



AIR QUALITY BOARD

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WEST VIRGINIA AIR QUALITY BOARD

MINUTES

DECEMBER 19, 2001

I. General

On December 19, 2001, a quorum of the members of the Air Quality Board met. The meeting was held at the Board's office located at 1615 Washington Street, E., Suite 301, Charleston, West Virginia. The Chair, Tom Hansen, called the meeting to order at 10:45 a.m.

The Board members present were:

Tom Hansen, Chair

Dick Calvert

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

Robert Foster

Absent Board members were:

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

Mike Koon

Jean Neely

Others present were:

Becky Charles, Attorney

Melissa Carte, Clerk

II. Administrative Matters

1.) Review and Approval of November 14, 2001, Minutes of the AQB Meeting:

The minutes of the November 14, 2001, Air Quality Board meeting were presented to the Board for consideration. Whereupon, Mr. Curtis moved and Mr. Foster seconded that the minutes of the November 14, 2001, Air Quality Board meeting, as written, be adopted and the motion passed unanimously 4 to 0.

III. Appeals

1.) Appeal #01-06-AQB (Lackawanna):

Appeal #01-06-AQB was filed on August 27, 2001, and set for hearing on September 20, 2001. The Board Chair granted a continuance and the hearing was rescheduled for November 14, 2001. On November 9, 2001, the Board Chair continued the hearing since the parties informed the Board that ongoing settlement negotiations would likely resolve the issues of the appeal without the need for a hearing. The Appellant withdrew the appeal on December 18, 2001. No further action was required of the Board and Appeal #01-06-AQB (Lackawanna) was removed from the Board's docket.

2.) Appeal #01-07-AQB (Kanawha River Terminals):

Appeal #01-07-AQB (Kanawha River Terminals) was filed with the Board on September 19, 2001, and set for hearing on November 14, 2001. On November 8, 2001, the Board Chair continued the hearing until December 19, 2001. However, on December 17, 2001, the parties entered a Consent Order which resolve the issues of the appeal without the need for a hearing and formally withdrew the appeal. No further action was required of the Board and Appeal #01-07-AQB (Kanawha River Terminals) was removed from the Board's docket.

3.) Appeal #01-08-AQB (Delbarton Mining):

Appeal #01-08-AQB (Delbarton Mining) was filed with the Board on October 12, 2001, and was scheduled for hearing on December 19, 2001. However, on December 14, 2001, the parties filed a Joint Motion for Continuance citing ongoing settlement negotiations which will likely resolve the matters of the appeal without the need for a hearing. On December 14, 2001, the Board Chair granted the Joint Motion for Continuance and continued the hearing until the January 9, 2002, Air Quality Board meeting.

The parties were informed that the Board will not grant any further continuances based on assertions that the parties want to continue discussions or settlement negotiations.

4.) Appeal #01-05-AQB (Columbia Natural Resources):

Appeal #01-05-AQB (Columbia Natural Resources) was filed with the Board on June 25, 2001. On November 9, 2001, the parties filed a Consent Order which formally withdrew the appeal. During the November 17, 2001, Board meeting the Board members reviewed the Consent Order and removed the appeal from the Board's docket.

However, the Board members requested that the parties submit a comparison document which explained how the complex issues of the appeal were resolved by the parties. One issue of the appeal was whether the internal combustion engine used for the compression of natural gas was a "manufacturing process operation". The Board members were informed that in order to settle the appeal the parties opted not to address this issue and avoided the matter entirely in the Consent Order.

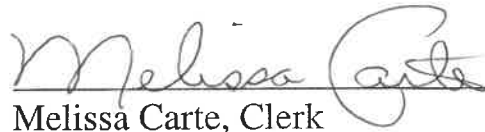
In addition, Ms. Charles informed Board members that in 1998 she issued a memo to Tom Zerbe of the WV DEP's Office of Legal Services regarding the submission of comparison documents which explain how the issues of the appeal were resolved in conjunction with Consent Orders or Settlement Agreements. This memo stated that in the future the Board may amend the Board's procedural rule and require that comparison documents be filed in conjunction with all settlement agreements but until then the Board will request a comparison document on a case-by-case basis.

The Board did not issue a broad directive requiring the submission of such documents on a routine basis.

IV. Other Business

WHEREUPON, at 11:00 a.m., Mr. Foster moved and Mr. Calvert seconded that the December 19, 2001, Air Quality Board meeting be adjourned and the motion passed unanimously 4 to 0. The Air Quality Board reconvened at 11:05 to conduct a joint meeting with the WV Environmental Quality Board.

I hereby certify that the forgoing is a true and correct record of the proceedings of the meeting held on December 19, 2001, by the West Virginia Air Quality Board. These minutes were approved by the Air Quality Board on March 13, 2002.


Melissa Carte, Clerk