



west virginia department of environmental protection

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July 25, 2012

Via Hand Delivery

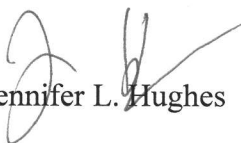
Jackie Shultz, Clerk
Environmental Quality Board
601 57th Street, SE
Charleston, WV 25304

Re: *Allegheny Energy Supply Company, LLC v. WVDEP*
Appeal Nos. 11-21-EQB & 11-22-EQB

Dear Ms. Shultz:

Please find enclosed for filing a ***Joint Status Report*** with regard to the above-referenced appeal. Should you have any questions, please do not hesitate to contact me.

Sincerely,


Jennifer L. Hughes

Encl.

cc: M. Ann Bradley, Esq.
M. Katherine Crockett, Esq.

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

**ALLEGHENY ENERGY SUPPLY
COMPANY, LLC,**

Appellant,

v.

**Appeal No. 11-21-EQB
Appeal No. 11-22-EQB**

**SCOTT G. MANDIROLA, Director,
Division of Water and Waste Management
West Virginia Department of Environmental
Protection,**

Appellee.

JOINT STATUS REPORT

Appellant Allegheny Energy Supply Company, LLC (“AESC”), by counsel, and Appellee Scott G. Mandirola, Director, Division of Water and Waste Management (“WVDEP”), by counsel, hereby submit this Joint Status Report to the West Virginia Environmental Quality Board (“Board”) for its information. Since AESC filed its appeals of WV/NPDES Permit No. WV0005339 (the “Permit”) and Order No. 7004 (the “Order”) on June 3, 2011, the parties have engaged in extensive discussions related to the issues raised therein, and have reached resolution of many of these issues on the terms set forth below. No action is requested from the Board at this time regarding the resolved issues.

1. With regard to Item 1 in the Notice of Appeal of the Permit relating to the lack of uniformity of the discharge limitations and monitoring requirements for Outlets 001 and 002, WVDEP has recalculated the water quality-based discharge limitations for Aluminum, Zinc, Iron and Total Residual Chlorine at these outfalls using a single combined dataset. To the extent that the resolution of related appeal issues results in the retention of the numeric discharge limitations for the above-listed parameters at Outlets 001 and 002, the Permit shall be revised to incorporate

identical discharge limitations for the above-listed parameters as recalculated by WVDEP and previously agreed to by AESC.

2. With regard to Item 4 in the Notice of Appeal of the Permit relating to the new and increased monitoring requirements at Outlets 001 and 002, Sections A.001 and A.002 of the Permit shall be revised to adjust the monitoring frequency for Total Suspended Solids, Copper, Lead, Zinc, Nickel, Aluminum, Chronic Toxicity, Selenium, Arsenic, Barium, Total Dissolved Solids, Antimony, Manganese, Sulfate, and Thallium as follows:

Parameter	Monitoring Frequency
Total Suspended Solids	1/month
Copper, Total Recoverable	1/month
Lead, Total Recoverable	1/quarter
Zinc, Total Recoverable	2/month
Nickel, Total Recoverable	1/quarter
Aluminum, Total Recoverable	2/month
Chronic Toxicity – Ceriodaphnia Dubia	1/6 months
Chronic Toxicity – Pimephales	1/6 months
Selenium, Total Recoverable	1/month
Arsenic, Total Recoverable	1/month
Barium, Total (as Ba)	1/quarter
Solids, Total Dissolved (TDS)	1/month
Antimony, Total (as Sb)	1/quarter
Total Recov. Manganese	1/quarter
Sulfate	1/month
Thallium, Total (as Tl)	1/quarter

3. With regard to Item 5 in the Notice of Appeal of the Permit relating to the requirement in Condition C.18 to begin use of any more sensitive approved analytical method for Total Residual Chlorine (“TRC”) immediately after such method becomes available, the Permit shall be revised to insert the following language after the fifth sentence of Condition C.18 on page 53 of 56 of the Permit: “However, the permittee shall not be obligated to commence TRC self-

monitoring in accordance with the new method earlier than 90 days after the permittee has received written notification of the new method from the Division.”

4. With regard to Item 8 in the Notice of Appeal of the Permit relating to the establishment of benchmark values for Total Dissolved Solids and Sulfate, the Permit shall be revised to eliminate the benchmark values for Total Dissolved Solids and Sulfate from Condition C.13.c on page 50 of 56 of the Permit. Further, Sections A.006, A.007, A.008, A.009, A.010 and A.011 of the Permit shall be revised to reduce the monitoring frequency for Total Dissolved Solids at Outlets 006, 007, 008, 009, 010 and 011 from 1/6 months to 1/year.

5. With regard to Item 10 in the Notice of Appeal of the Permit relating to the imposition of discharge limitations for Zinc at Outlets 006, 007, 008, 009 and 010 despite the absence of a benchmark value for zinc in the previous version of the Permit, the Permit shall be revised to delete the discharge limitations for Zinc at these outfalls.

6. With regard to Item 11 in the Notice of Appeal of the Permit relating to the scope of the reopener provision under Condition C.14, the Permit shall be revised to include the following underlined language in Condition C.14 on page 50 of 56: “If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the permit may be promptly modified and/or reissued where authorized by Section 9 of 47 CSR 10 to include effluent limitations and/or other requirements to control such storm water discharges.”

