

**Environmental Quality Board
601 57th Street, SE
Charleston, West Virginia 25304
(304) 926-0445
Fax: (304) 926-0486**

**MINUTES
January 11, 2007**

A public meeting of the Environmental Quality Board was held on Thursday, January 11, 2007 in Charleston, West Virginia. Members present were: Dr. Edward Snyder, Chairperson; Mr. Edward C. Armbrrecht, Jr; Mr. William H. Gillespie; Dr. D. Scott Simonton, and Dr. James Van Gundy.

Staff members present were Wendy E. Radcliff, Esquire, Counsel for the Board; Jackie Shultz, Clerk of the Boards; and Kathy Coleman, Administrative Secretary.

It being determined a quorum was present, Dr. Snyder called the meeting to order and the Board proceeded with its agenda.

I. APPEALS

1. ***Appeal 06-18-EQB (Monongahela Power Company d/b/a Allegheny Energy Supply)*** - The evidentiary hearing in this matter was canceled due to an agreement being reached by the parties. An Agreed Order was provided for the Board's review and consideration.
2. ***Appeal 06-27-EQB (Pennzoil-Quaker State Company)*** - The oral argument on Appellee's Motion to Dismiss was cancelled due to an agreement being reached by the parties. Armando Benincasa, Esquire appeared on behalf of the Appellant, Jim Snyder, Esquire appeared on behalf of St. Marys Refining Company, Appeal No. 06-25-EQB, and Mark Rudolph, Esquire appeared on behalf of the Appellee. Mr. Snyder explained that the two appeals arise from the same Order. The parties presented the Board with a Joint Motion to Stay Proceedings, which was granted for both Appeal 06-27-EQB (Pennzoil-Quaker State Company) and Appeal No. 06-25-EQB (St. Marys Refining Company).
3. ***Appeal 06-35-EQB (Talon Manufacturing Company, Inc.)*** - The expedited evidentiary hearing in this matter was canceled due to an oral agreement being reached by the parties. The parties will prepare a written agreement for the Board's review and consideration for presentation on or before the next scheduled hearing date of January 18, 2007.

II. ADMINISTRATIVE MATTERS

Minutes of November 16, 2006 Meeting

Upon a motion duly made by Dr. Simonton and seconded by Dr. Van Gundy, the Board voted unanimously to approve the November 16, 2006 minutes as drafted.

Budget Update

The Board was provided with a financial update through December 31, 2006. A copy of the report is attached and made part of these minutes as Exhibit A. Ms. Coleman reported that as of December 31, 2006, the Environmental Quality Board has expended 31% of its budget.

Ms. Coleman updated the Board regarding the projected expenses for Ms. Radcliff to attend the National Judicial College conference "Administrative Law: Fair Hearing" to be held April 23 - May 3, 2007 in Reno, Nevada. The projected total cost of \$4,000 will be equally divided between the Air Quality Board, Environmental Quality Board and Surface Mine Board. Upon a motion duly made by Mr. Armbricht and seconded by Mr. Gillespie, the Board voted unanimously to approve the expenditure.

Purchase Card Reports

The quarterly purchase card report was provided to the Board. The report details the purchase card transactions for the period of October - December 2006, and includes the Citigroup monthly statements.

The Board was also provided with the purchase card reports for the period of October 2005 through March 2006. A copy of the reports are attached and made part of these minutes as Exhibit B. Although these reports have already been reviewed by the Board members and approved by Dr. Snyder, there is no record of the Board's vote. Accordingly, upon a motion duly made by Dr. Simonton and seconded by Mr. Gillespie, the Board voted unanimously to approve the purchase card reports for October 2005 through March 2006 and October - December 2006.

Proposed Revisions to the Procedural Rules Governing Appeals Before the Environmental Quality Board 46 C.S.R. 4.

The Board was advised that the comment period for the proposed revisions to the procedural rules ended on December 15, 2006. Comments were received from the West Virginia Chamber of Commerce and David L. Yaussy, Esquire of Robinson & McElwee, on behalf of the West Virginia Manufacturers Association and the West Virginia Oil and Natural Gas Association.

The West Virginia Chamber of Commerce stated it is supportive of the Boards' decision to update the rules to include the current location at DEP's headquarters in Kanawha City and offered additional comments for the Boards' consideration. The Chamber suggested that the Boards update the process set forth in the procedural rules for filing of documents. They specifically urge (1) that §4.2 be revised to allow filings to be made electronically and provide that such a filing would be as effective as personal delivery, express mail or US Mail; (2) that §4.3 be reviewed to provide that a filing be effective upon actual filing with the Board, upon deposit in US Mail or upon deposit in express mail and that electronic filings be effective when sent; (3) that §4.4 be revised to provide that response time be tied to the date of personal delivery, and the date an email is sent; and (4) that three days be added to the date of postmark in US Mail or the date of filing in express mail.

