



west virginia department of environmental protection

Division of Water and Waste Management
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Keystone Clearwater Solutions, LLC
Attn: Ned Wehler
34 Northeast Drive
Hershey, PA 17033

DATE: August 4, 2016

ORDER NO.: 8523

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Keystone Clearwater Solutions, LLC (hereinafter "Keystone").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Keystone is conducting land disturbance activity in Pleasants County, West Virginia. On April 2, 2015, Keystone was issued Permit No. WV0116815, Registration No. WVR310430, for the Ohio River Pipeline project.
2. On June 23, 2015, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the Ohio River Pipeline project. During the inspection, violations of the following section of WV Legislative Rules were observed and documented:
 - a. 47CSR2 Section 3.2.a-Keystone caused conditions not allowable in waters of the State. Specifically, settleable solids associated with pipeline construction were observed in an unnamed tributary (UT) of McKim Creek, Cave Run, Shawnee Run, and a UT of Shawnee Run.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W-NW-JGT-062315-001, W-NW-JGT-062315-002, W-NW-JGT-062315-003, and W-NW-JGT-062315-004 were issued to Keystone.

3. On June 24, 2015, WVDEP personnel conducted an inspection of the Ohio River Pipeline project. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:
 - a. 47CSR2 Section 3.2.a-Keystone caused conditions not allowable in waters of the State. Specifically, settleable solids associated with pipeline construction were observed in the following locations:
 - i. A UT of Shawnee Run at or near GPS coordinates 39° 23.1943' N 81° 04.4645' W.
 - ii. A UT of Sugar Creek at or near GPS coordinates 39° 23.4731' N 81° 04.3919' W.
 - iii. A UT of Sugar Creek at or near GPS coordinates 39° 23.8397' N 81° 04.1908' W.
 - iv. A UT of Sugar Creek at or near GPS coordinates 39° 23.9154' N 81° 04.3471' W.
 - v. A UT of Sugar Creek at or near GPS coordinates 39° 24.0966' N 81° 04.6120' W.
 - vi. A UT of Sugar Creek at or near GPS coordinates 39° 24.1926' N 81° 04.7525' W.
 - vii. A UT of Sugar Creek at or near GPS coordinates 39° 24.1983' N 81° 04.9477' W.
 - viii. Stouts Run at or near GPS coordinates 39° 25.405' N 81° 06.289' W.
 - ix. Riggs Run at or near GPS coordinates 39° 26.382' N 81° 06.754' W & 39° 26.394' N 81° 06.763' W.

As a result of the aforementioned violations, NOV Nos. W-NW-JGT-062415-001, W-NW-JGT-062415-002, W-NW-JGT-062415-003, W-NW-JGT-062415-004, W-NW-JGT-062415-005, W-NW-JGT-062415-006, W-NW-JGT-062415-007, W-NW-TJK-062415-001, and W-NW-TJK-062415-002 were issued to Keystone.

4. From June 23 through 25, 2015, WVDEP personnel conducted an inspection of the Ohio River Pipeline project. During the inspection, violations of the following sections of WV Legislative Rules and Keystone's Permit were observed and documented:
 - a. 47CSR2 Section 3.2.a-Keystone caused conditions not allowable in waters of the State. Specifically, settleable solids associated with pipeline construction were observed in the following locations:
 - i. A UT of Sugar Creek at or near GPS coordinates 39° 24.4668' N 81° 05.2317' W.
 - ii. A UT of Sugar Creek at or near GPS coordinates 39° 24.6850' N 81° 05.2898' W.
 - iii. A UT of McKim Creek at or near GPS coordinates 39° 21.8150' N 81° 01.6100' W.
 - iv. Grimes Run at or near GPS coordinates 39° 21.8116' N 81° 01.8900' W.

- v. A UT of Middle Island Creek at or near GPS coordinates 39° 24.926' N 81° 06.014' W.
- b. Section D.1.-Keystone failed to properly operate and maintain all facilities. Specifically, erosion and sediment controls were nonfunctional and/or in need of maintenance throughout the project area.
- c. Section G.4.e.1.D.A-Keystone failed to have stone access entrances. Specifically, stabilized construction entrances were absent where the right of way (ROW) crosses public and/or private roads in multiple locations.
- d. Section B.-Keystone failed to comply with its Storm Water Pollution Prevention Plan (SWPPP) by failing to adhere to the guidelines for environmental compliance and performance standards.
- e. Section G.4.e.2.A.ii.j.-Keystone allowed sediment-laden water to leave the site without going through an appropriate best management practice (BMP). Specifically, perimeter controls were absent in multiple locations, resulting in sediment-laden water leaving the site.
- f. Section G.4.e.2.D.-Keystone failed to develop a maintenance plan and provide that all erosion controls on the site were inspected at least once every seven (7) calendar days and within twenty-four (24) hours after any storm event of greater than 0.5 inches of rain per twenty-four (24) hour period. Keystone personnel were unable to produce inspection reports and stated that inspections were not being conducted.

