

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.

STATUS REPORT

Appellant and Appellee submit this joint status report to update the Board on progress towards resolving the appeal of WVDEP's February 28, 2023 MR-HP15E Single Event Violation ("SEV") #16:

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. SEV #16 relates to artesianing water coming from an old well head on property currently owned by Bluestone Resources, Inc. adjacent to Indian Creek in Wyoming County, West Virginia. The residents of a trailer on the property made a complaint to WVDEP regarding the artesianing, and WVDEP traced the water to the Pinnacle Mine Complex.

3. In addition to administrative enforcement action, 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

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

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.

4. After a hearing in Wyoming County Circuit Court 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.

5. Judge Cochran subsequently issued a May 8, 2023 Preliminary Injunction order to Pinn MC, which included the following deadlines:

- Pinn MC was required to submit a Post Under Ground Mine Assessment ("PUMA") by and Mitigation Plan designed to remedy the artesian discharges June 26, 2023;
- WVDEP was required to submit comments on the PUMA and mitigation Plan to Pinn MC by July 11, 2023;
- Pinn MC was required to commence work on its Mitigation Plan by July 12, 2023.

6. A copy of Pinn MC's Mitigation Plan is attached. Regarding Item 1 of the attached approved mitigation plan, work commenced on schedule on July 12, 2023. The ditch to divert artesian discharges away from the residential structure was dug as proposed, and the "field well" was exposed. Temporary sediment control in the form of hay bales and filter fence were utilized during construction.

7. Although the ditch was approved to be grass lined, the soil in the area was found to be much sandier than expected. For this reason, a biodegradable erosion mat was placed in the ditch, and several loads of rock were used to line a portion of the ditch as well. Regarding

Item 2 of the attached approved mitigation plan, the cutting / lowering of the well casing was completed Friday, July 14.

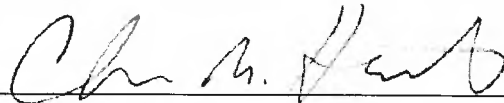
8. The Parties appeared at a status conference on July 18, 2023 and jointly informed Judge Cochran that all deadlines in the Preliminary Injunction Order had been complied with, and the Court scheduled a status conference in 30 days.

9. At this point in time, the Parties are successfully working cooperatively to ensure that the artesian discharges that are the subject of this appeal do not present any threat to the environment or public safety.

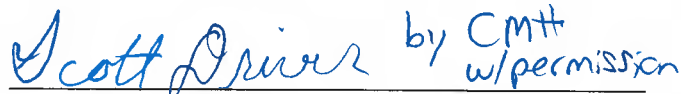
10. The Parties remain hopeful that a resolution can ultimately be reached without the need for an evidentiary hearing.

11. For these reasons, the Parties request that this appeal continue to be held in abeyance.

Respectfully submitted,



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

 by CMH
w/permission

CHARLES SCOTT DRIVER (WVBN 9846)
Office of Legal Services
West Virginia Department of
Environmental Protection
601 57th Street Southeast
Charleston WV 25304
*Counsel for West Virginia Department of Environmental
Protection*

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,**

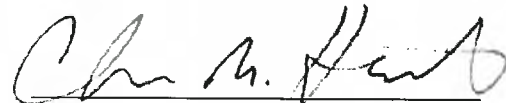
Appellee.

CERTIFICATE OF SERVICE

I, Christopher M. Hunter, hereby certify that a true and exact copy of the foregoing STATUS REPORT was caused to be served upon the following via United States mail, postage pre-paid, this 25th day of July, 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



Pinnacle Mining Company, LLC
Permit U-0204-83 (No. 50 Mine), NPDES WV0090000

May 8, 2023 Preliminary Injunction Order, Mitigation Plan
Rorrer v. Pinn MC Wind Down Co., LLC f/k/a Pinnacle Mining Company, LLC Wyoming County,
Cir. Ct., Case No. CC-55-2023-C-23

The following is the proposed Mitigation Plan for the above referenced Preliminary Injunction Order. This Mitigation Plan is being submitted on behalf of Pinnacle Mining Company, LLC (Pinnacle Mining) for its Permit U-0204-83, No. 50 Mine. The purpose of this Mitigation Plan is to provide a detailed plan, with completion dates, outlining the measures to be taken which remedy the alleged mine pool artesian at the property where James and Tina Christian currently reside (the “Property”) which is located at 5754 Welch Pineville Road, Pineville, West Virginia.

