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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**WEST VIRGINIA LAND RESOURCES, INC., and
MARION COUNTY COAL RESOURCES, INC.,**

Petitioners,

vs.

No. 21-0845

**DO NOT REMOVE
FROM FILE**

**AMERICAN BITUMINOUS POWER PARTNERS, LP,
WEST VIRGINIA DEPT. OF ENVIRONMENTAL PROTECTION,
and WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD,**

Respondents.

AND

AMERICAN BITUMINOUS POWER PARTNERS, LP,

SCANNED

Petitioner,

vs.

Nos. 21-0885, 21-0893

**WEST VIRGINIA LAND RESOURCES, INC.,
MARION COUNTY COAL RESOURCES, INC.,
WEST VIRGINIA DEPT. OF ENVIRONMENTAL PROTECTION,
and WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD,**

Respondents.

**PETITIONERS' BRIEF ON BEHALF OF
WEST VIRGINIA LAND RESOURCES, INC.
AND MARION COUNTY COAL RESOURCES, INC.**

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I. ASSIGNMENTS OF ERROR.

Assignment of Error No. 1: After finding that the West Virginia Department of Environmental Protection abused its discretion and otherwise acted in violation of governing law in multiple ways, the lower tribunal (West Virginia Environmental Quality Board) erred by declining to vacate the underground injection control permit issued to Respondent, American Bituminous Power Partners, LP.

Assignment of Error No. 2: The West Virginia Environmental Quality Board arbitrarily or erroneously failed to address important grounds raised by Petitioners for reversing the decision by the West Virginia Department of Environmental Protection to issue the underground injection control permit to Respondent, American Bituminous Power Partners, LP.

Assignment of Error No. 3: The West Virginia Environmental Quality Board mistakenly treated the application by Respondent, American Bituminous Power Partners, LP, to reissue its underground injection control permit as only an application to modify the authorized injection volumes in the previous version of the permit.

II. STATEMENT OF THE CASE.

A. Introduction.

Petitioners West Virginia Land Resources, Inc. (“West Virginia Land”) and Marion County Coal Resources, Inc. (“Marion Resources”) ask this Court to reverse and remand a decision by the West Virginia Environmental Quality Board (“Board”) to modify rather than vacate a permit reissued by Respondent West Virginia Department of Environmental Protection (“DEP”) to Respondent American Bituminous Power Partners, LP (“AMBIT”). The permit at issue, known as an “underground injection control” or “UIC” permit, authorizes the underground injection of millions of gallons of untreated acid mine drainage (“AMD”) at AMBIT’s facility in Marion

County, West Virginia (“UIC Permit”) into the abandoned Joanne Mine. JA000001-000022. This drainage flows through the Joanne Mine into other mine voids that are owned or controlled by Petitioners, and thus becomes Petitioners’ responsibility to manage and treat. JA001051-JA001052, JA001054, JA001061 (Final Order at 7-8, 10, 17). The reissued UIC Permit authorized a five-fold increase in the volume of AMD that could be injected – from a daily average of 52,120 gallons up to a daily average of 266,400 gallons. JA000023-JA000025.

Petitioners timely commenced an appeal before the Board of DEP’s reissuance of the UIC Permit. JA000026-JA000032 (Notice of Appeal). In their appeal, Petitioners challenged the legality of the entire permit on multiple grounds, including the substantial adverse impact on Petitioners from the very large authorized injection volumes set forth in the permit. JA000026-JA000032.

In a Final Order entered on September 29, 2021, the Board identified multiple errors and deficiencies in AMBIT’s permit application and the DEP’s processing of it. The Board concluded that DEP’s decision to reissue the UIC Permit was “arbitrary, capricious, and in violation of applicable statutory and legal provisions.” JA001063 (Final Order at 19). Despite this conclusion, the Board did not vacate the UIC Permit. Rather, the Board merely modified the permit to reduce the allowable injection rates to those set forth in the prior version of the UIC Permit. JA001047, JA001063 (Final Order at 3, 19). The Board also failed to address a number of grounds asserted by Petitioners as reasons to vacate the UIC Permit in its entirety.

B. Petitioners' Operations.

Petitioners are both affiliates of American Consolidated Natural Resources, Inc. ("ACNR"). JA001048 (Final Order at 5). ACNR and its affiliates, including Petitioners,¹ purchased various coal mining assets through bankruptcy proceedings involving Murray Energy Holdings Company and its affiliates. JA001048 (Final Order at 5). Marion Resources acquired and now operates an active underground coal mine located in Marion County, West Virginia, aptly named the "Marion County Mine." JA001049 (Final Order at 6). Among other assets, West Virginia Land acquired operations associated with various mined-out areas in northern West Virginia, including an AMD treatment plant known as the Dogwood Lakes AMD Plant.² Another ACNR affiliate, non-party Harrison County Coal Resources, Inc., acquired and now operates an active underground coal mine (the Harrison County Mine) located to the south and west of the Marion County Mine. JA000565 (Appellants' Ex. 2, Evidentiary Hearing); Evidentiary Hearing Tr. pp. 35, 44-45.

The active underground workings of both the Marion County Mine and Harrison County Mine are adjacent to a large network of interconnected mined-out voids in the Pittsburgh coal seam, known as the Fairmont Mine Pool. JA001047-JA001048 (Final Order at 4-5). The Fairmont Mine Pool is shown on the map attached as an exhibit to Final Order as the areas shaded in light blue. JA000565; Evidentiary Hearing Tr. p. 35. The active areas of the Marion County Mine and

¹ For ease of reference, and to be consistent with the nomenclature used by the Board in the Final Order, Petitioners will refer to ACNR and its affiliates, including Petitioners, collectively as "ACNR." JA001049 (Final Order at 6). Each of the Petitioners will be identified separately when appropriate.

² An affiliate of Murray Energy Holdings Company (Murray American Energy, Inc.) was the original party that commenced the Board appeal. JA000026. Once the sale of the assets described above was completed and the associated permits transferred to ACNR, West Virginia Land and Marion Resources were added as parties. JA001044 (Final Order at 1, footnote 2). Petitioners also moved to dismiss Murray American Energy, Inc. as a party. JA000436-JA000444. AMBIT opposed the motion. JA000464-JA000473. The Board did not issue a written order resolving the motion.

Harrison County Mine are shaded in gray or gold on the map. JA000565; Evidentiary Hearing Tr. p. 35.

