

AUG 18 1993

RECEIVED  
OCT 04 2005  
Dept. of Environmental Protection  
California District Office

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF ENVIRONMENTAL :  
RESOURCES, :  
Plaintiff, :  
v. :  
HOLLIDAY CONSTRUCTORS, INC., :  
Defendant :

No. 333 MD 93

CONSENT DECREE

A. The Plaintiff in this action is the Commonwealth of Pennsylvania, Department of Environmental Resources ("Department"), which 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. §§1396.1-1396.31 ("Surface Mining 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 of the Environmental Quality Board ("rules and regulations") promulgated thereunder.

B. Defendant Holliday Constructors, Inc. ("Holliday"), is a Pennsylvania corporation with a mailing address of P.O. Box 259, Hollidaysburg, Pennsylvania 16648.

C. Holliday is the permittee of a surface coal mining site located in Mt. Pleasant Township, Westmoreland County, which is covered by Mine Drainage Permit No. 6579119, and is known as the Hoyman Mine.

D. The Hoyman Mine has been backfilled and planted, but it has a discharge of mine drainage which is being pumped to a gravity flow wetland treatment system.

E. The Hoyman Mine was mined by a contract operator, Vipond & Vipond, Inc. ("Vipond"). Vipond has been dissolved.

F. Holliday is also the permittee of a surface coal mining site in Saltlick Township, Fayette County covered by Mine Drainage Permit No. 3375SM54 and known as the Shaffer Mine.

G. The Shaffer Mine is reclaimed, but it has a discharge of mine drainage which is being treated by a gravity flow wetland treatment system.

H. In 1986, in order to provide a funding mechanism to complete reclamation of the Hoyman Mine and to treat mine drainage from the Hoyman Mine property and at the Shaffer Mine, Vipond created and funded an Irrevocable Trust ("Irrevocable Trust") with the Hollidaysburg Trust Company in Hollidaysburg, Pennsylvania. A copy of the Irrevocable Trust Agreement by which said trust was created, is attached hereto as Exhibit A.

I. The Irrevocable Trust was funded at inception with \$500,000 in cash and marketable securities and from time to time with interest and income earned from approximately \$210,000 in collateral mining reclamation bonds posted with the Department for the Hoyman Mine and Shaffer Mine.

J. The cash and marketable securities which constituted the initial funding of the Irrevocable Trust were spent on reclaiming the Hoyman Mine and in constructing and operating mine drainage treatment facilities at the Hoyman Mine.

K. A ground water pumping system and a wetland treatment facility were constructed at the Hoyman Mine and a wetland treatment system was constructed at the Shaffer Mine, with funds from the Irrevocable Trust.

L. Over the past several years, the primary asset of the Irrevocable Trust has been the income earned by the collateral mining and reclamation bonds.

M. Over the past several years, the income earned by the collateral mining and reclamation bonds has been used, and has been adequate, to fund operation and maintenance of the groundwater pumping and wetland treatment system at the Hoyman Mine and to maintain the wetland treatment system at the Shaffer Mine.

N. By the terms of the Irrevocable Trust Agreement, the Irrevocable Trust terminated on January 30, 1993, and the Trustee distributed the remainder of the Irrevocable Trust ("Trust remainder") to the Commonwealth of Pennsylvania, by way of a check for \$6,548.39.

O. Holliday has established another trust (the "Holliday Trust") for the exclusive purpose of operating and maintaining the groundwater pumping and wetland

treatment facilities at the Hoyman Mine and the wetland treatment system at the Shaffer Mine, and other necessary water treatment at the Hoyman and Shaffer Mines.

P. The use of the remainder from the Irrevocable Trust to eliminate water pollution at the Hoyman and Shaffer Mines is a proper use of funds from the Pennsylvania Clean Water Fund, as provided by Section 8 of the Clean Streams Law, 35 P.S. §691.8.

NOW THEREFORE, this 12<sup>TH</sup> day of August, 1993, upon consent of the parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. The Holliday Trust shall be for the exclusive purpose of operating and maintaining groundwater pumping and water treatment facilities at the Hoyman Mine and the wetland treatment system at the Shaffer Mine.

2. The Department shall pay \$6,548.39 from the Clean Water Fund to Holliday, that being the amount of the remainder of the Irrevocable Trust. The Department shall use its best efforts to make such payment within 45 days of execution of this Consent Decree. These funds shall only be used for the operation and maintenance of the groundwater pumping treatment facilities at the Hoyman Mine and the wetland treatment system at the Shaffer Mine. These funds may not be used to pay any administrative or legal expenses associated with the Holliday Trust or this Consent Decree.

3. Holliday shall place into the Holliday Trust all income it receives from the collateral mining reclamation bonds posted by it with the Department for the Hoyman Mine and Shaffer Mine. The Commonwealth of Pennsylvania may, at its sole discretion, pay the interest directly to the Holliday Trust.

