

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

WEST VIRGINIA-CITIZEN ACTION GROUP, INC.,

Appellant,

v.

Appeal No. 25-04-AQB

**LAURA M. CROWDER, DIRECTOR,
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL
PROTECTION, DIVISION OF AIR QUALITY,**

Appellee,

and

MGS CNP1, LLC

Intervenor.

ORDER GRANTING MOTION TO INTERVENE

Pending before the Air Quality Board (“Board”) is (“Petitioners”) Motion to Intervene filed on month dd, 2026. After a review of the Board’s procedural rules and the West Virginia Rules of Civil Procedure, the Board GRANTS Petitioners’ Motion to Intervene.

West Virginia Code §22B-1-7(e) states: [w]ith the consent of the board and upon such terms and conditions as the board may prescribe, any person affected by the matter pending before the board may by petition to intervene as a party appellant or appellee.”

The Procedural Rules Governing Appeals Before the Air Quality Board state the following:

“While the differences in the functions of courts and administrative boards preclude the “wholesale transportation” of the Rules of Civil Procedure into the hearings before the board, some rules must be utilized to manage board hearings. Thus, as a matter of policy and to assure fairness, the appropriate Rules of Civil Procedure will guide the appeals process before the board.”

46 CSR 4-§ 6.13.

The Board reviewed Rule 24 of the West Virginia Rules of Civil Procedure for guidance in accordance with 46 CSR 4-§ 6.13. Rule 24 of the West Virginia Rules of Civil Procedure states, in pertinent part, the following:

Rule 24. Intervention.

- (a) *Intervention of right.* – Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this State confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.
- (b) *Permissive intervention.* – Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of this State confers a conditional right to intervene; or (2) when an applicant’s claim or defense and the main action have a question of law or fact in common.... In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

In this case, the W. Va. Code § 22-B-1-7(e) does not confer upon Intervenors an unconditional right to intervene in this appeal. The statute clearly prescribes that a person may intervene “with consent of the board and upon such terms and conditions as the board may prescribe.” The statute provides for the possibility to intervene under certain circumstances at the discretion of the Board.

Nevertheless, it appears that under Rule 24, anyone may still be afforded intervention of right status if the applicant claims an “interest relating to the property or transaction which is the subject of the action” and its disposition may “as a practical matter impair or impede the

applicant's ability to protect that interest unless the applicant's interest is adequately represented by existing parties."

Here, the Board finds that Petitioners have stated in their petition claims sufficient to show an interest relating to the permit at issue in this appeal and that Petitioners are situated such that the disposition of this appeal may impair their ability to protect their interest. Further, the Board find that the Petitioner's interests are not adequately represented by existing parties in this appeal.

In conclusion, the Board hereby finds, for the above reasons, that it is proper to allow Petitioners to intervene in this appeal.

It is so **ORDERED** and **ENTERED** this 23RD day of January, 2026.

for Kenna M DeRains
J. Michael Koon, Chairperson

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CERTIFICATE OF SERVICE

This is to certify that I, Kenna M. DeRaimo, Clerk for the West Virginia Air Quality Board,
have this day, the 23RD day of January, 2026, served a true copy of the foregoing **ORDER**

GRANTING MOTION TO INTERVENE, by delivering the same upon the following:

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Via Certified U.S. First-Class Mail
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Kenna M. DeRaimo, Clerk