

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD  
CHARLESTON, WEST VIRGINIA

RECEIVED

LESTER CANTLEY,

DEC 9 2024

Appellant,

Environmental Quality  
Board

v.

Appeal No. 24-12-EQB

JEREMY W. BANDY, DIRECTOR,  
DIVISION OF WATER AND WASTE  
MANAGEMENT, WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,

Appellee.

**APPELLANT WVDEP'S MOTION TO DISMISS**

The Appellant, Jeremy W. Bandy, Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection ("WVDEP"), by counsel, hereby moves the Board for entry of an order dismissing the above-styled appeal, striking it from the docket of the Board. WVDEP so moves because the Appellee, Lester Cantley, is procedurally and formally insufficient pursuant to W. Va. Code § 22B-1-7(c) and the Board's procedural rule, W. Va. C.S.R. § 46-4-2.2.

WVDEP further moves, in the interest of economy of resources, to extend the deadline for production of the certified record in the above-styled matter pending the Board's ruling on this motion.

In support of its motion, WVDEP states as follows:

**ARGUMENT**

**I. Mr. Cantley's notice of appeal is procedurally and formally insufficient.**

On October 23, 2024, WVDEP's Office of Environmental Enforcement received direct correspondence from Mr. Cantley alleging only that he was unable to pay for remediation of a site. This correspondence was not filed with the Board and came to the Board's attention only when WVDEP

forwarded it to the Board. The notice of appeal was therefore improperly filed pursuant to W. Va. Code § 22B-1-7(c) and W. Va. C.S.R. § 46-4-2.2(b).

Furthermore, the notice of appeal does not identify any WVDEP action or any associated objection thereto, with specificity or otherwise. Neither WVDEP nor the Board has any indication of what is being appealed or why. The notice of appeal therefore fails to meet the formal requirements of W. Va. C.S.R. § 46-4-2.2(c), which states that “[t]he notice of appeal shall set forth the action complained of, and in separate numbered paragraphs the specific objections to the action, including questions of fact and law to be resolved by the board.”

**II. It is necessary and proper to extend the deadline for production of a certified record.**


W. Va. C.S.R. § 46-4-2.3 requires WVDEP to prepare and produce a complete record of the proceedings out of which the appeal arises, including relevant documents and correspondence, within 14 days after receipt of a notice of appeal. This is not possible without knowing what is being appealed. WVDEP therefore requests an extension of the deadline for production of the certified record pending the Board’s ruling on this motion.

**PRAYER FOR RELIEF**

Accordingly, WVDEP moves the Board for entry of an order dismissing the notice of appeal, striking it from the docket of the Board, and for such other relief as is deemed appropriate.

Respectfully Submitted,  
JEREMY W. BANDY

By Counsel:

  
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CHARLESTON, WEST VIRGINIA**

**LESTER CANTLEY,**

**Appellant,**

**v.**

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

**Appellee.**

**CERTIFICATE OF SERVICE**

I, C. Scott Driver, hereby certify that on December 9, 2024, a true copy of the foregoing Appellant WVDEP's Motion to Dismiss was served by United States Postal Service mail, first-class and prepaid, and by e-mail on the following party:

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