

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

BET Associates IV, LLC	:	Surface Mining Permit No. 54733020
	:	Tamaqua and Coaldale Boroughs,
	:	Schuylkill County and Lansford,
	:	Summit Hill and Nesquehoning
	:	Boroughs, Carbon County

SECOND BET CONSENT ORDER AND AGREEMENT

This Second BET Consent Order and Agreement is entered into this 5th day of May, 2011, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), and BET Associates IV, LLC (“BET Associates”).

The Department has found and determined the following:

A. The Department is the agency vested 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 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. The Department has been delegated the authority to administer and enforce the Federal Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 *et seq.* (“SMCRA”) through its approved primacy program.

B. BET Associates is a Delaware limited liability company with an office and place of business at 1233 East Broad Street, P.O. Box 150, Tamaqua, Pennsylvania 18252-2229. Its members are Bruce Toll and Douglas Topkis.

C. Lehigh Coal and Navigation Company (“LCN”) is a Pennsylvania corporation with a business address of 101 North Centre Street, Pottsville, Pennsylvania 17901, whose business included the mining of anthracite coal by the surface method. LCN’s principal officers are sole shareholder, James J. Curran, Jr., President, and Caitlin Curran Hatch, Chief Executive Officer.

D. LCN operated an approximately 7500 acre anthracite surface coal mine (the “Site”) pursuant to Surface Mining Permit No. 54733020 (“Permit”) and Mining License No. 1831. The Site is located in Tamaqua and Coaldale Boroughs, Schuylkill County, and Lansford, Summit Hill and Nesquehoning Boroughs, Carbon County. The Permit was renewed by the Department effective March 22, 2007, and LCN filed a timely application for renewal of the permit on March 9, 2010.

E. An involuntary petition for relief under Chapter 11 of Title 11 of the United States Code was filed against LCN on July 15, 2008. LCN consented to the entry of an order for relief, which was entered on August 26, 2008.

F. On May 7, 2010, the Department suspended the LCN Permit, effective May 24, 2010. The Department issued a notice of intent to forfeit the bonds posted by LCN on August 11, 2010 and forfeited the bonds on May 2, 2011.

G. Pursuant to 11 U.S.C. § 363, LCN negotiated an Asset Purchase Agreement with BET Associates and BET Lehigh Real Estate, LLC (“BET LRE”) pursuant to which substantially all of LCN’s assets (“LCN’s Assets”) would be sold to BET Associates and BET LRE, provided they were the successful bidders.

H. BET LRE and BET Associates were the successful bidders for the LCN Assets at the sale, and the Bankruptcy Court approved the sale by order dated May 27, 2010.

I. BET Associates and BET LRE took possession of the LCN Assets on June 3, 2010.

J. The Permit includes two major surface mine pits, known as Job 111 or 99 and the Springdale Pit. There are numerous acres of abandoned mine lands on the Permit, including surface pits, spoil piles, and coal refuse piles, which were affected and abandoned before the enactment of the 1965 amendments to the Surface Mining Act and the passage of SMCRA. The mine pools beneath the Permit contain mine drainage from the abandoned mine lands, active operations, and other non-mine runoff infiltrating the Site.

K. Bethlehem Mines Corporation (“Bethlehem”), LCN’s predecessor on the Site, and the Department entered into Consent Order and Agreements (“COAs”) on July 7, 1978 and May 17, 1988, respectively. Pursuant to those COAs and a 1980 Consent Decree between the United States and Bethlehem, Bethlehem agreed to pump water from the mine pools at the Number 10 and Number 14 shafts on the Site, treat it, and discharge it into Panther Creek via former Outfalls 001 and 004, respectively. The Department issued National Pollutant Discharge Elimination System (“NPDES”) Permits authorizing the discharges, and the permits were never appealed. Pursuant to an amendment to the 1988 COA, among other things, liability for water treatment for the discharges was transferred by consent from Bethlehem to LCN.

L. At certain times in 1992 and 1999 and at all times subsequent to 2001, LCN ceased pumping the mine pools and water began to discharge from an abandoned muleway at elevation 802 feet mean sea level (“MSL”) near Route 309 (“Route 309 Discharge”) within Tamaqua Borough. The Route 309 Discharge was treated and discharged into the Little Schuylkill River via Outfall 005. Prior to 1992, the Department, Bethlehem and LCN had believed that, once pumping

ceased, the discharge would occur at the Old Tamaqua Colliery drift which is at elevation 782 feet MSL and which is closer to Route 309. If pumping does not resume, it is possible that the discharge would appear at the old drift.

