



Air Quality Board
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MINUTES

WEST VIRGINIA AIR QUALITY BOARD

March 23, 2000

I. General

On March 23, 2000, a quorum of the members of the Air Quality Board met. The meeting was held at the Board's office at 1615 Washington Street, E., Suite 301, Charleston, West Virginia. The Chair, Bob Foster, called the meeting to order at 9:00 a.m.

The Board members present were:

Bob Foster, Chair
Dick Calvert

Participating by telephone were Board members:

Jean Neely, Vice Chair
Mike Koon
Tom Hansen
Don Kuntz, designee of Dr. Henry Taylor

Absent were Board members:

Janet Fisher, designee of Gus Douglas

Chairman Foster introduced Dick Calvert as the newest appointee to the Air Quality Board. Mr. Calvert will fill the general public representative vacancy created when Ann Calvert was appointed by the Governor to serve as a member of the West Virginia Legislature.

II. Administrative Matters

1. Review and Approval of February 24, 2000, Meeting Minutes:

The minutes of the February 24, 2000, Board meeting were presented to the Board for consideration. The minutes were amended to add the word "extraneous" to page two, paragraph one, line two. In addition, page two, paragraph two, line three was amended to provide that "Chairman Foster announced that he and the Co-Chairs of the Environmental Quality Board sent a letter to Commissioner Castle regarding the predicted budget shortfall for the Air Quality Board and the Environmental Quality Board during the fiscal year 2000". Finally, the Absent Board Members section on page one of the minutes was amended to provide "None, vacant seat for general public representative."

Whereupon, Mr. Kuntz moved and Mr. Koon seconded, that the minutes of the February 24, 2000, Air Quality Board meeting, as amended, be adopted, and the motion passed unanimously 6 to 0.

2. Don Kuntz:

Don Kuntz serves as an ex-officio member of the Air Quality Board as the designee of Dr. Henry Taylor, Director of the Bureau of Public Health. Mr. Kuntz announced that he is retiring on March 31, 2000. The Board members expressed their appreciation for the assistance provided by Mr. Kuntz during his service on the Board. The Board will receive written notification of the new designee within a few weeks.

3. Budget Report:

The Board reviewed the budget analysis prepared by Ms. Coleman. A copy of that report is attached to and made a part of these minutes as Exhibit "A". The report indicates that if the Environmental Quality Board and the Air Quality Board continue to hold meetings on a monthly basis as planned, there will be a \$10,300.00 budget deficit. While the Air Quality Board does not currently have any appeals before it, the Environmental Quality Board has several critical issues to resolve.

Chairman Foster noted that there are sufficient funds to continue to pay the salaries of the staff and the general office expenses. However, unless the Boards receive the additional emergency funds as requested from Commissioner Castle, the Boards will be unable to meet after April 1, 2000. A copy of the second letter sent to Commissioner Castle regarding the Boards' financial situation is attached to and made a part of these minutes as Exhibit "B". Chairman Foster is attempting to arrange a meeting between Commissioner Castle and the Boards' Chairmen.

Mr. Hansen requested that the Board members receive a copy of the 2001 fiscal year budget. Mr. Kuntz reminded the Board that the three percent Agency expenditure reduction as mandated by the Governor and the \$756.00 cost of living pay increase for employees must be figured into that budget. Ms. Neely expressed concern about funding for merit raises for the staff.

5. Meeting Dates:

Ms. Neely moved and Mr. Kuntz seconded that due to budgetary considerations, the Air Quality Board will not meet again until July 25th, 2000, unless there is an extremely critical emergency. However, if the Boards receive the additional emergency funding, Air Quality Board meetings will be scheduled for April 27th, May 17th and June 27th.

6. Long Range Goals:

The Air Quality Board members identified and discussed long term goals and projects for the Boards and will be creating a time line for the creation of an Annual Plan. The development of a web-site; establishing an educational outreach program with a brochure; implementing capital improvements, including computer system and software upgrades; and providing for continuing education and training were highlighted as the major goals for the Board and staff. Air Quality Board members would like to schedule joint meetings with the members of the Environmental Quality Board to discuss these projects.

7. Ethics Policy:

Ms. Neely requested that the Board discuss creating and implementing an ethics policy for the Board members and is concerned that the Board currently does not have a resolution on ex-parte communications. Ms. Charles provided the Board members with a detailed memorandum regarding general ethics provisions that apply to the Board. A copy of that memorandum is attached to and made a part of these minutes as Exhibit "C". Ms. Charles also informed the Board members that she recently attended a meeting of the Administrative Law Division of the West Virginia State Bar where they were considering, at the request of the West Virginia Supreme Court, an ethical standard for Administrative Law Judges. They propose the creation of a code of ethics which would apply to members of all Boards, Commissions and Agencies which are charged with adjudicating cases. The State Bar will present this proposal as legislation or as an Executive Order from the governor. If successful, this code of ethics would supercede any rule that an Agency might implement. The Board decided to delay action on this issue pending the outcome of the State Bar's attempts to create a code of ethics.

