

MINUTES
WATER QUALITY APPEALS BOARD MEETING
100 N. 15th Avenue, Suite 103
Thursday, October 13, 2016

IN ATTENDANCE: Scott S. Wakefield, Chairman; Gail M. Clement, Vice Chair; Fred Brinker, Member

STAFF IN ATTENDANCE: Lisa Kautz & Sara Sullivan, Clerk of the Board; John Lopez, Solicitor Attorney General's Office, Counsel for the Board

MINUTES:

1. The regular meeting of the Water Quality Appeals Board (WQAB) was called to order by Scott Wakefield at 9:05 A.M., Thursday, October 13, 2016.
2. **Attendance for Meeting** – Russell Yurk & Dave Henry, Attorneys for Appellant SWVP-GTIS MR, LLC; Barbara Pashkowski, Attorney for Appellant Town of Florence; Tom Rankin, Mayor for Town of Florence; Christopher Ward, Attorney for Appellant Pulte Home Corp.; Brad Glass and Rita Maguire of Gallagher & Kennedy, Legal Counsel for Florence Copper, Inc.; Dan Johnson, Vice President and General Manager of Florence Copper Inc. Jeff Cantrell and Rick Zeise, Attorneys for the Attorney General representing ADEQ; Brad Pollock, Attorney General's Office; Jerry Scott and Ana Karen Lewis, ADEQ; Cliff Mattice, Town of Florence; Mark Nicholls of Florence Copper.
3. **Approval of the Minutes from the meeting of November 10, 2014.**

The Board reviewed and approved the minutes with no changes. Mr. Brinker moved to approve the minutes from November 10, 2014. Ms. Clement seconded the motion. Motion passed unanimously.

4. **16-001 WQAB – Arizona Public Service Company.** Mr. Curtis Cox requests Board approve the settlement. Board agrees to remove the appeal. Mr. Brinker moved to remove appeal. Ms. Clement seconds motion. Motion carries.
5. **16-002 WQAB – Town of Florence, SWVP-GTIS MR LLC, and Pulte Homes Corporation.** The Board will discuss and decide on hearing this new appeal or submit to the Office of Administrative Hearing. The Board may discuss and take action on setting deadlines, hearing dates and other procedural matters.

Chairman Wakefield allowed each party to briefly summarize what they are seeking and whatever else the parties feel the board needs to know.

Mr. Russell Yurk asks the Board to set forth procedural framework for how the appeal will be handled. Mr. Yurk states that this is going to require a two-step process. First, the board to review whether significant amendment complies with or cures deficiencies, and believes all of this can be accomplished through motions. Mr. Yurk also proposes attorneys brief what deficiencies were and whether permit terms comply, and feels that its unhelpful and premature for ADEQ and FCI to consistently argue that there are four issues on appeal. This is a different permit with different

terms; and it is in fact a significant amendment. Mr. Yurk requests arguing through motion to the Board and simultaneous briefing and responses by all parties with a response date would make the most sense. Mr. Yurk does not see any need for a hearing before OAH unless that first step come out of ADEQ's favor.

Mr. Scott Wakefield asks if Town of Florence or Pulte has anything to add. Ms. Barbara Pashkowski is in full agreement with Mr. Yurk, and asks the Board to proceed accordingly. Additionally, Mr. Christopher Ward is in full agreement.

Mr. Jeff Cantrell's position is that there is no need to hear this or brief issues as the board has already ruled on previous merit; a fairly comprehensive ALJ decision was already adopted and there is no need to brief the issues. The Board explained issues before ADEQ remand and additional briefing will only expend resources and delay the entire process. ADEQ feels very strongly that in order to properly prepare to defend any questions that the Board or appellants may have with the permit that they be required to identify those portions of the permit that they are objecting to as there are too many broad statements; requests Board strike provisions that ADEQ has asked for as being undecided or not specific enough.

Mr. Bradley Glass states that their position is to move to dismiss 16 of 21 issues raised by appellant, as the appellant is trying to challenge decisions upheld in previous decision thus forcing the re-litigation of issues. Mr. Glass states that there are four issues from ALJ and two motions before the board; he requests the Board dismiss or decide and instruct. Arguments are presented that appellant lacks specificity in challenge within permit and basis of those challenges. Mr. Glass further requests the Board limit scope if Board refers to OAH.

Ms. Rita Maguire argues that this is a pilot test project 2 years in operation, and 4 years in permitting process. The significantly amended permit is more stringent. Appellant wants the entire permit to be open for review since amended, and asks the Board only look at the new and amended terms. The new permit adheres to the order issued two years ago and sets allows for additional monitoring, contingency plans and reporting requirements.

Mr. Rick Zeiss states the items of determination within ALJ determination were: arbitrary, unlawful, unreasonable, incorrect technical judgment. He further requests that all witness testimony and statements to be submitted ahead of time, and nothing can be introduced unless on the stand under impeachment. Mr. Zeiss states he is trying to avoid a 34-day trial and proposes submittal of expert witnesses. Mr. Cantrell reiterated that they are entitled to know what the significant amendment does not fix so defense can properly be prepared. There are 37 pages of public comment; and it needs to be determined if public comment contains specificity. It is Not ADEQ's responsibility in order to determine issues as there is regulation which provides what the contents of Notice of Appeal needs to contain.

Ms. Clement determines that the Board needs to decide where they want to go with the issues and requests legal clarification. Mr. Wakefield requests legal advice from WQAB counsel Mr. Lopez in order to determine Board's authority.

There is a motion to go into Executive Session at 10:10am, motion carries.

Return to public session 10:46am

Ms. Clement states that the issues are confusing, and by narrowing the issues and limiting the scope based on the permit changes it would help the Board to make a decision. Mr. Brinker agrees with Ms. Clement that the Board will limit the scope to the 13 issues in 4 categories. They need to know if there were other permit conditions affected by the amendment, what exactly was changed, and what was affected by those changes. Mr. Brinker proposes setting a deadline.

All parties agree on a 4-week submittal deadline.

Mr. Brinker motions to request the parties to provide briefs to narrow the scope to the issues raised in the administrative law judge's order 29. They can discuss the 13 issues in 4 categories and need to specify how the significant amendment impacted. Number one how it met the remand of the Board and number if in doing so those revisions impacted any other portions of the permit that were not under remand. Ms. Clement seconds the motion, motion carries. Briefings will be due 11/14/2016, response to briefings due 11/21/2016, and the meeting will be determined after all the responses are received.

Mr. Brinker moves to adjourn, and Ms. Clement seconds the motion, adjourn 11:10am

Future Agenda Items. There were no future items for discussion.

6. Mr. Wakefield adjourned the meeting at 11:10 A.M.

ALL WQAB MEETINGS ARE AVAILABLE ON AUDIO TAPE


Submitted by Lisa Kautz, Clerk
Water Quality Appeals Board


Date

Approval Signature by Chairperson
Water Quality Appeal Board

Date