

**West Virginia Air Quality Board
Charleston, West Virginia**

**Tucker United, West Virginia Highlands
Conservancy, and Sierra Club,
Appellants**

v.

Appeal No. 25-AQB-02

**Director, Division of Air Quality,
Department of Environmental Protection,
Appellee**

and

**Fundamental Data LLC,
Intervenor.**

**PROTECTIVE ORDER CONCERNING
INTERVENOR'S REDACTED PERMIT APPLICATION**

In this case, Appellants appeal Appellee's issuance of a 45CSR13 construction permit to Intervenor for Intervenor's Ridgeline facility in Tucker County, West Virginia. The Certified Record contains, among other things, a redacted version of Intervenor's permit application. *See* CR2-79. Intervenor contends that the redactions were made to protect its confidential and proprietary business information and trade secrets under 45CSR31.

On October 17, 2025, Appellants filed a Request for Additional Discovery. In their request, Appellants seek an order allowing them "discovery of the redacted information in the permit application."

On November 5, 2025, the Board held a hearing on Appellants' Request for Additional Discovery. At the hearing, the Board deferred ruling on Appellants' request and asked the parties to meet and confer about a potential agreed protective order under which the redacted information from Intervenor's permit application could be disclosed to Appellants.

Pursuant to the Board's request, the parties met and conferred, and they have agreed that some, but not all, of the information redacted from Intervenor's permit application would be disclosed to Appellants only under and in accordance with the terms and conditions of this Order.

Accordingly, the Board hereby ORDERS as follows:

1. Within three (3) days of the entry of this Order, Intervenor will provide Appellants' Counsel with an unredacted version of Attachment N to Intervenor's permit application (the "Protected Information"). For the purposes of this Order, "Appellants' Counsel" means or refers to J. Michael Becher.

2. Appellants' Counsel may use the protected Information for the sole purpose of prosecuting this appeal and any appeal of the Board's final decision in this appeal. Appellants' Counsel may not use the Protected Information for any other purpose.

3. Appellants' Counsel shall maintain the Protected Information in strict confidence, and except as expressly provided in Paragraph 4 below, he may not disclose any of the Protected Information to any person or entity.

4. Appellants' Counsel may disclose the Protected Information to Dr. Ranajit Sahu, Appellants' expert witness, but only after Dr. Sahu signs the Acknowledgment and Agreement to Be Bound attached hereto as Exhibit A and the signed Acknowledgement and Agreement to Be Bound is provided to counsel for Intervenor.

5. In the event Appellants' Counsel wants to use or disclose Protected Information in a filing with the Board in this appeal, he must do so under seal. The Board hereby grants Appellants' Counsel leave to make any such filing under seal. In the event Appellants' Counsel wants to use or disclose Protected Information in a hearing before the Board in this appeal (including in demonstrative and evidentiary exhibits), he must first provide Intervenor with at least

three (3) days' advance written notice. Then, before Appellants' Counsel uses or discloses the Protected Information in a hearing, he must inform the Board and Intervenor, and the Board will clear the hearing room of all non-essential persons before the Protected Information is used or disclosed.

6. The protections conferred by this Order cover the Protected Information and (a) any information copied or extracted from Protected Information; (b) all copies, excerpts, summaries, or compilations of Protected Information; and (c) any deposition testimony, conversations, or presentations by a recipient that might reveal Protected Information.

7. Appellants' Counsel shall take such further actions as may be necessary or appropriate to maintain confidentiality of the Protected Information and to carry out the intent of this Order.

8. Even after final disposition of this appeal, the confidentiality obligations imposed by this Order shall remain in effect.

9. Upon the final disposition of this appeal, Appellants' Counsel and Dr. Sahu shall:
- a. Destroy the Protected Information and all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Information; and
 - b. Certify in writing to Intervenor's counsel that he (i) has destroyed the Protected Information and all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Information; and (ii) has not retained any Protected Information or any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Information.

10. Appellants' Request for Additional Discovery is denied as moot.

11. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

It is so **ORDERED** and **ENTERED** this 19th day of November, 2025.



J. Michael Koon, Chairman

This Order was prepared and
presented by:

/s/ J. Michael Becher
J. Michael Becher
(W. Va. Bar No. 10588)
Appalachia Mountain Advocates
P.O. Box 11571
Charleston, WV 25339
Counsel for Appellants

/s/ David L. Yaussy
David L. Yaussy, Esq.
(W. Va. Bar. Mo. 4156)
Spilman Thomas & Battle, PLLC
300 Kanawha Blvd., East
Charleston, WV 25301

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, Dr. Ranajit Sahu, who lives at 311 North Story Place, Alhambra, California 91801, declare under penalty of perjury that I have read in its entirety and understand the Protective Order Concerning Intervenor's Redacted Permit Application (the "Order") that was entered by the West Virginia Air Quality Board in *Tucker United, et al., v. Director, Division of Air Quality, Department of Environmental Protection, et al.*, West Virginia Air Quality Board, Appeal No. 25-AQB-02. I agree to comply with and to be bound by all the terms of the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any Protected Information to any person or entity except in strict compliance with the provisions of the Order.

Date: _____

Printed name: _____

Signature: _____

STATE OF CALIFORNIA,
COUNTY OF _____, TO-WIT:

I, _____, a Notary Public in and for said County and State, do hereby certify that _____, whose name is signed to the foregoing writing, has this day acknowledged the same before me.

Given under my hand this _____ day of _____, 2025.

My commission expires: _____

Notary Public

(SEAL)

**WEST VIRGINIA AIR QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

**TUCKER UNITED, WEST VIRGINIA HIGHLANDS
CONSERVANCY, and SIERRA CLUB,**

Appellants,

v.

Appeal No. 25-02-AQB

**DIRECTOR, DIVISION OF AIR QUALITY,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

Appellee

and

FUNDAMENTAL DATA, LLC,

Intervenor.

CERTIFICATE OF SERVICE

This is to certify that I, Kenna M. DeRaimo, Clerk for the Air Quality Board, hereby certify that on this day, the 20th day of November, 2025, have served a true copy of the foregoing **PROTECTIVE ORDER CONCERNING INTERVENOR'S REDACTED PERMIT APPLICATION** upon the following:

J. Michael Becher, Esq.
APPALACHIAN MOUNTAIN ADVOCATES
P.O. Box 11571
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mbecher@appalmad.org

*Via Certified U.S. First-Class Mail
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and Electronic Mail*

Charles S. Driver, Esq.
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Fundamental Data, LLC
c/o Casey L. Chapman, Responsible Official
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Purcellville, Virginia 20132

Via Certified U.S. First-Class Mail
9489 0090 0027 6726 0223 91


Kenna M. DeRaimo, Clerk