WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

WEST VIRGINIA WATER RESOURCES, INC.,

Appellant, Appeal No.: 24-01-EQB

v.

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

Appellee.

AGREED ORDER GRANTING JOINT MOTION REGARDING TRC APPEAL ISSUE

On May 9, 2025, Appellant West Virginia Water Resources, Inc. ("WVWR"), and Appellee West Virginia Department of Environmental Protection ("DEP"), by and through counsel, filed the Joint Motion to Enter Agreed Order on Total Residual Chlorine Appeal Issue ("Joint Motion"), that was accompanied by a proposed Agreed Order granting the Joint Motion (signed by counsel for the parties) (the "Proposed Agreed Order"). As stated therein, the purpose of the Joint Motion is to address that part of WVWR's appeal in this matter pertaining to monitoring and reporting for total residual chlorine ("TRC"), which was unaddressed by the Board's Order of December 20, 2024 (the "Partial SJ Order"). The Partial SJ Order granted summary judgment to the DEP regarding that part of WVWR's appeal challenging the DEP's incorporation of various conditions implementing the West Virginia Solid Waste Management Act, *W. Va. Code* § 22-15-1, et seq ("SWMA") as a part of WV/NPDES Permit No. WV0116521 issued on January 12, 2024, for WVWR's Dent's Run Landfill ("the Dent's Run NPDES Permit" or "Permit").

In response to the Joint Motion, on July 17, 2025, the Board entered an "Order of Dismissal" that amended the Proposed Agreed Order, and also entered the Proposed Agreed Order

(together, the "July 17, 2025 Orders"). In response to the parties' objections to the July 17, 2025 Orders, the Board hosted an informal conference with counsel to address those issues, and on July 29, 2025, entered an Order Rescinding the July 17, 2025 Orders. This proposed Agreed Order was originally submitted in draft form for the purpose of satisfying the parties' obligations under the July 29, 2025 Order.

For the reasons stated in the Joint Motion and because good cause has been shown, the Board hereby **GRANTS** the Joint Motion. Specifically, the Board acknowledges that the parties have agreed to the following provisions that are intended to settle WVWR's appeal from those parts of the Permit that require monitoring for TRC at Outlets 001 and 004 and at Leachate Monitoring Points LM1 and LM2, and the Board agrees that the terms of this Agreed Order comprise a reasonable and lawful manner of resolving those parts of the appeal:

1. The provisions in Section A of the Dent's Run NPDES Permit that require monitoring for TRC at Outlets 001 and 004 and that require monitoring for TRC at Leachate Monitoring Points LM1 and LM2 shall be removed.
2. A new provision shall be included under Section B ("Schedule of Compliance") of the Permit that: (a) requires quarterly monitoring for TRC for one (1) year at Outlets 001 and 004 and at Leachate Monitoring Points LM1 and LM2, starting with the first calendar quarter after a Final Order in this appeal becomes effective; (b) states that if TRC is detected at Outlets 001 or 004 during the initial one-year of quarterly monitoring, then TRC monitoring shall be required on a quarterly basis at Outlets 001 and 004 until the expiration date of the Permit, and if TRC is not detected at either Outlets 001 or 004 during the initial one-year of quarterly monitoring, then then no further monitoring for TRC at those outlets shall be required; and (c) states that if TRC is detected at Leachate Monitoring Points LM1

or LM2 during the initial one-year of quarterly monitoring, then TRC monitoring shall be required on a quarterly basis at Leachate Monitoring Points LM1 and LM2 until the expiration date of the Permit, and if TRC is not detected at either Leachate Monitoring Points LM1 or LM2 during the initial one-year of quarterly monitoring, then then no further monitoring for TRC at those Leachate Monitoring Points shall be required.

3. Within thirty (30) days following entry of this Order, WVWR will submit a permit modification application to implement the provisions set forth in paragraphs 1 and 2 above. DEP agrees to timely process that modification application in accordance with applicable regulations.

