

OPEN MEETINGS ADVISORY OPINION NO. 2005-03

Issued On March 3, 2005 By The

**WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS**

OPINION SOUGHT

The West Virginia Environmental Quality Board (EQB) asks if a particular committee created by the EQB is subject to the requirements of the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The EQB is required to review the standard for permitted aluminum content in state streams. In order to accomplish this task, appropriate scientific studies need to be developed and implemented. The EQB appointed a committee to serve as a technical review team for this project. The committee will consist of one representative from each of the following: the United States Environmental Protection Agency, the West Virginia Department of Environmental Protection, the West Virginia Division of Natural Resources, the aluminum industry, and the environmental community. An EQB member will chair this committee.

Initially, the committee will review and approve a request for proposal (RFP) which defines the scope of the aluminum study. The approved RFP will be sent to vendors whose proposals will be submitted to the committee for evaluation. The committee will then review vendors' proposals and recommend four finalists to be selected by the industry group which is funding part of the study.

Once a vendor has been selected to conduct the study, the committee will be expanded to review and monitor the data collection and analysis, as well as to provide guidance and direction to the vendor. Ultimately, the vendor's scientific study will be used by the EQB to determine the criteria to be applied in West Virginia to protect aquatic life from acute and chronic toxicity from aluminum.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

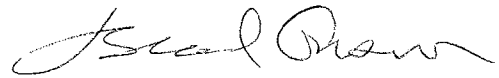
W. Va. Code § 6-9A-2 includes the following definitions:

(3) "Governing body" means the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members

(6) "Public agency" means any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power. . . .

ADVISORY OPINION

The Committee finds that the EQB technical review committee constitutes a subunit of a state board which has been authorized to exercise some portion of the board's executive power. The committee has been delegated authority to approve the RFP for an important scientific study as well as to direct the vendor ultimately selected to accomplish this study. Therefore, meetings of the committee are subject to the requirements of the Open Meetings Act.



Chairman