

Exhibit "A"

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Action Mining, Inc.	:	Mines & Permit Nos.
117 Shaw Mines Road	:	Summit No. 2 Mine, SMP 56663069
Meyersdale, PA 15552	:	Summit No. 3 Mine, SMP 56823066
	:	Elk Lick No. 1 Mine, SMP 56803015
	:	Alternative Financial Assurance Mechanism

POSTMINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 12th day of February, 2002, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Action Mining, Inc. ("Action Mining").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, as amended, 52 P.S. §§ 1396.1 *et seq.* ("Surface Mining Act"); the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, as amended, 35 P.S. §§ 1406.1 *et seq.* (Subsidence Act); the Coal Refuse Disposal Control Act, Act of September 24, 1968, P.L. 1040, as amended, 52 P.S. §§ 30.51 *et seq.* ("Coal Refuse Disposal Act"); the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.1 *et seq.* ("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 regulations promulgated thereunder.

B. Action Mining, Inc., 1117 Shaw Mines Road, Meyersdale, Pennsylvania 15522 is and has been engaged in the surface mining of bituminous coal.

C. WHEREAS, Action Mining operates three (3) surface coal mines in Somerset County, Pennsylvania, identified as the Summit No. 2 surface mine permit, Permit No. 56663069 ("Summit No. 2 Mine"), Summit No. 3 surface mine permit, Permit No. 56823066 ("Summit No. 3 Mine") located in Summit Township, Somerset County and the Elk Lick No. 1 surface mine permit, Permit No. 56803015 (Elk Lick No. 1 Mine"), located in Elk Lick and Summit Townships, Somerset County.

D. WHEREAS, there are three (3) historical discharges of acid mine drainage identified as MD24, MD25 and MD26 located on the Summit No. 2 mine and the Summit No. 3 mine. Those discharges predated the existence and operations of Settlor.

E. WHEREAS, on February 23, 1996, the Department issued an Administrative Order No. 963015 to the Settlor in which it asserted that the Settlor was liable, as a matter of Pennsylvania law and regulation, to collect and treat the said discharges known as MD24, MD25 and MD26. Action Mining timely perfected an administrative appeal from said Administrative Order to the Commonwealth of Pennsylvania Environmental Hearing Board in which it denied its liability under Pennsylvania law and applicable regulations to collect and treat said discharges. After litigation and negotiations, the Department and Settlor entered into a Consent Order and Settlement Agreement, dated June 30, 1999 ("June 30, 1999 Consent Order"), pursuant to which Action Mining did not admit liability for the discharges identified as MD24, MD25 and MD26, but in order to avoid litigation agreed to perpetually collect and treat those discharges and in which Settlor agreed to construct a treatment system to collect and treat the discharges identified as MD24, MD25 and MD26, and to create a trust fund or other financial

guarantee to ensure for the perpetual operation, maintenance and repair of such treatment facility. Subsequently, the Department advised Settlor that Settlor was obligated to collect and treat three (3) additional discharges that are commonly known as MD62, MD63 and MD64 and which are located on the Summit No. 2 Mine or the Summit No. 3 Mine Permit. Settlor denied any liability to collect or treat those discharges under applicable Pennsylvania law and regulations, following which the Department and Settlor negotiated for several years over Settlor's liability for said discharges, and during which period negotiations the Department and Settlor exchanged hydrologic, geologic and other technical information regarding Settlor's potential liability to collect and treat those discharges identified as MD62, MD63 and MD64. Ultimately, the Department threatened to issue an administrative order to Settlor to collect and treat the discharges identified as MD62, MD63 and MD64 and to require Settlor to construct a treatment system to treat said discharges and to establish a trust or other financial guarantee to ensure the perpetual operation, maintenance and repair of said treatment facility. After further negotiations, the Settlor accepted liability for the discharges identified as MD62, MD63 and MD64 and in the June 30, 1999 Consent Order, Settlor agreed to collect and treat those discharges, to construct a treatment facility for the collection and treatment of those discharges and to create a trust or financial guarantee to ensure the perpetual operation, maintenance and repair of a treatment facility for said discharges. This Trust is the trust that Settlor, in the June 30, 1999 Consent Order agreed to establish to ensure the perpetual operation, maintenance and repair of the treatment facility for the collection and treatment of the discharges commonly known as MD24, MD25, MD26, MD62, MD63 and MD64.

