



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
AIR POLLUTION CONTROL COMMISSION

1615 Washington Street, East Suite 301  
Charleston, West Virginia 25311

Telephone: (304) 558-4002  
Telefax: 558-1222

**MINUTES**  
**WEST VIRGINIA POLLUTION CONTROL COMMISSION**  
**OAQ Conference Room at 1558 Washington Street East**  
**September 29, 1993**

**I. General**

The West Virginia Air Pollution Control Commission met on September 29, 1993 at 2:00 p.m. The meeting was held in the conference room at the Office of Air Quality located at 1558 Washington Street, East, Charleston, West Virginia. Chairman L. Newton Thomas, Jr. called the meeting to order. The entire proceedings were recorded on magnetic tape.

**II. Commissioners Present**

L. Newton Thomas, Chairman  
Allen Hamner  
Samuel Kusic  
Joseph P. Schock for William T. Wallace  
The Honorable Gus R. Douglass

**III. Materials Presented to the Commissioners**

1. 45 C.S.R. 7: Revised proposed changes to 45 C.S.R. 7; Robinson & McElwee correspondence of 8/4/93 withdrawing Schuller's request; Jackson & Kelly correspondence of 8/26/93 requesting reconsideration of rule; Doepkin Keevican Weiss & Medved correspondence of 8/27/93 requesting reconsideration of rule; EPA Region III correspondence of 9/3/93 commenting on rule; OAQ memorandum of 9/29/93 regarding data submitted to support the requested changes.
2. 45 C.S.R. 10: Rule as filed with the Secretary of State and Legislative Rulemaking and Review Committee; EPA memorandum commenting on regulation 10.
3. Proposed Procedural Rules for consideration by the Commission.

**IV. Commission Meeting**

**A. MINUTES OF AUGUST 9 & 10, 1993 COMMISSION MEETING**

Minutes of the August 9 & 10, 1993 Commission meeting had previously been distributed to the Commissioners. At this time, a copy of the minutes with marked changes suggested by Chairman Thomas were distributed. Upon the conclusion of a review of those suggested changes, the Commission adopted the minutes as revised upon motion and unanimous vote of those Commissioners present.

**B. CONTINUED FINAL CONSIDERATION OF PROPOSED 45 C.S.R. 7**

Upon motion and unanimous vote of those Commissioners present, regulation 7 was removed from the table for reconsideration by the Commission.

Scott Dismukes, appearing on behalf of American Alloys, presented his arguments and data in support of the proposed revisions to regulation 7. Mr. Dismukes emphasized that there is no feasible method of controlling blowing tap holes. Mr. Dismukes took questions from the Commission regarding the manufacturing process.

Bob McLusky, appearing on behalf of Elkem Metals, next presented arguments and data to support the proposed revisions to regulation 7. Mr. McLusky emphasized that Elkem Metals will cease operations absent regulatory change due to the expense of meeting opacity standards during the manufacturing process events of blowing tap holes and poling. Mr. McLusky also stated that it is his belief that the EPA would approve of a SIP revision to encompass the proposed revision to regulation 7.

George Talbott, plant manager for Elkem Metals, presented comments on air quality conditions at the plant from his perspective as an employee and resident of the area.

Mr. McLusky then fielded some questions from the Commission. In particular, concern was expressed over the type of particulate emissions contributing to the opacity violations from these manufacturing processes.

Dale Farley presented a response to the request by American Alloys and Elkem Metals for regulatory relief through proposed revisions to regulation 7. Mr. Farley represented that he has received additional information from the companies, but that it is difficult to analyze the impacts of the regulatory revisions since most of the data is comprised of estimates. Mr. Farley then reviewed a Memorandum by OAQ staff which evaluated submissions of data by the companies in support of their request

for revisions to regulation 7. Mr. Farley stated that he cannot justify objecting to the proposed change to regulation 7.

Eugene Hogan of Elkem Metals responded to inquiry by the Commission regarding the disparity in submissions of data to the OAQ by Elkem Metals. Hogan explained that the company did not have experience in modeling air quality data and had originally used a worst case scenario to model the data. The later submission of data modelled the data using actual operating conditions.

