

**COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD**

ANTRIM MINING, INC.,

Appellant

v.

EHB Docket Nos. 89-056-F
89-184-F
90-536-F
91-290-F

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
RESOURCES,

Appellee

**SECOND AMENDMENT TO DECEMBER 31, 1991
CONSENT ORDER, AGREEMENT, AND ADJUDICATION**

NOW, this 8th day of March 1999, Antrim Mining, Inc. ("Antrim"), Appellant, and the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"),¹ Appellee, come before the Environmental Hearing Board ("Board") and stipulate to the following Amendment to the December 31, 1991 Consent Order, Agreement, and Adjudication, as previously amended on October 1, 1996, in the above-captioned matters.

¹ Since the Board's approval of the December 31, 1991 Consent Order, Agreement, and Adjudication in this proceeding, Pennsylvania's Department of Environmental Resources has been divided into two separate agencies. See 71 P.S. §§ 1340.101-1340.1103. One of those agencies, the Department of Environmental Protection, now performs the functions of the former Department of Environmental Resources that are relevant to this proceeding. See 71 P.S. § 1340.503(a).

Statement of Facts

- A. On December 31, 1991, Antrim and the Department entered into a Consent Order, Agreement, and Adjudication ("the Consent Adjudication") resolving the four appeals identified in the caption.
- B. All of the appeals from the Consent Adjudication were resolved without modification to the Consent Adjudication.
- C. Subsequently, on October 1, 1996, the parties signed a First Amendment to the Consent Adjudication.
- D. Antrim constructed and has successfully operated the modified treatment system (the "Facility") required by the First Amendment.
- E. Antrim employed RNS Service, Inc. ("RNS") as a contractor to operate the Facility in accordance with the Consent Adjudication.
- F. On July 30, 1998, Antrim submitted a report on the actual costs of operation of the Facility as required by Paragraph 3.c. of the First Amendment (which had amended Paragraph 9.a. of the Consent Adjudication). The July 30, 1998 report proposed a treatment trust in the amount of \$1,500,495 based on an annual operating cost of \$50,167.
- G. On September 24, 1998, the Department responded requesting certain additional information and suggesting that the Trust would require approximately \$213,289 more than Antrim had proposed.
- H. After further discussions with Antrim, the Department has agreed that it will accept the \$1,500,495 as the sufficient amount to fully discharge Antrim's obligations to fund the Discharge Treatment Trust required by Paragraph 9 of the Consent Adjudication, as modified by the First Amendment. This sum will be paid by a third party, unrelated to Antrim, USA Waste or its successor, Waste Management, Inc. ("USA Waste"), which purchased, *inter alia*, the Antrim Construction and

Demolition Waste Facility (previously known as the "Antrim Fly Ash Disposal Facility") on behalf of Antrim into the Discharge Treatment Trust which is being created on the same date as the date of this Agreement.

I. The payment of \$1.5 million referred to in Paragraph H above, into the Discharge Treatment Trust shall constitute full and complete performance by Antrim, and all persons referred to in Paragraph 22 of the Consent Adjudication, including RNS, (the "Antrim Affiliated Group") of all of Antrim's and the Antrim Affiliated Group's obligations under the Consent Adjudication, as amended;

J. Antrim and the Pennsylvania Environmental Defense Foundation ("PEDF") agreed that certain funds were being paid to PEDF as a result of the settlement of a federal Clean Water Act lawsuit brought by PEDF against Antrim would be placed as additional funds into the Trust. More specifically, PEDF is being paid 30 cents per ton of waste deposited in the Waste Facility which is now permitted as a construction and demolition landfill. On November 21, 1998, the Board of Trustees of PEDF agreed that ten cents (\$.10) of the 30 cents (\$.30), now being paid into another trust, will be paid into the Trust being established pursuant to the Consent Adjudication. The ten cents (\$.10) per ton payments should increase the Trust by \$280,000, helping to ensure the Trust's ability to provide funding for operation and maintenance of the modified treatment plan for more than fifty (50) years, based on current assumptions.

K. Antrim has informed the Department that it intends to liquidate the company pursuant to the Pennsylvania Business Corporation Act.

L. Antrim is the permittee of NPDES Permit No. 0596728SMP59850101 which authorizes the discharges from the Facility of treated drainage. The Department intends to revoke the permit once Antrim is liquidated.

M. Recently, a new group, the Babb Creek Watershed Association ("BCWA"), was formed as a non-profit entity. Antrim, the Department, and BCWA have had numerous discussions concerning

BCWA's operation and maintenance of the Facility.

N. During the period from January 1, 1999 until December 31, 1999, or the dissolution of Antrim, whichever occurs sooner, Antrim will retain the responsibility and liability for operation and maintenance of the Facility and for violation of the Permit or the statutes listed in Paragraph A.

O. During the period from January 1, 1999 through December 31, 1999, or the dissolution of Antrim, whichever occurs sooner, RNS will continue to serve as Antrim's contractor.

P. During the period from January 1, 1999 through December 31, 1999, Antrim and/or RNS will provide day-to-day supervisory services to BCWA, the Department or the Trust.

Q. During the period from July 1, 1999 until December 31, 1999, or the dissolution of Antrim, whichever occurs sooner, Antrim and RNS will provide reasonable consulting services to BCWA at no cost to BCWA, the Department or the Trust.

R. BCWA and the Department intend to enter into a separate Consent Order and Agreement which will govern operation and maintenance of the Facility after December 31, 1999 or the dissolution of Antrim, whichever occurs sooner. In addition, this Consent Order and Agreement will address certain activities which will occur prior to December 31, 1999.

