

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

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

JULY 12, 2022

**Appellant,**

Environmental Quality Board

**v.**

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

**Appellee.**

**DD OIL COMPANY'S RESPONSE TO  
WVDEP'S VACATION OF SUBJECT ORDER, ANNULMENT OF  
UNDERLYING NOTICES OF VIOLATION, AND MOTION TO DISMISS**

COMES NOW the Appellant, DD Oil Company, by counsel, J. Morgan Leach, Esq., Ryan J. Umina, Esq., and Beth L. Umina, Esq., and hereby files its Response to WVDEP's Vacation of Subject Order, Annulment of Underlying Notices of Violation, and Motion to Dismiss. In support of this response, the Appellant states as follows.

**RELEVANT PROCEDURAL HISTORY**

Beyond the procedural history noted by the Appellee, the Appellant submits the following:

1. The *Finding of Imminent Danger and Cease Operations Order* was issued by Inspector James on or about July 16, 2021.
2. The *Finding of Imminent Danger and Cease Operations Order* contained a provision that DD Oil had a right to apply for a formal hearing within 15 days to contest such order pursuant to W. Va. Code §22-6-4.

3. Before DD Oil could apply for a formal hearing to contest the *Finding of Imminent Danger and Cease Operations Order*, the WVDEP issued a *Notice of Violation* on July 20, 2021.
4. The *Notice of Violation* provided DD Oil seven days to abate the alleged violation, which would have expired on July 26, 2021.
5. On July 23, 2021, the WVDEP filed a *Motion for Preliminary Injunction* against DD Oil in the Circuit Court of Ritchie County before a response or attempt to abate could be made by DD Oil.
6. The Circuit Court entered an *Order Granting Temporary Restraining Order*, which deprived DD Oil of its right to contest the *Finding of Imminent Danger and Cease Operations Order* and to abate any alleged violations under the allotted time frame in the *Notice of Violation*.
7. Upon a hearing on the WVDEP's *Motion for Preliminary Injunction*, the Circuit Court ruled that the WVDEP did not provide sufficient evidence of irreparable harm as alleged in their motion and entered the *Order Denying Motion for Preliminary Injunction and Dissolving Temporary Restraining Order* which was entered on August 24, 2021.
8. The WVDEP then issued its September 9, 2021 letter to DD Oil stating that forms WR-34 and WR-35 were suddenly required.
9. DD Oil submitted forms WR-34 on September 30, 2021 and maintained that forms WR-35 were premature because well work had not been completed.

## ARGUMENT

In its recent filing, the WVDEP seeks to have this appeal dismissed as moot due to the recently filed notice which noted a plan to annul the Notices of Violation (“NOVs”) at issue on appeal. However, for the reasons stated below, such annulment does not make the appeal moot, and this Board continues to have the authority to grant the Appellant the relief sought.

**I) This Board has the authority to grant the declaratory and injunctive relief sought by the appellant pursuant to the West Virginia Code.**

Under the West Virginia Code, review boards such as the Environmental Quality Board have the authority to grant declaratory and injunctive relief because they fall under the definition of an agency. As mentioned in its appeal, the Appellant has asserted the Board has the authority to issue such rulings pursuant to W. Va. Code §29A-1-2, which defines the term “agency” for the purposes of the code. Specifically, the code states, “(a) ‘Agency’ means *any state board*, commission, department, office or officer authorized by law to make rules or adjudicate contested cases, except those in the legislative or judicial branches.” *See*, W. Va. Code §29A-1-2(a) (emphasis added).

To argue that the Board does not have authority to grant other relief requested by the Appellant, specifically an affirmation or declaration that a permit valid, or that the Appellee should be enjoined from further interfering with a valid permit, is contrary W. Va. Code §29A-1-2(a) and §22B-1-7(g)(1).

The Appellant has requested several other types of relief than is mentioned in the Appellee's Motion. Specifically, the Appellant has requested a declaration that its permit was at all relevant times valid, and that Appellant is requesting that the Appellee be enjoined from further

intrusions on its valid permit. Therefore, the Board falls under the definitions set forth in W. Va. Code §29A-1-2 and has the authority under §22B-1-7(g)(1) to grant the relief sought by the Appellant.

**II) In the alternative, pursuant to W. Va. Code §22B-1-7, the Board has the authority to modify the permits as requested by the Appellant and therefore this case is not moot.**

This Board unquestionably has the authority to modify the Appellant’s permits under W. Va. Code §22B-1-7 which states, in relevant part, “(1) [The Board], as the case may be, shall make and enter a written order affirming, *modifying* or vacating *the order, permit or official action* of the chief or secretary, or shall make and enter such order as the chief or secretary should have entered, or shall make and enter an order approving or modifying the terms and conditions of any permit issued;...” *See*, W. Va. Code §22B-1-7(g)(1) (emphasis added). Thus, the Board does have the authority to modify permits—the exact type of relief sought by the Appellant in its appeal filed July 8, 2022. Therefore, the Appellee’s argument that the case is moot is inaccurate and ignores the relief requested by the Appellant.

Through its appeal, the Appellant sought relief from the Board as it relates to the permits. Specifically, the Appellant asked the Board for “The entry of an Order declaring that DD Oil’s permits shall be extended to allow completion of the permitted well work[.]”. *See, Appeal from Order and Annulment Review*. Nothing in the code section cited by either party expressly prevents the Board from granting the sought relief. Rather, a plain language reading of the statute leads to quite the opposite conclusion. Therefore, the Appellant respectfully renews its request for an extension of its permits, as a form of equitable relief due to the interference in work caused by the Appellee.

## **CONCLUSION**

In closing, the Appellant continues to seek necessary and fair equitable relief, which the Board is vested with the authority to grant. Appellants have been severely economically damaged by this drawn-out process and seeks to have its permits extended so work may be completed on the Subject Wells, which has already been paid for. Accordingly, the Appellant moves the Board for an extension of its permits for the length of time from the first cease and desist order to present, and order enjoining the Appellee from further interference of its valid permit rights, to not hold these issues as moot, and for any such other relief as it deems just and appropriate.

**Respectfully submitted,  
Appellant by Counsel,**

**/s/ J. Morgan Leach**

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**CERTIFICATE OF SERVICE**

I, J. Morgan Leach, hereby certify that I have served a true and correct copy of the foregoing **DD Oil Company's Response to WVDEP's Vacation of Subject Order, Annulment of Underlying Notices of Violation, and Motion to Dismiss** upon the following this 12<sup>th</sup> day of July, 2022.

Scott Driver, Esq.  
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**/s/ J. Morgan Leach**  
J. Morgan Leach, Esq.