As the name indicates, the mined-out voids in the Fairmont Mine Pool are partially or completely flooded with water that drains into the voids from the surface. JA001049 (Final Order at 6). The Joanne Mine into which AMBIT injects its untreated AMD is part of the Fairmont Mine Pool. JA001047-JA001048 (Final Order at 4-5). ACNR manages the Fairmont Mine Pool by pumping water to the surface at various locations to maintain the mine pool at certain elevations – i.e. limiting how close to the surface the mine pool reaches. JA001049 (Final Order at 6). ACNR treats the water pumped from the mine pool before discharging the water to a surface stream under a permit issued by the DEP for that purpose. JA001049 (Final Order at 6). Among other reasons, ACNR’s management of the Fairmont Mine Pool is necessary to prevent the pool from rising to an elevation that would result in a surface discharge of untreated AMD, which would have deleterious effects on the quality of surface waters. JA001050 (Final Order at 7).

ACNR incurs costs to pump and treat water from the Fairmont Mine Pool. JA001050 (Final Order at 7). Those costs vary depending on which ACNR facility is pumping and treating the water. Water that reaches the northern and eastern portion of the Fairmont Mine Pool, which is the area to which AMBIT’s UIC Permit application indicates its injected water travels, is pumped and treated at the Dogwood Lakes AMD Plant owned by West Virginia Land. JA001050 (Final Order at 7). The cost to operate the Dogwood Lakes AMD Plant is approximately \$0.04 per hundred gallons of treated water. JA001050 (Final Order at 7). Assuming injection volumes of 80,000,000 gallons per year (a volume well within the approved limit in the reissued UIC Permit), West Virginia Land would incur approximately \$32,000 annually to treat this volume of water at the Dogwood Lakes AMD Plant. JA001050 (Final Order at 7).

Water flowing into the southern and western portion of Fairmont Mine Pool is pumped and treated at various locations and for different reasons. ACNR performs “protective pumping” in the Consol No. 9 Mine, which lies in between the Marion County Mine and the Joanne Mine, to prevent water from flowing into active underground areas of the Marion County Mine where workers regularly travel. JA001051 (Final Order at 8). Influx of water into these areas of the mine presents a safety hazard to individuals working in the mine. JA001051 (Final Order at 8). Protective pumping from the Consol No. 9 Mine takes place at the Lwelleyn AMD facility, which is located to the northeast of the Joanne Mine. JA001051 (Final Order 8). During times when pumping activity has reduced or ceased at the Llewellyn AMD facility, water flows into the actively traveled areas of the Marion County Mine. JA001051 (Final Order at 8). Water pumped at the Llewellyn AMD facility is then transported via surface pipeline to a reverse osmosis treatment facility operated by ACNR affiliate, West Virginia Water Resources, for final treatment prior to discharge. JA001051 (Final Order at 8).

ACNR also performs protective pumping at the Consol No. 20 Mine, which lies to the south of the Joanne Mine and to the east of the Harrison County Mine, to prevent water from flowing into active underground areas of the Harrison County Mine where individuals regularly travel. JA001051 (Final Order at 8). Influx of water into these areas of the mine presents a safety hazard to individuals working in that mine. JA001051 (Final Order at 8). Protective pumping from the Consol No. 20 Mine takes place at the Thorne AMD facility. JA001051 (Final Order at 8). During times when pumping activity has reduced or ceased at the Thorne AMD facility, water flows into the actively traveled areas of the Harrison County Mine. JA001051 (Final Order at 8); Evidentiary Hearing Tr. pp. 45 – 46. Water pumped at the Thorne AMD facility is transported via

surface pipeline to the same reverse osmosis treatment facility operated by ACNR affiliate, West Virginia Water Resources. JA001051 (Final Order at 8).

The cost to operate the reverse osmosis treatment facility that receives water from the Llewellyn and Thorne AMD facilities is approximately \$0.62 per hundred gallons of treated water. JA001052 (Final Order at 9). Assuming injection volumes of 80,000,000 gallons per year, it would cost \$496,000 annually to treat this volume of water at the reverse osmosis treatment facility. JA001052 (Final Order at 9). Marion Resources is responsible for 40% of the annual costs to treat water at the reverse osmosis facility. JA001052 (Final Order at 9).

In the Board appeal, Petitioners did not request an award of damages or other legal ruling that AMBIT is required to reimburse Petitioners for costs associated with managing and treating the AMD that AMBIT injects into the Fairmont Mine Pool. Petitioners presented evidence concerning their treatment costs solely to demonstrate how they are “adversely affected” by DEP’s reissuance of the UIC Permit, which gives Petitioners’ standing to challenge the UIC Permit. *See W. Va. Code* § 22-11-21; JA000995-JA000996 (Petitioners’ Response Brief submitted to the Board, pp. 6-7) (Section B, entitled “[Petitioners] Never Requested that the Board Award Compensatory Damages”).

ACNR is the only person or organization that pumps and treats water from the Fairmont Mine Pool. JA001050 (Final Order at 7). No government organization or other entity pumps or treats water from the Fairmont Mine Pool. JA001061 (Final Order at 17); Evidentiary Hearing Tr. p. 55. Rather, ACNR is obligated to manage the Fairmont Mine Pool as a consequence of its ownership of certain mined-out voids within the pool and as a condition of its operating permits. JA001054 (Final Order at 10); Evidentiary Hearing Tr. pp. 49 – 50. As noted above, ACNR also

manages the Fairmont Mine Pool to keep water out of actively mined sections of the Marion County Mine and Harrison County Mine.

C. AMBIT's Operations.

AMBIT operates an electricity generating power plant in Grant Town, West Virginia that is designed to burn "waste coal." Evidentiary Hearing Tr. pp. 657 – 658. "Waste coal" consists of lower quality coal and other earthen material that was historically removed from raw mined materials during processing to create a "clean coal" product (coal largely free of non-coal rocks and other debris) to be sold on the market to various purchasers. Evidentiary Hearing Tr. pp. 656 – 657. Historically, waste coal was deposited into mounds of material on the surface known as "gob piles." Water flowing through these gob piles generates AMD. Evidentiary Hearing Tr. pp. 656-657; 667.

