

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Bentley Development Company, Inc.	:	St. Clair Strip - Job 18
P.O. Box 338	:	SMP No. 39A77SM4
Blairsville, PA 15717	:	West Wheatfield Township, Indiana County
	:	
	:	Eagle Strip and Auger
	:	SMP No. 32823005
	:	Burrell & West Wheatfield Townships
	:	Indiana County
	:	
	:	Alternative Financial Assurance Mechanism

FIRST AMENDMENT TO
POST-MINING DISCHARGE TREATMENT TRUST
CONSENT ORDER AND AGREEMENT

This First Amendment to Post-Mining Discharge Treatment Trust Consent Order and Agreement dated March 23, 2022 ("First Amendment") is entered into this 22nd day of March, 2023, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Bentley Development Company, Inc. ("Bentley Development").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, *as amended*, 52 P.S. §§ 1396.1-1396.19a ("Surface Mining Act"); the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, *as amended*, 52 P.S. §§ 1406.1-1406.21 ("Mine Subsidence Act"); the Coal Refuse Disposal Control Act, Act of September 24,

Execution

1968, P.L. 1040, *as amended*, 52 P.S. §§ 30.51-30.66 (“Coal Refuse Disposal Act”); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 (“Clean Streams Law”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”); and the rules and regulations promulgated thereunder.

B. On March 23, 2022, the Department and Bentley Development entered into a Post-Mining Discharge Treatment Trust Consent Order and Agreement (“2022 Trust COA”) in which Bentley Development agreed to finance, as an alternative financial assurance mechanism, an irrevocable postmining treatment trust to meet its long-term postmining discharge treatment obligations on the following coal surface mine permits (“SMPs”) that are associated with post-mining discharge liability:

NAME	SMP NO.	TOWNSHIP	COUNTY
St. Clair Strip – Job 18	39A77SM4	West Wheatfield	Indiana
Eagle Strip and Auger	32823005	Burrell & West Wheatfield	Indiana

A copy of the first page of the 2022 Trust COA is attached as Exhibit A, and the document in its entirety is maintained in the Department’s Cambria District Mining Office and is posted on the Department’s website.

C. On March 23, 2022, Bentley Development and Somerset Trust Company, as Trustee, executed a Post-Mining Discharge Treatment Trust Agreement (“2022 Trust Agreement”) which established the Bentley Development Treatment Trust (“Trust”). The Department is identified as the beneficiary of the Trust under the 2022 Trust Agreement and

joined in the 2022 Trust Agreement to indicate its acceptance of the terms and conditions set forth therein, as well as the powers and authorities granted by the Trust. A copy of the 2022 Trust Agreement is attached to the 2022 Trust COA as Exhibit O.

D. Bentley Development no longer has any remaining active mining operations but currently retains water treatment liability under SMP Nos. 39A77SM4 and 32823005 that are associated with the 2022 Trust COA and with Bentley Development's National Pollutant Discharge Elimination System ("NPDES") Permit Nos. PA0607878 and Permit No. PA0607231.

E. Bentley Development is no longer doing business in the Commonwealth, and the officers of the corporation have informed the Department that they intend to dissolve the corporation in accordance with the Pennsylvania Business Corporations Law, 15 P.S. Chapter 19, Subchapter F regarding corporate dissolution, winding up of corporation business and discharging liabilities.

F. The officers of Bentley Development have informed the Department that the corporation no longer has the ability to continue to operate and maintain the St. Clair Strip and Eagle Strip Treatment Systems (collectively the "Treatment Systems") that are the subject of the 2022 Trust COA, and Bentley Development intends to discontinue treatment of the discharges because Bentley Development no longer has any income, technical staff, or employees on a going-forward basis and is unable to perform its obligations under the 2022 Trust COA and the 2022 Trust Agreement. The officers of Bentley Development have informed the Department that they wish to relinquish the corporation's operation and maintenance responsibilities associated with the Treatment Systems pursuant to the 2022 Trust COA.

G. In the conduct of its business, Bentley Development has met all of the land

reclamation requirements under SMP Nos. 39A77SM4 and 32823005 issued pursuant to the Surface Mining Act and the regulations promulgated thereunder. Other than as described herein regarding the long-term post-mining polluttional discharges, all reclamation obligations under Bentley Development's SMP Nos. 39A77SM4 and 32823005 have been met, and the surety reclamation bonds issued to the Department on behalf of Bentley Development, as identified in Paragraph U of the 2022 Trust COA, have been released pursuant to Paragraph FF of the 2022 Trust COA.

H. In anticipation of the turnover of responsibility for operation and maintenance of the Treatment Systems, the Department has performed an inspection of the St. Clair Strip Treatment System and found it to be satisfactorily maintained and in compliance with the permitted standards in SMP No. 39A77SM4 and NPDES Permit No. PA0607878. The Department has determined that the St. Clair Strip Treatment System is in good operating condition and consistently meets the effluent limits in the NPDES Permit No. PA0607878.

