

July
2004

JULY 25



Sunday, July 25, 2004

12:00 p.m. to 1:00 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		Mahan, Chairman	
Minard, Vice Chairman		Thompson, Vice Chairman	
Snyder	Absent	Cann	Absent
Unger		Kominar	
Boley		Armstead	
Minear		Faircloth	Absent

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

The minutes of the June 14, 2004, meeting were approved.

Debra Graham, Chief Counsel, explained the rule proposed by the **West Virginia Board of Examiners of Radiologic Technology, Rules of the West Virginia Radiologic Technology Board of Examiners, 18CSR1** and stated that the Board has agreed to technical modifications.

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

Joe Altizer, Associate Counsel, reviewed the rule proposed by the **DEP - Office of Waste Management, Underground Storage Tank Fee, 33CSR31**.

Joe Dowley, General Counsel, with the Department of Environmental Protection responded to questions.

Jan Vinyard, with the Oil Makers and Grocers Association commented and responded to questions.

Ms. Armstead excused himself from voting. Committee stated that would be unnecessary.

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

Connie Bowling, Associate Counsel, explained the rule proposed by the **Public Service Commission, Rules for Statewide Information**

and Referral 211 Service, 150CSR29 and stated that the Commission has agreed to technical modifications.

Daniel Walker, Technical Analyst, with the Public Service Commission responded to questions.

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

Ms. Bowling, explained the rule proposed by the **Governor's Committee on Crime, Delinquency and Corrections, Law Enforcement Training Standards, 149CSR2**, stated that the Committee has agreed to technical modifications and responded to questions.

Jeffrey Estep, Deputy Director, with the West Virginia Division of Criminal Justice to questions.

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

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

The meeting was adjourned.

JULY INTERIM ATTENDANCE
Legislative Interim Meetings
July 25, 26 and 27, 2004

Sunday, July 25, 2004

12:00 - 1:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member _____

Robert S. Kiss, ex
officio nonvoting member _____

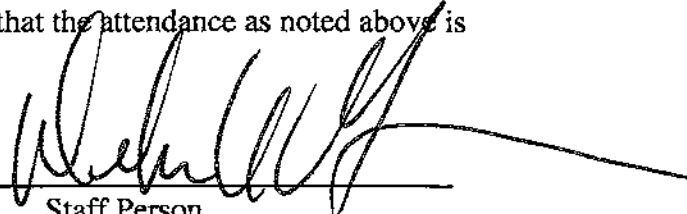
Senate

Ross, Chair _____ ✓
Minard, Vice Chair _____ ✓
Snyder _____
Unger _____ ✓
Boley _____ ✓
Minear _____ ✓

House

Mahan, Chair _____ ✓
Thompson, Richard, Vice Chair _____ ✓
Cann _____
Kominar _____ ✓
Armstead _____ ✓
Faircloth _____

I certify that the attendance as noted above is correct.



Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819.

JULY INTERIM ATTENDANCE

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Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert "Bob" Kiss, ex
officio nonvoting member

Senate

House

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

Mahan, Chair ✓
Thompson, Rick, Vice Chair ✓
Cann ✓
Kominar ✓
Armstead ✓
Faircloth ✓

Minutes approved (June 14, 2004)

Rad Tech

I explained

Mahan
adopted

Approve as modified

DEP - Waste Mgt

Joe explained

Joe Dahly (?) per Counsel responded to q's
Jan Vineyard - Oil Marketers & Grocers Assn. - in
favor of the proposed rule

Armstead moved to be excused from voting - Counsel
state no need to be excused

Minard
adopted Previous question

Minor
● adopted Approve

PSC

Connie explained again
Daniel Walker, ? responded to questions.

Unger Approve as modified
Adopted

Governors Comm

Connie explained
ICAF Estep, ? responded to questions

Unger Approve suggested agency mod
● Adopted

Mahan Approve as mod
adopted

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, July 25, 2004
12:00 p.m. to 1:00 p.m.
Senate Finance Committee Room M-451

1. Approval of Minutes - Meeting of June 14, 2004
2. Review of Legislative Rules:

Approved as modified Public Service Commission
Rules for Statewide Information and Referral 211 Service
150CSR29

1. Layover from June 14, 2004 Meeting
2. Approve with Modifications

Approved as mod. Governor's Committee of Crime, Delinquency and Corrections
Law Enforcement Training Standards
149CSR2

- Approve

Approved as mod. Radiologic Technology , WV Board of Examiners
Rules of the West Virginia Radiologic Technology Board of
Examiners
18CSR1

