

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH DIVISION

<hr/> CITIZENS COAL COUNCIL, Plaintiff, v. MATT CANESTRALE CONTRACTING, INC., Defendant	§ § § § § § § § § §	CIVIL ACTION NO. 2:13-CV-896
--	--	------------------------------

ORDER ON SECOND INTERIM AGREEMENT OF THE PARTIES

* * * * *

This matter came before the Court during the in-person conference of the Parties and non-party FirstEnergy Generation, LLC on June 7, 2016 and again during a telephonic status conference on June 20, 2016. Upon hearing the presentations of counsel and the terms of the proposed Second Interim Agreement of the Parties, which is attached as Exhibit 1 to this Order, the Court, being sufficiently advised, HEREBY ORDERS:

1. The Second Interim Agreement of the Parties is incorporated into this Order and thus binds the Parties.
2. This case will remain administratively closed until further Order of the Court.

SO ORDERED, this 24th day of June, 2016.



LISA PUPO LENIHAN, MAGISTRATE JUDGE

Exhibit 1

SECOND INTERIM AGREEMENT OF THE PARTIES

THIS SECOND INTERIM AGREEMENT (the "Agreement") is made and entered into by Citizens Coal Council ("CCC") and Matt Canestrone Contracting, Inc. ("MCC"), (individually a "Party" and collectively the "Parties") this 23rd day of June, 2016 (the "Effective Date").

WHEREAS, on or about June 26, 2013, CCC commenced the action in U.S. District Court for the Western District of Pennsylvania and styled *Citizens Coal Council v. Matt Canestrone Contracting, Inc.*, Case No. 2:13-cv-896 ("Lawsuit") against MCC asserting claims arising out of MCC's ownership and operation of the LaBelle Coal Refuse Disposal Area ("CRDA") located in LaBelle, PA.

WHEREAS, MCC has denied the allegations contained in the Lawsuit.

WHEREAS, in order to resolve any disputes without protracted litigation between the Parties, CCC and MCC have participated in negotiations to settle the Lawsuit.

WHEREAS, upon the full cooperation and advocacy by all Parties for such a continuation, on June 20, 2016, Magistrate Judge Lenihan agreed to continue the Lawsuit as administratively closed for a one (1) year period based on representations by the Parties that they had reached this Agreement and that they would continue to engage in settlement negotiations.

NOW, THEREFORE, in consideration of these premises and intending to be legally bound, the Parties agree as follows:

1. MCC agrees to not accept delivery of any additional coal combustion byproducts ("CCBs") at the CRDA during the term of this Agreement.
2. MCC agrees to amend its reclamation plan to limit the total amount of CCB material that may be utilized to complete the reclamation plan to 5 million tons. Further MCC agrees to limit its CCB material trucking, placement and grading activity operating hours to daylight hours only.
3.
 - a. The Lawsuit shall be stayed in its entirety during the term of this Agreement. Among other things, neither Party shall engage in discovery (whether direct or third party), joinder, motion practice, or any other pre-trial practice.
 - b. CCC commits that during the term of this Agreement it shall not commence a lawsuit related to and/or as described in the letter dated July 9, 2014 that CCC sent through counsel to FirstEnergy Generation, LLC and other related entities alleging violations of the Resource Conservation and Recovery Act at the CRDA.

4. MCC, as it sees fit, may continue to place final approved cover material over areas at the CRDA that have reached final grade.

5. MCC will maintain dust suppression on exposed CCBs with tackifier or soil cement in accord with appropriate professional standards as necessary.

6. Groundwater monitoring point GW-6, is a low flow pre-existing seep discharge emanating from a previously abandoned coal refuse pile subject to bond forfeiture, predating MCC's operation at the CRDA. MCC shall seek appropriate Department approvals to either: 1) inject the seep to the underground mine pool through a drilled bore hole; or 2) to construct a passive water treatment system in the receiving unnamed intermittent drainage channel. Following consultation with the Department, MCC will submit appropriate technical and regulatory documentation for approval. (Either technique referred to as "GW-6 Facility.") Upon approval by the Department, MCC shall construct and operate the GW-6 Facility in accord with regulatory requirements.

