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August 14, 2024

VIA U.S. AND ELECTRONIC MAIL

Kenna M. DeRaimo, Clerk
West Virginia Environmental Quality Board
601 57th Street
Charleston, West Virginia 25304

Re: *Riverside Valley Services, LLC v. WVDEP,*
Appeal No. 24-08-EQB

Motion to Expedite Evidentiary Hearing

Ms. DeRaimo:

Enclosed please find the original and two (2) copies of Appellant Riverside Valley Services, LLC's Motion to Expedite Evidentiary Hearing in Appeal No. 24-08-EQB. This Motion has been provided to all counsel of record via U.S. and electronic mail.

Should you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Marissa G. Nortz'.

Marissa G. Nortz

*Counsel to Appellant, Riverside Valley
Services, LLC*

cc: Charles S. Driver, Esq.
Jonathan C. Frame, Esq.

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

RIVERSIDE VALLEY SERVICES, LLC,

Appellant,

v.

Appeal No. 24-08-EQB

**DIRECTOR, DIVISION OF WATER
AND WASTE MANAGEMENT,
WEST VIRGINIA DEPARTMENT
OF ENVIRONMENTAL PROTECTION**

Appellee.

MOTION TO EXPEDITE EVIDENTIARY HEARING

Now Comes Riverside Valley Services, LLC (hereinafter “Appellant” or “RVS”), by counsel, Marissa G. Nortz, Armando F. Benincasa, Allyn G. Turner, and the law firm of Steptoe & Johnson PLLC, and respectfully moves this Board to grant Appellant an earlier hearing date to avoid unjust hardship and direct harm to the business of RVS. Appellant’s counsel represents that counsel for the West Virginia Department of Environmental Protection Division of Water & Waste Management’s (hereinafter “Appellee” or “WVDEP”) have been made aware of the issues giving rise to this motion in advance of its filing.

In support of its motion, RVS represents as follows:

1. Appellant operates a brine/wastewater processing and treatment plant in Moundsville, Marshall County, West Virginia. On July 8, 2023, after preliminary communications with WVDEP, RVS submitted a request for permit determination for its then-planned brine/wastewater processing and treatment plant to Mr. Yogesh Patel, Assistant Director of WVDEP’s Division of Water and Waste Management (hereinafter “DWWM”). *See Attachment B to Notice of Appeal.* At the time of its permit determination submittal, RVS

planned to undertake (in two phases) the processing and treatment of oil and gas brine water / completion waste.

2. Contemporaneously with its request for a permit determination from the WVDEP, RVS submitted its Waste Processing Radiation Protection Plan Program and associated forms and information to the West Virginia Department of Health (hereinafter “Department”) in compliance with its Radiologic Health Program and rules.
3. Within this permit determination request, RVS described its oil and gas completion waste disposal procedures as follows:

Water will then be transferred to the existing treatment facility where the final filtering/settling process will take place. This process may involve a series of tanks and final filtering of the production water. The clean water will be stored in the “clean” basin and prepped for transport. The second basin will be used for the sludge/sediment that drops out after the treatment process is complete. The sediment will be mixed with fly ash from the neighboring AEP Facility to dry out the mixture and create ***a solid that can be disposed of at any approved facility***. The mixture will require a waste profile to ensure the levels do not exceed the landfill acceptance thresholds. Both basins will be sealed and will be engineered to not allow leakage and protect soil, and groundwater. The area where trucks unload/load from the basins will be protected with its own secondary containment via a new concrete pad with berms. All areas will be monitored periodically to check for leaks and or additional problems. Inspection checklists will be developed and used by onsite personnel to train on facility processes and record issues/maintenance concerns. A preliminary site plan is attached.

Attachment B to Notice of Appeal at 2 (emphasis added).

4. On January 5, 2024, WVDEP sent Appellant its Permit Determination for its planned “treatment facility managing brine/wastewater derived from oil and gas-related waste.” *See Attachment C to Notice of Appeal*. Regarding the disposal of completion waste generated from RVS’s process, WVDEP placed the following relevant condition on RVS:

The owner/operator must obtain approval from the agency prior to disposal of any sludges/solids generated by the facility. The owner/operator may not accept Technically (sic) Enhanced Naturally Occurring Radioactive

Materials (TENORM, 64 CSR 23). To determine if TENORM is going to be accepted at your facility, it is suggested that all raw wastewater is sampled and analyzed to confirm that radionuclides are either absent or de minimums (sic) in all sources of fracturing wastewater. If radionuclides are present in sufficient levels, the facility must be certified by the WVDHHR or the NRC to accept TENORM and routine monitoring of radionuclides may be necessary. Please contact Terra Patton, of the Office of Environmental Health Services/Radiation, Toxics and Indoor Division prior to accepting wastewater that has the potential to contain TENORM.

Attachment C to Notice of Appeal at 3.