F. Action Mining is the permittee of the following three surface coal mines which are associated with post-mining discharge liability:

NAME	PERMIT NO.	TOWNSHIP	COUNTY
Summit No. 2	56663069	Elk Lick & Summit	Somerset
Summit No. 3	56823066	Elk Lick	Somerset
Elk Lick No. 1	56803015	Elk Lick	Somerset

G. The Summit No. 2 Mine is actively being mined. Due to the size of the pit and active mining operation and the Department's conversion of its bonding program from an alternate bonding system to a conventional bonding system, Action Mining must post additional bond to insure its surface reclamation obligations. There are Discharges associated with the Summit No. 2 Mine. All mining has been completed on the Summit No. 3 Mine which has been backfilled, regraded and revegetated and, but for the Discharges, \$128,315 of the \$140,495 of surety bond would be eligible for Stage I and Stage II release. All mining has been completed on the Elk Lick No. 1 Mine. The Elk Lick No. 1 Mine has been backfilled and regraded, but a portion of the Mine (approximately 50 acres) has not had topsoil applied and has not been seeded. Reclamation has been completed on the remainder of the Mine and, but for the Discharges, \$267,887.00 of the \$336,270.00 surety bond would be eligible for Stage I and Stage II release.

G. Action Mining constructed and operates a conventional treatment facility ("Treatment Facility") that collects and treats the discharges identified as MD24, MD25, MD26, MD62, MD63 and MD64 (collectively, the "Discharges"). The Discharges are located on the Summit No. 2 Mine and Summit No.3 Mine and some of the Discharges are hydrologically connected to the Elk Lick No. 1 Mine..

H. Action Mining agrees it has the legal responsibility to treat or abate the discharge(s) identified in Paragraph E. More specifically:

1. In 1996, the Department ordered Action to treat MD 23, MD 24 and MD 25. Action appealed but also complied by constructing the Treatment Facility.

2. In subsequent discussions with the Department, Action agreed that it was responsible for treating MD 62, MD 63 and MD 64. Action uses the Treatment Facility to treat MD 62, MD 63 and MD 64 as well as MD 23, MD 24 and MD 25.

I. The effluent limits applicable to the discharge(s) is 25 Pa. Code Section 87.102.

J. To address the post mining discharges of acid mine drainage Action installed the following treatment system. AMD seeps are collected in two separate areas. Seeps # 24, 25 & 26 are collected in the raw water pond and are pumped to one of the Aqua-Fix systems located in the treatment building using either one of, or both the 15 and 25 horsepower pump(s) in the upper pump house. Seeps # 62, 63 and 64 are collected below the permit area and gravity flow to the 70 ft diameter concrete raw water collection tank via HDPE piping along an abandoned railroad grade. The collected water is then pumped to the second Aqua-Fix system, also located in the treatment building, using one or both of the 40 hp pumps in the lower pump house. Pebble lime is added to the water as it flows through the Aqua-Fix wheels and the combined discharge flows along a 500 ft rock lined aeration channel into one of two narrow sludge ponds. From the sludge ponds the treated water flows through the large settling pond and the finishing pond and is discharged to an unnamed tributary to Coal Run. On an as needed basis sludge is removed from the narrow ponds and is pumped, using the sludge pump and sludge disposal pipe to one of four sludge disposal boreholes.

K. Action Mining's estimated annual cost to operate, maintain and repair the Treatment Facility is \$50,000.00. The present value of the capital cost of the major components

of the Treatment Facility that will require replacement is \$81,841.10. It is anticipated the Capital Improvement subaccount will have sufficient growth to cover these costs.

