

BEFORE THE WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

**DD OIL COMPANY,
a West Virginia Corporation,**

Appellant,

Appeal No.: 22-01-EQB

v.

**STATE OF WEST VIRGINIA, EX REL.,
HAROLD D. WARD, Cabinet Secretary,
West Virginia Department of
Environmental Protection,**

Appellee.

**APPELLANT'S RESPONSE TO
APPELLEE'S MOTION TO CONTINUE**

COMES NOW, Appellant, DD Oil Company, by counsel, J. Morgan Leach, Esq., Ryan J. Umina, Esq., and Beth L. Umina, Esq., and hereby objects to the Appellee's Motion to Continue, and in support thereof states as follows:

Appellee has acknowledged that Appellant's subpoena's were accepted by counsel on May 25, 2022, and were therefore timely filed. It is also important to note that Appellant's witness list was emailed to counsel on May 17, 2022, drafts of Appellant's subpoenas were delivered to Appellee's counsel on May 20, 2022, and Appellant's expected witnesses were disclosed in its discovery response filed on May 20, 2022.¹ Because the WVDEP was on notice as early as May 17, 2022, that Appellant's subpoenas were timely filed, and that the Appellee's responses were not timely filed, Appellant requests that the Board disregard such arguments in their motion to continue.

¹ See attached email correspondence regarding witnesses and Appellant's Response to WVDEP's Request for Statutory Discovery.

Further, to address the notion that Mr. Harmon scheduled a vacation for the dates of Appellant's appeal hearing stating that he "had no reason to believe that he may be called as a witness in this matter" is disingenuous at best. Mr. Harmon was included in the allegations contained within the Appellant's Appeal from Order and Annulment Review and therefore he knew or should have known that it was likely that he *would* be called as a witness since the time the appeal was filed on March 23, 2022. Further, Appellant is willing to accommodate Mr. Harmon by agreeing to allow him to testify via telephonic or online conferencing means at the appeal hearing at a time that is most convenient for him. Appellant also incorporates the arguments as set forth in Appellant's Response to Appellee's Motion to Quash Subpoena of Henry J. Harmon.

Finally, to address the assertion that Mr. Dye will be testifying against his own client is simply inaccurate. As stated in Appellant's Response to Appellee's Motion in Limine and Motion to Strike From the Record and Appellant's Response to Appellee's Motion to Quash Subpoena of Jeffery Dye, Mr. Dye will be called to testify regarding the underlying factual basis rather than his communications with his clients.

Last, and most importantly, the Appellant has been effectively denied its right to complete well work under its valid permits since the Finding of Imminent Danger and Cease Operations Order was improperly issued by the WVDEP on July 16, 2021. Since the time of the unjustified Cease Operations Order, Preliminary Injunction, and Notices of Violation that were filed by the WVDEP, the Appellant has suffered staggering financial damages by being unable to complete its permitted well work and produce oil and gas at a time when prices are at an all time high. As stated by Appellee, this is a grave matter. If the Board grants the Appellee's motion to

continue, this will further prejudice the Appellant, causing it to continue to suffer financial damages and be deprived of its rights under its valid permits.

WHEREFORE, Appellant respectfully requests that Appellee's Motion to Continue be denied, as well as such other relief the Board deems proper.

Respectfully submitted,
Appellant by Counsel

/s/ J. Morgan Leach
J. Morgan Leach, Esq.
W. Va. State Bar Id. 13124
(855) 444 - 5529 (call | text | fax)
P.O. Box 5518, Vienna, WV 26105
morgan@jmorganleach.law
jmorganleach.law

/s/ Ryan J. Umina
Ryan J. Umina, Esq.
W. Va. State Bar Id. 13056
133 Greenbag Road,
Morgantown, 26501
ryan@uminalegal.com

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**STATE OF WEST VIRGINIA, EX REL.,
HAROLD D. WARD, Cabinet Secretary,
West Virginia Department of
Environmental Protection,**

Appellee.

CERTIFICATE OF SERVICE

I, J. Morgan Leach, hereby certify that I have served a true and correct copy of the forgoing **APPELLANT'S RESPONSE TO APPELLEE'S MOTION TO QUASH SUBPOENA OF JEFFERY DYE** by email and USPS First Class mail upon the following this 2nd day of June, 2022.

Scott Driver, Esq.
West Virginia Department of
Environmental Protection
Office of Legal Services
601 57th Street SE
Charleston, WV 25304
charles.s.driver@wv.gov

/s/ J. Morgan Leach
J. MORGAN LEACH, ESQ.



