise, republish and redistribute the schedule at least ten (10) days, but not more than thirty (30) days prior to blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from that set forth in the prior

schedule. The blasting schedule described in subdivision 3.6.a. of this rule shall contain at a minimum the following:

- 3.3.a.1. Name, address and phone number of the operator;
- 3.3.a.2. Identification of the specific areas in which blasting will take place;
- 3.3.a.3. Dates and times when explosives will be detonated;
- 3.3.a.4. Methods to be used to control access to the blasting area; and
- 3.3.a.5. Types and patterns of audible warning and all clear signals to be used before and after blasting.

Counsel recommendation

Page 12. Delete the word 'readily' at the start of the 7th line in subsection 3.8 and add clarifying language at the end of the paragraph to insure the rule is consistent with statute, so that 3.8 reads as follows. (Note: Language with double underline is modified language.)

3.8 Pre-blast Surveys. - - The operator shall conduct the pre-blast survey in such a manner which will determine the condition of the dwelling or structure, and to document any pre-blasting damage and to document other physical factors that could reasonably be affected by the blasting. Assessments of the pre-blasting condition of structures such as pipes, cables, transmission lines, wells and water systems shall be based on the exterior or ground surface conditions and other readily available data. Special attention shall be given to the pre-blasting condition of wells and other water systems. The pre-blast survey shall include a description of the water source and water delivery system. When the water supply is a well, the pre-blast survey shall include written documentation about the type of well, and where available, the well log and information about the depth, age, depth and type of casing, the static water level, flow and recharge data, the pump capacity, the name of the drilling contractor, and the source or sources of the information.

Counsel recommendation

Page 13. Modify subdivision 3.9.a to eliminate superfluous language 'provided that' and to clarify that a fee for pre-blast surveyor training would cover only the specific costs of the training. Subdivision 3.9.a. would read as follows.

Individuals must possess a high school diploma or equivalent, provided that experience working as a pre-blast surveyor may be acceptable in lieu of the educational requirement, and complete the pre-blast surveyor training provided by the Office of Explosives and Blasting must to be approved by the office to administer conduct pre-blast surveys, provided that individuals meeting these criterion shall be approved. The Office shall not grant approval or re-approval of any person who is a convicted felon. The Director may establish a fee for pre-blast surveyor training to cover costs of the training.

OEB request

Page 13. Make a grammatical correction to the first sentence in subdivision 3.9.d., so the subject corresponds with the singular verb. Changing individuals to individual, and surveyors to surveyor makes the sentence read as follows.

An individual who is not an approved pre-blast surveyor may conduct pre-blast surveys, working as a pre-blast surveyor-in-training, only if they have registered to attend pre-blast surveyor training at the next available opportunity.

OEB request

Page 14. Add language to clarify that pre-blast survey deficiencies must be corrected. The modified subdivision would read as follows.

~~3.9.b.2.~~ 3.10.b. The office shall review each pre-blast survey as to form and completeness only, and notify the operator of any deficiencies within fifteen (15) days. If the office notifies the operator of deficiencies in a pre-blast survey within fifteen (15) days of submittal, the operator or his designee must correct all deficiencies before blasting. Otherwise, deficiencies must be corrected within forty-five (45) days.

OEB request and counsel recommendation

Page 37. Correct a numbering error by changing the number 20.8.c. to 8.8.c.

Page 38. Correct a numbering error by changing the number 20.8.d to 8.8.d.

Counsel recommendation

Page 14. Delete the reference to FOIA in subdivision 3.10.d, because the proposed language is not consistent with the requirements of West Virginia code 29B-1-4(2). OEB will request that similar language be added to statute. Deleting the sentence "To protect the rights of homeowners and residents, pre-blast surveys shall not be available under the Freedom of Information Act." modifies subdivision 3.10.d so it read as follows.

All pre-blast surveys shall be confidential and only used for evaluating damage claims. The Office of Explosives and Blasting shall develop a procedure for assuring surveys shall remain confidential.

Page 13, at the end of section 12.2

k. A practice of providing treatment recommendations relating to issuing prescriptions, via electronic or other means, for persons without establishing an on-going physician-patient relationship wherein the physician has obtained information adequate to support the prescription.

Provided, That this definition does not apply:

- 1) in a documented emergency; or
- 2) in an on-call or cross coverage situation ;
or
- 3) where patient care is rendered in consultation with another physician who has an ongoing relationship with the patient, and who has agreed to supervise the patient's treatment, including use of any prescribed medications.

