

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

Allegheny Enterprises, Inc.	:	SMP No. 12040102 (1555 Mine)
3885 Roller Coaster Road	:	Shippen Township
Corsica PA 15829	:	Cameron County
	:	Alternative Financial Assurance Mechanism

**POSTMINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 25<sup>th</sup> day of February, 2014, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Allegheny Enterprises, Inc. ("Allegheny") Allegheny.

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, 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, 52 P.S. §§ 1406.1 *et seq.* (Subsidence Act); the Coal Refuse Disposal Control Act, Act of September 24, 1968, P.L. 1040, 52 P.S. §§ 30.51 *et seq.* (Coal Refuse Disposal Act); the Clean Streams Law, Act of June 22, 1937, P.L. 1987, 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, 71 P.S. § 510-17 (Administrative Code) and the regulations promulgated thereunder.

B. Pursuant to § 4(d.2) of the Surface Mining Act, 52 P.S. § 1396.4(d.2), the Department may establish alternative financial assurance mechanisms which shall achieve the objectives and purposes of the bonding program. These mechanisms include the establishment of a site-specific trust fund funded by a mine operator for the treatment of post-mining discharges of mine drainage. The post-mining treatment trust being established as required by this Consent Order and Agreement through the accompanying Post-Mining Discharge Treatment Trust Agreement constitutes an alternative financial assurance mechanism authorized by § 4(d.2) of the Surface Mining Act. Pursuant to Sections 5, 315 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.315 and 691.610, Section 4.3 of SMCRA, 52 P.S. § 1396.4c, Sections 3.1 and 9 of the Coal Refuse Disposal Act, 52. P.S. §§ 30.53a and

30.59, and Section 9 of the Subsidence Act, 52 P.S. § 1406.9, the Department has authority to issue such orders as are necessary to aid in the enforcement of the provisions of these acts, including orders compelling an operator to establish a post-mining discharge treatment trust as an alternative financial assurance mechanism.

C. Allegheny is a Pennsylvania corporation with a business address of 3885 Roller Coaster Road, Corsica, Pennsylvania 15829. Allegheny conducts surface mining under mining license number 15882. Randy S. Stout is president, secretary, and owner.

D. Allegheny is the permittee of the 1555 coal mine, Surface Mining Permit ("SMP") No. 12040102, in Shippen Township, Cameron County ("1555 Mine"), which is associated with post-mining discharge liability.

E. The 1555 Mine is an active surface mining operation. Surface mining operations began in February, 2006 and continue through the date of this agreement.

F. SMP No. 12040102 was issued on November 17, 2005, authorizing surface mining on 180.1 acres. As of the date of this COA, approximately 10 acres have been mined and 8 acres reclaimed. A small (150 ft. x 15 ft.) pit is present.

G. The reclamation bonds currently posted for the 1555 Mine are set forth below:

PERMIT NO.	BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT NO.	BOND STATUS	BOND AMOUNT
12040102	Surety	Rockwood Casualty	ISM-2211	Active	\$5,079
12040102	Remining Financial Guarantee	Commonwealth of PA	4820-148-FG	Active	\$65,953
12040102	Surety	Rockwood Casualty	ISM-2250	Active	\$5,142
12040102	Remining Financial Guarantee	Commonwealth of PA	4820-151-FG	Active	\$34,047
12040102	Surety	Rockwood Casualty	ISM-2553	Active	\$19,530
12040102	Collateral	Farmer's National Bank	Cashiers Check No. 5352	Active	\$14,933

**Post-Mining Discharges**

H. Discharge MP26 is a pre-existing pollutional discharge located 100 feet from the southern boundary of SMP No. 12040102 and is hydrologically connected to the area mined by Allegheny. It was degraded with respect to iron concentrations by Allegheny's mining operation. A compliance order requiring treatment of the discharge was first issued on July 2, 2010. Allegheny originally constructed a treatment system consisting of a soda ash dispenser and settling pond. It was subsequently modified to incorporate the use of caustic soda. Allegheny experienced periodic noncompliance with that treatment system due, in part, to its remote location and need for frequent maintenance. On June 25, 2013, Allegheny entered into Consent Order and Agreement No. 134022 with the Department which required Allegheny to rebuild the treatment system as a passive system which would not require frequent maintenance

I. An aerial photograph depicting the location of the MP26 discharge is attached as Exhibit A. The latitude and longitude coordinates for MP26 are: lat 41°25'49.1" long 78°16'24.9.

J. The raw water quality of the MP26 discharge, as compiled by the Department on January 2, 2014 from analytical sampling results for the period from January, 2013 through December, 2013, is set forth in Exhibit B1

K. The required effluent limits applicable for the MP26 discharge are:

<b>Parameter</b>	<b>30-Day Average</b>	<b>Daily Daily Maximum</b>	<b>Instantaneous Inst. Maximum</b>
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
Acidity	10 lbs/day		13 lbs/day

L. The 1555 Mine is authorized to discharge under NPDES Permit No. PA0256145, originally issued November 17, 2005 and most recently renewed on November 17, 2010

M. Allegheny agrees it has the legal responsibility, pursuant to the Surface Mining Act and the Clean Streams Law, to properly treat or abate the discharge identified in Paragraph H above.

**Post-Mining Treatment Trust**

N. The MP26 treatment system consists of a baffled limestone ramp, 78 feet long, 13 feet wide with three concrete "New Jersey Barrier" baffles which discharges via a 67-foot long grass-lined channel to a settling pond which is 75 feet long, and 25 feet wide ("Treatment System"). A schematic of the Treatment System is

attached as Exhibit B2.

O. The Treatment System is located on land owned by Hancock Timber Lands VII, QRS Trust ("Hancock"). Hancock's predecessor, Allegheny Partners, LP, executed a contractual consent of landowner on August 27, 2002 for a 10,947 acre tract of land in Lumber, Shippen, and Benezette Townships in Cameron and Elk Counties, which includes the area of the Treatment System. The consent of landowner was recorded on the deed in Cameron County on February 17, 2003. Allegheny will obtain a Consent to Right of Entry form executed by Hancock and will submit said Consent to Right of Entry to the Department no later than March 31, 2014, at which point, the Consent to Right of Entry form executed by Hancock will be attached hereto as Exhibit G. The Consent to Right of Entry form executed by Hancock grants the parties and the trustee access to the Treatment System.