L. Raw water quality at the Discharges is set forth in Exhibit A.

M. The following surety bonds on the Summit No. 2 Mine were issued by the Rockwood Casualty Insurance Company: #SM1503 - \$23,895.60, #SM1463 - \$380,089.40, #ISM1036 - \$4,125.00, #ISM1193 - \$7,000.00, #ISM1311 - \$146,690.00, #ISM1319 - \$49,000.00, #ISM1329 - \$88,800.00, #ISM1520 - \$102,100.00, #ISM1641 - \$7,700.00, #ISM1689 - \$9,500.00, #ISM1730 - \$41,900.00, #ISM1815 - \$3,300.00, #ISM1824 - \$142,900.00 and #ISM1902 - \$95,100.00.

The following surety bonds on the Summit No. 3 Mine were issued by the Rockwood Casualty Insurance Company: #ISM1509 - \$137,675.00, #ISM1640 - \$1,920.00 and #ISM1046 - \$900.00.

The following surety bonds on the Elk Lick No. 1 Mine were issued by the Rockwood Casualty Insurance Company: #SM1625 - \$185,970.00, #ISM1357 - \$27,000.00, #ISM1225 - \$46,500.00, and #ISM1017 - \$11,200.00.

N. Action Mining would like to provide an alternative financial assurance mechanism as the financially backed enforceable contract to meet its unanticipated reclamation obligations, to comply with the June 30, 1999 CO&A between the Department and Action Mining and provide for the long-term treatment of post-mining discharges, and secure the release of reclamation bonds upon completion of all other reclamation requirements.

O. The parties have discussed the need to obtain accurate and timely information on the costs of operating and maintaining the Treatment Facility in order to maintain the proper

amount of financial backing. The parties have agreed the current annual cost of operating and maintaining the Treatment Facility is \$50,000.00.

P. The parties agree to use the information and figures which will be provided by the Accounting required by Paragraph 4 to calculate and adjust the proper size of the alternative financial assurance mechanism as described below. The parties also agree to use the formulas set forth below to calculate the present value of the alternative financial assurance mechanism.

ORDER

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 intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Action Mining as follows:

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

2. Findings

a. Action Mining agrees that for the purposes of any dispute or proceeding between the Department and Action Mining, or their respective successors, the findings in Paragraphs A

through P are true and correct and, in any matter or proceeding involving Action Mining and the Department, Action Mining shall not challenge the accuracy or validity of these findings.

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

3. Definitions

a. Accounting. The accounting required by Paragraph 4 of this Agreement.

b. Actual Treatment Cost. The average of three consecutive years of the costs and expenses of treatment, calculated by using the Accountings for those three years.

c. Annual Anniversary Date. The annual recurrence of the month and day that this Consent Order and Agreement is executed.

d. Calculated Treatment Cost. The projected future annual cost of treatment, based on the Actual Treatment Cost, compounded at three and one tenth percent (3.1%) annually.

e. Capital Improvement Account. The sub-account within the Trust that is primarily used to finance anticipated and periodic capital expenditures for the Treatment Facility.

f. Distribution Payment. The Trustee's disbursement of money from the Trust made at the written direction of the Department or a court of competent jurisdiction, to a person and in an amount specified by the Department and as provided by this Consent Order and Agreement.

g. Formula. The equation used to calculate the Present Value of the future operation and maintenance ("O&M") of the Treatment Facility. The equation is:

	PV	=	$(A/[E-I]) + A$
Where:	PV	=	Present Value of the O&M Costs
	A	=	Current Actual Treatment Cost
	E	=	Expected annual earnings/Interest Rate (assumed to be 9.3% or .093)*
	I	=	Inflation Rate (assumed to be 3.1% or .031)

* This assumption will remain the same unless the parties agree otherwise.

h. Primary Basis Valuation. 100% of the present value of the future cost of treatment as determined by the Formula.

i. Primary Target Valuation. 116 percent of the present value of the future cost of treatment as determined by the Formula.

j. Primary Trust Account. The sub-account within the Trust that is primarily used to finance annual operating and maintenance costs of the Treatment Facility.

k. Primary Trust Valuation. The cash, cash equivalents, investments at market value of investments and the face amount of surety bond currently held by the Trust in the Primary Trust Account.