Sunday, February 11, 2001

5:00 - 8:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

House

Ross, Chair	✓
Anderson, Vice Chair	✓
Minard	✓
Snyder	✓
Unger	✓
Miner	✓

Mahan, Chair	✓
Wills, Vice Chair	✓
Cann	✓
Kominar	✓
Faircloth	✓
Riggs	✓

minutes 1/7 & 1/8 approved

Human Services - Child Welfare

Earl
questions

I explained posture of rule & social work issue
Ann Bird - Dir Human Services responded to questions
Jack Frasier - Comm. Children & Families responded
to questions

Anderson
adopted

Foot of agenda

Governor's Committee

Anderson
adopted

Reconsider action

Mahan
adopted

Approved

~~FOA~~

Anderson
adopted

Reconsider

~~Anderson~~
Mahan

approved

Bd. of Medicine - Licensing

Rita explained

Approve as mod

Minard
adopted

Bd of Medicine - PA's

Rita explained

Approve as mod

Kominar
adopted

RN's - Disciplinary

Rita explained & asked q's

Approve as mod

Qern
adopted

Gov's Committee

Rita explained & asked a

John Davidson responded to q's

Approve rule

Law Enforcement
Mary
Caldwell

Snyder
adopted

Health - Radiological Health

Joe explained

Approve

Wills
adopted

DEP - Explosives

Joe explained - dist'd agency proposed mods

? and questions

Behind a Shaffer - Coal Co owner addressed Committee

Minard adopted Approve as mod from agency

Elaine? WV Organizing Proj addressed @

3.1.1 "may" prescribe

Minard adopted Approve as mod

Minard adopted - reconsider action

Minard adopted Remove James (mod)

Minard Approve as mod

DEP - Mining & Reclamation - Quarrying

Joe explained

Approve as mod

Mike Clouser - WV? Aggregates Council responded to a/b

Rocky Pastors?

Embalmer & Funeral Directors - Gen Proo.

Rita explained posture

~~Alden Robinson~~

Sen Anderson Approve as mod

ABCC - Cigarettes

Rita explained

Approve as mod

Adrian adopted

ABCE - Tobacco Products

Rita explained

Approve 45 mod

Wills

Waste Mgt - Yard Waste

Joe explained & responded to q's

Dick Cook - OWM

Mary Ann Maw

Approve a s mod

Caam
adapted

Waste Mgt - Haz Waste

Joe explained

Approve

Herson
adapted

Waste Mgt - UST

Joe explained

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, February 11, 2001
5 p.m. to 8 p.m.
Senate Judiciary Committee Room, W-208

1. Approval of Minutes - January 7, and January 8, 2000.
2. Review of Legislative Rules:

- Foot of agenda ✓ a. Division of Human Services
Child Placing Agencies Licensure, 78CSR2
- Approved ✓ b. Board of Medicine
as modified ✓ Licensure, Disciplinary and Complaint Procedures: Physicians,
Podiatrists, 11CSR1A
- Approved ✓ c. Board of Medicine
as modified ✓ Licensure, Disciplinary and Complaint Procedures, Continuing
Education, Physician Assistant, 11CSR1B
- Approved ✓ d. Registered Professional Nurses, Board of Examiners for
as modified ✓ Disciplinary Action, 19CSR9
- Approved ✓ e. Governor's Committee on Crime, Delinquency and Correction
Law Enforcement Training Standards, 149CSR2
- Withdrawn ✓ f. Department of Agriculture
Voluntary Farmland Protections Program, 61CSR26
WITHDRAWN - February 5, 2001
- Approved ✓ g. Division of Health
Radiological Health Rule, 64CSR23
- Approved ✓ h. DEP-Explosives and Blasting, Office of
as modified ✓ Surface Mining Blasting Rule, 199CSR1
- Approved ✓ i. DEP-Mining and Reclamation, Office of
as modified ✓ Rules for Quarrying and Reclamation, 38CSR3
- Approved ✓ j. Board of Embalmers and Funeral Directors
as modified ✓ General Provisions, 6CSR1

Will withdraw ✓
Board of Embalmers and Funeral Directors
Funeral Goods Sales, 6CSR2

Will withdraw ✓
Board of Embalmers and Funeral Directors
Crematory Requirements, 6CSR3

Approved as modified ✓
Alcohol Beverage Control Commissioner
Cigarettes Produced for Export; Imported Cigarettes, 175CSR8 ✓

Approved as modified ✓
Alcohol Beverage Control Commissioner
Prohibiting sale of Tobacco Products in Vending Machines,
175CSR9 ✓

Approved as modified ✓
Office of Waste Management
Yard Waste Composting Rule, 33CSR3 ✓

Approved as modified ✓
Office of Waste Management
Hazardous Waste Management Rule, 33CSR20 ✓

