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MAR 31 2023

Environmental Quality
Board

BEFORE THE WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

PINN MC WIND DOWN CO., LLC,

Appellant,

v.

Appeal No. 23-04-EQB

DIRECTOR, OFFICE OF MINING AND
RECLAMATION, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Appellee.

NOTICE OF APPEAL

The Appellant above-named respectfully represents that it is aggrieved by WVDEP's February 28, 2023 MR-HP15E Single Event Violation ("SEV") #16. A copy of the WVDEP's order is attached as Exhibit 1.

The Appellant prays that this matter be reviewed and that the Board vacate the WVDEP's SEV.

The specific objections to the action and requested relief are set forth in detail in separate numbered paragraphs and attached hereto.

I. Factual Background

1. On February 28, 2023, WVDEP issued SEV #16 to Pinnacle Mining Company, LLC on Permit No. WV0090000, which is the NPDES Permit associated with the Pinnacle Mine Complex. NPDES Permit WV0090000 governs discharges for Permit U020483 and the other surface mining permits associated with the Pinnacle Mine Complex,¹

2. The Pinnacle Mine was started by US Steel in 1968 and operated until 2018. *See* Exh. 2, Post Underground Mining Assessment, p. 4 ("PUMA"). The mining was conducted in the

¹ E002500, O013883, O400892, O401097, O402292, U070700.

Pocahontas No. 3 Seam underlying areas located in Wyoming and McDowell counties, West Virginia, with a mine area footprint encompassing approximately 26,000 acres. *Id.* The Pinnacle Mine is surrounded by five other mines in the Pocahontas No. 3 Seam; additionally, there are eight mines in overlying seams whose mine works are between the Pinnacle Mine and the surface. *Id.*, p. 5.

3. The history of Mission Coal Company, LLC’s (“Mission”) bankruptcy, which was the parent company of Pinnacle Mining Company, LLC, was laid out extensively before the West Virginia Surface Mining Board at an October 19, 2022 evidentiary hearing held in 22-08-SMB.

4. As explained during the hearing in that appeal, after Mission and its affiliates emerged from bankruptcy on April 30, 2019, Pinnacle Mining Company, LLC’s reorganized successor, Pinn MC Wind Down Co., LLC, has not owned the real or personal property assets related to the Pinnacle Mine Complex and has not had any ability to conduct ongoing business operations. Nor does it own any mining equipment or employ personnel capable of conducting mining or reclamation operations—it was created to hold the Pinnacle permit assets for a short period of time until the permits and associated assets were transferred, with regulatory approval, to Bluestone and others.

5. Pinn MC believed it would only be a matter of months until the various permits associated with the Pinnacle Mine Complex were either transferred to Bluestone Resources, Inc. (“Bluestone”) or replaced by Bluestone.

6. James and Tina Christian reside at 5754 Welch Pineville Road, Pineville, WV. On February 21, 2023, the Christians noticed water bubbling in their yard and discovered that the source of the artesianing was an old well. Exhibit 3 (Christian Aff’t), ¶ 3. They made a complaint to WVDEP, who then issued an Imminent Harm Cessation Order (“IHCO”) on February 21, 2023

and an Notice of Violation (“NOV”) on February 28, 2023 on the relevant surface mining permit (U020483) to Pinnacle Mining Company, LLC, citing violations of W.Va. Code § 22-3-16(a) and W.Va. Code R. § 38-2-20.3.a.

7. Also on February 28, 2023, WVDEP issued SEV #16, the order/citation underlying this appeal, for “unauthorized discharge in that water began to artesian at residence yard on Welch Pineville Road.” WVDEP’s prescribed remedial measures were that “[s]ubmit and obtain an application to bring discharge through an approved NPDES permitted outlet.”

7. On March 10, 2023, WVDEP instituted a civil enforcement action in the Circuit Court of Wyoming County and requested a temporary restraining order compelling Pinn MC to comply with the remedial provisions of IHCO # 31, NOV #32, and SEV # 16. SEV #16 was not directed to Pinn MC; however, WVDEP’s filings and statements in the civil action make clear that the agency views Pinn MC and Pinnacle Mining Company, LLC as the same entity. Moreover, WVDEP served the SEV on the Plan Administrator appointed to oversee the wind down of Mission Coal Wind Down Co., LLC and Pinn MC, which further indicates that WVDEP views Pinn MC and Pinnacle Mining Company, LLC as one and the same.

