

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

HOBET MINING, LLC,

Appellant,

v.

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

Appellee.

ORDER DISMISSING APPEAL

Hobet Mining, LLC (“Appellant”) appealed Notices to Comply it received on NPDES Permits WV1016776 and WV0099392. Both of the Notices to Comply were issued by the West Virginia Department of Environmental Protection (“Appellee”) on August 28, 2007. An evidentiary hearing on the matter was held on January 10, 2008. Appellant was represented by Blair M. Gardner, Esquire, of Jackson Kelly PLLC. Appellee was represented by Thomas L. Clarke, Esquire, of the West Virginia Department of Environmental Protection’s Office of Legal Services.

During the hearing, Mr. Clarke argued that the Board did not have jurisdiction over this matter because there was no appealable order issued to the Appellant. Mr. Clarke asserted that the Notice to Comply was nothing more than an enforcement tool at the discretion of the Appellee and amounted to a “warning” ticket to the Appellant.

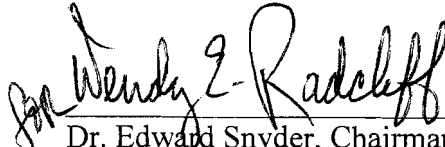
Appellant argued that it received a written notice of its right to appeal and that it had simply asserted that right after it was offered. Appellant directed the Board to the question of whether Appellee has the authority to pursue dual remedies. Appellant noted that the Appellee

commenced a civil action before the Circuit Court of Boone County, and to pursue other remedies would amount to an unlawful duplicative enforcement action.

The Board did not make a decision or comment on Appellant's underlying legal theory, but rather noted that the pending appeal was premature and that the Appellant had not suffered an adverse action subject to the jurisdiction of this Board. However, the Board noted that upon a subsequent order by the Appellee resulting in a penalty, Appellant would then have a right to challenge, if need be, the underlying facts that are the basis of the Notices to Comply and the order. For the reasons set forth herein, Appeal No. 07-22-EQB is dismissed from the Board's docket.

It is so ORDERED this 29th day of February, 2008, by the Environmental Quality Board.

ENVIRONMENTAL QUALITY BOARD



Dr. Edward Snyder, Chairman

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

HOBET MINING, LLC,

Appellant,

v.

Appeal No. 07-22-EQB

LISA A. MCCLUNG, DIRECTOR,
DIVISION OF WATER AND WASTE
MANAGEMENT, DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Appellee.

CERTIFICATE OF SERVICE

This is to certify that I, Jackie D. Shultz, Clerk for the Environmental Quality Board, have this day, the 4th day of March, 2008, served a true copy of the foregoing "**Order Dismissing Appeal**" to all parties in Appeal No. 07-22-EQB, by mailing the same via United States Mail, with sufficient postage, to the following address:

via certified mail:

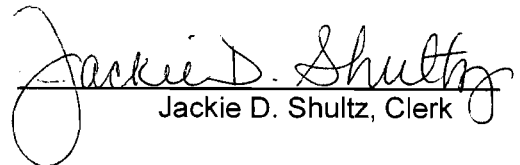
Blair M. Gardner, Esquire
Jackson Kelly PLLC
P.O. Box 553
Charleston, WV 25322

Certified Mail # 7160 6690 2530 0000 7435

via personal service:

Lisa A. McClung, Director
Division of Water and Waste Management
WV Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304

Thomas L. Clarke, Esquire
Office of Legal Services
WV Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304


Jackie D. Shultz, Clerk