AMBIT leased from Horizon Ventures approximately 80 acres of surface area where a number of gob piles exist at what is known as the Joanne parcel in Marion County, which overlies the abandoned Joanne Mine. Evidentiary Hearing Tr. pp. 658, 661, 689-690. The Joanne parcel is a different location than where AMBIT's Grant Town power plant is located. Evidentiary Hearing Tr. pp. 689-690. AMBIT had planned to use the gob piles as a source of fuel for its power plant, and also perform reclamation activities to reduce the AMD pollution created by the gob piles. Evidentiary Hearing Tr. pp. 662-663. Because of the high ash and sulfur content of the waste coal at the Joanne site, AMBIT has been unable to use the gob piles as a source of fuel. Evidentiary Hearing Tr. p. 662. Nevertheless, AMBIT's lease with Horizon Ventures and its mining permit issued by the DEP makes AMBIT responsible for treatment and remediation of AMD at the Joanne parcel. Evidentiary Hearing Tr. p. 674.

AMBIT undertook some remediation work to reduce the volume of surface water flowing into and from the gob piles, which in turn reduced the volume of AMD generated. Evidentiary Hearing Tr. pp. 664 – 670. Certain groundwater “seeps” coming out of the gob piles remain, however. Evidentiary Hearing Tr. p. 669. Rather than incur the expense to construct and operate a facility to treat this AMD, AMBIT routes it to a borehole that leads into the abandoned Joanne Mine, which is part of the Fairmont Mine Pool. Evidentiary Hearing Tr. pp. 689-690. The UIC Permit serves as AMBIT’s authorization for this “disposal” method. JA000001-JA000022; Evidentiary Hearing Tr. pp. 673-674. Without the UIC Permit, AMBIT would be required to manage and treat the AMD on the surface at its own expense. Evidentiary Hearing Tr. pp. 684-685. AMBIT estimates the capital cost to construct an AMD treatment facility would be approximately \$400,000 plus \$25,000 in annual operating costs. Evidentiary Hearing Tr. p. 686.³

By injecting the AMD into the Joanne Mine, AMBIT effectively shifts the costs of managing and treating this AMD to Petitioners. JA001060 (Final Order at 17). That is because the Joanne Mine is part of the Fairmont Mine Pool. JA001048 (Final Order at 5). The Board concluded that Petitioners ultimately bear the cost to manage and treat AMBIT’s AMD regardless of whether the water flows east and north to the Dogwood Lakes AMD Plant (as indicated in AMBIT’s UIC Permit application), or west and south to the Lewellyn and Thorne AMD facilities (as opined by Petitioners’ expert witness, Dr. James Kilburg). JA001050, JA001053, JA001055-JA001057, JA001060 (Final Order at 7, 10, 12 – 14; 17).

³ AMBIT operates such a treatment plant on property located across the road from the Joanne parcel, where it does not have access to the Fairmont Mine Pool. Evidentiary Hearing Tr. pp. 673, 686.

D. Deficiencies in the UIC Permit Application and Reissuance Process.

Based on the Certified Record prepared by DEP and the evidence presented during three days of evidentiary hearings, Petitioners identified a multitude of errors in the UIC Permit Application itself and in DEP's decision-making process to reissue the UIC Permit. These include the following:

1. The UIC Permit application did not accurately state the actual current average rate of injection and the actual current maximum rate of injection as of the date that the application was submitted. JA000896 (Petitioners' proposed final order at 13).
2. The UIC Permit application incorrectly stated that the receiving (target) void for AMBIT's injection was not up-dip of any other mine voids and incorrectly stated that there was no active mining in the surrounding area. JA000898 (Petitioners' proposed final order at 15).
3. The UIC Permit application did not accurately identify the flow path of the AMD injected by AMBIT. JA000899 (Petitioners' proposed final order at 16).
4. The UIC Permit application did not provide an adequate alternative treatment plan for disposition of the AMD in the event AMBIT was required to cease injection operations. JA000906 (Petitioners' proposed final order at 23).
5. The UIC Permit application did not satisfy the requirement that AMBIT identify its legal right to inject into the receiving (target) void. JA000907 (Petitioners' proposed final order at 24).
6. The UIC Permit Application did not satisfy the requirement that AMBIT identify its legal right to inject into "all down dip workings likely to receive water from the target void." JA000908 (Petitioners' proposed final order at 25).

7. When evaluating AMBIT's reissuance application, DEP did not consider AMBIT's routine failure to comply with the injection volume limitations and other requirements established in the prior version of the UIC Permit. JA000909-JA000910 (Petitioners' proposed final order at 26 – 27).
8. When evaluating AMBIT's reissuance application, DEP did not perform a meaningful review of whether the proposed five-fold increase in injection volume would "minimize disturbance to the prevailing hydrologic balance on the permit area and prevent material damage outside the permit area" as required by DEP's regulations. JA000919 (Petitioners' proposed final order at 36).
9. AMBIT's application indicated that it was violating the 2014 UIC Permit by injecting storm water runoff into the Joanne Mine, which AMBIT indicated would be discharged to a nearby receiving stream through an outlet under the West Virginia/ National Pollutant Discharge Elimination System ("WV/NPDES") permit held by AMBIT. Evidentiary Hearing Tr., pp. 330-331; JA000089 (Certified Record at 55); JA001058 (Final Order at 15, ¶ 47).
10. The legal advertisement soliciting public comments on the UIC Permit application did not include a physical address for the facility regulated by the UIC Permit. Rather, the advertisement listed a PO Box address. JA000910 (Petitioners' proposed final order at 27).
11. The legal advertisement soliciting public comments on the UIC Permit application erroneously described the material to be injected as "AMD Sludge" instead of AMD. JA000921 (Petitioners' proposed final order at 38). "AMD Sludge" is a byproduct of AMD treatment. Evidentiary Hearing Tr. p. 238. AMD Sludge consists of the

sediments removed from water during the treatment process. Evidentiary Hearing Tr. p. 238. AMBIT does not perform any AMD treatment at the Joanne parcel, and thus does not generate any AMD Sludge. Evidentiary Hearing Tr. pp. 638-639; 692 – 693.

12. Prior to reissuing the UIC Permit, DEP did not receive the required approval from the federal Mine Safety and Health Administration concerning the potential impact on miner safety of the activities proposed to be authorized by the reissued UIC Permit. JA000910-JA000911, JA000925 (Petitioners' proposed final order at 27 – 28; 42).

