

# BEFORE THE RECLAMATION COMMISSION

SIDWELL MATERIALS, INC.,	:	Case No. RC-13-012
	:	
Appellant,	:	Review of Chief's Order 7355 - Modified;
	:	Permit D-2261 (McGary Property)
-vs-	:	
	:	
DIVISION OF MINERAL RESOURCES	:	<b><u>ORDER OF CHAIRMAN</u></b>
MANAGEMENT,	:	<b><u>GRANTING TEMPORARY</u></b>
	:	<b><u>RELIEF FOR A LIMITED</u></b>
Appellee.	:	<b><u>PERIOD</u></b>

Appearances: Scott Eickelberger, Counsel for Appellant Sidwell Materials, Inc.; Brian Ball, Kristina Tonn, Assistant Attorneys General, Counsel for Appellee Division of Mineral Resources Management.

On December 16, 2013, Appellant Sidwell Materials, Inc. ["Sidwell"] filed with the Reclamation Commission a notice of appeal from modified Chief's Order 7355. This Chief's Order alleged that mining operations, conducted by Sidwell pursuant to coal mining and reclamation permit D-2261, had proximately caused the diminution of an agricultural or recreational water supply located on the Brian McGary property. Accompanying Sidwell's notice of appeal was a Request for Temporary Relief.

A hearing on Temporary Relief was conducted by the Chairman of the Reclamation Commission on January 8, 2014. Prior to the Temporary Relief hearing, the Commission conducted a site view of features relevant to this appeal. Representatives of both parties participated in the site view and presented arguments at the Temporary Relief hearing.

Modified Chief's Order 7355 requires Sidwell to take various actions, including:

... within 45 days of actual or constructive receipt of this Order  
... submit a written plan detailing the measures that will be taken  
to replace the agricultural/recreational water supplies located on  
the McGary property ... . The plan shall include a detailed time  
schedule for the implementation of each phase of the water  
supply replacement plan.

In enforcing Ohio's mining and reclamation laws, the Chief may establish compliance actions and compliance deadlines. Such actions and deadlines must be reasonable, and the Chief has an obligation to not be arbitrary and capricious in ordering remedial measures or in setting deadlines for the accomplishment of these measures. *See O.R.C. §1513.02(D)(4)*. Compliance deadlines must take into account the type of action required of the operator and the site specific conditions of the area involved. *See Sands Mining vs. Division, RBR -4-91-040 (February 20, 1992)*.

The Chairman **FINDS** that the granting of Temporary Relief in the immediate case will not adversely affect public health or safety or cause significant imminent environmental harm to land, air or water resources. The Chairman further **FINDS** that there is a substantial likelihood that Appellant Sidwell could establish at hearing that the compliance deadline for the submission of a detailed water replacement plan for the McGary water supplies, as set forth in modified Chief's Order 7355, is arbitrary or capricious.

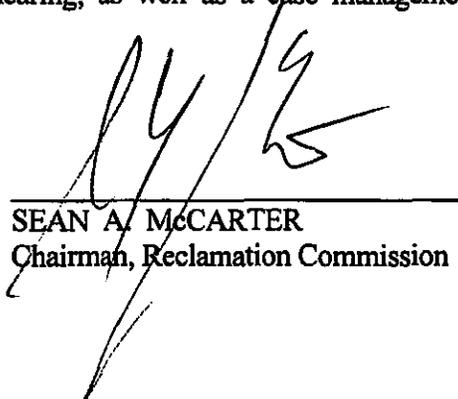
## **ORDER**

**WHEREFORE**, the Chairman of the Reclamation Commission hereby **GRANTS** Appellant's Request for Temporary Relief from the mandate of modified Chief's Order 7355, requiring Sidwell to submit a written water replacement plan for the McGary water supplies within 45 dates of Sidwell's receipt of modified Chief's Order 7355. Temporary Relief from this aspect of modified Chief's Order 7355 shall commence on January 8, 2014 and shall continue until **June 4, 2014**.

Appellant Sidwell shall not be relieved of its obligation to provide a temporary agricultural source of water to the livestock located on the McGary property, and Sidwell must continue to provide water to the McGary livestock on a daily basis.

A merit hearing in this matter will be scheduled for May 7 & 8, 2014. The parties will receive separate notice of the scheduling of this hearing, as well as a case management schedule for this appeal.

1/14/14  
DATE ISSUED

  
SEAN A. McCARTER  
Chairman, Reclamation Commission

**DISTRIBUTION:**

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