Approved as modified ✓
Office of Waste Management
Underground Storage Tanks, 33CSR30 ✓

3. Other Business

~~Adopted~~ as approved ✓
Governor's Committee on Crime, Delinquency and Correction
Protocol for Law Enforcement Response to Domestic Violence,
149CSR3 ✓

Approved as modified ✓
Economic Development Authority
General Administration of the West Virginia Capital Act:
Establishment of the Application Procedures to Implement the
Act, 117CSR1 ✓

FEBRUARY 13

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Tuesday, February 13, 2001
9 a.m. to 12 Noon
Senate Judiciary Committee Room, W-208

1. **Review of Legislative Rules:**
 - a. **Division of Human Services**
Child Placing Agencies Licensure, 78CSR2
 - b. **Environmental Quality Board**
Requirements Governing Water Quality Standards, 46CSR1
2. **Other Business**
 - a. *Committee Report*

Tuesday, February 13, 2001

9 a.m. to 12 Noon

Legislative Rule-Making Review
Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Anderson, Vice Chairman
Minard
Snyder
Unger
Minear

Mahan, Chairman
Wills, Vice Chairman
Cann
Kominar
Faircloth
Riggs
Absent

The meeting was called to order by Mr. Ross, Co-Chairman.

Debra Graham, Committee Counsel, explained that the rule proposed by the *Division of Human Services-Child Placing Agencies Licensure, 78CSR2*, had been moved the foot of the agenda at the previous meeting. Ann Burds, Director of Human Services, explained the compromise and proposed modifications. Nancy Guthrie, representing The Pressley Ridge Schools, addressed the Committee and responded to questions.

Ms. Mahan moved that the Committee approve the Division's proposed modifications. The motion was adopted.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer, Associate Counsel, explained that the rule proposed by the *Environmental Quality Board-Requirements Governing Water Quality Standards, 46CSR1*, had been moved to the foot of the agenda. He explained the conflicting proposals submitted by the stakeholders and responded to questions.

The following people addressed the Committee regarding the Board's proposed rule:

Rick Eades, West Virginia Environmental Council;
Jeremy Muller, West Virginia Rivers Coalition;
Les Shoemaker, West Virginia Farm Bureau;
Stephen Keen, Bright Enterprises and the West Virginia Hospitality and Travel Association;
Karen Price, West Virginia Manufacturers Association;

Don Garvin, West Virginia Environmental Council and Trout Unlimited;
KO Dameron, Massey Coal; and
Libby Chatfield, Technical Advisor to the Environmental Quality Board

Mr. Anderson moved that the Committee amend the proposed rule by striking the entire rule and inserting the coalition amendment. The motion was adopted.

Mr. Minard moved that the proposed rule be approved as amended. The motion was adopted.

Ms. Mahan moved that the Committee direct its staff to: prepare the Committee's report and submit the report to the Clerk's office of each House; draft a bill of authorization for each rule contained the report; and cause the bills to be introduced in each house with the members of the Committee as sponsors in their respective houses. The motion was adopted.

The meeting was adjourned.

FEBRUARY INTERIM ATTENDANCE
Legislative Interim Meetings
February 11, 12 and 13, 2001

Tuesday, February 13, 2001

9:00 - 12:00 Noon

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

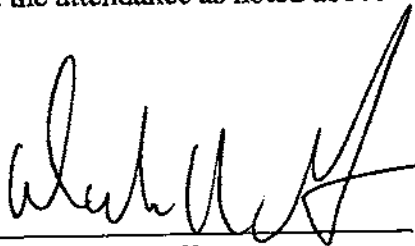
Senate

Ross, Chair	<input checked="" type="checkbox"/>
Anderson, Vice Chair	<input checked="" type="checkbox"/>
Minard	<input checked="" type="checkbox"/>
Snyder	<input checked="" type="checkbox"/>
Unger	<input checked="" type="checkbox"/>
Minear	<input checked="" type="checkbox"/>

House

Mahan, Chair	<input checked="" type="checkbox"/>
Wills, Vice Chair	<input checked="" type="checkbox"/>
Cann	<input checked="" type="checkbox"/>
Kominar	<input checked="" type="checkbox"/>
Faircloth	<input type="checkbox"/>
Riggs	<input checked="" type="checkbox"/>

I certify that the attendance as noted above
is correct.