8. Personnel Matters:

Chairman Foster informed the Air Quality Board members that Melissa Carte's six month performance evaluation and Kathy Coleman's sixty day performance evaluation have been completed. Both evaluations were very good.

Although the evaluations for Becky Charles and Libby Chatfield have been conducted, the written evaluation form has not been completed at this time. Chairman Foster has requested that Dr. Snyder, Co-Chair of the Environmental Quality Board, complete and submit the forms as soon as possible.

III. Appeals

1. 99-07-AQB (Elkem Metals):

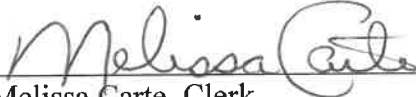
The Board members were informed that the appellant withdrew the appeal in this matter based on the March 21, 2000, Order of Rescission of Notice of Violation and Cease and Desist Order executed by the Chief of the Office of Air Quality which moots this appeal.

IV. OTHER BUSINESS

The Board members decided not to accept a per diem for this Air Quality Board meeting. The Board members have now spent three hours and twenty minutes conducting Air Quality Board business without accepting payment for their services.

WHEREUPON, at 10:10 a.m., Ms. Neely moved and Mr. Hansen seconded that the March 23, 2000, Air Quality Board meeting be adjourned and the motion passed unanimously 6 to 0.

I hereby certify that the forgoing is a true and correct record of the proceedings of the meeting held on March 23, 2000, by the West Virginia Air Quality Board. These minutes were approved by the Air Quality Board on 7-25-, 2000.


Melissa Carte, Clerk

TO: EQB & AQB Board Members

FROM: Kathy Coleman
Administrative Secretary

DATE: March 15, 2000

RE: Budget Update

Please find attached budget information for your review.

According to my estimates of expenses from now until June 30th, the Boards will be short funds in the amount of **(10,313.53)**. Please keep in mind that the figure is an estimate and **does not include a "cushion" amount for unexpected expenses.**

As you will see, I have categorized expenses as follows:

Operating Expenses - March thru June 2000
EQB & AQB - Board Meeting Expenses - March thru June 2000

In regards to salaries and benefits, Randy Taylor from DEP has assured me that according to his estimates, we do have enough funds available to cover current staff salaries and benefits until June 30th. However, as I understand, this is the time of the year that the Boards consider merit increases for certain staff members. If merit increases will be requested by the Boards, I will need to add those figures to the total shortage.

Due to the shortage of funds, Libby and Becky have discussed with me priority meetings for EQB and AQB. At this time, there are no priority meetings for the AQB. However, EQB has three: Rulemaking - Water Quality Standards (46 CSR 1), Kempco Remining Variance Request and 7-Eleven Appeal. If the Boards decide to meet only for the three priority items, the shortage would be reduced to **(3,119.65)**. I have attached a list of priority EQB meetings for your review.

I am working with Randy Taylor on a financial spreadsheet that will provide a detailed financial overview. The spreadsheets that I am providing today are of a simplified nature to compute the estimated shortage. In the future, I will use a different format and I welcome suggestions from the Board members.

If you have any questions, please feel free to contact me at 558-4002.

EXHIBIT "A"

ENVIRONMENTAL QUALITY BOARD & AIR QUALITY BOARD	
FUNDS AVAILABLE AS OF 3/15/00 PER WVFIMS FOR OPERATING AND BOARD MEETING EXPENSES:	15,438.62
LESS: CURRENT INVOICES DUE	(1,346.36)
LESS: OPERATING EXPENSES MARCH THRU JUNE 2000	(12,199.88)
LESS: BOARD MEETING EXPENSES MARCH THRU JUNE 2000	(12,205.91)
ESTIMATED DEFICIT AS OF 6/30/00	(10,313.53)

