

WEST VIRGINIA AIR QUALITY BOARD

MINUTES

December 5, 2000

I. General

On December 5, 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, Jean Neely, called the meeting to order at 1:00 p.m.

The Board members present were:

Dick Calvert

Robert Foster

Robert Frame, designee of the Commissioner of the WV Department of
Agriculture

The Board members who participated telephonically were:

Jean Neely, Chair

Tom Hansen, Vice Chair

Mike Koon (joined the meeting at 2:00 p.m.)

Absent from the meeting was:

Randy Curtis, designee of the Commissioner of the WV Bureau for Public Health

Others present:

Becky Charles, Attorney

Libby Chatfield

Melissa Carte, Clerk

Kathy Coleman, Administrative Secretary

II. Appeals

1. 00-02-AQB (Tanczyn):

The Board conducted a hearing on this appeal on September 12, 2000. The parties were provided with the opportunity to submit proposed Findings of Fact and Conclusions of Law for the Board's consideration. The Board reviewed these proposed findings and a draft Final Order as prepared by staff.

The draft Final Order was revised to include a sentence which provides that "The West Virginia statute and regulations are consistent and in compliance with the Federal Clean Air Act." In addition, the draft Final Order was revised to include a sentence which provides that "A formal rulemaking process exists within the Office of Air Quality through which the public has input."

Whereupon, Mr. Frame moved and Mr. Calvert seconded that the Board approve the draft Final Order, as revised, and the motion passed unanimously 5 to 0.

2. 00-03-AQB (Gatewood):

Appeal #00-03-AQB (Gatewood) was filed with the Board on June 26, 2000, and was scheduled for hearing on July 25, 2000. However, the Board continued the hearing in this matter since the parties were conducting ongoing settlement negotiations which would likely settle the matter without a hearing.

On November 9, 2000, the Appellant filed a Motion to Dismiss Appeal which was also supported by the Appellee. Whereupon, Mr. Foster moved and Mr. Hansen seconded that the Board grant the Appellant's motion and order that Appeal #00-03-AQB be dismissed and removed from the Board's docket, and the motion passed unanimously 5 to 0.

3. 00-04-AQB (Libby):

Appeal #00-04-AQB was filed on November 6, 2000, and in conjunction with this appeal the Appellant also filed a Motion for Permission to Take Discovery. On November 16, 2000, the Appellee filed an Objection to the Appellant's Motion for Discovery.

After discussion, Mr. Foster moved and Mr. Hansen seconded that the Air Quality Board deny the Appellant's Motion for Discovery unless the parties reach an agreement as to the terms, conditions and the scope of the depositions, and the motion passed unanimously 5 to 0.

III. Administrative Matters

1. Review and Approval of the Minutes of the Air Quality Board's October 20, 2000, joint meeting with the Environmental Quality Board:

The minutes of the October 20, 2000, joint meeting of the Air Quality Board and the Environmental Quality Board were presented to the Board for consideration. These minutes were previously revised by Chair Neely. After a review of those revisions, Mr. Foster moved and Mr. Hansen seconded that the minutes of the October 20, 2000, joint meeting of the Air Quality Board and the Environmental Quality Board be adopted, and the motion passed unanimously 5 to 0.

2. Budget Report:

The WV Environmental Quality Board and the WV Air Quality Board (the Boards) have requested from the WV Bureau of Environment's Division of Environmental Protection (DEP), a temporary transfer of funds to allow the Boards to continue operations while awaiting legislative approval of supplemental funding for the fiscal year 2001. The Air Quality Board discussed a proposed Memorandum of Understanding (MOU) regarding this transfer of funds as drafted by the DEP.

The Board discussed the terms and conditions included in the proposed MOU. Item three of the MOU requires that the EQB/AQB provide a list of paid documents to the WVDEP as proof the transfer of funds was needed in order to provide prompt payment of liabilities. Ms. Chatfield explained that DEP is requesting this list of expenses for its' records in the event that it is audited.

Item seven of the proposed MOU provides that the Commissioner of the Bureau of Environment holds the right to approve any merit increases proposed during this active loan period. Ms. Chatfield explained that she discussed this provision with Randy Huffman, Deputy Director of Administration for the Division of

Environmental Protection. DEP included this condition in the event that DEP would have to freeze merit increased during this loan period. Concerns were expressed regarding the interference with the autonomy of Boards if this condition is included in the MOU.

The members discussed clarifying this provision to apply only to a freeze of merit increases Division wide, not on an office-by-office basis.

One suggested addition to the MOU is a statement which provides that upon the repayment of the loan by the Boards, all provisions, conditions and agreements established in the MOU will terminate. The Board also discussed the possibility that the Legislature may deny the Boards' supplemental funding request and the Boards may be unable to repay the loan. It was suggested that the MOU be revised to address that possibility. The Board cannot accept the conditions of the MOU indefinitely, and establishing a date of termination for the MOU and its provisions would be necessary if that occurs.

The Board directed Ms. Chatfield to discuss these revisions with Randy Huffman. The Board acknowledged that the Environmental Quality Board members must also review and approve any MOU executed between the Boards and the DEP.

Vice-Chair Hansen agreed to attend Legislative meetings in an effort to assist the Boards in obtaining Legislative approval of the supplemental funding request.

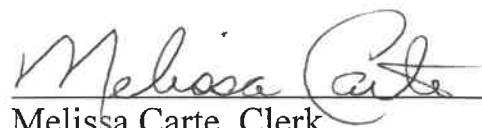
3. Meeting Dates:

The Board set a future meeting dates for January 22, 2001, February 22, 2001, and March 22, 2001. If the meetings are conducted by telephone they will begin at 8:30 a.m. If the Board members decide to conduct the meetings in person, then the meetings will begin at 1:00 p.m. unless a full agenda precludes the afternoon starting time.

The Board members decided not to charge a per diem for this telephone conference.

WHEREUPON, at 2:30 p.m., Mr. Foster moved and Mr. Calvert seconded that the December 5, 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 December 5, 2000, by the West Virginia Air Quality Board. These minutes were approved by the Air Quality Board on 3/22/01, 2001.



Melissa Carte, Clerk