

**FILED**

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**WW CONSULTANTS, INC.,  
a Virginia Corporation,**

2018 MAR 15 AM 11:51

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

**Plaintiff,**

v.

**Civil Action No.: 18-C-115  
Judge Bloom**

**POCAHONTAS COUNTY PUBLIC  
SERVICE DISTRICT, a public corporation  
and local political subdivision of the State of the  
State of West Virginia, MARK SMITH,  
DAVID GANDEE, and DAVID DRAGAN,  
in their official capacity as board  
members of the Pocahontas County  
Public Service District, the WEST  
VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, a  
Department of the State of  
West Virginia, and the WEST VIRGINIA  
WATER DEVELOPMENT AUTHORITY,  
an instrumentality of the State of  
West Virginia,**

**Defendants.**

**ANSWER OF DEFENDANT  
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

The Defendant, West Virginia Department of Environmental Protection ("WVDEP"), by counsel, Scott Driver, hereby tenders its answer to the Complaint in the above-styled matter.

WVDEP answers as follows:

**AFFIRMATIVE DEFENSES**

WVDEP asserts the following affirmative defenses, therefore moving the Court to dismiss the case:

WVDEP asserts its immunity to suit in this case under the doctrine of sovereign immunity.

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WVDEP asserts that any claims or damages alleged by the Plaintiff were caused by entities other than WVDEP.

WVDEP asserts that it owes and has assumed no duty, contractual or otherwise, to the Plaintiff or to any other named party or third party in this case.

WVDEP asserts that it is not a beneficiary of any agreement, contractual or otherwise, between the Plaintiff and WVDEP or any other named party or third party in this case.

WVDEP asserts that any purported duty, contractual or otherwise, to the Plaintiff or to any other named party or third party in this case, is insufficient, void, and/or voidable due to lack of privity between WVDEP and the Plaintiff or any other named party or third party in this case.

WVDEP asserts that any purported duty, contractual or otherwise, to the Plaintiff or to any other named party or third party in this case, is insufficient, void, and/or voidable due to lack of consideration.

WVDEP asserts that the Plaintiff comes to the case with unclean hands and/or is barred from asserting its allegations by the doctrine of laches.

WVDEP asserts that the Plaintiff is barred from asserting its allegations by the doctrine of estoppel.

WVDEP asserts that the Plaintiff is barred from asserting its allegations by its frustration of any purported duty, contractual or otherwise, to the Plaintiff or to any other named party or third party in this case.

WVDEP asserts that the Plaintiff lacks standing to bring this case against WVDEP.

WVDEP generally denies all allegations not admitted herein.

To the extent that specific allegations do not mention or appear to have any nexus with WVDEP, WVDEP generally denies those allegations which purport to allege a cause of action against WVDEP and demands strict proof thereof.

To the extent that, during the pendency of the case, it is determined that any other affirmative defenses are appropriate, pursuant Rule 8(c) of the West Virginia Rules of Civil Procedure or otherwise, WVDEP asserts any appropriate additional affirmative defenses.

To the extent that, during the pendency of the case, it is determined that any counterclaims, cross-claims, or third party claims are appropriate, WVDEP reserves the right to assert such claims.

#### **FAILURE TO STATE A CLAIM**

Pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, WVDEP moves the Court to dismiss the case for the Plaintiff's failure to state a claim upon which relief can be granted.

#### **TRIAL BY JURY**

WVDEP asserts its right to try this case before a jury.

#### **RESPONSES TO INDIVIDUAL PARAGRAPHS**

WVDEP's following responses are directed to the correspondingly numbered paragraphs of the Complaint.

1. WVDEP lacks knowledge or information sufficient to form a belief as to the truth of this allegation and accordingly denies it and demands strict proof thereof.
2. Upon information and belief, WVDEP admits this allegation.
3. Upon information and belief, WVDEP admits this allegation.
4. Upon information and belief, WVDEP admits this allegation.

5. Upon information and belief, WVDEP admits this allegation.
6. WVDEP denies this allegation and demands strict proof thereof.
7. WVDEP lacks knowledge or information sufficient to form a belief as to the truth of this allegation and accordingly denies it and demands strict proof thereof.
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**PRAYER FOR RELIEF**

For the foregoing reasons, WVDEP respectfully moves this Honorable Court for entry of an order dismissing, with prejudice, the Complaint in the above-styled matter, striking it from the docket of the Court.

WVDEP additionally moves for costs, attorney fees, and such other relief as may be deemed just and appropriate.

Respectfully Submitted,  
WEST VIRGINIA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION  
By Counsel



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Scott Driver, West Virginia Bar #9846  
West Virginia Department of  
Environmental Protection  
601 57<sup>th</sup> Street Southeast  
Charleston WV 25304  
Telephone: (304) 926-0499 x1453  
Facsimile: (304) 926-0461  
E-mail: [charles.s.driver@wv.gov](mailto:charles.s.driver@wv.gov)

**CERTIFICATE OF SERVICE**

**FILED**

**2018 MAR 15 AM 11:51**

I, Scott Driver, do hereby certify that service of the foregoing **Answer of Defendant West Virginia Department of Environmental Protection** has been made this 12<sup>th</sup> day of March, 2018, via first class mail, postage prepaid, on the following:

**Nathaniel K. Tawney, Esquire  
Keith Hoover, Esq.  
Flaherty Sensabaugh & Bonasso  
P.O. Box 3843  
Charleston, WV 25338**

**Michael M. Fisher, Esq.  
Jackson Kelly, PLLC  
P.O. Box 553  
Charleston, WV 25322**

**Mark Smith  
David Gandee  
David Dragan  
Pocahontas County Public Service District  
900 C Tenth Avenue  
Marlinton, WV 24954**

  
\_\_\_\_\_  
**C. Scott Driver (WV Bar# 9846)**