

**AOPA COMMITTEE  
OF THE  
NATURAL RESOURCES COMMISSION  
August 15, 2024, Meeting Minutes**

## AOPA COMMITTEE MEMBERS PRESENT

Jane Ann Stautz, Chair  
Bart Herriman  
Jennifer Jansen

**NRC, DIVISION OF HEARINGS STAFF PRESENT**

Elizabeth Gamboa  
Aaron Bonar  
Scott Allen

## GUESTS PRESENT

Ihor Boyko Sean Griggs

## Call to Order

Jane Ann Stautz, Chair, called the meeting to order at approximately 9:06 a.m., ET, at the Division of Hearings Hearing Room, Indiana Government Center North, 100 North Senate Avenue, Room N103, Indianapolis, Indiana. With the presence of three members, the Chair observed a quorum.

**Consideration and approval of minutes for the meeting held on May 17, 2024**

Bart Herriman partially abstained because of a conflict he did not participate in the matter of *Shorewood CD v. Drew*, Administrative Cause 22-041W. Herriman noted some edits to the minutes included changing “mind” to “mine” on page seven and to strike one of the commas on the second to last paragraph on page nine.

Jansen made a motion to approve the minutes of the May 17, 2024, AOPA meeting as amended. The Chair and Herriman both seconded the motion in part. Upon a voice vote, the motion carried.

**Consideration Findings of Fact, Conclusions of Law, and Nonfinal Order in the matter of *Beckman & Boyko v. Department of Natural Resources*; Administrative Cause No. 21-047R**

The Chair recognized the Division of Hearings, Chief Administrative Law Judge (ALJ), Elizabeth Gamboa.

ALJ Gamboa stated as follows:

Earlier in 2024 the Department of Natural Resources (Department) filed a motion questioning whether the ALJ, or the Natural Resources Commission (Commission) is the ultimate authority over the matter. At the time the Department's motion was denied there was no response filed by the Petitioners. The ALJ is leaving it open for discussion on whether the issue is a procedural or jurisdiction issue. The creation of the Commission is from a [IC] 14-10 which sets forth the requirements and authority for the Commission. The statute was amended in 1995.

The Commission is the ultimate authority except in proceedings concerning the approval or disapproval of a permit application or permit renewal under IC 14-34-4-13 and proceedings for suspension or revocation of a permit under IC 14-34. The ALJ is the ultimate authority for cases arising out of IC 14-34 with the exceptions in the statute and in 312 IAC 3-1-2 which says, "Except as provided in this section, the commission is the ultimate authority for the department and any department board." 312 IAC 3-1-2 further states, "Except as provided in subsection (d), an administrative law judge is the ultimate authority for an administrative review under the following: An order under IC 14-34, except for a proceeding concerning the approval or disapproval of a permit application or permit renewal and for suspension or revocation of a permit under IC 14-34-15-7." There is also an exception for an order granting or denying temporary relief under IC 14-34.

In *Peabody Coal v. Department of Natural Resources*, 6 CADDNAR 37 (1991) (*Peabody*) the ALJ in that case said, "Notwithstanding IC 14-3-32(a)... and any other law, the administrative law judge is the ultimate authority for the department for any administrative review proceeding under this article (IC 13-4.1), except for proceedings concerning the approval or disapproval of a permit application or permit renewal under IC 13-4.1-4-5 and proceedings for suspension or revocation of a permit." Because *Peabody* involved a notice of violation the ALJ was the ultimate authority in the case and the order stated, "as of July 1, 1991, the NRC does not have the power to issue a final order".

The Applicant Violator System (AVS) is not in IC 14-34 but is in 312 IAC 25-4 meaning there are questions whether the ultimate authority statute applies. The process for appealing the determination of ownership or control contains its own review process within the Department's Division of Reclamation and that decision can be appealed under IC 4-21.5 which does not decide who the ultimate authority is but provides a general process. The appeal process under 312 IAC 25-4-123 states, "Any action of the director or the commission is subject to judicial review by a court of competent jurisdiction." The rule specifically refers to an action by the Commission and not by the ALJ so the only way the Commission would be involved is as the ultimate authority.

