



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

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MINUTES
WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION
January 12, 1994

I. General

The West Virginia Air Pollution Control Commission (the "Commission") met on January 12, 1994, at 9:00 a.m. The meeting was held in the conference room at the Office of Air Quality ("OAQ") located at 1558 Washington Street, East, in Charleston, West Virginia. Acting Chairman Jean C. Neely called the meeting to order. Commissioners present at the meeting included:

Jean C. Neely, Acting Chairman
Robert L. Foster
Michael Koon
Thomas Ising
Joseph P. Schock, designate of William T. Wallace
Robert G. Morris, designate of the Honorable Gus R. Douglass

II. Commission Meeting

A. Organizational Meeting

The Commission meeting began with an introduction of each member. Mr. Foster, Mr. Koon, and Mr. Ising were appointed to the Commission in October, and this is the first meeting of the Commission since their appointment.

Election of Chairman and Vice Chairman

By motion and unanimous vote of those present, it was resolved that from this date forward the chairman of the Commission shall be a full participating and voting member of the Commission.

Jean C. Neely was nominated, seconded, and then elected to the position of chairman by a unanimous vote of those present.

Robert L. Foster was nominated, seconded, and then elected to the position of vice chairman by a unanimous vote of those present.

General Business

By motion and unanimous vote of those present, the Commission resolved to publish the procedural regulations (45 CSR 26) proposed for adoption by legal counsel in the State Register

for a thirty day public comment period, whereupon it would revisit the matter.

By motion and unanimous vote of those present, the Commission resolved to delegate the authority to its legal counsel to resolve procedural motions and routine matters on behalf of the Commission while it is not in session.

The minutes of the September 29, 1993 meeting of the Commission were approved by a unanimous vote of those present.

Changes made by the Legislative Rule-Making and Review Committee to 45 CSR 10 were reviewed and approved by motion and unanimous vote of those present.

Executive Session

Upon motion and unanimous vote, the Commission conducted an executive session for briefing by legal counsel of the contested cases currently before the Commission.

B. Petitions for Rulemaking

Request for Amendments to 45 CSR 5

A request was filed by the Coal Operators Association for amendments to 45 CSR 5, "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations." Robert K. Parsons of Jackson & Kelly and Christopher Power of Robinson & McElwee spoke on behalf of the Coal Operators Association. G. Dale Farley, Chief of the OAQ responded to the petition. After hearing from petitioners and the OAQ, the Commission continued its consideration of the matter until later in the meeting so that the parties could attempt to resolve the matter among themselves.

After the parties returned, and upon discussion, motion, and a unanimous vote of those present, the Commission resolved that its legal counsel shall, upon consultation with the petitioners and with the OAQ, draft an Advisory Opinion regarding the implementation of 45 CSR 5.

Request for Amendments to 45 CSR 14

A request was filed by the West Virginia Manufacturers Association for amendments to 45 CSR 14, "Prevention of Significant Deterioration." Kim Brown Poland spoke on behalf of the West Virginia Manufacturers Association. G. Dale Farley responded to the petition.

After discussion, motion, and unanimous vote of those present, the Commission resolved to initiate rule making procedures during 1994 in order to adopt changes to 45 CSR 14 as

proposed by the petitioner.

C. Contested Cases - Motions Docket

Appeal nos. 93-05-P and 93-06-P were scheduled for oral arguments by counsel on the Motion to Dismiss and Motion to Intervene and Consolidate, respectively. Counsel for Affiliated Construction Trades Foundation was unable to appear due to illness, and arguments on the Motions were not held as scheduled.

Arguments on the Motion for a Protective Order in Appeal no. 93-08-ORD were held. Kim Brown Poland opened arguments on behalf of Georgia-Pacific Corporation. Assistant Attorney General Mark Rudolph opened arguments on behalf of the OAQ. The appellant Georgia-Pacific Corporation dropped its claim of confidentiality with respect to items 4-12 listed in the Chief's order, but maintained its claim with respect to items 1-3. Counsel for the OAQ agreed that it would withdraw the order with respect to items 1-3.

After a discussion of the matter, and upon motion, and a unanimous vote of those present, the Commission resolved that its legal counsel shall draft an Order memorializing the agreement reached between Georgia-Pacific Corporation and the OAQ resolving appeal 93-08-ORD.

I hereby certify that the foregoing is a true and correct record of the proceedings of the meeting held on January 12, 1994, by the West Virginia Air Pollution Control Commission.

Submitted this 15th day of February, 1994.


Britt A. Bernheim,
Commission Secretary