8. The Christians dug a ditch to route the water away from their home and into Indian Creek, the stream behind their residence. Exh. 3, ¶ 5. Upon receiving notice of the IHCO, NOV, and SEV from Pinn MC, representatives of Bluestone began regular communication with the Christians and sent Derrick O’Neal, a professional mining engineer, to monitor the situation closely. *Id.*, ¶ 8. As of March 14, 2023, there was no standing water in the Christians yard or around their home. *Id.*, ¶ 6. Neither the Christians nor Derrick O’Neal believe the artesian discharges from the old well present an imminent danger to the Christians or their property. *See* Exh. 3 (Christian Aff’t); *see also* Exh. 4, ¶ 4 (Derrick O’Neal Aff’t).

9. After a hearing on WVDEP's motion for injunctive relief on March 15, 2023, Judge Cochran ordered Pinn MC to monitor the situation at the Christian property and to take action necessary to prevent damage to their property from artesian discharges. Additionally, Judge Cochran ordered Pinn MC to formulate a plan to remedy the artesian discharges at the Christian property. Judge Cochran ordered the parties to return to court on April 27, 2023 to present evidence on a remedy to the artesian discharges. The Judge also invited Bluestone to participate in the briefing and hearing on the remedy.

II. Specific Objections

1. WVDEP acted arbitrarily, capriciously, or otherwise in violation of the law as described above in issuing its February 28, 2023 SEV.

2. WVDEP acted arbitrarily, capriciously, or otherwise in violation of the law by finding that Pinn MC is responsible for obtaining a permitted NPDES outlet for the artesian discharges on the Christian property.

3. WVDEP acted arbitrarily, capriciously, or otherwise in violation of the law by conflating Pinn MC with Pinnacle Mining Company, LLC.

4. WVDEP acted arbitrarily, capriciously, or otherwise in violation of the law by finding that the artesian discharges at issue originated from areas associated with Permit No. U020483 and should, therefore, be permitted under NPDES Permit No. WV0090000.

Relief Requested

Pursuant to W. Va. Code § 22-11-21 and § 22B-1-7, Pinn MC therefore prays that this matter be reviewed and that the Board grant the following relief:

1. To order WVDEP to withdraw SEV #16 or, in the alternative, clarify that SEV #16 does not apply to or bind Pinn MC.

2. Any other relief that the Board deems appropriate.

PINN MC WIND DOWN CO., LLC



CHRISTOPHER M. HUNTER (WVBN 9768)

JACKSON KELLY, PLLC

1600 Laidley Tower

Post Office Box 553

Charleston, West Virginia 25322

Counsel for Pinn MC Wind Down Co., LLC

BEFORE THE WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

PINN MC WIND DOWN CO., LLC,

Appellant,

v.

Appeal No. 23-04-EQB

**DIRECTOR, OFFICE OF MINING AND
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ENVIRONMENTAL PROTECTION,**

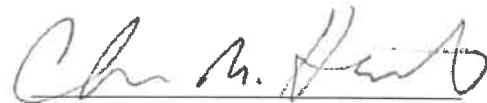
Appellee.

CERTIFICATE OF SERVICE

I, Christopher M. Hunter, hereby certify that a true and exact copy of the foregoing NOTICE OF APPEAL was caused to be served upon the following via United States mail, postage pre-paid, this 30th day of March, 2023.

