

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

WEST VIRGINIA WATER RESOURCES, INC.,

Appellant,

v.

Appeal No.: 24-01-EQB

**JEREMY BANDY¹, DIRECTOR,
DIVISION OF WATER AND WASTE MANAGEMENT,
WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Appellee.

**ORDER UPHOLDING THE ENVIRONMENTAL QUALITY BOARD'S ORDER
GRANTING WVDEP'S MOTION FOR SUMMARY JUDGMENT**

On February 13, 2023, a hearing took place before the Environmental Quality Board (the "Board") to address Appellant West Virginia Water Resources' ("WVWR") motion to reconsider the Board's partial summary judgment order entered December 20, 2024, wherein the Board found that WVDEP was is entitled to summary judgment concerning the issue of WVDEP including various requirements under the West Virginia Solid Waste Management Act and its accompanying regulations in the reissuance of WVWR's Solid Waste/NPDES Permit No. WV0116521.

Upon consideration of the written pleadings, oral argument, and evidence, the Board hereby upholds its previous summary judgment order.²

¹ Katheryn Emery no longer holds office as Director of the Division of Water and Waste Management. Pursuant to Rule 25(d) of the W.V. Rules of Civil Procedure, Emery's successor, Director Jeremy Bandy, is automatically substituted as a party.

² All arguments of counsel and pleadings have been considered and reviewed with reference to the evidentiary record before the EQB, as well as applicable law. To the extent that the arguments advanced by the parties are in accordance with these findings of fact, conclusions and legal analysis of the EQB and are supported by the evidence, they have been adopted. To the extent that the arguments advanced by the parties are inconsistent therewith, they have been rejected. Certain arguments have been omitted as not relevant or necessary to a proper decision.

The Board reiterates or notes the following:

1. In 2011, Consolidation Coal Company (“Consol”) entered into a federal Consent Decree with the U.S. Environmental Protection Agency and the WVDEP (the “Consent Decree”).
2. The Consent Decree required Consol to “design, construct, and operate a wastewater treatment plant, landfill, and pipeline collection system.” (Consent Decree, at p. 9).
3. The Consent Decree stated that the “landfill shall be designed in accordance with 33 C.S.R. 1 as an industrial solid waste disposal facility.” (*Id.*, at p. 10).
4. The Consent Decree also stated that “[a]pplications for permits necessary for the construction and operation of the landfill shall be submitted no later than February 1, 2011. (*Id.*)
5. On January 31, 2011, Consol submitted an “Industrial Solid Waste Class F Facility Application” for “the proposed Dent’s Run Solid Waste Facilities.” (C.R., pp. 370-1121, at p. 395).
6. WVDEP issued the Permit, Solid Waste/NPDES Permit No. WV0116521, to Consol on March 2, 2012. (*See* WVDEP’s Report of Compliance Evaluation (Dec. 13, 2018), C.R., pp. 1286-1300).
7. Thereafter, Consol constructed a wastewater treatment plant (the “Northern WV R/O Facility”) to treat mine water from “the wastewater streams which are permitted for discharge” pursuant to various NPDES permits. (Consent Decree, at p. 5).
8. The Northern WV R/O Facility generates reject material that is then disposed of at the Dents Run Solid Waste Facilities (“Dent’s Run Landfill”).
9. Since disposal at the Dent’s Run Landfill began that reject material has been handled as an industrial solid waste.

10. In 2016, Consol transferred ownership of the Dents Run Landfill to Murray American Energy, Inc. (*See* C.R., pp. 1286-1300).

11. On November 17, 2017, the Permit was reissued to Murray American Energy, Inc., with an effective date of January 1, 2018. (*Id.*)

12. On July 5, 2018, the Consent Decree was terminated.

13. In 2021, the Permit was transferred from Murray American Energy, Inc. to WVWR.

14. On May 11, 2022, WVWR applied for reissuance of the Permit for its “Solid Waste disposal facility of water treatment byproducts.” (C.R., pp. 349-367, at p. 364).

15. WVWR specifically represented that the reissuance application was being submitted to obtain a permit to operate and/or monitor an industrial solid waste disposal facility. (See Reissuance Application).

