

In the Circuit Court of Wyoming County, West Virginia

**Department of Environmental
Protection,**
Plaintiff,

v.

Case No. CC-55-2023-C-23
Judge Micheal Cochrane

**Pinn MC Wind Down Co., LLC, f/k/a
Pinnacle Mining Company, LLC,**
Defendant

Preliminary Injunction Order

Upon consideration of the Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction (the "Motion") and the Affidavit of Matthew D. Dillon in support thereof, the Defendant's Response in Opposition to the Motion and the affidavits in support thereof; and upon the record of the hearings held before the Court on March 15 and April 27, 2023; and it appearing that there exist imminent and identifiable threats to the property where James and Tina Christian currently reside, 5754 Welch Pineville Road, Pineville, WV (the "Property"), and other potential threats to the health and safety of the residents of Wyoming, County, which require immediate and ongoing action to address and prevent such threats; and it appearing that the Plaintiff has given the Defendant^[1] due and appropriate notice of its Motion and the temporary and preliminary relief requested therein, it is hereby ORDERED that:

1. This Court has personal jurisdiction over the Defendant, which holds mining and water pollution control permits issued by the Plaintiff within the State of West Virginia.
2. This Court has subject matter jurisdiction and venue over this action pursuant to and in accordance with W. Va. Code § 22-3-17(j) and W. Va. Code § 22-11-22a.
3. This Court has the power to issue the preliminary injunctive relief granted hereby pursuant to W. Va. Code § 22-3-17(j), W. Va. Code § 22-11-22a, and West Virginia Rule of Civil

Procedure 65(a).

4. The Plaintiff's Motion, to the extent that it seeks entry of a preliminary injunction, is hereby granted, and the Court shall carry the Motion on its docket pending further proceedings as indicated below.

5. The Defendant is hereby directed immediately to continue to monitor the Property. In the event that water artesianing from an old well on, or adjacent to, the Property begins to pool near the Christian residence in such a manner that threatens the Christians' health or safety, the Defendant shall take those steps necessary to prevent the pooling of the artesianing water around the residence on the Property and take other steps prevent threats to the health and safety of the Christians, pending the entry of final judgment in this action.

6. On or before June 26, 2023, the Defendant shall submit to the Plaintiff, and diligently pursue approval of, each of the following:

- a. a revision to permit U-0204-83 for a Post Underground Mining Assessment ("PUMA") and
- b. a detailed plan, with completion dates, outlining the measures to be taken which remedy the mine pool artesian at the Property (the "Mitigation Plan").

On or before July 11, 2023, the Plaintiff shall submit to the Defendant his comments and revisions to the PUMA and the Mitigation Plan, as necessary and appropriate to obtain approval of the same.

7. The Defendant shall commence work in accordance with the PUMA and the Mitigation Plan on or before July 12, 2023 and shall diligently comply in all respects with the PUMA and the Mitigation Plan and all orders of the Plaintiff in furtherance thereof.

8. The Court shall conduct a status conference and continued hearing to consider the Plaintiff's Motion on July 18, 2023 at 1:00 p.m. at the Wyoming County Courthouse, 100 Main and Bank Streets, Pineville, WV 24874.

9. This Order supersedes and replaces the Temporary Restraining Order previously entered by the Court, but shall not be deemed to affect the rights of any person under the Temporary Restraining Order for any acts or actions undertaken pursuant thereto prior to the date hereof.

10. This Court shall retain jurisdiction with respect to the Plaintiff's Motion and the implementation of this Order.

Dated: May __, 2023

/s/ Micheal M. Cochrane
Circuit Court Judge
27th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.

[1] Defendant represented to the Court that there is a dispute between the parties as to whether Pinn MC Wind Down Co., LLC is the proper party to this action and whether the Plan Administrator of Pinn MC Wind Down Co., LLC has the authority to control the manner in which operations, including reclamation, are conducted at the Pinnacle Mine Complex. The parties advised the Court that the question of Pinn MC Down Co., LLC's status as the permit-holder and the Plan Administrator's status as an owner or controller Pinnacle Mining Company, LLC in this case has been decided in Plaintiff's favor by the West Virginia Surface Mine Board, which decision is currently under appeal to the West Virginia Intermediate Appellate Court. The issue of Pinn MC Wind Down, LLC's status as the permittee of the permit underlying this action and/or the Plan Administrator of Pinn MC Wind Down, LLC's status as an owner or controller of Pinnacle Mining Company, LLC is, therefore, not before this Court. However, Pinn MC Wind Down, LLC represented to the Court that it did not contest those issues for the purposes of the Plaintiff's Motion and the entry of this Preliminary Injunction. Pinn MC Wind Down Co., LLC's appearance at the hearing and the entry of this Preliminary Injunction are not to be construed as an admission that the Plan Administrator is an owner, controller, or agent of Pinnacle Mining Company, LLC, nor does the Plan Administrator waive his right to argue before the Intermediate Court or elsewhere that he does not have the authority to control the manner in which mining or reclamation is conducted at the Pinnacle Mine Complex or to control the affairs of Pinnacle Mining Company, LLC, generally.