

BEFORE THE WEST VIRGINIA SURFACE MINE BOARD

**TAYLOR ENVIRONMENTAL
ADVOCACY MEMBERSHIP, INC.,**

Appellant,

v.

Appeal No. 2007-06-SMB

**WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Appellee,

and

ICG TYGART VALLEY, LLC,

Intervenor-Appellee.

ORDER

The Surface Mine Board (“Board”) conducted an evidentiary hearing in this case on November 13 and 14, 2007. In attendance for the Board: Chairman Michael and members Smith, Nay, Grafton, Schuerger, and Kastic. At the conclusion of the hearing and the evidence, the Board ruled by a vote of 4 to 2 to reverse and remand the Surface Mine Permit No. U-2004-06 to the West Virginia Department of Environmental Protection (“WVDEP”) as set forth below. Chairman Michael and members Smith, Nay, and Grafton voted with the majority, and members Schuerger and Kastic voted to affirm the issuance of the permit.

1. The Board finds that the stream monitoring plan is inadequate in at least one location where a longwall mine panel can pass beneath the headwaters of a stream before any downstream flow monitoring begins, thereby affecting the flow of the stream prior to the initiation of any flow monitoring. Accordingly, if the Permittee desires that WVDEP re-issue the Permit, it should revise its stream monitoring plan to ensure that flow monitoring begins in each stream before any upstream portion of that stream is undermined.

2. The permit application and cumulative hydrologic assessment sought to demonstrate that post-mining groundwater seepage of iron from the mining operation would comply with the hydrologic protection provisions of the West Virginia Surface Coal Mining and Reclamation Act. To this end, the Permittee introduced testimony that the expected concentrations of iron in any post-mining seepage would not exceed a range of approximately 1.0 - 1.4 milligrams per liter. The Board finds that the application did not contain sufficient supporting evidence or documentation to support that claim. If the Permittee desires that WVDEP re-issue the Permit, then it should submit a revised probable hydrologic consequences prediction to WVDEP to provide supporting evidence and documentation concerning its claims about the post-mining iron discharges.

3. The revisions the Board has requested the Permittee to make to the application are considered not to be significant and will not require a new advertisement by WVDEP. In addition, WVDEP shall make a final permit decision on any revision submitted by the Permittee to address the two issues set forth above within thirty (30) days of receiving the Permittee's supplemental information.

4. WVDEP should have, but failed to, assess the likely impacts on the hydrologic balance of operations proposed by pending ICG-Tygart Permit Application No. SMA O-2017-06 in the cumulative hydrologic impact assessment performed for ICG-Tygart Permit No. U-2004-06. Accordingly, WVDEP shall revise the CHIA for Permit No. U-2004-06 within the same thirty (30) day period that it has to act upon revisions to the application as set forth above in paragraphs 1 through 3, above.

5. Based on agreement of the parties, the effect of this order is stayed as to the Permittee's ongoing bridge construction activities. Appellee understands that it undertakes

the construction activities at its own risk and has, accordingly, agreed to not rely on the bridge construction activities to justify future permit applications or modifications. Additionally, the stay shall not be interpreted as a waiver of Appellant's right to challenge future permit actions.

ENTERED this 10th day December, 2007.


Chairman, Surface Mine Board