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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

ROCKWOOD CASUALTY
INSURANCE COMPANY

Re: Black Oak Development, Inc.
SMP 32900103

COMMONWEALTH OF
PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 17th day of August 2013, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Rockwood Casualty Insurance Company ("Rockwood").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, Sp. Sess. No. 1, P.L. 31 52 P.S. §§ 1406.1-1406.21 ("Mine Subsidence Act"), 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 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 regulation ("rules and regulations") promulgated thereunder.

B. Black Oak Development, Inc. ("Black Oak") is a Pennsylvania corporation with an address of 163 County Air Road, Woodland, Pennsylvania 16881. William Lamkie was the sole officer of Black Oak. Mr. Lamkie died on March 19, 2012. Black Oak filed bankruptcy in the mid-1990's and ceased operation in the same time period. The executor of Mr. Lamkie's estate has informed the Department that Black Oak had no plan of succession and is insolvent.

C. Black Oak conducted surface coal mining pursuant to the Surface Mining Permit, SMP No. 32900103 (issued July 23, 1990) in Burnside and Banks Townships, Clearfield and Indiana Counties, known as the Neely Permit. Except for some minor work, the mine was abandoned when Black Oak ceased operations.

D. Rockwood is a Pennsylvania corporation whose business includes, among other things, the issuance of reclamation surety bonds on behalf of surface coal mine operators, as principal, in favor of the Commonwealth, as obligee. Rockwood has a business address of 654 Main Street, Rockwood, Pennsylvania 15557-1029.

E. Rockwood posted the following surety bonds for SMP 32900103:

<u>Bond CD No.</u>	<u>Amount</u>
ISM1086	\$ 40,200
ISM1090	\$ 12,000
ISM1108	\$ 4,000
ISM1131	\$ 35,800
ISM1159	\$ 21,400
ISM1219	\$ 27,700
ISM1229	\$ 4,800
ISM1278	<u>\$ 7,000</u>
TOTAL	\$152,900

F. The surety bonds may be forfeited for any unabated violation of the law and regulations including, but not limited to, the Surface Mining Act, the Clean Streams Law, the Coal Refuse Disposal Act, and the regulations promulgated pursuant to those statutes.

G. The Neely mine has been the subject of numerous unabated violations including but not limited to severe erosion causing rills and gullies due to inadequate grading and pollutional discharges.

H. Special condition 6 of the SMP required Black Oak to treat the mine drainage seep known as MD-8A to meet effluent limits. After the permit was issued, Black Oak constructed treatment ponds TP-2 (Outfall 002) in order to treat MD-8A but treatment was abandoned in the mid 1990's. The MD-8A discharge still flows and shows iron levels in excess of applicable effluent limits. The treatment ponds are in disrepair and require rehabilitation to perform properly. In addition, two alkaline iron seeps have developed along State Road S.R. 3024 outside of the permit boundaries. The Department has determined that the two seeps are hydrologically connected to the mining area. These two mine seeps have iron levels in excess of permit effluent limit and are a violation of applicable law.

I. Due to the outstanding unabated violations and the inability of Black Oak to correct them, the surety bonds are subject to forfeiture pursuant to 25 Pa. Code § 86.180. Rockwood has consensually agreed to the forfeiture of the surety bonds listed in Paragraph E and both Black Oak, and the executor of Mr. Lamkie's estate have been informed by letter of this consensual forfeiture.

J. Pursuant to Section 1396.4(h) of the Surface Mining Act, 52 P.S. § 1396.4(h), Rockwood has elected to coordinate reclamation or other activities as described in Paragraphs 3-5 of this Consent Order and Agreement. On behalf of Rockwood, MineTech Engineers Inc. has prepared a Reclamation Plan (attached as Exhibit A) to abate the erosion violations on the Neely mine, rehabilitate the treatment system for the MD-8A seep, repair surface drainage collection

A

channels, conduct select grading and restoration activities on adjacent property, waterway and wetland enhancement in the waters of the Commonwealth.