All of these errors were set forth in Petitioners' Proposed Final Order submitted to the Board on March 24, 2021 (cited above). As explained in the following section, which outlines the procedural history leading up to the present proceeding, the Board only acknowledged a few of these deficiencies in its Final Order. The Board also effectively affirmed DEP's reissuance of the UIC Permit except for the increased injection volume limits.

E. Procedural history.

DEP reissued the UIC Permit to AMBIT on May 29, 2020. JA001044 (Final Order at 1). Two weeks later, on June 12, 2020, DEP issued Modification No. 1 to the UIC Permit. JA001044 (Final Order at 1). Petitioners timely challenged both the reissuance and modification of the UIC Permit by commencing an appeal before Board on June 26, 2020. JA000026-JA000032 (Notice of Appeal). The Board held evidentiary hearings on January 14, 2021, January 27, 2021, and February 4, 2021. JA001045 (Final Order at 2). Six witnesses testified, and the Board admitted a number of exhibits into evidence. JA001045 (Final Order at 2).

On March 24, 2021, Petitioners, AMBIT, and DEP each submitted proposed final orders to the Board for consideration. JA000884-JA000988. The parties later filed briefs in response to

each other's proposed orders, and also in support of their respective proposed orders. JA000989- JA001043.

On September 29, 2021, the Board entered its Final Order. JA001044-JA001067. In the "Conclusions of Law" section of the Final Order, the Board recognized that DEP "may only act on a UIC permit application that is both complete and accurate. *W.Va. C.S.R. §§4 7-13-13.10.c; 47-13-13.11.d; W. Va. Code § 22-11-9l.*" JA001061 (Final Order at 18). The Board then recounted a number of inaccuracies in the UIC Permit concerning the injection volumes and DEP's erroneous decision to reissue the UIC Permit:

DEP reissued a UIC permit based upon an application that was not accurate or complete. DEP conducted a hurried and/or perfunctory review of the reissuance application. **The AMBIT UIC Permit Application does not contain accurate information concerning AMBIT's actual injection rates into the Fairmont Mine Pool.** The volume figures in the application were simply recitations of the same volume figures set forth in the application for the 2014 version of the UIC Permit. The AMBIT UIC Permit Application did not include injection volumes from any of the annual reports that AMBIT submitted to DEP, which AMBIT certified to be accurate and "based on instantaneous readings." Appellants' Ex. 7. **By failing to submit an application reflecting accurate information concerning actual injection volumes, DEP did not have accurate important information concerning injection volumes.**

Moreover, no reliable flow path of the untreated AMD Injectate has been established. The more credible evidence of record demonstrates that the Joanne Mine pool water (and hence, its Injectate) does not flow to the east. The Board finds Dr. James Kilburg's testimony more credible concerning the flow path of AMD Injectate.

Accordingly, DEP could not have properly assessed the impact on active mine operations, the Fairmont Mine Pool, the waters of the state, etc. **DEP's approval of the application was therefore arbitrary, capricious, and in violation of applicable statutory and legal provisions.**

JA001061-JA001062 (Final Order at 18 – 19) (emphasis added).

Despite all these errors and deficiencies, the Board allowed the UIC Permit to remain in effect except for the increased injection volume limitations. JA001062 (Final Order at 19). The Board also failed to address several other errors and deficiencies identified by Petitioners in their

Proposed Final Order based on the evidence presented during the evidentiary hearing. JA000896, JA000898, JA000899, JA000906-JA000911, JA000919, JA000921, JA000925 (Petitioners' proposed final order at 13, 15, 16, 23 – 28, 36, 38, 42).

Petitioners timely commenced an appeal of the September 29, 2021 Final Order with this Court on October 18, 2021. AMBIT later filed two (2) additional appeals, after the Board denied AMBIT's initial motion to amend the Final Order and a subsequent supplemental motion to amend the Final Order. Appeal Nos. 21-0885 and 21-0893. In those appeals, AMBIT asserts purely procedural assignments of error. Appeal No. 21-0885 states the following assignments of error: (1) Petitioners lacked standing to pursue an appeal of the UIC Permit to the Board; (2) Petitioners sought relief from the Board that was not available as a matter of law; and (3) the Final Order "is factually flawed and failed to preserve AMBIT's evidence, AMBIT's arguments and objections" and Petitioners' "admissions against interest." *See* Section 17 of AMBIT's Appeal Notice. Appeal No. 21-0893 asserts a single assignment of error: that the Board erred in denying AMBIT's supplemental motion to amend, "which denial left AMBIT's dispositive motions without a ruling or appropriate order." *See* Section 17 of AMBIT's Appeal Notice.

By order entered on November 12, 2021, this Court granted the parties joint motion to consolidate the three appeals into two for purposes of briefing, preparation of a Joint Appendix, consideration, and decision.

III. SUMMARY OF ARGUMENT.

Unbeknownst to the Petitioners and acting under the authority of a 2014 UIC Permit, AMBIT has been disposing of millions of gallons of untreated AMD and surface runoff into an underground mine pool that Petitioners are required to treat and maintain. Other than the UIC

Permit, the record suggests that AMBIT has been conducting those operations with little if any regulatory oversight. For example, AMBIT has been injecting storm water runoff that it had no authority to inject and was supposed to discharge under its WV/NPDES permit. In addition (though it was not disclosed it in its application for reissuance of the UIC Permit), AMBIT has been injecting wastewater at an average daily rate that is over four times greater than its 2014 permit allowed. Furthermore, in direct contravention of the requirements of the DEP permit application, AMBIT has done so without identifying any legal right to inject either into the immediate receiving void or into the downstream mine voids that receive its discharges. These are not simply claims made by Petitioners in support of this appeal; these are among the specific findings made by the West Virginia Environmental Quality Board following its three-day evidentiary hearing on the appeal of the DEP's reissuance of AMBIT's UIC Permit.

That appeal also revealed numerous other deficiencies in AMBIT's reissuance application and the DEP's consideration of it. The application incorrectly stated that there was "no active mining" in the area of AMBIT's injection operation and (in violation of DEP regulations and federal law) was approved without the prior consent of the federal Mine Safety and Health Administration. Contrary to DEP regulations, there was no determination that AMBIT's injection activities (which are a part of a permitted mining operation) would minimize disturbance to the prevailing hydrologic balance on the permit area and minimize material damage beyond the permit area. The public notice of the UIC Permit reissuance application failed to comply with several parts of the applicable provisions of DEP's UIC regulations describing what must be included in the legal advertisement.

