

MINUTES

December 14, 2004

I. General

On December 14, 2004, a quorum of the members of the Air Quality Board conducted a meeting at the Board's office located at 601 57th St., SE, Charleston, West Virginia. The Chair, Tom Hansen, called the meeting to order at 9:00 a.m.

The Board members present were:

Robert Foster

Dick Calvert

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:

Tom Hansen, Chair

Mike Koon

Absent Board members were:

Jean Neely

Staff members present were:

Melissa Carte, Clerk

Kathy Coleman, Administrative Secretary

Whereupon, the Board addressed the issues set forth in the meeting agenda as follows:

I. Administrative Matters

- 1.) Review and Approval of the October 14, 2004, Air Quality Board Meeting Minutes:

Whereupon, the Board reviewed the draft minutes of the October 14, 2004, Board meeting. After discussion, Mr. Hudson moved and Mr. Calvert seconded that the October 14, 2004, meeting minutes be approved as written, and the motion carried unanimously 6 to 0.

- 2.) Review and Approval of the minutes of the October 14, 2004, joint meeting of the Air Quality Board and the Environmental Quality Board:

Whereupon, the Board reviewed the draft minutes of the October 14, 2004, joint Board meeting. After discussion, Mr. Hudson moved and Mr. Calvert seconded that the October 14, 2004, joint meeting minutes be approved as written, and the motion carried unanimously 6 to 0.

- 3.) Review and Approval of the minutes of the October 29, 2004, joint meeting of the Air Quality Board and the Environmental Quality Board:

Whereupon, the Board reviewed the draft minutes of the October 29, 2004, joint Board meeting. After discussion, Mr. Hudson moved and Mr. Calvert seconded that the October 29, 2004, joint meeting minutes be approved as written, and the motion carried unanimously 6 to 0.

- 4.) Budget Report:

General Budget Report

Ms. Coleman provided the Board with a financial update through October 31, 2004. As of October 31, 2004, the Boards have spent 37% of the combined budget which represents a four month period, or 33% of the fiscal

year. A copy of this budget report is attached to and made a part of these minutes as Exhibit "A".

Projected Expenses

As requested by the Boards, Ms. Coleman provided reports detailing projected expenses from November 1, 2004, through June 30, 2005. The reports are based on the following assumptions: that the Boards do not conduct Board meetings and will not incur Board meeting expenses; that the Boards do not employ a legal counsel and will not pay salary and benefits; and that the Boards do not employ a technical advisor and will not pay salary and benefits for that period. Based on these assumptions, the analyses project an excess of funds in the amount of \$26,292.62 for the AQB and \$47,461.94 for the EQB. The combined total in excess funds for the remainder of fiscal year 2005 is \$73,754.56. These remaining funds may be expended by each Board to cover Board meeting expenses, and any expenses incurred for both the legal counsel and technical advisor positions. Copies of these budget analyses are attached to and made a part of these minutes as Exhibit "B".

In addition, Ms. Coleman provided the Board members with an analysis of projected Board meeting expenses. This analysis is based on the assumption that the Air Quality Board will conduct six Board meetings with all members attending and that the Environmental Quality Board will conduct six Board meetings with all members attending. The analysis also provides funding for court reporter fees including the cost of hearing transcripts, and fees for legal services from the Attorney General's office. In addition, the analysis provides funding for some members of the EQB to attend Legislative Session meetings, and for the Chair of the EQB to attend six Nutrient Criteria Committee meetings. A copy of this analysis is attached to and made a part of these minutes as Exhibit "C".

Based on the assumptions outlined above, the Air Quality Board's projected meeting expenses would be \$15,757 and the EQB's projected expenses would be \$33,307. **The combined total of projected expenses for the remainder of fiscal year 2005 is \$49,064.** This would leave an excess in funding for the AQB of \$10,535.62 and an excess in funding for the EQB of \$14,154.94. **The combined total of excess funding for fiscal year 2005 is \$24,690.56.** These funds may be used by the Boards to cover extra expenses

such as additional Board meetings, public hearings, computer equipment upgrades, and Technical Advisor fees.

