

**WV DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AIR QUALITY BOARD AND ENVIRONMENTAL QUALITY BOARD**

601 57<sup>th</sup> St., SE  
Charleston, West Virginia 25304  
(304) 926-0445

**MINUTES**

**WEST VIRGINIA AIR QUALITY BOARD  
AND ENVIRONMENTAL QUALITY BOARD**

**OCTOBER 29, 2004**

**JOINT MEETING**

On October 29, 2004, a quorum of the members of the Air Quality Board (AQB) and a quorum of the members of the Environmental Quality Board (EQB) met at its offices located at 601 57<sup>th</sup> St., SE., Charleston, West Virginia. AQB Vice Chair Mike Koon and EQB Chair Ed Snyder called the meeting to order at 9:00 a.m.

Air Quality Board members present were as follows:

Dick Calvert

Robert Foster

Randy Curtis, designee of the Commissioner of the WV Bureau for Public  
Health

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

AQB Members participating by teleconference were:

Mike Koon

Absent were AQB Board members:

Tom Hansen

Jean Neely

Environmental Quality Board members present were as follows:

Ed Snyder, Chair  
Edward C. Armbrrecht, Jr.  
Scott Simonton

Environmental Quality Board members participating by teleconference were as follows:

Cameron Hackney

Staff members present were as follows:

Libby Chatfield  
Becky Charles  
Kathy Coleman

Whereupon, the Air Quality Board and the Environmental Quality Board addressed the administrative matters set forth in the Agenda as follows:

### **Administrative Matters**

#### 1. Budget:

During the October 14, 2004, joint Board meeting, the Board members were informed that the current combined budget for fiscal year 2005 is \$267,882 and based on projected expenditures, the Boards are anticipating a \$55,000 budget shortfall for fiscal year 2005.

In order to address this shortfall the AQB members recommended that the Boards cease conducting meetings as of November 1, 2004, since by discontinuing meetings the Boards would have sufficient funds to cover operating expenses and staff salaries for fiscal year 2005.

However, some members of the Environmental Quality Board did not agree with the recommendation of the Air Quality Board. Instead they contended that the Boards should continue to conduct meetings until all funds are expended, then lay off staff and close the Boards' offices.

No decision was made on the issue at that time and the Boards' Chairs stated that they would attempt to contact the Governor's office in an effort to have the budget shortfall added to the agenda of an upcoming special legislative session. During the October 29, 2004, joint Board meeting the Board members were informed that the Boards' Chairs had been unable to meet with the Governor to discuss the budget issues.

However since the October 14, 2004, Board meeting, Ms. Chatfield, who serves as the EQB's technical advisor, has resigned her position with the Boards effective November 15, 2004. This will free up some additional monies for the Boards.

The Board members then discussed various options for dealing with the budget issues including: prioritizing issues which must be addressed immediately, such as Stay Hearings; obtaining legal assistance from the State Attorney General's office; and seeking technical advice from various other state agencies.

Whereupon, Dr. Snyder moved and Dr. Simonton seconded that the EQB use existing funds to retain the two current staff members and then to utilize the remaining available funds to cover Board meeting expenses, and the motion carried 3 to 1, with Mr. Armbrecht voting against the motion.

Whereupon, Mr. Foster moved and Mr. Calvert seconded that the AQB use existing funds to retain the two current staff members and then to utilize the remaining available funds to cover Board meeting expenses, and the motion carried unanimously 5 to 0.

The Boards then directed Ms. Coleman to prepare a fiscal year 2005 budget report which reflects payment of the salaries of the remaining two staff members, fixed expenditures and the funds remaining for Board meeting expenses. The Boards will then divide that remaining money equally for use by each Board as necessary.

## 2. Personnel Matters:

The Boards then discussed related personnel matters. The Boards determined that while it is critical to have legal counsel present during all appeal hearings and other related matters, it is not fiscally feasible to attempt to hire a new attorney during this fiscal year. Instead the Boards determined

that they will contact the State Attorney General's office to procure legal counsel from that office on an "as needed" basis.

In addition, the EQB has several rulemaking issues pending. Because the Board's technical advisor has resigned her position, Dr. Hackney moved and Dr. Simonton seconded that the Board explore the possibility of entering into a memorandum of understanding with various state agencies such as the WV Department of Environmental Protection, the Division of Natural Resources, the Department of Agriculture, the Soil Conservation Agency, the Municipal Water Association, the Division of Forestry, and the Bureau for Public Health, as well as the US Environmental Protection Agency, for technical advise and assistance. The motion carried 3 to 1, with Mr. Armbrecht voting against the motion.