4. The parties have agreed and the Board confirms that the Solid Waste Provisions in the Permit that were addressed by the Partial SJ Order included (among others) the requirement in Section B ("Schedule of Compliance") that WVWR collect quarterly samples from five (5) groundwater monitoring wells for TRC for one year following the effective date of the Permit, and add TRC to a "Phase II monitoring program" if TRC was detected in any of the downgradient wells. Accordingly, the issue of the need for groundwater monitoring for TRC does not fall within the scope of this Agreed Order and (as with the other appeal issues that remain pending) will be addressed as a part of the Board's Final Order.

5. In WVWR's Notice of Appeal, WVWR argued that inclusion in Part A of the Permit of the requirements for TRC monitoring at Outlets 001 and 004 and at Leachate Monitoring Points LM1 and LM2 was contrary to the DEP's January 12, 2024 response-to-comment letter stating that TRC limits had been removed from Section A, and WVWR also asserted that the inclusion of such monitoring was done without any demonstration of need. The DEP has disputed these arguments and assertions. By filing the Joint Motion and/or

entering into this Agreed Order, neither party concedes that the other party's position on this issue as stated in this paragraph was or is meritorious, and the Board makes no ruling on this issue.

6. In WVWR's Notice of Appeal, WVWR argued that the Dent's Run Landfill is a coal facility that is not subject to the SWMA, and therefore it is WVWR's position that the Dent's Run Landfill is subject to W.Va. C.S.R. §47-30-1, et seq. ("WV/NPDES Rule for Coal Mining Facilities") rather than W.Va. C.S.R. §47-10-1, et seq. ("NPDES Program Rule") or W.Va. C.S.R. §33-1-1, et seq. ("SWMA Rule"). The DEP has disputed these arguments and assertions. The parties agree that: (a) WVWR's submission of a modification application pursuant to this Agreed Order under the NPDES Program Rule and/or the SWMA Rule; (b) anything stated in that modification application or related correspondence; and (c) the DEP's processing of such a modification application under the NPDES Program Rule and/or the SWMA Rule, shall not constitute a waiver of any claim or defense that WVWR may make in this appeal, and shall not be admissible as evidence in this appeal or in any other proceeding or used against WVWR in any manner in opposing or challenging WVWR's position that the Dent's Run Landfill is a coal facility.
7. By entering into this Agreed Order, WVWR does not agree to accept TRC monitoring in any future permit for the Dent's Run Landfill, or in any existing or future permit for any other facility, and WVWR expressly reserves its rights to oppose, appeal and/or otherwise challenge any such requirement.
8. The parties will jointly or separately notify the Board promptly after the DEP issues a modified permit implementing the provisions set forth in paragraphs 1 and 2 above, and advise the Board on the parties' positions on appropriate next steps for issuing a Final Order

in this appeal. The parties agree and the Board acknowledges that issuance of a modified permit implementing the provisions set forth in paragraphs 1 and 2 above shall not resolve this appeal, and this appeal may not be dismissed without entry of a Final Order that satisfies applicable law pertaining to the form, content and procedure for issuance of such an order.

9. If a modified permit is not issued within ninety (90) days after the entry of this Agreed Order, the parties will jointly or separately submit a status report(s) to the Board, and the parties will submit such status reports every thirty (30) days thereafter until notice is given to the Board in accordance with paragraph 8 above.

The Board hereby extends the Stay, initially granted by Order entered on February 23, 2024 (which included, among other provisions, those parts of Section A of the Permit that require TRC monitoring and reporting at Outlets 001 and 004 and at Leachate Monitoring Points LM1 and LM2), until a Final Order is issued by the Board or the Board takes other action pertaining to the Stay (following notice to the parties and an opportunity for hearing) in response to a motion or of its own accord

It is so **ORDERED** and **ENTERED** this 11th day of September, 2025.

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

By: _____
Dr. Edward Snyder, Chairperson

Agreed to by:

West Virginia Water Resources, Inc.
By counsel

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BEFORE THE WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
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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 12th of September, 2025, a true copy of the foregoing **AGREED ORDER GRANTING JOINT MOTION REGARDING TRC APPEAL ISSUE** has been served upon the following:

Christopher B. Power, Esq.
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Via U.S. First-Class Certified Mail
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Via Interdepartmental Mail

Kenna M. DeRaimo, Clerk
Environmental Quality Board