

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

AMSTED GRAPHITE MATERIALS, LLC

Appellant,

v.

Appeal No. 21-04-EQB

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

Appellee.

APPELLEE'S RESPONSE TO MOTION FOR STAY

The Appellee, Katheryn D. Emery, Director, Division of Water and Waste Management, West Virginia Environmental Protection ("WVDEP"), by counsel, hereby responds in opposition to the Appellant's previously filed Motion for Stay, moving the Board for entry of an order denying said Motion for Stay.

The Board's procedural rule, W. Va. Code R. § 46-4-5.5 states as follows:


5.5. Stay Requests.

The filing of the notice of appeal does not stay or suspend the effectiveness of the action appealed from, except as provided for by section five, article five, chapter twenty-two of the Code of West Virginia. **The appellant may request a stay of the action appealed from by written motion contemporaneous with the filing of the notice of appeal.** The motion for stay shall include a copy of the action appealed from and any other documents supporting the request. The motion for stay shall be served on the board and all parties in accordance with these rules. [Emphasis added.]

A request for stay was not submitted to the Board contemporaneously with the notice of appeal, and there is no provision for staying the effectiveness of appealed action without such filing. The Motion for Stay in this instance has been filed almost two years after the filing of the notice of appeal.

The parties have previously represented to the Board that settlement negotiations are ongoing, and WVDEP continues to believe there is a significant possibility that the matter can be resolved without further adverse litigation. However, the pendency of settlement negotiations does not equate to inevitability, no matter how few terms remain in controversy. Accordingly, WVDEP does not believe an untimely stay is appropriate.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the attached *Appellee's Response to Motion for Stay* was delivered on the following persons by electronic mail on May 17, 2023, with hard copies served by United States Postal Service mail, first class, on the same date.

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