OHIO E.P.A.
SEP 10 2014

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Rosebud Mining Company 301 Market Street Kittanning, PA 16201	:	Director's Final Findings and Orders
Respondent	:	

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: [signature] Date: 9-10-14

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Rosebud Mining Company ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in the composition of Respondent shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapters 6111 and 3745 and the rules promulgated thereunder.

IV. FINDINGS

The Director has made the following findings of fact, not the Respondent. By consenting to the entry of these Orders, Respondent does not admit to the findings of fact set forth below, nor does Respondent admit to any liability associated with the findings of fact. The Director of the Ohio EPA has made the following findings:

1. Ohio EPA and the U.S. Army Corps of Engineers ("USACE") conducted a site visit on May 5, 2011 at the Rosebud Mining Company's McLain Area Site to verify stream and wetland

scoring that Respondent had submitted for a future coal mining project.

2. At the site visit, it was discovered that two primary headwater habitat streams had been impacted prior to any issuance of a 401 or 404 permit, because Respondent had culverted one stream and filled a portion of another in order to put in an access road for exploratory activities. Respondent impacted approximately 100 to 200 linear feet of stream. A cease and desist letter was sent to Respondent from the USACE on June 7, 2011.

3. Pursuant to ORC § 6111.04, no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid, unexpired permit.

4. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.

5. Respondent has not received a Section 401 water quality certification or other permit or authorization from Ohio EPA to perform the activities described.

6. In impacting the streams in question, as described above without a Section 401 water quality certification or other permit or authorization from Ohio EPA, Respondent has caused pollution by discharging or placing or causing to be placed other wastes into waters of the state. Respondent has violated ORC §§ 6111.04 and 6111.07.

7. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purpose of ORC Chapter 6111.

V. ORDERS

1. Respondent shall pay to the Ohio EPA the amount of ten thousand five hundred dollars ($10,500.00) in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 6111.09. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for eight thousand four hundred dollars ($8,400.00) within thirty (30) days of the effective date of these Orders. The official check and a cover letter identifying the Respondent shall be submitted to Carol Butler, or her successor at:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

A photocopy of the check shall be sent to Ohio EPA, Southeast District Office at the following address:

Ohio EPA, Southeast District Office
2195 Front Street
Logan, Ohio, 43138

and to:

Shane A. Farolino, Esq.
Roetzel & Andress
222 South Main Street
Suite 400
Akron, Ohio 44308-2098

2. In lieu of paying the remaining two thousand one hundred dollars ($2,100.00) of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a supplemental environmental project ("SEP") by making a contribution in the amount of $2,100.00 to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for that amount. The official check and a cover letter identifying the Respondent shall be submitted to Carol Butler, or her successor at:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

A copy of the check shall be sent to Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, OH 43216-1049

3. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 2, Respondent shall immediately pay to Ohio EPA the remaining $2,100.00 of civil penalty in accordance with the procedures in Order No. 1.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of the Respondent. For purposes of these Orders, a responsible official is as defined in Ohio Administrative Code Rule 3745-33-03.

VII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

VIII. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

IX. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Mark Mann

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

All documents required to be submitted by the Ohio EPA pursuant to these Orders shall be addressed to:

Rosebud Mining Company
95 N. Lisbon Street
Carrollton, Ohio 44615
Attn: Gary Alkire

and to:

Shane A. Farolino, Esq.
Roetzel & Andress
222 South Main Street
Suite 400
Akron, Ohio 44308-2098

or to such persons and addresses as may hereafter be specified in writing by Respondent.

X. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, defenses and causes of action, except as specifically waived in Section XI of these Orders.

XI. WAIVER

In order to resolve disputed claims, without admission of law, fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for

Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XII. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency

Craig W. Butler
Director

september 10, 2014
Date

IT IS SO AGREED:
Rosebud Mining Company

Signature

8/15/14
Date

James R Barker
Printed or Typed Name

Executive Vice President
Title