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MAY 31 2022

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

Environmental Quality
Board

**DD OIL COMPANY,
A WEST VIRGINIA CORPORATION,**

Appellant,

v.

Appeal No. 22-01-EQB

**STATE OF WEST VIRGINIA, EX REL.,
HAROLD D. WARD, CABINET SECRETARY,
WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Appellee.

APPELLEE'S MOTION TO CONTINUE

The Appellee, Harold D. Ward, Cabinet Secretary, West Virginia Department of Environmental Protection ("WVDEP"), by counsel, hereby moves the Board to continue the evidentiary hearing in the above-styled matter currently scheduled for June 9 and 10, 2022 to the currently open docket dates of July 14 and 15, 2022, as suggested by the Board as a possibility to allow for deliberation. In support of its motion, WVDEP states as follows:

On Wednesday, May 25, 2022, WVDEP received subpoenas for six current WVDEP employees, including Secretary Ward, management of the Office of Oil and Gas, and counsel for WVDEP. Due to the holiday weekend, WVDEP is promptly responding three business days after receipt, filing separately to quash three of the subpoenas, specifically for Cabinet Secretary Ward, Deputy Chief Harmon, and WVDEP counsel Jeffrey Dye. In the interests of fairness, deliberation on the pleadings by the full Board, with the assistance of its counsel, is appropriate and vital prior to convening for an evidentiary hearing.

Mr. Harmon has previously scheduled a vacation for June 9 and 10. A deliberation by the Board on the morning of the evidentiary hearing would therefore have little effect on relieving

the burden of his testimony, as he would have to make himself available on June 9 regardless. WVDEP respectfully argues that deliberation and a ruling on this matter is appropriate prior to the morning of the evidentiary hearing.

Mr. Dye is counsel for WVDEP and the assertion of attorney-client privilege is being both claimed and opposed. The import of the Board's decision in this particular matter cannot be overstated, as it involves a party's counsel directly testifying against his own client. This is a grave matter. WVDEP respectfully argues that deliberation on the pleadings by the full Board, with the assistance of its counsel, is absolutely vital prior to the morning of the evidentiary hearing.

The evidentiary hearing is currently set just over a week from the date of this filing. If the Board agrees that deliberation of the full Board and its counsel is appropriate, then the Board would have to convene between the date of this filing and June 9, allowing additional time to receive and consider responses to each motion. Conversely, as the Board has suggested potential alternative dates of July 14 and 15 for the evidentiary hearing, the Board could accordingly deliberate on its regular docket date of June 9 without the necessity of convening a special meeting of the Board.

Accordingly, to prevent undue burden to Mr. Harmon as well as the potential testimony of Mr. Dye against his own client, and to allow the Board, with the assistance of its counsel, the appropriate time to deliberate fully on the pleadings, WVDEP hereby moves that the evidentiary hearing in the matter be continued to the Board's currently open docket dates of July 14 and 15

Respectfully Submitted,
HAROLD D. WARD
By Counsel

[SIGNATURE ON FOLLOWING PAGE]


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the attached Appellee's Motion to Continue was served on the following persons by electronic mail on May 24, 2022, with hard copies served by United States Postal Service mail, first class, on the same date.

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