

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

**ALLEGHENY ENERGY SUPPLY COMPANY, LLC,**

**Appellant,**

**Appeal No.: 24-03-EQB**

**v.**

**JEREMY W. BANDY, DIRECTOR,  
DIVISION OF WATER AND WASTE MANAGEMENT,  
WEST VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,**

**Appellee.**

**ORDER GRANTING STAY PENDING APPEAL**

Pending before the Board is the Appellant Allegheny Energy Supply Company, LLC (“AESC”)’s Motion for Stay, filed by counsel pursuant to *W. Va. Code* § 22B-1-7(d) and Rules 5.3, 5.4 and 5.5 of the Board’s Procedural Rules, seeking the entry of a Stay of certain provisions of Modification No. 2 to WV/NPDES Solid Industrial Waste Permit No. WV0079171 dated February 7, 2024, as supplemented by Letter of Correction dated February 16, 2024 (collectively, “Permit Mod No. 2”) issued by the Director, Division of Water and Waste Management, W. Va. Department of Environmental Protection (“DEP”) for the McElroy’s Run CCR Landfill and Impoundment (the “Facility”).

AESC seeks to stay certain water quality-based effluent limits (“WQBELs”) applicable to Outlets 001 and 002 and related portions of the Compliance Schedule (Part B) of Permit Mod No. 2. In support of its Motion, AESC states that it will suffer irreparable harm in the absence of a Stay due to the potential application of the “Anti-backsliding” provision of the federal Clean Water Act, 33 U.S.C. § 1342(o) that might prevent any WQBELs from being increased after the Permit Mod

No. 2 takes effect on April 1, 2024, and the potential for exceeding several of those WQBELs while this appeal is pending. At the hearing on the Motion convened (by ZOOM) on March 25, 2024, the DEP, by counsel, stated that it does not oppose the Motion.

\* \* \*

WHEREFORE, upon due consideration of the Motion, the Notice of Appeal and other record evidence, and having determined that the standards for issuance of a Stay have been satisfied, the Board hereby GRANTS the Motion and ORDERS that following provisions of Permit Modification No. 2 of WV/NPDES Solid Industrial Waste Permit No. WV0079171 shall be and hereby are STAYED until further Order of the Board: (a) the effluent limits for Fluoride and Selenium applicable to Outlet 001; (b) the effluent limits for Aluminum, Arsenic, Cadmium, and Selenium applicable to Outlet 002; (c) the interim effluent limits for Aluminum and Cadmium at Outlet 002; and (d) the Compliance Schedule (Part B) provisions applicable to the effluent limits identified in Subparagraphs (a), (b) and (c).

**ORDERED** and **ENTERED** this 25<sup>TH</sup> day of March, 2024.

ENVIRONMENTAL QUALITY BOARD

  
Dr. Edward Snyder, Chairperson

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

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COMPANY, LLC,**

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**JEREMY W. BANDY, DIRECTOR,  
DIVISION OF WATER AND WASTE  
MANAGEMENT, WEST VIRGINIA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,**

**Appellee.**

**CERTIFICATE OF SERVICE**

I, Kenna M. DeRaimo, Clerk for the Environmental Quality Board, hereby certify that on this day, the 26<sup>th</sup> of March, 2024, have served a true copy of the foregoing **ORDER GRANTING STAY**

**PENDING APPEAL** to the following:

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*Via Certified U.S. First Class Mail*

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Kenna M. DeRaimo, Clerk