James Leach <morgan@jmorganleach.law>

DD Oil 22-01-EQB, proposed order re: continuance

James Leach <morgan@jmorganleach.law>

Tue, May 17, 2022 at 8:52 AM

To: "Driver, Charles S" <charles.s.driver@wv.gov>, ryan@uminalegal.com, beth@uminalegal.com

Scott:

My apologies for the delay. I intend to call the following witnesses:

- Harold Ward
- Jason Harmon
- Derek Haught
- Jeremy James
- Doug Newlon
- Scott Roedehaver
- Jeffery Dye
- Hugh Dale
- Employees/Contractors of DD Oil (I will review and identify these folks for you).

Their anticipated testimony will be focused on the drilling activities on the subject wells between the dates of September 25, 2020 to May 25, 2021 as well as the conduct alleged in our Complaint against the WVDEP. I will get you a formal response and file today, including a reciprocal request for discovery. Do you intend to call any additional witnesses other than who I've identified? Also, can you accept service of subpoenas for WVDEP personnel?

I am still waiting on a few pieces of information from our client to be able to finish up that I may have to supplement when I receive it. Thanks again for your patience on our responses.

Let me know if you have any other questions or concerns and I look forward to your response on service of subpoenas.

Best,
Morgan

[Quoted text hidden]

--

J. Morgan Leach, Esq.

(855) 444 - JLaw (call | text | fax)

P.O. Box 5518, Vienna, WV 26105

morgan@jmorganleach.law

jmorganleach.law

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James Leach <morgan@jmorganleach.law>

DD Oil 22-01-EQB, proposed order re: continuance

James Leach <morgan@jmorganleach.law>
To: "Driver, Charles S" <charles.s.driver@wv.gov>
Cc: ryan@uminalegal.com, beth@uminalegal.com

Fri, May 20, 2022 at 11:42 AM

Scott:

Hope you are doing better today. I have emailed our disclosures and a reciprocal request for discovery to the Clerk and cc'd you on that correspondence. Please also find attached to this email the draft subpoenas for WVDEP personnel along with an acceptance of service. If you have any questions or issues with the contents or acceptance of the subpoenas, please let me know. If not I will get them executed and served to you.

SUBPOENAS / ACCEPTANCE OF SERVICE

Last, after reviewing my file, I do not believe we have an Answer from WVDEP to our Appeal. Is that something that we can expect before our pre-trial hearing next week?

Thanks in advance,
Morgan
[Quoted text hidden]

5. Jeremy James, WVDEP Office of Oil and Gas Inspector to provide testimony on his knowledge of the allegations contained within the Appeal from Order and Annulment Review;
6. Doug Newlon, Oil and Gas Inspector Supervisor (Southern Region) to provide testimony on his knowledge of the allegations contained within the Appeal from Order and Annulment Review;
7. Scott Roedehaver, Enforcement, Assistant Chief to provide testimony on his knowledge of the allegations contained within the Appeal from Order and Annulment Review;
8. Jeffery Dye, Office of Legal Services to provide testimony on his knowledge of the allegations contained within the Appeal from Order and Annulment Review;
9. Hugh Dale, Appellant and Owner of DD Oil Company to provide testimony on his knowledge of the allegations contained within the Appeal from Order and Annulment Review;
10. Kim Butler, employee of DD Oil Company to provide testimony on their knowledge of the allegations contained within the Appeal from Order and Annulment Review and to testify with respect to the *Employee Work Summary attached as Appellants "Ex. 20"*;
11. Ronnie Hanah, employee of DD Oil Company to provide testimony on their knowledge of the allegations contained within the Appeal from Order and Annulment Review;
12. Randy Holbert, employee of DD Oil Company to provide testimony on their knowledge of the allegations contained within the Appeal from Order and Annulment Review;

2. Please identify with reasonable particularity the issues which are the subject of the hearing.

ANSWER:

1. Please reference Appellant's *Notice of Appeal and Appeal from Order and Annulment Review* specifying the questions of fact, questions of law, and relief requested in this matter.

Respectfully submitted,
Appellant by Counsel

/s/ J. Morgan Leach

J. Morgan Leach, Esq.
W. Va. State Bar Id. 13124
(855) 444 - 5529 (call | text | fax)
P.O. Box 5518, Vienna, WV 26105
morgan@jmorganleach.law
jmorganleach.law

/s/ Ryan J. Umina

Ryan J. Umina, Esq.
W. Va. State Bar Id. 13056
133 Greenbag Road,
Morgantown, 26501
ryan@uminallegal.com

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STATE OF WEST VIRGINIA, EX REL.,

Appellee.

CERTIFICATE OF SERVICE

I, J. Morgan Leach, hereby certify that I have served a true and correct copy of the forgoing **APPELLANT'S RESPONSE TO WVDEP'S REQUEST FOR STATUTORY DISCOVERY** upon the following this 20th day of May, 2022.

Scott Driver, Esq.
West Virginia Department of
Environmental Protection
Office of Legal Services
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0460 x 1453
Facsimile: (304) 926-0461
E-Mail: Charles.s.driver@wv.gov

/s/ J. Morgan Leach
J. MORGAN LEACH. ESQ.