The AVS process did not exist when the statute was enacted that says the ALJ is the ultimate authority and there is no guessing what the intent of the Indiana General Assembly would have been. The Commission is the ultimate authority with the approval or denial of permits and the AVS is a permit-denying statute. This could mean the Commission could make the decision as opposed to the ALJ having ultimate authority.

No authority was found by the ALJ nor cited by the Department that would make the matter a jurisdictional issue. If there is a question as to whether an issue is a jurisdictional issue or procedural issue then, absent clear facts of jurisdiction, the error should be on the procedural issue side. The Commission should also not overstep its authority.

The decision has implications for anyone who might be listed on the AVS, and the extra step will ensure the Petitioners in this matter will have more due process.

The Chair thanked ALJ Gamboa for the additional information and background.

The Chair recognized Sean Griggs, counsel for the Petitioners, David Beckman and Alan Boyko (Petitioners).

Griggs presented argument, which is summarized as follows:

The Petitioners agree with the ALJ that the AOPA Committee is the ultimate authority to decide the issue. The Objection was filed on July 24<sup>th</sup> and the rules allow fifteen days for a response, The ALJ Order denying the motion was on day fourteen, and the Petitioners filed their response on the fifteenth day. The Petitioners' reasons for denying the motion to withdraw objections were different than the ALJ's reasons, but the result is the same. The Department filed their response to the Petitioners' filings two days prior to the AOPA Committee meeting.

Exhibit D from the Petitioners' response filing is the transcript of the second day of the administrative hearing and is important because of the claims made in the filings by the Department. The Department claims that Steve Chancellor's status on the AVS is not an issue, and it was never stated that only Boyko and Beckman were on the AVS for White Stallion Energy (WSE).

On page 105 of Exhibit D is testimony by Patrica Beard who says other people with WSE had been "end dated" meaning they were no longer with WSE and not on the AVS. Chancellor was a member of White Stallion Holdings and was "end dated" on December 2, 2020, the date of the bankruptcy. The argument by the Department was there were no other officers to place on the AVS, so it had to be the Petitioners who had to be added to the AVS list. There was no discussion by the Department about putting WSE, anyone else from WSE, or Chancellor, on the AVS and the Department only put Beckman and Boyko on the AVS because there was no one else. On the list provided by the Department in their filing, it is evident that Chancellor is on the AVS list for a lot of other mining operations. The Petitioners disagree with the statement that Chancellor's AVS status was never discussed because it was, according to the witness - and that witness stated - there were only two people remaining at WSE to place on the AVS.

The Chair recognized Ihor Boyko, Counsel for the Respondent, Department of Natural Resources (Department).

Boyko presented argument, which is summarized as follows:

What the Department filed shows Chancellor on the AVS and Mr. Griggs made the statement at the previous AOPA Committee meeting that Chancellor could get a permit in another state and that statement is false. The AVS shows Chancellor has multiple violations and it does not matter if he is connected with WSE or another entity. Beard's testimony at the administrative hearing about end-dating Chancellor does not address Chancellor being permit blocked in other states.

AOPA decisions are based in accordance with information presented at the administrative hearing and there was no issue with Chancellor being permit blocked on the AVS system, but the issue was Chancellor's end date. Mr. Griggs mischaracterized at the last AOPA Committee meeting that Chancellor was getting away when Chancellor is not.

The decision needs to be made based on accurate information and Beard's affidavit was filed to reflect what was previously testified to at the administrative hearing. Chancellor's end date does not reflect if he is permit blocked on the AVS system.

The Chair recognized Griggs for rebuttal.

Griggs presented rebuttal argument, which is summarized as follows:

In reviewing the May 17, 2024, AOPA Committee meeting, there was an element of concern if the Petitioners' activities had risen to the level of belonging on the AVS. The other concern is that someone should be on the AVS. Instead of the Department keeping Chancellor on the AVS, the Department put the Petitioners on the AVS because they are officers of WSE. The issue is why are the Petitioners, who are finance people, on the AVS and not the mining operations people. The concern by the AOPA Committee seemed to be if the Petitioners are not put on the AVS, then there is not anyone else to hold accountable. The reason for putting the Petitioners on the AVS is more tenuous.

