

John T. Frey
CLERK, CIRCUIT COURT
FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

ASSOCIATION OF ENERGY)
CONSERVATION PROFESSIONALS,)
et al.,)
)
Petitioners,)
)
v.)
)
VIRGINIA STATE AIR POLLUTION)
CONTROL BOARD, et al.,)
)
Respondents.)

Case No.: CL-2023-0012061

RESPONDENTS' OBJECTION TO VENUE AND MOTION TO TRANSFER VENUE

Respondents the Virginia State Air Pollution Control Board (“Air Board”), the Virginia Department of Environmental Quality (“DEQ”), and the Director of DEQ Michael Rolband (“Director Rolband”), by counsel and pursuant to Va. Code §§ 2.2-4003, 2.2-4026, 8.01-264, and Rules 2A:2-:5, submit this Objection to Venue and Motion to Transfer Venue. In support thereof, Respondents state as follows:

1. Under the Virginia Administrative Process Act (“VAPA”), the Association of Energy Conservation Professionals, Virginia Interfaith Power & Light, Appalachian Voices, and Faith Alliance for Climate Solutions (“Faith Alliance,” collectively, “Petitioners”) brought this administrative appeal in the Circuit Court for Fairfax County challenging a regulation adopted by the Air Board.

2. Under VAPA, “[a]ctions may be instituted in any court of competent jurisdiction as provided in § 2.2-4003.” Va. Code § 2.2-4026.

3. For VAPA “proceedings under § 2.2-4026,” like here, “venue shall be as specified in subdivision 1 of § 8.01-261.” Va. Code § 2.2-4003.

4. Under that subdivision, in “actions for review of, appeal from, or enforcement of state administrative regulations” venue is proper in “the county or city” where “the moving or aggrieved” party: “(1) [r]esides; (2) [r]egularly or systematically conducts affairs or business activity; or (3) [w]herein such party’s property affected by the administrative action is located.” Va. Code § 8.01-261(1).

5. Pursuant to Rule 2A:2, a party initiating a VAPA appeal “must specify the circuit court to which the appeal is taken” in its Notice of Appeal. Furthermore, in the case of multiple appeals of the same regulation, “all such appeals will be transferred to and heard by the court having jurisdiction that is named in the notice of appeal that is the first to be filed.” Rule 2A:3(b).

6. Petitioners specified in their Notice of Appeal that they were taking their administrative appeal to the Circuit Court for Fairfax County. See Pet., Ex. A. And Petitioners subsequently filed their Petition for Appeal in the Circuit Court for Fairfax County.

7. Faith Alliance, however, is the only Petitioner to allege any connection to Fairfax County. See Pet. ¶ 16 (alleging Faith Alliance is headquartered in Reston, Virginia).

8. By contrast, the Association of Energy Conservation Professionals is “based in Floyd, Virginia,” *id.* ¶ 13, Appalachian Voices is headquartered in Boone, North Carolina with offices in Charlottesville, Virginia and Norton, Virginia, *id.* ¶ 14, and Virginia Interfaith Power & Light is located in Richmond, Virginia, *id.* ¶ 15.

9. As a result, absent Faith Alliance, venue is improper in the Circuit Court for Fairfax County and Petitioners could not have instituted a VAPA action in this court. See Va. Code §§ 2.2-4003, 2.2-4026, 8.01-261(1).

10. Yet, as set forth in Respondents' contemporaneously filed Motion to Dismiss and Demurrer and forthcoming brief in support thereof, Faith Alliance plainly lacks both constitutional and statutory standing to pursue this administrative appeal.

11. While this entire action can be dismissed because no Petitioner has standing, in the event this Court determines that Faith Alliance lacks standing but that another Petitioner does not, Respondents move for a change of venue to a jurisdiction where venue to hear this administrative appeal would be proper as to a remaining Petitioner.

12. Depending upon which, if any, of the Petitioners other than Faith Alliance survive Respondents' Motion to Dismiss and Demurrer, venue would potentially be proper in the Circuit Court for the City of Richmond, the Circuit Court for Floyd County, the Circuit Court for the City of Charlottesville, or the Circuit Court for Wise County and the City of Norton.

WHEREFORE, if the Court does not dismiss this action in its entirety for lack of standing, the Court should grant Respondents' Motion to Transfer Venue and transfer this matter to a circuit court where venue would be proper as to a Petitioner found to have standing to pursue this administrative appeal.

Respondents reserve the right to file a brief in support of this Objection to Venue and Motion to Transfer Venue pursuant to Rule 4:15.

Respectfully submitted,

**VIRGINIA STATE AIR POLLUTION
CONTROL BOARD, VIRGINIA
DEPARTMENT OF ENVIRONMENTAL
QUALITY, AND DEQ DIRECTOR MICHAEL
ROLBAND**

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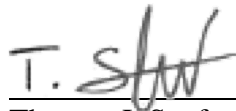
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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2023, a true and correct copy of the foregoing Respondents' Objection to Venue and Motion to Transfer Venue was sent, pursuant to an agreement of counsel, via electronic mail to the following addresses:

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