Available Funding for Fiscal Year 2005

In addition the Air Quality Board will receive \$21,000 from the Governor's Contingency fund and the Environmental Quality Board will receive \$34,000 from the Governor's Contingency fund. This \$55,000 was provided by the Governor to assist the Boards in continuing to carry out their mandated function during fiscal year 2005. With these additional funds the Air Quality Board will have excess funding for fiscal year 2005 in the amount of \$31,535.62 and the Environmental Quality Board will have excess funding for fiscal year 2005 in the amount of \$48,154.94. **Including the additional funding from the Governor's Contingency fund, the Boards will have a combined total excess funding for fiscal year 2005 in the amount of \$79,690.56.**

Purchase Card Report

Ms. Coleman presented the Board members with a Purchasing Card Report which details the purchases made by authorized staff members for the months of July through September 2004 and also provided the members with the bank statements. After a review of the statement Mr. Foster moved and Mr. Hudson seconded that the Board accept the report, and the motion carried unanimously 6 to 0.

5.) Personnel Matters:

Although the Boards now have excess funding for fiscal year 2005 in the amount of approximately \$79,690.56, this excess is a result of the loss of two of the Boards' four staff members (the Boards' legal counsel and the EQB's technical advisor) and \$55,000 in temporary funding provided from the Governor's Contingency fund. The Boards have not received permanent additional funding. The Air Quality Board members determined that until permanent additional funding is provided to the Board, the Board cannot hire fulltime legal counsel. After the conclusion of the 2005 legislative session the Board will evaluate the fiscal year 2006 budget to determine whether it is feasible to hire a fulltime staff attorney.

Until the Board's current budget issues have been permanently resolved, the Board has procured legal assistance from the State Attorney General's office. That office will provide the Boards with an attorney on a part-time basis of twenty-five hours per week. The Boards will be responsible to pay the hourly rate of \$38.00 but the Attorney General's office will cover the cost of employee benefits. The Attorney General's office has assigned Wendy Radcliff to serve as the Boards' legal counsel and she will begin on December 16, 2004.

6.) Miscellaneous Matters:

The Board staff informed the Board members of several matters which may need to be addressed. Currently, staff is experiencing difficulties with two printers in the office, these printers are eight years old and need to be replaced. The Board determined that the staff could purchase new printers.

Also, staff members are currently utilizing outdated computers and would like the Board to consider replacing two of these computers and monitors. In the past the Board has received replacement computers from the WV Department of Environmental Protection that were actually computers which were originally intended to be placed in surplus property. The Board Chair requested that the staff provide him with information regarding the office computers including the current operating systems as well as the software packages being used in order to determine the necessary upgrades. Mr. Hansen will review the information and make a recommendation to the other Board members during the next Board meeting.

In addition, the software program Amicus which is used by the Board clerk on a daily basis is not functioning properly. This program will need to be repaired or replaced as soon as possible. The clerk will continue to work with the Amicus technical support team to determine whether the problem is within the software or the computer and update the Board members during the next Board meeting.

The Board clerk also discussed the procedure utilized by the Board to complete service of process. Currently, all Board Orders are served on all parties of an appeal by certified mail with return receipt requested which costs the Board approximately \$5.00 per letter and requires additional staff time to complete. However now that the Board is physically located in the

same building as the Office of Legal Services and also the Division of Air Quality, two agencies which are involved in all AQB appeals, it would be less expensive and less time consuming to hand deliver these Orders. The Board determined that these Orders could be hand delivered provided that the parties served provide some form of written acknowledgement of the receipt of the Board Order.

7.) Establish Future Board Meetings Dates:

The Board scheduled Board meetings on January 18, 2005, February 15, 2005, March 15, 2005, and April 19, 2005.

II. Appeals

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

Appeal No. 04-01-AQB was filed with the Air Quality Board on January 26, 2004, by Murphy Consolidated Industries. The Board conducted the evidentiary hearing on this appeal during the May 18, 2004, AQB Meeting. The parties were also provided with the opportunity to submit Proposed Findings of Fact and Conclusions of Law and Response Briefs. The Board reviewed these pleadings and made a decision in Appeal No. 04-01-AQB during the October 14, 2004, Board meeting. The Board members were informed that the Final Order was completed and Entered on November 12, 2004. Appeal No. 04-01-AQB (Murphy) has now been removed from the Board's docket.