4. Annual Treatment Costs; Records; Factors; Accounting

a. Action Mining shall keep accurate financial records of all the costs and expenses of annual treatment for each year. The various cost factors, if applicable to the Treatment Facility, fall into several general categories, including, but not limited to: Reagent; Polymer; Electrical; Sludge Removal; Labor, including benefits; Maintenance; Sampling; Overhead; Snow Removal; Mowing; Access Road Repair and Maintenance and Miscellaneous. The individual item shall be tracked and reported for each general category.

b. Action Mining shall keep separate records for the Treatment Facility.

c. Action Mining shall provide an annual accounting of the costs and expenses of annual treatment ("the Accounting") to the Department on or before the 90th day following the last day of the fiscal year for which the Accounting is being provided. The Accounting shall cover the period beginning-February 1 and continuing through January 31 of each year, or other

fiscal year as Action Mining may adopt for its corporate finances in the future, and shall be in accordance with Generally Accepted Accounting Principles. The Accounting shall be accompanied by an affidavit of the treasurer or other corporate officer responsible for the financial affairs of Action Mining and by the President of Action Mining attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

d. Action Mining's obligation to keep records and provide the Accounting shall continue for the period during which Action Mining is operating the Treatment Facility.

e. In the event of a dispute about the costs and expenses of treatment incurred by Action Mining, Action Mining shall bear the burden of proving the accuracy and completeness of the Accounting and the records upon which the Accounting is based. A Special Report prepared under Generally Accepted Accounting Principles as to the treatment costs incurred by Action Mining, prepared by an independent licensed public or certified public accountant, shall satisfy Action Mining's burden of proof as to any of these matters.

5. Treatment Trust

a. Action Mining shall establish an irrevocable trust to be known as the Action Mining Treatment Trust (Trust). The Trust shall secure Action Mining's obligation to treat discharges of mine drainage, including its obligation to operate and maintain the Treatment Facility, in perpetuity, or until water treatment is no longer necessary, and to provide financial resources to the Department and the citizens of the Commonwealth to maintain and operate the Treatment Facility, and to treat the mine drainage in perpetuity in the event Action Mining becomes unable or unwilling to meet these obligations. The Trust shall also provide for the

demolition of treatment facilities and reclamation of the treatment site should treatment no longer be needed. The agreement establishing the Trust is attached as Exhibit B.

b. Action Mining shall establish within the Trust two sub-accounts: a sub-account designated as the Primary Trust Account; and a sub-account designated as the Capital Improvement Account.

6. Funding of the Primary Trust Account

a. Initial Payment to the Primary Trust Account: Upon its execution of this Consent Order and Agreement, Action Mining shall deposit an amount of \$110,000.00 into the Primary Trust Account.

b. Ongoing Payments to the Primary Trust Account:

- On February 12, 2003, Action Mining shall deposit an amount of \$110,000.00 into the Primary Trust Account.

- On February 12, 2004, Action Mining shall deposit an amount of \$110,000.00 into the Primary Trust Account.

- On February 12, 2005, Action Mining shall deposit an amount of \$110,000.00 into the Primary Trust Account.

- On February 12, 2006 Action Mining shall deposit an amount of \$110,000.00 into the Primary Trust Account.

- On February 12, 2007 Action Mining shall deposit an amount of \$110,000.00 into the Primary Trust Account.

- On February 12, 2008 Action Mining shall deposit an amount of \$110,000.00 into the Primary Trust Account.

- On February 12, 2009, Action Mining shall deposit an amount of \$106,881.02 into the Primary Trust Account.

c. Surety Bonds as part of the Corpus of the Primary Trust Account: Upon its execution of this Consent Order and Agreement, Action Mining shall deliver to the Trustee a fully executed rider or riders containing language prepared by the Department, for the surety bonds posted for the Summit No. 3 Mine and the Elk Lick No. 1 Mine prior to this Consent Order and Agreement. These surety bonds are more particularly described in Paragraph K. Immediately following execution of this Consent Order and Agreement Action Mining shall apply for bond release or final bond release of \$128,315.00 of the surety bond on the Summit No. 3 Mine and \$246,670.00 of the surety bond on the Elk Lick No. 1 Mine which is eligible for Stage I and Stage II bond release but for the Discharges. Upon completion of the bond release process for these bond amounts, Action Mining shall deliver to the Trustee a replacement bond and rider in the amount of \$396,202 and the Department will release \$246,670.00 of bond posted for the Elk Lick No. 1 Mine and \$128,315.00 of bond posted for the Summit No. 3 Mine.