M. The flow rate of the Route 309 Discharge is variable and increases significantly in response to large precipitation events or snowmelt. The pond that is used for treatment was originally constructed as a sediment pond in connection with an adjacent abandoned mine land reclamation project funded by the Department. Because of its proximity to the highway and its limited capacity to contain the flows resulting from a large precipitation event or snowmelt, the existing Route 309 Treatment System is a threat to public health and safety. In addition, the existing system was not properly designed, constructed, operated and maintained by LCN, does not efficiently and adequately treat the mine drainage discharge, and cannot be sufficiently expanded because of topographic limitations and the proximity of businesses and public utility lines. In order to protect public health and safety, to provide for ongoing efficient water treatment, and to avoid periodic episodes of high flows bypassing the treatment system, a new, larger and more efficient treatment system must be constructed at a new location. Among other things, the new treatment system, which will require that water be pumped into it, will discharge to Panther Creek.

N. On May 27, 2010, the Department, BET LRE and BET Associates entered into a Consent Order and Agreement (“First BET Consent Order and Agreement”) in which, among other things, BET LRE agreed to fund the treatment of the Route 309 Discharge in the interim and BET Associates agreed to file an application for transfer of the Permit and seek new bonding.

O. Since taking possession of the LCN Assets, BET LRE has funded the operation of the Route 309 Treatment System. Interim improvements have been made to the system, including

enhancements to the existing lime addition system, repairs to the dredge and shore pump, installation of aeration mechanisms, and addition of a tote of liquid caustic soda as emergency back-up in the event of a power failure.

P. On August 13, 2010, BET Associates filed an application to transfer the Permit.

Q. As required by Paragraph 5(c) of the First BET Consent Order and Agreement, BET LRE submitted an interim flow management plan to prevent a catastrophic failure of the Route 309 Treatment System. The plan proposed pumping the mine pool at the Number 10 or Number 14 shafts and discharging into Panther Creek.

R. The Department has determined that, based on the 2011 Bond Rate Guidelines, the total bond required for the Permit is \$10,523,000. Of that amount, \$2,100,000 is a land reclamation financial guarantee ("LRFG"), originally issued to LCN. The Department has agreed to reassign the LRFG to BET Associates, subject to Paragraph 4(b) below. Before the Permit may be transferred, BET Associates must post \$8,423,000 in new bond(s). These bonds are not replacement bonds for any bonds which may have been posted by LCN and/or any of its predecessors. In addition, the new bonds being posted are for land reclamation only. BET Associates is establishing a post-mining treatment trust as the long term financial assurance for the treatment of the Route 309 Discharge.

S. Subsequent to the execution of the First BET Consent Order and Agreement, the Department and BET Associates met to discuss a number of issues, including the outstanding reclamation obligations and bonds, the relocation of the Route 309 Discharge, construction of a new treatment system, and long term financial assurance for treatment of the relocated Route 309 Discharge.

T. BET Associates has advised the Department, and its insurance broker has confirmed, that BET Associates cannot obtain new surety bonds if the bonds are required to cover the treatment of the Route 309 Discharge.

U. BET Associates has preliminarily evaluated potential changes to the Route 309 Treatment System, including relocating the discharge by pumping and treating the mine pool at the Number 10 shaft, Number 14 shaft, or some other location(s) and discharging at or near former Outfalls 001 and 004 into Panther Creek, a tributary of the Little Schuylkill River, as previously authorized in the NPDES Permit for the Site. To facilitate such relocation, the NPDES Permit would have to be modified to include outfalls at or near Outfalls 001 and/or 004, which discharge into Panther Creek upstream from Panther Creek's confluence with the Little Schuylkill River.

V. Panther Creek is impaired for metals (iron, manganese, aluminum) and pH as a result of drainage from abandoned coal mines. As required by § 303 of the Clean Water Act, 33 U.S.C. § 1313, the Department established Total Maximum Daily Loads ("TMDLs") for metals and pH for Panther Creek. If discharges at or near Outfall 001 or Outfall 004 or at other locations on Panther Creek were to resume, the effluent limits would have to take the TMDLs into account.

