

MINUTES

MARCH 15, 2005

I. General

On March 15, 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 Vice Chair, Mike Koon, called the meeting to order at 9:00 a.m.

The Board members present were:

Mike Koon, Vice 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:

Tom Hansen, Chair

Jean Neely

Staff members present were:

Melissa Carte, Clerk

Kathy Coleman, Administrative Secretary

*Wendy Radcliff, the attorney assigned by the State Attorney General's office to assist the Board was present during the meeting.

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

I. Appeals

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

Appeal No. 04-06-AQB (Techsol Chemical) was filed with the Board on August 6, 2004, by Techsol Chemical and is in regards to a Notice of Violation, and a Cease and Desist Order issued by the WVDEP's Division of Air Quality. The Evidentiary Hearing in this appeal was scheduled to be conducted during the March 15, 2005, Board meeting.

However, on March 8, 2005, the Appellant filed a Motion for Continuance citing continuing substantive settlement negotiations that cannot be completed prior to the March 15, 2005, Board meeting. Further, discussions regarding the resolution of the issues of the appeal are complicated by the pendency of civil litigation between the parties currently pending in the Circuit Court of Wayne County, West Virginia. The parties of the civil litigation have agreed to resolve the case through mediation and are obligated to complete that mediation by July 25, 2005. Resolution of the civil litigation is expected to provide the basis for resolving the issues of the appeal pending before the Air Quality Board without the need for an evidentiary hearing.

On March 9, 2005, the Board Chair found that good cause existed and granted the Appellant's Motion for Continuance. The evidentiary hearing in Appeal 04-06-AQB was continued until a date yet to be determined in 2005. In order to enable the Board to determine whether an evidentiary hearing regarding the issues of Appeal 04-06-AQB is necessary and when such hearing should be scheduled, the Appellant was directed to file a written status report with the Board by April 1, 2005, May 1, 2005, June 1, 2005, July 1, 2005 and August 1, 2005. The Board will review these reports at its regularly scheduled meetings and will take appropriate actions on the appeal as necessary.

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 in this appeal was conducted during the March 15, 2005, Board meeting. A transcript of the evidentiary hearing, which was prepared by a certified court reporter, is available in the Board office for review.

II. Administrative Matters

1.) Review and Approval of the January 18, 2005, Board Meeting Minutes:

Whereupon, the minutes of the January 18, 2005, 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 January 18, 2005, AQB meeting be approved as written, and the motion carried unanimously 5 to 0.

2.) General Budget Update:

The Board members were provided with the monthly budget report. Ms. Coleman stated that as of February 25, 2005, which represents 66% of the fiscal year, the Air Quality Board (AQB) has spent 39.77% of its budget and the Environmental Quality Board (EQB) has spent 48.91% of its budget. Together the Boards have spent 46% of the combined budget during this eight month period. Copies of these budget reports are attached to and made a part of these minutes as Exhibit "A"

Ms. Coleman then provided an overview of the Governor's fiscal year 2006 budget bill which proposes an increase of general revenue funding for the Boards in the amount of \$76,823, which would provide an increase of \$24,420 for the AQB and \$52,403 for the EQB. However, the Boards will not be receiving the additional \$30,000 supplemental funding from the WV Department of Environmental Protection (WVDEP) as provided for in the fiscal year 2005 budget nor the \$55,000 supplement from the Governor's Contingency Fund. If the Governor's proposed budget bill passes as proposed, the net affect would result in an overall decrease in funding of \$8,177. A copy of the comparison chart is attached to and made a part of these minutes as Exhibit "B".

A draft analysis of projected expenditures for the AQB and the EQB was also provided to the Board members. Ms. Coleman noted that the Boards'

current operating expenses will increase approximately \$18,000 per year because of the Boards being housed in the new WVDEP building. Based on these projected expenditures, the AQB would have an excess of funding for fiscal year 2006 of \$103. The projected expenditures are based on the continuing usage of the part-time legal counsel from the Attorney General's office (38.50 per hour for 25 hours per week and the Boards are not responsible to pay the cost of benefits) and also does not include the salary or benefits for a Technical Advisor/Office Supervisor for the Boards. A copy of this draft analysis is attached to and made a part of these minutes as Exhibit "C".

3.) Consolidation of the Air Quality Board, the Environmental Quality Board and the Surface Mine Board:

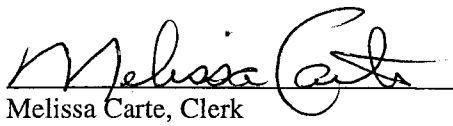
The Board Members were provided with a copy of the Final Order issued by the Kanawha County Circuit Court regarding the consolidation of the Surface Mine Board with the Air Quality Board and the Environmental Quality Board. The Court has directed the Boards to consolidate immediately. The Chairs of the three Board held a meeting to discuss the initial steps needed to consolidate these Boards. Ms. Coleman will oversee all aspects of the three Boards' budgets, Ms. Radcliff or another representative of the State Attorney General's office will provide legal assistance to the three Boards and Melissa Carte will serve as the Clerk of all three Boards. The Board Chairs will continue to conduct further staff meetings to facilitate the consolidation process.

4.) Schedule Future Board Meeting Dates:

The Board scheduled future meetings dates for May 17, 2005, June 14, 2005, July 19, 2005, and August 23, 2005.

Whereupon, Mr. Foster moved and Mr. Calvert seconded that the March 15, 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 March 15, 2005, by the West Virginia Air Quality Board. These minutes were approved by the Air Quality Board on April 19, 2005.


Melissa Carte, Clerk