ENVIRONMENTAL QUALITY BOARD & AIR QUALITY BOARD	
MONTHLY OPERATING EXPENDITURES	
EXPENSES - FIXED:	
R-CAS-CO - RENT FOR OFFICE SPACE	805.36
MINOLTA - COPIER LEASE	282.00
WV ASSOC. OF REHAB - JANITORIAL SERVICE	111.79
LUCENT TECHNOLOGIES - TELEPHONE SERVICE AGREEMENT	42.87
LUCENT TECHNOLOGIES - TELEPHONE LEASE AGREEMENT	53.70
LEXIS NEXIS - ONLINE & ADMIN. CHARGES FOR LEGAL PUBLICATIONS	190.00
DEPT OF ADMINISTRATION - IS & C - INTERNET ACCESS	67.80
TOTAL MONTHLY FIXED EXPENSES	1,553.52
EXPENSES - ESTIMATED:	
STATE AUDITOR'S OFFICE - PROCESSING OF WVFIMS TRANSACTIONS	30.00
DEPT. OF ADMINISTRATION - IS & C - WVFIMS USAGE	50.00
DEPT. OF ADMINISTRATION - PERSONNEL FEES	30.00
DEPT. OF NATURAL RESOURCES - POSTAGE - OUTGOING MAIL PROCESSED BY DNR	150.00
DEPT. OF ADMINISTRATION - CENTRAL MAIL - POSTAGE FOR CHECKS SENT FOR BILL PAYING BY AUDITOR'S OFFICE	5.00
AT & T	50.00
BELL ATLANTIC	200.00
LEXIS LAW PUBLISHING - WV CODE UPDATES	75.00
TYLER MOUNTAIN - WATER COOLER RENTAL & REFILLS	26.00
UTILITIES FOR OFFICE, CONFERENCE ROOM AND STORAGE SPACE. RENT FOR CONFERENCE ROOM, STORAGE SPACE AND PARKING	316.00
OFFICE SUPPLIES	100.00
TOTAL MONTHLY ESTIMATED EXPENSES	1,032.00
TOTAL FIXED AND ESTIMATED PER MONTH	2,585.52
TOTAL ESTIMATED FOR MARCH - JUNE 2000 (4 MONTHS)	10,342.08
ADD: MISCELLANEOUS BILLS PRIOR TO MARCH	1,857.80
GRAND TOTAL OPERATING EXPENSES THRU JUNE 2000	12,199.88

ENVIRONMENTAL QUALITY BOARD & AIR QUALITY BOARD	
BOARD MEETING EXPENSES: SCHEDULED MEETINGS MARCH - JUNE 2000 (ESTIMATES)	
AIR QUALITY BOARD:	
MARCH PER DIEM	400.00
MARCH TRAVEL	232.75
APRIL PER DIEM	400.00
APRIL TRAVEL	232.75
MAY PER DIEM	500.00
MAY TRAVEL	569.21
JUNE PER DIEM	500.00
JUNE TRAVEL	569.21
2 HEARINGS - COURT REPORTER & TRANSCRIPTS	900.00
TOTAL - AQB	4,303.92
ENVIRONMENTAL QUALITY BOARD:	
MARCH PER DIEM	0.00
MARCH TRAVEL	0.00
APRIL PER DIEM (2 MEETINGS)	600.00
APRIL TRAVEL (2 MEETINGS)	1,296.06
MAY PER DIEM	400.00
MAY TRAVEL	697.91
JUNE PER DIEM (2 MEETINGS)	1,000.00
JUNE TRAVEL (2 MEETINGS)	1,908.02
PUBLICATION - PUBLIC NOTICE	200.00
4 HEARINGS - COURT REPORTER & TRANSCRIPTS	1,800.00
TOTAL - EQB	7,901.99
GRAND TOTAL AQB & EQB BOARD MEETING EXPENSES	12,205.91
Per diem and travel amounts are based on number of board members available to attend scheduled meetings; thus, amounts will vary.	

ENVIRONMENTAL QUALITY BOARD	
PRIORITY BOARD MEETINGS:	
RULEMAKING - WATER QUALITY STANDARDS (46 CSR 1):	
BOARD MEETINGS (3) - PER DIEM & TRAVEL EXPENSE DISCUSSION OF ANTIDegradation, OUTSTANDING EPA DISAPPROVALS, BLACKWATER RIVER USE REDESIGNATIONS AND COMMENTS REGARDING THE TRIENNIAL REVIEW OF THE STANDARDS.	4,362.03
KEMPCO REMINING VARIANCE REQUEST:	
BOARD MEETINGS (3) - NO PER DIEM OR TRAVEL EXPENSE - BOARD CAN ADDRESS ITEM DURING RULEMAKING - WATER QUALITY STANDARDS MEETINGS.	0.00
PUBLIC HEARING - COURT REPORTER & TRANSCRIPTS	450.00
PUBLICATION - PUBLIC NOTICE	200.00
7-ELEVEN APPEAL:	
BOARD MEETINGS (2) - NO PER DIEM OR TRAVEL EXPENSE - BOARD CAN ADDRESS ITEM DURING RULEMAKING - WATER QUALITY STANDARDS MEETINGS.	0.00
TOTAL EXPENSES FOR EQB PRIORITY BOARD MEETINGS	5,012.03
Per diem and travel amounts are based on the attendance of all EQB Board Members.	