As a result of the aforementioned violations, NOV Nos. W-NW-JGT-062515-001, W-NW-JGT-062515-002, W-NW-TAM-062515-001, W-NW-TAM-062515-002, W-NW-TJK-062515-001, W-NW-JGT-062515-003, W-NW-JGT-062515-004, W-NW-JGT-062515-005, W-NW-JGT-062515-006, and W-NW-TJK-062515-002 were issued to Keystone.

- 5. On July 14, 2015, WVDEP issued Order No. 8418 to Keystone in response to the aforementioned violations. The Order required Keystone to immediately cease and desist any further land development activity until such time when compliance with the terms and conditions of its permit/all pertinent laws and rules was achieved and to submit a proposed plan of corrective action within ten (10) days of the effective date of the Order.
- 6. On July 22, 2015, WVDEP approved Keystone's request to resume its HDD activity associated with the Middle Island Creek bore and the CSX railroad bore of the Ohio River Project. All other areas of operation remained under the cease and desist requirement of Order No. 8418.
- 7. On August 5, 2015, WVDEP personnel conducted an inspection of the Ohio River Pipeline project. During the inspection, a violation of the following section of the terms and conditions of Keystone's WV/NPDES permit was observed and documented:
 - a. Section D.1.-Keystone failed to properly operate and maintain the facility. Specifically, silt fencing and other erosion and sediment controls were in poor condition.

As a result of the aforementioned violation, a warning was issued to Keystone.

8. On August 11, 2015, WVDEP personnel conducted an inspection of the Ohio River Pipeline project. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:
 - a. 47CSR2 Section 3.2.b-Keystone caused conditions not allowable in waters of the State. Specifically, two (2) timber mat stream crossings were constructed in a manner which created sediment deposits in two(2) UTs of Riggs Run.

As a result of the aforementioned violation, NOV Nos. W-NW-TJK-081115-001 and W-NW-TJK-081115-002 were issued to Keystone.

9. On August 21, 2015, in response to Keystone's request, WVDEP lifted the cease and desist requirement of Order No. 8418 based upon its evaluation of the aforementioned project on August 19, 2015. All other terms and conditions of the Order remained in full effect.
10. On March 29, 2016, WVDEP personnel met with representatives of Keystone to discuss the terms and conditions of the Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Keystone shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Upon the effective date of this Order, Keystone shall provide copies of weekly inspection reports required by Section G.4.e.2.D. of its WV/NPDES permit until such time when WV/NPDES permit coverage for the Ohio River Pipeline is terminated. Inspection reports shall be submitted on a weekly basis to:

**WVDEP - NW Regional Environmental Enforcement Office
ATTN: Tonya Mather
2031 Pleasant Valley Road
Fairmont, WV 26554**

3. Upon the effective date of this Order, Keystone shall repair any deficiencies identified during the aforementioned weekly inspections within five (5) calendar days.
4. Upon the effective date of this Order, Keystone shall provide all documentation regarding the disposal of any drill mud used on the Ohio River Pipeline Project. Documentation shall be submitted to:

**WVDEP - NW Regional Environmental Enforcement Office
ATTN: Tonya Mather
2031 Pleasant Valley Road
Fairmont, WV 26554**

5. Because of Keystone's Legislative Rule and permit violations, Keystone shall be assessed a civil administrative penalty of sixty thousand eight hundred eighty-five dollars (\$60,885) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Keystone hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Keystone agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Keystone does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Keystone other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Keystone shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Keystone becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Keystone shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Keystone intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Keystone (i.e., force majeure), the time for performance hereunder shall be extended

for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Keystone of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Keystone to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Keystone, its successors and assigns.
7. This Order shall terminate upon Keystone's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Ned Wehler
Keystone Clearwater Solutions

9.14.2016

Date

Public Notice begin:

Date

Public Notice end:

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

revised March 2013

RECEIVED

SEP 15 2016

ENVIRONMENTAL
ENFORCEMENT

WV Department of Environmental Protection
Environmental Enforcement
Photo Log

Company Name: Keystone Clearwater Solutions LLC
Facility Name: Ohio River Pipeline
Location: Pleasants County
Stream: Grimes Run, UTs of McKim Creek, Shawnee Run, UTs of Shawnee Run, UTs of Sugar Creek

