

MINUTES

JANUARY 18, 2005

I. General

On January 18, 2005, 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:

Tom Hansen, Chair

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

Absent Board members were:

Mike Koon

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. Appeals

1.) Appeal No. 04-05-AQB (Oxbow)

Appeal No. 04-04-AQB was filed on July 2, 2004, by Oxbow Carbon and is regards to certain terms and conditions in their Coke Screening Operation permit. The appeal was set for hearing on October 25, 2004, however, on August 20, 2004, the Appellant filed a “Motion to Stay Appeal Pending Resolution of Related Proceedings”, stating that the issues raised in the Notice of Appeal are related and substantially similar to issues raised in another case (Appeal No. 04-01-EQB) which was pending before the Air Quality Board. On September 8, 2004, the Board’s Vice Chair reviewed the Appellant’s Motion and found that judicial economy would be best served if the Board granted a stay of the proceedings in Appeal No. 04-05 pending the issuance of the Board’s Final Order in Appeal No. 04-01.

On November 12, 2004, the Board issued a Final Order in Appeal No. 04-01, upholding the conditions of the permit at issue. The Board’s findings contained in that Final Order were not favorable for the Appellant and Counsel for the Appellant has now filed an appeal of the Board’s Final Order issued in Appeal No. 04-01 in Kanawha County Circuit Court. On December 22, 2004, the Appellant in Appeal No. 04-05 again filed a “Motion to Stay Appeal Pending Resolution of Related Proceedings”, requesting that the Board now stay the proceedings in Appeal No. 04-05 pending the Circuit Court’s review of the Board’s Final Order issued in Appeal No. 04-01. The Appellee opposed this motion.

The Board conducted a Hearing on the Appellant’s Motion to Stay Appeal Pending Resolution of Related Proceedings during the January 18, 2005, Board meeting. The Hearing was limited to arguments regarding whether the issues raised in Appeal No. 04-01 and Appeal No. 04-05 are related and substantially similar and whether the final resolution of Appeal No. 04-01-AQB would result in the consensual settlement of Appeal No. 04-05 without the need for an evidentiary hearing. An audio tape of the hearing is available in the Board office for review.

The Board then went into executive session to discuss of the evidence presented regarding the motion filed in Appeal No. 04-05-AQB (Oxbow). The Board members then directed Ms. Radcliff to draft an Order which reflects their decision on the Appellant’s Motion to Stay Appeal Pending

Resolution of Related Proceedings and to provide the draft to the Board Chair for review and approval prior to entering and issuing the Order.

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

Appeal No. 04-07-AQB (Catenary) was filed with the Board on October 15, 2004, and is in regards to a Notice of Violation and Cease and Desist Order issued by the WVDEP's Division of Air Quality. The evidentiary hearing was scheduled to be conducted during the January 18, 2005, Board meeting. However, on January 7, 2005, the Appellee filed a Motion to Dismiss the appeal with a memorandum in support of the motion, and also filed a Motion for Partial Summary Judgment with a memorandum in support of that motion. The Appellant will be filing a Response to these motions prior to the Board meeting. During the January 18, 2005, Board meeting, the Board conducted a hearing on these motions. A copy of the transcript of the hearing is available in the Board office for review

The Board then went into executive session to discuss of the evidence presented regarding the motions filed in Appeal No. 04-07-AQB (Catenary). The Board members then directed Ms. Radcliff to draft an Order which reflects their decision on the Appellee's Motion to Dismiss and Motion for Partial Summary Judgment and to provide the draft to the Board Chair for review and approval prior to entering and issuing the Order.

II. Administrative Matters

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

Whereupon, the minutes of the December 14, 2004, Air Quality Board Meeting were presented to the Board members for consideration. After review, Mr. Foster moved and Mr. Hudson seconded that the minutes of the December 14, 2004, Air Quality Board meeting, as written, be adopted, and the motion carried unanimously 5 to 0.

2.) General Budget Update:

Ms. Coleman provided the Board members with a monthly budget report which provides a financial update through December 31, 2004. As of December 31, 2004, the Boards have spent 30% of the combined budget which represents a six month period, or 50% of the fiscal year. A copy of this report is attached to and made a part of these minutes as Exhibit "A".

After further discussion of the Board's budget, the Board requested that the staff research the purchase of new computer equipment, software, and printers. In addition, the staff will research whether using a central server with a tape back-up of the data on computer hard drive is feasible. The Board members authorized Chairman Hansen to approve the selection and purchase of the necessary equipment. The Board members also encouraged the staff to take any available training or classes which may be relevant to their current job responsibilities.

The Board Chair noted that the current budget surplus is a direct result of additional monies being provided to the Boards by the Governor's office and that the additional money may not be included in the 2006 fiscal year budget. Consequently, the Boards' will not begin the process of hiring a full-time attorney or technical advisor until after the conclusion of the 2005 legislative session and a review of the 2006 budget is complete. At that time the members will review each Boards' responsibilities to determine the staff needed to perform those functions adequately and also determine whether the funding is available for additional full-time staff.

The Board members acknowledged that since both the Boards' legal counsel and technical advisor have resigned from the Boards, the work load for the two remaining staff members has increased significantly. However, since additional funding provided to the Boards is viewed as temporary, pay raises for the staff may not be appropriate. Therefore, the Board members authorized Chairman Hansen to work with the Chair of the Environmental Quality Board (Ed Snyder) to award bonuses to the remaining two staff members.

3.) Purchasing Card Report:

Ms. Coleman provided the Board with a quarterly Purchase Card Report which details the purchases made by the authorized staff members for the

months of October through December 2004. A copy of this report is attached to and made a part of these minutes as Exhibit "B". After review, Mr. Foster moved and Mr. Hudson seconded that the Board approve the Purchase Card report, and the motion carried unanimously 5 to 0.

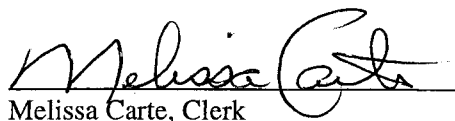
4.) Web Site:

Ms. Coleman provided the Board with a report of website activity. Over the past two years the Board's website has averaged over 330 visitors per month. The staff will be updating the "Final Orders" page on the site to include all 2004 Board Orders.

The EQB will be adding several pages to their website including a page for remining information, the Nutrient Criteria Committee, and the Board's Aluminum study. Chairman Hansen requested that the AQB website be periodically placed on the Board meeting agenda in order that the members may review and discuss website to determine whether any changes, updates or improvements are needed.

Whereupon, Mr. Foster moved and Mr. Calvert seconded that the January 18, 2005, Board meeting be adjourned, and the motion carried unanimously 5 to 0.

I hereby certify that the forgoing is a true and correct record of the proceedings of the meeting held on January 18, 2005, by the West Virginia Air Quality Board. These minutes were approved by the Air Quality Board on March 15, 2005.


Melissa Carte, Clerk