

**ENVIRONMENTAL QUALITY BOARD  
CHARLESTON, WEST VIRGINIA**

**DAVID A. O'BRIEN**

**Appellant,**

v.

**Appeal No. 09-02-EQB**

**DIRECTOR, DIVISION OF WATER AND  
WASTE MANAGEMENT, DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,**

**Appellee.**

**ORDER**

David A. O'Brien ("Appellant") filed the above-styled appeal on March 27, 2009, seeking the Board to revoke the modification of WV/NPDES Permit Number WV1011642 Modification 1 issued February 19, 2009, by the West Virginia Department of Environmental Protection ("WVDEP" or "Appellee") Division of Water and Waste Management.

On April 7, 2009, the Appellee filed a Motion to Dismiss arguing that Appellant failed to file a timely appeal. Appellee asserts that for Appellant's appeal to be deemed "perfected," Appellant must have filed his notice of appeal by March 23, 2009, thirty (30) days after WVDEP sent an electronic copy of the permit modification to the Ohio County Development Authority. Appellant filed his notice of appeal via United States mail with a postmark of March 27, 2009. Appellant filed a response and stated he does not oppose the Motion.

46 C.S.R. §4-2.2b states: "An appeal filed by a person authorized by statute to seek review of an order, permit or official action shall be perfected by filing a notice of appeal with the board within thirty (30) days after the date upon which service of such order, permit or official action was complete. For persons entitled by statute to appeal the failure or refusal of the appropriate chief or

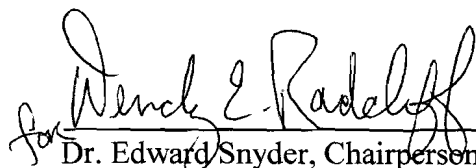
the director to act within a reasonable time on an application for a permit, such notice of appeal shall be filed within a reasonable time.”

46 C.S.R. §4-4.3 states: “Filing is effective upon personal delivery, upon delivery of express mail, or upon deposit in the United States mail as ascertained by postmark.”

The Board finds that Appellant’s appeal was not timely filed. Therefore, the Board finds it necessary and proper to **GRANT** the Appellee’s Motion to Dismiss and hereby **DISMISSES** Appeal No. 09-02-EQB from its docket.

It is so **ORDERED** and entered this 29 of April, 2009.

**Environmental Quality Board**

  
for Wendy E. Radloff  
Dr. Edward Snyder, Chairperson

ENVIRONMENTAL QUALITY BOARD  
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DIRECTOR, DIVISION OF WATER AND  
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Appellee.

CERTIFICATE OF SERVICE

This is to certify that I, Jackie D. Shultz, Clerk for the Environmental Quality Board, have this day, the 29<sup>th</sup> day of April, 2009, served a true copy of the foregoing "**Order**" to all parties in Appeal No. 09-02-EQB, by mailing the same via United States Mail, with sufficient postage, to the following address:

*via certified first-class mail:*

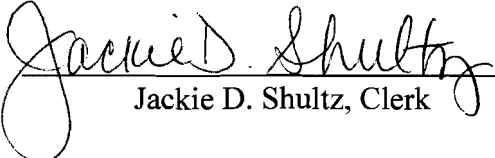
David A. O'Brien                      Certified Mail #  
1956 N. Birchwood Park Drive  
Cherry Hill, NJ 08003-1026

91 7108 2133 3936 1623 6882

*via personal service:*

Scott Mandirola, Director  
Division of Water and Waste Management  
WV Department of Environmental Protection  
601 57<sup>th</sup> Street, S.E.  
Charleston WV 25304

Office of Legal Services  
WV Department of Environmental Protection  
601 57<sup>th</sup> Street, S.E.  
Charleston WV 25304

  
Jackie D. Shultz, Clerk