



## WEST VIRGINIA AIR QUALITY BOARD

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

**MINUTES**  
**WEST VIRGINIA AIR QUALITY BOARD**  
**November 20, 1996**

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### **I. General**

The West Virginia Air Quality Board (the "Board") met on November 20, 1996, at 12:00 p.m.. The meeting was held at 1615 Washington Street, E., Charleston, West Virginia. Mike Koon, Vice-Chair of the Board, called the meeting to order. Board members present at the meeting included:

Michael Koon, Vice Chair  
Janet Fisher (designee of Gus Douglas)  
Robert Foster  
Don Kuntz (designee for Dr. Harry Taylor)  
Jean Neely (by telephone)

Not Present:

Thomas Ising, Chair  
Allen Hamner

### **II. Board Meeting**

#### **A. Minutes**

The Board made a change to the October 23, 1996 minutes. The Board requested that the Board members be listed in the minutes in the following order: Chair and Vice-Chair; other attending members in alphabetical order. The Board also requested the correction of a typographical error in section seven of the minutes where the word "been" was spelled "bee." The Board commented that they would like more information in the Motion section of the minutes. Bob Foster made a motion to accept the minutes as amended, seconded by Don Kuntz. The motion carried by a unanimous vote of members present. Janet Fisher was not present for this vote.

#### **B. Motions**

##### **1. David White, Appeal No. 96-12-P**

Don Kuntz made a motion to grant the Appellee's Motion for Dismissal, seconded by Bob Foster. Jean Neely made a motion to find Appellee's Motion for Extension of Deadline to File Formal Discovery Requests moot, seconded by Bob Foster. All motions carried by a unanimous vote of the members present. Janet Fisher was not present for this vote.

## **2. Motions to Depose in Apple Grove**

Bob Foster made a motion to deny all Motions to Depose unless all parties can reach an agreement and a motion to require the parties to bear the costs of the depositions such as court reporter fees, mileage and the cost of the transcripts. These motions were seconded by Don Kuntz. The motion carried by a unanimous vote of the members present. Janet Fisher was not present for this vote.

## **3. Appellee's Objections to Appellants' failure to request leave for discovery (Apple Grove cases)**

The Board discussed the Appellee's objections to various Appellants' requests for discovery on the basis that the Appellants did not seek "leave" from the Board to request discovery. Jean Neely made a motion to deny the Appellee's objection in all appeals where it was made. Bob Foster seconded the motion.

## **4. Objections to Producing documents (for discovery) contained in the certified record.**

Jean Neely made a motion to not require any party in the Apple Grove appeals to produce any document contained in the certified record. Bob Foster seconded the motion.

## **3. Monty Fowler, Appeal No. 96-08-P**

Jean Neely made a motion granting in part and denying in part Appellee's Motion for Leave to Engage in Formal Discovery, seconded by Bob Foster. Don Kuntz made a motion granting in part and denying in part Appellant's Motion for Discovery, seconded by Bob Foster. Bob Foster made a motion denying Motion to Reconsider Establishment of a Second Certified File, seconded by Don Kuntz. All motions carried by a unanimous vote of the members present. Janet Fisher was not present for this vote.

## **4. Ohio Valley Environmental Coalition, Appeal No. 96-09-P**

Don Kuntz made a motion to deny the Appellant's Motion for Oral Argument on Appellee's Objection to Appellant's Formal Discovery. Bob Foster seconded the motion. All other matters concerning this appeal were covered in the general motions (as set out above) regarding depositions, failure to request leave for discovery, and production of documents in the certified record.

## **5. Concerned Citizens Coalition, Appeal No. 96-10-P**

The Board discussed each item to which the Appellee had objected and instructed the Board's attorney to write an order denying in part and granting in part the requested discovery in accordance with the Board's decision on each item. Bob Foster made a motion to grant in part and deny in part the Appellant's request for discovery. Don Kuntz seconded the motion. All

other matters concerning this appeal were covered in the general motions (as set out above) regarding depositions, failure to request leave for discovery, and production of documents in the certified record.

