



APPALACHIAN
MOUNTAIN
ADVOCATES

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December 11, 2017

Jackie Shultz
WV EQB
601 57th Street, S.E.
Charleston, WV 25304

Dear Ms. Shultz,

Please find enclosed an original and six copies of Appellants, West Virginia Highlands Conservancy and West Virginia Rivers Coalition, Motion to Withdraw from Appeal No. 17-10-EQB. The motion has been served on all parties to the action, as well as parties to the associated action 17-09-EQB. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

/s/ J. Michael Becher

J. Michael Becher

W.Va. State Bar 10588

Appalachian Mountain Advocates

P.O. Box 11571

Charleston, WV 25339

304-382-4798

mbecher@appalmad.org

*Counsel for West Virginia Highlands
Conservancy and West Virginia Rivers
Coalition*

cc: Parties of Record

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

WEST VIRGINIA RIVERS COALITION,
and WEST VIRGINIA HIGHLANDS
CONSERVANCY
Appellants,

v.

Appeal No. 17-10-EQB

SCOTT MANDIROLA
Director, Water and Waste
Management
West Virginia Department
of Environmental Protection,
Appellee,

ANTERO TREATMENT, LLC,
Intervenor.

Consolidated for purposes of an evidentiary hearing with:

TOM RHULE,
Appellant,

v.

Appeal No. 17-09-EQB

SCOTT MANDIROLA
Director, Water and Waste
Management
West Virginia Department
of Environmental Protection,
Appellee,

ANTERO TREATMENT, LLC,
Intervenor.

APPELLANTS', WEST VIRGINIA HIGHLANDS CONSERVANCY AND WEST VIRGINIA RIVERS COALITION, MOTION TO WITHDRAW FROM APPEAL

Appellants, West Virginia Highlands Conservancy and West Virginia Rivers Coalition, have reached a settlement agreement with Permittee/Intervenor Antero Treatment, LLC. That agreement, attached to this motion as Exhibit A, should resolve all matters in Appeal No. 17-10-EQB. As a result, and pursuant to the Agreement, Appellants hereby move to withdraw their appeal. DEP has represented by counsel that it does not oppose this motion.

Respectfully submitted

West Virginia Highlands Conservancy, and
West Virginia Rivers Coalition

By Counsel,

/s/ J. Michael Becher
J. Michael Becher (WV Bar No. 10588)
Appalachian Mountain Advocates
P.O. Box 11571
Charleston, WV 25339
304-382-4798

CERTIFICATE OF SERVICE

I hereby certify that I, J. Michael Becher, have on this, the 11th day of December 2017, served a true and correct copy of the foregoing Appellants' Motion to Withdraw from Appeal, to all parties in Appeal No. 17-10-EQB, by mailing the same via U.S. Mail, with sufficient postage to the following addresses:

Jackie Shultz (6 copies and original)
WV EQB
601 57th Street S.E.
Charleston, WV 25304

Charles S. Driver
Office of Legal Services
WV DEP
601 57th Street S.E.
Charleston, WV 25204

John Meadows
Allyn Turner
Steptoe & Johnson PLLC
P.O. Box 1588
Charleston, WV 25326

Tom Rhule
1404 Watts Street
Charleston, WV 25302

/s/ J. Michael Becher
J. Michael Becher (WV Bar No. 10588)
Appalachian Mountain Advocates
P.O. Box 11571
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304-382-4798

Exhibit A

Settlement Agreement

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

WEST VIRGINIA RIVERS
COALITION and WEST VIRGINIA
HIGHLANDS CONSERVANCY,
Appellants,

v.

Appeal No.17-10-EQB

SCOTT MANDIROLA,
Director, Division of
Water and Waste Management,
Department of Environmental
Protection,
Appellee,

and

ANTERO TREATMENT LLC,
Intervenor.

SETTLEMENT AGREEMENT AND RELEASE

Whereas, Appellants filed their Appeal No. 17-10-EQB with the Board on June 24, 2017 alleging that WVDEP's issuance of West Virginia National Pollutant Discharge Elimination System (WV/NPDES) Permit No. WV00117579 was improper;

Whereas, Appellee and Intervenor have contested the allegations raised by Appellants during the course of this appeal; and,

Whereas, the Appellants and Intervenor wish to resolve all claims as between them relating to Appellee's issuance of WV/NPDES Permit WV00117579 without any admission as to the contested claims raised in Appellants' Appeal;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and intending to be legally bound, the parties agree as set forth below:

DEFINITIONS

1. Wherever the terms listed below are used in this Agreement, the definitions shall apply.
2. “Appellants” shall mean the West Virginia Rivers Coalition and the West Virginia Highlands Conservancy, collectively.
3. “Appellee” shall mean the West Virginia Department of Environmental Protection.
4. “Board” shall mean the West Virginia Environmental Quality Board.
5. “Effective Date” shall be the date upon which the last of the parties affixes its signature to this Agreement.
6. “Intervenor” or “Permittee” shall mean Antero Treatment LLC, and any associated entity.
7. “Permit” shall mean the combined Solid Waste and WV/NPDES Permit WV00117579 held by Antero Treatment LLC for the Antero Landfill.