- Approve with Modifications

Approved DEP - Office of Waste Management
Underground Storage Tank Fee
33CSR31

- Approve

3. Other Business

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, July 25, 2004
12:00 p.m. to 1:00 p.m.
Senate Finance Committee Room M-451

1. **Approval of Minutes - Meeting of June 14, 2004**
2. **Review of Legislative Rules:**
 - a. **Public Service Commission**
Rules for Statewide Information and Referral 211 Service
150CSR29
 - b. **Governor's Committee of Crime, Delinquency and Corrections**
Law Enforcement Training Standards
149CSR2
 - c. **Radiologic Technology , WV Board of Examiners**
Rules of the West Virginia Radiologic Technology Board of
Examiners
18CSR1
 - d. **DEP - Office of Waste Management**
Underground Storage Tank Fee
33CSR31
3. **Other Business**

JULY INTERIM ATTENDANCE
Legislative Interim Meetings
July 25, 26, and 27, 2004

Sunday, July 25, 2004

12:00 p.m. - 1:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex officio nonvoting member

Robert "Bob" Kiss, ex officio nonvoting member

Senate

House

Ross, Chair	✓
Minard, Vice Chair	✓
Snyder	_____
Unger	✓
Boley	✓
Minear	✓

Mahan, Chair	✓
Thompson, Rick, Vice Chair	✓
Cann	_____
Kominar	✓
Armstead	✓
Faircloth	_____

- Mahan Motion
 minutes approved (June 14, 2004)

- ~~Rad. Tech~~ Rad. Tech by Debra - explained
 motion by Mahan approved as mod.

- DEP by Joe - explained
~~Rad. Tech~~

Joe D answer ?'s - ~~DEP~~ w/DEP
 Bill Makes i Does Ass.

Jane Vinyard answer ?'s

Armed had moved to excuse himself - Committee stated

Minard motion approved

Minard motion
rule approved

- ~~Minard motion~~

- Pub Serv Committee by Connie - explained

Minard ?'s

Danny Walker - answer ?'s

Unger ?'s

Mahan ?'s

Unger motion

~~Unger~~ Motion app. w/ Mod.

- Gov. Committee by Connie - explained

Jeff Estep ^{Deputy Director} w/ wv Div of Crim Justice Services
answer ?'s

Unger ?'s

Approved suggest

~~Unger moves~~ ~~approved~~

Unger moves w/ mod. approved

Mahan moves to be excused himself

Committee stated unnecessary

Mahan moves Approve as modified w/ Agency
suggestion

JULY 26



Monday, July 26, 2004

11:00 a.m. to 1:00 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
Minard, Vice Chairman
Snyder
Unger
Boley
Minear

Mahan, Chairman
Thompson, Vice Chairman
Cann Absent
Kominar
Armstead
Faircloth Absent

The meeting was called to order by Ms. Mahan, Co-Chairman.

The minutes of the June 15, 2004, meeting were approved.

Edward Snyder, Ph. D., West Virginia Environmental Quality Board Chair, discussed the history of the development of state water quality standards and responded to question from the Committee.

Allyn Turner, Director of the Division of Water and Waste Management, with the West Virginia Department of Environmental Protection gave presentations on how program amendments offered to state water quality standards compare to similar existing standards of surrounding states and on DEP's position on the state's current and proposed water quality standards on aluminum. Ms. Turner responded to question from the Committee

Tom Ambrecht, with the West Virginia Environmental Quality Board, addressed the Committee and responded to questions.

Tom Boggs, with the West Virginia Chamber of Commerce, addressed the Committee and responded to questions.

The meeting was adjourned.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, July 26, 2004
11:00 a.m. to 1:00 p.m.
Senate Finance Committee Room M - 451

1. **Approval of Minutes - Meeting of June 15, 2004**
2. **Environmental Quality Board discussion regarding history of development of state water quality standards**

Edward M. Snyder, Ph. D., Board Chair
WV Environmental Quality Board

Edward C. Armbrecht, Jr., Board Member
WV Environmental Quality Board

Scott Simonton, Ph. D., Board Member
WV Environmental Quality Board

3. **Allyn Turner - Director of the Division of Water and Waste Management, WV Department of Environmental Protection**

(a) Presentation on how program amendments offered to state water quality standards compare to similar existing standards of surrounding states.

(b) Presentation on DEP's position on the state's current and proposed water quality standards on aluminum.