7. Annual Distribution or Contribution Payments – Primary Trust Account

a. All calculations under this Paragraph shall be based on values as determined on the Annual Anniversary Date.

b. If the Primary Trust Valuation does not include the value of surety bonds, then Distribution Payments shall be made according to paragraph 7.c. Otherwise, Distribution Payments shall be made according to Paragraph 7.d. and e.

c. If at the end of any year the Primary Trust Valuation is greater than the Primary Target Valuation, then a Distribution Payment shall be made to Action Mining. The amount of such Distribution Payment will be equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, or equal to the Calculated Treatment Cost, whichever is less. This amount is depicted graphically at Points 1, 2 and 3 on Exhibit C.

d. If at the end of any year the Primary Trust Valuation is greater than the Primary Target Valuation, then a Distribution Payment shall be made to Action Mining in the form of a surety bond reduction of the surety bond(s) identified in Paragraph 6.c. This amount is depicted graphically at Point 1 on Exhibit C. Such surety bond reduction shall be in an amount determined by the following formula:

$$BR = ((1 + RoR) (TR - B) + B) - (1.03(TV))$$

Where:

BR	=	surety bond reduction
B	=	surety bond amount
RoR	=	assumed net rate of return or effective rate of return
TV	=	Primary Target Valuation
TR	=	Primary Trust Valuation

e. In the year the final bond is released, if the Primary Trust Valuation after the final surety bond release remains greater than the newly calculated Primary Target Valuation, then an additional Distribution Payment shall be made under paragraph 7.c.

f. If the Primary Trust Valuation is less than or equal to the Primary Target Valuation, but greater than or equal to the Primary Basis Valuation, than no Distribution Payment shall be made and no additional contribution shall be required. This provision is depicted graphically as Point 4 on Exhibit C.

g. If the Primary Trust Valuation is less than the Primary Basis Valuation, then Action Mining shall make an additional contribution into the Primary Trust Account in an amount equal to the difference between the Primary Basis Valuation and the Primary Trust Valuation, or in an amount equal to the Calculated Treatment Cost, whichever is less except as provided in Paragraph 13.a. This amount is depicted graphically as Points 5 and 6 on Exhibit C. This provision does not apply until Action Mining has fulfilled its obligations to make ongoing payments under paragraph 6.b.

8. Adjustments to the Primary Target Valuation for Deviations Between Actual Treatment Cost and Calculated Treatment Cost

a. All calculations under this paragraph shall be based on values as determined on the Annual Anniversary Date and before any Distribution Payment.

b. If the Actual Treatment Cost for any year is greater than or equal to 110 percent or less than or equal to 90 percent of the Calculated Treatment Cost, the Department will calculate a new Primary Basis Valuation using the Formula and the newly determined Actual Treatment Cost. A new Primary Target Valuation will then be determined by calculating 116 percent of the new Primary Basis Valuation. Exhibit D is a graphic depiction of the adjustment.

is greater than the newly calculated Primary Target Valuation, than a distribution payment shall be made to Action Mining in the form of a surety bond reduction. Such bond reduction shall be in an amount determined by the following formula:

$$BR = ((1 + RoR) (TR - B) + B) - (1.03(TV))$$

Where:

BR	= surety bond reduction
RoR	= assumed net rate of return or effective rate of return
TV	= Primary Target Valuation
TR	= Primary Trust Valuation
B	= surety bond amount

e. In the year the final surety bond is released, if the Primary Trust Valuation after the final surety bond release remains greater than the newly calculated Primary Target Valuation, then an additional Distribution Payment shall be made under Paragraph 9.c.

