

**WEST VIRGINIA AIR QUALITY BOARD  
CHARLESTON, WEST VIRGINIA**

AIR QUALITY BOARD  
REC'D  
JAN. 8, 2024

**ROXUL USA, INC., D/B/A  
ROCKWOOL,**

**Appellant,**

**v.**

**Case No. 23-01-AQB**

**LAURA M. CROWDER, DIRECTOR,  
DIVISION OF AIR QUALITY,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,**

**Appellee.**

**MOTION TO INTERVENE**

The Jefferson County Foundation, Inc. (“JCF”), Ms. Karen Freer, Ms. Sharon Wilt, and Mr. Gavin Perry (collectively, “Intervenors”), through undersigned counsel, respectfully request that the West Virginia Air Quality Board (“AQB” or the “Board”) grant them leave and consent to proceed as intervenors in Case No. 23-01-AQB pursuant to W. Va. Code § 22B-1-7(e), the West Virginia Rules of Civil Procedure, the Procedural Rules of the Board, and in the interests of fairness, justice, and efficiency. Roxul USA, Inc. d/b/a Rockwool (“Rockwool”) and the Intervenors each filed a Notice of Appeal regarding certain terms and conditions related to air emissions in Modification Permit R14-0037A (“Permit” or “Modified Permit”). For the reasons more fully stated below, the Intervenors pray this Court grant their Motion to Intervene.

### **Statement in Support of Motion to Intervene**

1. On November 16, 2023, the West Virginia Department of Environmental Protection Division of Air Quality (“WVDEP” or “Appellee”) issued Modification Permit R14-0037A to Rockwool.
2. On December 11, 2023, Rockwool filed a Notice of Appeal and challenged the terms and conditions contained in the Permit.
3. More specifically, Rockwool requests the following relief in its Appeal:
  - a. Elimination of Permit Condition 4.1.11;
  - b. A PM<sub>2.5</sub> limit at the Wet Electrostatic Precipitator (“WESP”) of 50.39 tons per year (“tpy”) and 12 kg per hour; and
  - c. Order that emission testing be done in accordance with Condition 4.3.3 of the Permit.
4. The Intervenors seek to preserve Permit conditions 4.1.11 (closure of exterior doors); 4.1.5a (limits on PM 2.5); and 4.3.2 (stack testing schedule).
5. On information and belief, Rockwool requested a stay of the Permit, or certain condition therein, and that request was granted by the Board on or around December 18, 2023.
6. The Intervenors filed a Notice of Appeal regarding the same Permit, which has been docketed as Case No. 23-02-AQB, on December 18, 2023.
7. The Intervenors had no knowledge that Rockwool appealed the Permit or requested a stay until after they filed their own appeal. Upon information and belief, the Rockwool appeal, request for stay, and the notice of hearing were not posted on the AQB website until on or about December 18, 2023, and thus public notice was not made, and proposed Intervenors had no opportunity to consider intervention prior to that date.

8. Jefferson County Foundation is a West Virginia based nonprofit corporation organized under Section 501(c)(3) of the Internal Revenue Code, formed for the purpose of supporting and promoting effective and accountable government, sustainable development, and the protection of health, heritage, and the environment in the Eastern Panhandle of West Virginia. JCF's purpose includes protecting the air quality of Jefferson County and preventing unauthorized pollution from impacting the public health and environment of the County. As such, JCF has an interest in and will be affected by the Modified Permit issued by the WVDEP for the Rockwool Manufacturing Facility (Identification No. 037-00108) in Jefferson County, West Virginia. JCF has a primary business address of P.O. Box 460, Ranson, West Virginia, 25438.

9. JCF has a Board of Directors consisting of three (3) members, who all own real property in Jefferson County, West Virginia. One seat is presently vacant.

10. JCF submitted comments on the draft modified permit to the WVDEP during the public comment period. These comments included, among other things, comments on closure of exterior doors, emission limits, and stack testing protocols.

11. Ms. Karen Michelle Freer owns real property in Jefferson County, West Virginia, where her property value and health are or may be impacted by the air emissions from Rockwool. Ms. Freer's property is less than one (1) mile from the Rockwool site, where she can see, hear, and smell Rockwool's activities. Her air quality is and will be impacted by the emissions regulated under this permit. Ms. Freer also keeps horses on her property as a business enterprise, and emissions from the facility may harm her business and the use and enjoyment of her land. Additionally, Ms. Freer submitted comments to the WVDEP during the public comment period for this Permit.

12. Mr. Gavin Perry owns real property in Jefferson County, West Virginia, where his property value and health may be impacted by the adverse impacts from Rockwool's emissions. Mr. Perry's property is less than one (1) mile from the Rockwool site, and his air quality is and will be impacted by the emissions regulated under this permit. Additionally, Mr. Perry submitted comments to the WVDEP during the public comment period for this Permit.