K. The Neely Permit and the area of the two roadside seeps are situated on property owned by several persons including: Richard Scott Young and Michelle Glenn Young; Michael P. Lamkie; Albert A. Lamkie and Marion Lamkie; Albert J. Lamkie and Nancy Lamkie; Carole Decker; N. Joan Archard; and Marlene Lowmaster . Rockwood has obtained properly executed Consent to Right of Entry forms from the landowners granting access to the work areas including the treatment systems, drainage channels and wetland areas within and outside of the permit area. Copies of the executed Consent to Right of Entry forms are attached as Exhibit B.

B

L. The activities described in the Reclamation Plan include construction and maintenance of an encroachment or water obstruction or an abandoned mining site as described in 25 Pa. Code § 105.12(a)(15).

M. The discharges described in paragraph H and for which the treatment system described in paragraph J is being rehabilitated will require treatment in perpetuity. A long-term treatment trust will be developed for maintaining the treatment system ("Trust").

N. The Department has calculated a present value Trust amount which would cover the annual operation and maintenance expenses at the treatment sites and cover the recapitalization costs over a 75 year period. The Trust amount was calculated using accepted standards that the Department utilizes at other mine permits that require perpetual treatment.

O. The Department and Rockwood agree that conducting the work described in the Reclamation Plan for the Neely Permit and payment of funds as calculated by the Department

into a trust constitute an efficient, expeditious method of addressing outstanding regulatory compliance issues.

P. The Department and Rockwood desire to resolve the foregoing matters without resorting to litigation.

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Rockwood as follows:

1. Authority.

This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to 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 Mine Subsidence Act, 52 P.S. § 1409.9, Section 5 of the Clean Streams Law, 35 P.S. § 691.5; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of Rockwood to comply with any term or condition of this Agreement shall subject Rockwood to all penalties and remedies provided by these statutes for failing to comply with an order of the Department.

2. Findings.

a. Rockwood and the Department agree that the findings in Paragraphs A through P are true and correct and, in any matter or proceeding involving Rockwood and the Department, they shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the finds in this Consent Order and Agreement in any matter or proceeding.

3. Treatment Trust.

Within ten (10) days following notice by the Department in a final inspection report that the Reclamation Plan has been completed and the bond is eligible for waiver of collection, Rockwood shall deposit \$60,547.00 into the Trust as directed by the Department.

Trust
60,547

4. Reclamation Schedule.

No later than November 15, 2013, Rockwood shall complete reclamation activities at the site as set forth in the Reclamation Plan.

11-15-13

5. Waiver of Permit Requirements.

Pursuant to 32 P.S. § 693.7 and its implementing regulation at 25 Pa. Code § 105.12(a)(15), for the activities conducted under the Reclamation Plan, permit requirements for conducting activities in the waters of the Commonwealth are waived, subject to the conditions described in the letter dated July 3, 2013, attached hereto as Exhibit C, from the Department to Rockwood and incorporated into the Reclamation Plan by reference.

C
Letter

6. Waiver of Bond Collection.

Prior to demobilization by Rockwood's contractor, and with at least 5 working days' notice from Rockwood, the Department will conduct an inspection to determine whether the work is consistent with the Reclamation Plan. If not, the inspector will advise the contractor regarding any deficiencies and shall re-inspect upon completion. The Department will waive collection of the corporate surety bonds within fifteen (15) working days of completion of the Reclamation Plan as documented in a final inspection report.

w/5 day
insp.

w/15 day

7. Remedies.

a. In the event Rockwood fails to comply with any provision of this Consent Order and Agreement, the Department may pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

8. Reservation of Rights.

The Department reserves the right to require additional measures to achieve compliance with applicable law. Rockwood reserves the right to challenge any action which the Department may take to require those measures.

9. Liability of Rockwood.

Rockwood shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by their respective officer's agents, employees, or contractors. Rockwood shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by their respective successors and assigns.