Staff Person

Terri Anderson

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review Date 2-13-01
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
RICE SADES	CHARLESTON WV	WVSEC	
Blaine Mullins	" "	The State Journal	
✓ Jeremy P. Muller	Elkins, WV	W.V.A. RIVERS COALITION	X
Nathan Petty	Elkins, WV	W.Va. Rivers Coalition	X
✓ TIM SPANCO	MORGANTOWN	MUNICIPAL L., Rural Water, MWQA	X
DON GARVIN	Buckhannon, WV	West Virginia Environmental Council Treat. National Fed	X
✓ LES SHOEMAKER, JR	Buckhannon	WV Farm Bureau	X
Nancy Peoples Guthrie	Charleston	The Pressley Ridge Schools	X

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review
Please print or write plainly.

Date 2-13-01

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
✓ Stephen C. Keen	Summersville, WV	Bright Enterprises and WV Hospitality and Travel Assn.	X
Sam Lockwood	1 Red Rock Rd Buckhannon	WVFB	X
Dave Yaussy	Charleston WV	Robinson & McElwee	
Allyn Turner	Charleston WV	DEP office of Water	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: _____ Date _____

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Karen Price	WNMA		X

78CSR2

**TITLE 78
LEGISLATIVE RULES
DIVISION OF HUMAN SERVICES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 2
CHILD PLACING AGENCIES LICENSURE**

REQUESTED REVISIONS

Current language:

5.2.b. An agency shall limit internal investigations to ensuring the safety of the children in placement.

Requested change:

5.2.b. An agency shall limit internal assessment of an incident to ensuring the safety of the children in placement without compromising the Department's subsequent investigation.

Current language:

8.1.d. Case Managers and Homefinders shall have:

8.1.d.1. Valid West Virginia Board of Social Work Examiners licenses; and

8.1.d.2. A Bachelor's degree in a human services field and one (1) year experience in child welfare services; or a Bachelor's degree in a human services field and three (3) years of experience in child welfare services.

Requested change:

8.1.d. Homefinders shall have:

8.1.d.1. A valid West Virginia Board of Social Work Examiners license.

8.1.e. Case Managers shall have:

8.1.e.1. A Master's or Bachelor's degree in a human services field as defined by the Department in the Foster Care Program Standards and one (1) year of experience in child welfare services.

8.1.e.2. All case managers not licensed within the scope of their practice shall be supervised by an employee who is a licensed graduate social worker (LGSW), licensed certified social worker (LCSW), or a licensed independent clinical social worker (LICSW). Supervision shall include signing off on all paperwork of the supervised employee, conducting a minimum of two (2) case related face to face meetings each month, and developing continuing education recommendations for the employee based on supervision. Agencies shall ensure an appropriate ratio of supervisors to case managers to meet the supervisory needs of unlicensed social workers.

8.1.e.3. The Department requires agency employees to obtain professional continuing education or coursework as specified in 8.2.d.2.

Current language:

8.1.e. Para-Professional employees shall have:

8.1.e.1. A high school diploma or GED and be at least twenty-one years of age;

8.1.e.2. Training and supervised practice during the first six months of employment as prescribed in this rule; and

8.1.e.3. If they provide direct services to clients, in addition to the general required training and supervised practice, completed client-specific training on the services they provide and have documentation from the training supervisor that they are competent to deliver the services.

Suggested Change:

8.1.f. Para-Professional employees shall have:

8.1.f.1. A high school diploma or GED and be at least twenty-one years of age;

8.1.f.2. Training and supervised practice during the first six months of employment as prescribed in this rule; and

8.1.f.3. If they provide direct services to clients, in addition to the general required training and supervised practice, completed client-specific training on the services they provide and have documentation from the training supervisor that they are competent to deliver the services.

Proposed Framework: WV Antidegradation Implementation Procedures

1. All West Virginia waters shall be considered and reviewed as Tier 2 waters unless otherwise designated, with the exception of the main stems of the Ohio and Kanawha Rivers, which shall be considered Tier 1, unless these river segments or portions thereof are otherwise designated.

A) Based on available information, any waters that are not better quality than the applicable water quality standards for that pollutant shall be considered Tier 1 waters for that pollutant.

1 and 2

B) All waters described in Section 46-1-4.1.c are considered Tier 2.5 waters. *A*

C) All waters described in Section 46-1-4.1.d are considered Tier 3 waters.

2. Unless otherwise designated, these procedures shall apply to all new permits, permits with increased limits or loadings, ~~and renewal of existing permits~~ *and*

3. For Tier I waters, the Director shall determine for all permits whether the water quality to protect existing uses of the affected waters will be maintained and protected if the activities in the permit are authorized. Activities that do not meet this standard shall not be permitted.

4. For Tier II waters, the Director shall require water quality sufficient to assure maintenance and protection of existing uses (as for Tier I waters) for all proposed activities covered by these procedures. The Director shall further require an analysis as to whether the proposed activity will degrade water quality.

