

## **MINUTES**

**April 20, 2004**

### **I. General**

On April 20, 2004, 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, Robert Foster, called the meeting to order at 9:00 a.m.

The Board members present were:

Robert Foster, Chair  
Dick Calvert  
Randy Curtis, designee of the Bureau for Public Health  
Tom Hansen

Absent Board members were:

Doug Hudson, designee of the Commissioner of the WV  
Department of Agriculture  
Mike Koon  
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 November 13, 2003, Air Quality Board Meeting Minutes:

The minutes of the November 13, 2003, Air Quality Board meeting were presented to the Board members for consideration. After review, Mr. Hansen moved and Mr. Curtis seconded that the minutes of the November 13, 2003, Board meeting be approved as written, and the motion carried unanimously 4 to 0.

### 2.) Monthly Budget Report:

The Board members reviewed the budget report provided by Ms. Coleman. A copy of the report is attached to and made a part of these minutes as Exhibit "A". As of March 31, 2004, the Boards have spent 74.34% of the combined budgets which represents a nine month period or 75% of the fiscal year.

### 3.) Fiscal Year 2004 – Year-End Analysis:

The Board members were informed that based on the projected expenses for the remainder of the 2004 fiscal year, the Boards will experience a projected funding shortfall of approximately \$7,000.00 for the combined budgets.

The Board members discussed funding options, including canceling Board meetings or requesting additional funding from the WV Department of Environmental Protection. Chairman Foster stated that he will discuss the budget problems and potential resolutions with Ed Snyder, Chair of the Environmental Quality Board.

### 4.) Fiscal Year 2005 Budget:

The Board members were informed that the legislature has passed the budget for the 2005 fiscal year. The Air Quality Board received a total of \$82,514.00 (after the mandated 9% cut) which includes a slight increase of \$448.00 over the 2004 fiscal year budget. However, although the Environmental Quality Board submitted a budget request of \$178,766 (after the mandated 9% cut) the legislature approved only \$155,368.00 which

reduces the EQB's funding by \$23,398.00 and comes directly from the "personal services" line item of the budget.

The Boards' Chairs will be meeting with Randy Huffman, Assistant Secretary of the Department of Environmental Protection (WVDEP), on April 28, 2004, to discuss the budget reduction and the immediate need for supplemental funding from the WVDEP.

Ms. Coleman included a general budget history which shows that from fiscal year 2002 through fiscal year 2005, the Boards' budget, due to various mandated budget cuts, has been decreased by a total of \$79,744.

#### 5.) Purchasing Card Reports:

The Board members were provided with the quarterly Purchase Card report which details the purchases made by authorized staff members for the months of October 2003 through December 2003. A copy of this report is attached to and made a part of these minutes as Exhibit "B". After a review of the report, Mr. Calvert moved and Mr. Curtis seconded that the Board approve the Purchase Card report, and the motion carried unanimously 4 to 0.

The Board members were provided with the quarterly Purchase Card report which details the purchases made by authorized staff members for the months of January 2004 through March 2004. A copy of this report is attached to and made a part of these minutes as Exhibit "C". After a review of the report, Mr. Hansen moved and Mr. Calvert seconded that the Board approve the Purchase Card report, and the motion carried unanimously 4 to 0.

#### 4.) Website Update:

The Board members were informed that the average number of hits per month on the AQB website from December 2002 through March 2004, were 466 and the average number of visitors per month were 272. Ms. Coleman will continue to provide the Board with a website update every six months.

5.) Schedule Future Board Meetings:

Currently the Board has two appeals pending which may garner a lot of public interest and which will require several Board meetings. The Board members scheduled Air Quality Board meetings for May 18, 2004, June 1<sup>st</sup>, 2<sup>nd</sup>, 24<sup>th</sup> and 25<sup>th</sup>, 2004, as well as July 12<sup>th</sup> and 13<sup>th</sup>, 2004.

However, the Board Chair noted that because of the budget shortage, the Board may not be able to proceed with these Board meetings and appeal hearings.

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

The Board members reviewed the calendar of upcoming events for the months of April and May.

7.) Consolidation of the Air Quality Board and the Environmental Quality Boards with the Surface Mine Board:

In 1994 the state code was changed to require the consolidation of three Boards – the Air Quality Board, the Environmental Quality Board and the Surface Mine Board. The Air Quality Board and the Environmental Quality Board consolidated at that time, however, the Surface Mine Board did not participate in that consolidation. A lawsuit has now been filed requesting that the Surface Mine Board be mandated by the Courts to move forward with the consolidation with the AQB and EQB.

Chairman Foster informed the Board members that he and Ed Snyder will be meeting with Tom Michael, Chair of the Surface Mine Board regarding the consolidation of the Surface Mine Board with the AQB and the EQB. However, although the AQB and EQB receive their funding from the legislature, at this time the Surface Mine Board does not appear to have a budget separate from the WVDEP. The AQB and EQB budgets cannot absorb to expenses of the Surface Mine Board.