Despite the admonition on the first page of the DEP's application form that "all information is mandatory" and warning that submission of "sparse or misleading" information may lead to denial of permit reissuance, the agency chose to overlook all these violations. Indeed, the DEP not

only approved AMBIT's request that the UIC Permit be reissued, but also granted its request to allow a massive increase in the volume of wastewater injected -- from 18 million gallons per year to over 97 million gallons.

Without explanation, after properly finding upon appeal that DEP's reissuance of the AMBIT UIC Permit was "arbitrary, capricious, and in violation of applicable statutory and legal provisions," the Board failed to vacate it. Instead, the Board merely modified the permit to reduce the volume of AMD that AMBIT will be permitted to inject, and otherwise affirmed its reissuance. Regardless of any explanation that could be given for this action, it was clearly wrong and reflects a clearly unwarranted exercise of discretion within the meaning of *W.Va. Code* § 22B-1-7(g)(1). As a result, the Board's Final Order should be reversed and this matter should be remanded with instructions to vacate the AMBIT UIC Permit on the basis of the many errors and omissions associated with its reissuance.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION.

The Court should grant Rule 19 oral argument. The issues presented involve application of existing law to largely undisputed facts; an unsustainable exercise of discretion or clear error of law by the Board where the law governing the discretion is settled; and relatively narrow legal issues governing permit issuance. The appeals do not present legal issues of first impression, issues of fundamental public importance, constitutional issues, or inconsistencies or conflicts in decisions by lower tribunals (all of which are appropriate for Rule 20 argument). Because the Petitioners seek reversal of the Board's decision, and because the question of the appropriate limits on the Board's discretion to grant partial relief will be of importance to many regulated entities and others

affected by DEP permitting decisions, Petitioners do not believe this appeal is appropriate for a memorandum decision.

V. ARGUMENT.

A. Standard of Review.

The Board's review of a DEP Order, such as issuance of a permit, is *de novo*. *W.Va. Code* § 22B-1-7(e). This means the Board is not to afford any deference to the DEP's decision, but rather must act independently on the evidence before it. *W. Va. Div. of Env't'l Protection v. Kingwood Coal Co.*, 200 W.Va. 735, 745, 490 S.E.2d 823, 834 (1997).

In appeals of Board orders taken to circuit court, that court "shall reverse, vacate or modify the order or decision of the [Board] if the substantial rights of the . . . petitioners have been prejudiced because the administrative findings, inferences, conclusions, decisions, or order are '(1) In violation of constitutional or statutory provisions; or (2) In excess of the statutory authority or jurisdiction of the agency; or (3) Made upon unlawful procedures; or (4) Affected by other error of law; or (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.'" Syl. Pt. 2, *Shepherdstown Volunteer Fire Department v. Human Rights Commission*, 172 W.Va. 627, 309 S.E. 2d 342 (1983); Syl. Pt. 1, *St. Mary's Hospital v. State Health Planning and Development Agency*, 178 W.Va. 792, 364 S.E.2d 805 (1987); *Kingwood Coal Co.*, 200 W.Va. at 746, 490 S.E.2d at 835 (citing *W.Va. Code* § 29A-5-4(g), made applicable to appeals from the Board by *W.Va. Code* § 22B-1-9(a)).

When reviewing a circuit court's ruling in such an administrative appeal, this Court applies the same standards as the circuit court would have applied. *Kingwood Coal Co.*, 200 W.Va. at 747, 490 S.E.2d at 835. Since this appeal is brought directly to the Court under the authority of *W.Va.*

Code § 22B-3-3(a), those same standards should also apply to the Court’s consideration of this matter. *See, e.g., Charleston Town Ctr. v. Human Rights Com’n*, 224 W.Va. 747, 751, 688 S.E.2d 915, 919 (2009) (applying review standards of *W.Va. Code* § 29A-5-4(g) to appeals of final orders issued by the West Virginia Human Rights Commission brought directly to the Supreme Court of Appeals).

B. Assignment of Error No. 1: After Finding that DEP Abused Its Discretion and Otherwise Acted in Violation of Governing Law in Multiple Ways, the Board Erred by Declining to Vacate the UIC Permit.

The Board correctly found that the DEP is only authorized to act upon a UIC permit application “that is both complete and accurate.” JA001061 (Final Order at 18 (citing *W.Va. C.S.R.* § 47-13-13.10.c; *W.Va. C.S.R.* § 47-13-13.11.d; and *W.Va. Code* § 22-11-9)). The Board also made detailed Findings of Fact that supported its conclusion that AMBIT’s application for the UIC Permit “was not accurate or complete.” *Id.* (emphasis added).

Specifically, the Board found that AMBIT’s application did not accurately state the current rates of injection; incorrectly asserted that the receiving void was not up-dip of other mine voids; incorrectly stated that there was no active mining in the area; and did not sufficiently identify the flow path of the injectate from its operations. JA001053 - JA001055 (Final Order at 10-12). All those findings are based on substantial evidence in the record, to which the Final Order makes specific reference. The Board also determined that the DEP “could *not* have properly assessed the impact [of AMBIT’s injection operations] on active mine operations, the Fairmont Mine Pool, [or] the waters of the State” (JA001062 (Final Order at 19) (emphasis added)) – evaluations that the DEP was required to make before deciding whether to reissue the UIC Permit. *See W.Va. Code* § 22-11-11(b); *W.Va. Code* § 22-3-14(b)(9); *W.Va. C.S.R.* § 38-2-14.5.e.2.

As a result of these errors, the Board was right to conclude that the DEP's reissuance of the UIC Permit was "arbitrary, capricious, and in violation of applicable statutory and legal provisions." JA001062 (Final Order at 19). Petitioners' sole challenge to the Board's Final Order in this appeal is its decision to grant their appeal only "in part" (i.e., by modifying the UIC Permit rather than vacating it). Based on the factual findings and legal conclusions set forth in the Final Order, the decision to grant such limited relief was either clearly wrong or the result of a plainly unwarranted exercise of discretion on the part of the Board. This portion of the Final Order should therefore be reversed under *W. Va. Code* § 29A-5-4(g).

