

August 1, 2019

William R. Winters, Chief
Office of Surface Mining, Reclamation, and Enforcement
United States Department of the Interior
710 Locust St, 2nd Floor
Knoxville, TN 37902
Via email: bwinters@osmre.gov

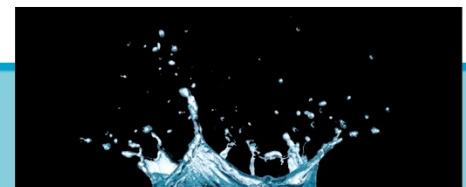
RE: OSMRE Permit Application No. 3265, Triple H Coal, LLC, Surface Mine No. 2A

Dear Mr. Winters,

I am writing on behalf of Tennessee Clean Water Network, Sierra Club, Defenders of Wildlife, and Statewide Organizing for Community eMpowerment (collectively, "Commenters"). It has come to our attention that the Office of Surface Mining, Reclamation and Enforcement ("OSMRE") has reopened its processing of the application for the proposed Triple H Coal, LLC Surface Mine 2A (OSMRE No. 3265). We are writing to express our objections to that reopened processing and, should OSMRE decide to persist with processing of the application, to request a mine site visit pursuant to 30 U.S.C. § 1263(b) and 30 C.F.R. § 773.

It is our further understanding that if OSMRE persists with processing of the permit application, it will abide by the Local Interagency Working Agreement ("LIWA") policy and hold a joint public meeting with TDEC and any other relevant federal or state agencies at a later date once applications for all additional required permit applications have been filed. If our understanding of OSMRE's intentions regarding compliance with LIWA and the opportunity for a public hearing are incorrect, please let us know as soon as possible and please consider this letter as a request for an informal conference.

The proposed permitted area falls almost entirely within the North Cumberland Wildlife Management Area ("NCWMA") ridgelines that the Department of the Interior has designated as unsuitable for coal surface mining in its December 7, 2016 decision. That decision explicitly states that "[u]nder this decision, except for access or haul roads, and proposals to remine, OSMRE would not accept and process applications for proposed surface coal mining operations in designated ridgelines in the NCWMA." Because it is our understanding that the proposed permitted area is not a haul road and does not include remining or otherwise qualify for an exception to the prohibition, OSMRE may not process the application. Accordingly, based on the information we have reviewed, we believe that OSMRE must deny the permit application and perform no additional permit processing activities.



July 31, 2019
Bill Winters, OSMRE
Page 2 of 2

If OSMRE decides that, notwithstanding the language quoted above, it has a legitimate basis to continue to process the permit application, we ask that OSMRE provide us with an explanation of the basis for its decision.

Furthermore, if OSMRE continues to process the permit application, we hereby reserve all rights to challenge any final agency actions regarding the permit application on the basis that OSMRE lacks the authority to process the application or make any decision regarding the application other than to deny the application. Consistent with that reservation of rights, our organizations wish to avail ourselves of all rights of public participation in the permitting process. Accordingly, should OSMRE persist with processing the permit application, we request a mine site visit for the purpose of gathering information relevant to the permitting of this mine, including but not limited to water samples, photographs, and observations of existing conditions.

Because the substance of the permit application appears to be essentially unchanged from the 2014 application, we hereby re-adopt and incorporate by reference the objections filed by TCWN on behalf of our organizations in a letter dated March 20, 2014. That letter is attached.

Thank you for your consideration of the requests and issues raised in this letter. Please do not hesitate to contact me at kathy@tcwn.org should you wish to discuss this matter further.

Sincerely,



Kathy Hawes
Executive Director

with

Peter Morgan and Bonnie Swinford, *Sierra Club*
Ann League, *Statewide Organizing for Community eMpowerment*
Jane Davenport and Katherine Diersen, *Defenders of Wildlife*

March 20, 2014

William Winters
Office of Surface Mining, Reclamation and Enforcement
710 Locust Street, Second Floor
Knoxville, TN 37902

RE: Objections and request for informal conference/mine site visit
Triple H Coal, LLC – OSM No. 3265

Dear Mr. Winters:

I am writing on behalf of the Tennessee Clean Water Network, Sierra Club, Defenders of Wildlife, Statewide Organizing for Community eMpowerment, and United Mountain Defense (collectively, “Commenters”) to express our objections to the application for the proposed Triple H Coal, LLC Surface Mine 2A (OSM No. 3265) and to request an informal conference and mine site visit pursuant to 30 U.S.C. § 1263(b) and 30 C.F.R. § 773.13(c).

