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Environmental hearing board issues ruling on undermining of streams near Ryerson

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The state Environmental Hearing Board issued a mixed ruling Tuesday regarding the undermining of streams near Ryerson Station State Park in Greene County as it addressed the extent of damage that may be allowed to a stream without causing a determination the stream may be impaired. On an appeal of permit revisions on Consol Energy's Bailey Mine, the board ruled state mining officials violated the law in issuing a permit allowing the company to mine beneath Polen Run while anticipating damage so extensive that restoration would involve essentially destroying and rebuilding the stream. In the same ruling, the board found mining officials were in compliance with the law when they approved another permit that allowed the company to mine beneath a dozen other streams in the same area that would be impacted by subsidence but to a lesser degree. The ruling by EHB Judge Steven Beckman came on appeals filed three years ago by the Center for Coalfield Justice and Sierra Club against two permit revisions issued by the state Department of Environmental Protection allowing Bailey to longwall mine in and near Ryerson park. The company initially filed a permit revision, No. 180, to longwall mine about 3,000 acres that called for undermining 14 streams and included plans for restoring the streams should there be damage. Two streams, Polen Run and Kent Run, were excluded from the revision because of DEP's concerns about potential damage and whether restoration plans

would be successful. The company later filed and received DEP approval for permit revision, No. 189, allowing it mine under Polen Run and proposing to use a more extensive “geo-composite liner system” as part of the restoration process. The environmental groups appealed the revisions claiming the agency violated the law by failing to protect the streams’ designated uses, which were classified as trout stocked fisheries. They also argued it was unlawful for DEP to accept post-mining plans for stream remediation as a basis for approving permits the department knew would cause subsidence-induced impairments. Consol and DEP maintained the appellants failed to show the streams would be impaired by the subsidence and said any impacts would only be temporary and would be addressed by remediation and restoration activities. The “fundamental question” in the case, the board said in its 71-page opinion, is whether impacts from mine subsidence will impair or have impaired streams in the area. It agreed with DEP and Consol statutes and regulations allow for temporary and limited disruption of a stream’s use. “The Department and Consol argue that the statutes and regulations allow for disruption of the stream uses that are limited in scope and duration,” the board said. “We think this is correct. Limited and temporary disruptions of a stream’s use clearly are part of the Department’s overall permitting scheme and occur frequently when work is required within or adjacent to a stream.” In regard to streams covered under revision No. 180, the board said actual impacts to the streams from the longwall mining “did not rise to the level of impairing” the streams. Streams in those area were restored using stream bed grouting, which the board called a “minor” form of restoration, and gate cutting, which was used to address stream pooling. “We certainly believe that even this level of impact, which necessitated the implementation of minor forms of stream mitigation, could result in stream impairment if the time or amount of work involved extended beyond what was demonstrated in this case,” the board said. In regard to revision No 189 and Polen Run, the board determined the extensive

activities involving the installation of the channel liner did constitute impairment. “When the Department anticipates that the impacts from longwall mining are going to be so extensive that the only way to ‘fix’ the anticipated damage to the stream is to essentially destroy the existing stream channel and streambanks and rebuild it from scratch, the Department’s decision to issue Permit Revision No. 189 is unreasonable and contrary to law,” the board said. Installation of the liner had involved clearing vegetation from around the stream banks, excavating the stream bottom and installing clean fill material and the liner. The impact, the board said, is similar to the “permanent elimination” of the stream. “Polen Run as it existed prior to Consol’s longwall mining no longer exists,” the board said. Among other things, the new stream is shorter and groundwater is no longer able to enter the stream in a normal fashion. Veronica Coptis, executive director of the Center for Coalfield Justice, said the group was pleased with the decision. “This ruling has put the industry and the DEP on notice that it must do a better job of developing mining plans to protect streams,” she said. A DEP spokeswoman said the agency is still reviewing the decision. Consol said the decision was good news for the company and its employees. “The EHB decision reaffirms that coal can be produced responsibly while protecting jobs, the economy and the environment at the same time,” Consol said in a prepared statement. The environmental hearing board also addressed a recently-passed amendment to the state’s mining law that attempted to clarify the law in regard to mining under streams. The amendment will allow for planned mine subsidence beneath streams, provided any damage is not predicted to be permanent and a plan is submitted to repair it. The board said the law did not apply in this case because the law first has to be reviewed and approved by federal mine regulators.

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