4. Holliday shall furnish the Department not less than semi-annually a statement of the value of the Holliday Trust and an accounting of expenditures from the Holliday Trust. Further, Holliday shall also provide an accounting of expenditures made from the remainder of the Irrevocable Trust transferred to the Holliday Trust.

5. This Consent Decree shall not affect in any way the Department's rights to forfeit any or all of the bonds for the Hoyman Mine and/or the Shaffer Mine, or take other actions to insure compliance with applicable law. Nor shall this Consent Decree affect the rights of Holliday to challenge or contest forfeiture or other actions by the Department.

6. Holliday shall inform all persons necessary for the implementation of this Consent Decree of the terms and conditions of this Consent Decree. Holliday shall remain liable for any breach of this Consent Decree caused, contributed to, or allowed by its directors, officers, agents, managers, servants, privies, successors, and assigns.

7. All correspondence with the Department concerning this Consent

Decree shall be addressed to:

District Mining Manager  
Department of Environmental Resources  
Greensburg District Mining Office  
Armbrust Building  
R.D. 2, Box 603-C  
Greensburg, PA 15601-0982

8. All correspondence with Holliday concerning this Consent Decree shall

be addressed to:

Gerhart W. Malsatzki, President  
Holliday Constructors, Inc.  
P.O. Box 259  
Hollidaysburg, PA 16648

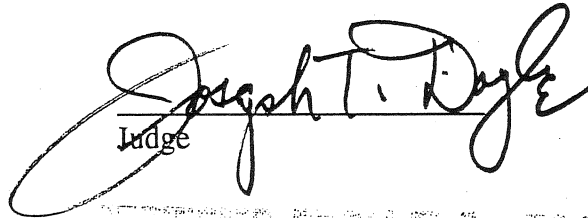
9. Holliday's obligations under Paragraphs 1, 2, 3, 4 and 6 of this

Consent Decree shall terminate five years from the date of execution of this Consent Decree, upon the written consent of the Department, or upon the Department's forfeiture and collection of the bonds posted by Holliday for its mining activities at the Hoyman Mine and Shaffer Mine, whichever comes first.

10. The paragraphs of this Consent Decree shall not be severable. Should any part hereof be declared invalid or unenforceable, this Consent Decree shall then be null and void, unless both parties agree in writing to its continuance.

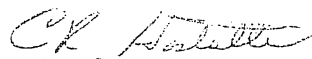
11. This Consent Decree shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

12. No changes, additions, modifications, or amendments of this Consent Decree shall be effective unless they are set in writing and signed by the parties hereto.

  
Judge

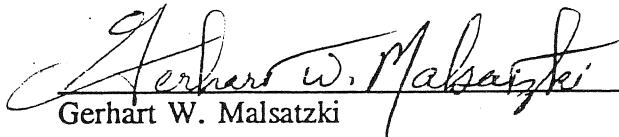
CERTIFIED FROM THE RECORDS  
AND UNDER SEAL


AUG 12 1993

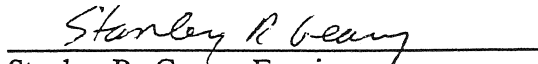
  
Deputy Prothonotary - Chief Clerk

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound,  
agree to the entry of this Consent Decree.

FOR HOLLIDAY CONSTRUCTORS, INC.:

  
Gerhart W. Malsatzki  
President

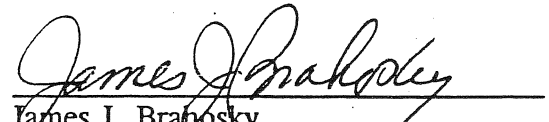
  
Stitler A. Vipond  
Secretary


  
Stanley R. Geary, Esquire  
Attorney for Holliday Constructors, Inc.  
Buchanan Ingersoll, P.C.  
57th Floor, USX Tower  
600 Grant Street  
Pittsburgh, PA 15219

/mbh

HOLLIDAY.CD

FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL RESOURCES:

  
James J. Brabosky  
Greensburg District Mining Manager  
Armbrust Building  
R. D. 2, Box 603C  
Greensburg, PA 15601

  
Steven Lachman, Esquire  
Assistant Counsel  
Office of Chief Counsel  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745



ASSIGNMENT

FOR VALUE RECEIVED, and intending to be legally bound hereby, the Undersigned does hereby assign and transfer to Holliday Trust, all of its rights and interest in the following described collateral:

Bond Nos. 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214 and 1215 in the face amount of \$5,000 each, total face value \$50,000.

Hospital Authority - Philadelphia Einstein. Held in trust as security for collateral bonds filed with DER on November 13, 1985 for the Shaffer Mine in Saltlick Township, Fayette County (MDP #3375SM54, MP Nos. 1216-3, 1216-3A and 1216-3A2).

