

**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 MOTION TO CONTINUE HEARING & STATUS REPORT

Appellant Allegheny Energy Supply Company, LLC, by counsel, and Appellee Scott G. Mandirola, Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection, by counsel, jointly move this Board to continue the hearing currently scheduled for May 8, 2014 in Appeal Nos. 11-21-EQB and 11-22-EQB and reschedule the hearing for the Board's September 2014 docket. This also serves as the status report that the parties committed to provide to the Board within 14 days following the release by WVDEP of the draft Total Maximum Daily Load for the West Fork River watershed (the "TMDL") for public comment, setting forth (a) the parties' expectations regarding the status of the remaining appeal issues impacted by the TMDL and (b) the parties' expectations regarding the timeline for finalization of the TMDL.

In support of their Joint Motion, the parties represent as follows:

1. The instant appeals involve numerous complex technical issues that have required extensive investigation, analysis and discussion by the parties. Since these appeals were filed on June 3, 2011, the parties have engaged in numerous meetings related to the potential resolution of

the issues raised. These discussions have resulted in the resolution of the majority of the objections raised and a Joint Status Report was submitted by the parties on July 25, 2012 setting forth the parties' agreement as to those issues.

2. Since late March 2013, the parties have been engaged in ongoing discussions regarding WVDEP's revision of the TMDL and the wasteload allocation ("WLA") for iron to be assigned to the Harrison Power Station (the "Station"), which directly implicate several of the remaining unresolved issues in the instant appeals. These negotiations involved a detailed review and analysis by the agency of a substantial amount of data and other information provided by AESC characterizing the discharges of iron from the Station. This analysis was undertaken in an effort to confirm that the Station's operation results in an overall reduction of iron loadings to the West Fork River over the long term.

3. The draft TMDL was released for public comment on April 10, 2014. As set forth in the draft TMDL, despite WVDEP's acknowledgement that the Station is uniquely situated with respect to the nature of its iron discharges, the agency concluded that it could not afford the Harrison Power Station a WLA less stringent than the 1.5 mg/L water quality criterion for iron that would provide relief from the iron discharge limitations challenged in the appeal. *See* WVDEP, Draft Report: Total Maximum Daily Loads for the West Fork River Watershed, West Virginia (April 2014) at 59.¹

4. The comment period on the draft TMDL extends through May 9, 2014. AESC intends to submit comments for WVDEP's review and consideration during this period.

¹ Available online at http://www.dep.wv.gov/WWE/watershed/TMDL/grpe/Documents/West%20Fork%202014%20docs/Draft%20documents/Draft_E2_Public_Report_4_10_14.pdf.

5. Currently, the agency tentatively hopes to review comments on the draft TMDL, prepare a responsiveness summary, and finalize the TMDL during June 2014, although the timeframe for this process necessarily depends on the nature of the comments submitted.

6. The parties believe that it is appropriate to allow the TMDL process to conclude before moving forward with an evidentiary hearing in this appeal. The parties also anticipate holding one final settlement meeting at the conclusion of the TMDL process to discuss the remaining issues and identify those items for which a hearing will be required. Accordingly, the parties request a continuance of the evidentiary hearing until the Board's September 2014 docket to allow for the completion of these negotiations.

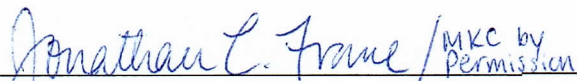
7. This request is made in good faith and not for purposes of delay. The parties remain hopeful that these discussions will result in the resolution of some or all of the remaining issues, thereby limiting the scope of—if not eliminating the need for—any hearing before this Board. Accordingly, the parties believe that both the interests of justice and the efficient expenditure of the Board's resources will be best served by continuing the currently scheduled hearing in Appeal Nos. 11-21-EQB and 11-22-EQB to allow time for continued productive negotiations between the parties.

WHEREFORE, for the foregoing reasons, the parties respectfully request that the Board grant this Joint Motion to Continue Hearing as to the above-referenced appeals and schedule the evidentiary hearing in this matter for the Board's September 2014 docket.

Respectfully submitted this 22nd day of April, 2014.

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

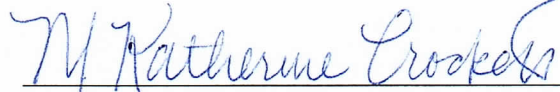
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