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

Appeal No. 04-02-AQB (Jamison) was filed with the Board on April 1, 2004. The evidentiary hearing was conducted on June 24, 2004, and July 12, 2004. The parties were also provided with the opportunity to submit Proposed Findings of Fact and Conclusions of Law and Response Briefs. The Board reviewed these pleadings and made a decision in Appeal No. 04-02-AQB during the October 14, 2004, Board meeting. The Board members were informed that the Final Order was completed and Entered on

November 30, 2004. Appeal 04-02-AQB (Jamison) has now been removed from the Board's docket.

3.) Board Docket of Pending Appeals:

The Board members then reviewed the status of the four appeals which are currently pending before the Air Quality Board. Roland Huson, of the WV DEP's Division of Legal Services was present at the meeting and provided an update regarding some of these appeals.

Appeal No. 04-04-AQB (Juliana Mining Co.)

This appeal was filed with the Board on June 16, 2004, by Julianna Mining Company regarding a Notice of Violation and Cease and Desist Order which was issued to the Company by the WVDEP for failure to notify the Division of Air Quality regarding the demolition of their prep plant. The Evidentiary Hearing in this appeal was set for October 25, 2004, but was continued because the Board did not have adequate legal counsel at that time. Mr. Huson informed the Board that the issues of this appeal have been resolved and that a settlement agreement will be presented to the Board for consideration within the next few days.

Appeal No. 04-05-AQB (Oxbow)

Appeal No. 04-05-AQB was filed with the Board on July 2, 2004, by Oxbow Carbon and Mineral, LLC and is in regards to certain terms and conditions contained in a Coke Screening Operation permit. The Evidentiary Hearing in this appeal was set for September 29, 2004. However, on August 20, 2004, the Appellant filed a Motion to Stay the Proceedings stating that the outcome of another AQB appeal (Appeal No. 04-01-AQB Murphy) could resolve this appeal without the need for an evidentiary hearing. This motion was granted and a Status Report from the Appellant is now due. Mr. Huson stated that he has not been in contact with the Appellant and Ms. Carte stated that she would contact the Appellant to obtain the status report. The Board members will review the status report during the January 18, 2004, Board meeting to determine whether further action is required.

Appeal No. 04-06-AQB (Techsol Chemical)

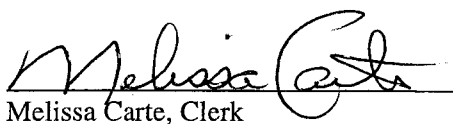
Appeal No. 04-06-AQB was filed on August 6, 2004, by Techsol Chemical Company and is in regards to a Notice of Violation and a Cease and Desist Order issued by the WVDEP for the transloading of coal tar light oil without vapor balancing equipment causing a violation of air quality standards. The Evidentiary Hearing in this appeal was set for October 25, 2004, but was continued because the Board did not have adequate legal counsel at that time. The Board scheduled the Evidentiary Hearing in Appeal No. 04-06-AQB for January 18, 2005, beginning at 9:00 a.m.

Appeal No. 04-07-AQB (Catenary Coal)

Appeal No. 04-07-AQB was filed with the Board on October 15, 2004, by Catenary Coal Company and is in regards to a Notice of Violation and Cease and Desist Order issued by the WVDEP for failure to maintain adequate dust controls and the generation of fugitive emissions. The Board scheduled the Evidentiary Hearing in Appeal No. 04-07-AQB (Catenary Coal) on January 18, 2005, beginning at 1:00 p.m.

Whereupon, Mr. Calvert moved and Mr. Foster seconded that the December 14, 2004, meeting of the Air Quality Board be adjourned, and the motion carried unanimously 6 to 0.

I hereby certify that the forgoing is a true and correct record of the proceedings of the meeting held on December 14, 2004, by the West Virginia Air Quality Board. These minutes were approved by the Air Quality Board on January 18, 2005.


Melissa Carte, Clerk