I. The Department has also performed an inspection of the Eagle Strip Treatment System and found it to be satisfactorily maintained and in compliance with the permitted standards in SMP No. 32823005 and NPDES Permit No. PA0607231. The Department has determined that the Eagle Strip Treatment System is in good operating condition and consistently meets the effluent limits in the NPDES Permit PA0607231.

J. The Department has reviewed Bentley Development's financial obligation pursuant to the 2022 Trust COA and determined that the Trust has a value of \$257,628.20 as of December 31, 2022.

K. In accord with the requirements under the Pennsylvania Business Corporations Law

to wind up the corporation by discharging Bentley Development's debts and other liabilities, settle and close Bentley Development's business, and marshal and distribute the assets of the corporation including obligations under its regulatory approvals and the 2022 Trust COA and 2022 Trust Agreement as described herein, the officers of Bentley Development have agreed to enter into this First Amendment with the Department.

L. Consistent with the purpose of the Trust as specified in Paragraph 5.a of the 2022 Trust COA, due to Bentley Development's inability to continue to operate and maintain the Treatment Systems and treat the post-mining discharges, the officers of Bentley Development are tendering those obligations and Bentley Development's rights under the Trust to Somerset Trust Company and the Department, as described herein and subject to the terms set forth below.

M. The parties hereto acknowledge the intended dissolution of Bentley Development as a business entity and the settlement and full and complete performance and discharge of its legal obligation to provide financial resources to the Commonwealth to provide for long-term water pollution treatment as required by Section 4(d.2) of SMCRA, 52 P.S. § 1396.4(d.2).

ORDER

After full and complete negotiation of all matters set forth in this First Amendment and upon mutual exchange of covenants contained herein, the parties intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Bentley Development as follows:

1. Authority. This First Amendment is an Order of the Department authorized and issued pursuant to Sections 5 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5 and 691.610; Section 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c; Sections 3.1 and 9 of the Coal Refuse Disposal Act, 52 P.S. §§ 30.53a and 30.59; Section 9 of the Subsidence Act, 52 P.S. § 1409.9; and

Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of Bentley Development to comply with any term or condition of this First Amendment shall subject Bentley Development to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings.

a. Bentley Development agrees that the findings in Paragraphs A through M, above are true and correct, and in any matter or proceeding involving Bentley Development and the Department, Bentley Development 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 First Amendment in any matter or proceeding.

3. Treatment Liability. Upon execution of this First Amendment, the Department, as the named beneficiary of the Trust along with the Trustee, agrees to take over operation and management of the Treatment Systems, and will utilize the funds in the Trust to operate and maintain the Treatment Systems in a manner consistent with the 2022 Trust COA, this First Amendment, and the 2022 Trust Agreement.

4. Waiver of Rights to Distribution from Trust. Bentley Development hereby waives any right to, and the Trust shall retain, all future disbursements Bentley Development may be entitled to under the 2022 Trust COA, including but not limited to, any 2023 annual distribution amount that may have accrued in the Trust for distribution to Bentley Development for operation and maintenance of the Treatment Systems under Paragraph 7 of the 2022 Trust COA. Such funds shall remain in the Trust and accrue for the benefit of Somerset Trust

Company and the Department to be used to operate and maintain the Treatment Systems or as the Department and the Trustee see fit to benefit waters of the Commonwealth.

5. Personal Property. Bentley Development has agreed to transfer and convey additional equipment and personal property to the Trustee, without reservation, to be used in connection with operation and maintenance of the Treatment Systems pursuant to the Equipment Bill of Sale attached as Exhibit B.

6. Paragraph 17 of the 2022 Trust COA is revised as follows:

17. Bentley Development's Continuing Obligation. The Department acknowledges that under the terms of this First Amendment, Bentley Development has no further obligation or responsibility (i) for the ongoing treatment of the mine discharges associated with the SMP Nos. 39A77SM4 and 32823005, identified in Paragraph E of the 2022 Trust COA and which are the subject of the 2022 Trust COA, or (ii) for any other obligation or responsibility under the 2022 Trust COA.

7. Except as modified herein by this First Amendment, all other provisions of the 2022 Trust COA shall remain in full force and effect.

8. Counterpart Signatures.

This First Amendment may be signed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their duly authorized representatives. The undersigned representatives of Bentley Development certify under penalty of law, as provided by 18 Pa.C.S. § 4904, that they are authorized to execute this First Amendment on behalf of Bentley Development; that Bentley


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Execution


Development consents to the entry of this First Amendment as a final ORDER of the Department; and that Bentley Development hereby knowingly waives its rights to appeal this First Amendment and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No 1988-94, 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. Signature by Bentley Development's attorney certifies only that the agreement has been signed after consulting with counsel.

