

**TENNESSEE BOARD OF WATER QUALITY, OIL AND GAS
THE NASHVILLE ROOM, 3RD FLOOR, WILLIAM SNODGRASS TENNESSEE
TOWER
NASHVILLE, TENNESSEE**

Summary of Action on Agenda Items of the

April 17, 2018

Meeting of the Tennessee Board of Water Quality, Oil and Gas

Members Present: Gary Bible,
Elaine Boyd, James W. Cameron,
Frank McGinley, Judy Manners,
John McClurkan

Members Phone-In: Derek Gernt, Charlie
Johnson, , Anthony Robinson, , Kevin
Davis, Jill Davis

Members Not Present: Monty Halcomb

Chair: James W. Cameron

Technical Secretary:
Tisha Calabrese Benton

Introduction by Tisha Calabrese Benton

Ms. Benton welcomed the Board and advised that the meeting was being streamed live on the internet. She identified the Board members present by teleconference and welcomed participants in the EFOs. Ms. Benton reported to the Chairman that a quorum was present.

Audio of the proceedings available at: <https://www.tn.gov/environment/about-tdec/boards-and-commissions/board-tennessee-board-of-water-quality--oil-and-gas.html>

Agenda Item 1. Presentation of Meeting Minutes

Chairman Cameron asked the Board to review the meeting minutes from October 2017. There were no edits or corrections made.

Motion to approve: Charlie Johnson
Second: Frank McGinley
Vote: Unanimous

Agenda Item 1. Legislative Update

Chairman Cameron recognized Tisha Benton for an update on legislative actions affecting programs overseen by the board.

Ms. Benton discussed Storm water Public Chapter 496 which became effective February 22, 2018, updates concerning post construction effluent must be passed by the board through rules and that no more MS4 permits to local governments could be issued until that has occurred. There is still a pending appeal s of the new MS4 permit.

Chairman Cameron asked when this would be resolved. Ms. Benton replied that the Division is currently working on a settlement. The chair asked to clarify why no permits could be issued. Ms. Benton replied that the language “maximum extent practicable” had to be defined by rule.

Ms. Benton then discussed Public Chapter 523 CAFO permits (signed February 28, 2018). The updated legislation would limit these permits to only large operations or in cases where a federal NPDES permit is required. These are the large liquid waste facilities. The law provides an option for operators to voluntarily obtain permits. This legislation would require amendments to the CAFO rules. Drafts of the new rules are being prepared.

Coal Mining. NEW Chapter 59-81-101 creates primacy of the regulation of coal in TN after the availability of federal funds. The bill has passed and is awaiting the governor’s signature. This would take coal mining permits from the federal government and return it to state control. The legislation would create a new coal fund (federally funded) and would add two members to the board (one for industry and one for owners). Once enacted the Water Quality Oil and Gas Board would be renamed The Tennessee Board of Energy and Natural Resources.

The permit shield bill has passed and would cause the State NPDES permit shield to be comparable with the federal permit. The Division does not anticipate it will have an impact on the existing permits.

Fee Bill – requires that fee increases greater than the rate of inflation be passed by legislation not by rule.

Chairman: Any members have questions? (No).

Agenda Item. 2. Enforcement Update

Chairman Cameron recognized Stephanie Durman for an update on enforcement activities.

Stephanie Durman:

After review of the database over the last six months the Division has issued 28 orders. Of these 9 were consent orders, 2 were agreed orders, 3 were appealed and remain pending. There are currently 12 appeals before this board. Permit appeals – no new third party appeals and 1 permittee appeal (set for ALJ in August 2018). There are 8 unresolved appeals within this board jurisdiction.

Chairman: What happened to the one from February (cancelled)?

Durman: MR. Paddock and I agreed to my comments. The hearing was cancelled after Sierra Club filed an interlocutory with chancery court. When that appeal is resolved we anticipate setting a new hearing date.

Agenda Item. 3. Adopt BPWTT Rescission

Chairman Cameron recognized Vojin Janjic.

Vojin Janjic:

Rule chapter 0400-040-05 Rescinds requirement for discharge permits based on a provision of the Clean Water Act that was repealed by congress in 1981 due to excessive cost of implementation. Was never implemented.

Chairman: Questions?

Charlie Johnson: How does this change how we operate?

Janjic: We have been using the best available technology limits so there would be no change.

Roll Call Vote:

Unanimous (Holcomb not present).

Agenda Item. 4. Adopt Drinking Water Rule

Chairman Cameron recognized David Money of TDEC/DWR.

David Money:

Mr. Money provided an update regarding public drinking water rulemaking. Revised total coliform rule required amending to maintain primacy. Also, adopted provisions of the Safe Drinking Water Act and general housekeeping for language. Outreach was completed to internal and external stake holders. Also, adopted the e-Reporting rule into the regulations.

Chairman: Did we receive copies of that? I don't have that.

Benton: Brian will get copies if you will allow us to push this item down the agenda.

Chairman: Let's do that.

(BREAK FOR COPIES)

Agenda Item. 5. Begin formal rulemaking for WQS (0400-40-07)

Chairman Cameron recognized Gregory Denton of TDEC/DWR.

