

MINUTES

April 8, 2003

I. General

On April 8, 2003, a quorum of the members of the Air Quality Board conducted a meeting at the Board's office located at 1615 Washington Street, E., Charleston, West Virginia. The Chair, Mike Koon, called the meeting to order at 9:00 a.m.

The Board members present were:

Dick Calvert

Robert Foster

Tom Hansen

Randy Curtis, designee of the Bureau for Public Health

Doug Hudson, designee of the Commissioner of the WV
Department of Agriculture

Board members participating telephonically were:

Mike Koon, Chair

Absent Board members were:

Jean Neely

Staff members present were:

Becky Charles, Attorney

Melissa Carte, Clerk

Libby Chatfield, Office Supervisor

Kathy Coleman, Administrative Secretary

II. Administrative Matters

1.) Review and Approval of the February 11, 2003, AQB Meeting Minutes:

The minutes of the February 11, 2003, Air Quality Board meeting were presented to the Board members for consideration. Whereupon, Mr. Foster moved and Mr. Hudson seconded that the minutes of the February 11, 2003, Air Quality Board meeting, be approved as written, and the motion carried unanimously 6 to 0.

2.) General Budget Report:

a.) Monthly Budget Update:

Ms. Coleman provided the Board members with a memo which provides a financial update through February 28, 2003. That memo is attached to and made a part of these minutes as Exhibit "A". As of February 28, 2003, the Boards have spent 61% of the combined budgets. That eight month period represents 67% of the fiscal year.

In addition, the Board reviewed the fiscal year 2004 budget reductions. The Boards must reduce 10% from the entire budget and an additional 3% from personal services – which will be comprised of a reduction of \$12,291 from the AQB budget and a reduction of \$19,742 from the EQB budget and will result in an overall budget reduction of \$32,033. This is more than half of the supplemental funding that was appropriated by the Legislature in 2002.

b.) Additional Cost Reduction Proposals and Analysis:

The Board reviewed the proposed staff suggestions for reduction of expenses. After review the Board approved reducing the budget line item for staff training and development from \$1,500 to \$750 and the staff travel from \$2,000 to \$1,500, provided that additional monies could be added back to the line item if necessary, and the motion carried unanimously 6 to 0.

Currently the Board is required to send all final orders entered by the Board by certified mail. Receipt of the Final Order establishes the time period for filing an appeal of that Final Order in Circuit Court. Staff has requested that the Board approve the distribution of certain appeal orders (those which will not be appealed) such as Agreed Orders, Settlement Agreements or

Appeal Withdrawals through regular mail and interdepartmental mail. This could result in a significant savings to the Board. After discussion, Mr. Foster moved and Mr. Hansen seconded that the Board staff send final decisions which are entered by the Board, but which will not likely be appealed, through regular and interdepartmental mail, and the motion carried unanimously 6 to 0.

Board members also agreed that the staff should begin to duplex copy all materials mailed in the board meeting packets and that local members could pick up their materials. Also, Ms. Coleman will provide copies of the travel forms in the meeting packets rather than sending it out separately.

Ms. Coleman contacted Verizon after researching a detailed billing and it was determined that because of a coding error, the Boards were being overcharged \$12.00 each month. In addition, she is currently working with the janitorial service in an effort to reduce the cost of the services.

In another cost cutting measure the Board staff cancelled the subscriptions to the WV Register, the WV Code of State Rules Monthly Supplement and the Underground Storage Tank Guide. Also, staff will reduce the length of legal ads regarding public hearings which are published in the newspaper approximately eight times each year.

Another cost cutting option suggested by the staff was to discontinue the Unemployment Compensation Insurance. However, after discussion, Mr. Hansen moved and Mr. Foster seconded that the Board retain the insurance, and the motion carried unanimously 6 to 0. Mr. Hansen then moved and Mr. Calvert seconded that the Board accept all other cost cutting measures suggested by staff, and the motion carried unanimously 6 to 0.