Scott Driver
Office of Legal Services
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

Kevin W. Barrett, Esquire
Bailey & Glasser LLP
209 Capitol Street
Charleston, WV 25301





NPDES NUMBER	LATITUDE	LONGITUDE	DATE	INSPECTION			PHOTOS
				TIME	REASON	TYPE	
WV0090000	37° 32' 13"	81° 34' 54"	02/28/2023	08:00	RI	RI	Yes

PERMITTEE NAME PINNACLE MINING COMPANY, LLC **NPDES EXP DATE** 01/29/2021
ASSOC. PERMITS E002500, O013883, O400892, O401097, O402292, U020483, U070700
LAST HPU INSP DATE 12/16/2022 **TYPE** CSI **CUR NPR#** 4 **CUR NPM#** 72 **CUR NPT#** 1
TIME USED (HRS)=> **PERMIT REVIEW** 0.25 **INSPECT** 0.50 **TRAVEL** 0.50 **REPORT** 0.25
AREAS EVALUATED: **PERMIT** X **FACILITY SITE REVIEW** X **EFFLUENT/RECEIVING WATERS** X
RECORDS/REPORTS N/A **SELF-MONITORING PROGRAM** N/A **COMPLIANCE SCHEDULES** N/A
OPERATIONS MAINTENANCE N/A **STORMWATER** N/A **SAMPLING DONE?** No

INSPECTION COMMENTS

SEV#16 issued for an unauthorized discharge in that water began to artesian at residence yard on Welch Pineville Road. NPDES is in review process. SEV'S #13, 14, 15 are still in effect.

SEV STANDARD	EVALUATION	SEV#	SEV STANDARD	EVALUATION	SEV#
A0012 Effluent Violation.....			A0013 Failed Toxicity Test.....		
A0015 Unauthorized Discharge.....	SEV Issued	16	A0016 Reported Fish Kill.....		
A0022 Narrative Effluent Violation.....			A0023 Industrial Spill.....		
B0019 Best Management Practice Deficit			B0020 Improper Operation and Maintena		
B0026 Failure to Allow Entry.....			B0028 Failure to Implement SPCC Plan..		
B0041 Failure to Maintain Records.....			B0042 Violation of a milestone in an orde		
C0021 Failure to Monitor for Toxicity Reqi			D0011 Discharge Without a Valid Permit.		
D0013 Unapproved Operation.....			D0015 Failure to Pay Fees.....		
D0016 Fail to Submit Timely Permit Rene			D0017 Violation Specified in Comment....		
E0014 Noncompl. w/ Sect. 308 Info Requ			E0016 Failure to Submit Req. Report (No		
E0017 Failure to Notify.....					

WATER QUALITY TESTS

Outfall	pH	Fe	Mn	Al	NF	NC	Treat	Flow	Units	Temp	Units	Sp Cond	Units

AUTH. COMPANY REPRESENTATIVE Gil Nathan
DELIVERY METHOD / DATE TIME Certified 2/28/2023 13:10:00 **COMPLETION DATE TIME** 2/28/2023 13:10:00
CERTIFIED MAIL NUMBER 7007 2680 0001 9564 9974
ADDRESS 302 SOUTH JEFFERSON STREET, ROANOKE, VA 24011
WV DEP REP. Matthew D Dillon

ERIS

MR-HP15E HYDROLOGIC PROTECTION UNIT SINGLE EVENT VIOLATION

NPDES NUMBER	ORIGINAL INSPECTION		SEV CODE DATA		SEV ACTIVITY			INSP ID NUMBER
	DATE	TIME	FORM#	SEV CODE	DATE	TIME	SEV #	
WV0090000	02/28/2023	08:00	HP6E	A0015	02/28/2023	08:00	16	980

PERMITTEE NAME PINNACLE MINING COMPANY, LLC

Assoc. Permits E002500, O013883, O400892, O401097, O402292, U020483, U070700

Whereas an inspection of the above operation by the undersigned Authorized Representative of the Director was completed on the 28th day of February, 2023. The inspection revealed a violation of the provisions of Chapter 22, Article 11 of the Code of West Virginia. You are hereby notified that you are in violation of the provisions listed below.

WV CODE

Reg 47-

22-11-4(a)

30-3.1.a.1

[DOV] Description of Violation:

SEV#16 issued for an unauthorized discharge in that water began to artesian at residence yard on Welch Pineville Road

[REM] Remedial Measures:

Submit and obtain an application to bring discharge through an approved NPDES permitted outlet.

MUST BE CORRECTED WITHIN 20 DAYS OF ISSUANCE OR YOUR PERMIT MAY BE SUBJECT TO PENALTIES, REVOCATION, SUSPENSION OR MODIFICATION.