In this regard, it is important to note that the Board's factual findings as to the inaccuracy and incompleteness of the UIC Permit application apply to the application *as a whole* – not just to AMBIT's request for a five-fold increase in its permitted injection rates. As the Board acknowledged, the UIC regulations prohibit the DEP from acting upon any application for reissuance of a permit that is not accurate and complete in *all respects*. *W. Va. C.S.R.* § 47-13-13.10.c; *W. Va. C.S.R.* § 47-13-13.11.d. Indeed, the UIC permit application form developed by the DEP makes this perfectly clear. *See* JA000086 (Certified Record at 52, "UIC Permit Reissuance Application for Coal Mines," warning that *all* information requested "is mandatory" and that "[o]mission of required information, [or] sparse or misleading presentation of information" may cause reissuance denial.) (emphasis added).

As described above, the Board found that AMBIT's UIC Permit application violated these rules in several ways. However, its Final Order inexplicably addressed only *one* of those violations. In much the same way the DEP did not have the discretion to ignore any of those violations, the Board also had no authority to do so. In the face of AMBIT's multiple violations of the DEP's duly promulgated legislative rules governing the UIC permitting process, the Board should have vacated

the UIC Permit in its entirety. See, e.g., *Klamath-Siskiyou Wildlands Ctr. v. Nat'l Oceanic & Atmospheric Admin. Nat'l. Marine Fisheries Serv.*, 109 F.Supp.3d 1238, 1241 (N.D. Cal. 2015) (“[W]hen a court finds an agency’s decision unlawful under the Administrative Procedures Act, vacatur is the standard remedy”).

Compounding this problem, the Final Order reflects no attempt by the Board to explain *why* it concluded that a reduction in permitted injection volumes was an appropriate remedy for the numerous violations of the law set forth in its findings. The introductory section of the Final Order states that issuance of the UIC Permit “as it applies to increasing the injection volumes of untreated AMD was arbitrary and capricious.” JA001046 (Final Order at 3.) The “Conclusion of Law” section further finds that DEP’s reissuance of the entire UIC Permit was “arbitrary, capricious, and in violation of applicable statutory and legal provisions” – not just in one respect, but (as confirmed by the use of the plural, “provisions”) based upon the multiple “Findings of Fact” immediately preceding it. JA001059, JA001062 (Final Order at 16, 19). The Final Order contains no discussion of the Board’s rationale of how effectively affirming reissuance of UIC Permit without the requested increased injection volumes was an appropriate remedy for the multiple deficiencies identified by the Board.

Finally, if the Board intended to find that the DEP’s issuance of the UIC Permit was “arbitrary and capricious” only as to the approved increase in injection rates, it never attempted to explain *how* the DEP’s decision to act upon the AMBIT application could otherwise be justified. As addressed above, such a legal conclusion would be directly contrary to the findings of fact set forth in the Final Order identifying multiple inaccuracies and insufficiencies in the reissuance application. If it intended to so rule, the Board was required to include in the Final Order “a concise and explicit statement of the underlying facts” that supported such a determination. *W.Va. Code* §

29A-5-3; *In re Queen*, 196 W.Va. 442, 447, 473 S.E.2d 483, 488 (1996) (requiring that the decision of an administrative agency “build an accurate and logical bridge between the evidence and the result”). The absence of “an accurate and logical bridge” connecting the Board’s findings of fact to the remedy awarded is a further indication that the Board had no legitimate basis for limiting the relief granted to the Petitioners.

C. Assignment of Error No. 2: The Board Arbitrarily Failed to Address Important Grounds for Reversing the DEP’s Decision Raised by Petitioners.

In addition to the DEP’s legal error and/or abuse of discretion in acting upon a UIC permit application that was incomplete and inaccurate in the ways identified by the Board (see JA001053 - JA001055 (Final Order at 10-12)), Petitioners asserted the following grounds for their appeal to the Board:

- (1) the UIC Permit Application did not clearly identify the material to be injected, in violation of *W.Va. C.S.R. § 47-13-13.10.c* (requiring complete and accurate applications) and *W.Va. C.S.R. § 47-13-13.11.d* (requiring compliance with application forms developed by the DEP) (*see* JA000910, JA000916, JA000922 - JA000923 (Petitioners’ Proposed Final Order at 26, 32, 38-39));
- (2) the UIC Permit Application did not provide an adequate explanation of AMBIT’s alternative treatment plan for disposition of its wastewater in the event it was required to cease injection operations, as required by the DEP application form (*see* JA000918 - JA000907; JA000908 - JA000919 (Petitioners’ Proposed Final Order at 23-24; 34-35));
- (3) the UIC Permit Application did not provide sufficient information to establish a legal right to inject into the receiving void and a legal right to inject into all down-dip mine

works likely to receive injectate from the receiving void, as required by the application form and by *W.Va. Code* §22-3-9(a)(9) (*see* JA000917, JA000919-JA000920 (Petitioners' Proposed Final Order at 33, 35-36));

- (4) The UIC Permit application incorrectly stated that the receiving (target) void for AMBIT's injection was not up-dip of any other mine voids and incorrectly stated that there was no active mining in the surrounding area. JA000898 (Petitioners' proposed final order at 15).
- (5) the DEP did not make a finding that the proposed injection operation would "minimize disturbance to the hydrologic balance on the permit area and prevent material damage outside the permit area..." as required by *W.Va. C.S.R.* § 38-2-14.5.e.2 (*see* JA000920 (Petitioners' Proposed Final Order at 36));
- (6) the DEP erroneously failed to consider AMBIT's significant history of failing to comply with its existing UIC Permit as part of its decision-making process on the UIC Permit Application, as required by *W. Va. C.S.R.* § 47-13-13.12.a; Evidentiary Hearing Tr., p. 271;
- (7) the legal advertisement of the UIC Permit application failed to comply with *W.Va. C.S.R.* § 47-13-13.25.a, because it: (a) erroneously identified the material to be injected as "AMD Sludge"; (b) omitted any address for the location of the facility at which the permitted activity would take place; and (c) erroneously stated that the "business conducted" at the regulated site was "AMD Treatment," when in fact no treatment of acid mine drainage occurs at the site of the AMBIT injection operation (*see* JA000925-JA000926 (Petitioners' Proposed Final Order at 41-42)); and

(8) in violation of *W.Va. C.S.R. § 38-2-14.5.e.2.B* and *30 C.F.R. § 784.25*, the DEP did not ensure that the U.S. Department of Labor’s Mine Safety and Health Administration (“MSHA”) had reviewed the AMBIT application and approved of the proposed activity *before* issuing the UIC Permit. *See* JA000926 (Petitioners’ Proposed Final Order at 42); JA000084 (Certified Record at 50 (“Mining Underground Injection Control (UIC) Draft Permit Consultation” form, requiring that the MSHA District Administrator certify whether the agency recommends issuance or denial of mining-related UIC permits)).

