

## **MINUTES**

**October 14, 2004**

### **I. General**

On October 14, 2004, a quorum of the members of the Air Quality Board conducted a meeting at the Board's office located at 601 57<sup>th</sup> St., SE, Charleston, West Virginia. The Chair, Tom Hansen, called the meeting to order at 9:00 a.m.

The Board members present were:

Robert Foster, Chair

Dick Calvert

Randy Curtis, designee of the Bureau for Public Health

Tom Hansen

Doug Hudson, designee of the Commissioner of the WV  
Department of Agriculture

\*Board member Mike Koon participated telephonically during the discussion of all appeal related matters.

Absent Board members were:

Jean Neely

Staff members present were:

Becky Charles, Attorney

Libby Chatfield, Office Supervisor

Kathy Coleman, Administrative Secretary

Whereupon, the Board addressed the issues set forth in the meeting agenda as follows:

### I. Administrative Matters

#### 1.) Review and Approval of the August 4, 2004, Air Quality Board Meeting Minutes:

The minutes of the August 4, 2004, Air Quality Board Meeting were presented to the Board for consideration. After review, Mr. Foster moved and Mr. Hudson seconded that the minutes of the August 4, 2004, Air Quality Board meeting be approved as drafted, and the motion carried unanimously 5 to 0.

#### 2.) General Budget Update:

Ms. Coleman provided the Board with a budget update. As of September 30, 2004, which represents a three month period or 25% of the 2004 fiscal year, the Boards have spent 27.51% of the combined budgets. A copy of the budget report is attached to and made a part of these minutes as Exhibit "A".

Ms. Coleman also provided the Board with budget reports which detail projected expenses for the Air Quality Board and the Environmental Quality Board from November 2004 through June 2005. The figures contained in the report were calculated based on the following assumptions: the Air Quality Board and the Environmental Quality Board will cease to conduct meetings after November 1, 2004, through June 2005, and that no salary or benefits will be paid for the position of legal counsel after November 1, 2004 through June 2005. (Ms. Charles has resigned her position as legal counsel for the Boards effective October 31, 2004.)

The Air Quality Board budget for fiscal year 2005 is \$97,514. Based on the projected expenses and the assumptions outlined above, the Air Quality Board will end the fiscal year with a balance of \$27,541.11. The Environmental Quality Board budget for fiscal year 2005 is \$170,368. Based on the projected expenses and the assumptions outlined above, the Environmental Quality Board will end the fiscal year with a balance of \$24,134.61. This results in a combined balance for fiscal year 2005 of \$51,675.00. A copy of these budget reports are attached and made a part of these minutes as Exhibit "B".

In preparation for the joint meetings of the Boards, the Air Quality Board members then discussed current budget issues. The Boards are anticipating a \$55,000 budget shortfall for fiscal year 2005. In order to address this shortfall it was previously recommended that the Boards cease conducting meetings as of November 1, 2004, since by discontinuing meetings the Boards would have sufficient funds to cover operating expenses and staff salaries for fiscal year 2005. Air Quality Board members expressed concerns regarding the Environmental Quality Board's position that the Boards should continue to conduct meetings until all funds are expended and then lay off staff and close the offices.

Further, Ms. Charles has resigned her position as legal counsel for the Air Quality Board and the Environmental Quality Board effective October 31, 2004. The Boards cannot handle legal matters or conduct evidentiary hearings without an attorney but may not have the funds to hire a replacement for Ms. Charles. The Board discussed using the State Attorney General's office to provide legal assistance on a temporary basis.

\*\*At 10:00 a.m. the Air Quality Board and the Environmental Quality Board convened a joint meeting to discuss personnel issues and budget matters. Separate minutes of that meeting have been prepared.

At the conclusion of the joint meeting of the two Boards, the Air Quality Board resumed its regular meeting to discuss appeal related matters. Board Member Mike Koon joined the meeting telephonically. Board discussions regarding appeals are not subject to the requirements of the Open Governmental Proceedings Act, are not open to the public, and minutes of that portion of the meeting are not prepared.

## **II. Appeals**

### **1.) Appeal No. 04-01-AQB (Murphy):**

Appeal No. 04-01-AQB (Murphy Consolidated Industries) was filed with the Air Quality Board on January 26, 2004. The Board conducted the evidentiary hearing on this appeal during the May 18, 2004, AQB Meeting. The parties were also provided with the opportunity to submit Proposed Findings of Fact and Conclusions of Law and Response Briefs. This information is available in the Board's office for review.

During the October 14, 2004, Board meeting, the Board went into executive session make a final decision in Appeal No. 04-01-AQB (Murphy). After a review and discussion of the evidence presented in the case, the Board reached a final decision. The Board members then directed Ms. Charles to draft a Final Order which reflects that decision and to provide it to the individual Board members for review and approval prior to entering and issuing the Final Order. Appeal #04-01-AQB (Murphy) will be removed from the Board's docket after the Final Order is entered.

2.) Appeal No. 04-02-AQB (Jamison):

Appeal No. 04-02-AQB (Jamison) was filed with the Board on April 1, 2004. The evidentiary hearing was conducted on June 24, 2004, and July 12, 2004. The parties were also provided with the opportunity to submit Proposed Findings of Fact and Conclusions of Law and Response Briefs. This information is available in the Board's office for review.

The Board went into executive session make a decision in Appeal No. 04-02-AQB (Jamison) during the October 14, 2004, Board meeting. After a review and discussion of the evidence presented in the case, the Board reached a final decision. The Board members then directed Ms. Charles to draft a Final Order which reflects that decision and to provide it to the individual Board members for review and approval prior to entering and issuing the Final Order. Appeal #04-02-AQB (Jamison) will be removed from the Board's docket after the Final Order is entered.

Whereupon, Mr. Hudson moved and Mr. Koon seconded that the October 14, 2004, Air Quality Board meeting be adjourned, and the motion carried unanimously 6 to 0.

I hereby certify that the forgoing is a true and correct record of the proceedings of the meeting held on October 14, 2004, by the West Virginia Air Quality Board. These minutes were approved by the Air Quality Board on December 14, 2004.



Melissa Carte, Clerk