



BUREAU OF THE ENVIRONMENT  
**ENVIRONMENTAL QUALITY BOARD**  
**AIR QUALITY BOARD**

1615 Washington Street, East, Suite 301  
Charleston, West Virginia 25311-2126  
(304) 558-4002  
Fax: (304) 558-4116

**MINUTES**  
**WEST VIRGINIA ENVIRONMENTAL & AIR QUALITY BOARD**  
**August 19, 1998**

**I. General**

The West Virginia Environmental & Air Quality Boards (the "Boards") met on August 19, 1998, at 8:30 a.m. The meeting was held at 1558 Washington Street, E., Charleston, West Virginia. J. Michael Koon, Chair of the Air Quality Board, called the meeting to order. Board members present included:

Michael Koon, Chair of the Air Quality Board (AQB)  
Edward Snyder, Chair of the Environmental Quality Board (EQB)  
Ann Calvert, AQB  
Robert Foster, AQB  
Thomas Hansen, AQB  
Charles R. Jenkins, EQB  
Don Kuntz (designee for Dr. Henry Taylor), AQB  
Jean Neely, AQB  
David Samuel, EQB  
Donald Tarter, EQB

Staff Members Present:

Becky Charles, Legal Counsel  
Margaret Chico-Eddy, Clerk of the Boards  
Ann Holstein, Administrative Secretary

**II. Board Meeting**

**A. Introduction of Both Boards**

**B. Air Quality Board Matters**

**1. Election of Officers**

Jean Neely made a motion to nominate Mike Koon as Chair of the Air Quality Board and Bob Foster as Vice-Chair of the Air Quality Board. This motion was seconded by Don Kuntz. The motion carried by a unanimous vote.

**2. Minutes**

Bob Foster made a motion to approve the April 24, 1998 minutes as submitted. This motion was seconded by Don Kuntz. The motion carried by a unanimous vote.

Don Kuntz made a motion to approve the May 19, 1998 minutes as submitted. This motion was seconded by Tom Hansen. The motion carried by a unanimous vote.

Ann Calvert made a motion to accept the August 4, 1998 minutes as amended. This motion was seconded by Bob Foster. The motion carried by a unanimous vote.

**3. Merit Increase Document**

The AQB reviewed the document and approved it for this year.

**4. Scheduling Hearing Dates**

The Board selected October 16, November 10 and December 8, to hold their upcoming hearings.

**C. Environmental Quality Board Matters**

**1. Minutes**

Don Tarter made a motion to approve the July 13, 1998 minutes as submitted. This motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

**2. Paitzel Lockhart, Appeal No. 98-06-EQB**

Bob Jenkins made a motion to deny the Appellee's Motion to Dismiss Paragraph 1 of the Notice of Appeal. This motion was seconded by David Samuel. The motion carried by a unanimous vote.

David Samuel made a motion to deny the Appellee's Motion to Dismiss Paragraph 2 of the Notice of Appeal. This motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

David Samuel made a motion to grant the Appellee's Motion to Dismiss Paragraph 6 of the Notice of Appeal. This motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

David Samuel made a motion to deny the Appellee's Motion to Dismiss Paragraph 7 of the Notice of Appeal. This motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

David Samuel made a motion to grant the Appellee's Motion to Dismiss Paragraph 8 of the Notice of Appeal. This motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

David Samuel made a motion to grant the Appellee's Motion to Dismiss Paragraph 9 of the Notice of Appeal. This motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

Bob Jenkins made a motion to grant the Appellee's Motion to Dismiss Paragraph 3 of the Notice of Appeal. This motion was seconded by David Samuel. The motion carried by a unanimous vote.

David Samuel made a motion to grant the Appellee's Motion to Dismiss Paragraph 5 of the Notice of Appeal. This motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

David Samuel made a motion to grant the Appellee's Motion to Dismiss Paragraph 10 of the Notice of Appeal. This motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

David Samuel made a motion to grant the Appellee's Motion to Dismiss Paragraph 11 of the Notice of Appeal. This motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

Bob Jenkins made a motion to grant the Appellee's Motion to Dismiss Paragraph 12 of the Notice of Appeal. This motion was seconded by David Samuel. The motion carried by a unanimous vote.

David Samuel made a motion to deny the Appellee's Motion to Dismiss Paragraph 15 of the Notice of Appeal. This motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

Bob Jenkins made a motion to deny the Appellee's Motion to Dismiss Paragraphs 13 & 14 of the Notice of Appeal. This motion was seconded by David Samuel. The motion carried by a unanimous vote.

David Samuel made a motion to grant the Appellee's Motion to Dismiss Paragraph 16 of the Notice of Appeal. This motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

### **3. Edmund L. Wright, et al, Appeal No. 98-09-EQB**

Bob Jenkins made a motion to grant a General Continuance until Appeal No. 98-01-EQB has been finalized. This motion was seconded by David Samuel. The motion carried by a unanimous vote.