4. **Other Business**

JULY INTERIM ATTENDANCE
Legislative Interim Meetings
July 25, 26, and 27, 2004

Monday, July 26, 2004

11:00 a.m. - 1:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex officio nonvoting member

Robert "Bob" Kiss, ex officio nonvoting member

Senate

House

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

Mahan, Chair	<input checked="" type="checkbox"/>
Thompson, Rick, Vice Chair	<input checked="" type="checkbox"/>
Cann	<input type="checkbox"/>
Kominar	<input checked="" type="checkbox"/>
Armstead	<input checked="" type="checkbox"/>
Fairecloth	<input type="checkbox"/>

Edward Snyder, EQB spoke on issues Bd is addressing; responded to questions.

Allyn Turner, DEP

Also looked at some mining states

Reviewed pollution ^{standards} control in surrounding states - 69 pollutants; specifically looked at aluminum, manganese and selenium; responded to questions

Aluminum - stds for warm water too stringent → several ~~#~~ bodies of H₂O will be listed as impaired. Retain for trout water, suspend 87 for warm water fisheries.

Ted Ambrecht, EQB addressed the C
 Tom Boggs, WV Chamber " " "

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Legislative Interim Meetings

July 25, 26, and 27, 2004

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Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
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Robert "Bob" Kiss, ex
officio nonvoting member

Senate

House

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

Mahan, Chair ✓
Thompson, Rick, Vice Chair ✓
Cann ✓
Kominar ✓
Armstead ✓
Faircloth

meeting called to order by Mahan

- Edward M. Snyder, ^{PHD.} WV Env. Quality Bd, Bd Chair
opening statement
?'s from committee members

Approved minutes

- Allyn Turner - Director of the Division of Water and Waste Management, WV Department of Environmental Protection

Grave - power point presentation from last Dep meeting ^{given to doc to be distributed to members} and copy of letter send to the EQB was distributed to bd members

(a) hand out presentation on how program amendments agreed to state water quality standards compare to similar existing standards of surrounding states
answer 2's from the committee

(b) ~~DEP~~ Presentation on DEP's position on the state's current and proposed water quality standards on aluminum information provided to counsel (for) to be distributed to Bd. members

- Ted Armbark - DEP, committee member addressed the committee

- Tom Boggs, Chair of Committee addressed the committee

Konner motion to open

JULY INTERIM ATTENDANCE
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Monday, July 26, 2004

11:00 - 1:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member _____

Robert S. Kiss, ex
officio nonvoting member _____

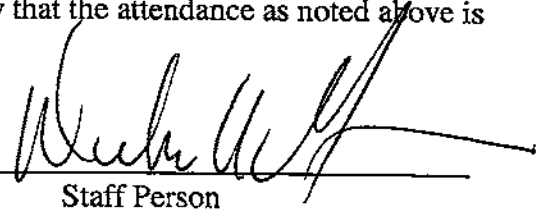
Senate

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

House

Mahan, Chair ✓
Thompson, Richard, Vice Chair ✓
Cann ✓
Kominar ✓
Armstead ✓
Faircloth _____

I certify that the attendance as noted above is correct.



Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819.

§22B-3-1. Environmental quality board; composition and organization; appointment, qualifications, terms, vacancies.

(a) On and after the effective date of this article, the "water resources board," heretofore created, shall continue in existence and hereafter shall be known as the "environmental quality board."

(b) The board shall be composed of five members who shall be appointed by the governor with the advice and consent of the Senate. Not more than three members of the board shall be of the same political party. Each appointed member of the board who is serving in such capacity on the effective date of this article shall continue to serve on the board until his or her term ends or he or she resigns or is otherwise unable to serve. As each member's term ends, or that member is unable to serve, a qualified successor shall be appointed by the governor with the advice and consent of the Senate. Individuals appointed to the board shall be persons who by reason of previous training and experience are knowledgeable in the husbandry of the state's water resources and with at least one member with experience in industrial pollution control.

(c) No member of the board shall receive or, during the two years next preceding the member of the board's appointment, shall have received a significant portion of the member of the board's income directly or indirectly from a national pollutant discharge elimination system permit holder or an applicant for a permit issued under any of the provisions of article eleven, chapter

twenty-two of this code. For the purposes of this subsection: (1) The term "significant portion of the member of the board's income" means ten percent of gross personal income for a calendar year, except that it means fifty percent of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving such portion pursuant to retirement, a pension or similar arrangement; (2) the term "income" includes retirement benefits, consultant fees and stock dividends; (3) income is not received "directly or indirectly" from "permit holders" or "applicants for a permit" where it is derived from mutual-fund payments or from other diversified investments with respect to which the recipient does not know the identity of the primary sources of income; and (4) the terms "permit holders" and "applicants for a permit" do not include any university or college operated by this state or political subdivision of this state.

