

BEFORE THE RECLAMATION COMMISSION

SAGINAW MINING CORPORATION,

Appellant,

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee.

Case No. RC-09-013

Review of Chief's Order 7339;
Permit D-328 (Filicky water supply)

ORDER CLOSING
APPEAL

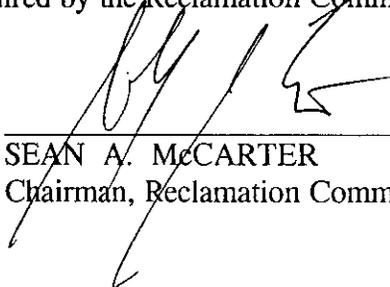
Appearances: April R. Bott, Sarah L. Herbert, Counsel for Appellant Saginaw Mining Corporation; Molly Corey, Mark G. Bonaventura, Assistant Attorneys General, Counsel for Appellee Division of Mineral Resources Management.

FINDINGS, CONCLUSIONS

On December 29, 2009, Saginaw Mining Company ["Saginaw"] filed with the Reclamation Commission a notice of appeal from Chief's Order 7339. This Order alleged that operations at Saginaw's permit D-328 site resulted in the interruption and diminution of domestic and agricultural water supplies owned by Ms. Nikki Filicky. Chief's Order 7339 required Saginaw to replace the affected water supplies. This cause was assigned case number RC-09-013.

On July 21, 2010, the Appellant and the Appellee jointly filed a Consent Agreement, setting forth certain actions that the parties will undertake to fully resolve this matter. The Agreement anticipates that the Filicky water supplies will be replaced by Saginaw. The Agreement further anticipates that, upon successful replacement of the affected water supplies, Chief's Order 7339 will be terminated. A copy of the Consent Agreement is attached hereto. The Reclamation Commission has reviewed the Consent Agreement and **FINDS** that the Agreement effectively resolves all issues raised by this appeal. Pursuant to O.A.C. §1513-3-17, case number RC-09-013 is hereby **CLOSED** without further action required by the Reclamation Commission.

7/21/10
DATE


SEAN A. McCARTER
Chairman, Reclamation Commission

Saginaw Mining Company
RC-09-013

DISTRIBUTION:

April Bott, Sarah Herbert, Via Fax [614-462-1914] & Regular Mail
Molly Corey, Mark G. Bonaventura, Via Fax [614-268-8871] & Inter-Office Mail
Nikki Filicky, Via Regular Mail

BEFORE THE RECLAMATION COMMISSION
STATE OF OHIO

RECEIVED

JUL 21 2010

SAGINAW MINING COMPANY,

Case No. RC 09-013

RECLAMATION
COMMISSION

Appellant,

v.

Appeal of Order
by the Chief No. 7339

DIVISION OF MINERAL
RESOURCES MANAGEMENT,

Appellee.

CONSENT AGREEMENT

This Consent Agreement is entered into by and between the State of Ohio, Department of Natural Resources, Division of Mineral Resources Management ("DMRM"), and Saginaw Mining Company ("Saginaw") (hereinafter collectively referred to as the "Parties"). DMRM and Saginaw stipulate to the following facts and settlement conditions:

FACTS:

- A. DMRM is the agency with the duty and authority to administer Ohio's mining laws and regulations, Ohio Revised Code Chapter 1513 and Ohio Administrative Code Section 1501:13 *et seq.*
- B. Saginaw or its predecessor was issued Permit No. D-0328 ("Permit") by DMRM authorizing coal mining operations in association with at BT-285 (Saginaw Mine), an underground mine located in Belmont County, State of Ohio ("Mine Site"), subject to the provisions of Ohio Revised Code Chapter 1513 and Ohio Administrative Code Section 1501:13 *et seq.*, and conditions established in the permit.

- C. Saginaw ceased mining at the Mine Site in 1992, and DMRM has already granted bond release on most of the surface areas of the Mine Site.
- D. On November 23, 2009, DMRM issued Order by the Chief No. 7339 (“Order”) to Saginaw which asserted that Saginaw’s operations at the Mine Site resulted in the interruption and diminution of domestic and agricultural water supplies, Water Wells 1 and 2, and Developed Springs 2 and 16, at a property located at 64697 Pearson Road, St. Clairsville, Ohio 43950 (“Filicky Property”). (“Order by the Chief No. 7339” Attached as Exhibit 1.)
- E. The Order required Saginaw to replace the water supply/provide a permanent water supply at the Filicky Property.
- F. Saginaw has voluntarily provided water to the Filicky Property since November 2008 by providing the Filicky Property with water buffalos.
- G. On December 29, 2010, Saginaw filed a Notice of Appeal from the Order to the Reclamation Commission and that appeal has been assigned Case No. 09-013.

