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MAY 15 2023

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

Environmental Quality
Board

AMSTED GRAPHITE MATERIALS, LLC

Appellant,

v.

Appeal No. 21-04-EQB

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

Appellee.

MOTION FOR STAY

Appellant, Amsted Graphite Materials, LLC (“Appellant” or “AGM”), by and through its undersigned counsel, respectfully moves the West Virginia Environmental Quality Board (“EQB” or “Board”) for a stay of certain provisions of its WV/NPDES Permit that is the subject of this appeal. In support of its motion, Appellant AGM states as follows:

1. On May 26, 2021, AGM filed a timely appeal of certain terms and conditions of its recently renewed WV/NPDES Permit No. WV0004707 (the “Permit”) issued by the West Virginia Department of Environmental Protection (“WVDEP”) on or about April 28, 2021.
2. The Board thereafter scheduled this matter for hearing, and after granting continuances to allow for settlement efforts, set the hearing for August 11-12, 2022.

3. The parties sought additional time from the Board to complete negotiations to resolve all issues raised by the appeal.

4. A significant element of the appeal and negotiations in the appeal involved the Permit's compliance schedule, covering PAHs, WET, temperature (April), and temperature difference at Outlet 003; PAHs, WET, copper, lead, zinc, and aluminum at Outlets 009/050; and WET, zinc, and nitrite nitrogen at Outlet 030, which required final compliance no later than June 1, 2023.

5. Consistent with their representations to the Board, the parties continued settlement efforts, and achieved agreement in principle on a revised compliance schedule that would extend the final compliance date in the Permit.

6. The parties' written agreement was near completion in late November 2022, with a single proposed clarification (not related to the agreed upon compliance schedule) to be discussed. Despite good faith efforts, the parties have not yet submitted the final executed agreement to the Board for approval.

7. Based upon the agreement reached by the parties, AGM proceeded with the filing of its application for a major permit modification to implement the terms of the agreement in January 2023 which includes a modification to the final compliance dates contained in the Permit's compliance schedule. That modification application is to the best of our knowledge complete and pending.

8. AGM is continuing efforts toward achieving compliance with the terms and conditions of the Permit consistent with its permit modification application.

9 Thus, while the settlement agreement has been agreed to as to the compliance schedule, it has not yet been finalized and approved by the Board despite the good faith efforts of the parties.

10. Unfortunately, as referenced above, the original Permit compliance schedule includes a final compliance date of June 1, 2023.

11. As Appellant AGM's permit modification application is still currently pending, it is highly likely that Appellee will be unable to complete the legal process to approve AGM's request for permit modification prior to the final compliance date set forth in AGM's current permit under appeal.

12. Without a Stay of the current Permit's compliance schedule, AGM will be at risk to be immediately in non-compliance with the terms and conditions of its Permit as of June 1, 2023, and subject to potential penalties and other enforcement action by the Appellee and potentially by third parties.

13. AGM will be significantly and unjustly impacted and suffer unjust hardship if a stay is not granted to allow time for the Appellee to complete final action related to entry of the settlement agreement and AGM's outstanding request for permit modification consistent with the settlement agreement.

14. Given the status of the appeal, and the good faith actions of both parties, Appellant AGM seeks a temporary stay of the compliance schedule in the Permit to allow for sufficient time for completion of the permit modification implementing the revisions to the compliance schedule and any other steps necessary to resolve the remaining issues raised in AGM's appeal.

15. AGM more specifically seeks a stay for a minimum of 90 days of the Permit's compliance schedule and further until such time as Appellee takes final action upon AGM's currently pending request to modify its permit.

16. AGM requests that the Board set this matter for further status conference in 90 days to address the status of the agreed to settlement and AGM's pending request for permit modification.

WHEREFORE, Appellant AGM believes it is clear that it will suffer an unjust hardship if its Motion for Stay is not granted, and respectfully moves the Board to GRANT its Motion for Stay and to grant such other and further relief that the Board deems just and as set forth above.

A handwritten signature in cursive script, appearing to read "Allyn Turner", written over a horizontal line.

Allyn Turner, WVBN 5561
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Counsel for Amsted Graphite Materials, LLC

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CERTIFICATE OF SERVICE

I, Allyn G. Turner, do hereby certify that a true and exact copy of the foregoing **MOTION FOR STAY** was caused to be served upon the following via hand delivery this 12th day of May 2023.

Scott Driver, Counsel for WVDEP
Division of Water and Waste Management
WV Department of Environmental Protection
601 - 57th Street SE
Charleston, WV 25304 – 2345

Kenna DeRaimo, Clerk of the Board
West Virginia Environmental Quality Board
601 - 57th Street SE
Charleston, WV 25304 – 2345


Allyn G. Turner