10. Capital Improvement Account

a. Action Mining shall establish with the Trust a sub-account designated as the Capital Improvement Account. Assets of the Capital Improvement Account may be commingled with assets of the Primary Trust Account for purposes of investment, but must be accounted for and reported separately as if they are assets of a separate and distinct fund.

b. On the date of this Consent Order and Agreement the required annual balance of the Capital Improvement Account for a 75-year period shall be determined and made a part of this agreement as Exhibit E.

c. To determine the required balance in the Capital Improvement Account the following methodology shall be used.

i. For each planned capital replacement component or activity, the current cost of that component or the cost to complete that activity will be determined.

ii. For each planned capital replacement component or activity, the estimated number of years in the life cycle of the component or the number of years between when the activity is needed will be determined.

iii. If the water treatment facility has been in operation for a significant period of time, then for each planned capital replacement component or activity, the estimated number of years until the next replacement or activity is needed will be determined.

iv. For each planned capital replacement component or activity, the future value of the first replacement or activity will be calculated using a Present Value equal to the current cost, a rate of 3.1 percent, the amount of payment equal to \$0.00, the number of payment periods equal to the number of years from the date of this agreement until the next replacement or activity, and a beginning of period payment.

v. For each planned capital replacement component or activity, the Present Value will be calculated using the Future Value calculated in paragraph 10.c.iv. above, a rate equal to the assumed net rate of return used elsewhere in this agreement, and all other variables the same as used in paragraph 10.c.iv. above.

vi. For each planned capital replacement component or activity, the Future Value of the second and each subsequent capital replacement or activity will be calculated using the same values as in paragraph 10.c.iv. above except the value for the number of payment periods. The value for the number of payment periods for the second replacement or activity will be equal to the number of years until the next replacement or activity plus the number of years in the expected life

cycle as determined in paragraph 10.c.ii. above. The number of payment periods for the third replacement will be equal to the number of years until the next replacement or activity plus two times the number of years in the expected life cycle. The number of periods for the fourth replacement will be equal to the number of years until the first replacement plus three times the years in the life cycle. The Future Value of each replacement will be calculated in like manner until the number of periods is equal to the number of years until the last replacement or activity is expected to occur that does not exceed 75 years from the year the calculations are being made.

vii. For each planned capital replacement component or activity, the Present Value of the second and each subsequent capital replacement or activity will be calculated using the same values as in Paragraph 10.c.v. above except the value for the number of payment periods which shall be determined in like manner to Paragraph 10.c.vi. above.

viii. The required balance in the Capital Improvement Account for the current year shall be equal to the sum of all Present Values calculated in Paragraph 10.b.v. and vii. above.

ix. The required balance in the Capital Improvement Account shall be recalculated on an annual basis and each time a Distribution Payment is contemplated under Paragraph 12. Such recalculation shall be deemed an amendment to Exhibit E and this Consent Order and Agreement, and shall be used in making all future calculations involving the Capital Improvement Account.

11. Transfer of Funds to the Capital Improvement Account

a. The provisions of this Paragraph do not apply if the Primary Trust Valuation includes the value of surety bonds.

b. If the Primary Trust Valuation after any Distribution Payment under paragraph 7 above is greater than the Primary Target Valuation, then a transfer of funds to the Capital Improvement Account shall be made if the current balance in the Capital Improvement Account is less than the required balance for the current year as indicated on Exhibit E. The amount of such transfer will be equal to the difference between the required balance and the current balance, or in an amount equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, whichever is less.

12. Distribution Payments from the Capital Improvement Account

a. A distribution payment shall be made to Action Mining any time a planned capital replacement is made as indicated on Exhibit E. The capital replacement and maintenance activities shall be made as needed, which may be sooner or later than the projected time. The amount of the Distribution Payment shall be equal to the calculated cost of the Capital Improvement as indicated on Exhibit E, or in an amount equal to the difference between the current balance in the Capital Improvement Account and the required balance after the capital improvement Distribution Payment, whichever is less.

b. Each time a Distribution Payment from the Capital Improvement Account is contemplated under this Paragraph or Paragraph 13. below, the required balance in the Capital Improvement Account must be recalculated to determine the required balance after the proposed Distribution Payment, and to determine the appropriate Distribution Payment.