S. In Paragraph 3.a. of the First Amendment, the Department agreed that it would not impose on Antrim's contractor (RNS) the underlying liability for the B1-14 and B1-16 discharges based on the contractual relationship with Antrim and the performance of the treatment of those discharges. RNS has asked that the Department now agree not to withhold permit or licenses from RNS based on its contractual relationship with Antrim and the performance of the treatment of the discharges. Further, RNS has asked the Department to agree that RNS does not own or control BCWA or is owned or controlled by BCWA or is a related party to BCWA as that term is defined in 25 Pa. Code § 86.1. As is more fully set forth in a separate Consent Order and Agreement with RNS which is being signed on the same date as this Second Amendment, the Department has agreed to RNS' requests.

T. Paragraph 30 of the Consent Adjudication provides: "Except as provided in Paragraph 27 (Force Majeure), no changes, additions, modifications, or amendments of this Consent Order, Agreement, and Adjudication shall be effective unless they are set out in writing and signed by the parties hereto, and approved by the Board."

Amendment to Order, Agreement, and Adjudication

After full and complete negotiation of all matters set forth in this Second Amendment to December 31, 1991 consent Order, Agreement, and Adjudication, the parties, in consideration of the mutual exchange of covenants contained herein, and intending to be legally bound, hereby AGREE, and the Department hereby ORDERS, as follows:

1. This Second Amendment to December 31, 1991 Consent Order, Agreement, and Adjudication is an Order of the Department that is authorized and issued pursuant to Sections 5, 316, 402, and 610 of The Clean Streams Law, 35 P.S. §§ 691.5, 691.316, 691.402, 691.610, Sections 4.2 and 4.3 of the Surface Mining Act, 52 P.S. §§ 1396.4b, 1396.4c, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of Antrim to comply with any term or condition of the Consent Order, Agreement, and Adjudication, as amended herein, shall subject Antrim to all penalties and remedies provided by those statutes for failing to comply with an order of the Department. This Second Amendment to December 31, 1991 Consent Order, Agreement, and Adjudication also is an Adjudication of the Environmental Hearing Board that is authorized and issued pursuant to Section 4(a) of the Environmental Hearing Board Act, 35 P.S. § 7514(a), the Administrative Agency Law, 2 Pa.C.S. § 103(a) and Chapters 5A and 7A, and 25 Pa. Code § 1021.120.

2. a. From the date of this Agreement through and including June 30, 1999, Antrim, acting by itself or through its contractor, shall provide day-to-day supervisory services to BCWA at no

cost to BCWA, the Department or the Trust.

b. For the period from July 1, 1999 through the date of December 31, 1999 or the dissolution of Antrim, whichever is sooner, Antrim or its consultant will provide reasonable consulting services to BCWA concerning the operation and maintenance of the combined discharge treatment system at no cost to BCWA, the Department or the Trust.

3. USA Waste's funding of the Trust, on behalf of Antrim, constitutes sufficient funding pursuant to the Consent Adjudication so that the Department will release the bonds listed in Appendix I to the Consent Adjudication as required by Paragraph 9.d. of that Agreement. Antrim has applied for bond release in accordance with Department procedures.

4. Once the Trust has been funded in accordance with Paragraph H and so long as Antrim complies with Paragraph 2, the Department agrees that Antrim has fulfilled its obligations and has no further obligations, under the Consent Adjudication and the First and Second Amendments.

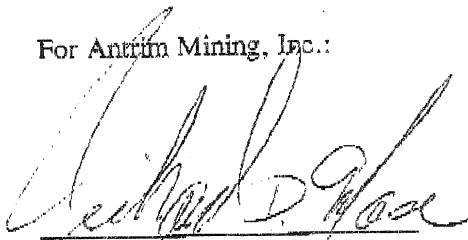
5. This Second Amendment may be executed in one or more counterparts and, when signed by all of the parties listed below, shall constitute a single binding agreement.

6. Except as specifically set forth herein, the December 31, 1991 Consent Order, Agreement, and Adjudication, as previously amended, is unchanged and remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to December 31, 1991 Consent Order, Agreement, and Adjudication to be executed by their duly authorized representatives. The undersigned representatives of the Department and Antrim certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Second Amendment to December 31, 1991 Consent Order, Agreement, and Adjudication on behalf of the party they represent. The representatives of Antrim further certify under penalty of law, as provided by 18 Pa.C.S. § 4904, that Antrim consents to the entry of the Second Amendment to

December 31, 1991 Consent Order, Agreement, and Adjudication and the foregoing Findings as an ORDER of the Department, and that Antrim hereby knowingly waives its right to appeal this Second Amendment to December 31, 1991 Consent Order, Agreement, and Adjudication and the foregoing Findings, which rights may be available under Section 4 of the Environmental Hearing Board Act, 35 P.S. § 7514, the Administrative Agency Law, 2 Pa.C.S. § 103(a) and Chapters 5A and 7A, or any other provision of law.

For Antrim Mining, Inc.:



Richard D. Mase
President

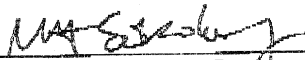
For the Commonwealth of Pennsylvania,
Department of Environmental Protection:



Michael Smith
District Mining Manager

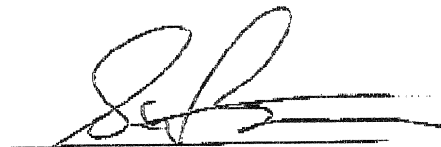


~~Patricia A. Warren~~ Paul Theodorakis
~~Secretary/Treasurer~~



Martin H. Sokolow, Jr.
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CORPORATE SEAL



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