The Board members then discussed ways of reducing the cost of Board meetings. Currently the Board members receive mileage, \$55.00 for expenses, \$115 for lodging, and a \$150 per diem for each meeting. After reviewing several options, Mr. Hansen moved and Mr. Calvert seconded that the Board discontinue the automatic \$55.00 expense payment and require reimbursement of hotel and meal expenses to be receipt based with the appropriate caps in place. The Board members will also continue to receive mileage expenses and the per diem. The motion carried 6 to 0, and the new reimbursement policy will become effective on May 6, 2003.

c.) Fiscal Year 2004 Preliminary Expenditure Schedule:

Ms. Coleman provided the Board members with a draft expenditure schedule for fiscal year 2004 which details all projected expenses. A copy of this memo is attached to and made a part of these minutes as Exhibit "B". This expenditure schedule can be adjusted as necessary by amending the budget. The Air Quality Board's total projected expenses for fiscal year 2004 are \$103,029. The Air Quality Board and the Environmental Quality Board combined projected expenses are \$316,280. The Boards have a combined approved budget of \$281,315 with a surplus balance from 2003 of \$26,000, thus leaving a projected shortfall of (\$8,965.00) for fiscal year 2004. The Board asked Ms. Coleman to update this expenditure schedule to reflect the changes made at the meeting, including the staff suggestions for reducing the budget, expense reimbursement reductions and the number of meetings budgeted.

3.) Review the calendar of events for the months of April and May:

The Board members reviewed a calendar of events for the months of April and May, 2003. Ms. Coleman informed the Board members that the Fiscal Year 2004 Expenditure Schedule is due in the DEP budget office by April 21, 2003.

Also, interested staff members will be attending a meeting on April 22, 2003, with other employees of the Department of Environmental Protection in order to discuss the agency's display for the WV State Fair. Staff hopes to participate at the Fair this year.

In addition, Board members were informed that Ms. Charles and Ms. Carte would like to attend a conference regarding Public Records and Open Meetings in West Virginia which will take place on June 17, 2003, in Charleston. The cost of the seminar is \$279.00 per participant. The Board members determined that this would be an appropriate conference for staff to attend. In addition, Ms. Charles would receive Continuing Legal Education (CLE) credits for attending the class.

4.) Schedule joint meeting with the Environmental Quality Board regarding budget matters:

The Board members discussed whether it is necessary to conduct another joint meeting with the Environmental Quality Board to discuss budget matters. The Air Quality Board members determined that the Chairs of the Air Board and the Environmental Quality Board should discuss the current budget matters to determine whether there are any outstanding issues which need to be addressed at a joint Board meeting prior to scheduling such a meeting.

5.) Legislative Update:

a.) House Bill 2076:

House Bill 2076 is a bill to provide the Environmental Boards, including the Air Quality Board, with the specific authority to employ legal counsel. The Board members were informed that this bill was not approved by the Legislature.

b.) House Bill 3155:

House Bill 3155 establishes a change to the mission of the Air Quality Board. It modifies the review and notification procedures associated with the release of information required for air quality permits through Freedom of Information Act requests, and provides that the Director of the Department of Environmental Protection shall promulgate legislative rules regarding the protection of records, reports, data or information, and trade secrets. The Air Quality Board was given the authority to adjudicate appeals of agency decisions relating to the confidentiality of trade secrets.

III. Misc.

The Board members were provided with a letter from the Appalachian Center for the Economy and the Environment dated March 14, 2003, regarding a Notice of Intention to File a Petition for Writ of Mandamus. The WV Council of Trout Unlimited intends to petition the Kanawha County Circuit Court for a writ of mandamus directing the Surface Mine Board to consolidate with other State Boards (the Air Quality Board and the Environmental Quality Board) in accordance with State law. Currently only

the Air Quality Board and the Environmental Quality Board are consolidated.