A) If the proposed activities would not degrade water quality, the Director may permit the proposed activity.

10% of assimilative capacity for individual and 7% cap of assimilative capacity for cumulative

B) If the Director determines that the water quality degradation would be de minimis, the Director may authorize the activity but only after public notice of the finding, including identification of other de minimis determinations, upstream of the proposed activity. In making this determination, the Director shall consider cumulative impacts, and generally shall presume that impacts greater than five percent are not de minimis.

C) If the proposed activity will degrade water quality, the applicant must evaluate reasonable, less degrading alternatives to the proposed activity that would reduce or eliminate water quality degradation, including alternatives that would eliminate the discharge altogether. Reasonable alternatives that reduce or eliminate degradation of water quality shall be implemented unless the applicant demonstrates that the costs are unreasonable. If the applicant implements an alternative that would not degrade water quality, no further Tier 2 review is necessary.

exempt POTW with reduced loading etc, NWP, non point with BMPs

Additional waters may be nominated for inclusion in that category by any interested party or by DEP on its own initiative.

D) If the proposed activity, including reasonable alternatives, would degrade water quality, a Tier 2 review shall be completed, as follows:

i) The applicant must make a demonstration that the water quality necessary to protect and maintain the existing uses will be protected, that no reasonable alternatives exist, and that the social and economic importance of the activity for the area where the receiving water is located, justifies the anticipated water quality degradation.

ii) The Director shall assure that there is achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

iii) If the Director makes a preliminary determination, based on information in the record, that the water quality degradation resulting from the proposed activity may be necessary to accommodate important social and economic development, then the applicant's submissions and the Director's preliminary findings and determination shall be subject to public notice and comment and intergovernmental coordination to solicit the views of relevant agencies.

iv) Following public review and intergovernmental coordination, the Director independently shall either determine that the applicant's demonstration has been sufficient, deny authorization for the proposed activity, or require modification. The Director's determination shall be based on the record and shall provide the public with a reasonable basis for understanding the Director's decision. The Director shall document this determination in the fact sheet that accompanies the final permit.

5. For Tier 2.5 and Tier 3 waters, the Director shall not authorize any activity that would result in degradation of these waters unless there is a demonstration that the impact would be short-term in duration, generally presumed to be less than ninety (90) days, and of transient impact.

6. The requirement of these provisions may be suspended by the Director upon a determination that suspension is necessary to address an emergency or imminent threat to public health or the environment.

7. In determining whether or not a proposed activity would degrade water quality, the Director may consider the impact of proposed effluent trades, provided that the trading proposal has been fully analyzed, that trading ratios are 2:1 or greater to account for uncertainty, and that trades are confined to a geographic area reasonably immediate to the site of the proposed activity. Trades between different watersheds shall not be authorized.

8. The Director may consider compliance with best management practices (BMP) in applying these requirements, but only where the Director has determined that the proposed BMP is sufficient to meet the requirements of the antidegradation policy.

ANTIDegradation PROPOSAL
February 6, 2001

1. DEP should implement an interim antidegradation policy based on a modified January 19, 2001 rule (see attached).
2. EQB should withdraw its rule.
3. Regulated community should withdraw its Clean Water Good Jobs rule.
4. Public interest sector notice of intent to sue should be withdrawn.
5. DEP should convene a six month process to integrate and refine antideg, TMDL, Tier listing, trading, stream segmenting, and watershed management.
6. EPA should support the above process by continuing funding to state programs and by not promulgating its own rule.

