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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 QUASH
SUBPOENA OF CABINET SECRETARY HAROLD D. WARD**

The Appellee, Harold D. Ward, Cabinet Secretary, West Virginia Department of Environmental Protection ("WVDEP"), by counsel, hereby moves to quash the previously issued subpoena of Secretary Ward in the above-styled matter. WVDEP so moves pursuant to Rule 45 of the West Virginia Rules of Civil Procedure.

The EQB has the authority to issue subpoenas for testimony at hearings held before it only pursuant to W. Va. Code § 22B-1-6 and § 29A-5-1. Like all subpoenas, that subpoena power is regulated by Rule 45 of the West Virginia Rules of Civil Procedure. This rule provides for the manner in which subpoenas may be quashed, stating:

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time for compliance; (ii) requires a person to travel for a deposition to a place other than the county in which that person resides or is employed or transacts business in person or at a place fixed by order of the court; (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or (iv) subjects a person to undue burden.

Pursuant to W. Va. Code § 22-6-1(f), § 22-1-6, Secretary Ward may and did delegate his authority in this matter to James A. Martin, Director of WVDEP's Office of Oil and Gas, and to

Mr. Martin's staff. As a practical matter in a government agency dealing with hundreds of daily matters requiring his signature, this delegation of duties by the Cabinet Secretary is absolutely necessary for WVDEP's functioning and performance of its duties.

As affirmed in the sworn Affidavit of Harold D. Ward, attached hereto as Exhibit 1, the handling of the matter at issue was delegated to the Office of Oil and Gas. Secretary Ward has no knowledge concerning the agency action complained of by the Appellant or the underlying facts of the case. He appears in the Certified Record only as the designated signatory to an agency document. His anticipated testimony would be an extremely brief confirmation of these facts as affirmed in his sworn Affidavit and would offer nothing of probative value to the Board, subjecting him and the Board to undue burden for no practical or proper purpose. The rule explicitly mandates the quashing of such subpoenas upon timely motion.

Accordingly, WVDEP hereby moves that the subpoena issued to Secretary Ward for the evidentiary hearing in this matter be quashed and that such other relief be granted as is deemed just and appropriate.

Respectfully Submitted,
HAROLD D. WARD
By Counsel

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EXHIBIT 1

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

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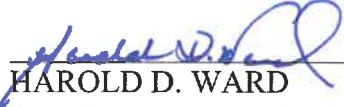
Appellee.

AFFIDAVIT OF CABINET SECRETARY HAROLD D. WARD

I, Harold D. Ward, Cabinet Secretary, West Virginia Department of Environmental Protection ("WVDEP"), hereby swear and affirm that if called upon to testify, my testimony would be as follows:

1. I serve as the Cabinet Secretary of WVDEP and, as part of the performance of my own duties, necessarily delegate duties regarding the appropriate matters to James A. Martin, Director of the Office of Oil and Gas ("OOG"), and to such staff as Mr. Martin designates.
2. Upon my information and belief, the duties regarding the actions at issue in the above-styled matter were delegated to Mr. Martin and his staff.
3. I have no involvement in this matter other than as a signatory to the Order complained of in the Notice of Appeal.
4. I have no knowledge of this matter other than answering counsel's inquiry as to the extent of my knowledge.
5. My anticipated testimony would consist solely of the above statements.
6. The above statements are true and accurate.

Further this Affiant sayeth not.


HAROLD D. WARD
CABINET SECRETARY

This day the Affiant, Harold D. Ward, personally appeared before me, the undersigned authority, a notary public in and for Kanawha County and the State of West Virginia, and after first being duly sworn, swears and affirms as stated heretofore.

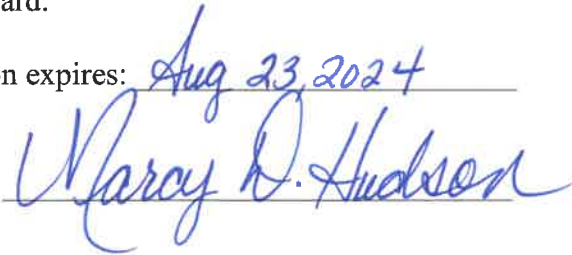
STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

Taken, subscribed, and sworn to before the undersigned authority this 31 day of May, 2022, by Harold D. Ward.

My commission expires: Aug 23, 2024

[SEAL]





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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the attached Appellee's Motion to Quash Subpoena of Harold D. Ward 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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