



WEST VIRGINIA AIR QUALITY BOARD

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M I N U T E S

1615 Washington Street, East
9:00 a.m. August 17, 1994

I. MEMBERS PRESENT

Robert L. Foster, acting as Chairman
Thomas Ising
Michael Koon
Robert Morris (designee of the Honorable Gus Douglass)
Joseph P. Schock (designee of Dr. William Wallace)

II. MEETING

Preliminary Motions and Hearing in the matter of **Appeal Nos. 93-01-P and 93-02-P: Affiliated Construction Trades Foundation, Appellant v. Chief, Office of Air Quality, Appellee, and Union Carbide Chemicals and Plastics, Intervenor.**

A. Preliminary Matters:

1. Appellant renewed its motion for Discovery which had been denied by order of the Commission on 8/16/94. Arguments on the motion were made by counsel for each party.

2. Intervenor moved to strike as untimely under the Rules of Civil Procedure appellant's Motion for Summary Judgement filed the day before hearing on 8/16/94. Appellee joined in intervenor's motion. Arguments on the motion were made by counsel for each party.

3. Appellant renewed its motion for a stay of the Board's proceedings pending resolution of a Petition for Declaratory Judgement filed with the Division of Environmental Protection. Appellant's stay request had been denied by the Board (by oral communication) on 8/13/94. Arguments on the motion were made by counsel for each party.

The Board adjourned to deliberate each of the motions made during the morning session of the hearing. Upon returning the Board made the following rulings:

1. On the Motion for Discovery: to let stand the written Order issued by the Board on 8/16/94.

2. On the Motion to Strike Appellant's Motion for Summary Judgement: to deny the motion to strike, therefore the Board would consider Appellant's Motion for Summary Judgement.
3. On Appellant's Motion for Summary Judgement: to deny the Motion as it improperly relied on questions of fact to be determined during the course of the hearing.
4. On Appellant's Motion to Stay the Proceedings: to let stand the Board's order denying the Motion to Stay.

C. Intervenor's Motion for Summary Judgement

Next the Commission considered a Motion for Summary Judgement filed by the Intervenor. Opening statements were made by counsel for each party, with the proponent of the Motion proceeding first. Following arguments by counsel, Board members elicited testimony on specific questions that it had regarding chemical processes that were at issue in the Motion for Summary Judgement.

D. Lunch Recess

During the lunch recess, the Board took time to deliberate towards its decision on Intervenor's Motion for Summary Judgement and to consider organizational and administrative matters.

The Board discussed the organizational scheme (the Bureau of the Environment) under which it has been placed. Chairman Neely had requested that the Board reach a decision whether to request the Governor consider an alternate organizational scheme. Members of the Board voiced concern regarding the ability of the Board to remain independent of the Division of Environmental Protection since that agency and the Bureau of the Environment are both headed by David Callaghan. The Board reviewed executive order 5-94 issued on 6/30/94 and decided to defer a decision on what action to take until the matter could be further deliberated.

The Board was apprised of the administrative matter of selection of an individual to fill a vacant administrative position with the Board. The Board approved of the Legal Counsel's exercise of discretion in selecting an individual to fill the position.

D. Ruling on Motion for Summary Judgement

Upon returning from the lunch recess, in a bench ruling on the Motion for Summary Judgement, the Board granted the Motion

for Summary Judgement with respect to all issues involving the regulatory analysis of the case.

However, it was also the opinion of the Board that the motion did not address some of the issues that were raised in the appeal, namely, the issues raised with respect to internal inconsistencies in the permit applications, and the allegations with respect to excessive emissions estimates. Further, the Board requested additional testimony on the issue regarding analysis by the Appellee of the supplemental information submitted by Intervenor. The parties were asked to proceed with the hearing on the merits of the issues remaining in the case, at which time appellant asked for a recess during which the parties reached an agreement to settle the remaining issues without a hearing.

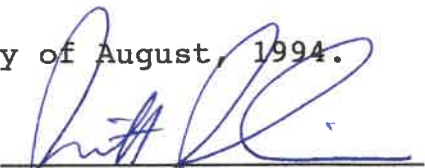
E. Issues Settled by the Parties

1. **Permit Inconsistencies:** The permit emissions limitations for Ethylene Oxide and Propylene Oxide do not accurately reflect the information submitted by Intervenor in the permit application. The Appellee agreed to revise the permit to correct this inconsistency.
2. **Excessive Emissions:** Intervenor agreed to revise the pages of its permit application which contained errors leading to excessive emissions estimates.
3. **Supplemental Application Information:** The Appellant agreed to withdraw this claim of its appeal.

Whereupon, the meeting was adjourned.

I hereby certify that the foregoing is a true and accurate representation of the proceedings held by the Air Quality Board on the 17th day of August, 1994.

Submitted for approval this 29th day of August, 1994.



Britt A. Bernheim
Legal Counsel of the
Air Quality Board