### **4. Webster Co. Solid Waste Authority, Appeal No. 97-06-EQB**

David Samuel made a motion to deny the Appellee's Motion for Clarification. This motion was seconded by Bob Jenkins. The motion carried by a unanimous vote. The Board wanted some language in the order stating that the terms "reasonable", "diligent", and "promptly" should be given their ordinary and common meanings.

## **D. Joint Board Matters**

### **1. Budget Report**

Ann Holstein discussed in detail the budget expenditures for fiscal years 1995/1996, 1996/1997 and 1997/1998. She presented the Boards with a "cost analysis" document that she had compiled for fiscal years 1996-1998. The Boards requested Ann to compare the costs of conference call meetings to the costs of travel for meetings. She can then determine if conference call costs make a difference in our travel budget and overall budget. Ann informed the Boards that both budgets would be very tight this fiscal year. She has asked for an improvement package from the Legislature for fiscal year 1998/1999.

### **2. Legislative Audits**

Becky Charles discussed Legislative audits with the Boards. She explained to them that preliminary performance reviews are done around an agency's sunset date. The EQB is the only one of our Boards affected by the sunset provision. The AQB by statute is not affected. Jean Neely and David Samuel suggested asking for an audit. Becky informed the Boards that there may be a cost to the Boards for a post audit. The Boards requested that Becky find out the cost and report back to the Boards.

Jean Neely made a motion for the Chairs to write a letter requesting a post audit of both Boards after reasonable costs have been ascertained. This motion was seconded by Bob Jenkins. The motion carried by a unanimous vote.

### **3. Review of National Judicial College Administrative Law Course**

Becky Charles discussed her recent course at the National Judicial College (NJC) with

the Boards. The following items were discussed: (a) The Boards asked that Becky do some research on the problem of five days to hear stay requests, which are set by statute. (b) Becky asked the Boards to consider amending the procedural rules to include that Appellees file answers to Notices of Appeal on a case-by-case basis. Decisions on this matter would go through each Board Chair. (c) Becky discussed when recusal is appropriate and what "bias" really means in this context. (d) Becky suggested that Board members be aware of the public's perception of them during hearings. She suggested that being overly friendly with one side or the other could lead to a perception of bias. After some discussion on this matter, the Boards decided that they believe their conduct is appropriate but that they will keep this issue in mind. (e) The Board discussed disruptive attorneys and the Board's right to continue a hearing until the party can retain another attorney. (f) Gender bias was discussed. (g) There was discussion regarding cross examination and oral arguments and how to handle rambling conversation without cutting the parties off. (h) Becky said the NJC recommended informing Pro Se litigants of their burden of proof. In the Boards appeals, it may be helpful to inform Pro Se litigants that they must show where the permit is flawed. (i) The Boards discussed taping all telephonic hearings and adding this to the procedural rules. (j) The Boards discussed changing the Notice of Hearing to reflect that failure to appear could result in the dismissal of a case. Then also decided to omit the rule requiring notices to be sent by certified mail. (k) Becky suggested adding a statement in our subpoenas that a subpoena is subjected to being quashed. (l) The Boards discussed adding to the procedural rules that recusal motions must be submitted two weeks before the hearing. (m) The Board discussed exhibits and time limits on various cases. (n) Dealing with the media was discussed. (o) The propriety of reopening of cases was also covered by the NJC and discussed with the Boards.

#### **4. Office Recycling Policy**

As stated in the Employee Handbook, the Boards support recycling of all recyclable materials. The recycling of pop cans and using both sides of every sheet of paper before going into the bins is not mandatory. The Boards expect employees to use good judgement in this matter.

#### **5. Office Consolidation**

Becky Charles informed the Boards of the recent building consolidation meeting she attended and the various sites that were discussed. She informed the Boards that the committee hopes to have a new building in two years.

#### **6. Pending Case Sheets**

Both Boards reviewed and discussed their pending cases.

#### **7. Performance Evaluations**

The Boards decided to have the following schedule for staff performance evaluations:

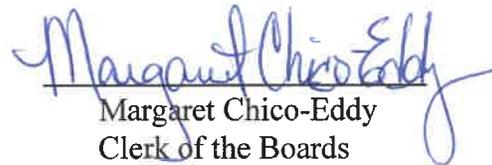
- (a) The chairs will meet individually with the staff in mid September to gather information and discuss goals.
- (b) The Boards will discuss staff performance.
- (c) The staff is to complete the 360 evaluations and submit them to the Chairs by November 1, 1998.
- (d) The Chairs will synthesize the 360 evaluations and finalize the Performance Evaluations by the first week of January 1999.

### **8. Executive Session**

Don Tarter made a motion to go into an executive session to discuss personnel matters. The motion was seconded by Bob Foster. The motion carried by a unanimous vote.

I hereby certify that the foregoing is a true and accurate representation of the proceedings held by the Environmental and Air Quality Boards on the 19th day of August 1998.

Submitted for approval the 17th day of September 1998.

  
Margaret Chico-Eddy  
Clerk of the Boards