Substantial evidence was presented in support of each of these appeal grounds. Indeed, as to the grounds identified as numbers (3), (5), (6) and (7) in the list set forth immediately above, Petitioners’ assertions were essentially undisputed. As a result, by failing to address these appeal grounds and make some determination of fact and law with respect to same, the Board acted in violation of: (1) *W.Va. Code § 29A-5-3*, requiring that it set forth an “explicit statement of the underlying facts” that support its rulings, and (2) *W.Va. Code § 22B-1-7(g)*, requiring that it issue a decision in every appeal only after considering “all the testimony, evidence and record in the case....”

These appeal grounds present *significant* violations of the UIC regulations and related legal requirements. For example, when AMBIT submitted its application for issuance of the 2014 UIC permit, it stated that all storm water runoff from the site would be discharged to the nearby receiving stream through an outlet under the West Virginia/ National Pollutant Discharge Elimination System (“WV/NPDES”) permit held by AMBIT. Evidentiary Hearing Tr., pp. 330-331. When AMBIT filed its application for reissuance of the UIC permit in 2020, however, it was already *injecting* such surface runoff from the site into the Joanne Mine using Injection Point 001. *See* JA000089 (Certified Record at 55); JA001058 (Final Order at 15, ¶ 47). This was a clear

violation of the 2014 UIC permit, but the DEP Permit Reviewer did not believe he had authority to consider that in making a decision on the reissuance application. Evidentiary Hearing Tr., pp. 271, 335-337; JA001058 (Final Order at 15, ¶ 47).

Similarly, the DEP's UIC Permit Reissuance Application for Coal Mines expressly requires that an applicant establish its "legal right to inject into the proposed mine void, including any and all down dip workings likely to receive water from the target void." *See* JA000101 (Certified Record at 67). An applicant must establish such a right through the submission of "signed and notarized documents," providing "specific approval from the mineral owner to allow the proposed injection." The form warns permit applicants that "**[w]ithout proper documentation [of a legal right to inject], [the] application will be denied.**" Certified Record at 67 (emphasis in original).

After finding that AMBIT had not submitted the required documentation, DEP Permit Reviewer Bob Hudnall requested that AMBIT either identify the specific provision of its lease that authorized underground injection or provide a statement from its lessor acknowledging that it was aware of the injection operations and approved of them. *See* JA000691 (DEP Ex. 2 (Feb. 28, 2020 Technical Correction Request), at 3). AMBIT did neither. Evidentiary Hearing Tr., pp. 356, 631. Nevertheless, the DEP did not view this as a reason to deny the reissuance application and the Board did not identify it as a reason to reverse the DEP's decision to reissue the UIC Permit.

This case highlights the importance of the proper legal advertisement of a pending UIC permit application. Although the DEP had contacted Petitioners' staff about an earlier version of the application, neither the DEP nor AMBIT ever informed Petitioners when the draft UIC Permit had been prepared, when it was open for public comment, or when it was issued. *See* JA000895 (Petitioners' Proposed Final Order, at 12, ¶ 29). Had the proper geographic information been

provided in the published advertisement, perhaps someone with knowledge would have noticed the proximity of the injection operation to the Fairmont Mine Pool and alerted Petitioners to it.⁴

Footnote 5 of the Final Order does not cure the Board's failure to expressly address each of these appeal grounds identified by Petitioners. *See* JA001046 (Final Order, at 3, note 5) ("Footnote 5"). In Footnote 5, the Board stated that to the extent its Findings of Fact and Conclusions of Law were "in accordance with" those offered by the parties, they had been adopted, but to the extent proposed findings and conclusions submitted by the parties were "inconsistent with" those made in the Final Order, they were deemed rejected. However, with the exception of the injection of surface runoff, the separate grounds for appeal raised by Petitioners (listed above) were not addressed by the Board *at all*. Further, the Board provided *no* explanation of how those appeal grounds had any connection to the findings and conclusions set forth in the Final Order. Therefore, these additional appeal grounds cannot be viewed as being "consistent" *or* "inconsistent" with the findings and conclusions set forth in the Final Order -- and the Board's decision to ignore them as having been either implicitly adopted or rejected cannot be affirmed. *See In re Queen*, 196 W.Va. at 447, 473 S.E.2d at 488 (administrative appeal body must "adequately explain" and support the findings it makes to support its decisions).

Footnote 5 also asserts that any proposed findings and conclusions that were completely omitted from the Final Order were considered by the Board to be "not relevant or necessary to a proper decision." *Id.* Petitioners, however, were entitled to have *some* description of how the Board "considered" every appeal ground raised, because otherwise it is impossible to determine whether the Board actually addressed them. *See In re Queen*, 196 W.Va. at 446, 473 S.E.2d at 487 (reversing

⁴ Pending amendments to DEP's UIC Regulations, authorizing issuance of Class 6 UIC permits for carbon dioxide geologic sequestration wells, also bring focus on the need for compliance with the rules governing the public notice process. *See* <https://apps.sos.wv.gov/adlaw/csr/ruleview.aspx?document=17482&KeyWord=> (last visited November 20, 2021)

appeal commission’s decision that “entirely failed to address an important aspect” of the case). In addition, contrary to Footnote 5, the grounds listed above *are* “relevant” to the Board’s decision – especially in evaluating that part of the Final Order that limited the form of relief granted by the Board. Therefore, the Board abused its discretion or acted in violation of its legal duty to fully consider Petitioners’ appeal in issuing the Final Order without addressing these additional grounds for appeal. Had it specifically addressed Petitioners’ other appeal grounds in the Final Order, the Board would have been left with the inescapable conclusion that the only adequate remedy for these errors and omissions was to vacate the UIC Permit.

D. Assignment of Error No. 3: The Board Mistakenly Treated AMBIT’s Application for Reissuance of the UIC Permit as an Application to Modify the Authorized Injection Volumes.