P The capital cost to construct the treatment system was \$20,970 based on cost modeling using AMD treat software

Q. In order to calculate the amount necessary to fully fund the trust, the Department and Allegheny Allegheny have agreed to use actual operation and maintenance costs from past operations of the Treatment System, or AMDTreat cost estimates where insufficient operation and maintenance cost data exist. The current annual operation and maintenance costs for the Treatment System are summarized below:

**Table of Current Annual Operation and Maintenance Costs**

CATEGORY	SAMPLING	LABOR	MAINTENANCE	PUMPING	CHEMICAL	SLUDGE REMOVAL
Rate	(\$27/sample)	(\$35/hr.)				
Annual Cost	\$1,891	\$626	\$734	\$0	\$0	\$126

Based on actual operation and maintenance costs from past operations and AMDTreat cost estimates, the current annual cost of operating and maintaining the Treatment System is approximately \$3,377.

R. In order to calculate the amount necessary to fully fund the trust, the Department and Allegheny have agreed to use recapitalization and demolition cost data generated by the Department's AMDTreat software tool. According to the AMDTreat software tool, the present value of recapitalization costs is \$4,117. The AMDTreat recapitalization cost schedule for the treatment system is attached as Exhibit E1. The present value for liability insurance is \$1,869

S. Allegheny is willing to establish a post-mining treatment trust with CNB Wealth and Asset Management, c/o Calvin Thomas, P.O. Box 47, 7 South 2<sup>nd</sup> Street, Clearfield, PA 16830 as an alternative financial assurance mechanism, and a financially-backed enforceable contract, in order to provide for the long-term treatment of post-mining discharges and secure the release of reclamation bonds upon completion of all other reclamation requirements. Allegheny agrees to establish the 1555 Mine Treatment Trust by executing a Post-Mining Treatment Trust Agreement with CNB Wealth and Asset Management, c/o Calvin Thomas, P.O. Box 47, 7 South 2<sup>nd</sup> Street, Clearfield, PA 16830 that conforms to the Department's model trust agreement.

T. The parties have discussed the need to obtain accurate and timely information on the costs of operating and maintaining the Treatment System in order to maintain the proper amount of financial assurance.

U. The parties have agreed to use the formulas set forth below to calculate the present value of the 1555 Mine Treatment Trust. The parties agree that the present value of the fully-funded 1555 Mine Treatment Trust for the discharges covered by this Consent Order and Agreement is \$83,399 as shown in Exhibit E2. This sum constitutes the current present value of the estimated future operation and maintenance costs for the Treatment System, and the current present value of the estimated future recapitalization costs for the Treatment System. The parties have also agreed to use the information and figures which will be provided by the Accounting required by Paragraph 4 to recalculate and adjust the amount of the 1555 Mine Treatment Trust as described in Paragraphs 8 and 10 below. Allegheny agrees to pay \$5,000 upon the execution of the trust agreement with subsequent payments of \$5,000 at the end of each calendar quarter beginning June 30, 2014.

V. If the raw (before treatment) water quality at Discharge MP26 meets the requirements of Allegheny's NPDES permit, Part A1D, relating to pre-existing discharges, for at least a full two-year period, it is agreed that treatment of Discharge MP26 is no longer required and that treatment of the discharge by Allegheny and long-term financial assurance for operating a treatment system is no longer needed. The Treatment System may be removed by Allegheny or left in place with the approval of the landowner and its agreement to maintain the system.

#### 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 Allegheny as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 5 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5 and 691.610; 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 Allegheny to comply with any term or condition of this Consent Order and Agreement shall subject Allegheny to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. Allegheny agrees that the findings in Paragraphs A through U are true and correct and, in any matter or proceeding involving Allegheny and the Department, Allegheny 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. Thirty (30) days after the last day of Allegheny's fiscal year or thirty (30) days after the last day of any fiscal year which Allegheny may adopt in the future.

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 Systems.

f. Distribution Payment. The Trustee's disbursement of money from the Trust made at the written direction of the Department 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 Systems. 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 8.43% )*
	I	=	Inflation Rate (assumed to be 3.1% or .031)

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% 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 Systems.

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. Allegheny shall keep accurate financial records of all the costs and expenses of annual treatment for each year. The various cost factors fall into several general categories, including, but not limited to: Reagent; Polymer; Electrical; Sludge Removal; Labor, including benefits; Maintenance; Sampling; Overhead; and Miscellaneous. The individual item shall be tracked and reported for each general category.

b. Allegheny shall keep separate records for each of the following Treatment Systems:

c. Allegheny shall provide an annual accounting of the costs and expenses of annual treatment to the Department on or before the 90<sup>th</sup> day following the last day of the fiscal year for which the Accounting is being provided. The Accounting shall cover the period beginning on January 1 and continuing through December 31 of each year, or other fiscal year as Allegheny 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 Allegheny and by the President of Allegheny attesting to the completeness and accuracy of the records of the costs

and expenses of annual treatment as reported in the Accounting.

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

e. In the event of a dispute about the costs and expenses of treatment incurred by Allegheny, Allegheny 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 Allegheny, prepared by an independent licensed public or certified public accountant, shall satisfy Allegheny's burden of proof as to any of these matters.

