

BEFORE THE WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

WEST VIRGINIA WATER RESOURCES, INC.,

Appellant,

Appeal No.: 24-01-EQB

v.

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

Appellee.

APPELLANT'S MOTION TO CONTINUE EVIDENTIARY HEARING

Pursuant to *W. Va. Code* §§ 22B-1-6(d) and 22B-1-7, and Rules 5.3, 5.4 and 6.2 of the Environmental Quality Board (“Board”)’s Procedural Rules, Appellant West Virginia Water Resources, Inc. (“WVWR”) submits this Motion to Continue the evidentiary hearing in this appeal that is currently scheduled to begin on January 16, 2025.


As good cause for this request, WVWR states that contemporaneously with this motion it is filing Appellant’s Motion to Reconsider the Board’s December 20, 2024 Order (“Reconsideration Motion”). That motion sets forth several grounds for WVWR’s request that the Board reconsider and withdraw its order granting partial summary judgment to Appellee West Virginia Department of Environmental Protection (“DEP”) regarding that part of WVWR’s appeal challenging the DEP’s incorporation of various conditions implementing the West Virginia Solid Waste Management Act, *W. Va. Code* § 22-15-1, et seq (“SWMA”) as a part of WV/NPDES Permit No. WV0116521 issued on January 12, 2024, for WVWR’s Dent’s Run Landfill (“the Dent’s Run NPDES Permit”). As explained in the Reconsideration Motion, the Partial Summary Judgment Order should be withdrawn because there are at least two (2) disputed, material facts

regarding WVWR's appeal of the SWMA provisions included in the Dent's Run NPDES Permit – namely, (1) whether the material deposited at the Dent's Run Landfill (a.k.a. "R/O Plant Reject") constitutes "solid waste" under the SWM, and (2) whether the DEP decision to issue an industrial solid waste permit (instead of a coal NPDES permit) for the Dent's Run Landfill was based on the characteristics of the mine water treated at the Northern WV Treatment Facility. However, under Rule 56 of the West Virginia Rules of Civil Procedure (as applied to Board proceedings), summary judgment may be granted only when there are *no* disputed material facts concerning an appeal. *See* Rule 56(c), W.Va. R. Civ. P.

WHEREFORE, WVWR MOVES that the Board continue the evidentiary hearing for at least sixty (60) days to provide sufficient time for the Board to review all filings, deliberate and act upon the Motion to Reconsider and, if deemed appropriate, to schedule this appeal for hearing on all of the issues raised in the Notice of Appeal. A proposed Order accompanies this motion.

Respectfully submitted:

West Virginia Water Resources, Inc.
By counsel



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CERTIFICATE OF SERVICE

As counsel for the Appellant, West Virginia Water Resources, Inc., I do hereby certify that on the 3rd day of January, 2025, I served a true and exact copy of the Appellant's Motion to Continue Evidentiary Hearing and proposed Order Granting Motion to Continue Evidentiary Hearing on the following counsel by electronic mail and via regular first-class mail at the below address:

Jeffrey Dye, Esq.
Office of Legal Services
West Virginia Department of Environmental Protection
601 57th Street, S.E.
Charleston, WV 25304


Robert M. Stonestreet (W. Va. Bar No. 9370)