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**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 DEPUTY CHIEF HENRY J. HARMON**

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 Mr. Harmon 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.

Mr. Harmon is the Deputy Chief of OOG. As such, he is frequently copied on e-mails regarding matters with which he has no or peripheral involvement. Mr. Harmon is aware of some


matters involving DD Oil Company. However, as affirmed in the sworn Affidavit of Henry J. Harmon, attached hereto as Exhibit 1, he did not participate in the annulment review, the underlying notices of violation, or the order complained of by the Appellant. He appears in the Certified Record only as having been copied on two e-mail chains, neither of which he responded to or contributed to in any way.

Furthermore, having had no reason to believe that he may be called as a witness in this matter, Mr. Harmon previously scheduled a vacation which includes the currently scheduled dates of the evidentiary hearing. If forced to testify, Mr. Harmon will have to make burdensome arrangements to testify during his vacation.

Mr. Harmon's anticipated testimony 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 Mr. Harmon 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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AFFIDAVIT OF HENRY J. HARMON

I, Henry J. Harmon, Deputy Chief, Office of Oil and Gas, 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 Deputy Chief of the Office of Oil and Gas and, as part of the performance of my own duties, am frequently copied on e-mails regarding matters in which I am not directly involved.

2. I was copied on two e-mail chains regarding an annulment review and underlying notices of violation with which I was not involved.

3. I had no involvement in the action complained of.


4. My anticipated testimony would reflect the above statements and my lack of knowledge of and involvement with the matter at issue.

5. Having had no reason to believe my testimony might be compelled, I scheduled a vacation on the currently scheduled dates of the evidentiary hearing.

6. It would be unduly burdensome for me to arrange to testify while on vacation.

6. The above statements are true and accurate.

Further this Affiant sayeth not.


HENRY J. HARMON
DEPUTY CHIEF,
OFFICE OF OIL AND GAS

This day the Affiant, Henry J. Harmon, 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.

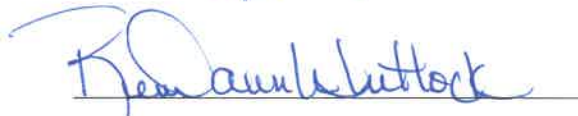
STATE OF WEST VIRGINIA,

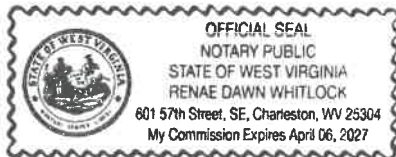
COUNTY OF KANAWHA, to-wit:

Taken, subscribed, and sworn to before the undersigned authority this 31st day of May, 2022, by Henry J. Harmon.

My commission expires: April 6, 2027

[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 Henry J. Harmon 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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