BUREAU OF THE ENVIRONMENT
ENVIRONMENTAL QUALITY BOARD and AIR QUALITY BOARD

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March 22, 2000

Michael Castle, Commissioner
Bureau of the Environment
10 McJunkin Road
Nitro, West Virginia 25143

Dear Commissioner Castle:


As per stated in our letter to you dated February 18, 2000, the Air Quality Board and the Environmental Quality Board have been concerned about the projected lack of funds to continue to hold the necessary meetings and hearings through the remainder of the fiscal year.

Please see the attached analysis of projected expenditures from now until June 30th which calculates a projected deficit of (10,313.53). If we do not receive additional funding, both Boards will have no choice but to discontinue meeting effective April 1, 2000, until the new fiscal year. Therefore, we wish to reiterate our urgent request for additional funding.

Thank you for your time regarding our budget crisis. Please let us know when it may be convenient to meet with you if you wish to discuss this issue in further detail.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Elizabeth M. Chaffield".

 Robert L. Foster, Chair
Air Quality Board


 Edward Snyder, Co-Chair
Environmental Quality Board

Exhibit "B"

To: Board Members
From: Becky Charles
Date: March 8, 2000
Re: Ethics standards

1. GOVERNMENTAL ETHICS ACT

There is no formal code of ethics that applies specifically to hearing boards in West Virginia. However, the West Virginia Governmental Ethics Act, W. Va. Code §§ 6B-1-1 et. seq., would apply to the board members. Under the Ethics Act, an Ethics Commission was established which can advise and answer questions concerning the act. Always feel free to ask my advise about any ethical question that you have but you can also call the Commission with questions.

It is important that you are familiar with the Ethics Act since it contains a provision for criminal penalties for some violations. A violation of the Act can result in a criminal trial where a guilty party "shall be guilty of a misdemeanor and shall be punished by confinement in the county jail for a period not to exceed six months or shall be fined not more than one thousand dollars, or both such confinement and fine." W. Va. Code §6B-2-10. There are other penalties for filing false financial statements and wilful disclosure of confidential material.

2. CHAPTER 22B PROVISIONS

Chapter 22B of the W. Va. Code includes some provisions that are ethics related and specifically apply to the Environmental

Exhibit "C"

and Air Quality Boards. For instance, § 22B-1-10 deals with confidentiality. That provision states:

"With respect to any information obtained in the course of an appeal, all members of boards and all personnel employed thereby shall maintain confidentiality to the same extent required of the chief or director." W. Va. Code § 22B-1-10.

Another ethics related provision concerns conflict of interest. This provision states that "[i]n addition to the specific conflict of interest provisions set forth in this chapter, any member who has any financial interest in the outcome of a decision of the board shall not vote or act on any matter which shall directly affect the member's personal interests." W. Va. Code § 22B-1-11.

3. ADMINISTRATIVE PROCEDURES ACT PROVISIONS

West Virginia Code Chapter 29A contains the state's Administrative Procedures Act. This chapter includes some ethics related provisions which would pertain to appeals heard by the board. Among the pertinent provisions in this chapter are § 29A-5-1(d) which states that "all hearings shall be conducted in an impartial manner." Another relevant provision states that all evidence, including papers, records, shall be made part of the record in the case but that "no other factual information or evidence shall be considered in the determination of the case." § 29A-5-2(b). In other words, if it is not in the record, it can not form the basis for a decision.

4. CODE OF JUDICIAL ETHICS

While the West Virginia Code of Judicial Ethics is not binding upon board members, since the board is a quasi-judicial body, the Code should be considered as a guide. The following are some excerpts from the Code of Judicial Conduct that may be of use to board members.

Canon 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

.....

B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others....

Canon 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY¹

.....

(B)(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the

¹ There is an interesting case where a court held that the deputy commissioner of motor vehicles could not have acted impartially where the procedure with that agency would "offer a possible temptation to the average man to forget the burden of proof" in the hearing before him. State v. Kelly, 145 W.Va. 70 (1960). In that case, the court stated that an administrative hearing must be fair, unbiased and impartial as to accord with due process. Furthermore, if due process is denied, then this in itself leads to an arbitrary and capricious action. Thus, the court overturned the commissioner's decision on the basis that it was arbitrary and capricious due to the commissioner's bias.

judge deals in an official capacity, and shall require similar conduct of lawyers...and others subject to the judge's direction and control....

(B)(7) ...A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes... that do not deal with substantive matters...are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond....

E. Disqualification

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

....

(d) the judge or the judge's spouse, or a person within

the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee, of a party;

....

(iii) is known by the judge to have more than de minimis interest that could be substantially affected by the proceeding;....

Canon 4

A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;...

These various provisions should serve as a guide but is by no means complete. If any of these provisions is particularly of interest to you I would be glad to supply you with the full text or even research a particular issue for you. Please do not hesitate to contact me if you ever have any question concerning an ethical issue.