NOV Issued Resulted in Off-Site Impact

AUTH. COMPANY REPRESENTATIVE Gil Nathan

DELIVERY METHOD / DATE TIME Mail 2/28/2023 13:26:00

CERTIFIED MAIL NUMBER 7007 2680 0001 9564 9974

ADDRESS 302 SOUTH JEFFERSON STREET, ROANOKE, VA 24011

WV DEP REP. Matthew D Dillon

Harold D. Ward

[Secretary, Department of Environmental Protection]

Matthew D Dillon 02/28/2023
[WV DEP Rep/Date]

Contact Matthew D Dillon at (304) 574-4465 upon completion. Failure to complete the above measures within the above time period may result in a Cessation Order or revocation of the permit and forfeiture of the performance bond.

Post Underground Mining Assessment (PUMA)

for

Pinnacle Mine

Pocahontas No. 3 Seam

Pinnacle Mining Company, LLC

P. O. Box 338 Pineville, WV

MSHA ID No. 46-1816

State ID No. UO-204-83A

January 3, 2019

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Exhibits

1. Pinnacle Final Map.pdf

Includes:

- Extent of workings
- Coal floor elevation contours
- Adjacent mining (includes overlying)
- Topographic features

- Borehole locations (w/ dewatering sites, horizontal legs of gas drainage holes)
- Existing mine pools at time of closure

2. Pinnacle Mine Barrier Pillars.pdf

Includes:

- Pinnacle Mine footprint
- Adjacent Pocahontas No. 3 Seam mines
- Boundary and outcrop barrier pillars identified with width annotations
- Final mine pool shoreline @ 1325 ft. elevation
- Hydraulic head (ft.) contours based on 1325 ft. shoreline elevation
- Location of 8A shaft discharge point.

Objective

As a requirement for the Phase 1 permit release, Pinnacle Mining Company, LLC must submit a Post Underground Mining Assessment (PUMA) as directed by the WVDEP for the Pinnacle Mine because it is below drainage. This PUMA will include information to update and support the PHC predictions in the permit release application,

Background

The Pinnacle Mine was started by US Steel in 1968 and is located in Wyoming and McDowell counties, WV. It was the last mine in the United States to utilize a longwall plow face. Annual production has varied over the years from less than 1.0 to about 3.5 million tons. The outline of the footprint of the mined area encompasses approximately 26,000 acres. It underlies the major drainages of Pinnacle Creek and Indian Creek of the Upper Guyandotte watershed.

Geology

The Pinnacle Mine is in the Pocahontas No. 3 Seam of the Lower Pennsylvanian Pocahontas Formation. It has the rank of low volatile bituminous with an average dry product coal quality of 17% volatile matter, 7% ash, 1.00% sulfur and a vitrinite reflectance of 1.68. It has been utilized primarily as a metallurgical blend coal for coke production or blast furnace PCI.

The average seam thickness of the Pocahontas No. 3 is approximately 4.5 ft. with minimal to no in-seam partings. The bottom of seam elevation ranges from 700 ft. to 1450 ft. above sea level. The structural strike of the seam averages approximately N 35° E with a dip that varies from 1° to 2° to the northwest. There are two subtle structural axis features, the Mullens Anticline and Pineville Syncline within the mined area. Both these features

plunge to the southwest. Overburden ranges from a limited outcrop area to 2250 ft. with an average of 825 ft.

Adjacent and Superjacent Mining

The Pinnacle Mine is surrounded by five separate mines in the Pocahontas No. 3 Seam. These mines and their relative location to Pinnacle Mine with the approximate mine pool water elevation if known are as follows:

1. Itmann No.1 Mine – North; Unknown Mine Pool Elev.
2. Itmann No. 3 Mine – Northeast; Unknown Mine Pool Elev.
3. Keystone No. 1&2 Mine – Southeast; Mine Pool Elev.-1350 ft.
4. Capels Mine (Shannon Branch) South; Mine Pool Elev.-1276 ft.
5. Kepler Mine – North; Mine Pool Elev.- 983 ft.