SETTLEMENT CONDITIONS:

Without hearing, admission or determination of any issue of fact or law, and upon consent of the Parties hereto, the Parties agree as follows:

1. Saginaw agrees to resolve DMRM’s Order to provide a permanent water supply at the Filicky Property by providing Ms. Filicky with a permanent replacement water supply for the domestic and agricultural water supplied historically by Water Wells 1 and 2, and by Developed Springs 2 and 16, that satisfies the requirements of R.C. 1513.162 and Ohio Adm. Code 1501:13-9-04 and Paragraph 2 of this Consent Agreement.
2. The permanent replacement water supply shall be installed subject to the following terms:

(a) The Filicky Property will receive a permanent replacement water supply no later than October 1, 2010. If conditions beyond the reasonable control of Saginaw cause delay making this deadline unachievable and Saginaw determines that it will not be able to meet this deadline, Saginaw will immediately provide written notice to DMRM explaining such reasons for the delay. Extensions may be granted for good cause as determined by the Chief of the DMRM, and will not be unreasonably withheld.

(b) Saginaw will report its efforts to find and install a permanent replacement supply for the water previously provided by Water Wells 1 and 2 and Developed Springs 2 and 16 to DMRM, Cheryl Socotch or other designee identified by DMRM, on 30 day intervals beginning 30 days after the filing of this Consent Agreement with the Reclamation Commission.

(c) Saginaw will contact both Cheryl Socotch and Nikki Filicky prior to commencement of any on-site water replacement and provide a proposed schedule to both DMRM and Filicky.

(d) DMRM will use its best efforts to support Saginaw's ability to gain legal access to the Filicky Property for the purpose of complying with this Consent Agreement.

(e) If Saginaw chooses to replace the water supply at the Filicky Property by drilling a new well or wells, or rehabilitating existing Water Well 1 and Water Well 2, Saginaw will submit drilling plans, including location, depth, and diameter of borehole, to the DMRM fifteen (15) days prior to start of installation. Saginaw will comply with all applicable state and local regulations, and submit any permit approvals obtained from other agencies to the DMRM prior to drilling. Any well(s) drilled for residential purposes must meet all applicable state regulations for a private water system.

(f) If Saginaw chooses to replace the water supply at the Filicky Property by connecting the Filicky Property to the municipal water supply, Saginaw will provide notice to DMRM fifteen (15) days prior to start of installation. Saginaw will be responsible for the cost of installation, payment of initial tap-in fees, and the installation of a water metering device if required by the public water authority. Saginaw may receive local economic development grants, if eligible. Saginaw will not be responsible for operation and maintenance costs of the municipal water supply under this Consent Agreement.

(g) Saginaw will continue to provide water to the Filicky Property until the permanent water supply replacement has been completed.

3. Saginaw expressly denies any liability related to any water loss, including any water loss at the Filicky Property, and any liability related to subsidence. By entering into this Consent Agreement, Saginaw does not implicitly or expressly admit any such liability and maintains all rights and defenses afforded by law.
4. The paragraphs of this Consent 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.
5. This Consent Agreement shall constitute the entire agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or intent of any provisions herein in any litigation or any other proceeding.
6. No changes, additions, modifications or amendments to this Consent Agreement shall be effective unless they are set out in writing and signed by the Parties hereto.

7. This agreement or any amendment 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.
8. This Consent Agreement shall constitute for satisfaction of Saginaw's liability to DMRM for those claims contained in the Order by the Chief 7339. Once the terms of paragraph 1 are completed by Saginaw, Saginaw will notify the DMRM, and the DMRM will verify compliance and, terminate Chief's Order No. 7339. Upon termination of Chief's Order No. 7339, this Consent Agreement will extinguish.

IN WITNESS WHEREOF, the Parties hereto have caused this Consent Agreement to be executed by their duly authorized representatives.

July 21, 2010
DATE:

K. J. Whyte
Kevin J. Whyte
Vice President and General Counsel
Saginaw Mining Company
11 Stanwix Street
Pittsburgh, PA 15222

APPROVED AS TO FORM:

DATE:

April R. Bott, Esq.
Bott Law Group LLC
6037 Frantz Road, Suite 105
Dublin, Ohio 43017
Attorney for Saginaw Mining

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11 Stanwix Street
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APPROVED AS TO FORM:

July 21, 2010
DATE:

April R. Bott
April R. Bott, Esq.
Bott Law Group LLC
6037 Frantz Road, Suite 105
Dublin, Ohio 43017
Attorney for Saginaw Mining

7-21-10

DATE:



John Husted, Chief
Ohio Department of Natural Resources
Division of Mineral Resources Management
2045 Morse Rd., Building H-2
Columbus, OH 43229

APPROVED AS TO FORM:

