

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

**INDEPENDENT OIL AND GAS
ASSOCIATION OF WEST VIRGINIA, INC.,**)

Appellant,)

v.)

Appeal No. 13-17-EQB

**SCOTT G. MANDIROLA, Director, Division
of Water and Waste Management, West
Virginia Department of Environmental
Protection,**)

Appellee,)

and)

**WEST VIRGINIA SURFACE OWNERS'
RIGHTS ORGANIZATION, WEST
VIRGINIA ENVIRONMENTAL COUNCIL,
and WEST VIRGINIA RIVERS COALITION,**)

Intervenors.)

AGREED ORDER

This day came the Appellant, Independent Oil and Gas Association of West Virginia, Inc. ("IOGA"), the Appellee, Scott G. Mandirola, Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection ("WVDEP"), and the Intervenors, West Virginia Surface Owners' Rights Organization, West Virginia Environmental Council, and West Virginia Rivers Coalition (collectively, "Intervenors"), by counsel, and represented to the West Virginia Environmental Quality Board (the "Board") that they have reviewed the issues appealed, conferred, and now have resolved the following issues raised in the above-styled appeal. The parties agree that settlement of the issues as set forth in this Agreed

Order is in the best interests of the parties. This settlement is specific to the General Permit, and does not bind other permits or orders currently in place or issued in the future.

This appeal arises out of WVDEP's issuance on May 13, 2013 of General Water Pollution Control Permit No. WV0116815 for Stormwater Associated with Oil and Gas-related Construction Activities (the "General Permit"). The parties present this Agreed Order to the Board to memorialize and evidence the agreement of IOGA, WVDEP and Intervenors with respect to the appealed issues addressed herein.

Upon due consideration of the oral and written submissions of counsel, the Board hereby **APPROVES** the agreement reached by the parties and **ORDERS** the following:

1. With regard to Item 1(a) under "Relief Requested" in the Notice of Appeal relating to the introductory language setting forth the scope of the General Permit, the first sentence on page 1 of 22 of the General Permit is revised to state as follows:

This is to certify that any discharge of stormwater runoff from oil and gas field construction activities related to operations such as exploration, production, processing or treatment operations or transmission facilities, disturbing one acre or greater of land area are agreeing to be regulated under the terms and conditions of this General Water Pollution Control Permit (General Permit), except for;

[...]

3. Activities occurring within the limit of disturbance authorized by an active permit or certification issued by the Department of Environmental Protection's Office of Oil and Gas (OOG).

2. With regard to Item 1(b) under "Relief Requested" in the Notice of Appeal, IOGA withdraws its objection to the provisions of the General Permit requiring the preparation of a Stormwater Pollution Prevention Plan, and therefore these provisions remain as stated in the General Permit.

3. With regard to Item 1(c) under "Relief Requested" in the Notice of Appeal relating to the language in Section G.1 on page 12 of 22 of the General Permit authorizing WVDEP to require a permittee or prospective permittee under the General Permit to obtain an alternative permit under certain circumstances, Section G.1 is revised to state as follows:

G.1 Requiring an Individual Permit

The Director may require any person otherwise eligible for this permit to apply for and obtain an Individual Permit in the event that the proposed project will involve land disturbance across a very significant area or other unique impacts that the Director determines require the imposition of special conditions beyond those contained in this General Permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any owner or operator authorized by this permit to apply for an Individual Permit only if the owner or operator has been notified in writing that such a permit application is required.

Consistent with these revisions to Section G.1, Section H on page 21 of 22 of the General Permit is revised to delete the phrase "or alternative general permit."

4. With regard to Item 1(d) under "Relief Requested" in the Notice of Appeal relating to the timeframes in which requests for modification must be submitted, Section C.11 on page 4 of 22 of the General Permit is revised as follows:

C.11 Permit Modification

This permit may be modified, suspended, or revoked in whole or in part during its term in accordance with the provisions of W. Va. Code § 22-11-12 and 47 C.S.R. 10-9. Any permittee wishing to modify coverage under this permit shall submit such a request at least 45 days prior to the commencement of the proposed action for modification if no public notice period is required. A modification that will have a public notice period must be submitted at least 90 days prior to construction to allow for the public notice procedure. *Provided*, that upon approval of a request for modification by the Director, the permittee may immediately commence the proposed action.

5. With regard to Item 1(e) under "Relief Requested" in the Notice of Appeal relating to the definitions of "construction activity" and "disturbed area," Section E.1 on page 8 of 22 of the General Permit is revised as follows:

“Construction Activity” means land disturbance operations such as grubbing, grading, filling, and excavating during site development for residential, commercial or industrial purposes. This includes, but is not limited to, access roads, borrow and spoil areas and equipment lay down or staging areas where such land disturbance activity will take place.

[...]

“Disturbed area” is the total area of land disturbing activity that will take place during all phases of a construction project, including, but not limited to, waste and borrow sites, equipment lay down or staging areas where such land disturbance activity will take place, utility installation road building, mass grading and site development.