- a. MCC shall submit required regulatory approval documentation for the GW-6 Facility to the Department within thirty (30) days of the Effective Date of this Agreement.
- b. If a passive surface water treatment facility is selected, it shall achieve the following effluent limitations on a consistent basis:

<u>Parameter</u>	<u>30-Day Average</u>	<u>Daily Maximum</u>	<u>Instantaneous Maximum</u>
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended Solids	35 mg/l	70 mg/l	90 mg/l
pH	greater than 6.0; less than 9.0		
Alkalinity	greater than acidity		

- c. MCC shall commence construction of the GW-6 Facility within thirty (30) days of receiving all necessary final, unappealable permits and/or authorizations, and shall use commercially reasonable measures to complete the construction in a prompt fashion. In any case, barring a circumstance beyond MCC's reasonable control, MCC shall complete construction within twelve (12) months of receiving all necessary final, unappealable permits and/or authorizations.

- d. MCC shall at all times maintain in good working order and properly operate the GW-6 Facility (and related appurtenances) for collection and treatment. Proper operation and maintenance includes but is not limited to effective performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training, and adequate laboratory and processing controls including appropriate quality assurance procedures.
- e. CCC agrees that the GW-6 Facility is appropriate and it agrees on behalf of itself and its members that they will not advocate for more stringent requirements for that Facility in any Department or other governmental permit or authorization. It also agrees on behalf of itself and its members that they will not dispute the application of the provisions or concepts of 25 Pa. Code § 87.207 to GW-6.

7. Within thirty (30) days of the Effective Date of this Agreement, MCC shall pay each participating CCC household listed on Exhibit A to the first Interim Agreement (a total of thirty-nine (39) households with a limit of one (1) payment per household except that Sherri Sukal shall substitute for Rudy Sukal) a one-time sum of Six Hundred Forty Dollars and No Cents (\$640.00) as reimbursement for home cleaning and repair.

8. Within fifteen (15) days of the Effective Date of this Agreement, MCC shall pay to Public Justice P.C. (counsel for CCC) the amount of Thirty Seven Thousand Five Hundred Dollars and No Cents (\$37,500.00) and within thirty (30) days of the Effective Date of this Agreement an additional Thirty Seven Thousand Five Hundred Dollars and No Cents (\$37,500.00) for a total of Seventy Five Thousand Dollars and No Cents (\$75,000.00) for costs incurred in the Lawsuit up to April 1, 2015. Such payment shall be in full satisfaction of any claim by CCC and its counsel for costs (but not attorneys' fees) incurred before April 1, 2015 associated with this matter and shall be credited against total case costs (but not attorneys' fees) that may be awarded through judgment or agreed upon settlement of the Lawsuit.

9. Within thirty (30) days of the Effective Date of this Agreement, MCC shall pay to CCC the amount of Five Thousand Dollars (\$5,000) for CCC to apply to a beneficial use related to the CRDA as CCC may see fit.

10. The Agreement and the conduct contemplated shall not be admissible as evidence to prove or disprove any disputed claim. Except as expressly set forth herein, the Parties and the CCC members listed in Exhibit A to the first Interim Agreement, including Sherri Sukal, each individually reserve any and all rights, claims, and/or defenses that they may have under law or equity.

11. The Parties agree that disputes under this Agreement may be adjudicated by the Court, and the Parties each individually consent to the jurisdiction of the Court for those purposes.

12. This Agreement has been freely negotiated by all Parties and in the event there is any controversy, dispute, or claim involving the meaning, interpretation, validity, or enforceability of this Agreement or any of its terms or conditions, there shall be no inference,

presumption, or conclusion drawn against a Party by virtue of such Party having drafted this Agreement or any portion hereof.

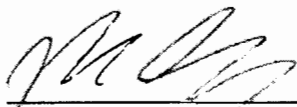
13. This Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all Parties signing the same page or the same documents, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents.

14. Subject to approval by the Court, this Agreement may be extended and/or modified by written agreement of the Parties.

15. Unless extended, this Agreement shall terminate on June 20, 2017. However, Provision 2 shall remain binding after the remainder of this agreement terminates unless superseded by a subsequent written agreement of the parties or an Order of the Court, and Provision 3.a may be modified by the Court upon Motion of MCC.

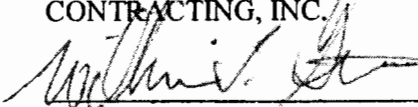
16. If either party violates any provision of this Agreement, the parties shall have the right to resume the litigation prior to the termination date in paragraph 15 above.

FOR CITIZENS COAL COUNCIL



Patton Dycus, Esq.
Counsel to Citizens Coal Council

FOR MATT CANESTRALE
CONTRACTING, INC.



William T. Gorton III, Esq.
Counsel to Matt Canestrale Contracting, Inc.