

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

**J.C. BAKER & SON, INC.
and BAKER OIL COMPANY,**

Appellants,

v.

Appeal No. 22-03-EQB

**KATHERYN EMERY, P.E., DIRECTOR,
DIVISION OF WATER AND WASTE
MANAGEMENT, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Appellee.

**ORDER GRANTING “MOTION TO BIFURCATE HEARING TO
DETERMINE FIRST WHETHER APPELLANTS ARE OR WERE
THE OWNER OR OPERATOR OF THE UNDERGROUND STORAGE
TANKS (USTs) AT ISSUE IN THIS APPEAL,” CONTINUING EVIDENTIARY
HEARING, AND SCHEDULING PREHEARING CONFERENCE**

On August 25, 2022, came appellants J. C. Baker & Son, Inc. (“J. C. Baker”) and Baker Oil Company (“Baker Oil”) (J.C. Baker and Baker Oil are collectively “Appellants”), by their counsel, R. Terrance Rodgers, of Kay Casto & Chaney PLLC, and appellee Katheryn D. Emery, P.E., Director, Division of Water and Waste Management, Department of Environmental Protection (“Appellee”), by her counsel, Charles S. Driver, of the Office of Legal Services of the West Virginia Department of Environmental Protection, for a prehearing status conference and a hearing on *Appellants’ Motion To Bifurcate Hearing To Determine First Whether Appellants Are Or Were The Owner Or Operator Of The Underground Storage Tanks (USTs) At Issue In This Appeal (“Motion To Bifurcate”)*.

The West Virginia Environmental Quality Board (“the Board”) heard argument of Appellants and argument of Appellee with regard to the *Motion To Bifurcate*. After considering

the *Motion To Bifurcate* itself and the arguments for and against the *Motion To Bifurcate*, the Board is of the opinion that the *Motion To Bifurcate* should be granted.

During the prehearing status conference, counsel for Appellants made an oral motion to continue the evidentiary hearing scheduled for September 8, 2022 and September 9, 2022. Appellee's counsel stated that Appellee had no opposition to said oral motion. Having considered said oral motion and the fact that Appellee did not oppose the same, the Board is of the opinion that said oral motion should be granted.

Based upon the foregoing, it is hereby **ORDERED** that:

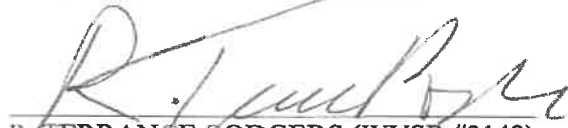
1. the *Motion To Bifurcate* shall be, and hereby is, **GRANTED**;
2. Appellants' oral motion to continue the evidentiary hearing scheduled for September 8, 2022 and September 9, 2022, shall be, and hereby is, **GRANTED**;
3. the Board shall conduct an evidentiary hearing on the limited issue of whether Appellants were ever the owner or operator of the underground storage tanks (USTs) which are at issue in this appeal on October 13, 2022 and October 14, 2022; the evidence to be presented at said evidentiary hearing shall be limited to documents and testimony solely related to the issue of whether Appellants were ever the owner or operator of the underground storage tanks (USTs) which are at issue in this appeal; said evidentiary hearing will begin at 8:30 a.m. at the Board's offices located at 601 57th Street, S.E., Charleston, Kanawha County, West Virginia 25304; Appellants and Appellee may attend in person or participate remotely via Zoom; a Zoom link will be provided prior to said evidentiary hearing; and
4. the Board shall conduct a prehearing conference at 10:00 a.m., on September 29, 2022; the parties may appear in person at the Board's offices or by telephone by dialing 1-800-

309-2350 (after the welcome message, dial the conference ID 78252 followed by the pound (#) key).

It is so **ORDERED** and **ENTERED** this 9th day of September, 2022.


for Dr. Edward Snyder, Chairperson

PREPARED AND PRESENTED BY:



TERRANCE RODGERS (WVSB #3148)

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*Counsel for appellants J.C. Baker & Son,
Inc. and Baker Oil Company*

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CERTIFICATE OF SERVICE

I hereby certify that I, Kenna M. DeRaimo, Clerk for the Environmental Quality Board, have this day, the 9th day of September, 2022, served a true copy of the foregoing **ORDER GRANTING MOTION TO BIFURCATE HEARING AND SCHEDULING EVIDENTIARY HEARING AND PREHEARING STATUS CONFERENCE** to the following:

R. Terrance Rodgers, Esq.
KAY CASTO & CHANEY PLLC
Post Office Box 2031
Charleston, WV 25327
*Counsel for Appellants
J.C. Baker & Son, Inc. and
Baker Oil Company*

Via Certified U.S. First Class Mail
7021 1970 0001 1851 7956

Charles S. Driver, Esq.
Office of Legal Services
WV Department of Environmental Protection
601 57th Street, S.E.
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Counsel for WVDEP

Via Interdepartmental Mail


Kenna M. DeRaimo, Clerk