

F. Paul Calamita III General Counsel
WEST VIRGINIA MUNICIPAL WATER QUALITY ASSOCIATION
515 W. Main St. P.O. Box 1310
Bridgeport, West Virginia 26330

Re: Emergency Rule re 47 CSR 30B NPDES Rules for Coal Mining Facilities

Dear Mr. Calamita:

I am writing this letter in response to your association letter dated September 24, 2021 objecting to a proposed change in the Emergency Rule related to 47 CSR 30B, NPDES Rules for Coal Mining Facilities, deleting of 8.3.

A decision issued by the U.S. District Court for the Southern District of West Virginia (Judge Chambers) on March 22, 2021, in a citizens suit action against Lexington Coal Company related to administrative enforcement actions taken by the West Virginia Department of Environmental Protection (WV DEP) against coal mining NPDES permit holders. Judge Chambers held that because West Virginia's NPDES enforcement program does not match the enforcement regulations of the federal Environmental Protection Agency (EPA), federal citizen suits can proceed against permit holders. 47 CSR30B 5.4 that serves as the basis for the March 2021 decision finding the state program is *"not comparable" to the federal enforcement regulations and that state enforcement actions cannot preclude citizen suits against permit holders in federal court: "This Court... holds that West Virginia's administrative enforcement provisions are not comparable to the CWA because Defendant has the authority to reject the Proposed Consent Order and avoid civil penalties at any point and for any reason. The potential for abuse and manipulation of this authority undermines the purpose of the CWA, which does not require alleged violators to consent to penalties."*

To address the decision and restore the ability of state NPDES enforcement actions to "shield" permit holders from direct actions in federal court, the coal mining NPDES enforcement rule was revised to remove the language regarding termination of enforcement proceedings "at any time for any reason" at 47 CSR 30B 5.4 and deleted 47 CSR 30B 8.3



West Virginia Coal Association

PO Box 3923, Charleston, WV 25339 • (304) 342-4153 • Fax 342-7651 • www.wvcoal.com

October 14, 2021

Mr. Charles Sturey
Division of Mining & Reclamation
West Virginia Department of Environmental Protection
601 57th Street S.E.
Charleston, WV 25304
Submitted via electronic mail: charles.s.sturey@wv.gov

Dear Mr. Sturey:

Pursuant to the public notice published by the West Virginia WV Department of Environmental Protection (WV DEP), the West Virginia Coal Association (WVCA) offers the following comments on the proposed revisions to the state's coal mining NPDES enforcement rule, 47 CSR 30B.

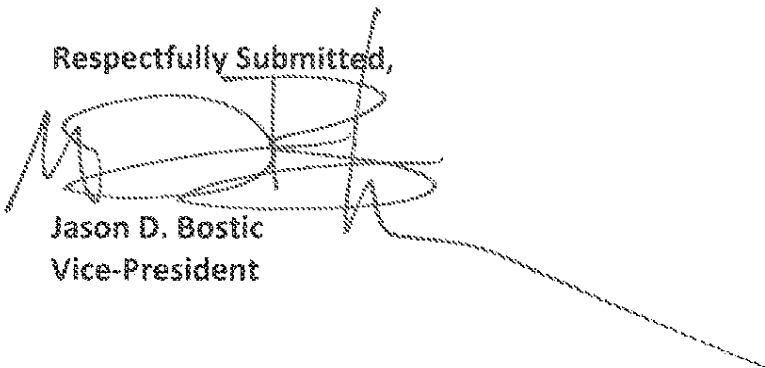
As we explain below, WVCA fully supports the proposed revisions, compliments the agency for working quickly to enact the changes and urges the prompt finalization of the proposed amendments.

WVCA is a non-profit state coal trade association representing the interests of the West Virginia coal industry on policy and regulation issues before various state and federal agencies that regulate coal extraction, processing, transportation, and consumption. WVCA's general members account for 90 percent of the Mountain State's underground and surface coal production of both thermal and metallurgical coal. WVCA also represents associate members that supply an array of services to the mining

industry in West Virginia. WVCA's primary goal is to enhance the viability of the West Virginia coal industry by supporting efficient and environmentally responsible coal removal and processing through reasonable, equitable and achievable state and federal policy and regulation. WVCA is the largest state coal trade association in the nation.

As the agency noted in filing the proposed revisions, these changes are necessary based on a recent federal court decision which raised concerns about the current enforcement process for coal mining NPDES permits. WVCA and its members agree that the changes are necessary to ensure the state program reflects federal requirements, serves as an effective enforcement tool for the agency and provides a stable regulatory process for the coal industry.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jason D. Bostic", is written over a dotted line. The signature is stylized and somewhat illegible due to the handwriting.

Jason D. Bostic
Vice-President



WEST VIRGINIA MUNICIPAL WATER QUALITY ASSOCIATION

515 W. Main St.
P.O. Box 1310
Bridgeport, West Virginia 26330
304-842-8231

September 24, 2021

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GENERAL COUNSEL

Paul Calamita, AQUALAW

Mr. Charles Sturey
WV Department Of Environmental Protection
601 57th Street
Charleston, WV 25304

Re: Emergency Rule re 47 CSR 30B NPDES Rules for Coal Mining Facilities

Dear Mr. Sturey:

I am writing on behalf of the West Virginia Municipal Water Quality Association (WVMWQA) – a state association of municipal water, sewer, and storm water utilities – to object to a proposed change in the Emergency Rule related to 47 CSR 30B, NPDES Rules for Coal Mining Facilities, filed on August 19, 2021. Specifically, we disagree with the deletion of 8.3:

§47-30B-8. Entry of Consent Order.

8.1. Before a responsible party and the Secretary sign any consent order resolving an alleged violation of the Act or the Mining NPDES Rule, the proposed consent order is subject to the public notice and comment requirements of the Mining NPDES Rule at 47 CSR 30 § 15.2 and the public hearing provisions of W. Va. Code § 22-11-22a(b)(4).

8.2. Based upon the public comments or information received during the public hearing, the Secretary may determine either to modify the proposed consent order or to execute it as drafted.

~~8.3. Should the Secretary modify the proposed consent order based on public comments or information received at the public hearing, the responsible party may reject the proposed modification, thereby rejecting the modified consent order. At that point the agency shall withdraw the proposed consent order.~~

If the agency believes that changes to a proposed consent order are necessary based upon public comment, then the Agency must seek consent of the defendant to those changes. If consent is not given, then the order must be withdrawn (i.e., it is no longer a consent order).

Sincerely,

F. Paul Calamita III
General Counsel

C: WVMWQA Members