## **6. Buckeye Forest Council, Appeal No. 96-11-P**

Bob Foster made a motion to deny the Appellant's Motion for Summary Judgement, seconded by Don Kuntz. Bob Foster made a motion to Grant in Part and Deny in Part Appellant's Motion for Discovery and Grant in Part and Deny in Part Appellee's Motion for Discovery, seconded by Don Kuntz. Jean Neely made a motion to Deny the Appellant's Motion to Allow Written Documents as Testimony, seconded by Bob Foster. The Board felt that testimony should be taken by deposition or in person. All motions carried by a unanimous vote of the members present. Janet Fisher was not present for this vote.

The Board recessed at 3:00 p.m. to allow Bob Foster to leave for an appointment and to notify Janet Fisher that the Apple Grove portion of the meeting was complete and her presence was needed for the remainder of the meeting.

## **C. Administrative Matters**

### **1. Temporary Technical Advisor**

At the request of Jean Neely, the resume of Patrick T. Brennan and Mark L. Kramer were sent to the Board from Meteorological Evaluation Services Company, Inc., of Amityville, New York. The Board discussed having a conference call the first week of December, during which time they would review the resumes for a temporary technical advisor. The Board's Legal counsel, Becky Charles, prepared a summary of the Apple Grove cases in order to assist the chosen technical advisor.

### **2. Executive Session**

Pursuant to 6-9A-4(2) by a unanimous vote the Board went into executive session to discuss personnel matters. Jean Neely made a motion to come out of executive session, seconded by Janet Fisher. Jean Neely made a motion to have a policy between the Environmental and Air Quality Boards to compensate employees by the December meetings, seconded by Don Kuntz.

### **3. Georgia-Pacific Corporation**

A Motion to Reinstate this appeal was presented to the Board. Legal Counsel, Becky Charles, suggested speaking to the parties about renumbering this case before it is placed back on the Boards docket. Don Kuntz made a motion to allow the Board's legal counsel, Becky Charles, to consult with the parties, seconded by Janet Fisher. The vote was 3-1, with Mike Koon, Don Kuntz and Janet Fisher voting to grant the Board's legal counsel, Becky Charles, to consult with the parties before reinstating this appeal to the Board's docket and Jean Neely voting to deny.

#### **4. Budget Report**

Jean Neely discussed with the Board a new title for the Budget Report and the Board came up with Expenditures v. Budget Report. The Board had a few questions pertaining to the Expenditures v. Budget Report that needed to be answered by Ann Holstein who was away at a computer seminar. Ann will answer these questions for the Board at the December meeting via telephone as she will be out of the office that day.

#### **5. Transition of New Administration**

Legal Counsel, Becky Charles, discussed with the Board different options in making a smooth transition with the new administration in January. By a unanimous vote the Board decided to leave things as they are, because it would take too long to reappoint members and this may leave the Board without a quorum.

#### **6. Pritchard Mining Order**

Don Kuntz made a motion to sign the Pritchard Mining order dismissing the appeal without prejudice. Janet Fisher seconded the motion. The motion carried by unanimous vote.

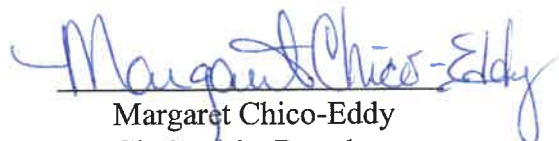
#### **7. Leone/Cousins letter from Counsel**

Legal Counsel, Becky Charles, explained to the Board about the statutory duty to copy the entire file and that was completed and taken to Kanawha County Circuit Court. Perry McDaniel counsel for Mr. Leone and Mr. Cousins, sent the Board a letter afterwards about the cost and it not being necessary to have sent the entire file to the Circuit Court.

Don Kuntz made a motion to adjourn the meeting, seconded by Janet Fisher. Whereupon the meeting adjourned at 4:30 p.m.

I hereby certify that the foregoing is a true and accurate representation of the proceedings held by the Air Quality Board on the 20th day of November 1996.

Submitted for approval the 21 day of December 1996.

  
Margaret Chico-Eddy  
Clerk of the Boards