Whereupon, Mr. Foster moved and Mr. Hudson seconded that the October 29, 2004, joint meeting of the Air Quality Board and the Environmental Quality Board be adjourned and the motion carried unanimously 8 to 0.

\*At the conclusion of the joint meeting, the individual Boards discussed various appeal related matters. Although such appeal related matters are not subject to the requirements of the West Virginia Open Governmental Proceedings Act, minutes are provided below.

### **Air Quality Board**

The Air Quality Board members reviewed and discussed the four (4) currently pending appeals:

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

Appeal No. 04-04-AQB (Julianna Mining Co.) was filed with the Board on June 16, 2004, and was scheduled for hearing during the October 25, 2004, Board meeting. Although this Board meeting was cancelled, the parties filed a Motion to Continue Hearing citing ongoing settlement negotiations which may resolve the issues of the appeal without the need for an evidentiary hearing. The Board will continue to monitor the settlement negotiations and if needed, schedule an evidentiary hearing at a later date.

**2.) Appeal No. 04-05-AQB (Oxbow)**

Appeal No. 04-05-AQB (Oxbow) was filed with the Board on July 2, 2004. On August 20, 2004, the Appellant filed a Motion to Stay the Proceedings stating that the resolution of another Board appeal, Appeal No. 04-01-AQB (Murphy), could resolve the issues of this appeal without the need for an evidentiary hearing. The Motion to Stay the Proceedings was granted and a Status Report is now due in the Board office on November 12, 2004. (The Board has reached a final decision in Appeal No. 04-01-AQB (Murphy) and is currently in the process of issuing a Final Order.)

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

Appeal No. 04-06-AQB (Techsol Chemical) was filed with the Board on August 6, 2004, and should be set for hearing as soon as possible.

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

Appeal No. 04-07-AQB (Catenary Coal) was filed with the Board on October 15, 2004, and should be set for hearing as soon as possible.

After discussion, the Board members opted to continue all evidentiary hearings for the pending appeals indefinitely until the exact amount of available Board funding is determined and legal assistance is procured from the State Attorney General's office.

**Environmental Quality Board**

The Environmental Quality Board members reviewed and discussed the 21 currently pending appeals.

**1.) Appeal No. 03-14-EQB (Broadway):**

Appeal No. 03-14-EQB (Broadway) was filed with the Board on September 19, 2003. The Board began the evidentiary hearing on December 11, 2003, however the hearing was not completed. At the conclusion of that portion of the hearing, the Appellant informed the Board of a pending medical procedure. In order to provide the Appellant with ample opportunity to recover from the procedure, the Board Chair continued the evidentiary hearing. After a review of a status report which was provided by the parties,

the evidentiary hearing was then scheduled for the October 29, 2004, Board meeting. However, because of the loss of the Board's legal counsel and the Boards' current budgetary problems the hearing has been continued to a date yet to be determined.

**2.) Appeal No. 03-20-EQB (Lusk):**

Appeal No. 03-20-EQB (Lusk) was filed with the Board on November 20, 2003. The Board conducted the evidentiary hearing on April 29, 2004, and entered a Final Order in the appeal on July 7, 2004. On July 8, 2004, the Appellee filed Motion for Clarification and/or Amendment of the Final Order. The Board members were informed that the Appellant has filed an appeal of the Board's Final Order in Circuit Court and that the Appellee has withdrawn the Motion for Clarification. Appeal No. 03-20-EQB (Lusk) has now been removed from the Board's docket.

**3.) Appeal No. 04-03-EQB (Hominy):**

Appeal No. 04-03-EQB (Hominy) was filed with the Board on March 2, 2004, and was set for hearing on August 26, 2004. However the parties opted to argue the issues of the appeal through written legal briefs instead of an evidentiary hearing, and a briefing schedule was issued. The Board members were provided with the briefs of the parties during the October 29, 2004, Board meeting.

**4.) Appeal No. 04-06-EQB (Hominy 2):**

Appeal No. 04-06-EQB (Hominy 2) was filed with the Board on April 22, 2004, and was set for hearing during the August 26, 2004, Board meeting. However the parties opted to argue the issues of the appeal through written legal briefs instead of an evidentiary hearing, and a briefing schedule was issued. The Board members were provided with the briefs of the parties during the October 29, 2004, Board meeting.

