

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

BRADLEY KEENAN,
NATURAL RESOURCES
DEFENSE COUNCIL,
WV SURFACE OWNERS'
RIGHTS ORGANIZATION, and
PLATEAU ACTION NETWORK,

Appellants,

v.

Appeal No.:

DIRECTOR, DIVISION
OF WATER AND WASTE MANAGEMENT,
WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION;

Appellee.

NOTICE OF APPEAL

Action Complained of: The appellants named above, by counsel, Rist Law Offices, by Thomas A. Rist, respectfully represent as follows:

The issuance of order number 2014-UIC-13 to Danny E. Webb Construction, Inc. dated March 4, 2014 by the West Virginia Department of Environmental Protection violates State and Federal Law, including the West Virginia Water Pollution Control Act.

Relief Requested: The appellants therefore pray that this matter be reviewed and that the Board grant the following relief:

Appellants request that the Board reverse or vacate the order altogether and require all injection at this site to cease until such time as a permit can be issued that is in compliance with state and federal law.

Specific Objections:

1. By order dated March 4, 2014, the WV DEP revoked Underground Injection Control (UIC) Permit No. 2D0190460, originally issued to Danny E. Webb Construction, Inc. on February 6, 2014. The revocation order states in Paragraph 8 that the permit was revoked due to "procedural deficiencies" but nothing further is noted in

the order about what these "procedural deficiencies" are or how they are to be corrected. The order additionally fails to provide any deadline for when a reapplication should occur and instead, gives an open-ended extension, allowing injection to occur at the site indefinitely.

As a result, the issuance of this order violates the public policy of the state of West Virginia to maintain reasonable standards of purity and quality of the water of the state pursuant to the West Virginia Water Pollution Control Act, W. Va. Code § 22-11-1 *et seq.* and the West Virginia Groundwater Protection Act, W. Va. Code § 22-12-1 *et seq.*

2. Although the order revokes a UIC permit, it still allows Danny E. Webb Construction, Inc. to continue injection into the well. Allowing further injection into this well when the permit itself has been revoked violates 47 CSR 13-13.1.a, 47 CSR 13-13.2.a.1, 47 CSR 13-13.12.b, and 42 U.S.C. § 300h(b)(1).

3. The issuance of this order violates W. Va. Code § 22-6-11 because the proposed work at this well constitutes a hazard to the safety of persons; damage would occur to publicly owned resources, and the proposed work fails to protect fresh water sources or supplies.

The stream adjacent to this permit is a tributary of Wolf Creek, flows directly into the New River upstream from the current drinking water source for the town of Fayetteville and surrounding area.

The New River is a publicly owned resource that is critical to the whitewater rafting and tourism industry in southern West Virginia. This river is not being adequately protected by the issuance of this order.

Moreover, Danny E. Webb Construction, Inc. has a history of substantial violations that were not timely abated. By failing to adequately address (1) the operator's history of violations and to ensure they will not recur, and (2) continuing unsafe conditions at the site, this order fails to protect fresh water sources and supplies.

4. The issuance of this order violates W. Va. Code § 22-6-11 because the order would allow injection beyond the capacity of the geologic formation into which injection is proposed, and therefore fails to protect fresh water sources and supplies, and constitutes a hazard to the safety of persons.

5. Waste fluid pits were constructed on this site without the prior approval of the WV DEP. W. Va. Code 22-11-4(a)(12) requires that plans to be submitted prior to construction. This did not occur in this case. These pits are now required to be closed and reclaimed pursuant to this order, yet the order provides no guidance or requirements concerning the closure of these pits other than Danny E. Webb Construction, Inc. will provide plans for how to close and reclaim the pits. An order allowing continued injection to occur prior to the closure of these pits should not have been issued until this serious problem is abated.

6. Stream monitoring requirements in the order as issued are wholly inadequate to protect the water resources of the State of West Virginia.

7. The injectate monitoring frequency and parameters are not designed to prevent violations of primary safe drinking water act standards.

8. The issuance of the order violates 47 CSR 58-4 because the site does not meet the requirements of that section for the protection of groundwater.

Respectfully Submitted,

BRADLEY KEENAN,
NATURAL RESOURCES
DEFENSE COUNCIL,
WV SURFACE OWNERS'
RIGHTS ORGANIZATION, and
PLATEAU ACTION NETWORK,

By Counsel

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