



AlaFile E-Notice

01-CV-2014-000432.00

Judge: JIM HUGHEY III

To: PARNELL KENNETH MARK
parnell@ptlawllc.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM VS ALABAMA SURFACE M
01-CV-2014-000432.00

The following matter was FILED on 11/2/2018 2:14:54 PM

Notice Date: 11/2/2018 2:14:54 PM

ANNE-MARIE ADAMS
CIRCUIT COURT CLERK
JEFFERSON COUNTY, ALABAMA
JEFFERSON COUNTY, ALABAMA
716 N. RICHARD ARRINGTON BLVD.
BIRMINGHAM, AL, 35203

205-325-5355
anne-marie.adams@alacourt.gov



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
 BIRMINGHAM DIVISION**

THE WATER WORKS BOARD OF)
 THE CITY OF BIRMINGHAM,)
 Plaintiff,)
)
 V.) Case No.: CV-2014-000432.00
)
 ALABAMA SURFACE MINING)
 COMMISSION and)
 MAYS MINING, INC.,)
 Defendants.)

ORDER

This matter came before the Court for a hearing on October 10, 2018 on The Water Works Board of the City of Birmingham (the “Board”)’s Motion to Review and Remand Re-Issued Permit [Doc. 119]. Stone Arledge of Birmingham Reporting served as the official Court Reporter for the hearing.

At the commencement of the hearing, the Court granted the Motion to Substitute Parties filed by Mays Mining, Inc. [Doc. 163] and overruled the Defendants’ Motion to Deny Hearing [Docs. 140 and 143]. With regard to Defendants’ Motion to Deny Hearing, the Court specifically held that it has jurisdiction to review the Permit to Engage in Surface Coal Mining Operations (the “Re-Issued Permit”),¹ which was re-issued by the Alabama Surface Mining Commission (the “Commission”) on May 21, 2018, to determine whether the Re-Issued Permit considered the matters identified by the Court on page 4 of the Final Order On Appeal (“Final Order”). *See* Document 145, Exhibit A and Document 114, p. 4.

¹ The Re-Issued Permit cites to a December 21, 2017 report entitled *Soil and Groundwater Environmental Assessment Report, Reed Mine #5, Cordova, Alabama* prepared by Spectrum Environmental, Inc. (the “Spectrum Report” or the “Report”). Because the Spectrum Report is integral to the Commission’s decision to re-issue the Permit, the Court also received and reviewed a copy of the Report before issuing this Order.

Page 4 of the Final Order sets forth the Court's concerns regarding the reasonableness of conducting surface coal mining operations on a "brownfield" site (i.e., the site of a former industrial plant) as opposed to a "greenfield" site (i.e., undeveloped land). The Court was particularly concerned that the Commission had not fully and adequately considered the potential environmental impacts unique to mining those portions of the site that contained the former plywood plant. Specifically, the Court was concerned: (1) that the Commission did not indicate that either it or the experts it relied on have experience with the mining of brownfield sites; (2) that the Commission cited no articles, treatises, handbooks or the like which set forth any best practices for the mining of brownfield sites; (3) that the Commission presented no experiential data from the mining of any nearby, or similar, brownfield sites;² and (4) that, in light of the Commission's lack of experience, lack of experiential data, and inability to identify any established best practices for the mining of brownfield sites, the Commission had not ordered, or even considered ordering the permittee to take affirmative measures such as (a) including a "condition" in the Permit that "no disturbance is to occur" in brownfield areas, (b) requiring a reasonable layer of the soil from the brownfield areas to be transported to an appropriate landfill rather than re-deposited on the site or, (c) requiring a reasonable layer of the soil from the brownfield areas to be tested for potential pollutants once the soil has been disturbed and, then, if any pollutants are detected at unsatisfactory levels, transporting that soil to an appropriate landfill rather than re-depositing it on the site. *See id.* With these concerns unresolved, the Commission's decision to allow mining on the brownfield portions of this site is unreasonable, unlawful, and unsupported by the clear preponderance of the evidence. *See id.*, citing ALA. CODE § 9-16-79(6).

Having completed its review of the Re-Issued Permit and the Spectrum Report, the Court finds and holds that the Commission has not resolved the above concerns. Specifically, the Court finds and holds: (1) that neither the Commission nor Spectrum indicates that either has experience with the mining of brownfield sites; (2) that neither the Commission nor Spectrum cites any articles, treatises, handbooks or the like setting forth best practices for the mining of brownfield sites; (3) that neither the Commission nor Spectrum presents any experiential data from the mining of nearby, or similar, brownfield sites; and (4) that the Commission does not indicate whether – or, if so, using what criteria and with what analysis – it considered ordering the permittee to take affirmative measures to avoid or eliminate any potential environmental impact unique to mining the brownfield portions of this site.

² The actual experience of the Commission in overseeing the successful mining and reclamation of three nearby greenfield sites was a significant factor in the Court's upholding the Commission's decision to allow the mining of the greenfield portions of this site. *See* Final Order p. 3.

Pursuant to the above findings and holdings, the Court continues to hold that the mining of the brownfield portions of the site at issue in this case are unreasonable, unlawful, and unsupported by the clear preponderance of the evidence. Therefore, those aspects of the Re-Issued Permit REMAIN STAYED and the Re-Issued Permit is REMANDED back to the Commission for further proceedings.

Nothing in this Order shall affect the Court's prior ruling that surface mining may be conducted on the greenfield portions of this site. *See* Document 114.

DONE this 2nd day of November, 2018.

/s/ JIM HUGHEY III
CIRCUIT JUDGE