**FOR BENTLEY DEVELOPMENT
COMPANY, INC.:**

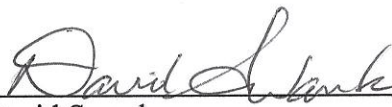
**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**




William Stefan
President




David D. Thomas
District Mining Manager
Cambria District Mining Office



David Swank
Secretary



Robyn Katzman Bowman
Assistant Counsel
Southcentral Region OCC



Kevin Garber
Attorney for Bentley Development
Company, Inc.
(or initials of company officer indicating
waiver of opportunity for attorney
review)

EXHIBIT LIST

- EXHIBIT A First page of the 2022 Post-Mining Discharge Treatment Trust
Consent Order and Agreement
- EXHIBIT B Equipment Bill of Sale

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Bentley Development Company, Inc.	:	St. Clair Strip – Job 18
P.O. Box 338	:	SMP No. 39A77SM4
Blairsville, PA 15717	:	West Wheatfield Township, Indiana County
	:	
	:	Eagle Strip and Auger
	:	SMP No. 32823005
	:	Burrell & West Wheatfield Townships
	:	Indiana County
	:	
	:	Alternative Financial Assurance Mechanism

POST-MINING DISCHARGE TREATMENT TRUST
CONSENT ORDER AND AGREEMENT

This Post-Mining Discharge Treatment Trust Consent Order and Agreement (“Consent Order and Agreement”) is entered into this 23rd day of March, 2022, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), and Bentley Development Company, Inc. (“Bentley Development”).

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, *as amended*, 52 P.S. §§ 1396.1-1396.19a (“Surface Mining Act”); the Bituminous Mine Subsidence and Land Conservation Act; Act of April 27, 1966, P.L. 31, *as amended*, 52 P.S. §§ 1406.1-1406.21 (“Mine Subsidence Act”); the Coal Refuse Disposal Control Act, Act of September 24, 1968, P.L. 1040; *as amended*, 52 P.S. §§ 30.51-30.66 (“Coal Refuse Disposal Act”); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 (“Clean Streams Law”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929,

EXHIBIT B

COPY

Equipment Bill of Sale

This Equipment Bill of Sale, dated as of May 18, 2023 ("Bill of Sale"), is made by Bentley Development Company, Inc., with a mailing address of P.O. Box 338, Blairsville, PA 15717 ("Transferor"), in favor of Somerset Trust Company, with a business address of 131 North Center Avenue, P.O. Box 1330, Somerset, PA 15501, as Trustee of the Bentley Development Post-Mining Discharge Treatment Trust ("Bentley Development Trust") ("Trustee," and together with Transferor, the "Parties," and each, a "Party").

1. Conveyance. In consideration of the covenants and agreements set forth herein and in the First Amendment to Post-Mining Discharge Treatment Trust Consent Order and Agreement between the Parties dated MARCH 22, 2023, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Transferor hereby sells, assigns, transfers, conveys, grants, bargains, and delivers to the Bentley Development Trust all of its right, title, and interest in and to the Equipment described on Exhibit A, attached to and made a part of this Bill of Sale (the "Equipment"), such transfer to be effective as of the date hereof (the "Effective Date").

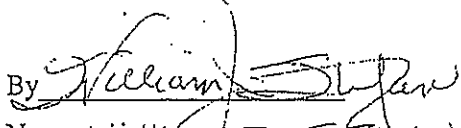
2. Representations and Warranties. Transferor represents and warrants that the Equipment is transferred to the Bentley Development Trust hereby free and clear of all liens and encumbrances; however, Transferor and Trustee agree that **THE EQUIPMENT IS SOLD, TRANSFERRED AND CONVEYED TO THE BENTLEY DEVELOPMENT TRUST BY TRANSFEROR "AS IS, WHERE IS" AND WITH ALL FAULTS, AND TRANSFEROR MAKES NO AND HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO THE EQUIPMENT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY, or (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. TRUSTEE ACKNOWLEDGES, BY ACCEPTING THIS BILL OF SALE, THAT THE TRUSTEE HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY TRANSFEROR OR ANY OTHER PERSON ON TRANSFEROR'S BEHALF.**

3. Governing Law. This Bill of Sale is governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania, without giving effect to the conflict of law provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania.

4. Counterparts. This Bill of Sale may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Bill of Sale delivered by email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Bill of Sale.

IN WITNESS WHEREOF, the Parties have each duly executed and delivered this Bill of Sale as of the date first written above.

**BENTLEY DEVELOPMENT COMPANY,
INC.**

By 
Name: William J. STEFAN
Title: PRESIDENT

SOMERSET TRUST COMPANY

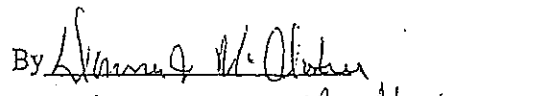
By 
Name: Donna J McAlister
Title: VP and Trust Officer

EXHIBIT A

DESCRIPTION OF THE EQUIPMENT

1. Two aboveground storage tanks located at Transferor's St. Clair Strip – Job 18 reclaimed mine site located in West Wheatfield Township, Indiana County, Pennsylvania, each having an approximate capacity of 4,500 gallons.
2. One aboveground storage tank located at Transferor's Eagle Strip and Auger reclaimed mine site located in Burrell & West Wheatfield Townships, Indiana County, Pennsylvania, having an approximate capacity of 5,000 gallons.