13. Ms. Sharon Wilt owns real property in Jefferson County, West Virginia, where her property value and health may be impacted by the adverse impact from Rockwool's emissions. Ms. Wilt's property is located less than one (1) mile from the Rockwool site. Ms. Wilt has experienced significant health issues since the Rockwool site began its operations, and her air quality is and will be impacted by the emissions regulated under this permit. Additionally, Ms. Wilt submitted comments to the WVDEP during the public comment period for this Permit.

14. The West Virginia Code Section governing appeals to the Board provides, in part, that, “[w]ith the consent of the board<sup>1</sup> and upon such terms and conditions as the board may prescribe, any person affected by the matter pending before the board may by petition intervene as a party appellant or appellee.” W. Va. Code § 22B-1-7(e).

15. The procedural rules governing appeals before the AQB provide that, “While the differences in the functions of courts and administrative boards preclude the ‘wholesale transportation’ of the Rules of Civil Procedure into the hearings before the board, some such rules must be utilized to manage board hearings. Thus, as a matter of policy and to assure fairness, the appropriate Rules of Civil Procedure will guide the appeals process before the board.” W.Va. Code R. § 52-1-6.13.

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<sup>1</sup> The term “board” is defined by the West Virginia Code to include the Environmental Quality Board. W.Va. Code § 22B-1-2(1).

16. Any person<sup>2</sup> affected by a matter before the AQB may petition to intervene in that matter. W.Va. Code § 22B-1-7(e).

17. Applications for intervention to an AQB appeal by the Intervenors are thus *guided* by the provision for permissive intervention found in Rule 24(b) of the West Virginia Rules of Civil Procedure, which states:

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of this State confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or State governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.<sup>3</sup>

18. The West Virginia Supreme Court interprets intervention liberally and recognizes that it is a practical procedural tool that promotes efficiency by resolving related issues in a single matter, while protecting the interests of the parties and non-parties. *SWN Prod. Co., LLC v. Conley*, 243 W. Va. 696, 704-05 (2020). The Court further notes that intervention should be permitted when there is no prejudice and greater justice could be obtained by including the non-parties with a real interest in the contested matter. *Id.*

19. The Intervenors meet the standards for permissive intervention and should be granted permission to intervene.

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<sup>2</sup> The term “person” is broadly defined by the West Virginia Code to include “any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the State of West Virginia; governmental agency; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any other legal entity whatever.” W.Va. Code § 22B-1-2(6).

<sup>3</sup> W. Va. R.C.P. 24(b)

20. Intervenor's application is timely. Fewer than thirty (30) days have passed since the Appeal was filed, and only 17 days (including intervening state and federal holidays) have passed since AQB posted information on its website concerning this matter and Intervenor became aware of the Appeal. In *State ex rel. Ball v. Cummins*, the Supreme Court of Appeals of West Virginia held that filing for intervention within approximately seven weeks of the initial action was timely. *State ex rel. Ball v. Cummins*, 208 W.Va. 393, 399 (1999).

21. Additionally, the related questions of law and fact between the Permit conditions the Intervenor commented on, the Permit conditions that Rockwool appeals, and the Permit conditions that Intervenor has separately appealed all justify intervention.

22. The Intervenor submits that their recreational, aesthetic, affected property owner, and business interests would be significantly affected by the air emissions that would result if the conditions and restrictions in the Permit that are the subject matter of this Appeal are modified as Rockwool requests, such that the AQB should grant them status as intervenors in this appeal under W. Va. Code § 22B-1-7(e).

22. Neither Appellant nor Appellee is prejudiced by granting this Motion to Intervene, and allowing the Intervenor to intervene will not unduly delay the proceedings. In fact, intervention will facilitate a more efficient resolution of these issues, as both Appellant and Intervenor have appeals pending before the Board on the same Permit.

23. Because the Intervenor has a conditional right to intervene, has done so timely, has interests that will be affected by this matter, and their intervention will not prejudice the parties or cause undue delay, the Board should grant this Motion to Intervene.

WHEREFORE, the Intervenor requests the following relief:

A. That this Board grant their Motion to Intervene; and

B. That the Appellants' request for relief be denied.

Respectfully Submitted,  
Jefferson County Foundation, Inc.,  
Karen Freer, Sharon Wilt, and  
Gavin Perry,

By Counsel,



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**Certificate of Service**

I, Andrew Earley, do hereby certify that I served the foregoing Motion to Intervene on the Clerk of the West Virginia Air Quality Board, the Appellant, and the Appellee by First Class U.S. Mail, postage prepaid, at the following addresses on January 5, 2024:

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West Virginia Air Quality Board  
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