



AIR QUALITY BOARD

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MINUTES

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JULY 10, 2002

I. General

On July 10, 2002, 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 9:00 a.m..

The Board members present were:

Tom Hansen, Chair

Dick Calvert

Robert Foster

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

Absent Board members were:

Mike Koon

Jean Neely

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

Others present were:

Becky Charles, Attorney

Melissa Carte, Clerk

Libby Chatfield, Office Supervisor

Kathy Coleman, Administrative Secretary

Ms. Charles introduced Perry McDaniel, Office of Legal Services and Stephanie Timmermeyer, Director of the Division of Air Quality. They attended the meeting in order to meet the Board members and to discuss any general issues of concern that the Board members might have.

Mr. McDaniel informed the Board that the WV Department of Environmental Protection (DEP) is still planning to consolidate all its Departments and Boards at one location. The actual site selected for the building is in Kanawha City. Mr. McDaniel is advocating, on behalf of the Boards, for a separate office space located on the first floor near an entrance to the building. He is also requesting an adequate meeting room with an acceptable layout, good acoustics and installed sound system, as well as a separate "breakout" room for Board deliberations. There is no definite date set for starting the construction of the building.

The Board then discussed member appointments with Mr. McDaniel. Ms. Neely's term expired on June 30, 2001, and she has not yet been reappointed to the Board. Mr. Foster's term expired on June 30, 2002 and he has not yet been reappointed to the Board. Mr. McDaniel stated that he would contact the Governor's office regarding the Board member appointments.

In addition, the statute which creates the WV Air Quality Board provides that Board members are to be appointed to five-year terms. However, when Mr. Hanson was re-appointed to the Board in 2000, he was inadvertently appointed to a four-year term and the WV Legislature approved that term. Consequently the appointments of both Tom Hansen and Mike Koon will expire in June 2004, instead of on a rotating basis. Mr. McDaniel stated that this term of appointment should be corrected as soon as possible but that it would need to go through the legislative process since the State Senate specifically confirmed Mr. Hansen for a term ending June 30, 2004.

The Board also discussed the status of the petition filed by the West Virginia Attorney General with the WV Supreme Court in which he is seeking to bar all state agencies and boards from employing their own counsel and to require use of the Attorney General's office for all legal services.

The WV Supreme Court issued its decision on the petition on June 12, 2002. The opinion generally provides that the Attorney General is the chief legal officer of the State but that the employment and use of attorneys, who are

not employees of the Attorney General, by other State entities is not unconstitutional.

The Supreme Court declined to rule on specific attorney positions and instead directed the parties to address and resolve the specific issues using “principals of accommodation, respect, and comity.” As a direct result, the Governor’s office has scheduled a meeting with the Attorney General. The Board suggested and Mr. McDaniel concurred that in order to protect the Boards’ interests, Ms. Charles should contact Alex Macia, Counsel to the Governor, to discuss the practical concerns, issues and circumstances that are specific to the Air Quality Board and the Environmental Quality Board and separate from those of the WV Department of Environmental Protection.

II. Administrative Matters

1.) Review and Approval of the minutes of the May 8, 2002, AQB Meeting:

The minutes of the May 8, 2002, AQB meeting were provided to the Board for review. Whereupon, Mr. Foster moved and Mr. Calvert seconded that the minutes of the May 8, 2002, AQB meeting, as written, be adopted, and the motion passed unanimously 4 to 0.

2.) Budget Report:

The year-end budget reports will be provided to the members during the August Board meeting. In addition, the Board was informed that the annual Groundwater Memorandum of Agreement between the EQB and the Division of Water Resources has been signed by the Allyn Turner, Director of the Division of Water Resources. Also, KRM Court Reporting has been awarded the court reporter services contract for a one year period with no increase in the cost of services provided.

3.) Update on the Board’s Web-site:

The staff has met with Matthew Thornton, who is the Boards’ web designer to review the preliminary drafts of the new websites. Overall, the staff is very pleased with the websites. The completion deadline for the websites has been extended to July 15, 2002. The Board members were provided with the

web addresses and the site IDs and passwords have been provided to the staff to enable them to update the websites.

Once the websites are fully operational, the Board staff will send the website addresses to the Boards' entire e-mail list, the Division of Air Quality, the Division of Water Resources and the WVDEP's Public Information office for distribution.