8.) House Bill No. 4140:

During the past legislative session House Bill 4140 passed. This Bill requires the West Virginia Ethics Commission to establish a code of conduct for state administrative law judges which will include civil penalties and

sanctions for violations. Although it appears that this particular rule will not apply to the members of the Air Quality Board, Ms. Charles stated that there are other provisions, such as the Administrative Procedures Act, which controls the conduct of the Board members during appeals and evidentiary hearings.

### **III. Appeals**

#### 1.) Appeal No. 04-01-AQB (Murphy Consolidated):

Appeal No. 04-01-AQB (Murphy Consolidated) was filed with the Board on January 26, 2004, and was scheduled for hearing during the April 20, 2004, Board meeting. However, on April 13, 2004, the parties filed a Joint Motion to Continuance citing ongoing settlement negotiations which will likely resolve the issues of the appeal without the need for a hearing. The Board Chair granted the continuance and rescheduled the hearing until the May AQB meeting. However, the Order Granting Continuance informed the parties that no further continuances would be granted on the basis of continued settlement negotiations. If the Appeal is not settled prior to the May Board meeting, the parties will be required to appear before the Board in May 2004 for the evidentiary hearing.

#### 2.) Appeal No. 04-02-AQB (Jamison):

Appeal No. 04-02-AQB (Jamison) was filed with the Board on April 1, 2004, and is set for hearing during the May 2004 Board meeting. This is a third party appeal and the Appellant is appealing the issuance of Permit No. R-14-0024 which was issued to Longview Power Company on March 2, 2004, by the Division of Air Quality and is for the construction of an electrical power generation facility.

On April 6, 2004, the permit holder filed a Motion to Intervene in the Appeal. After discussion of the Motion to Intervene, Mr. Hansen moved and Mr. Curtis seconded that the Board GRANT the Longview Power Company's Motion to Intervene, and the motion carried unanimously 4 to 0. The Board found that the Appellant filed an appeal that questions the issuance, terms and conditions of a permit held by Longview, and under the statute the permit holder has a right to intervene in the appeal.

The Appellant in this appeal filed an appeal of a permit issued by the WVDEP to Longview Power Company. Another appeal of this permit was filed by the Sierra Club, National Parks Conservation Association, and Trout Unlimited (Appeal No. 04-03-AQB). On April 6, 2004, the permit holder filed a Motion to Consolidate these two appeals. After discussion, Mr. Hansen moved and Mr. Curtis seconded that the Board deny the Motion to Consolidate these appeals, and the motion carried unanimously 4 to 0. The Board agreed with the Appellant that there is actually little overlap in actual issues raised by the two appeals and found that the administration of these appeals would be easier managed if they are kept separate. The Board will however, conduct the separate evidentiary hearings close in time.

3.) Appeal No. 04-03-AQB (Sierra):

Appeal No. 04-03-AQB was filed with the Board on April 2, 2004, and is set for hearing during the May 2004 Board meeting. This is a third party appeal and the Appellant is appealing the issuance of Permit No. R-14-0024 which was issued to Longview Power Company on March 2, 2004, by the Division of Air Quality and is for the construction of an electrical power generation facility.

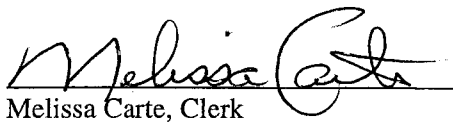
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The Appellant in this appeal filed an appeal of a permit issued by the WVDEP to Longview Power Company. Another appeal of this permit was filed by Jarrett Jamison (Appeal No. 04-02-AQB). On April 6, 2004, the permit holder filed a Motion to Consolidate these two appeals. After discussion, Mr. Hansen moved and Mr. Curtis seconded that the Board deny the Motion to Consolidate these appeals, and the motion carried unanimously 4 to 0. The Board agreed with the Appellant that there is actually little overlap in actual issues raised by the two appeals and found that the administration of these appeals would be easier managed if they are

kept separate. The Board will however, conduct the separate evidentiary hearings close in time.

Mr. Hanson moved and Mr. Calvert seconded that the Board members be paid the \$150 per diem for participating in this meeting. Whereupon, Mr. Calvert moved and Mr. Hanson seconded that the April 20, 2004, meeting of the Air Quality Board be adjourned at 10:15 a.m. and the motion carried unanimously 4 to 0.

I hereby certify that the forgoing is a true and correct record of the proceedings of the meeting held on April 20, 2004, by the West Virginia Air Quality Board. These minutes were approved by the Air Quality Board on May 18, 2004.

  
Melissa Carte, Clerk