On June 7, 2024, the Department issued a cessation order demanding civil penalties related to the violations after the AOPA Committee indicated the Petitioners did not bear responsibility at the May 17<sup>th</sup> meeting. The Department chose and went after Beckman individually for violations and civil penalties because they think he has the financial means to pay. The Department is only choosing to go after the financial people instead of the mining people who should be held accountable.

The Chair noted the new case being appealed to the Commission's Division of Hearings is not a matter currently before the AOPA Committee.

Boyko stated there were several notices of violations and cessation orders sent to Beckman in the past to his provided address, but they were not claimed or returned. The cessation order referenced by Griggs was claimed and appealed, but not relevant to the pending matter.

The Chair acknowledged the complexities of the matter with both procedural and jurisdictional issues to consider. She said there is a revised unsigned Nonfinal Order and asked if there was additional discussion.

Herriman said Griggs made some suggested changes to the Nonfinal Order. Herriman stated those changes include Paragraph 20 where Chancellor was the CEO and not the COO, Paragraph 98 the spelling of Boyko's name needs corrected, and Paragraphs 100 and 101 needs to be corrected.

ALJ Gamboa stated some other changes are the inconsistent font in Paragraph 89, Paragraph 91 insert "of" in between the words "category" and "controllers", and in Paragraph 14 Rebekah Singh's name is misspelled. She said other changes include the misspelling of "regulatory" in Paragraph 60 and the misspelling of Chancellor's name in Paragraph 62 delete the extra "it" in Paragraph 76, in Paragraph 79 delete "petition" and insert "Petitioner".

The Chair suggested putting page numbers in the order.

Herriman said that Griggs indicated that the AOPA Committee did not believe the Petitioners' activities rose to the level of them being placed on the AVS. Herriman noted at the May 17<sup>th</sup> AOPA Committee meeting the record reflects that [Herriman] stated even though Petitioners played a significant role in mining operations, both financial and otherwise with respect to the mining, it does not rise to the level of being placed on the AVS, especially since others who had more control were not placed on the AVS. Herriman said at the time he made the statement Herriman was under the impression that no other people involved in the mining operation were held responsible and were absolved from liability.

The Chair asked if there was motion to approve the Nonfinal Order, remand the matter, or amend the Nonfinal Order.

Jansen said she would be inclined to approve the Nonfinal Order as amended.

The Chair noted the amended version of the Nonfinal Order would not list the Petitioners on the AVS.

Herriman said based on the evidence the Petitioners had some role to play in the mining operations. Herriman does not like the fact that there seems to be reliance on the contract, where it would be easy to leave out certain aspects in the contract, remove someone's titles, and therefore absolve yourself from liability under the AVS system.

The Chair stated she is inclined to give greater deference to the ALJ, who had the opportunity to hear all the evidence and related testimony because there may be additional information that was in the record that the AOPA members may not have heard or been aware of at the last AOPA Committee meeting. The Chair said she would be inclined to give deference to the ALJ's judgment, and that the original Nonfinal Order be issued.

Jansen stated she would agree and defer to the ALJ's judgement of the testimony.

Herriman moved to accept the original draft, with revisions, of the Findings of Fact and Conclusions of Law with Nonfinal Order in the matter of *Beckman & Boyko v. Department of Natural Resources*. Jansen seconded the motion.

The Chair called for a vote to approve the Findings of Fact and Conclusions of Law with Nonfinal Order, issued by the ALJ on March 13, 2024, in the matter of *Beckman & Boyko v. Department of Natural Resources* with amendments and the typographical corrections previously identified. On a voice vote, the motion carried.

ALJ Gamboa stated regarding the Department's motion on the ultimate authority and to the extent that is a motion to reconsider the original denial, ALJ Gamboa said she will prepare an order on the motion to reconsider.

The Chair thanked ALJ Gamboa and asked if there was anything additional.

### **Adjournment**

The meeting was adjourned at approximately 9:48 a.m. ET.