

Air Quality Board
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MINUTES
January 16, 2007

A public meeting of the Air Quality Board was held on Tuesday, January 16, 2007 in Charleston, West Virginia. Members present were Douglas Hudson, Chairperson; Mr. Randy C. Curtis; Mr. Robert L. Foster; and Mr. R. Thomas Hansen. Members not present were Mr. Dick Calvert and Mr. J. Michael Koon.

Staff members present were Wendy E. Radcliff, Esquire, Counsel for the Board; Jackie Shultz, Clerk of the Board; and Kathy Coleman, Administrative Secretary.

It being determined a quorum was present, Mr. Hudson called the meeting to order and the Board proceeded with its agenda.

Minutes of June 6, 2006 Meeting

Upon a motion duly made by Mr. Foster and seconded by Mr. Curtis, the Board voted unanimously to approve the June 6, 2006 minutes as drafted.

Minutes of August 29, 2006 Meeting

Upon a motion duly made by Mr. Foster and seconded by Mr. Curtis, the Board voted unanimously to approve the August 29, 2006 minutes as drafted.

Budget Update

The Board was provided with a financial update for the period of July 1, 2005 through June 30, 2006. The Air Quality Board ended fiscal year 2006 with a surplus of general revenue funds in the amount of \$33,192, and the Environmental Quality Board's surplus of general revenue funds totaled \$40,483. Additionally, the Environmental Quality Board's Groundwater Special Operating Fund year end balance totaled \$87,074. The surplus in general revenue funds was due in large part to the savings realized from contracting with the Attorney General's Office for a part-time attorney rather than hiring a full-time attorney. The surplus of \$87,084 in the EQB Groundwater Special Operating Fund is non-appropriated funding and will be carried forward to fiscal year 2007. Concerns were raised with regard to whether the non-appropriated funds would be absorbed by the West Virginia Department of Environmental Protection or remain with the Boards. Ms. Coleman stated that, based on her conversations with WVDEP personnel, the WVDEP is willing to allow the Boards to retain control of these funds due to the fact that they still hear appeals regarding ground water permits.

The Board was provided with a financial update for the period of July, 2006 - December, 2006. The Air Quality Board has spent 46% of its budget as of December 31, 2006.

The Board was advised that Ms. Radcliff will be attending the National Judicial College conference "Administrative Law: Fair Hearing" to be held April 23 - May 3, 2007 in Reno, Nevada. The projected total cost of \$4,000.00 will be equally divided between the Air Quality Board, Environmental Quality Board and Surface Mine Board. Upon a motion duly made by Mr. Hansen and seconded by Mr. Foster, the Board voted unanimously to approve the expenditure.

Purchase Card Reports

The quarterly report for July - September, 2006 was provided to the Board. The report details the purchase card transactions for this period and includes the Citigroup monthly statements.

The quarterly report for October - December 2006 was provided to the Board. The report details the purchase card transactions for this period and includes the Citigroup monthly statements.

Upon a motion duly made by Mr. Hanson and seconded by Mr. Foster, the Board voted unanimously to approve all purchase card reports.

Proposed Revisions to the Procedural Rules Governing Appeals Before the Environmental Quality Board 46 C.S.R. 4.

The Board was advised that the comment period for the proposed revisions to the procedural rules ended on December 15, 2006. Comments were received from the West Virginia Chamber of Commerce and David L. Yaussey, Esquire of Robinson & McElwee, on behalf of the West Virginia Manufacturers Association and the West Virginia Oil and Natural Gas Association urge the Board

The WV Chamber of Commerce stated it is supportive of the Boards' decision to update the rules to include the current location at DEP's headquarters in Kanawha City and offered these additional comments for the Boards' consideration. The Chamber suggested that the Boards update the process set forth in the procedural rules for filing of documents. They specifically urge (1) that §4.2 be revised to allow filings to be made electronically and provide that such a filing would be as effective as personal delivery, express mail or US Mail; (2) that §4.3 be reviewed to provide that a filing be effective upon actual filing with the Board, upon deposit in US Mail or upon deposit in express mail and that electronic filings be effective when sent; (3) that §4.4 be revised to provide that response time be tied to the date of personal delivery, and the date an email is sent; and (4) that three days be added to the date of postmark in US Mail or the date of filing in express mail.

With regard to the certified record, the Chamber urged the Board to adopt a consistent practice regarding the distribution of these documents to parties in proceedings. The Chamber pointed out that the Surface Mine Board automatically sent the certified record upon receipt from DEP while the AQB and EQB require a FOIA request. The Chamber feels this is unduly cumbersome and suggests this be addressed in the procedural rules to provide clarity and consistency regarding the availability of the certified record to parties to an appeal.

Finally, in an effort to assist parties who may be unfamiliar with the discovery practices, the Chamber proposed that the procedural rules be modified to include time limits for filing and responding to discovery requests.

David L. Yaussy, Esquire, of the law firm Robinson & McElwee, on behalf of the West Virginia Manufacturers Association and the West Virginia Oil and Natural Gas Association, urged the Board to consider two additional changes. They suggested that the Board substitute the language in §2.2c for that which is currently found in the Board's appeal form, and require the same information in both documents. With regard to discovery, they suggested that the provisions of *W.Va. Code* §22B-1-8 could be placed in the Board's rule so that all parties are aware of the discovery that can take place without leave of the Board. In addition, establishing response deadlines of thirty days from date of receipt may help eliminate some of the current confusion as to when responses are due.

Ms. Radcliff informed the Board that the suggestions made are for the most part in-house process changes that can be made without a rule change.

Board Meeting Dates

The Board scheduled meeting dates as follows: March 20, April 17, and May 15, 2007.

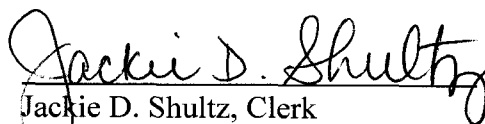
Personnel

The Board was provided with a copy of the West Virginia Department of Environmental Protection's Employee Performance Appraisal Form. After discussion, the Board agreed to utilize the appraisal form for employee evaluations. Upon a motion duly made by Mr. Foster and seconded by Mr. Hansen, the Board voted unanimously to adopt the WVDEP Evaluation Form for its own use.

Adjournment

There being no further business to come before the Board, the meeting was adjourned.

I hereby certify that the foregoing is a true and correct record of the proceedings of the Air Quality Board meeting held on January 16, 2007. The Air Quality Board unanimously approved these minutes on September 18, 2007.


Jackie D. Shultz, Clerk
Environmental Quality Board