6. With regard to Item 1(f) under “Relief Requested” in the Notice of Appeal relating to the frequency of site inspections, Section G.4.e.2.D on pages 20-21 of 22 of the General Permit is revised as follows:

G.4.e.2.D. Maintenance

A description of procedures to maintain in good and effective condition and promptly repair or restore all grade surfaces, walls, dams and structures, vegetation, erosion and sediment control measures and other protective devices shall be identified in the site plan. At a minimum, procedures in the site plan shall provide that all erosion controls on the site are inspected at least once every seven calendar days for actively disturbed areas, 14 calendar days for restored areas and within 24 hours after any storm event of greater than 0.5 inches of rain per 24-hour period.

7. With regard to Item 1(g) under “Relief Requested” in the Notice of Appeal, IOGA withdraws its objection to the omission of express language in the General Permit confirming that full compliance with the terms and conditions thereof constitutes compliance with the West Virginia Water Pollution Control Act, W. Va. Code §§ 22-11-1 *et seq.*, based on the understanding that a permit shield is provided by W. Va. Code R. § 47-10-3.4.a.

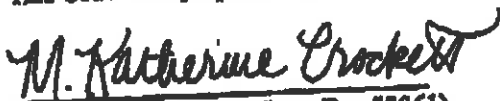
8. With regard to Item 1(h) under “Relief Requested” in the Notice of Appeal, IOGA withdraws its objection to the issuance of the General Permit by the Director of the Division of Water and Waste Management rather than the Chief of the Office of Oil and Gas.

9. Any terms or conditions of the General Permit not expressly modified by this Agreed Order shall remain as stated therein.

ENTERED this 20th day of May, 2014.


Edward M. Stryker, Chairman

This Order was prepared by:

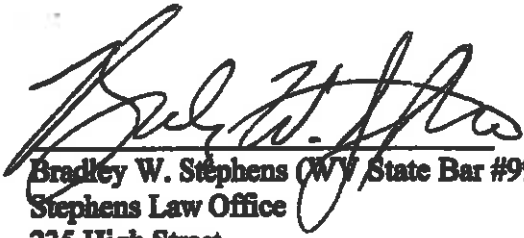


Allyn G. Turner (WV State Bar #5561)
M. Katherine Crockett (WV State Bar #10799)
Spilman Thomas & Battle, PLLC
300 Kanawha Boulevard East
Charleston, WV 25301
(304) 340-3800 (telephone)
(304) 340-3801 (facsimile)
Counsel for Appellant Independent Oil and Gas Association of West Virginia, Inc.

Agreed to by:

 / MKC by permission

Rico R. Moore (WV State Bar #7488)
Office of Legal Services
West Virginia Department of Environmental Protection
601 57th Street, S.E.
Charleston, WV 25304
(304) 926-0460 (telephone)
(304) 926-0461 (facsimile)
Counsel for Appellee Scott G. Mandirola, Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection



Bradley W. Stephens (WV State Bar #9930)

Stephens Law Office

235 High Street

#518 Monongahela Building

Morgantown, WV 26505

(304) 680-4055

Counsel for Intervenors West Virginia Surface Owners' Rights Organization, West Virginia Environmental Council, and West Virginia Rivers Coalition

ENVIRONMENTAL QUALITY BOARD

**INDEPENDENT OIL AND GAS ASSOCIATION
OF WEST VIRGINIA, INC.,**

Appellant,

v.

Appeal No. 13-17-EQB

**SCOTT G. MANDIROLA, Director,
Division of Water and Waste Management,
West Virginia Department of Environmental
Protection,**

Appellee,

and

**WEST VIRGINIA SURFACE OWNERS' RIGHTS
ORGANIZATION, WEST VIRGINIA ENVIRONMENTAL
COUNCIL AND WEST VIRGINIA RIVERS COALITION,**

Intervenors.

CERTIFICATE OF SERVICE

This is to certify that I, Jackie D. Shultz, Clerk for the Environmental Quality Board, have this day, the 22nd day of May, 2014, served a true copy of the foregoing Agreed Order to all parties in Appeal No. 13-17-EQB, by mailing the same via United States Mail, with sufficient postage, to the following address:

via certified first-class mail:

**M. Katherine Crockett, Esquire
Spilman Thomas & Battle PLLC
300 Kanawha Boulevard, East
Charleston, WV 25301**

Certified Mail #

91 7199 9991 7033 2820 9543

**Bradley W. Stephens, Esquire
Stephens Law Office
#518 Monongahela Building
235 High Street
Morgantown, WV 26505**

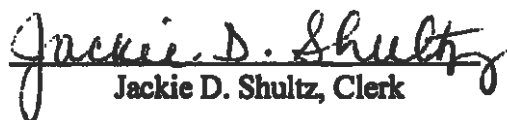
Certified Mail #

91 7199 9991 7033 2820 9536

via personal service:

**Scott G. Mandirola, Director
Division of Water and Waste Management
WV Department of Environmental Protection
601 57th Street, S.E.
Charleston, WV 25304**

**Rico Moore, Esquire
Office of Legal Services
WV Department of Environmental Protection
601 57th Street, S.E.
Charleston WV 25304**


Jackie D. Shultz, Clerk