7. With regard to Item 12 in the Notice of Appeal of the Permit, AESC will withdraw its objection to the discharge limitations for Ammonia Nitrogen imposed at Outlet 101, and therefore these limitations shall remain as specified under Section A.101 on page 45 of 56 of the Permit.

8. With regard to Item 13 in the Notice of Appeal of the Permit relating to the discharge limitations for “Tem. Diff. Discharge/Upstream” at Outlet 102, AESC’s objection has been mooted by WVDEP’s letter dated June 15, 2011, which revised the Permit to correct the typographical error and substitute a reference to Total Suspended Solids.

9. With regard to Item 15 in the Notice of Appeal of the Permit relating to the requirement under Conditions C.25 and D.2.d on pages 53 of 56 and 54 of 56, respectively, to collect temperature data “concurrently” where continuous monitoring is already in place, the Permit shall be revised to delete Conditions C.25 and D.2.d in their entirety.

10. With regard to Item 17 in the Notice of Appeal of the Permit, AESC will withdraw its objection to the requirement under Condition D.2.b to install, maintain and operate in-stream temperature monitors downstream of Outlets 001 and 002. The current stay of Condition D.2.b,¹ which requires the installation of these in-stream temperature monitors within six months of the effective date of the Permit, will be lifted and the six-month installation period shall commence upon the effective date of the modified permit issued by WVDEP as described below.

11. With regard to Item 18 in the Notice of Appeal of the Permit relating to the requirement to collect downstream temperature monitoring samples at two feet below the surface of the West Fork River, Condition D.2.b of the Permit on page 54 of 56 shall be revised to specify that such sampling must be collected at “approximately two feet below the surface.”

12. With regard to Item 19 in the Notice of Appeal of the Permit relating to the scope of the reopener provision under Condition C.3, the Permit shall be revised to include the following underlined language in Condition C.3 on page 49 of 56: “Upon review of information submitted under terms or conditions of this permit and where authorized by Section 9 of 47 CSR 10, the

¹ Condition D.2.b was stayed by Paragraph 5 of this Board’s Order dated June 17, 2011 pending the outcome of these appeals before the Board.

permit may be modified to require additional effluent limitations/monitoring requirements and/or improved best management practices.”

13. With regard to Item 20 in the Notice of Appeal of the Permit relating to the requirement in Condition C.10 to use any more sensitive approved analytical method that becomes available without prior notice of the availability of such a method from WVDEP, the Permit shall be revised to insert the following language after the third sentence of Condition C.10 on page 50 of 56 of the Permit: “However, the permittee shall not be obligated to commence self-monitoring in accordance with any such new method earlier than 90 days after the permittee has received written notification of the new method from the Division.”

14. With regard to Item 21 in the Notice of Appeal of the Permit, AESC will withdraw its objection to the method detection level (“MDL”) for Beryllium as specified in Condition C.16.a of the Permit based on WVDEP’s confirmation that Condition C.16.a does not require the company to achieve the published MDL during every sampling event. Further, Condition C.16.a on page 52 of 56 shall be revised to authorize the use of EPA Method No. 245.1 for purposes of conducting the required sampling for Mercury at Outlets 006, 007, 008, 009, 010 and 011.

15. With regard to Item 22 in the Notice of Appeal of the Permit, AESC will withdraw its objection to WVDEP’s failure to apply a translator in developing the WQBELs for zinc and aluminum at Outlets 001, 002, 006, 007, 008, 009, 010 and 011.

16. With regard to Item 2 in the Notice of Appeal of the Order relating to the compliance schedule for Outlet 102 set forth in Paragraph 4 under “Order for Compliance,” AESC’s objection has been addressed by WVDEP’s amendment of the Order by letter dated May 2, 2012.

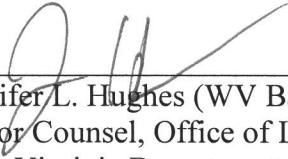
17. With regard to Item 3 in the Notice of Appeal of the Order relating to the maximum daily discharge limitation for Total Suspended Solids at Outlet 102, Paragraph 4 under “Order for Compliance” shall be revised to state that the maximum daily limitation for Total Suspended Solids is 100 mg/L, consistent with the Effluent Limitations Guidelines for the Steam Electric Power Generating Point Source Category, 40 C.F.R. § 423.12(b)(3).

Settlement discussions remain ongoing between AESC and WVDEP with respect to the remaining unresolved issues in these appeals. At the culmination of these discussions, the parties will submit for the Board’s review and approval a proposed agreed order reflecting the terms set forth above, as well as the terms of any additional appeal issues resolved during the interim. Upon the Board’s approval of such order, AESC shall submit an application to WVDEP requesting modification of the Permit as described herein. As soon as practicable, WVDEP shall grant the modification, subject to the procedures set forth in Section 9 of 47 CSR 10 governing major permit modifications. WVDEP shall amend Order No. 7004 as described herein no later than five (5) business days following the Board’s entry of the proposed agreed order.

Respectfully submitted this 25th day of July, 2012.

**SCOTT G. MANDIROLA, DIRECTOR
DIVISION OF WATER AND WASTE
MANAGEMENT, WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

By: WVDEP Office of Legal Services



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