**5.) Appeal No. 04-07-EQB (Higginbotham):**

Appeal No. 04-07-EQB (Higginbotham) was filed with the Board on April 30, 2004, and the evidentiary hearing regarding the issues of the appeal was scheduled to be conducted during the July 22, 2004, Board meeting. Prior to the hearing the parties informed the Board that the issues of the appeal had

been resolved and that an evidentiary hearing would not be needed. The parties were supposed to submit an Agreed Order to the Board for approval. The Agreed Order was not been submitted and the Board scheduled the evidentiary hearing to be conducted during the October 29, 2004, Board meeting. However, because of the loss of the Board's legal counsel and the Boards' current budgetary problems the hearing has been continued to a date yet to be determined.

**6.) Appeal No. 04-09-EQB (PKC):**

Appeal No. 04-09-EQB (PKC) was filed with the Board on May 5, 2004, was set for hearing during the July 22, 2004, Board meeting. However, the parties filed a Motion for Continuance citing ongoing settlement negotiations which may resolve the issues of the appeal without the need for an evidentiary hearing. The Board will continue to monitor the settlement negotiations and if needed, will schedule an evidentiary hearing at a later date.

**7.) Appeal No. 04-10-EQB (Weirton):**

Appeal No. 04-10-EQB (Weirton) was filed with the Board on May 13, 2004. The Board heard arguments on preliminary motions filed in the appeal during the July Board meeting and were schedule to rule on those motions during the August 26, 2004, Board meeting and if necessary, reschedule the evidentiary hearing in the appeal. However, on August 9, 2004, the parties submitted a letter stating that the parties had reached an agreement in principal which would settle all matters of the appeal without the need for an evidentiary hearing. The parties completed the Settlement Agreement which was then provided to the Board members for review and approval during the October 29, 2004, Board meeting. Counsel for the parties did not attend the Board meeting to present the proposed Order. However, after review and discussion, the Board members approved the settlement and directed that Appeal No. 04-10-EQB (Weirton) be removed from the Board's docket.

**8.) Appeal No. 04-11-EQB (Burke, Haney & Hansen):**

Appeal No. 04-11-EQB (Burke, Haney & Hansen) was filed with the Board on May 14, 2004, and was scheduled for hearing. However, prior to the scheduled hearing date the parties filed an Agreed Order for the Board's

review and approval. During the October 29, 2004, Board meeting, the Board members approved the proposed Agreed Order. Appeal No. 04-11-EQB (Burke, Haney & Hansen) will be removed from the Board's docket.

**9.) Appeal No. 04-12-EQB (Huntington Alloys):**

Appeal No. 04-12-EQB (Huntington Alloys) was filed with the Board on May 14, 2004, and was set for hearing during the September 9, 2004, Board meeting. However, the parties requested a continuance citing significant ongoing studies which will require months of data gathering and analysis but which may resolve the issues of the appeal without the need for an evidentiary hearing. The Board granted the continuance in order to allow the parties to conduct these studies but directed that a status report be filed with the Board by January 3, 2005.

**10.) Appeal No. 04-14-EQB (Burke, Haney & Hansen):**

Appeal No. 04-14-EQB (Burke, Haney & Hansen) was filed with the Board on June 25, 2004, and was scheduled for hearing. However, prior to the scheduled hearing date the parties filed an Agreed Order for the Board's review and approval. During the October 29, 2004, Board meeting, the Board members approved the proposed Agreed Order. Appeal No. 04-14-EQB (Burke, Haney & Hansen) will be removed from the Board's docket.

**11.) Appeal No. 04-15-EQB (Crab Orchard/MacArthur PSD):**

Appeal No. 04-15-EQB (Crab Orchard/MacArthur PSD) was filed with the Board on July 16, 2004, and the evidentiary hearing in this Appeal was set for the October 29, 2004, Board meeting. However, the parties requested a Stay of the Proceedings pending action by the USEPA on the Board's Water Quality Standards rule, since such action may resolve the issues of the appeal without the need for an evidentiary hearing. The Board granted the continuance but directed that a status report be filed with the Board for review during the December 9, 2004, Board meeting.

**12.) Appeal No. 04-16-EQB (Fink, Guthrie & Ray):**

Appeal No. 04-16-EQB (Fink, Guthrie & Ray) was received by the Board of July 21, 2004, and was scheduled for hearing on October 29, 2004. Because of the loss of the Board's legal counsel and the Board's current budgetary problems the hearing was continued to a date yet to be determined.



However, on October 22, 2004, counsel for the Appellees filed a letter stating that it is imperative that the Board conduct the evidentiary hearing in this appeal in a timely fashion. The letter further stated that if the Board refuses to reschedule the hearing, they “will be forced to consider other options, including an option to file a mandamus petition with the Kanawha County Circuit Court...”. After discussion the Board opted to set the evidentiary hearing in Appeal No. 04-16-EQB (Fink, Guthrie & Ray) for December 9, 2004. The Board will attempt to procure legal counsel from the State Attorney General’s office for the hearing.