There are also eight overlying underground mines, seven in the Sewell Seam and one in the Lower Fire Creek Seam. The average interval to the Sewell Seam is 700 ft. and Lower Fire Creek Seam is 400 ft. These overlying mines are small in size compared to the overall Pinnacle Mine footprint. There are no underlying mines nor any identified additional mineable coal reserves below the Pocahontas No. 3 Seam in the vicinity of the Pinnacle Mine. The adjacent and overlying mine outlines are shown on Exhibit 1 – Pinnacle Final Map.pdf.

Mine Hydrology

Pinnacle Mine has a total of 16 mine de-watering sites with 1 to 6 deep well turbine pumps per each site for a total of 46 in all. During mining operations certain pumps were run as needed to control water levels in order to maintain ventilation and production. Average pumping rates were approximately 14,000,000 gallons/day prior to cessation of coal production. In recent history, increased pumping rates of approximately 19,000,000

gallons per day occurred when longwall mining was conducted beneath Indian Creek. Based on required stream flow monitoring, there was no noticeable water loss from Indian Creek. The additional water inflow was attributed to coal seams and bedrock aquifers affected by the increased storage and permeability due to stream valley stress relief fracturing. These zones were intersected by the longwall cave and fractured zones resulting in the additional inflows to the mine. However, the fractures zone created by the longwall caving did not reach the surface as to not have a noticeable effect on the water flow in Indian Creek.

There were several mine pools within the Pinnacle Mine at the time mining operations ceased. These mine pool locations along with the location of all the deep well dewatering sites are found on Exhibit 1 – Pinnacle Final Mine.pdf.

The cessation of pumping operations occurred on October 25, 2018. It was determined that the 8A Shaft and bore holes would be left open to allow for outfall drainage because of the retention ponds available at the site with final discharge into Indian Creek. The time estimate for water to begin discharging from 8A Shaft location is approximately 60 months, which was derived from historical mine pumping rates and the estimated remaining mine void volume. With the water discharge point at 8A Shaft location, the final mine pool shoreline is estimated to be at 1325 ft. elevation.

Barrier Pillars

There were nine mine boundary barrier pillars and one outcrop barrier pillar identified for the Pinnacle Mine. These barrier pillars are identified on map Exhibit 2 – Pinnacle Mine Barrier Pillars.pdf. Based on the 1325 ft. final mine pool elevation, a hydraulic head contour map was generated. Analysis was conducted using four empirical engineering formulas for barrier pillar design. The analysis presented here is for the maximum hydraulic head based on the final mine pool shoreline (1325 ft. elevation) and the width of each barrier pillar where this maximum head would be encountered.

The following table shows these results:

Barrier Pillar Map ID	Adjacent Mine	Barrier Pillar Depth (ft.)	Seam Thick (ft.)	Barrier Pillar Width (ft.) @ Max. Hydraulic Head (ft.)	Pinnacle Mine Max. Hydraulic Head (ft.) @ 1325 ft. elev Shoreline	Empirical Barrier Piller Width (ft.)			
						PA Mine Inspectors	Pressure Arch	North American Rule	Rule of Thumb
B1	Kepler Mine	1098	4.18	364	525	147	197	186	575
B2	Kepler Mine	964	4.24	269	425	133	179	160	475
B3	Capels Mine	1250	4.50	732	450	163	217	217	500
B4	Capels Mine	1326	5.29	608	325	174	227	234	375
B5	Capels Mine	1197	4.88	474	200	159	210	206	250
B6	Keystone 1&2 Mine	1079	4.40	179	50	146	194	182	100
B7	Itmann No. 1 Mine	586	4.57	n/a	0	No Hydraulic Head			
B8	Itmann No. 1 Mine	830	4.01	n/a	0				
B9	Itmann No. 3 Mine	497	3.44	954	124	83	118	76	174
B10	Pinnacle Mine (Outcrop)	214	4.84	n/a	0	No Hydraulic Head			

In this table the green shaded cells show the results of the empirical formulas where the actual barrier width is greater than the formula design width. The yellow shaded cell indicates where it is less. Both Kepler Mine barrier pillars have a width of approximately 60% of the design width determined by the Rule of Thumb formula. The Rule of Thumb formula has been primarily used to determine outcrop barriers width and may not be applicable to all in-mine barrier pillars. Design width based on the other three formulae indicate that the actual Kepler barrier pillars are 1.5 – 2.0 times the width recommendation. This would indicate a more than sufficient width for these barrier pillars based on the criteria of these other three accepted empirical formulae.