I. Objections

Based on their initial review of the application currently on file with OSM, Commenters have a number of concerns they believe need to be thoroughly addressed through a robust and transparent review process that engages local residents and concerned organizations. In sum, Commenters’ objections at this time are as follows:

- This surface mine may create a new source of acid mine drainage. The test holes drilled at CH-4, TRI-H#1 and TRI-H#2 indicate that potentially acid forming materials are present in the strata to be disturbed by mining. Sediment basins alone do little to reduce acid mine drainage, and the presence of acid forming materials call into question the potential for long-term hydrologic damage and failure of reclamation.
- This mine may adversely affect the federally threatened blackside dace, which have been identified in the Upper Hickory Creek Watershed. Commenters note a dace survey is due to be completed within the next two weeks, but question the effectiveness of a single point-in-time survey in identifying whether the receiving waters are used by blackside dace. Moreover, unlike many streams in the area, the baseline conductivity levels in many of the surface waters are at or below the level tolerated by dace. Recent empirical studies suggest that blackside dace cannot maintain healthy, sustaining populations at stream conductivities above 240 $\mu\text{S}/\text{cm}$ and are visibly distressed at conductivities above

500 $\mu\text{S}/\text{cm}$.¹ Because the mine proposes only to use sediment ponds to treat its wastewater, these conductivity levels are likely to measurably increase and to exceed levels healthy for dace.

- The permit applicant's baseline hydrologic data appear to be inadequate, inaccurate, and incomplete. OSM may not lawfully approve the permit application unless and until the hydrologic baseline data are accurate and complete. 30 U.S.C. § 1260(b)(1); 30 C.F.R. § 773.15(a). The existing data cannot support a conclusion that the proposed sediment ponds would prevent material damage to hydrologic balance outside the permit area.
- In addition to potential impacts on dace, the mine is likely to negatively affect the hydrologic balance outside the permit area by increasing sedimentation and concentrations of dissolved solids, including metals. Sediment ponds are not effective at reducing the discharge of pollutants in dissolved form.
- This surface mine may result in adverse health impacts for community members. Numerous peer-reviewed studies in highly-regarded scientific journals have linked coal mining in Appalachia with serious human health problems. Those studies show a positive correlation between the prevalence and intensity of mining and the prevalence of cancer, mortality from cancer, kidney disease, birth defects, mortality from cardiovascular and pulmonary disease, impaired function due to health problems, and health problems and mortality in general.² Health problems are most severe in areas where the amount of

¹ See Ecology and Conservation of the Threatened Blackside Dace, *Chrosomus cumberlandensis*, *Southeastern Naturalist*, Vol. 12, Special Issue 4, 201; U.S. Fish & Wildlife Serv., Draft Blackside Dace *Phoxinus Cumberlandensis* (= *Chrosomus cumberlandensis*) 5-year Review: Summary and Evaluation, 6 (2009) (unpublished draft on file with U.S. Fish & Wildlife Serv.), at 19; Tyler R. Black & Hayden T. Mattingly, Conservation Status of the Threatened Blackside Dace in Selected Cumberland River Streams, Final Project Report, 1–2 (2007) (unpublished report submitted to U.S. Fish & Wildlife Serv., Cookeville, Tenn. & Frankfort, Ky. Field Offices), at 12; H. T. Mattingly et al., Factors Affecting the Distribution and Recovery of the Threatened Blackside Dace in Kentucky and Tennessee, Final Project Report, 57, 59–62 (Sept. 2005) (report submitted to the U.S. Fish & Wildlife Serv., Cookeville, Tenn. & Frankfort, Ky. Field Offices); U.S. Fish & Wildlife Serv., Pers. Comm. (2012). All studies cited here were previously submitted to OSM on October 8, 2013 as attachments to the objections to Appolo Fuels, Inc.'s proposed Sterling & Strays Surface Mine 1, OSM No. 3264.

