

Date: February 14, 2025

From: Chad Cordell, Kanawha Forest Coalition and Willie Dodson, Appalachian Voices

To: Bret Stutler, DMR

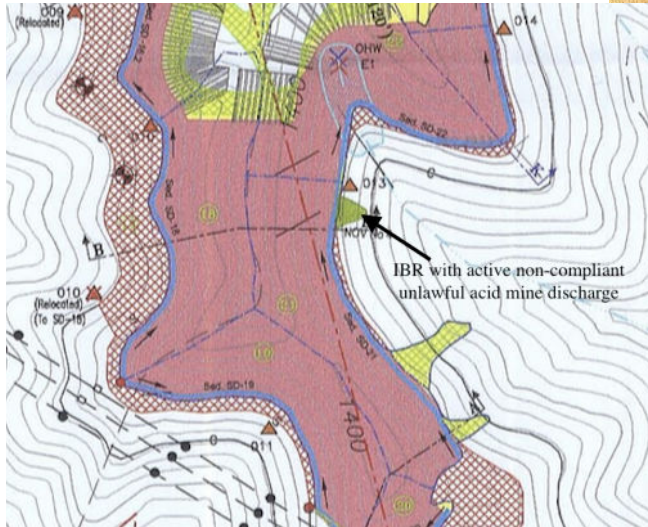
CC: Jonathan Rorrer, Dennis Stottlemeyer, Justin Adams (OSMRE)

RE: Objection to Proposed Phase 1, 2, and 3 Bond Release – KD#1 Mine (permit #S300905, NPDES#WV1019121)

Mr. Stutler,

Please accept these comments regarding our objection to Keystone West Virginia, LLC's application for phase 1, 2, and 3 bond release on the KD#1 surface mine increments 1, 2, 3, and 4.

During a site visit to the KD#1 mine on April 4, 2017 the Kanawha Forest Coalition made the WVDEP aware of a significant acid discharge originating in the incidental boundary revision south of outlet 060 (formerly outlet 013) at coordinates 38.23433, -81.60310. This discharge was field tested at a pH of 4.0 and conductivity in excess of 4,000 μ S/cm.



Despite numerous complaints regarding this non-compliant discharge over the past 8 years, the agency has consistently failed to take any enforcement action and the discharge continues unabated. When we accompanied you to the permit in January 2024 (the last time Keystone requested bond release), we again brought this unlawful discharge to your attention. You declined to take a water sample that day despite previously telling us you would be taking samples of all raw water sources within the permit boundary.

(cont.)

In the course of determining eligibility for bond release, §22-3-23(b) of the Act requires an evaluation of “whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the pollution...”. In this case, pollution is occurring and will continue to occur until it is abated by the permittee.

§38-2-12.2.e of the WV Surface Mining Rule states that, “no bond release or reduction will be granted if, at the time, **water discharged from or affected by the operation** requires chemical or passive treatment in order to comply with applicable effluent limitations or water quality standards.”

Neither Keystone nor the WVDEP has produced any evidence whatsoever that this discharge existed prior to the commencement of mining on the KD#1 permit. It isn’t documented in any pre-mining site inspection or baseline water monitoring. Indeed, it would be highly unusual to see a discharge with this chemical signature in the absence of large scale land disturbance such as surface mining. This water “discharges from” within the permit area, and is highly likely “affected by the operation” as outlined in the rule quoted above.

Several years ago the agency made an initial attempt to investigate the cause of the discharge but was unable to establish a link between the discharge and standing water in sediment ditch SD-21 above. Rather than continuing to investigate in order to establish the source of the discharge, the agency abandoned the investigation. No effort was made, for instance, to determine whether the discharge is caused by precipitation percolating through the backfill above the ditch and running underneath the sediment ditch to discharge below the downslope berm, or to investigate any other potential causes.

The agency’s inability to determine the source of this discharge after an inadequate investigation does not release it from enforcement responsibility, nor does it release Keystone from its responsibility for abatement. The agency needs to put the necessary resources into a holistic investigation to determine the source, and Keystone must effectively abate it prior to bond release.

Until such time as this non-compliant acid discharge from the permit is effectively and permanently abated, the permit does not meet the requirements for bond release.

As of the January, 2024 bond release inspection we accompanied you on, some areas of the permit had not yet had trees planted (such as the slope above outlets 052 and 053 -formerly outlets 005 and 006). Additionally, the most recent satellite imagery available to us indicates significant areas of the permit are still inadequately vegetated and excessively eroded. Even if the permittee has succeeded in repairing, re-vegetating, and planting these areas since the time that imagery was acquired, it would be impossible for the minimum demonstrated tree survival timeframe of two growing seasons to have been achieved as required.

For these reasons, Kanawha Forest Coalition and Appalachian Voices **oppose** bond release for the KD#1 surface mine. Bond release is the agency’s last opportunity to ensure that a permit doesn’t leave a legacy of persistent, long-term, unabated water quality issues. When the agency isn’t doing everything possible to identify problems and have the permittee abate them, it’s doing a disservice to the public and failing to uphold both the law and its mission of environmental protection.

I can be reached by email at kanawhaforestcoalition@gmail.com or by phone at 681-214-0906.

Thank you,



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