13. Miscellaneous Distribution Payments from the Primary Trust Account and the Capital Improvement Account

If the Primary Trust Valuation exceeds the Primary Target Valuation in the Primary Trust Account, or if the balance in the Capital Improvement Account exceeds the required balance as indicated on Exhibit E, then such surplus funds may be used for the following purposes:

a. Surplus funds in the Capital Improvement Account shall be transferred to the Primary Trust Account to reduce or completely satisfy Action Mining's obligation to make a contribution payment under Paragraph 7.g. This amount is depicted graphically at Point 5 on Exhibit C. However, the amount of surplus funds transferred to the Primary Trust Account may exceed Action Mining's obligation under paragraph 7.g. if additional funds are needed so that the Primary Trust Valuation equals the Primary Basis Valuation. This amount is depicted graphically at Point 6 on Exhibit C.

b. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the Action Mining to pay for unanticipated capital expenditures, or anticipated capital expenditures that exceed the calculated cost of the capital improvement as indicated on Exhibit E.

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the Action Mining to finance implementation of a new treatment technology, provided the application of such treatment technology is first approved by the Department.

d. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the Action Mining to implement remediation or abatement activities to reduce or eliminate the discharge, or to improve the quality of the discharge, provided the Department first approves such activities.

14. Real and Personal Property

a. Action Mining will assign to the Trust all rights of access to the Summit No. 2 Mine, the Summit No.3 Mine and the Elk Lick No.1 Mine possessed by Action Mining and which rights of access are expressed in the Contractual Consent Of Landowner forms, various leases and deeds identified in Exhibit A of the Post-Mining Discharge Treatment Trust Agreement as are necessary for the purposes described in the Post-Mining Discharge Treatment Trust Agreement executed together with this CO&A and attached hereto. Within thirty days of execution of this CO&A Action Mining shall correct, if necessary, and certify to the Department that all of the information in Exhibit A of the Post-Mining Discharge Treatment Agreement is accurate.

b. Action Mining will convey to the Trust title to all equipment, pumps, plumbing, buildings, structures, etc., which together compose the Treatment Facility and which are described on Exhibit B of the attached Post-Mining Discharge Treatment Trust Agreement. Title will be delivered to the Trustee upon execution of this CO&A.

Valuation, the Calculated Treatment Cost, and distribution payments from or additional payments into the Action Mining Treatment Trust; and to address any other issues that may concern this Consent Order and Agreement or its implementation.

b. When the parties meet as provided by subsection (a) of this paragraph, they will also review and discuss the performance of the Action Mining Treatment Trust and any changes to the investment strategy. Action Mining may advise the Department of Action Mining's investment concerns, tax concerns and preferred investment strategy, such as the ratio of stocks to bonds. The Department will consider Action Mining's concerns and preferences when providing direction to the Trustee but in no event shall Action Mining's concerns, preferences and interests be given precedence over the purposes and objectives of this Trust nor given precedence over the interests of the Department as beneficiary of this Trust.

c. At any time that the Trust contains sufficient assets ("Investment Assets") (exclusive of (i) the equipment and other components of the Treatment Facility and (ii) the real estate, access and other similar rights for and to the Treatment Facility) sufficient to purchase investment grade bonds that, in the aggregate, will annually yield earnings, net of trust management fees and the Inflation Rate, sufficient to ensure the annual operation and maintenance costs of the Treatment Facility and maintain the Capital Improvement Account ("Preferred Yield"), the Settlor may request the Department (which request shall not be unreasonably withheld to the extent such investments are not contrary to the interests of the Department as beneficiary of the Action Mining Treatment Trust) to direct the Trustee to invest 100% of the Investment Assets of the Trust in such bonds so that the Preferred Yield will be locked in until the maturity date of such bonds. In such event, assuming that all other variables,

such as the Inflation Rate, trust management fees, annual operation and maintenance costs of the Treatment Facility and the capital equipment replacement cost and rate, remain constant, there will be no recalculation of the Primary Target Valuation until the maturity date of the bonds.

