

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:

BET Associates IV, LLC,

Surface Mining Permit No. 54733020
Tamaqua and Coaldale Boroughs,
Schuylkill County and Lansford,
Summit Hill and Nesquehoning
Boroughs, Carbon County

AMENDMENT TO SECOND BET CONSENT ORDER AND AGREEMENT

This Amendment to Second BET Consent Order and Agreement (“Amendment”) is entered into this 16th day of January, 2013, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and BET Associates IV, LLC (“BET Associates”). Pursuant to Paragraphs 19 and 23 of the Second BET Consent Order and Agreement dated May 5, 2011, (“Second BET COA”), the Department and BET Associates modify the Second BET COA as set forth below:

I. The Department has found and determined the following:

* * * * *

V. The Little Schuylkill River is impaired for metals (iron, manganese and aluminum), pH and sediment as a result of drainage from abandoned coal mines. As required by § 303 of the Clean Water Act, 33 U.S.C. § 1313, the Department established Total Maximum Daily Loads (“TMDLs”) for metals, pH and sediment for the Little Schuylkill River. The TMDL included waste load allocations for aluminum, iron, manganese and total suspended solids for the Route 309 Discharge. The allowable loads from the Panther Creek TMDL, as described in Paragraph W, were used in the calculation of the Little Schuylkill River TMDL (pp. 44-45).

W. Panther Creek is a tributary to the Little Schuylkill River and is impaired for metals (iron, manganese and aluminum) and pH as a result of drainage from abandoned coal mines. As required by § 303 of the Clean Water Act, 33 U.S.C. § 1313, the Department established TMDLs for metals and pH for Panther Creek. The TMDLs for Panther Creek were calculated without data from Outfall 004 at the Site because LCN ceased pumping from the Number 14 shaft and discharging at Outfall 004 in February 2002. Panther Creek Watershed TMDL (p. 45).

X. The Panther Creek Watershed TMDL (p. 9) recognizes that the TMDL may be re-evaluated to reflect more current conditions in the watershed. EPA's March 22, 2012 draft guidance document "Considerations for Revising and Withdrawing TMDLs" notes at page 5 that a TMDL may have to be revised "when the modeling assumptions, data or other information originally used to derive the water body's loading capacity have significantly changed since the original TMDL was approved."

Y. At the time of the execution of the Second BET COA the Department reviewed the Panther Creek TMDL in light of the potential resumption of discharges from Outfall 004 to the creek as a result of the relocation of the Route 309 Discharge for public health and safety reasons. The Department submitted an informal revision of the Panther Creek TMDL to the U.S. Environmental Protection Agency ("EPA") but did not propose any revisions to the Little Schuylkill River TMDL to account for the relocation of the Route 309 Discharge and the integration of a revised Panther Creek TMDL. The Department has since prepared a draft revision to the Little Schuylkill River TMDL but has not submitted it to EPA for review.

Z. BET Associates cannot design the relocation and upgrade of the Route 309 Discharge based on potentially conflicting waste load allocations for Panther Creek and the Little

Schuylkill River, and approval by EPA of revisions to the two TMDLs, modification of BET Associates' NPDES Permit and issuance of any other required Department approvals may not be accomplished in sufficient time for BET Associates to construct and operate the relocated Route 309 Treatment System in accordance with the schedule in the Second BET COA.

* * * * *

1. Authority. This Amendment is an Order of the Department authorized and issued pursuant to Sections 5, 402, and 610 of The Clean Streams Law, 35 P. S. §§ 691.5, 691.402, 691.610; Section 4.3 of the Surface Mining Conservation and Reclamation Act 52 P.S. § 1396.4c; Section 9 of the Coal Refuse Disposal Act, 52 P.S. § 30.59; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings

a. BET Associates agrees that the findings in Paragraphs V through Z are true and correct and, in any matter or proceeding involving BET Associates and the Department, BET Associates shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Amendment in any matter or proceeding.

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5. Treatment Systems

a. No later than 180 days after the date of the Second BET Consent Order and Agreement, BET Associates shall submit a written proposal to relocate the Route 309 Discharge. The proposal shall include design plans and a schedule for relocation of the Route 309 Discharge and construction and operation of a new treatment system(s) within

nine months of the issuance of the modification to BET Associates' NPDES Permit and any other required Department approvals. The new treatment system(s) shall be capable, among other things, of treating enough water so that the flows of the existing Route 309 Discharge substantially diminish, except for any de minimis amount as described in Paragraph CC above or as otherwise approved by the Department.

* * * * *

i. For a period of up to 18 months after the first new treatment system becomes operational, and for a period of up to 18 months after each additional treatment system becomes operational, but in no event later than February 15, 2015, the following effluent limitations and monitoring requirements shall apply to any discharges at or near Outfall 001 or 004 or from any new outfall:

DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
Parameter	Average Monthly	Maximum Daily	Instantaneous Maximum	Measurement Frequency	Sample Type
Total Iron	3.0 mg/l	6.0 mg/l	7.0 mg/l	monthly	Grab
Total Manganese	2.0 mg/l	4.0 mg/l	5.0 mg/l	monthly	Grab
Total Aluminum	2.0 mg/l	4.0 mg/l	5.0 mg/l	monthly	Grab
Total Suspended Solids	35.0 mg/l	70.0 mg/l	90.0 mg/l	monthly	Grab
pH	6.0 – 9.0 standard units				
Alkalinity must exceed acidity at all times.					

6. Use of Existing Treatment System

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c. So long as BET Associates maintains the existing Route 309 Treatment System in accordance with good operating practices, and until six months after the new treatment system becomes operational, but no later than February 15, 2015, the Department agrees to exercise its enforcement discretion and will not cite BET Associates for any violations related to the manganese effluent limitation at Outfall 005.

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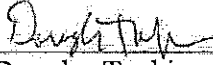
19. Panther Creek and Little Schuylkill River TMDLs In the event that EPA refuses to approve, modifies, or has not acted on the revisions to the Panther Creek and Little Schuylkill River TMDLs submitted by the Department prior to February 15, 2014, BET Associates' obligations to design and construct new treatment system(s) for the Route 309 Discharge shall be suspended and the parties shall meet expeditiously to negotiate modifications to the affected provisions of this Amendment.

II. Except to the extent that Paragraph I above modifies the Department and BET Associates' rights and obligations under the Second BET COA, the Department and BET Associates' rights and obligations remain as set forth in the Second BET COA.

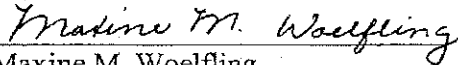
IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized representatives. The undersigned representatives of BET Associates certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Amendment on behalf of BET Associates; that BET Associates consents to the entry of this Amendment as a final ORDER of the Department; and that BET Associates hereby knowingly waives its right to appeal this Amendment to challenge its content

or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by BET Associates' attorney certifies only that the agreement has been signed after consulting with counsel.

FOR BET ASSOCIATES IV, LLC:

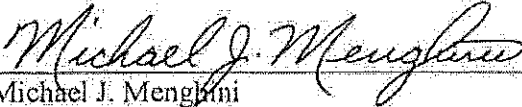


Douglas Topkis
Member

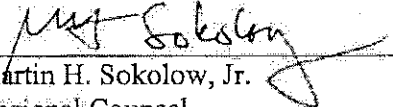


Maxine M. Woelfling
Attorney for BET Associates IV, LLC

**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**



Michael J. Menghini
District Mining Manager



Martin H. Sokolow, Jr.
Regional Counsel