WV Code Section 22B-1-1 et seq. enacted in 1994, establishes the Air Quality Board, the Environmental Quality Board and the Surface Mine Board. The statute provides that “it is the intent of the Legislature to consolidate and combine the legal, technical and support personnel of the three Boards to provide for consistent appellate process and to maintain continuity of the Boards’ functions and membership. The Boards shall share physical facilities, hearing rooms, technical and support staff and general overhead. In addition, it is the policy of this state to retain and maintain adequate funding and sufficient support personnel to ensure knowledgeable and informed decisions.”

The petition states that the three Boards have not consolidated and that has prejudiced the rights of citizens and diminished the Boards effectiveness. The Air Quality Board and the Environmental Quality Board notify the public of meetings and hearings via the internet, maintain websites and share an attorney as well as technical and support staff. The Surface Mine Board has only one part-time staff member, and does not employ an attorney or technical support personnel.

The Department of Environmental Protection filed a response to this letter stating that with the construction of the new building which will house the entire agency, the DEP will be in the position to consolidate all of the Boards. The building is slated for completion in the fall of 2004, and at that time the DEP will evaluate possible consolidation of the Boards’ staff, overhead issues and meeting rooms. Also the Surface Mine Board is in the process of creating a website and the DEP’s Public Information Office will post the Boards’ meeting notices on the DEP website.

The Air Quality Board members requested that Mr. Koon discuss the matter with the Chair of the Environmental Quality Board during the upcoming meeting of the Boards’ Chairs.

Whereupon, Mr. Koon left the meeting and Mr. Foster chaired the remainder of the meeting.

IV. Appeals

1.) Appeal No. 03-03-AQB (Monongahela Power/Allegheny Energy):

Appeal No. 03-03-AQB (Monongahela Power/Allegheny Energy) was filed with the Board on February 7, 2003, and was set for hearing during the April 8, 2003, Board meeting. However, on April 3, 2003, the Board continued the evidentiary hearing until the May 6, 2003, Board meeting. On March 27, 2003, the WV Chamber of Commerce filed a Motion to Intervene in the Appeal and all responses have been filed. The Board considered this Motion to Intervene and the Responses during the April Board meeting.

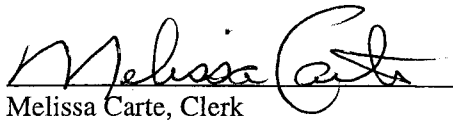
The Board determined that the Motion to Intervene was not timely filed and that allowing intervention at this time could unduly delay the process, especially the negotiation process, and could prejudice the rights of the original parties. In addition, the Board determined that the Chamber's interests were adequately represented by counsel for the Appellant. The Board also considered the fact that the permit in controversy here is an individual permit issued to the Appellant and that no precedent will be set by the final disposition of this individual appeal. After discussion, Mr. Hansen moved and Mr. Hudson seconded that the Board deny the WV Chamber of Commerce's Motion to Intervene in Appeal #03-03-AQB (Monongahela Power/Allegheny Energy), and the motion carried unanimously 5 to 0.

2.) Appeal #03-02-AQB (Elkem Metals):

Appeal #03-02-AQB was filed with the Board on January 27, 2003. On February 24, 2003 the Appellee filed a Motion to Dismiss this Appeal stating that the appeal was premature since no final action had been taken by the Agency and consequently there were no issues for review by the Board. The Appellant filed a Response to the Appellee's Motion to Dismiss in which they did not object to the dismissal of the appeal. After discussion, Mr. Hansen moved and Mr. Hudson seconded that the Board GRANT the Appellant's Motion to Dismiss Appeal #03-02-AQB (Elkem Metals) and that the appeal be removed from the Board's docket, and the motion carried unanimously 5 to 0.

Whereupon, Mr. Calvert moved and Mr. Curtis seconded that the April 8, 2003, Air Quality Board meeting be adjourned and the motion carried unanimously 5 to 0. The Board members opted to be paid for attending this meeting.

I hereby certify that the forgoing is a true and correct record of the proceedings of the meeting held on April 8, 2003, by the West Virginia Air Quality Board. These minutes were approved by the Air Quality Board on May 6, 2003.


Melissa Carte, Clerk