16. The reissuance application referred to the facility as Dent’s Run Landfill.

17. WVWR was seeking the reissuance of an industrial solid waste NPDES permit for an industrial waste landfill. It was not seeking a coal mining NPDES permit.

18. On January 12, 2024, WVDEP approved the reissuance of the Permit. (C.R., p. 27).

19. The Permit contains requirements made pursuant to the West Virginia Solid Waste Management Act and its accompanying regulations, W.Va. Code § 22-15-1 *et seq.* and W.Va. Code R. § 33-1-1 *et seq.*, respectively.

20. W.Va. Code R. § 33-1-2.28 defines a “Class F Solid Waste Facility” as “any industrial solid waste disposal facility.”

21. W.Va. Code R. § 33-1-2.59 defines an “Industrial Solid Waste Landfill” as “any solid waste disposal facility that is owned, operated, or leased by an industrial establishment for

the land disposal of industrial solid waste created by that person or such person and other persons on a cost-sharing or nonprofit basis. The term ‘industrial solid waste landfill’ does not include land application units, surface impoundments, or injection wells.”

22. Section 6, Article 1, Chapter 33 of the West Virginia Code of State Rules establishes the closure and post-closure requirements for solid waste facilities.

23. Unless a permittee transfers a permit to another person in accordance with W. Va. Code R. § 33-1-3.19, the permittee is bound to continue to maintain and operate the solid waste facility until all closure and post-closure requirements have been met. *See* W.Va. Code § 22-15-10(b), proscribing the abandonment of a solid waste facility, unless done so in accordance with the code, plans, specifications, orders, instructions, and rules.

24. WVWR has cited no law or authority that allows an industrial solid waste landfill to be converted into any other type of disposal facility.

25. Beginning in 2011-2012, the Dents Run Landfill was designed, permitted, and constructed as an industrial solid waste landfill in accordance with and pursuant to the Solid Waste Management Act and Solid Waste Management Regulations.

26. Since then, Dent’s Run Landfill has been operated and continuously permitted as an industrial solid waste landfill in accordance with and pursuant to the Solid Waste Management Act and Solid Waste Management Regulations.

27. When WVWR acquired the Dent’s Run Landfill in 2021, WVWR knew, or with due diligence should have known, that the facility was and always has been permitted and operated as an industrial solid waste landfill in accordance with and pursuant to the Solid Waste Management Act and Solid Waste Management Regulations.

28. When WVWR submitted its reissuance permit application in May 2022, it clearly was seeking the reissuance of an industrial solid waste NPDES permit for an industrial waste landfill.

29. The Board does not find it to be material to its decision to grant summary judgement to answer whether the reject material deposited at the Dent's Run Landfill constitutes waste resulting from coal mining operations.³ Accordingly, it does not find it necessary to make such a determination.

30. The Dent's Run Landfill was permitted and constructed, and has been operated, as an industrial solid waste landfill. WVWR's reissuance permit application was for an industrial solid waste landfill. Dent's Run is subject to the requirements of the Solid Waste Management Act and Solid Waste Management Regulations until all closure and post-closure requirements have been met and the Permit is released.

31. Based upon the foregoing, the Board hereby upholds its Order Granting WVDEP's Motion for Summary Judgment.

32. The Board instructs the EQB Clerk to set this matter for hearing about all outstanding issues.

It is so **ORDERED** and **ENTERED** this 26th day of February 2025.

ENVIRONMENTAL QUALITY BOARD



Dr. Edward Snyder, Chairman

³ Nonetheless, to make such a determination, the Board would likely have to hear expert testimony.

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CERTIFICATE OF SERVICE

I, Kenna M. DeRaimo, Clerk for the Environmental Quality Board, hereby certify that on this day, the 26th day of February, 2025, a true copy of the foregoing **ORAL UPHOLDING THE ENVIRONMENTAL QUALITY BOARD'S ORDER GRANTING WVDEP'S MOTION FOR SUMMARY JUDGMENT** has been served upon the following


Christopher B. Power, Esq.
Robert M. Stonestreet, Esq.
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Via Certified First-Class Mail

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Via Interdepartmental Mail


Kenna M. DeRaimo, Clerk
Environmental Quality Board