This Mitigation Plan is organized in a tabular format with steps presented in numbered bullets. Each step includes a description of each task and the associated timeframe each task is expected to be started and completed. This schedule assesses the currently available options to attempt remedy of the artesian at the Property. The remedial work described below is to commence on or before July 12, 2023, and Pinnacle Mining shall diligently comply with this plan.

Mitigation Plan Steps / Tasks	Start / Completion Date
1. Excavate existing groundwater well area (i.e., “Field Well,” located in an adjacent field of the Property), along with constructing a trapezoidal grass-lined drainage ditch from well area to Indian Creek. No disturbances within jurisdictional waters are proposed.	July 12, 2023 / July 21, 2023
2. Cut off / lower Field Well casing, which has a current top elevation of approximately 1,288.5 feet, by up to 4.0 feet to an approximate elevation of \geq 1,284.5 feet.	July 21, 2023 / July 26, 2023
3. Monitor well discharge / flow elevation adjacent to the Property (i.e., Property House Well) for 30 days to see if any relief in alleged mine pool artesian discharge occurs. Monitoring will be conducted weekly at the Christian residence well, and at the Pinnacle 8A Fan Site. Monitoring at the 8A fan site will be for pool elevation only, unless a discharge develops.	July 26, 2023 / August 25, 2023
4. Apply for a Modification to NPDES Permit WV0090000 to add an NPDES Outlet at the exit of the drainage ditch for direct discharge into Indian Creek. a. Note that beginning with construction, any direct discharge to Indian Creek will be monitored on a semi-monthly basis for the following parameters: Flow, Specific Conductance, pH, Total Suspended Solids, Settable Solids, Total Sulfates, Total Iron, Total Manganese, Total Aluminum, Dissolved Aluminum, Total Dissolved Solids. Results will be reported to WVDEP via email within 72 business hours of the report becoming available.	Start August 1, 2023 / Diligently Pursue
5. After monitoring in Step 3, if no relief or no apparent lowering of groundwater elevation occurs after 30 days, a 6-inch diameter borehole will be drilled adjacent to Field Well to an approximate depth equal to the depth of other wells on the Property (i.e., Shed Well and House Well, a respective depth of approximately 59 and 62.6 feet).	August 25, 2023 / September 2, 2023
6. Monitor well discharge / flow elevation at Property House Well weekly for an additional 30 days to see if any relief occurs.	September 2, 2023 / October 2, 2023
7. After monitoring in Step 6, if no relief or no apparent lowering of groundwater elevation occurs after 30 days, a second 6-inch diameter borehole will be drilled adjacent to the drilled well, discussed above, to a similar depth.	October 2, 2023 / October 9, 2023
8. Monitor well discharge / flow elevation at Property House Well weekly for an additional 30 days to see if any relief occurs.	October 9, 2023 / November 8, 2023
9. If no relief or no apparent lowering of groundwater elevation occurs after 30 days, Pinnacle Mining will consult with WVDEP in regard to what additional options may be available.	November 8, 2023 / November 15, 2023
10. Pinnacle Mining will, within 15 days, report to the Court and WVDEP its subsequent remedial proposal.	November 15, 2023 / November 30, 2023

Notes / Clarifications

The following notes are provided in support of the Mitigation Plan for clarification:

- Pinnacle Mining, which is bankrupt, is not proposing nor does it have the financial resources to conduct pumped dewatering of the No. 50 Mine.
- The above Mitigation Plan is subject to Pinnacle Mining obtaining appropriate right-of-entry to the Property, which Pinnacle Mining does not currently control, lease, or otherwise have the legal right to enter.
- Equipment / construction activities will be scheduled based on availability.
- Discharge monitoring at the proposed NPDES Outlet will be reported on Discharge Monitoring Reports in accordance with the permit's requirements.
 - Should any discharge water from the new wells be found to be out of compliance, additional storage / treatment may be installed along the drainage ditch. Should chemical treatment be needed, a Revision to the Article 3 permit and a Modification to the NPDES permit will be submitted prior to implementation.
- All alternatives, schedules, and plans presented are based on current conditions and the Plan would be subject to revision should the area exhibit any alterations to its current conditions.