APPLICABILITY

8. This Agreement shall apply to and is binding on the Appellants and Intervenor and all persons acting on their behalf.
9. Within 30 days of the Effective Date of this Agreement, Intervenor agrees to submit to WVDEP a voluntary additional sampling protocol to add the following conditions into Permit WV00117579:
 - a. Monthly laboratory analysis of salt samples taken in the form of a grab sample from one truck per month that has passed through radiation detection equipment at the facility. Samples shall be subject to analysis using EPA test

method 901.1M. Results of this analysis shall be reported along with the results from the radiation detectors of the load from which the sample was taken. This requirement shall be effective for 12-months from the date of its inclusion in the permit. If two or more laboratory samples deviate from the results calculated by radiation detection equipment at the facility by more than 1.5 picocuries/gram, Antero will conduct an additional 12 months of salt sampling.

- b. Monthly groundwater sampling for radium 226 and 228 from groundwater monitoring wells. If any sample indicates a statistically significant increase over background levels (as calculated using pre-salt disposal groundwater data per condition C.14.d of the approved permit) Antero will conduct an additional 12 months of groundwater sampling.
- c. The addition of bromide as a regular monitoring parameter for each surface water monitoring outfall. Intervenor shall include monitoring of bromide at the same frequency as other surface water sampling parameters at the applicable outfall for a period of one year.
- d. Antero agrees to include TDS as a regular monitoring parameter for surface water outfalls for the duration of the permit, and will be monitored at the same frequency as other surface water sampling parameters included in the permit. If conditions allow for more frequent sampling during the 12-month period, Antero agrees to undertake monthly surface water sampling for TDS during that 12-month period (noting that all surface outlets on the permit are

storm water only outlets and are not anticipated to flow continuously, so this would only occur during extended wet or saturated conditions).

10. If paragraph 9(b) above allows analysis by any method other than EPA method 901.1, Antero shall take a duplicate sample to be analyzed pursuant to method 901.1. The results of those samples shall be distributed to the Appellant and Appellee.

11. Appellants and Intervenor agree that such conditions shall be submitted to WVDEP as a minor modification. Once submitted, Intervenor agrees to pursue the above-mentioned conditions until incorporated into the permit and not to challenge any of the above-listed conditions.

12. This Agreement shall not prevent Intervenor or Appellants from challenging any condition resulting from this Agreement that is inconsistent with the terms listed herein.

13. Intervenor agrees that the results of sampling under Paragraph 9 of this Agreement will be sent to Appellants at the following addresses:

West Virginia Rivers Coalition
3501 MacCorkle Ave. S.E.#129
Charleston, WV 25304

West Virginia Highlands Conservancy
P.O. Box 304
Charleston, WV 25321

14. Appellants agree to notify the Board of this settlement immediately upon execution and shall file a motion to withdraw the instant appeal within 2 days of the Effective Date of this Agreement and, in any event, no later than the start of the scheduled hearing in this matter. Appellants and their expert agree not to attend the Board hearing unless subpoenaed.

GENERAL PROVISIONS

15. Nothing in this Agreement shall prevent Appellants or Appellee from enforcing the terms of the Permit, including the terms and conditions made applicable to the Permit through the modification resulting from this Agreement.


16. Nothing in this Agreement shall prevent any party from pursuing or challenging any future modifications, reissuance, or renewal of the Permit, except as specifically detailed in this Agreement.

17. This Agreement shall terminate upon the renewal of the Permit.

18. The terms of this Agreement shall not be changed, revised, or modified except by written instrument signed by each of the parties to this Agreement.

19. The Appellants and Intervenor reserve all legal and equitable rights and defenses available to them to enforce or defend the provisions of this Agreement. Before any party invokes such rights to interpret, enforce, or modify this Agreement, that party shall send written notice to the other parties outlining the nature and requesting informal negotiations among the principals and counsel to resolve the matter. If the parties are unable to resolve the matter within 10 business days from the date of the notice (or within an additional period of time agreed to by the parties), any party may invoke its rights.

20. The undersigned representative(s) for each Party certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into the terms and conditions of this Agreement and bind them legally to it.

 12/8/17

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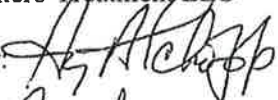
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*Counsel to Intervenor Antero Treatment
LLC*

Antero Treatment LLC

By: 

Its: *Chief Administrative Officer*

 12/8/17

J. Michael Becher (W. Va. Bar No. 10588)


Appalachian Mountain Advocates

PO Box 11571

Charleston, WV 25339

*Counsel to Appellants West Virginia Rivers
Coalition and West Virginia Highlands
Conservancy*

West Virginia Rivers Coalition

By: 

Its: *Attorney*

West Virginia Highlands Conservancy

By: 

Its: *Attorney*