Summary of Stakeholder Positions on Major Antidegradation Issues

	FINAL EQB DOCUMENT	ENVIRONMENTAL	EPA	CL WATER/GD JOBS	STAKEHOLDER GRP
What constitutes degradation? (Deminimus)	10% of ambient conc. or assim. capacity which ever is more protective, 5% In Tier 2.5	All discharges that alter the receiving stream, otherwise violates state 40 CFR131.12, deminimus = 0	5% change in water quality	10% of assimilative capacity, redefines how capacity is determined, policy inconsistent with standard permitting regs	No consensus reached
Should previously issued permits be grandfathered?	Grandfathers existing discharges.	Grandfathering should be prohibited; creates a disincentive for new industries.	Policy should apply to all new, existing and existing permits with increased loadings	Grandfathers existing discharges into high quality waters	No consensus reached
How should nonpoint sources be handled?	General statement: NPS activities will be in compliance with the achievement of BMPs also in compliance with 4.1.b see 1.) below	Concur with the antideg stakeholder committee consensus recommendation	BMPs should be sufficient to meet requirements of antidegradation	General statement: NPS activities will be in compliance with the achievement of BMPs also in compliance with 4.1.b see 2.) below	General statement: NPS activities will be in compliance with the achievement of BMPs also in compliance with 4.1.b see 3.) below
What should be exempt from antidegradation review?	Temp, fecal, pH, DO, old permits, mussels, drinking water chem., Corp Nationwides, gen. NPDES, emerg., trading, grd water remed., some STP, 20% cap in change in ambient water quality	No exemptions are appropriate except emergency situations and they should be time limited; trading should not be exempt esp w/ upcoming trading stakeholder meetings	From 1/19/01: trading with a 2:1 offset provision plus emergencies.	All Nationwide Army Corp of Engineer permits, all general permits plus DEP can determine exemptions at its discretion	OK'd temp, fecal, pH, DO, some ammonia discharges, emergencies, ground water remediation, trading, Nationwides minus #21 and #26
Should there be a limit to cumulative impacts in a watershed ?	Cumulative impacts not addressed except following exemptions - 20% cap in change in ambient water quality	Yes, by making the deminimus 0, the policy will effectively and fairly deal with cumulative impacts	The director shall consider cumulative impacts.	Cumulative impacts not addressed.	Cumulative impacts not addressed
How much public notice and comment should be provided?	Notice/comment outlined for Tier 1, Notice outlined in Tier 2 exact opportunity for comment unclear, Notice but no comment in Tier 2.5 & 3	Public notice and comment should be provided at each milestone of antidegradation review	No specific comments except that policy should follow Intergovernmental and public notice requirements of the CWA	One opportunity for public comment - suggest incorporate into routine discharge permit notice and comment	Stakeholders agreed the language proposed in section on outside agency and public notice/comment was inadequate.

Summary of Stakeholder Positions on Major Antidegradation Issues

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<p>What constitutes acceptable less degrading alt. pollution controls? And should using them exempt permittee from further review if activity still degrades?</p>	<p>Acceptable less degrading alternatives are less costly than 110% of the costs of the pollution control measures associated with the proposed activity. Unclear if review continues.</p>	<p>The degree to which less degrading alt. should be required should be determined based on pollution reduction vs harm vs cost and at the discretion of the agency; review should continue if degrading</p>	<p>Discharger should implement less degrading controls unless they prove cost is unreasonable; Review continues unless not degrading</p>	<p>110% of the cost of current pollution control measures, if after implementation of control measures degradation is still significant - review would continue</p>	<p>No consensus reached.</p>
<p>How should outside agencies be involved in antideg review?</p>	<p>Either notice/comment to agencies outlined in Appendix F1 or other procedures as outlined in West Virginia CPP</p>	<p>Agree with stakeholders simple notice/comment inadequate; Agencies outside the DEP should be cooperating partners to assure the compliance with WQS; State CPP inadequate</p>	<p>Follow Watershed Management Framework and State Continuing Planning Process</p>	<p>Simple notice/comment, no coordination with regulatory or administrative oversight to assure compliance with WQS</p>	<p>Stakeholders agreed that a simple notice and comment to outside agencies is inadequate and state's current system (CPP) is inadequate for resolving this issue</p>
<p>How should we define/treat high quality streams?</p>	<p>Maintain Tier 2 default; Maintain Tier 2.5 streams with no new degrading discharges; Maintain Tier 3 with no new or expanded discharges except temporary with limited effects; and support adequate citizen and board nomination procedures for Tier 3 waters.</p>	<p>Maintain Tier 2 default; Support stakeholder recommendations; in addition Waters of National and State Parks and Wildlife Refuges should be included in Tier 3 as referenced in 40 CFR 131.12 and 40 CFR 131.32.</p> <p>NOTE: Tier 1 protections are redundant with other sections of the CWA. Only Tier 2 or higher provide additional stream protections see this section in Cl Water/Gd Jobs</p>	<p>Maintain Tier 2 default except Mainstem of Ohio and Kanawha Rivers; support EQB document on Tier 2.5 and Tier 3 streams</p>	<p>Stream protection defaults to Tier 1 in absence of water quality data, (DEP est. that max 10% of streams in WV have enough data), eliminates all of Tier 2.5 protection for naturally reproducing trout streams, and other high quality streams (these streams had tier 3 protection in past years); Significantly weakens Tier 3 protections by changing what degradation means and what activities can occur in Tier 3, limits citizen/Board nominations for Tier 3 streams</p>	<p>Maintain Tier 2 default; Maintain Tier 2.5 streams with no new degrading discharges; Maintain Tier 3 with no new or expanded discharges except temporary with limited effects; and support adequate citizen and board nomination procedures for Tier 3 waters</p>

Summary of Stakeholder Positions on Major Antidegradation Issues

1.) pertinent portions of 4.1.b read as follows: BMPs that have been implemented, applied or installed at a specific site should be evaluated to determine whether the BMPs are sufficient to reduce or minimize impacts to water quality. Where appropriate, the Director may require application or implementation of BMPs sufficient to prevent violations of water quality standards. If BMPs are demonstrated to be inadequate to reduce or minimize water quality impacts, the Director may require that more appropriate BMPs be developed and applied or, alternatively, may require that the activity causing the pollution cease.

