

**West Virginia Environmental Quality Board
Charleston, West Virginia**

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

Appellants,

v.

Appeal No. 22-03-EQB

**Kathy Emery, P.E., Director,
Division of Water and Waste Management,
West Virginia Department of Environmental
Protection,**

Appellee.

Order Denying Appellants' Motion Concerning *de novo* Review, etc.

Appellants, by counsel, filed a motion requesting that this Board enter an order requiring that it hold a *de novo* hearing and give no consideration to the WVDEP Order UST-22-005 issued on April 26, 2022, and any of the findings of fact, which is the subject of this appeal. Appellants further request that the Board require the WVDEP to prove its case against Appellants.

The Board already holds *de novo* hearings. Also, the Board essentially implements a burden-shifting test wherein it expects the Appellants to present evidence that the Order at issue was issued in error, etc. The WVDEP then presents evidence that the Order was issued appropriately and is supported by the evidence of record. The Appellants will have the opportunity to submit rebuttal evidence.

The Board will follow its normal protocol and procedure in hearing evidence. The Board will consider witness testimony, exhibits, the Certified Record, and any other evidence when hearing this appeal.

The Board finds the Appellants' motion to be unnecessary. Accordingly, the Appellants' motion is DENIED.

ENTERED this 25th day of October, 2022.

West Virginia Environmental Quality Board

for *Kenna M. DeRaimo*
Dr. Edward Snyder, Chairman

Prepared by:

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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.

CERTIFICATE OF SERVICE

I hereby certify that I, Kenna M. DeRaimo, Clerk for the Environmental Quality Board, have this day, the 25th day of October, 2022, served a true copy of the foregoing **ORDER GRANTING UNOPPOSED MOTION TO CONTINUE** to the following:

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*Counsel for Appellants
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Via Certified U.S. First Class Mail
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Kenna M. DeRaimo, Clerk