4.) Review the calendar of events for the months of July and August:

The Board members reviewed the calendar of events for the months of July and August. The Board noted that during the month of July the Board Chairs should discuss with each staff member their individual goals for the upcoming fiscal year. This process was recommended to the Board by the Division of Personnel to be used as a precursor to the annual performance evaluation.

5.) Election of Air Quality Board Chair:

Pursuant to WV Code §22B-1-4(b) at the first meeting of each fiscal year the Board elects a Chair. Mr. Foster moved and Mr. Frame seconded that Mike Koon be elected as the Board Chair for the 2003 fiscal year, and the motion passed unanimously 4 to 0.

II. Appeal Matters

1. Appeal #02-03-AQB:

Appeal #02-03-AQB (Elk Run Coal Company) was filed with the Board on April 2, 2002 and was scheduled for hearing during the July 10, 2002, Board meeting. However, on July 2, 2002, the parties submitted a Consent Order which withdraws the appeal. Although no further action was required by the Board, the members reviewed this Consent Order.

2. Appeal #02-04-AQB:

Appeal #02-04-AQB (Production Efficiency) was filed with the Board on April 18, 2002, and was scheduled for hearing during the July 10, 2002, Board meeting. However, on July 9, 2002, the parties submitted a Consent

Order which withdraws the appeal. Although no further action was required by the Board, the members reviewed this Consent Order.

3. Appeal 02-07-AQB:

Appeal #02-07-AQB (Appalachian Timber) was filed with the Board on May 6, 2002, and was scheduled for hearing during the July 10, 2002, Board meeting. On June 26, 2002, Stephen K. Shuman, attorney for the Appellant filed a Motion for Admission for Gregg M. Rosen to Practice Pro Hac Vice. After reviewing the motion, Mr. Foster moved and Mr. Calvert seconded that the Board grant the Motion for Admission for Gregg M. Rosen to Practice Pro Hac Vice, and the motion passed unanimously 4 to 0.

In addition, the parties of Appeal #02-07-AQB (Appalachian Timber) have entered into a Stipulated Order and have asked the Board to enter an Order adopting this Stipulated Order as a Board Order. After review, Mr. Foster moved and Mr. Frame seconded that the Board adopt and incorporate the Stipulated Order into the Board's Final Order, and the motion passed unanimously 4 to 0.

4. Appeal #02-08-AQB:

Appeal #02-08-AQB (Guardian Fiberglass) was filed with the Board on May 8, 2002, and was scheduled for hearing during the July 10, 2002, Board meeting. However, on June 26, 2002, the parties submitted a Consent Order which withdraws the appeal. Although no further action was required by the Board, the members reviewed this Consent Order.

5. Appeal #02-10-AQB

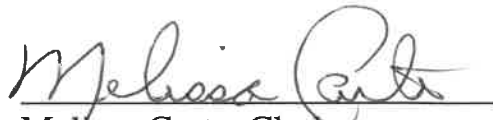
Appeal #02-10-AQB (Michael Abshire) was filed on May 23, 2002, and is scheduled for hearing during the August 7, 2002, Board Meeting. However, on June 27, 2002, Columbia Natural Resources, which is the owner and operator of the facility that is the permit holder, filed a Motion to Intervene. WV Code §22B-1-7(e), provides that in any appeal brought by a third party, the permittee or regulated entity shall be granted intervenor status as a matter of right where issuance of a permit or permit status is the subject of the appeal. Further, 52 CSR 1-2.2.e provides that the holder of the permit shall be considered a party in interest in the appeal proceedings and shall have the right to intervene in the appeal.

Whereupon, Mr. Foster moved and Mr. Frame seconded that the Board grant Columbia Natural Resources' Motion to Intervene and afford them Intervenor status as a party appellee, and the motion passed unanimously 4 to 0.

WHEREUPON, Mr. Foster moved and Mr. Calvert seconded that the Board members be paid for participating in this meeting. The Board members did not accept payment for the May meeting and

WHEREUPON, at 10:20 a.m., Mr. Calvert moved and Mr. Foster seconded that the July 10, 2002, Air Quality Board meeting be adjourned and the motion passed unanimously 4 to 0.

I hereby certify that the forgoing is a true and correct record of the proceedings of the meeting held on July 10, 2002, by the West Virginia Air Quality Board. These minutes were approved by the Air Quality Board on August 7, 2002.


Melissa Carte, Clerk