5. As operations progress, RVS has determined that disposal of oil and gas waste within an approved West Virginia facility is necessary from both a logistical and financial standpoint. Based on this operational decision, RVS has initiated actions to obtain all necessary approvals for the disposal of this waste within West Virginia in direct accordance with the conditions placed on RVS within the WVDEP Permit Determination.
6. RVS has obtained all requisite approvals from the Department of Health. *See Attachment D to Notice of Appeal.*
7. RVS is currently seeking to obtain all requisite approvals from WVDEP for this disposal – here the waste disposal authorization described above – and the WVDEP’s delayed action on this request has given rise to this appeal as well as to this Motion.
8. Pursuant to the West Virginia Code of State Rules, approved West Virginia landfills must apply for a special waste permit modification to accept oil and gas completion wastes from generators such as RVS. W. Va. Code R. §§ 33-1-4.13 and 33-1A-3.1.
9. The Wetzel County Landfill is approved to accept such special wastes, and regularly receives minor permit modifications to accept oil and gas completion waste from generators like RVS. *See, e.g., Attachment E to Notice of Appeal.*

10. In accordance with these regulatory requirements, Wetzel County Landfill submitted the requisite West Virginia DEP Waste Characterization Form, which included all requisite information and authorizations of RVS as the generator, to WVDEP on May 16, 2024, which included a laboratory analysis of RVS's waste. After receiving a request for additional information from WVDEP, on May 23, 2024, Wetzel County Landfill and RVS submitted the following additional information to WVDEP for the processing of this waste authorization: (1) a RVS Waste Profile; (2) a description of RVS's treatment process; and (3) RVS's Certificate of Registration with the West Virginia Secretary of State. *See Attachment F to Notice of Appeal.*
11. Appellant asserts that it has submitted all requisite information for proper disposal of oil and gas completion waste at the Wetzel County Landfill and as of the filing of this Motion has received no additional communications from WVDEP seeking additional information from either RVS or Wetzel County Landfill to formally process this minor permit waste authorization.
12. WVDEP has been processing these types of oil and gas waste disposal authorizations for approximately ten (10) years, and prior to 2024, these authorizations were typically processed in less than one (1) month of submittal and often as quickly as 1 week. *See Attachment G to Notice of Appeal.* Appellant understands, upon information and belief, that well over fifty such authorizations have been quickly and efficiently approved in just the past two years.
13. WVDEP received Wetzel County Landfill's request to accept completion waste from RVS approximately eighty-nine (89) days ago, which is far longer than is necessary to grant or deny this authorization and, conservatively, is at least fifty-five (59) days longer than

WVDEP has historically taken to issue these authorizations, which are simply minor permit modifications to Wetzel County Landfill's existing permit.

14. Indeed, since filing its appeal, Appellant's review of publicly available files suggests that over the past two years, the average processing time for one of these waste disposal authorizations may be less than ten (10) days. More recently, Appellant believes based on WVDEP records that the average processing time is approximately 15.5 days in certain instances.
15. WVDEP's failure to act is a constructive denial of the waste authorization subject to appeal before this Board. *See* W. Va. Code § 22-15-16 and 22B-1-7(c) ("Persons entitled to appeal may also file a notice of appeal related to the failure or refusal of the appropriate chief or the secretary to act within a specified time on an application for a permit; such notice of appeal shall be filed within a reasonable time.").
16. WVDEP's failure to approve the pending waste disposal authorization for RVS directly limits Appellant's ability to operate in West Virginia, or to take on additional clients or waste from existing clients, for processing and disposal.
17. WVDEP's failure to approve the pending waste disposal authorization thus has caused and continues to cause direct harms, including but not limited to increased transportation and disposal costs, artificial limitations on operating capacity, and limitations on Appellant's ability to compete for new business (or forcing RVS to effectively turn down new business). As such, Appellant's harm is immediate and ongoing.
18. Appellant's remedy to address WVDEP's costly and unjust delay is to seek redress from this Board. Time is of the essence.

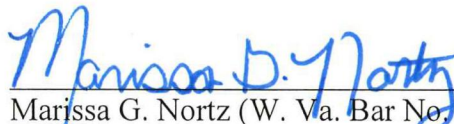
19. In sum, Appellant timely filed it's with the Board, Appellant's pending waste disposal authorization request is complete, Appellant's pending waste disposal authorization has been pending with the WVDEP for far longer than normal or necessary for such a request and as such has been constructively denied by the WVDEP, the WVDEP has failed to act despite multiple requests to WVDEP to approve this authorization, and the WVDEP's delay has caused and is continuing to have a detrimental impact on Appellant's business.
20. The hearing in this matter is scheduled for December 2024, allowing the WVDEP to continue to effectively prohibit Appellant's disposal of oil and gas completion wastes in West Virginia for months. Given the lack of response or action by the WVDEP to date, the only way that Appellant can limit continued harm to its business is to seek an earlier hearing date.

WHEREFORE, Appellant respectfully moves this Board to reschedule the evidentiary hearing in this matter to the September 2024 docket, which appears to be the week of September 9, 2024.¹ Appellant asserts that is could be prepared for an evidentiary hearing on September 12, 2024, or alternatively and based on this Board's availability, October 10, 2024. Appellant understands that its request is unusual but given the circumstances surrounding this Appeal urgency is required.

Respectfully submitted,

Riverside Valley Services, LLC, Appellant

By Counsel:



Marissa G. Nortz (W. Va. Bar No. 12742)
Armando F. Benincasa (W. Va. Bar No. 6865)

¹ Typically, this Board holds hearing on the Thursday of the docketed week.

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**West Virginia Environmental Quality Board
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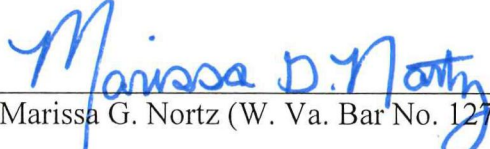
Appellee.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August 2024, I served the foregoing “Motion to Expedite Evidentiary Hearing” upon the following parties via electronic mail and U.S. mail, postage prepaid, in envelopes addressed to the following:

Kenna M. DeRaimo, Clerk
Environmental Quality Board
601 57th Street, SE
Charleston, West Virginia 25304

Charles S. Driver, Esq.
Jonathan C. Frame, Esq.
WV Department of Environmental Protection
601 57th Street, SE
Charleston, West Virginia 25304



Marissa G. Nortz (W. Va. Bar No. 12742)