5. Treatment Trust

a. Allegheny shall establish an irrevocable trust to be known as the 1555 Mine Treatment Trust by executing a Post-Mining Treatment Trust Agreement with CNB Bank. The 1555 Mine Treatment Trust shall secure Allegheny's obligation to treat the MP26 discharge, including its legal obligation to operate and maintain the Treatment Systems in perpetuity or until water treatment is no longer necessary. The 1555 Mine Treatment Trust shall also secure the Allegheny's obligation to provide financial resources to the Department and the citizens of the Commonwealth sufficient to operate and maintain the Treatment Systems and to treat the mine drainage in perpetuity in the event Allegheny becomes unable or unwilling to meet these obligations. The 1555 Mine Treatment Trust shall provide for the demolition of treatment facilities and reclamation of the treatment site should treatment no longer be needed. The agreement establishing the 1555 Mine Treatment Trust is attached as Exhibit F.

b. Allegheny shall establish within the 1555 Mine Treatment Trust two sub-accounts: (i) a sub-account designated as the Primary Trust Account; and, (ii) a sub-account designated as the Capital Improvement Account.

c. Upon 30 days prior notice to the Department, Allegheny may post an appropriate bond or bonds with the Department, in the amount determined by the Department in accordance with applicable bonding requirements, in order to guarantee Allegheny's obligation to treat or abate the MP26 discharge, and Allegheny may subsequently petition the Department to terminate the 1555 Mine Treatment Trust. Upon termination of the Trust following the posting of sufficient bonds to guarantee the Allegheny's obligation, the Department shall direct the



Trustee to distribute any residuum, less final trust administration expenses of the Trustee, to the Settlor in accordance with Articles 4 and 12 of the Post-Mining Discharge Treatment Trust Agreement attached as Exhibit F.

6. Funding of the Primary Trust Account

a. Initial Payment to the Primary Trust Account: Upon its execution of this Consent Order and Agreement, Allegheny shall deposit an amount of \$ 5,000 into the Primary Trust Account. This sum constitutes the current present value of the amount necessary to fully fund the Treatment Trust, and includes the current present value of the future operation and maintenance of the Treatment System(s) and the current amount needed to finance anticipated and periodic capital expenditures for the Treatment System(s).

b. Allegheny will make payments in the Trust of \$5,000 per quarter by the end of each calendar quarter, beginning with the second quarter of 2014 until the Trust is fully funded in accordance with Exhibit F.

c. No Surety Bonds will be made part of this treatment trust. Surety Bonds are eligible for release upon full funding of the trust, pending any outstanding reclamation obligations.

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 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 Allegheny. 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 Point 1, 2 and 3 on Exhibit C.

c. 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, then no Distribution Payment shall be made and no additional contribution shall be required. This provision is depicted graphically as Point 4 on Exhibit C.

d. If the Primary Trust Valuation is less than the Primary Basis Valuation, then Allegheny 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 & 6

on Exhibit C. This provision does not apply until Allegheny 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 graphical depiction of the adjustment.

9. Distribution Payments for Adjustments to the Primary Target Valuation

a. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 8. above is greater than the Primary Trust Valuation, no distribution payment shall be made under this paragraph.

b. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 8, above is based on a reduced Actual Treatment Cost, and the Primary Trust Valuation is greater than the newly calculated Primary Target Valuation, then a Distribution Payment shall be made to Allegheny. The amount of such Distribution Payment will be equal to the percent change in Actual Treatment Cost times the Primary Trust Valuation, or in an amount equal to the difference between the Primary Trust Valuation and the newly calculated Primary Target Valuation, whichever is less. The amount of such Distribution Payment shall be determined by the following formulas:

$$DP = TR (1 - (\text{new ATC} / \text{prior ATC}))$$

Or

$$DP = TR - \text{new TV}$$

Where:

DP	=	Distribution Payment
TR	=	Primary Trust Valuation
TV	=	Primary Target Valuation
ATC	=	Actual Treatment Cost

10. Capital Improvement Account

a. 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. The required balance in the Capital Improvement Account has been determined by use of the AMDTreat Recapitalization tool based on the following methodology: For each planned capital replacement activity, the current cost and the projected year of replacement, are determined. The future cost of each replacement activity is calculated by compounding the present cost at a rate of 3.1% annually. The year in which each replacement activity will be needed is projected based on typical component life cycles. Assuming a net rate of return on investment of 8.43%, the initial amount of the Capital Improvement Account must be sufficient to cover all anticipated expenditures for capital replacement activities for a 75-year period.

c. A schedule for the Capital Improvement Account balance and projected capital expenditures is made a part of this agreement as Exhibits E1 and E2. The required balance in the Capital Improvement Account may be recalculated on an annual basis or each time a Distribution Payment is contemplated under Paragraph 12. Such recalculation shall be deemed an amendment to Exhibits E1 and E2 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. 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 Allegheny any time a planned capital replacement is made as indicated on Exhibits E1 and E2. 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 Exhibits E1 and E2, 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 E2, 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 Allegheny'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 Allegheny'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 Allegheny to pay for unanticipated capital expenditures, or anticipated capital expenditures that exceed the calculated cost of the capital improvement as indicated on Exhibit E1.

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by Allegheny 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 Allegheny 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

There is no real or personal property as part of this treatment trust.

15. Public Liability Insurance

a. Allegheny shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the Treatment Systems and the real and personal property which is identified in the Post Mining Treatment Trust Agreement as part of the trust principal. The Trustee and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policy.

b. In addition to the requirements of Paragraph 15.a. the public liability insurance shall be written on an occurrence basis and shall provide bodily injury and property damage coverage in the minimum amounts of \$500,000 per person and \$1,000,000 per occurrence. The insurance shall include a rider requiring the insurer to notify the Department thirty days prior to substantive changes being made to the policy or prior to termination or failure to renew. Proof of insurance shall consist of a certificate of insurance filed annually with the Department which certifies Allegheny has a public liability insurance policy in force meeting the requirements of this Paragraph.

16. Annual Requirements

a. The parties will meet on or before the thirtieth day following delivery to the Department of the Accounting of each year: (i) to review and discuss the Accounting for the then completed fiscal year; (ii) to review the effectiveness of the Treatment Systems and any change in the fiscal year; (iii) to resolve any issues which arise as a result of that change or the performance of the 1555 Mine Treatment Trust; (iv) to calculate, recalculate or adjust the size of the Primary Target Valuation; the Calculated Treatment Cost, and distribution payments from or additional payments into the 1555 Mine Treatment Trust; and, (v) to address any other issues that may concern this Consent Order and Agreement or its implementation.

b. The Operator shall provide annually to the Department, on forms furnished by the Department, the information required by 25 Pa. Code §§ 86.62(b) and (c) (relating to identification of interests).