The application for the UIC Permit was, first and foremost, an application to *reissue* the permit that had been issued to AMBIT on April 27, 2014 and expired on April 27, 2019. JA00001 (2014 permit, at 1); JA000087 (Certified Record, at 53, UIC Permit “Reissuance” application form). Without the reissuance of the permit, AMBIT’s injection operations would constitute unlawful discharges of pollutants into waters of the State without a valid permit authorizing that activity. *See W.Va. Code* § 22-11-8(b)(2), (7) (prohibiting unpermitted discharges to waters of the State, including groundwater; prohibiting unpermitted operation of any disposal well for injection of wastewater).

When a permittee seeks reissuance of a permit, the DEP is required to treat the application as one seeking a brand-new permit. *See W.Va. C.S.R.* § 47-13-13.12.b (in order to continue injection after the expiration date of an existing permit, the operator must “apply for and obtain a new permit”); JA000087 (Certified Record, p. 53, UIC Permit “Reissuance” application form emphasizes that applicant must provide complete responses to all questions, including all required

“detailed and technical information” to allow the DEP to make a “sound permitting decision”). This means that the applicant must demonstrate that it meets *all* the requirements for reissuance of the permit for another term.⁵ DEP’s review, therefore, extends to all aspects of the existing permit, and is not limited just to aspects that the permittee may seek to have changed in the reissued permit.

By contrast, a permittee may also request modifications to specific terms of an existing permit. When a permittee seeks to *modify* an existing UIC permit that is already in effect, such an application does not trigger a “re-opening” of the entire permit. *W.Va. C.S.R. § 47-13-13.18* (“When a permit is modified, only the conditions subject to modification are reopened.”) The DEP evaluates only the requested change, prepares a draft permit, provides public notice (if deemed warranted), and then decides to either grant or deny the request. *Id.* If the modification request is denied, the permittee’s continued authority to inject under the permit in accordance with its existing terms is unaffected.

AMBIT took the opportunity in its permit reissuance application to *also* seek an increase in the volumes of injectate that it would be authorized to place into the Fairmont Mine Pool, from approximately 18 million gallons per year to over 97 million gallons per year – or an increase of *more than 78 million gallons per year* of injectate. JA001050 (Final Order at 7). Under the DEP’s UIC regulations such a sizeable increase in the permitted injection rate could have been classified as a “major” modification to the UIC Permit, requiring preparation of a draft permit and public notice of the application. See *W.Va. C.S.R. § 47-13-13.18.a.1* (major modifications include “substantial” additions to the permitted activity); Tr., 1/27/21, p. 331 (DEP UIC Permit Manager Bob Hudnall notes that the proposed addition of a new type of injectate (storm water runoff) in the

⁵ Those requirements are essentially the same ones that apply to the issuance of a new permit for a proposed injection operation that does not yet exist. See *W.Va. C.S.R. § 47-13-13.12.b.*

AMBIT reissuance application was considered a request for “modification” of the permit as a part of the reissuance).⁶

In this case, the Board erroneously treated Petitioners’ challenge to *reissuance* of the UIC Permit as only a challenge to *modification* of the injection volumes authorized by that permit. In other words, the Board viewed Petitioners’ appeal only from the standpoint of whether AMBIT had demonstrated grounds to increase the permissible injection volumes. Finding that AMBIT had not provided sufficient justification for that, the Board modified the UIC Permit to reinstate the injectate volume limits from the 2014 permit. JA001062 (Final Order at 19). By doing so, the Board failed to address the more important question of whether AMBIT had satisfied the requirements for having the UIC Permit reissued at all.⁷ This constitutes either an error of law or a clearly unwarranted exercise of discretion within the meaning of *W.Va. Code* § 29A-5-4(g). In either case, this erroneous approach to examining the type of permitting action under appeal is apparently what caused the Board to modify the UIC Permit rather than vacate it. Since the Board’s own findings demonstrate that reissuance of the UIC Permit was improper, the Final Order should be reversed and remanded to the Board with instructions to enter an order vacating the UIC Permit.

* * *

⁶ The DEP did not require that AMBIT make any mention of the modification aspect of its reissuance application in the public advertisement of it. JA000061 (Certified Record at 27).

⁷ Further evidence of this mistaken understanding of the scope of the appeal is found in the penultimate paragraph of the Final Order, where the Board provides guidance to the DEP with respect to how to assess any future requests “for increases in injection volumes” and how it should consider any future AMBIT applications to “further modify” the AMBIT UIC Permit. JA001062 (Final Order at 19).

VI. CONCLUSION.

Based on the factual findings and legal conclusions set forth in its September 29, 2019 Final Order, the Board's decision to grant limited relief to the Petitioners in the form of a reduction in injection rates in the UIC Permit reissued to AMBIT was either clearly wrong or the result of a clearly unwarranted exercise of discretion on the part of the Board. In accordance with *W. Va. Code* § 29A-5-4(g) and *W. Va. Code* § 22B-1-7(g)(1), the Final Order should be reversed and this matter should be remanded to the Board with instructions to enter a final order vacating the UIC Permit based on the findings and conclusions the Board previously entered and based upon any additional findings the Board may wish to make in consideration of the Court's opinion.

Respectfully submitted,

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**WEST VIRGINIA LAND RESOURCES, INC., and
MARION COUNTY COAL RESOURCES, INC.,**

Petitioners,

vs.

No. 21-0845

**AMERICAN BITUMINOUS POWER PARTNERS, LP,
WEST VIRGINIA DEPT. OF ENVIRONMENTAL PROTECTION,
and WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD,**

Respondents.

AND

AMERICAN BITUMINOUS POWER PARTNERS, LP,

Petitioner,

vs.

Nos. 21-0885, 21-0893

**WEST VIRGINIA LAND RESOURCES, INC.,
MARION COUNTY COAL RESOURCES, INC.,
WEST VIRGINIA DEPT. OF ENVIRONMENTAL PROTECTION,
and WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD,**

Respondents.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Petitioners' Brief in Appeal No. 21-0845 on behalf of West Virginia Land Resources, Inc. and Marion County Coal Resources, Inc., and the Joint Appendix for all referenced appeals (via electronic delivery only, by agreement), was served upon counsel of record for all parties and upon the Clerk of the West Virginia Environmental Quality Board on the 30th day of November, 2021, by 1st Class U.S. Mail addressed as follows:

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