(d) The members of the board shall be appointed for overlapping terms of five years, except that the original appointments shall be for terms of one, two, three, four and five years, respectively. Any member whose term expires may be reappointed by the governor. In the event a board member is unable to complete the term, the governor shall appoint a person with similar qualification to complete the term. The successor of any board member appointed pursuant to this article must possess the qualification as prescribed herein. Each vacancy occurring in the office of a member of the board shall be filled by appointment within sixty days after such vacancy occurs.

§22B-3-2. Authority of board; additional definitions.

(a) In addition to all other powers and duties of the environmental quality board, as prescribed in this chapter or elsewhere by law, the board has and may exercise the powers and authorities:

(1) To receive any money as a result of the resolution of any case on appeal which shall be deposited in the state treasury to the credit of the water quality management fund created pursuant to section ten, article eleven, chapter twenty-two of this code;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries and with affected groups and take such other action as may be appropriate in regard to its rule-making authority; and

(3) To encourage and conduct such studies and research relating to pollution control and abatement as a board may deem advisable and necessary in regard to its rule-making authority.

(b) All the terms defined in section two, article eleven, chapter twenty-two of this code, are applicable to this article and have the meanings ascribed to them therein.

§22B-3-3. Judicial review.

All of the provisions of section nine, article one of this chapter apply to and govern such review with like effect as if the provisions of said section nine were set forth in extenso in this section, with the following modifications or exceptions:

(1) As to cases involving an order denying an application for a permit, or approving or modifying the terms and conditions of a permit, the petition shall be filed in the circuit court of Kanawha County;

(2) As to cases involving an order revoking or suspending a permit, the petition shall be filed in the circuit court of Kanawha County; and

(3) As to cases involving an order directing that any and all discharges or deposits of solid waste, sewage, industrial wastes or other wastes, or the effluent therefrom, determined to be causing pollution be stopped or prevented or else that remedial action be taken, the petition shall be filed in the circuit court of the county in which the establishment is located or in which the pollution occurs.

§22B-3-4. Environmental quality board rule-making authority.

(a) In order to carry out the purposes of this chapter and chapter twenty-two of this code, the board shall promulgate legislative rules setting standards of water quality applicable to both the surface waters and groundwaters of this state. Standards of quality with respect to surface waters shall be such as to protect the public health and welfare, wildlife, fish and aquatic life, and the present and prospective future uses of such water for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof: *Provided*, That the director of the bureau of environment shall establish the antidegradation implementation procedures which apply to regulated activities that

have the potential to affect water quality, pursuant to section seven-b, article eleven of chapter twenty-two of this code.

(b) Except for the alternate procedures provided for in subsection (c) of this section, the board shall promulgate legislative rules setting water quality standards in accordance with the provisions of article three, chapter twenty-nine-a of this code and the declaration of policy set forth in section two, article eleven, chapter twenty-two of this code.

(c) The board may grant site specific variance only for remined areas of coal remining operation from the standards of water quality set forth in legislative rule 46-CSR-1, et seq., setting standards for iron manganese and pH prior to the issuance of a national pollutant discharge elimination system (NPDES) permit by the division of environmental protection in accordance with 33 USC Section 1311(p) of the federal Water Pollution Control Act. The standards established in the variance will exist for the term of the NPDES permit. The board will promulgate procedural rules on granting site specific coal remining variances in accordance with the provisions of article three, chapter twenty-nine-a of this code on or before the first day of July, one thousand nine hundred ninety-five. At a minimum, the procedures for granting or denying a remining variance will include the following: A description of the data and information to be submitted to the board by the applicant for such variance; the criteria to be employed by the board in its decision; and provisions for a public comment period and public hearing prior to the board's decision. The board may not grant a variance without requiring the applicant to improve the

instream water quality as much as is reasonably possible by applying best available technology economically achievable using best professional judgment which requirement will be included as a permit condition. The board may not grant a variance without a demonstration by the applicant that the coal remining operation will result in the potential for improved instream water quality as a result of the remining operation. The board may not grant a variance where the board determines that degradation of the instream water quality will result from the remining operation.

(d) No rule of the board may specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant.

§22B-3-5. Continuation of the board.

The environmental quality board shall continue to exist pursuant to the provisions of article ten, chapter four of this code until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to that article.