Photo #	Photographer	Description	Notice Of Violation
DSCF3717	JGT	Sediment from stream crossing on an UT of McKim Creek observed causing Conditions Not Allowable	W-NW-JGT-062315-001
DSCF3901	JGT	Sediment from stream crossing on Cave Run observed causing Conditions Not Allowable	W-NW-JGT-062315-002
DSCF3913	JGT	Sediment from stream crossing on Shawnee Run observed causing Conditions Not Allowable	W-NW-JGT-062315-003
DSCF3938 DSCF3952	JGT	Sediment observed leaving ROW through unmaintained silt fence and entering into an UT of Shawnee Run causing Conditions Not Allowable	W-NW-JGT-062315-004
DSCF3961 DSCF3977	JGT	Sediment observed leaving ROW through unmaintained silt fence and entering into an UT of Shawnee Run causing Conditions Not Allowable	W-NW-JGT-062415-001
DSCF4062 DSCF4058	JGT	Sediment observed leaving ROW through unmaintained silt fence and entering into an UT of Sugar Creek causing Conditions Not Allowable	W-NW-JGT-062415-002
DSCF4149 DSCF4153 DSCF4156	JGT	An UT of Sugar Creek observed to be filled in where the ROW crosses	W-NW-JGT-062415-003
DSCF4181 DSCF4188	JGT	Sediment from stream crossing on an UT of Sugar Creek observed causing Conditions Not Allowable	W-NW-JGT-062415-004
DSCF4228 DSCF4237 DSCF4244 DSCF4251	JGT	Sediment from stream crossings on UTs of Sugar Creek observed causing Conditions Not Allowable	W-NW-JGT-062415-005

DSCF4271 DSCF4274	JGT	Sediment from stream crossing on an UT of Sugar Creek observed causing Conditions Not Allowable	W-NW-JGT-062415-006
DSCF4303 DSCF4313	JGT	Sediment from stream crossing on an UT of Sugar Creek observed causing Conditions Not Allowable	W-NW-JGT-062415-007
425 428 431	TJK	Sediment from stream crossing on Stouts Run observed causing Conditions Not Allowable	W-NW-TJK-062415-001
437 441	TJK	Sediment from stream crossing on Riggs Run observed causing Conditions Not Allowable	W-NW-TJK-062415-002
DSCF4402 DSCF4408	JGT	Sediment observed leaving ROW through unmaintained silt fence and entering into an UT of Sugar Creek causing Conditions Not Allowable	W-NW-JGT-062515-001
DSCF4457 DSCF4466	JGT	Sediment observed leaving ROW through unmaintained	W-NW-JGT-062515-002
DSCN2130 DSCN2131	TAM	Upstream and downstream views of stream crossing on an UT of McKim Creek where sediment was observed causing Conditions Not Allowable	W-NW-TAM-062515-001
DSCN2143 DSCN2150	TAM	Sediment from stream crossing on Grimes Run observed causing Conditions Not Allowable	W-NW-TAM-062515-002
447 449	TJK	Sediment from stream crossing on an UT of Middle Island Creek observed causing Conditions Not Allowable	W-NW-TJK-062515-001
DSCF3829 DSCF3832 DSCF4500	JGT	BMPs not installed where required by approved E&S plans resulted in sediment leaving ROW without first going through an appropriate BMP	W-NW-JGT-062515-004
DSCF3908 DSCF3956 DSCF4041	JGT	Lack of a stabilized construction entrance where project crosses CR-3 and CR-28	W-NW-JGT-062515-006
DSCF5435 DSCF5447	TJK	Poorly maintained silt fencing Silt fencing not entrenched into the ground	Warning
DSCF5564 DSCF5568 DSCF5570	TJK	Sediment deposits in an Unnamed Tributary (UT) of Riggs Run. Poorly constructed timber mat stream crossing allowing sediment to enter into an UT of Riggs Run.	W-NW-TJK-081115-001
DSCF5570	TJK	Poorly constructed timber mat stream crossing allowing sediment to enter into an UT of Riggs Run	W-NW-TJK-081115-002



DSCF3717



DSCF3901



DSCF3913



DSCF3938



DSCF3952



DSCF3961



DSCF3977



DSCF4062



DSCF4058



DSCF4149



DSCF4153



DSCF4156



DSCF4181



DSCF4188



DSCF4228



DSCF4237



DSCF4244



DSCF4251



DSCF4271



DSCF4274



DSCF4303



DSCF4313



425



428



431



437



441



DSCF4402



DSCF4408



DSCF4457



DSCF4466



DSCN2130



DSCN2131



DSCN2143



DSCN2150



447



449



DSCF3829



DSCF3832



DSCF4500



DSCF3908



DSCF3956



DSCF4041



DSCF5435



DSCF5447



DSCF5564



DSCF5568



DSCF5570

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
2a	Minor	Major	\$2,000	4	\$8,000
3a	Minor	Major	\$2,000	9	\$18,000
4a	Minor	Major	\$2,000	5	\$10,000
4b	Minor	Major	\$2,000	1	\$2,000
4c	Minor	Major	\$2,000	1	\$2,000
4e	Minor	Major	\$2,000	1	\$2,000
4f	Minor	Major	\$1,700	1	\$1,700
8a	Minor	Major	\$2,000	2	\$4,000
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$47,700

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$4,770
6.2.b.4 - Compliance/noncompliance history	25		\$11,925
6.2.b.6 - Economic benefits - (flat monetary increase)	\$6,000		\$6,000
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$4,770)
6.2.b.3 - Cooperation with the Secretary		10	(\$4,770)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$13,185
Penalty =			\$60,885

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	\$6,000
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$6,000
Comments: Avoided cost of three (3) adequate construction entrances.	