17. Action Mining's Continuing Obligation

a. Neither Action Mining's agreement to fund the Action Mining Treatment Trust nor the full or partial funding of the Trust, nor the exhaustion of the Trust shall in any way limit Action Mining's obligation to operate the Treatment Facility. Furthermore, exhaustion of the Trust shall not excuse Action Mining from Action Mining's obligation to adequately treat or to abate the discharges.

b. Action Mining's interests in Distribution Payments provided by this CO&A is personal to Action Mining and the Department agree no other person or entity has any interest in Distribution Payments provided by this CO&A however, an Action Mining successor, assign or other person or entity who assumes and satisfies Action Mining's duties and obligations under this CO&A and legal responsibility for the discharges identified in Paragraph E will, upon the consent of the Department, have an interest in Distribution Payments as provided by this CO&A. Action Mining agrees it has no residuary or reversionary interest in Distribution Payments or principal of the Trust which can be conveyed, passed on or distributed to any person, shareholder, successor in interest or assign except as provided

18. Additional Remedies

a. In the event Action Mining fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue

any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. In the event Action Mining defaults on the obligations of this Consent Order and Agreement Action Mining will be subject to a permit block on the Department's compliance tracking system and the federal Applicant Violator System and the Department will, in addition to any other remedy or penalty prescribed herein, list Action Mining as a violator on the Department's compliance tracking system and on the federal Applicant Violator System.

c. The remedies provided by this Consent Order and Agreement 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 civil penalty is paid.

19. Reservation of Rights

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

20. Liability of Action Mining

Action Mining shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Action Mining also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

21. Transfer of Sites

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Action Mining Sites or any part thereof.

b. If Action Mining intends to transfer any legal or equitable interest in the Action Mining Sites which is affected by this Consent Order and Agreement, Action Mining shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Director, District Mining Operations of such intent.

c. The Department in its sole discretion may agree to modify or terminate Action Mining's duties and obligations under this Consent Order and Agreement upon transfer of the Action Mining Sites. Action Mining waives any right that it may have to challenge the Department's decision in this regard.

22. Correspondence with Department

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

Samuel C. Faith
Mineral Resources Program Specialist, District Mining Operations
Department of Environmental Protection
McMurray District Mining Office
3913 Washington Road
McMurray, PA 15317

23. Correspondence with Action Mining

- a. All correspondence with Action Mining concerning this Consent Order and

Agreement shall be addressed to:

1117 Shaw Mines Road
Meyersdale, PA 15552
Attention: Larry Sanner, President

- b. Action Mining 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.

24. Force Majeure

- a. In the event that Action Mining 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, or other circumstances beyond Action Mining's control and which Action Mining, by the exercise of all reasonable diligence, is unable to prevent, then Action Mining may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond Action Mining's control. Action Mining's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.

b. Action Mining 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, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by Action Mining to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) working days of its submission. Action Mining'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 Action Mining and other information available to the Department. In any subsequent litigation, Action Mining 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

25. 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.

26. 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

or merges into or permits to merge with it and Action Mining is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of Action Mining's properties or assets which include, but is not limited to, voting stock of Action Mining. Successor does not include any corporation or other entity to which Action Mining transfers or assigns all or substantially all of its financial or non-financial liabilities. Action Mining shall notify the Department, without delay, of any successor as defined herein and shall provide such successor with a copy of this Consent Order and Agreement.

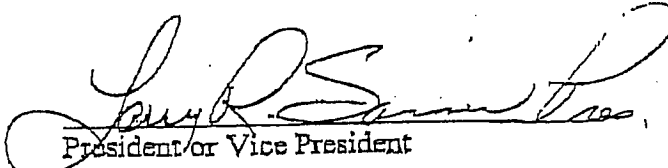
32. Counterpart Signatures

The parties agree to execute this Consent Order and Agreement by counterpart signatures transmitted via facsimile.

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 Action Mining 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 Action Mining; that Action Mining consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Action Mining 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, the Act of July 13, 1988, P.L. 530, No 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa.C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by Action Mining's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR ACTION MINING

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION


 President or Vice President

 District Mining Manager

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FOR ACTION MINING

President or Vice President

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION



District Mining Manager

Secretary Treasurer

Joseph N. Pizarchik
Assistant Counsel
Southcentral Region OCC

Attorney for Action Mining