2.) pertinent portions of 4.1.b read as follows: If BMPs are demonstrated to be inadequate to reduce or minimize water quality impacts, the Director may require that more appropriate BMPs be developed and applied.

3.) pertinent portions of 4.1.b read as follows: The Director shall assure that Best Management Practices (BMPs) are sufficient to satisfy the requirements of the Water Quality Standards. If BMPs are demonstrated to be inadequate to meet Water Quality Standards, the Director shall work with appropriate authorities to require that BMPs be revised or adopted to assure compliance with those standards or shall require the activity causing the nonpoint source pollution to cease.

WQS = Water Quality Standards - = minimum standards that will protect human health and aquatic life

CWA = Clean Water Act

CPP = Continuing Planning Process = part of the CWA that deals with assuring WQS are met through adequate interagency cooperation plus other methods

ANTIDEGRADATION PROPOSAL

February 6, 2001

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B) All waters described in Section 46-1-4.1.c are considered Tier 2.5 waters.

C) All waters described in Section 46-1-4.1.d are considered Tier 3 waters.

and

2. Unless otherwise designated, these procedures shall apply to all new permits, permits with increased limits or loadings ~~and renewal of existing permits~~ *

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7. In determining whether or not a proposed activity would degrade water quality, the Director may consider the impact of proposed effluent trades, provided that the trading proposal has been fully analyzed, that trading ratios are 2:1 or greater to account for uncertainty, and that trades are confined to a geographic area reasonably immediate to the site of the proposed activity. Trades between different watersheds shall not be authorized.

results in a demonstrable improvement in water quality

8. The Director may consider compliance with best management practices (BMP) in applying these requirements, but only where the Director has determined that the proposed BMP is sufficient to meet the requirements of the antidegradation policy.

Office of Oil and Gas of the Division of Environmental Protection, and reasonable land, soil and water conservation measures, practices applied to agricultural nonpoint sources.

4A.3. Regulated activities that qualify for coverage under a Corps of Engineers nationwide permit, or any subsequent reissuance of the same nationwide permit (or subsequent nationwide permit that regulates those activities) for which state water quality certification has been granted or conditionally approved, and regulated activities that are covered by a WV/NPDES general permit, will be deemed to be in compliance with antidegradation requirements.

★ 4A.4. A proposed new or expanded discharge from a sanitary wastewater treatment plant constructed or operated to alleviate a public health concern associated with failing septic systems or untreated or inadequately treated sewage, shall be exempt from these procedures. This exemption would include combined sewer overflow elimination or reduction projects affecting one or more water bodies and shall apply only where there will be a net decrease in the overall pollutant loading discharged to the combined receiving waters.

★ 4A.5 The discharge of filter backwash from a potable water treatment plant, where the backwash is discharged into the water body from which it was removed, shall be exempt from these procedures.

★ 4A.6. Reissuance of an individual sanitary wastewater treatment plant NPDES permit where no new increase in permitted levels will occur shall be exempt from these procedures, provided that the Director may require antidegradation review procedures be applied where individual circumstances warrant.

46-1-4B. Antidegradation Review Process.

4B.1. The following section outlines how the agency conducting the antidegradation review will determine the level of protection ("tier") assigned to the receiving water body associated with the activity subject to this rule. All regulated activities not covered by the provisions of Sections 4A.2 and 4A.3 must undergo this review.

4B.2. In conducting an antidegradation review the agency's first task is to determine the baseline water quality for the receiving water body. Data for establishing the baseline water quality may come from a federal or state agency, the regulated entity, the public, or any other source, as long as the data are recent and reliable. If adequate data are not available, the agency may, in conjunction with the regulated entity or on its own initiative, establish a plan for obtaining the necessary data. The regulated entity may be required to provide ambient concentrations for those parameters of concern that are or may be discharged as a result of the regulated activity into the affected water body to help the permitting agency determine the baseline water quality, the existing uses, and the applicable tier.