10. Limitation of Liability.

Rockwood's performance or reclamation obligations under this Consent Order and Agreement shall be in Rockwood's capacity as surety. Rockwood shall not, by virtue of this Consent Order and Agreement or any of its contractor's activities hereunder: (a) be deemed an

owner, occupier, permittee or operator of any surface mine site or mine drainage treatment system under the Clean Streams Law or the SMCRA or any regulations promulgated hereunder; or (b) be deemed to have assumed any liabilities or obligations of Black Oak, except as expressly set forth in this Consent Order and Agreement. This Consent Order and Agreement is not intended to create rights in any party other than Rockwood and its contractors.

11. Decisions Under the Consent Order and Agreement.

With the exception of any determinations by the Department under Paragraph 6 or 17 of this Consent Order and Agreement (i.e., waivers of collection of the Rockwood Bonds), any decision or determination made by the Department regarding the terms and obligations of this Consent Order and Agreement shall not be deemed to be a final action of the Department and shall not be appealable to the Environmental Hearing Board or to any court. Any objection which Rockwood may have to the decision will be preserved until the Department enforces this Consent Order and Agreement. In the event of any appeal of a determination by the Department under Paragraph 6 or 17 of this Consent Order and Agreement, the Department agrees not to take action to collect the Rockwood Bonds unless and until the appeal is resolved in favor of the Department.

12. Force Majeure.

a. In the event that Rockwood is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, weather or other circumstances beyond Rockwood's control and which Rockwood, by the exercise of all reasonable diligence is unable to prevent, then Rockwood may petition the Department for an extension of time. An increase in the cost of

performing the obligation set forth in this Consent Order and Agreement shall not constitute circumstances beyond Rockwood's control.

b. Rockwood shall only be entitled to the benefits of this paragraph if it notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, the expected duration of the delay, and the efforts which have been made and are being made by Rockwood to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten working days of its submission. Rockwood's failure to comply with the requirements of this paragraph specifically and in a timely fashion shall render this paragraph null and of no effect as to the particular incident involved.

c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by Rockwood and other information available to the Department. In any subsequent litigation, Rockwood shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

13. Correspondence with Department.

All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

District Mining Manager
Cambria District Office
286 Industrial Park
Ebensburg, PA 15931
Phone: 814-472-1900
Fax: 814-471-1898

14. Correspondence with Rockwood.

All correspondence with Rockwood concerning this Consent Order and Agreement shall be addressed to:

Randall Livingston
Rockwood Casualty Insurance Company
654 Main Street
Rockwood, PA 15557
Phone: 814-926-5275
Fax: 814-926-4681

Rockwood shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

15. Severability.

The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

16. Entire Agreement.

This Consent Order and Agreement 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.

17. Attorney Fees.

The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

18. Modifications.

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

19. Titles.

A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

20. Counterparts.

This Consent Order and Agreement or amendments thereto may be executed in multiple counterparts, each of which shall be deemed an original agreement, and all of which shall constitute one agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Rockwood certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Rockwood; that Rockwood consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Rockwood hereby knowingly waives its rights to appeal this Consent Order and Agreement and 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 Rockwood's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR ROCKWOOD:

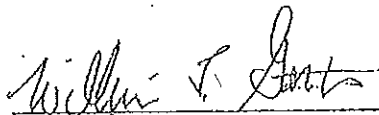


Kurt Tipton
Senior Vice President, Rockwood

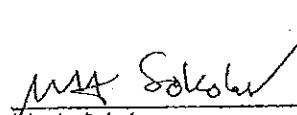
FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



Daniel Sammarco, P.E.
Cambria District Mining Manager



William T. Gorton III
Attorney for Rockwood



Martin Sokolow
Assistant Counsel

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FOR ROCKWOOD:

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

Kurt Tipton
Senior Vice President, Rockwood

Daniel Sammarco, P.E.
Cambria District Mining Manager

William T. Gorton III
Attorney for Rockwood

Martin Sokolow
Assistant Counsel

Exhibit A

ROCKWOOD CASUALTY INSURANCE COMPANY
SURETY RECLAMATION PLAN

Exhibit B

CONSENT TO RIGHT OF ENTRY FORMS

Exhibit C

WAIVER OF PERMITS LETTER

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