17. Allegheny's Continuing Obligation

Neither Allegheny's agreement to fund the 1555 Mine Treatment Trust nor the full or partial funding of the 1555 Mine Treatment Trust, nor the exhaustion of the 1555 Mine Treatment Trust shall in any way limit Allegheny's obligation to operate the Treatment Systems and to treat the discharge(s) covered by this Consent Order

and Agreement in a manner which meets the effluent limitations described in Paragraph K above. Furthermore, exhaustion of the 1555 Mine Treatment Trust shall not excuse Allegheny from Allegheny's obligation to adequately treat or to abate the discharges.

18. Stipulated Civil Penalties

a. In the event Allegheny fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, Allegheny shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$100.00 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded to:

District Mining Manager  
Department of Environmental Protection  
Moshannon District Mining Office  
186 Enterprise Dr.  
Philipsburg, PA 16866

c. Any payment under this paragraph shall neither waive Allegheny's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Allegheny's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Allegheny's liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

19. Additional Remedies

a. In the event Allegheny 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 Allegheny defaults on the obligations of this Consent Order and Agreement Allegheny 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 Allegheny 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.

20. Reservation of Rights

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

21. Liability of Allegheny

Allegheny 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. Allegheny also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

22. 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 Allegheny Sites or any part thereof.

b. If Allegheny intends to transfer any legal or equitable interest in the Allegheny Sites which is affected by this Consent Order and Agreement, Allegheny 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, 25 Technology Drive, California Technology Park, Coal Center PA 15423 and the District Mining Manager identified in ¶ 23 of such intent.

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

23. Correspondence with Department

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

District Mining Manager  
Department of Environmental Protection  
Moshannon District Mining Office  
186 Enterprise Dr.  
Philipsburg, PA 16866

24. Correspondence with Allegheny

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

Randy Stout, President  
Allegheny Enterprises, Inc.  
3885 Roller Coaster Rd.  
Corsica, PA 15829

b. Allegheny 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.

25. Force Majeure

a. In the event that Allegheny 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 Allegheny's control and which Allegheny, by the exercise of all reasonable diligence, is unable to prevent, then Allegheny 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 Allegheny's control. Allegheny'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. Allegheny 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 Allegheny 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. Allegheny'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 Allegheny and other information available to the Department. In any subsequent litigation, Allegheny 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

26. 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.

27. 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 admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

28. Attorney Fees

The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement

29. Modifications

Except as provided in Paragraph 10, no changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

30. Titles

A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

31. Decisions under Consent Order

Except for Paragraphs H, K, and M,, any decision which the Department makes under the provisions of this Consent Order and Agreement is intended to be neither a final action under 25 Pa. Code §1021.2, nor an

adjudication under 2 Pa. C.S. § 101. Any objection which Allegheny may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

32. Successors

This Consent Order and Agreement shall be fully and completely binding upon any successor of Allegheny. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) Allegheny consolidates with or merges into or permits to merge with it and Allegheny is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of Allegheny's properties or assets which include, but is not limited to, voting stock of Allegheny. Successor does not include any corporation or other entity to which Allegheny transfers or assigns all or substantially all of its financial or non-financial liabilities.


Allegheny 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.

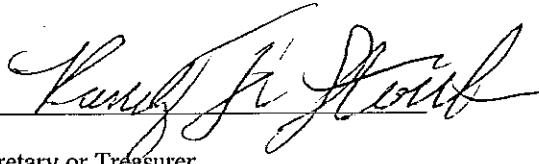
33. Counterpart Signatures

The parties agree that this Consent Order and Agreement may be executed by counterpart signatures transmitted via electronic means.

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 Allegheny 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 Allegheny; that Allegheny consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Allegheny 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 Allegheny's attorney certifies only that the agreement has been signed after consulting with counsel.


FOR Allegheny:

  
\_\_\_\_\_  
Randy Stout  
President

  
\_\_\_\_\_  
Secretary or Treasurer

*by counterparts*  
\_\_\_\_\_  
Attorney for Allegheny

FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION:

  
\_\_\_\_\_  
Michael W. Smith  
District Mining Manager

\_\_\_\_\_  
A.J. Jenkins  
Assistant Counsel  
Bureau of Regulatory Counsel

FOR Allegheny:

President or Vice President

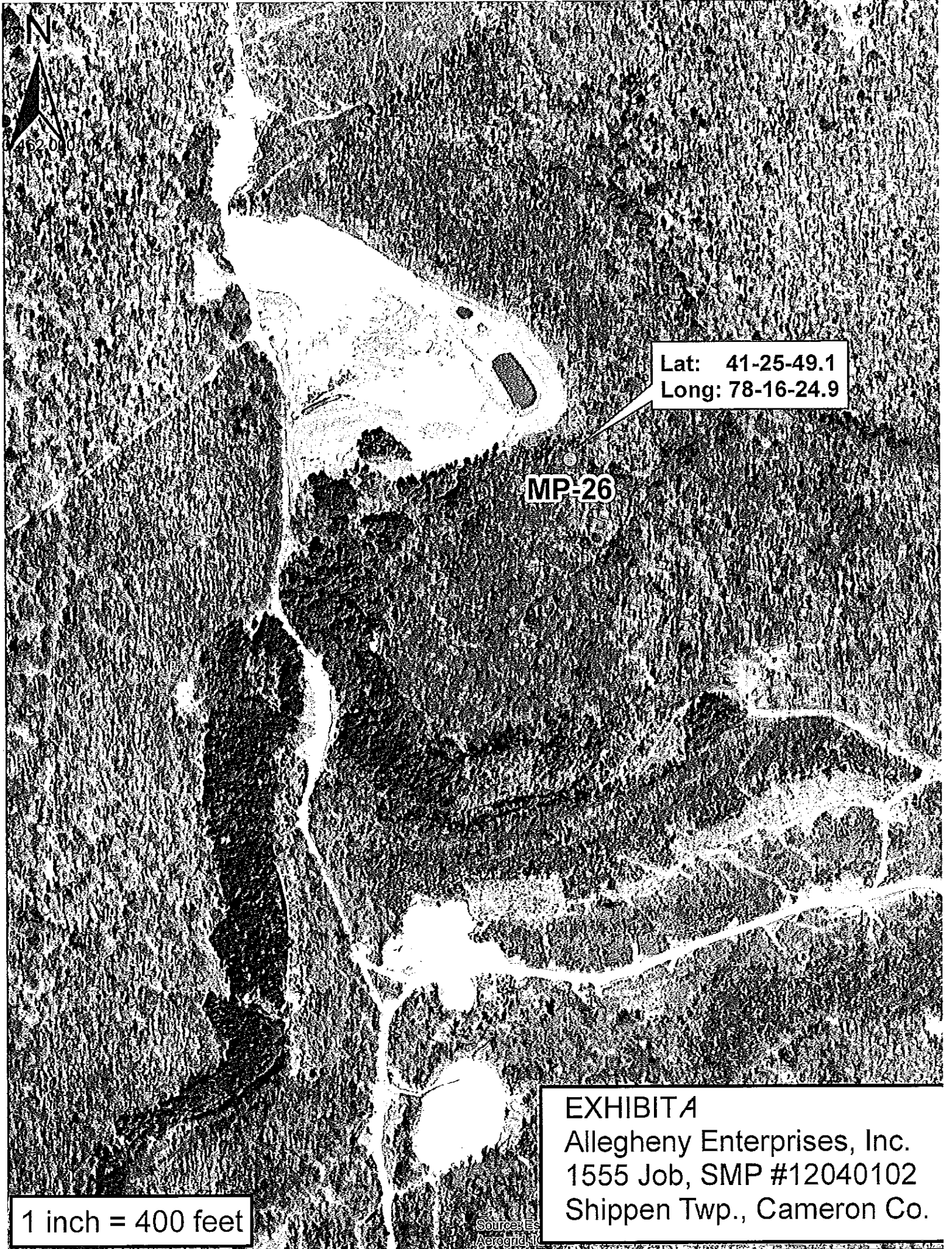
Secretary or Treasurer

The Serene Law Firm, PLLC  
By: *Jana D. Davis*, Member  
Attorney for Allegheny

FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION:

District Mining Manager

Assistant Counsel  
Southcentral Region OCC



452-010

Lat: 41-25-49.1  
Long: 78-16-24.9

MP-26

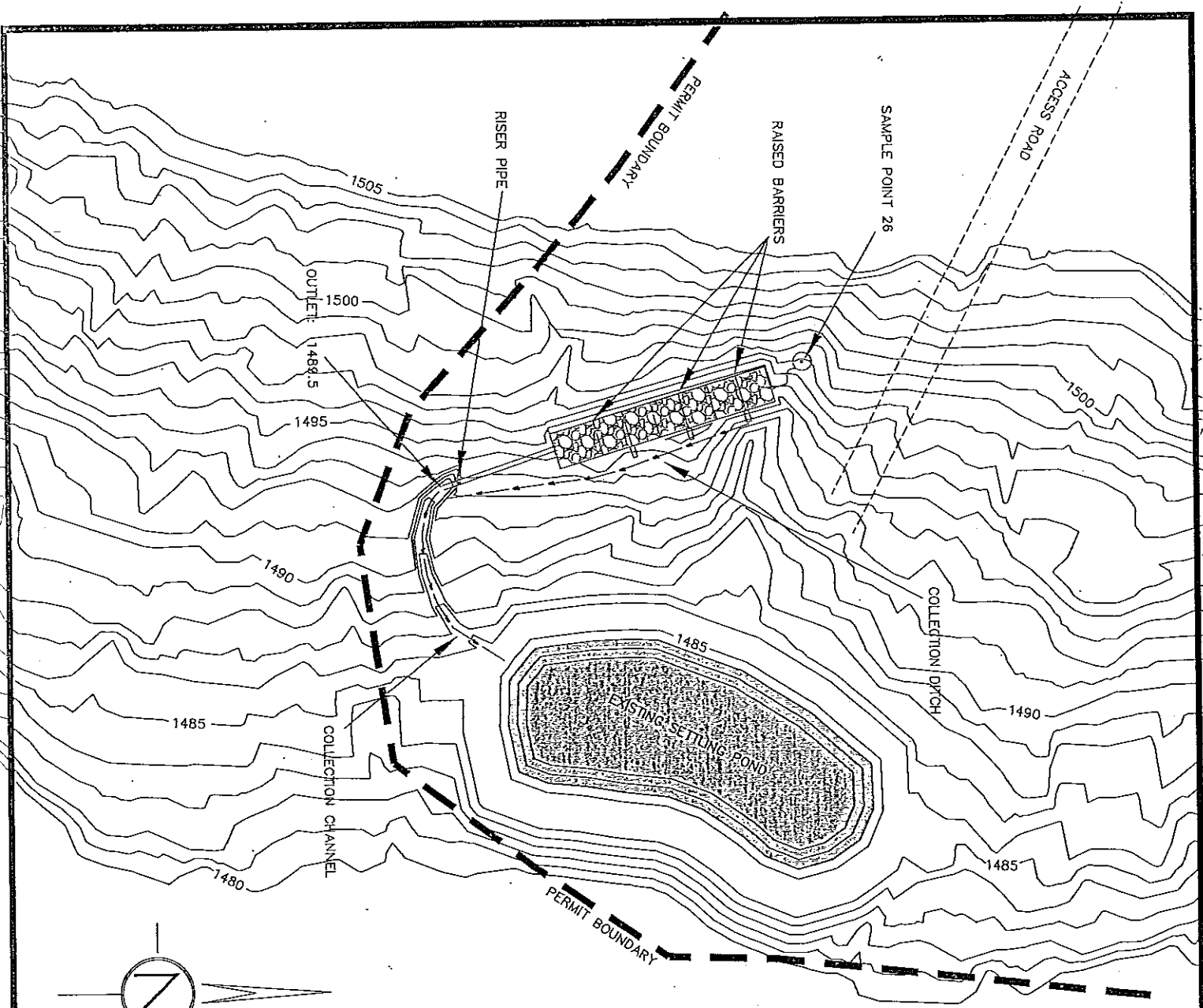
1 inch = 400 feet

EXHIBIT A  
Allegheny Enterprises, Inc.  
1555 Job, SMP #12040102  
Shippen Twp., Cameron Co.

Source: Esri  
Aerogrid, Inc.

