

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Marquise Mining Corporation	:	MF Land Operation Mine
P.O. Box338	:	SMP No. 56950105
Blairsville, PA 15717	:	StonycreekTownship
	:	Somerset County
	:	
	:	
	:	Alternative Financial Assurance Mechanism

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

This First Amendment to Post-Mining Treatment Trust Consent Order and Agreement dated August 17, 2011 (“First Amendment”) is entered into this 22nd day of March, 2023, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), and Marquise Mining Corporation (“Marquise”).

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, P.L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative Code"); and the rules and regulations promulgated thereunder.

B. On August 17, 2011, the Department and Marquise entered into a Post-Mining Treatment Trust Consent Order and Agreement ("2011 Trust COA") in which Marquise agreed to finance, as an alternative financial assurance mechanism, an irrevocable post-mining treatment trust to meet its long-term post-mining discharge treatment obligations on the MF Land Operation mine site, Surface Mine Permit ("SMP") No. 56950105 located in Stonycreek Township, Somerset County, that is associated with post-mining discharge liability. A copy of the first page of the 2011 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 August 17, 2011, Marquise and Somerset Trust Company, as Trustee, executed a Post-Mining Discharge Treatment Trust Agreement ("2011 Trust Agreement") which established the Marquise Treatment Trust ("Trust"). The Department is identified as the beneficiary of the Trust under the 2011 Trust Agreement and joined in the 2011 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 2011 Trust Agreement is attached to the 2011 Trust COA as Exhibit F.

D. Marquise no longer has any remaining active mining operations but currently retains water treatment liability under SMP No. 56950105 that is associated with the 2011 Trust COA and with Marquise's National Pollutant Discharge Elimination System ("NPDES") Permit

No. PA0213136.

E. Marquise is no longer doing business in the Commonwealth, and the officers of the company 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 Marquise have informed the Department that the corporation no longer has the ability to continue to operate and maintain the MF Land Treatment System ("Treatment System") that is the subject of the 2011 Trust, and Marquise intends to discontinue treatment of the discharges because Marquise no longer has any income, technical staff, or employees on a going-forward basis and is unable to perform its obligations under the 2011 Trust COA and the 2011 Trust Agreement. The officers of Marquise have informed the Department that they wish to relinquish the corporation's operation and maintenance responsibilities associated with the Treatment Systems pursuant to the 2011 Trust COA.

G. In the conduct of its business, Marquise has met all of the land reclamation requirements under SMP No. 56950105 issued pursuant to the Surface Mining Act and the regulations promulgated thereunder. Other than as described herein regarding the long-term post-mining pollutional discharges, all the reclamation obligations under Marquise's SMP No. 56950105 have been met, and the collateral reclamation bond posted by Marquise, as identified in Paragraph N of the 2011 Trust COA, has been released pursuant to Paragraph S of the 2011 Trust COA.

H. In anticipation of the turnover of responsibility for operation and maintenance of the Treatment System, the Department has performed an inspection of the MF Land Treatment

Execution

System and found it to be satisfactorily maintained and in compliance with the permitted standards in SMP No. 56950105 and NPDES Permit No. PA0213136. The Department has determined that the MF Land Treatment System is in good operating condition and consistently meets the effluent limits in NPDES Permit No. PA0213136.

I. The Department has reviewed Marquise's financial obligation pursuant to the 2011 Trust COA and determined that the Trust has a value of \$190,809.60 as of December 31, 2022.

J. In accord with the requirements under the Pennsylvania Business Corporations Law to wind up the corporation by discharging Marquise's debts and other liabilities, settle and close Marquise's business, and marshal and distribute the assets of the corporation including obligations under its regulatory approvals and the 2011 Trust COA and 2011 Trust Agreement as described herein, the officers of Marquise have agreed to enter into this First Amendment with the Department.

K. Consistent with the purpose of the Trust as specified in Paragraph 5.a of the 2011 Trust COA, due to Marquise's inability to continue to operate and maintain the Treatment System and treat the post-mining discharges, the officers of Marquise are tendering those obligations and Marquise's rights under the Trust to Somerset Trust Company and the Department, as described herein and subject to the terms set forth below.

L. The parties hereto acknowledge the intended dissolution of Marquise 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 Marquise 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 Marquise to comply with any term or condition of this First Amendment shall subject Marquise to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings.

a. Marquise agrees that the findings in Paragraphs A through L, above, are true and correct, and in any matter or proceeding involving Marquise and the Department, Marquise 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 System, and will utilize the funds in the Trust in a manner consistent with the 2011 Trust COA, this First Amendment, and the 2011 Trust Agreement.

4. Waiver of Rights to Distribution from Trust. Marquise hereby waives any right to, and the Trust shall retain, all future disbursements Marquise may be entitled to under the 2011 Trust COA, including but not limited to, any 2023 annual distribution amount that may have accrued in the Trust for distribution to Marquise for operation and maintenance of the Treatment System under Paragraph 7 of the 2011 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 System or as the Department and the Trustee see fit to benefit waters of the Commonwealth.

5. Paragraph 17 of the 2011 Trust COA is revised as follows:

17. Marquise's Continuing Obligation. The Department acknowledges that under the terms of this First Amendment, Marquise has no further obligation or responsibility (i) for the ongoing treatment of the mine discharges associated with SMP No. 56950105, identified in Paragraph E of the 2011 Trust COA, and which are the subject of the 2011 Trust COA , or (ii) for any other obligation or responsibility under the 2011 Trust COA.

6. Except as modified herein by this First Amendment, all other provisions of the 2011 Trust COA shall remain in full force and effect.

7. 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 Marquise certify under penalty of law, as provided by 18 Pa.C.S. § 4904, that they are authorized to

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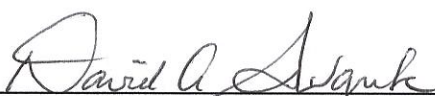
Execution

execute this First Amendment on behalf of Marquise; that Marquise consents to the entry of this First Amendment as a final ORDER of the Department; and that Marquise 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 Marquise's attorney certifies only that the agreement has been signed after consulting with counsel.


**FOR MARQUISE MINING
CORPORATION:**



John M. Lee
President




David A. Swank
Secretary

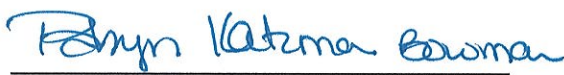


Kevin Garber
Attorney for Marquise Mining Corporation
(or initials of company officer indicating
waiver of opportunity for attorney review)

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



David D. Thomas
District Mining Manager
Cambria District Mining Office



Robyn Katzman Bowman
Assistant Counsel
Southcentral Region OCC

EXHIBIT LIST

EXHIBIT A 2011 Postmining Treatment Trust Consent Order and Agreement

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Marquise Mining Corporation	:	MF Land Operation Mine
101 Scirell Drive	:	SMP No. 56950105
P. O. Box 338	:	Stonycreek Township
Blairsville, PA 15717	:	Somerset County
	:	Alternative Financial Assurance Mechanism

POSTMINING TREATMENT TRUST
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