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BEFORE THE WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD APR 26 2024

WEST VIRGINIA WATER RESOURCES, INC.,

Environmental Quality
Board

Appellant,

Appeal No.: 24-01-EQB

v.

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

Appellee.

MOTION TO EXTEND STAY PENDING APPEAL

On February 16, 2024, Appellant West Virginia Water Resources, Inc. (“WVWR”) filed its Notice of Appeal in this matter, appealing the issuance on January 12, 2024, by the Director of the Division of Water and Waste Management, West Virginia Department of Environmental Protection (“DEP”), of Solid Waste/NPDES Permit No. WV0116521 (“the NPDES Permit”) covering WVWR’s Dent’s Run Landfill. On the same day, WVWR moved for a Stay of certain parts of the NPDES Permit (referred to as the “Solid Waste Permit Provisions,” and specifically defined in the Motion for Stay).

Following hearing, the Board entered its Order Granting Stay Pending Appeal (“Stay Order”) on February 23, 2024, finding that “the evidence and argument presented does not establish that there would be any significant risk of environmental harm to the waters of this State or the public while the appeal is pending.” Without explanation, the Stay Order specified that the Stay shall remain in effect only until July 1, 2024.

This matter is scheduled for evidentiary hearing on May 9, 2024. Because WVWR and DEP are engaged in ongoing discussions concerning various issues relevant to a potential

resolution of this appeal, the parties have filed a “Joint Motion to Continue Evidentiary Hearing.” As stated in that motion, the parties agree that additional time is needed to work through the issues raised in this appeal, to determine whether an amicable resolution may be reached and if so, the terms of such a resolution.

For the same reasons explained in detail in WVWR’s Motion for Stay and in WVWR’s “Supplemental Brief in Support of Motion for Stay” (filed on February 22, 2024), WVWR moves to extend the Stay granted in the Stay Order, so that it will remain in effect until the final disposition of this appeal. In support of this motion, WVWR states as follows:

- (1) WVWR is still exposed to irreparable harm should the Stay not be extended, in the form of the groundwater monitoring, analysis and related reporting requirements found in the Solid Waste Provisions that will require WVWR to expend significant financial and staff resources without the opportunity for recompense should it prevail;
- (2) The DEP will suffer no harm from the extension of the Stay;
- (3) WVWR is likely to succeed on the merits of its appeal, for all of the reasons previously described in its written submissions and during argument of the Motion for Stay; and
- (4) As the Board previously found, there is no evidence that an extended Stay would present “any significant risk of environmental harm to the waters of this State or the public.” Stay Order, p. 1. In this regard, the DEP does not contend that the Dent’s Run Landfill has a history of violating the Groundwater Protection Standards set forth in W.Va. C.S.R. § 47-12-1, et seq. In addition, the facility has a 60 mil HDPE primary geomembrane liner and a second 40 mil HDPE secondary

membrane liner to monitor for any breach of the primary liner (which has not occurred). Moreover, there are no known groundwater users in the area of the Dent's Run Landfill.

For the reasons described above, WVWR therefore asks the Board to enter an Order that modifies or supersedes the Stay Order and extends the current stay of the Solid Waste Provisions until the final disposition of these appeals.

Respectfully submitted,

West Virginia Water Resources, Inc.

By counsel



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CERTIFICATE OF SERVICE

I, Christopher B. Power, counsel for Appellant West Virginia Water Resources, Inc., do hereby certify that copies of the foregoing Joint Motion to Continue Evidentiary Hearing and Motion to Extend Stay Pending Appeal have been served upon the Appellee this 24th day of April, 2024, via e-mail and first-class mail, addressed to the following:

Chance J. Chapman, Esq.
Attorney
Office of Legal Services
West Virginia Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304



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