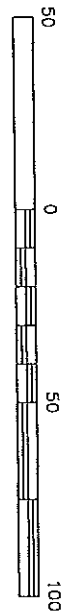


# EXHIBIT B2



### NOTES:

1. ACCESS TO THE LIMESTONE RAMP WILL BE FROM THE EXISTING ROAD TO THE SETTLING POND.
2. THE LENGTH OF THE LIMESTONE RAMP WILL BE 75'. THE WIDTH WILL BE 12 AND A DEPTH OF 4'. NEW JERSEY BARRIERS (OR CONCRETE BARRIERS) WILL BE USED AS BAFLES, SPACED AS NOTED.
3. STAGING, STORAGE AND DISPOSAL AREAS TO BE IN LOCATION AS DETERMINED BY THE OPERATOR.
4. THE LIMESTONE RAMP WILL BE FILLED WITH AASHTO #3 LIMESTONE WITH A MINIMUM CALCIUM CARBONATE OF 80%.



SCALE: 1"=50'  
CONTOUR INTERVAL: 1 FOOT

## ALLEGHENY ENTERPRISES, INC.

1555 OPERATION  
SMP #12040102  
LIMESTONE RAMP  
PLAN VIEW



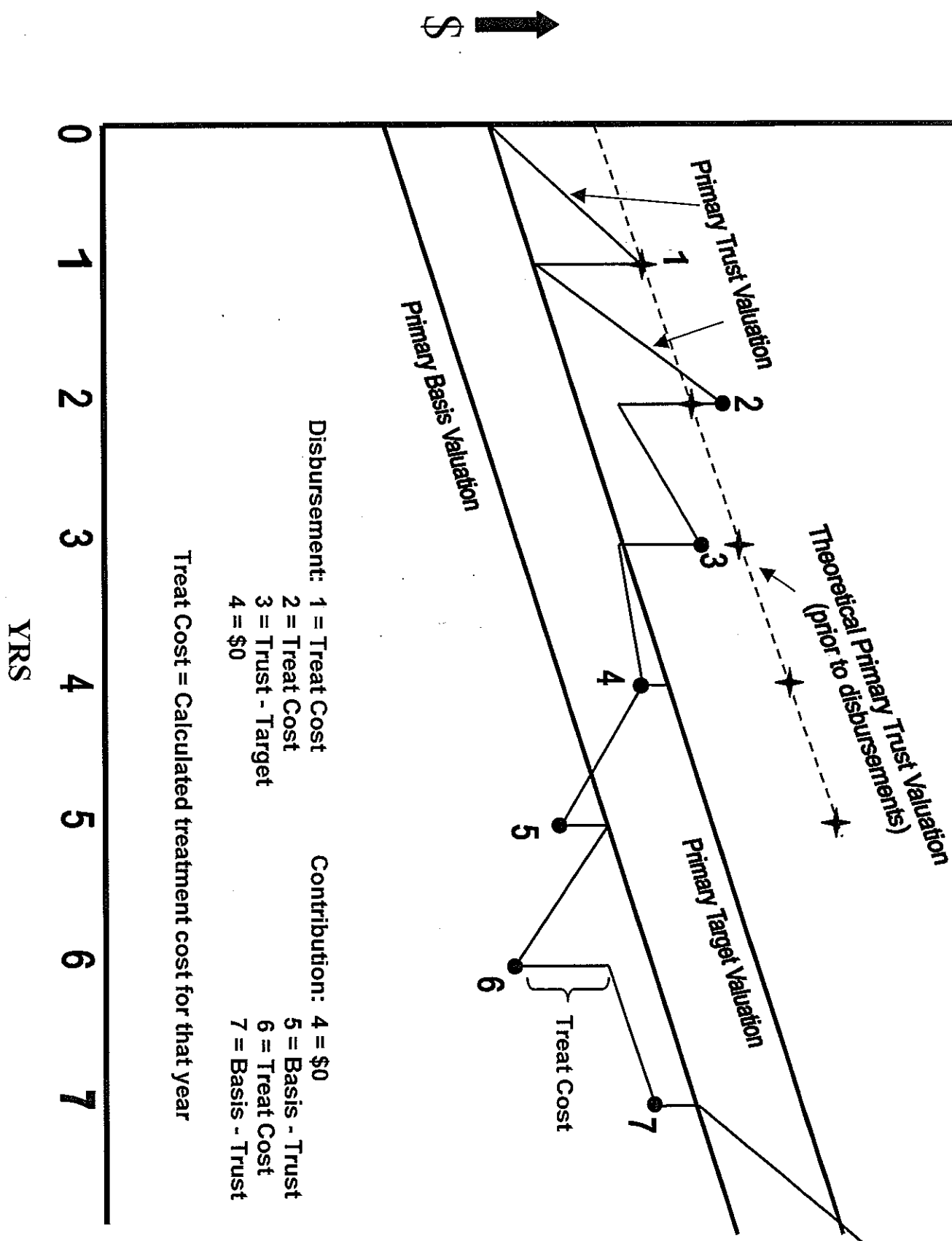


Exhibit C



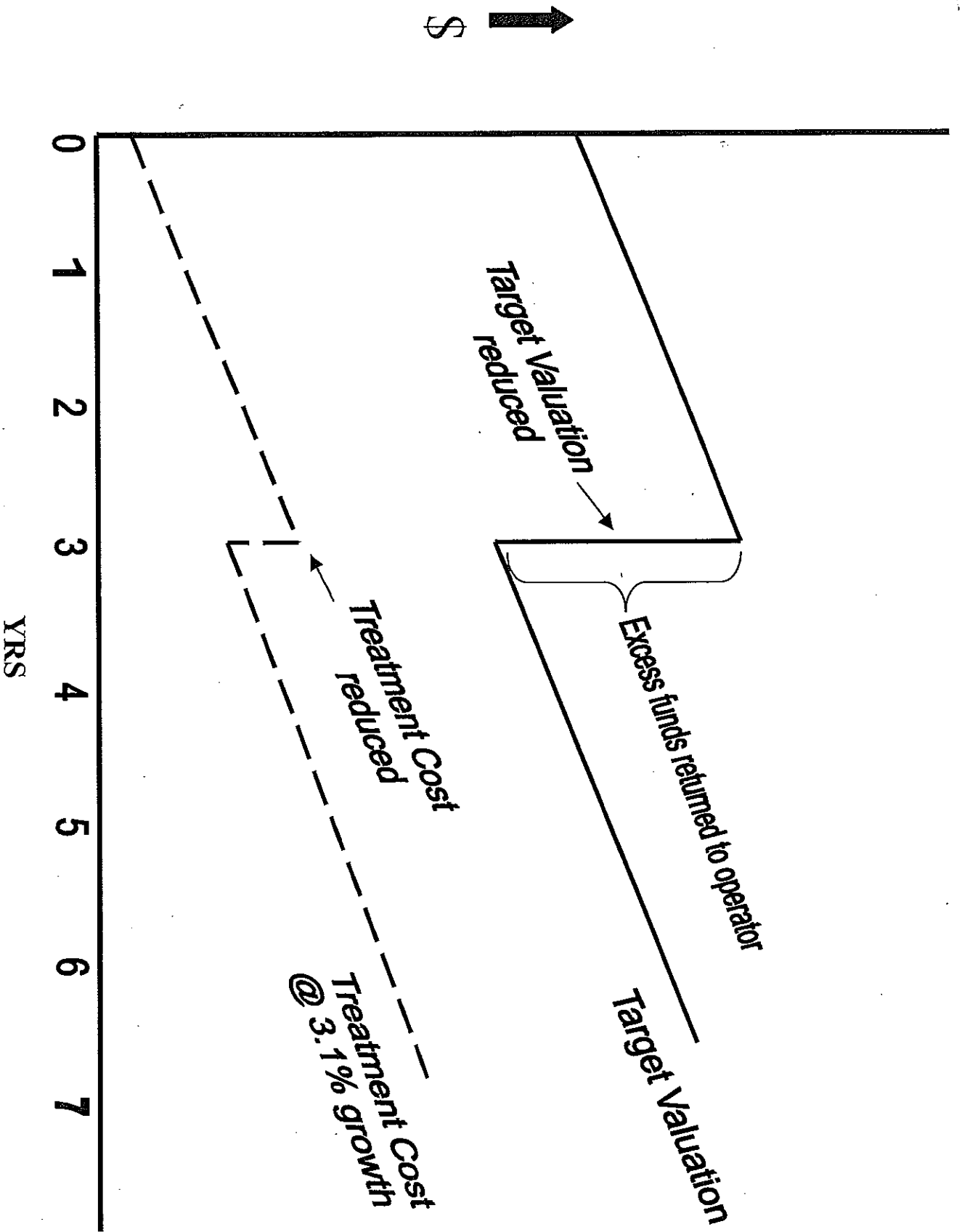


Exhibit D

Company Name Allegheny  
 Project MP26 PTS  
 Site Name 1555

EXHIBIT E1

Printed on 11/18/2013



Life of Trust Fund 75 yrs  
 Inflation Rate 3.10 %  
 Return Rate 8.43 %

AMD TREAT  
 RECAPITALIZATION COST

AMD TREAT

Year	Trust Fund Growth Fund Before Payout	Trust Fund Growth Fund After Payout	Payout Schedule	Year	Trust Fund Growth Fund Before Payout	Trust Fund Growth Fund After Payout	Payout Schedule
	4,117	4,117	Initial Fund Amount				
1	4,464	4,464	0	51	38,289	38,052	237
2	4,840	4,840	0	52	41,260	41,260	0
3	5,248	5,248	0	53	44,738	44,738	0
4	5,690	5,690	0	54	48,510	48,510	0
5	6,170	6,170	0	55	52,599	52,599	0
