

April 27, 2005

The Honorable Betty Ireland Secretary of State  
Administrative Law Division  
Building 1, Room 157K  
Charleston, WV 25305

**RE: Notice of Meeting for Publication in the West Virginia Register**

Dear Ms. Secretary:

In accordance with Chapter 6, Article 9A of the West Virginia Code, notice is hereby given that the West Virginia Environmental Quality Board (the "Board") will meet on Thursday, May 5, 2005, at 9:00 a.m. The meeting will be conducted in **1st floor hearing room at the Board offices located at 601 57<sup>th</sup> St., SE, Charleston, Kanawha County, West Virginia.** During the meeting the Board will discuss the following agenda\*\*:

**I. Appeals**

**1.) Board Docket:**

The Board will review and discuss the docket of appeals currently pending before the Environmental Quality Board.

**II. Rulemaking**

**1.) Legislative Rule 46 CSR 1:**

The Board will review the "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, establish an effective date for the legislative rule, and approve the rule for filing with the WV Secretary of State's office.

**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. Consequently, the Company appeared before the Board during the March 10, 2005, Board meeting to discuss a further course of action. It was determined that the company should submit a new application for a variance to numeric criterion for chlorides (not a site-specific criteria change) for the Board's review. The company has submitted a completed variance application which the Board members will review and discuss during the May 5, 2005, Board meeting.

**3.) Continuation of Board Committees:**

The Board Chair will provide 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.

**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).

**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. The company has now submitted an application seeking a site-specific revision to 46 CSR 1 (“Requirements Governing Water Quality Standards”). The Board will discuss any potential future actions by the Board on the request in light of the transfer of rule-making authority from the Board to the WVDEP.

**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 will discuss any potential future actions by the Board on the application in light of the transfer of rule-making authority from the Board to the WVDEP.

**III. Administrative Matters**

- 1.) Review and Approval of the March 31, 2005, Board meeting minutes
- 2.) Review and Approval of the April 7, 2005, Board meeting minutes
- 3.) General Budget Update
- 4.) Purchasing Card Report
- 5.) Personnel Matters
- 6.) Consolidation of the Air Quality Board, the Environmental Quality Board and the Surface Mine Board
- 7.) Schedule future Board meeting dates

**IV. Other Business**

The Board may take up additional administrative matters and may also consider such business as it may deem appropriate consistent with the Open Governmental Proceedings Act (WV Code §6-9A-1). Portions of this meeting may not be subject to the Open Governmental Proceedings Act.

**\*\*Items may not be discussed by the Board in the order in which they are listed on the agenda.**

Sincerely,

Melissa Carte,  
Clerk of the Boards