Talridge Hager of Elkem Metals responded to inquiry regarding the blowing tap hole process. Mr. Hager represented that the blowing tap hole process is difficult to model because the emissions are variable since the events are unscheduled and unpredictable.

The Commission inquired whether the silica particulate was inert. The Commission expressed concern whether the silicate emitted by these processes would be respirable. Mr. Hamner inquired of company representatives as to whether the silicate were amorphus or crystalline, expressing concern that crystalline silica causes diseases associated with asbestos. Representatives from Elkem Metals responded that the particulate silica was amorphus and constituted a nuisance dust rather than a health hazard. Elkem Representatives also offered to produce a scientific study which confirms that the particulate emitted is not a health hazard.

Whereupon, the revisions to 45 C.S.R. 7 proposed by Elkem Metals and American Alloys and as unopposed by the OAQ, was approved upon motion and a unanimous vote of those Commissioners present, subject to the stipulation that the Commission receive the report from Elkem Metals supporting its representation that the silica emissions do not present a health hazard.

**C. OTHER COMMISSION BUSINESS**

1. Regulatory Matters for the Commission

a. Redesignation Request: Mr. Farley updated the Commission on West Virginia's request that the EPA redesignate the ozone non-attainment areas of Wood, Kanawha-Putnam, and Cabell-Wayne Counties. However, the EPA has requested that a new package of information be submitted by the OAQ by November 15, 1993.

b. Legislative Rules: Mr. Farley presented an update on legislative rules that are currently before the Legislative Rulemaking and Review Committee. Mr. Farley anticipated that

modifications will be requested by the Committee, and that EPA has requested a modification to 45 C.S.R. 10 that may need to be suggested to the Committee. Mr. Farley asked the Commission what procedure it wished to employ in order to authorize such changes to the regulations before the Committee.

The Commission approved of Mr. Farley as the primary contact person for the legislature in order to field questions and comments by the Legislative Rulemaking and Review Committee. The Commission stated that it expects consultation to occur between the OAQ and MS. Bernheim as the Commission's representative so that the intent of the Commission will be carried out as modifications are made to the rules during the legislative process.

c. VOCs - drycleaning facilities: Due to recent EPA rulemaking which duplicates section 36 of regulation 21, that section may need to be eliminated from the rule. Thus, the OAQ may request the Commission to adopt an emergency revision to delete a section of regulation 21.

d. 45 C.S.R. 30: In order to meet the CAA requirement that this regulation be implemented by November, the regulation will need to be filed as an emergency rule. Mr. Farley indicated that he will need to request the Commission to approve emergency filing of the rule.

## 2. Proposed Procedural Rules

The Commissioners were presented with a copy of proposed procedural rules to govern the process of appeals before the Commission. The Commission expressed the wish that any such procedural rules be made as simple as possible. Mr. Kopelman suggested that the Commission consider the adoption of a mandatory mediation mechanism.

Whereupon, consideration of the proposed procedural rules was continued to the next meeting of the Commission.

## 3. Report on Status of the DEP Reorganization Bill

Ms. Bernheim reported that the DEP Reorganization Bill is again to be taken up during the interim meetings of the legislature. The provisions of the bill reorganizing the appeals boards eliminate the rulemaking function of the Commission. The Commission expressed concern that transferring rulemaking to the DEP would result in a loss of access to the rulemaking process by the regulated community. It was resolved to draft a letter addressed to the Senate and House for Chairman Thomas' signature expressing the Commission's concern over the loss of rulemaking authority.

Following the conclusion of the other business, the meeting was adjourned.

I hereby certify that the foregoing is a true and correct record of the proceedings of the meeting held on September 29, 1993 by the West Virginia Air Pollution Control Commission.

Submitted this 12<sup>TH</sup> day of January, 1994.

  
\_\_\_\_\_  
Britt A. Bernheim, APCC Secretary