The barrier pillar between Pinnacle Mine and Keystone 1&2 Mine separates longwall panel gob areas. On the Keystone 1&2 Mine side it is a series of bleeder entries and the startup areas for the panels and the Pinnacle side has three panels approximately 5000 ft. long aligned parallel to the barrier pillar. The distance from the edge of the longwall gob areas between mines ranges from 375 ft. to 630 ft. At the minimum distance of 375 ft. and an angle of draw of 21° the cave plus fracture zone height of 200 ft. of the two adjacent longwall gob areas do not intersect. There would be no connection of fracture induced permeability between the mines.

Water Quality

Based on historical water analysis from the deep well turbine pump sites, there had been no water chemical quality issues that required treatment prior to discharge. Only under limited circumstances, when longwall mining had occurred under Indian Creek with an increase in water and accompanying coal fines was retention required to allow for settlement of these coal fines prior to discharge.

Included with this document are the following water monitoring reports:

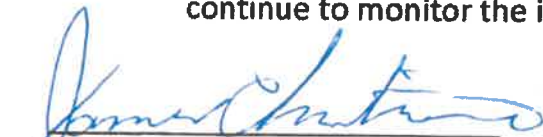
- Two quarters of Surface water monitoring
- Two quarters of Ground water monitoring
- Representative discharges from outlets 012, 051 and 069

The water monitoring data is reflective of the quality expected from any future discharge from this mine. Over the history of the mine, treatment for suspended solids was required only for water pumped directly from the active longwall operating face, which would be expected because of the activity occurring. All other water has been discharged without treatment.

AFFIDAVIT

Under penalties of perjury, James L. Christian and Tina M. Christian declare the following:

1. We are residents of West Virginia, and we are both over eighteen (18) years of age.
2. We reside at 5754 Welch Pineville Road, Pineville, WV 24874.
3. On or around February, 2023, we noticed water bubbling from a location in the yard of our home. We dug around the leak to identify its source and found that it was from an old water well that had not been used in approximately 30 years.
4. The water from the leak eventually pooled in our yard and around our home.
5. We then dug a ditch to route the water away from our home and into the stream nearby.
6. At this time, there is no standing water in our yard or around our home.
7. We do not believe that either we or our home are in imminent danger because of the water coming out of the well.
8. Representatives of Bluestone Resources, Inc. have been in regular communication with us since the water began pooling in our yard and continue to monitor the issue closely.



James L. Christian

3-14-23

Date



Tina M. Christian

3/14/23

Date

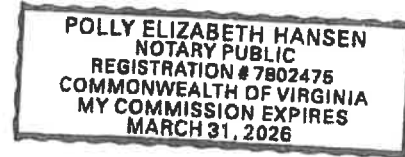
Subscribed and sworn before me this 14th day of March 2023.

Polly Hansen

Notary Public

Registration No: 7802475

Expiration: March 31, 2026



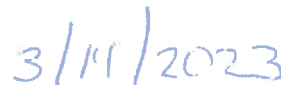
AFFIDAVIT

Under penalties of perjury I, Derrick O'Neal declare the following:

1. I am a resident of West Virginia, and I am over eighteen (18) years of age.
2. I am Director of Engineering for West Virginia Operations for Bluestone Resources, Inc.
3. On or about March 14, 2023, I visited the residence of James and Tina Christian at 5754 Welch Pineville Road, Pineville, WV 24874.
4. At the time of my visit to the Christians' residence, there was no standing water in the residence's yard or around the residence. Water that appeared to be coming from a water well at the residence was being routed away from the residence. I did not observe any condition that appeared to place the Christians or their residence in imminent danger.



Derrick O'Neal



Date

Subscribed and sworn before me this 14th day of March 2023.



Notary Public

Registration No: 7802475

Expiration: March 31, 2026