MEMORANDUM

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: JOE ALTIZER
DATE: FEBRUARY 12, 2001
RE: SUMMARY OF PROPOSALS FOR 46CSR1, REQUIREMENTS GOVERNING WATER QUALITY STANDARDS

At the January Legislative Rulemaking and Review Committee Meeting, this rule was laid over to provide an opportunity for further stakeholders negotiations in an attempt to work out an agreement on disputed rule provisions. Two stakeholders meetings were held with no movement whatsoever by the stakeholders on disputed rule provisions. A coalition of interest groups representing businesses, municipalities and others which will be impacted by the proposed rule's implementation requirements have developed an alternative proposal based on Virginia and other state's proposals for implementing water quality standards, which they have titled "Clean Water Good Jobs." The Environmental Protection Agency [EPA] has also proposed what its representatives say is an acceptable approach for the state to gain approval of the state's proposed implementation plan. No member of the stakeholders group support the version proposed by the Environmental Quality Board.

The table below represents Counsel's understanding of the major differences between the two proposals.

Environmental Quality Board	Coalition Proposal
<u>Tier 1</u> This protection level would apply to all waters of the state. Waters meeting Tier 2, 2.5 and 3, standards must maintain those standards.	<u>Tier 1</u> Default standard for all waters of the state, after review as required in Tier 2 review below, Tier 2 or 3 applies. Current activities and uses would determine baseline quality. This antideg review process is contained in Table F, 4.6.

<p><u>Tier 2</u> High Quality water is the default standard for all waters of the state. All waters are Tier 2 unless demonstrated that quality does not meet Tier 2, fishable or swimable standards, or meets Tier 2.5 or 3.</p> <p>DEP has the authority to exempt activities such as a 403 permit.</p> <p>De minimis is 10% measured by ambient or <u>upstream</u> assimilative capacity. 20% cap on total deminius impact.</p> <p>Sociological evaluation, consideration of less degrading alternatives, and interagency coordination</p>	<p>Tier 2 High Quality standard is applied only after anti-deg and base-line water quality review.</p> <p>Specific activities exempted by rule, these include BMPs for forestry practices, oil and gas operations Corps Eng Nationwide permits.</p> <p>De minimis is 10% measured based only on <u>downstream</u> assimilative capacity.</p>
<p><u>Tier 2.5</u> No degradation allowed. No long term down stream impact to designated segments of a stream are allowed. A nomination procedure for designating a water Tier 2.5 is provided.</p>	<p><u>Tier 2.5</u> does not exist. All waters are Tier 1 until review is conducted which would result in <u>Tier 2</u> designation for these waters.</p>
<p><u>Tier 3</u> No new or increased discharges allowed.</p>	<p><u>Tier 3</u> nomination provisions for designation as a Tier 3 are rewritten.</p>

EPA proposal

Bob Koroncai, representing Region 3 of the EPA has indicated failure to gain approval by the EPA may result in withdrawal of the current federal waiver of its' review of state issued minor NPDES permits.

The EPA proposal as set out in the January 19th letter from the Regional Administrator of Region 3 offered a proposal to meet Clean Water Act requirements:

All WV waters considered Tier 2, excepting the Ohio and Kanawha Rivers being Tier 1 unless portions are otherwise designated.

Retention of all currently designated Tier 2.5 and Tier 3 designations. All federally designated Wild and Scenic Rivers or National Rivers, naturally producing trout streams, and waterbody in state and federal forest and recreation areas are deemed Tier 2.5. Outstanding Resource waters are considered Tier 3.

The Tier 1 standard will protect existing uses while Tier 2 will protect existing uses and require a degradation analysis, which includes socio-economic impacts analysis. De minimis cumulative is set at 5% for Tier 2. Short term degradation of Tiers 2.5 and 3 are allowed. A trading program of 2:1 within the same watersheds would be allowed. The DEP may require more than Best Management Practices when BMPs are deemed insufficient.

Tuesday, February 13, 2001

9:00 - 12:00 Noon

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

House

Ross, Chair ✓
Anderson, Vice Chair ✓
Minard ✓
Snyder ✓
Unger ✓
Minear ✓

Mahan, Chair ✓
Wills, Vice Chair ✓
Cann ✓
Kominar ✓
Faircloth ✓
Riggs ✓

Div. of Human Services - Child Placing

Ann Burd explained the compromise & proposed modifications.

Nancy, Presley Ridge

Mahan adopted

Adopt mod's presented by Div

Mahan adopted

Approve as mod

EQB - Water Quality Stats.

Minard adopted

Joe explained posture of the proposed rule & conflicting proposals - ans'd questions

Anderson adopted

Approve as ~~mod~~ amended

Coalition amendment + 3 changes

Mahan adopted

Action on report & bills