**13.) Appeal No. 04-17-EQB (MUB):**

Appeal No. 04-17-EQB (MUB) was received by the Board on July 30, 2004, and was scheduled for hearing during the October 29, 2004, Board meeting. However, due to the loss of the Board’s legal counsel and the Board’s current budgetary problems the hearing has been continued to a date yet to be determined.

**14.) Appeal No. 04-18-EQB (Rapp’s Dairy):**

Appeal No. 04-18-EQB (Rapp’s Dairy) was received by the Board on August 4, 2004, and was scheduled for hearing during the November 2004 Board meeting. However, due to the loss of the Board’s legal counsel and the Board’s current budgetary problems the hearing has been continued to a date yet to be determined.

**15.) Appeal No. 04-19-EQB (Coastal Coal):**

Appeal No. 04-19-EQB (Coastal Coal) was filed with the Board on August 9, 2004, and was scheduled for hearing during the November 2004, Board meeting. However, on October 12, 2004, the Appellant filed a Motion to Withdraw the Appeal. During the October 29, 2004, Board meeting, the Board members reviewed the motion and granted the Appellant’s Motion Withdraw the Appeal. Appeal No. 04-19-EQB (Coastal Coal) will be removed from the Board’s docket.

**16.) Appeal No. 04-20-EQB (Coastal Coal):**

Appeal No. 04-20-EQB (Coastal Coal) was filed with the Board on August 9, 2004, and was scheduled for hearing during the November 2004, Board meeting. However, on October 12, 2004, the Appellant filed a Motion to Withdraw the Appeal. During the October 29, 2004, Board meeting, the

Board members reviewed the motion and granted the Appellant's Motion Withdraw the Appeal. Appeal No. 04-20-EQB (Coastal Coal) will be removed from the Board's docket.

**17.) Appeal No. 04-21-EQB (Coastal Coal):**

Appeal No. 04-21-EQB (Coastal Coal) was filed with the Board on August 9, 2004, and was scheduled for hearing during the November 2004, Board meeting. However, on October 12, 2004, the Appellant filed a Motion to Withdraw the Appeal. During the October 29, 2004, Board meeting, the Board members reviewed the motion and granted the Appellant's Motion Withdraw the Appeal. Appeal No. 04-21-EQB (Coastal Coal) will be removed from the Board's docket.

**18.) Appeal No. 04-22-EQB (Webster Co. Solid Waste):**

Appeal No. 04-22-EQB (Webster Co. Solid Waste) was received by the Board on August 9, 2004, and was scheduled for hearing during the November 2004 Board meeting. However, due to the loss of the Board's legal counsel and the Board's current budgetary problems the hearing has been continued to a date yet to be determined.

**19.) Appeal No. 04-23-EQB (Federal Bureau of Prisons):**

Appeal No. 04-23-EQB (Federal Bureau of Prisons) was received by the Board on August 27, 2004, and was scheduled for hearing on November 10, 2004. However, due to the loss of the Board's legal counsel and the Board's current budgetary problems the hearing has been continued to a date yet to be determined.

**20.) Appeal No. 04-24-EQB (Arch Coal Company):**

Appeal No. 04-24-EQB (Arch Coal) was filed with the Board on August 30, 2004, and was scheduled for hearing during the October 29, 2004, Board meeting. However, the Appellant submitted a letter to the Board on October 20, 2004, withdrawing the appeal. Appeal No. 04-24-EQB (Arch Coal) has now been removed from the Board's docket.

**21.) Appeal No. 04-25-EQB (Stewards of the Potomac Highlands)**

Appeal No. 04-25-EQB (Stewards of the Potomac Highlands) was received by the Board on September 22, 2004, and was scheduled for hearing during

the December 9, 2004, Board meeting. However, due to the loss of the Board's legal counsel and the Board's current budgetary problems the hearing has been continued to a date yet to be determined.

After discussion, the Board members opted to continue all evidentiary hearings for the appeals, except for Appeal No. 04-16-EQB (Fink, Guthrie & Ray), indefinitely until the exact of amount of available Board funding is determined and legal assistance is procured from the State Attorney General's office.

I hereby certify that the forgoing is a true and correct record of the proceedings of the joint meeting held on October 29, 2004, by the West Virginia Air Quality Board and the West Virginia Environmental Quality Board. These minutes were approved by the WV Air Quality Board on December 14, 2005, and by the Environmental Quality Board on December 9, 2004.



Melissa Carte, Clerk