Gregory Denton:

Mr. Denton spoke about the tri-annual review (power point). Three parts of WQS: General Water Quality Criteria, the Anti-degradation Policy and the Stream Use Classifications for Surface Waters. All three have to be considered under the tri-annual review. Adoption of these rules is the Board's responsibility. OQC will provide assistance to the board. The Division is the technical side of the board process. EPA is the approving authority of our criteria. Board options 1: Adopt EPA recommendation as they provide it. 2: Propose something different. 3: Pivot (e.g. do not change where we are now – postpone difficult decisions. Currently staff recommends moving forward revising general criteria and streamlining the anti-degradation policy. Hope to have public hearing in early June. Possibly returning a revised rule to the board by October.

Chairman: Questions?

Jill Davis: I would like to see what you have proposed for approval.

Denton: The original draft will be published before public comments. We are not proposing anything today. The draft in October will look completely different.

Chairman: Does the Division need any action from the board today?

Benton: No.

Chairman: So you need only a general expression to go forward?

Agenda Item. 6. Begin formal rulemaking for ARAP revisions (0400-40-07)

Chairman Cameron recognized Jonathon Burr of TDEC/DWR.

Jonathon Burr:

Mr. Burr asks permission to enter into rulemaking for ARAP rule revisions. We have provided a 1 page synopsis to the board.

- Intend to clarify ARAP are for streams and wetlands WWC references would be removed.
- Intend to introduce the term “base line conditions.”
- Avoidance and minimization will include LEDPA “practicable alternative”
- ARAP will now be required to produce a draft permit
- Clarify the language “No Net Loss”
- Non-substantive typo and language updates.

Chairman: Any questions? (NO) Do we need to take a formal vote?

Patrick Parker: Only as a formality.

Chairman: Do I hear a motion?

Gary Bible: I move that this be considered.

Jill Davis: Second.

Voice Vote: Unanimous

Burr: If all goes as planned we will have this ready for the October board.

Agenda Item. 4. Adopt Drinking Water Rule (Continued from above)

Chairman: Let’s continue from before. Board members on the phone have an email copy.

Mr. Money please remind us.

David Money: This refers to the total coliform rule from 2016. We have to adopt the rule correctly to maintain primacy from EPA. We also made changes to the operation and maintenance sections of our rules. This would also impact how our labs comply with the Cromerr Rule.

Chairman: Questions?

Gary Bible: I move we adopt these rules.

Charlie Johnson: Second.

Roll Call Vote:

Unanimous (Holcomb not present).

Agenda Item. 7. Public Comments

Chairman: Before we do public comments, the Governor has created a steering committee to develop the TN H2O project to develop a TN water plan through the year 2040 and beyond. Several members of the board are involved. The committee is made of big shots and subcommittee made up where all the real work is being done. Over a hundred people are involved with this. The intent is a 30000 ft overview of our water resources needs of the next 20 years. It’s become a research project: TN Valley, Cumberland

Valley west TN Mississippi region. There are a lot a very smart people dedicating a lot of time to this project.

Chairman Cameron recognized Brian Paddock of Sierra Club.

Brian Paddock:

Mr. Paddock has provided legal support to the Sierra Club for a number of years. I appreciate the board using video conferences through all the field offices. The bill concerning the coal mines would change the board quite a lot. This is done under the Surface mining reclamation act. The bill is more than 70 pages. This happened once before. After 18 months, the state surrendered primacy back to the federal government October 1, 1984. The changes to this board would include many additional obligations. This would raise the board to 14 members. The affect could be dramatic because the obligation would change because the time frames for mine interest are shorter. The first act would be emergency mining regulations. They must be as strict as existing federal laws but NOT stricter. That is a very bad precedent. Also, board would have to hear appeals from not only enforcement but disputes for mining in less than 5 days. The appeal time is also shorter – 30 days. This is a lot shorter than current board appeals.

Chairman Cameron recognized Erin McDermott.

Erin McDermott:

Ms. McDermott would like to oppose NR17MS009 TN009621 Hoover would wanted to eliminate three small wetlands to expand a blasting quarry. The mitigation is to be out of county. These wetlands should be mitigated in county. There is now flooding issues over the Cinder Road. Who foots the bill for that? Constant noise and flooding. They are now producing asphalt (2017) resulting in us calling for air complaints. Locals are getting sick. I hope that Metro stops mitigating wetlands out of county.

Chairman Cameron recognized Roxanne Reiley of TN Mining Association.

Roxanne Reiley:

Ms. Reiley wanted to comment about Mr. Paddocks concerns. Never was there a discussion about the board ceasing to exist. Adding mining is just an evolution of the board as it took on energy components. The state currently has no input on mining regulations. Bringing primacy will give the state better oversight of mining. Mining has never had representation and adding the two members would correct that.

(End Public Comment)

Chairman Cameron asked the Board if there was new business.

Charlie Johnson motioned to adjourn the meeting.

Second: Mr. Bible

Vote: Unanimous

SUBMITTED.

Jennifer Dodd
Technical Secretary

Date

APPROVED BY THE TENNESSEE BOARD OF WATER QUALITY, OIL AND GAS.

James Cameron, Chair
Tennessee Board of Water Quality, Oil and Gas

Date