6	6,690	6,690	0	56	57,033	57,033	0
7	7,254	7,254	0	57	61,841	61,841	0
8	7,866	7,866	0	58	67,055	67,055	0
9	8,529	8,529	0	59	72,707	72,707	0
10	9,248	9,248	0	60	78,837	208	78,628
11	10,028	10,028	0	61	226	226	0
12	10,873	10,873	0	62	245	245	0
13	11,790	11,790	0	63	265	265	0
14	12,784	12,784	0	64	288	288	0
15	13,862	13,862	0	65	312	312	0
16	15,030	15,030	0	66	339	339	0
17	16,297	16,213	84	67	367	367	0
18	17,580	17,580	0	68	398	-0	398
19	19,062	19,062	0	69	-0	-0	0
20	20,669	16,065	4,603	70	-0	-0	0
21	17,420	17,420	0	71	-0	-0	0
22	18,888	18,888	0	72	-0	-0	0
23	20,480	20,480	0	73	-0	-0	0
24	22,207	22,207	0	74	-0	-0	0
25	24,079	24,079	0	75	-0	-0	0
26	26,109	26,109	0	76	0	0	0
27	28,310	28,310	0	77	0	0	0
28	30,696	30,696	0	78	0	0	0
29	33,284	33,284	0	79	0	0	0
30	36,090	10,873	25,217	80	0	0	0
31	11,790	11,790	0	81	0	0	0
32	12,784	12,784	0	82	0	0	0
33	13,861	13,861	0	83	0	0	0
34	15,030	14,889	141	84	0	0	0
35	16,144	16,144	0	85	0	0	0
36	17,505	17,505	0	86	0	0	0
37	18,981	18,981	0	87	0	0	0
38	20,581	20,581	0	88	0	0	0
39	22,316	22,316	0	89	0	0	0
40	24,197	15,719	8,477	90	0	0	0
41	17,044	17,044	0	91	0	0	0
42	18,481	18,481	0	92	0	0	0
43	20,039	20,039	0	93	0	0	0
44	21,728	21,728	0	94	0	0	0
45	23,560	23,560	0	95	0	0	0
46	25,546	25,546	0	96	0	0	0
47	27,700	27,700	0	97	0	0	0
48	30,035	30,035	0	98	0	0	0
49	32,567	32,567	0	99	0	0	0
50	35,313	35,313	0	100	0	0	0

