

WEST VIRGINIA AIR QUALITY BOARD
CHARLESTON, WEST VIRGINIA

RECEIVED

ROXUL USA, INC., d/b/a
ROCKWOOL,

JAN 29 2024

AIR QUALITY BOARD

Appellant,

v.

Appeal No. 23-01-AQB

DIRECTOR, DIVISION OF
AIR QUALITY, DEPARTMENT
OF ENVIRONMENTAL
PROTECTION,

Appellee,

and

JEFFERSON COUNTY
FOUNDATION, INC., et al.,

Intervenors.

**ROCKWOOL'S MOTION FOR LEAVE
TO FILE AN AMENDED NOTICE OF APPEAL**

Leave to amend a pleading "shall be freely given when justice so requires." W. Va. R. Civ. P. 15(a). Motions to amend "should always be granted under Rule 15 when: (1) the amendment permits the presentation of the merits of the action; (2) the adverse party is not prejudiced by the sudden assertion of the subject of the amendment; and (3) the adverse party can be given ample opportunity to meet the issue." *Donahue v. Mammoth Restoration & Cleaning*, 246 W. Va. 398, 406, 874 S.E.2d 1, 9 (2022).

Pursuant to Rule 15 of the West Virginia Rules of Civil Procedure and *Donahue v. Mammoth Restoration & Cleaning*, Appellant Roxul USA, Inc., d/b/a/ ROCKWOOL, hereby moves the West Virginia Environmental Quality Board for leave to file an Amended Notice of Appeal. In support of its Motion, ROCKWOOL states as follows:

1. ROCKWOOL owns and operates a stone wool¹ insulation manufacturing facility in Ranson, Jefferson County, West Virginia, which is referred to herein as “RAN-5”. CR at 1-2.

2. On April 30, 2018, the West Virginia Department of Environmental Protection’s Division of Air Quality (“DAQ”) issued a pre-construction major source air pollution control permit to ROCKWOOL for the construction of RAN-5 (the “Pre-Construction Permit”). [CR at 2.]

3. Under the Pre-Construction Permit, ROCKWOOL could burn either coal or natural gas to melt the rock and other materials to make stone wool insulation. After the Pre-Construction Permit was issued, and while the plant was still being constructed, ROCKWOOL decided to burn natural gas, not coal, to melt the rock and other materials. Accordingly, on October 3, 2022, ROCKWOOL submitted an application to modify the Pre-Construction Permit to eliminate the permit conditions relating to the use of coal, and ROCKWOOL resubmitted its application for modification on May 22, 2023. [See CR at 488-890.]

4. After a lengthy and extensive review and public comment period, DAQ issued Modification Permit R14-0037A (the “Modified Permit”) to ROCKWOOL on November 16, 2023.

5. On December 11, 2023, ROCKWOOL filed its original Notice of Appeal with the Board. In its original Notice of Appeal, ROCKWOOL challenged three permit Conditions: (i) Condition 4.1.11 which requires all exterior doors at RAN-5 to be kept closed when not in use; (ii) Condition 4.1.5.a which sets, among other things, limits on PM_{2.5} emissions from the Wet Electrostatic Precipitator (“WESP”) at 33.6 tons per year, and 8.0 kg per hour; and (iii) Condition 4.3.2 which mandated retesting of equipment within 12 months.

¹ Stone wool, sometimes called “rockwool” or “mineral wool”, is made from spinning molten basaltic rock into fine fibers which are then formed into a range of cubes, blocks, growing slabs, and granular products.

6. Since it filed its original Notice of Appeal, ROCKWOOL has decided not to challenge permit Condition 4.1.11 as it applies to the eight exterior doors in the charging building at RAN-5 (ROCKWOOL still challenges permit Condition 4.1.11 as it applies to the remaining exterior doors at RAN-5), and ROCKWOOL has decided not to challenge permit Condition 4.3.2.

7. In addition, since it filed its original Notice of Appeal, ROCKWOOL has learned that the hydrochloric acid (“HCl”) limitation for the Melt Furnace (IMF01) in permit Condition 4.1.4(a) was incorrectly set at 0.62 tons per year, which is exactly one-half of what it should be. ROCKWOOL believes the HCl limitation is the result of either a typographic error or a serious error in engineering judgment.

8. Amendments to pleadings are governed by Rule 15 of the West Virginia Rules of Civil Procedure which provides, in relevant part, that a party may freely amend a pleading once within 20 days after it is served, but thereafter, the party may amend a pleading only by leave of court or by written consent of the adverse party. W. Va. R. Civ. P. 15(a).

9. Leave to amend “shall be freely given when justice so requires.” *Id.* Notably, motions to amend should always be granted under Rule 15 when: (1) the amendment permits the presentation of the merits of the action; (2) the adverse party is not prejudiced by the sudden assertion of the subject of the amendment; and (3) the adverse party can be given ample opportunity to meet the issue.

Donahue v. Mammoth Restoration & Cleaning, 246 W. Va. 398, 406, 874 S.E.2d 1, 9 (2022).

10. Here, ROCKWOOL seeks leave to make the following three amendments to its original Notice of Appeal:

First, ROCKWOOL proposes to curtail its challenge to permit Condition 4.1.11;

Second, ROCKWOOL proposes to end its challenge to permit Condition 4.3.2; and

Third, ROCKWOOL proposes to challenge the HCI limitation for the Meld Furnace because it is either a typographic error or a serious error in engineering judgment.

11. ROCKWOOL's motion should be granted pursuant to W. Va. R. Civ. P. 15(a) and *Donahue v. Mammoth Restoration & Cleaning* because the proposed amendments will permit the presentation of the merits of the action and the other parties will not be prejudiced by the amendment and they will have ample opportunity to meet the issues.

12. A copy of ROCKWOOL's proposed Amended Notice of Appeal is attached as Exhibit 1.

WHEREFORE, ROCKWOOL respectfully requests that the Board grant its motion and enter an Order granting ROCKWOOL's Motion for Leave to File an Amended Notice of Appeal.

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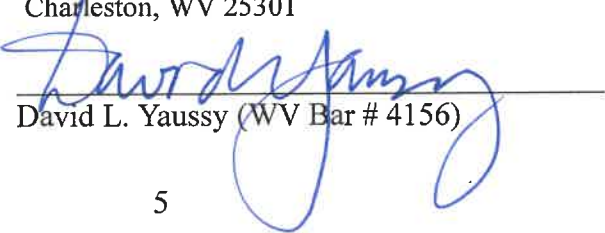
CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of January, 2024, I caused the foregoing **ROCKWOOL'S MOTION FOR LEAVE TO FILE AN AMENDED NOTICE OF APPEAL** to be served upon the following parties by email and First Class United States mail:

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