

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

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

v.

Appeal No. _____

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

NOTICE OF APPEAL

Action Complained Of: The appellant named above respectfully represents that it is aggrieved by:

The issuance of WV/NPDES Permit WV0117579 and the associated landfill permit for a solid waste landfill owned and operated by Antero Treatment, LLC in Doddridge County, West Virginia without adequate protections for radioactive materials.

Relief Requested: The appellant therefore prays that this matter be reviewed and that the board grant the following relief:

The issuance of an order vacating WV/NPDES Permit WV0117579 and the associated landfill permit as issued, with the direction to modify the permit to protect against the disposal and discharge of radioactive materials.

Specific Objections: The specific objections to the above actions, including questions of fact and law to be determined by the Board, are set forth in detail in separate numbered paragraphs and attached hereto.

Amendment of this Notice of Appeal may be had only by leave of the Board, and only for good cause shown.

Dated this 24th day of June, 2017



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FACTS AND GROUNDS FOR APPEAL

- 1) West Virginia Rivers Coalition makes its mission the conservation and restoration of West Virginia's exceptional rivers and streams. Since 1989, it is the statewide voice for water-based recreation and clean, swimmable, and fishable rivers and streams that serve as safe drinking water sources—from the headwaters to wherever waters flow in West Virginia. It places current emphasis on water policy analysis and citizen engagement in the public processes of policymaking and source water protection planning. It has approximately 2,500 members.
- 2) Plaintiff West Virginia Highlands Conservancy, Inc., is a nonprofit organization incorporated in West Virginia. It has approximately 1,700 members. It works for the conservation and wise management of West Virginia's natural resources, and is one of West Virginia's oldest environmental activist organizations. The West Virginia Highlands Conservancy is dedicated to protecting our clean air, clean water, forests, streams, mountains and the health and welfare of the people that live her and for those who visit it to recreate.
- 3) Appellants have members who live and use the area near the Antero Treatment LLC's solid waste landfill in Doddridge County, West Virginia. Their use includes streams that will receive discharges from NPDES Permit WV0117579, such as the Hughes River and its tributaries. Their aesthetic, environmental and recreational interests will be adversely affected by the landfills environmental impacts, including the discharge of pollutants from the permitted outfalls.

BACKGROUND

- 4) On May 25, 2017 the WVDEP issued and approved a combined WV/NPDES Permit and solid waste landfill permit to Antero Treatment LLC, for the development and operation of a solid waste landfill to receive salt from the nearby Antero Clearwater Facility. The permitted operation are of the landfill is approximately 447 acres, with 134 acres of disposal area.
- 5) WV/NPDES Permit WV0117579 allows the discharge of stormwater and associated pollutants from 13 outfalls into unnamed tributaries of Cabin Run of the Hughes River and unnamed tributaries of Dotson Run of the Hughes River.
- 6) This permit was issued without any final effective numeric limits at any outfall to protect water quality standards. There was no evaluation for the potential for radioactivity from waste to be disposed of at this site, and no numeric effluent limitation sufficient to protect water quality standards related to radioactivity.
- 7) While the permit places a limit on disposal of salts "if the combined concentration for salt from Radium 226 and Radium 228 are greater than 5pCi/gr above [the] local background level." The monitoring requirements associated with this limit is not protective, and may allow for the disposal of material with radioactivity several times the permitted limit.

- 8) The permit does not place any numeric permit limits on any parameter, rather relying on report and monitor only requirements and “stormwater benchmarks.” In response to comments on the issue WVDEP claimed that the facility was exempt from NPDES requirements because it is an excluded from the definition of “industrial activity” pursuant to 40 C.F.R. 122.26.
- 9) This facility is an “industrial activity” within the meaning of 40 C.F.R. 122.26 and therefore should be subject to NPDES requirements including those to impose technology based limits for landfills and to protect water quality standards.
- 10) While bromide is included as a parameter of concern for groundwater monitoring it is not subject to monitoring requirements for surface water discharges.

SPECIFIC OBJECTIONS

1. WVDEP has failed to issue a permit adequately protective of West Virginia Water Quality Standards for radioactive materials.

- 11) Radioactivity is known to be commonly associated with oil and gas waste, as evidenced by the monitoring and reporting requirements of this very permit. Despite this, the analysis of pollutants during bench scale testing by ALS did not examine the radioactive potential of the waste to be deposited at the landfill.
- 12) A permit cannot be issued “[w]hen the imposition of conditions cannot ensure compliance with applicable water quality requirements.” 47 C.S.R. 30-3.2.a.7.
- 13) A permit cannot be issued “[w]hen the conditions of the permit do not provide for compliance with the applicable requirements of the [Clean Water Act] and [the West Virginia Water Pollution Control Act.]” 47 C.S.R. § 30-3.2.a.1
- 14) Both the Clean Water Act and West Virginia Water Pollution Control Act require compliance with both numeric and narrative water quality standards. 33 U.S.C. § 1313; W.Va. Code § 22-11-7b; 47 C.S.R. § 47-2-1 *et seq.*
- 15) West Virginia Water Quality standards provide numeric thresholds for the amount of radioactive material that may be present in the state’s waters. 47 C.S.R. § Appendix E Table 1.
- 16) West Virginia Water Quality standards also prohibits “any other condition, *including radiological exposure*, which adversely alters the integrity of waters of the State.” 47 C.S.R. § 3.2.i (emphasis added).
- 17) As described in the next section, the permit condition prohibiting the deposit of salt with Radium 226 and 228 in excess of 5pCi/gr above background levels is insufficient to prohibit the disposal of radioactive material because there is not adequate monitoring.