## Exhibit E2 - Allegheny Enterprises MP26 Trust Fund

Year	Projected Annual O&M Cost	Primary Basis Valuation	Primary Target Valuation (PTV)	Recap (Before Payout)	Scheduled Capital Payouts	Recap (After Payout)	PTV with recap (before payout)	Insurance Present Value	PTV + Recap and Insurance
2014	\$3,377	\$66,735	\$77,413	\$4,117	\$0	\$4,117	\$81,530	\$1,869	\$83,399
2015	\$3,482	\$68,804	\$79,813	\$4,464	\$0	\$4,464	\$84,277	\$1,665	\$85,942
2016	\$3,590	\$70,937	\$82,287	\$4,840	\$0	\$4,840	\$87,127	\$1,722	\$88,849
2017	\$3,701	\$73,136	\$84,838	\$5,248	\$0	\$5,248	\$90,086	\$1,780	\$91,867
2018	\$3,816	\$75,403	\$87,468	\$5,691	\$0	\$5,691	\$93,159	\$1,841	\$95,000
2019	\$3,934	\$77,741	\$90,179	\$6,171	\$0	\$6,171	\$96,350	\$1,904	\$98,254
2020	\$4,056	\$80,151	\$92,975	\$6,691	\$0	\$6,691	\$99,666	\$1,970	\$101,635
2021	\$4,182	\$82,635	\$95,857	\$7,255	\$0	\$7,255	\$103,112	\$2,038	\$105,150
2022	\$4,311	\$85,197	\$98,829	\$7,866	\$0	\$7,866	\$106,695	\$2,108	\$108,804
2023	\$4,445	\$87,838	\$101,892	\$8,530	\$0	\$8,530	\$110,422	\$2,182	\$112,604
2024	\$4,583	\$90,561	\$105,051	\$9,249	\$0	\$9,249	\$114,300	\$2,259	\$116,558
2025	\$4,725	\$93,369	\$108,308	\$10,028	\$0	\$10,028	\$118,336	\$2,339	\$120,674
2026	\$4,871	\$96,263	\$111,665	\$10,874	\$0	\$10,874	\$122,539	\$2,422	\$124,960
2027	\$5,022	\$99,247	\$115,127	\$11,790	\$0	\$11,790	\$126,917	\$2,508	\$129,425
2028	\$5,178	\$102,324	\$118,696	\$12,784	\$0	\$12,784	\$131,480	\$2,598	\$134,078
2029	\$5,338	\$105,496	\$122,375	\$13,862	\$0	\$13,862	\$136,237	\$2,692	\$138,930
2030	\$5,504	\$108,766	\$126,169	\$15,030	\$0	\$15,030	\$141,199	\$2,790	\$143,990
2031	\$5,675	\$112,138	\$130,080	\$16,298	\$84	\$16,214	\$146,378	\$2,893	\$149,270
2032	\$5,850	\$115,614	\$134,113	\$17,580	\$0	\$17,580	\$151,693	\$2,998	\$154,691
2033	\$6,032	\$119,198	\$138,270	\$19,062	\$0	\$19,062	\$157,333	\$3,109	\$160,442
2034	\$6,219	\$122,894	\$142,557	\$20,669	\$4,603	\$16,066	\$163,226	\$3,226	\$166,451
2035	\$6,412	\$126,703	\$146,976	\$17,421	\$0	\$17,421	\$164,397	\$3,249	\$167,645
2036	\$6,610	\$130,631	\$151,532	\$18,889	\$0	\$18,889	\$170,421	\$3,368	\$173,789
2037	\$6,815	\$134,681	\$156,230	\$20,482	\$0	\$20,482	\$176,711	\$3,492	\$180,203
2038	\$7,026	\$138,856	\$161,073	\$22,208	\$0	\$22,208	\$183,281	\$3,622	\$186,903
2039	\$7,244	\$143,160	\$166,066	\$24,080	\$0	\$24,080	\$190,146	\$3,758	\$193,904
2040	\$7,469	\$147,598	\$171,214	\$26,110	\$0	\$26,110	\$197,324	\$3,899	\$201,224
2041	\$7,700	\$152,174	\$176,522	\$28,311	\$0	\$28,311	\$204,833	\$4,048	\$208,881
2042	\$7,939	\$156,891	\$181,994	\$30,698	\$0	\$30,698	\$212,692	\$4,203	\$216,895
2043	\$8,185	\$161,755	\$187,636	\$33,286	\$0	\$33,286	\$220,922	\$4,366	\$225,287
2044	\$8,439	\$166,769	\$193,452	\$36,092	\$25,217	\$10,875	\$229,544	\$4,536	\$234,080
2045	\$8,701	\$171,939	\$199,449	\$11,792	\$0	\$11,792	\$211,241	\$4,174	\$215,416
2046	\$8,970	\$177,269	\$205,632	\$12,786	\$0	\$12,786	\$218,418	\$4,316	\$222,734
2047	\$9,248	\$182,765	\$212,007	\$13,864	\$0	\$13,864	\$225,870	\$4,464	\$230,334
2048	\$9,535	\$188,430	\$218,579	\$15,032	\$141	\$14,891	\$233,611	\$4,617	\$238,228
2049	\$9,831	\$194,272	\$225,355	\$16,147	\$0	\$16,147	\$241,502	\$4,772	\$246,274
2050	\$10,135	\$200,294	\$232,341	\$17,508	\$0	\$17,508	\$249,849	\$4,937	\$254,786
2051	\$10,450	\$206,503	\$239,544	\$18,984	\$0	\$18,984	\$258,527	\$5,109	\$263,636
2052	\$10,774	\$212,905	\$246,969	\$20,584	\$0	\$20,584	\$267,553	\$5,287	\$272,841
2053	\$11,108	\$219,505	\$254,625	\$22,319	\$0	\$22,319	\$276,945	\$5,473	\$282,418
2054	\$11,452	\$226,309	\$262,519	\$24,201	\$8,477	\$15,724	\$286,720	\$5,666	\$292,386
2055	\$11,807	\$233,325	\$270,657	\$17,049	\$0	\$17,049	\$287,706	\$5,686	\$293,392
2056	\$12,173	\$240,558	\$279,047	\$18,487	\$0	\$18,487	\$297,534	\$5,880	\$303,414
2057	\$12,550	\$248,015	\$287,698	\$20,045	\$0	\$20,045	\$307,743	\$6,082	\$313,824