² See Hendryx M, Ahern M, Nurkiewicz T. Hospitalization patterns associated with Appalachian coal mining. *Journal of Toxicology and Environmental Health Part A*, 70, 2064-2070, 2007; Hendryx M, Ahern M. Relations between health indicators and residential proximity to coal mining in West Virginia. *American Journal of Public Health*, 98, 669-671, 2008; Hendryx M. Mortality rates in Appalachian coal mining counties: 24 years behind the nation.; *Environmental Justice*, 1, 5-11, 2008; Hendryx M, O'Donnell K, Horn K. Lung cancer mortality is elevated in coal mining areas of Appalachia. *Lung Cancer*, 62, 1-7, 2008; Hendryx M. Mortality from heart, respiratory and kidney disease in coal mining areas of Appalachia. *International Archives of Occupational and Environmental Health*, 2009, 82, 243-24; Hendryx M, Ahern M. Mortality in

mining is the greatest, and they are greater near surface mines than near underground mines.³

- In addition to impacts on fish and aquatic life, the proposed mine may negatively impact terrestrial wildlife, native plants, and recreation in the area by reducing forest cover, increasing patchiness, and introducing new vectors for invasive species.
- Transporting coal at and from this mine is likely to increase sediment runoff through construction/operation of haul roads, increase dust from uncovered coal trucks, damage local roads through excessive wear and tear from heavy loads, and increase traffic hazards.
- This mine should be evaluated with respect to the cumulative impacts (water, air, public health, fish and wildlife, etc.) of many other coal mines in the affected area.
- In addition to the SMCRA analysis, the issues raised above should separately be assessed through a site-specific NEPA review, specifically through a full environmental impact statement that assesses the impact of this and surface coal mines in this watershed.

II. Request for Informal Conference

Commenters request an informal conference to be conducted in or near Duff, Tennessee to facilitate participation by local residents. Commenters request, to the extent practicable, that this conference be held in conjunction with the Tennessee Department of Environment and

Appalachian coal mining regions: the value of statistical life lost. *Public Health Reports*, 2009, 124, 541-550; Hendryx M, Zullig K. Higher coronary heart disease and heart attack morbidity in Appalachian coal mining regions. *Preventive Medicine*, 2009, 49, 355-359; Hendryx M, Fedorko E, Anesetti-Rothermel A. A geographical information system-based analysis of cancer mortality and population exposure to coal mining activities in West Virginia, United States of America. *Geospatial Health*, 2010, 4, 243-256; Ahern M, Mullett M, MacKay K, Hamilton C. Residence in coal-mining areas and lowbirth-weight outcomes. *Maternal and Child Health Journal*, 2010, 82:243-249; Cain L, Hendryx M. Learning outcomes among students in relation to West Virginia coal mining: an environmental “riskscape” approach. *Environmental Justice*, 2010, 3, 71-77; Epstein PR, Buonocore JJ, Eckerle K, Hendryx M, Stout BM, Heinberg R, Clapp RW, May B, Reinhart NL, Ahern MM, Doshi SK, Glustrom L. Full cost accounting for the life cycle of coal. *Annals of the New York Academy of Sciences*, 2011, 1219, 73-9812. Hendryx M. Poverty and mortality disparities in central Appalachia: mountaintop mining and environmental justice. *Journal of Health Disparities Research and Practice*, 2011, 4(3), 50-59; Esch L, Hendryx M. Chronic cardiovascular disease mortality in mountaintop mining areas of central Appalachian states. *Journal of Rural Health*, 2011, 27, 350-357.

³ Zullig, Keith, Hendryx, Michael, “Health-Related Quality of life Among Central Appalachian Residents in Mountaintop Mining Counties,” *American Journal of Public Health* (May 2011).

Conservation, the Corps of Engineers (if a Section 404 permit is required), U.S. Fish & Wildlife Service, and other agencies pursuant to the Local Interagency Working Agreement. The purpose of the informal conference would be to allow concerned members of the public to review the proposal in detail and to have the opportunity to ask site-specific questions. The potential issues would include, but not necessarily be limited to, the above-listed objections.

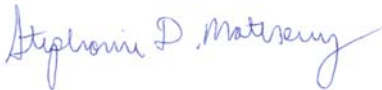
III. Request for Site Visit

Commenters request access to the proposed mining area prior to the informal conference for the purpose of gathering information relevant to the permitting of this mine, including but not limited to water samples, photographs, and observations of existing conditions.

Commenters have members who live, work, and/or recreate in the vicinity of the proposed mine. Thus, the organizations have interests in environmental quality, including but not limited to interests in air, surface water, ground water, terrestrial ecosystems, and aquatic ecosystems that may be adversely affected by the proposed new surface mine.

Thank you for your consideration of these requests. Please do not hesitate to call me at 865-522-7007 x 102 to discuss this matter further.

Sincerely,

A handwritten signature in blue ink that reads "Stephanie D. Matheny". The signature is written in a cursive style with a long, sweeping tail on the "y".

Stephanie D. Matheny
Attorney