18) Moreover, while the permit (ineffectively) attempts to limit the *disposal* of material with radioactivity significantly above background levels, there are no provision preventing the *storage* of such radioactive materials on site. Without limitations on the storage of radioactive material there is no assurance that this material will not be present in stormwater discharges from the site.

19) Without effective limits on radioactivity, the permit as issued is not protective of water quality standards and violates the West Virginia Pollution Control Act as well as the federal Clean Water Act.

2. The Permit Does Not Contain Monitoring Requirements Sufficient to Ensure Compliance with the Prohibition on Disposal of Salts with Radioactivity in excess of 5pCi/gr above background levels.

20) West Virginia permitting regulations require monitoring that, among other things, is “sufficient to yield data that are representative of the monitored activity.” 47 C.S.R. § 30-6.k.

21) Federal Clean Water Act regulations require monitoring sufficient to “assure compliance with permit limitations.” 40 C.F.R. 122.44(i).

22) Permit Condition C.28(c) prohibits the disposal of salts in the Antero landfill with radioactivity from Radium 226 and 228 in excess of 5pCi/gr above background levels.

23) The corresponding monitoring requirements mandate the use of a radiation detector capable of measuring exposure rates from “ten micorentgens per hour (10 μ R/hr) to greater than fifty milliroentgens per hour (>50 mR/hr.)”

24) The mandated monitoring requirement is not adequate to yield data representative of the monitored activity nor to assure compliance with the associated permit limitation.

25) Radiation detectors installed at landfill gates have limited effectiveness at accurately quantifying the alpha radiation activity from Radium contained in drilling wastes since, due to the low penetrability of alpha particles, the waste itself and the waste container tend to block the alpha particles from ever reaching the detector.

26) Even though alpha particles and most beta particles can be stopped by skin, exposure through ingestion or inhalation is hazardous. If alpha emitting radionuclides enter the body by these pathways, they are the most destructive form of ionizing radiation. Radium may be bio-concentrated and bio-accumulated by plants and animals, and it is transferred in food chains from lower trophic levels to humans.

3. This discharges from this facility are discharges associated with an industrial activity. A NPDES permit with both technology and water quality-based numeric effluent limits is required.

- 27) During commenting many commenters opposed the draft permit on the basis that it did not include numeric effluent limits, but only imposed monitor and report only requirements.
- 28) In response to comment WVDEP claimed that this facility was excluded from the definition of “industrial activity” pursuant to 40 C.F.R. § 122.26(b)(14). In fact this facility is included within the definition of “industrial activity” pursuant to 40 C.F.R. § 122.26(b)(14)(v).
- 29) Because discharge from this facility is discharge associated with an industrial activity an individual NPDES permit is required. 40 C.F.R. § 122.26(a).
- 30) Because a NPDES permit is required, the WVDEP must include limits to reflect technological achievements to reduce pollutants as well as to protect water quality standards. 40 C.F.R. § 122.44(a), (d).

4. Bromide is a parameter of concern that should be included in monitoring and/or limits for surface water outfalls.

- 31) Bromide was included as a parameter of concern for groundwater monitoring. There is no rationale as to why it should not be monitored and/or limited in surface water discharges as well.

QUESTIONS OF FACT AND LAW

- 1) Whether the director has approved a permit that will not comply with the West Virginia Water Pollution Control Act and the federal Clean Water Act in the ways described above, specifically:
- a. Whether the director has issued a permit that will not ensure compliance with West Virginia Water Quality Standards for radioactivity;
 - b. Whether the director has issued a permit that does not contain adequate monitoring requirements to ensure that radioactive material will not be disposed of onsite, or discharged from the site.
 - c. Whether the director has issued a permit that complies with the provisions of 40 C.F.R. § 122.44, to impose effluent limits based on technology and to protect water quality standards.
 - d. Whether the director issued a permit that fails to protect surface waters from bromide.

RELIEF REQUESTED

Appellants respectfully request that the Board:

- a. Answer each of the objections in the Appellants favor;
- b. Vacate the Director's permit approval of WV/NPDES Permit WV0117579 and the associated landfill permit.
- c. Remand the permit with instructions to impose effluent limits and monitoring requirements sufficient to protect against the disposal of radioactive materials on site and the discharge of radioactive materials from the site.
- d. Remand the permit with instructions to impose effluent limits sufficient to represent technology-based achievements in pollution reduction and protection of water quality standards.
- e. Alternatively, to modify the permit to address each of the Appellants' concerns consistent with the Board's ruling on the objections above.



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CERTIFICATE OF SERVICE


This is to certify the I, J. Michael Becher, attorney for the Appellants, have this day, the 24th of June 2017 served a true copy of the foregoing **Notice of Appeal**, to all parties, by mailing the same via United States Mail, with sufficient postage to the following addresses:

Via first class mail:

Antero Treatment LLC
1615 Wynkoop St
Denver, CO 80202

Scott Mandirola
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West Virginia Dep. of Env'tl Protec.
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