The following bonds were filed with DER as security for collateral bonds for the Hoyman Mine in Mt. Pleasant Township, Westmoreland County (MDP #6579119 and MDP 3475SM29).

Bond Nos. A1999, A2000, A2001, A2004 and A2005 in the face value of \$5,000 each, total face value \$25,000.

Pittsburgh Urban Development Authority. Security for a collateral bond filed with DER on June 30, 1980, for MP No. 1216-4.

Certificate of Deposit ("C.D.") #6063 in the original amount of \$3,040.

Hollidaysburg Trust Company. Held in trust as security for DER collateral bonds filed with DER on March 30, 1988.

C.D. #6065 in the original amount of \$19,930.

Hollidaysburg Trust Company. Held in trust as security for DER collateral bonds filed with DER on March 30, 1988.

C.D. #6066 in the original amount of \$7,500.

Hollidaysburg Trust Company. Held in trust as security for DER collateral bonds filed with DER on March 30, 1988.

C.D. #6067 in the original amount of \$3,885.

Hollidaysburg Trust Company. Held in trust as security for DER collateral bonds filed with DER on March 30, 1988.

C.D. #44167 in the original amount of \$7,665.

Hollidaysburg Trust Company. Held in trust as security for DER collateral bonds filed with DER on April 6, 1990.

C.D. #53562 in the original amount of \$61,800.

Hollidaysburg Trust Company. Held in trust as security for DER collateral bonds filed with DER on April 7, 1992.

C.D. #46260 in the original amount of \$5,000.

Hollidaysburg Trust Company. Held in trust as security for DER collateral bonds filed with DER on September 28, 1990.

C.D. #B14586 in the original amount of \$500.

Mellon Bank. Held in trust as security for DER collateral Bonds filed with DER on November 12, 1985.

C.D. #54831 in the original amount of \$1,000.

Central Counties Bank. Held in trust as security for DER collateral bonds filed with DER on September 22, 1980.

Assignor Name: Holliday Constructors, Inc.

MDP 6579119 Hoyman Mine  
MDP 3475SM29 Hoyman Mine  
Permit Site #: MDP 3375SM54 Shaffer Mine

AND the undersigned hereby authorizes and requests the Commonwealth of Pennsylvania, Department of Environmental Resources to send the above-identified collateral of \$ 185,320.00 when (Total of original amounts) released by the Department, to: Holliday Trust c/o Eugene Oberle, R.D. 1, Box 697, Claysburg, PA 16648. Holliday Trust is a trust created by Holliday Constructors, Inc. for the purpose of maintaining and operating mine drainage treatment facilities at the Hoyman Mine and Shaffer Mine identified above. Mr. Oberle is the Trustee. A copy of the Trust Agreement is attached hereto as Exhibit A.

IN WITNESS WHEREOF, Holliday Constructors, Inc., a corporation, has caused this Assignment to be executed this 28th day of June, 1993 by the undersigned duly authorized officer(s).

HOLLIDAY CONSTRUCTORS, INC.

Paul F. McNulty  
Witness

Paul F. McNulty  
Witness

BY: Gerhart W. Malsatzki  
Name: Gerhart W. Malsatzki  
Title: President

Stitler A. Vipond  
Name: Stitler A. Vipond  
Title: Secretary


ASSIGNOR ACKNOWLEDGMENT:

STATE OF PENNSYLVANIA  
COUNTY OF Blair

On this 28th day of June, 1993 before me, a notary public,  
personally appeared the undersigned officers, Gerhart W. Malsatzki, and  
President  
Stitler A. Vipond, of Holliday Constructors, Inc., a corporation,  
Secretary

and swore that they, being authorized to do so, executed the foregoing  
Assignment on behalf of said corporation.

IN WITNESS WHEREOF, I hereto set my hand and official seal.

  
Notary Public

SEAL


My commission expires:

Notarial Seal  
Timothy S. Edmundson, Notary Public  
Duncansville Boro, Blair County  
My Commission Expires Jan. 11, 1994  
Member, Pennsylvania Association of Notaries

ASSIGNEE ACKNOWLEDGMENT:


(Sign & print names)

NAME OF ASSIGNEE - Holliday Trust

by:   
Eugene Oberle, Trustee

STATE OF PENNSYLVANIA  
COUNTY OF Blair

Taken, subscribed and sworn to before me the undersign authority on  
this 28th day of June, 1993, in the County and State  
aforementioned.

  
Notary Public

SEAL

My commission expires:

Notarial Seal  
Timothy S. Edmundson, Notary Public  
Duncansville Boro, Blair County  
My Commission Expires Jan. 11, 1994  
Member, Pennsylvania Association of Notaries