

BEFORE THE WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

MONONGAHELA POWER COMPANY,

Appellant,

Appeal No.: 16-04-EQB

v.

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

Appellee.

RECEIVED

JUL 17 2017

WVDEP  
OFFICE OF LEGAL SERVICES

AGREED ORDER REMANDING PERMIT

Appellant Monongahela Power Company (“MPC”) and Appellee Scott G. Mandirola, Director of the Division of Water and Waste Management, West Virginia Department of Environmental Protection (“WVDEP”), have jointly requested that the Board enter this Agreed Order, remanding Solid Waste/NPDES Permit No. WV0075795 (the “MPC Permit”) to the WVDEP for certain revisions described below, with the existing Stay entered by the Board on October 31, 2016 to remain in effect until the exhaustion of all appeals with respect to the revised and/or re-issued MPC Permit following this remand.

In particular, in accordance with the Settlement Agreement entered by the parties on April 26, 2017, upon remand the WVDEP agrees to propose to modify the MPC Permit to include:

1. A Compliance Schedule identical in all material respects to that shown on Exhibit A attached to this Agreed Order; and

2. Revisions to Condition C.22, such that it will read as follows:

With the exception of short duration events resulting from unexpected power, pump, or other equipment failures, as well as necessary maintenance activities performed in a timely manner, flow from the 18-inch pipe to the constructed wetlands may be decreased only if the Selenium concentration at Sampling Point LM21 exceeds 0.12 mg/l or when the waters of Robinson Run back up into the pump station. In the event flow from the 18-inch pipeline is decreased due to equipment failures or maintenance activities, the permittee shall keep accurate records of the cause and duration of such events for a minimum period of three (3) years.

The parties acknowledge that, concurrently with the development and testing of the chemical treatment system described in Exhibit A, MPC may also undertake a mixing zone study and submit an application to modify the MPC Permit to allow for revised effluent limits for mercury, based upon the results of a mixing zone analysis and implementation of the measures set forth in such an application (such as use of a diffuser, and/or other equipment). Should MPC submit such a mixing zone application pertaining to the mercury effluent limits in the NPDES Permit, the WVDEP agrees that MPC may also submit an application for revised effluent limits for chloride, arsenic, selenium, and any other water quality-based parameter based upon the same mixing zone study.

\* \* \*

WHEREFORE, upon due consideration of the parties' previous submissions, and having determined that the parties' representations and agreements as set forth above are acceptable, lawful, and reasonable, and with the intent of promoting the efficiency of the appeal process and for other good cause shown, the Board hereby GRANTS the parties' joint request and ORDERS that:

1. The MPC Permit is hereby REMANDED to the WVDEP, to propose the changes described above and as shown on Exhibit A. The WVDEP shall issue an appropriate

public notice and hold a public comment period on such changes, as required by and in accordance with applicable regulations.

2. Should the WVDEP incorporate a compliance schedule that is materially different from that set forth on Exhibit A, and/or should the revised MPC Permit otherwise be inconsistent with this Agreed Order or objectionable to MPC, MPC shall have the right to appeal to this Board and otherwise challenge such a revised and/or re-issued MPC Permit.
3. Until the exhaustion of all appeals with respect to the revised and/or re-issued MPC Permit that is issued following remand, the Stay entered by the Board on October 31, 2016 shall remain in full force and effect.

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

By: 

Dr. Edward Snyder, Chairperson

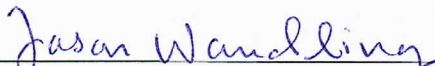
AGREED TO BY:

Monongahela Power Company  
By counsel



Christopher B. Power (W. Va. Bar No. 4286)  
Babst Calland Clements and Zomnir, P.C.  
BB&T Square  
300 Summers Street, Suite 1000  
Charleston, WV 25301  
Phone: (681) 265-1362  
Fax: (681) 205-8814  
[cpower@babstcalland.com](mailto:cpower@babstcalland.com)

West Virginia Department of Environmental Protection  
By counsel



Jason E. Wandling, Esq. (W. Va. Bar No. 9259)  
Associate Counsel  
Office of Legal Services  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street, S.E.  
Charleston, West Virginia 25304  
Phone: (304) 926-0449, Ext. 1446  
Fax: (304) 926-0461  
[Jason.E.Wandling@wv.gov](mailto:Jason.E.Wandling@wv.gov)

EXHIBIT A – COMPLIANCE SCHEDULE  
Monongahela Power Company

Solid Waste/NPDES Permit No. WV0075795  
Chemical Treatment System Proposal

<u>Activity</u>	<u>Date</u>
Continue chemical feed testing and data collection in accordance with previously-approved Mercury Treatment Trial	Through Dec. 31, 2018
Compile, analyze and evaluate data from chemical testing	Jan. 1, 2019 – Mar. 15, 2019
Prepare Permit Modification Application*	Mar. 16, 2019 – June 1, 2019
WVDEP Review, Finalization of Application, Processing and Issuance of Permit Modification allowing installation of system on proposed schedule	June 2, 2019 – Dec. 31, 2019
Prepare RFP for chemical treatment system equipment and installation	Jan. 1, 2020 – April 30, 2020
Installation and start-up of permanent chemical treatment system, as warranted	May 1, 2020 – Dec. 15, 2020
Compliance with mercury effluent limits at Outlet 008	Jan. 1, 2021
* * *	
Submission of status reports on implementation of treatment and other approaches to achieving compliance	Jan. 1, 2017 – Nov. 1, 2020 (Every 6 months)

[\* - may also include application for site-specific mixing zone limits based on use of diffuser]

ENVIRONMENTAL QUALITY BOARD

MONONGAHELA POWER COMPANY,

Appellant,

v.

Appeal No. 16-04-EQB

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

Appellee.

CERTIFICATE OF SERVICE

This is to certify that I, Jackie D. Shultz, Clerk for the Environmental Quality Board, have this day, the 18<sup>th</sup> day of August, 2017, served a true copy of the foregoing **Agreed Order Remanding Permit** in Appeal No. 16-04-EQB, by mailing the same via United States Mail, with sufficient postage, to the following address:

*via certified first-class mail:*

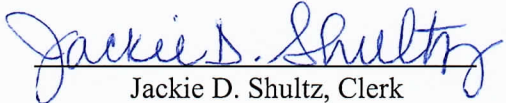
Christopher B. Power, Esq.  
Babst Calland Clements & Zomnir, P.C.  
BB&T Square  
300 Summers Street, Ste. 1000  
Charleston, WV 25301

Certified Mail: 91 7199 9991 7037 7332 1340

*via personal service:*

Scott D. Mandirola, Director  
Division of Water and Waste Management  
WV Department of Environmental Protection  
601 57<sup>th</sup> Street, S.E.  
Charleston, WV 25304

Jason E. Wandling, Esq.  
Office of Legal Services  
WV Department of Environmental Protection  
601 57<sup>th</sup> Street, S.E.  
Charleston, WV 25304

  
Jackie D. Shultz, Clerk