July 21, 2010

DATE:



Molly S. Corey
Assistant Attorney General
Environmental Enforcement Section
ODNR
2045 Morse Rd., Bldg. D - 2
Columbus, Ohio 43229-6605
(614) 265-6669
Attorney for DMRM



Ohio Department of Natural Resources

TED STRICKLAND, GOVERNOR

SEAN D. LOGAN, DIRECTOR

John F. Husted, Chief
Division of Mineral Resources Management
2045 Morse Road, Building H-3
Columbus, OH 43229-6693
Phone: (614) 265-6633 Fax: (614) 265-7999

ORDER BY THE CHIEF

**TO: Saginaw Mining Company
C/O Carmuse North American
Black River Operations
9043 Highway 154
Butler, KY 41006**

ORDER NUMBER: 7339

DATE: November 23, 2009

PERMIT NUMBER: D-0328

SUBJECT: DIMINUTION OF DOMESTIC/AGRICULTURAL WATER SUPPLIES

FINDINGS OF FACT

The Chief of the Division of Mineral Resources Management, having given due consideration to the matter contained herein, make the following Findings of Fact:

Investigation revealed that the Carmuse North America, (formerly Saginaw Mining) conducted room and pillar underground mining operations in close proximity to the residence and beneath several developed springs on the Nikki Filicky property at 64697 Pearson Road, St. Clairsville, Ohio 43950. This mining subsequently resulted in the interruption and diminution of domestic and agricultural water supplies (WW-1, WW-2, DS-2, & DS-16) that supply water to the Filicky residence, and property. The approved mining plan for permit D-328 indicates that Carmuse, would deal with water supply problems on a case-by-case basis if problems were to occur, and that public water lines were available for use as alternate supplies.

Order by the Chief continued on Page 2



Permit Number: D-0328

Order Number: 7339

November 23, 2009

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CONCLUSIONS OF LAW

The Chief of the Division of Mineral Resources Management, based upon the foregoing Findings of Fact, makes the following Conclusions of Law:

Section 1501:13-9-04 (P) (1) (A) of the Ohio Administrative Code, and Section 1513.162 of the Ohio Revised Code Require:

The operator of coal mining operations shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agriculture, industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the coal mining operations.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the following Order is hereby issued:

IT IS HEREBY ORDERED THAT the operator shall continue to supply temporary water to the Nikki Filicky residence, and property sufficient for their daily needs until a permanent water supply is provided and accepted by DMRM.

IT IS FURTHER ORDERED THAT within thirty days (30) days of actual or constructive receipt of this Order, Carmuse shall provide Nikki Filicky with permanent replacement water supply(s).

IT IS FURTHER ORDERED THAT in providing the permanent water supply replacement the operator shall:

Develop an alternative permanent water supply(s) of comparable quality and quantity to that which existed prior to mining as required by the approved mining and reclamation plan, the Ohio Revised Code, the Ohio Administrative Code, and with direction as provided by Procedure Directive "Technical 06-1". The replacement supplies shall be designed and developed in conjunction with the property owner and the Division to meet the needs of the property owner for quality, quantity, and location.

Permit Number: D-0328

Order Number: 7339

November 23, 2009

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INSTRUCTIONS FOR FILING YOUR NOTICE OF APPEAL

To initiate an appeal to the Reclamation Commission, you must have an interest, which is, or may be, adversely affected by a decision of the Division Chief. You may appeal the Chief's decision by filing a notice of appeal with the reclamation commission. At a minimum, your notice of appeal to the Reclamation Commission must be filed within 30 days of your receipt of the Chief's decision; include a statement of the grounds upon which your appeal is based; and have attached to it a copy of the Chief's decision being appealed. Your notice of appeal may include a request that the Board members view the site in question. Temporary Relief may also be requested; this will allow for an expedited hearing in some cases. Your notice of appeal must be directed to the Reclamation Commission at the following address:

Reclamation Commission
2045 Morse Road, Bldg. F-2
Columbus Ohio 43229

Also, a copy of your notice of appeal, including the attached copy of the Chief's decision, must be sent to the Division Chief at:

Chief, Division of Mineral Resources Management
2045 Morse Road, Bldg. H-3
Columbus, OH 43229-6605

**FAILURE TO COMPLY WITH ANY OF THESE REQUIREMENTS WILL
RESULT IN A DISMISSAL OF YOUR APPEAL WITHOUT A HEARING**

Permit Number: D-0328

Order Number: 7339

November 23, 2009

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11.23.09
Date


John F. Husted, Chief
Division of Mineral Resources Management

CERTIFIED MAIL #: 9171082133393630691322

DC/JFH/cs

cc: Lanny Erdos
Cheryl Socotch
Mike Kosek
OSM
Files