With regard to the certified record, the Chamber urged the Board to adopt a consistent practice regarding the distribution of these documents to parties in proceedings. The Chamber pointed out that the Surface Mine Board automatically sent the certified record upon receipt from DEP while the AQB and EQB require a FOIA request. The Chamber feels this is unduly cumbersome and suggests this be addressed in the procedural rules to provide clarity and consistency regarding the availability of the certified record to parties to an appeal.

Finally, in an effort to assist parties who may be unfamiliar with the discovery practices, the Chamber proposed that the procedural rules be modified to include time limits for filing and responding to discovery requests.

David L. Yaussy, Esquire, of the law firm Robinson & McElwee, on behalf of the West Virginia Manufacturers Association and the West Virginia Oil and Natural Gas Association, urged the Board to consider two additional changes. They suggested that the Board substitute the language in §2.2c for that which is currently found in the Board's appeal form, and require the same information in both documents. With regard to discovery, they suggested that the provisions of *W.Va. Code* §22B-1-8 could be placed in the Board's rule so that all parties are aware of the discovery that can take place without leave of the Board. In addition, establishing response deadlines of thirty days from date of receipt may help eliminate some of the current confusion as to when responses are due.

The Board then solicited comments from Armando Benincasa, Esquire of Steptoe & Johnson; James Snyder, Esquire, of Jackson Kelly; and Mark Rudolph, Esquire, of the WVDEP, who were present.

Mr. Benincasa commented that email works well for filing pleadings/orders. He suggested that the Board could hold a procedural conference to see if the parties would agree to accept electronic filing and then issue an order directing how the procedure would work.

Mr. Snyder commented that anything presented on disc is easier to present on a screen rather than having to handle oversized maps, etc. With regard to electronic filing, he stated that it is a

complicated process. He stated that in federal court, before an attorney can file documents, they are required to take a half day training course on how to file.

Mr. Rudolph commented that bankruptcy court has a service list where everything is done electronically unless the party opts out. If the party opts out, documents are received via regular mail. He voiced concern that converting certified records to pdf format may save the Board time, but would be a burden for the Department of Environmental Protection.

After discussion and upon a motion duly made by Mr. Armbrecht and seconded by Dr. Simonton, the Board directed Ms. Radcliff to draft rule revisions to encompass the suggestions of Mr. Yaussy and the Chamber of Commerce.

With regard to electronic filing, Ms. Radcliff recommended this would be a good change for the Board to consider in addition to paper filings. After discussion, the Board directed the staff to investigate the feasibility of electronic filing and report back to the Board.

The Board agreed with the suggestions and comments received and determined that any suggestions that can be implemented in-house will be done immediately. Otherwise, changes that require a rule change will be reviewed by the Board at a later time. Upon a motion duly made and seconded, the Board directed Ms. Radcliff to respond to the comments accordingly.

Personnel

The Board was provided with a copy of the West Virginia Department of Environmental Protection's Employee Performance Appraisal Form. Ms. Coleman recommended that the Board adopt the form to replace the current employee evaluation form. After discussion, the Board agreed to utilize the appraisal form for employee evaluations. Upon a motion duly made by Dr. Van Gundy and seconded by Dr. Simonton, the Board voted unanimously to adopt the WVDEP Evaluation Form for its own use. Dr. Snyder suggested that evaluations be performed in January and July of each year. Dr. Snyder then suggested that Board Chairs meet with staff in February to discuss employee evaluations.

Board Meeting Dates

The Board scheduled meeting dates for the remainder of 2007 as follows: February 8-9; March 22-23; April 12-13; May 10-11; June 14-15. Based upon a suggestion by Mr. Gillespie, the Board voted unanimously to establish the second Thursday and Friday of each month as fixed meeting dates of the Board beginning in July 2007.

Other Business

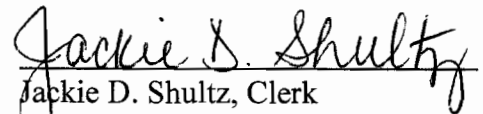
Mr. Armbrecht inquired of Mr. Randy Sovic, Technical Analyst, Division of Water and Waste Management, with regard to the status of the Nutrient Criteria Committee. Mr. Sovic

provided an update on the water quality standards rulemaking issues, which transferred from the Board to the WVDEP effective July 1, 2005. Mr. Sovic will provide additional information as requested by the Board.

Adjournment

There being no further business to come before the Board, the meeting was adjourned.

I hereby certify that the foregoing is a true and correct record of the proceedings of the Environmental Quality Board meeting held on January 11, 2007. The Environmental Quality Board approved these minutes on March 16, 2007.


Jackie D. Shultz, Clerk
Environmental Quality Board