W. The existing TMDLs for Panther Creek were calculated without data from Outfall 004 at the Site because LCN ceased pumping from the Number 14 shaft and discharging at Outfall 004 in February 2002. Panther Creek Watershed TMDL, (p. 45).

X. The Panther Creek Watershed TMDL (p. 9) recognizes that the TMDL may be re-evaluated to reflect more current conditions in the watershed.

Y. The Department has reviewed the Panther Creek TMDL in light of the potential resumption of discharge to the creek as a result of the relocation of the Route 309 Discharge for

public health and safety reasons and has submitted a formal revision of the TMDL to the U.S. Environmental Protection Agency (“EPA”).

Z. The transfer of the Permit, revision of the Panther Creek TMDL, modification of the NPDES Permit to re-authorize discharges at or near Outfalls 001, 004 and/or at other discharge points and the relocation and upgrade of the Route 309 Treatment System could not be accomplished in the short period of time after the LCN Assets were acquired by the BET entities.

AA. Resumption of mining and reclamation activities on the Site is expected to reduce the pollution load to Panther Creek. The relocation of the Route 309 Discharge and the pumping of the mine pool(s) at the new treatment systems will eliminate a public health and safety hazard in the area of the Route 309 Discharge.

BB. As more fully set forth in Paragraph 5 below, BET Associates is willing to relocate the Route 309 Discharge and design and construct a new treatment system that employs technology that exceeds what is currently defined as Best Available Technology Economically Achievable (“BAT”) and Best Available Demonstrated Technology (“BADT”) for treatment of mine drainage discharges from active operations and treatment of post-mining discharges from underground mines. This new treatment system will be designed, constructed and operated in a manner that is capable of achieving a manganese reduction in the effluent greater than the degree of effluent reduction attainable by the application of BAT or BADT alone.

CC. BET Associates intends to manage the elevation of the mine pools in order to create storage capacity to normalize flows, especially during large precipitation events or snowmelt. BET Associates intends to monitor mine pool elevations at the Arlington Borehole, which is located at Latitude N 40° 47’ 53.3” and Longitude W 75° 56’ 58.8”. BET Associates has stated that it may use the Route 309 Discharge treatment system during the period when the mine pools

are initially pumped down after construction of a new treatment system and during extraordinary situations. Also, because the mine pools have not been pumped on any regular basis since 2001, BET Associates believes that a de minimis discharge may continue at the Route 309 Discharge point for an unknown period of time once BET Associates begins to pump the mine pool(s). The Department has agreed that BET Associates may continue to use the existing Route 309 Discharge treatment system to treat any de minimis discharge.

DD. BET Associates has agreed that it will assume liability for the Route 309 Discharge and its treatment. BET Associates has asked and the Department has agreed that BET Associates' liability is set forth in the First BET Consent Order and Agreement, this Second BET Consent Order and Agreement, and the Permit once transferred. However, BET Associates is not assuming LCN's liability under any previous Consent Decrees or COAs.

EE. BET Associates has agreed to establish a treatment trust and sign a trust agreement with Woodlands Bank that provides the trust with a security interest in, and an easement to, certain coal reserves located on the Site until such time as the trust is fully funded. A separate Post-Mining Treatment Trust Consent Order and Agreement is being executed simultaneously with this Second BET Consent Order and Agreement. In light of BET Associates' agreement to execute the Post-Mining Treatment Trust Consent Order and Agreement, the Department has agreed that BET Associates may post reclamation bonds which address all outstanding land reclamation obligations at the Site, but which do not cover the Route 309 Discharge. A copy of this Second BET Consent Order and Agreement will be attached to the Department's standard bond form so that it will act as a rider.

FF. The Lausanne Tunnel was constructed in 1905 to de-water the coalfields in the Panther Valley and it discharges into Nesquehoning Creek approximately 200 yards above the

creek's confluence with the Lehigh River. The underground coal mines de-watered by the 24,000-foot tunnel ceased operating in the mid-1950s. Mine drainage flows from the tunnel average 4000 gallons per minute (gpm) and are treated in a passive system that was constructed in 2004 with federal and state abandoned mine land reclamation funds. As is indicated on Exhibit 1, water from the portion of the site east of the groundwater divide flows to the Lausanne Tunnel; water from the portion of the site west of the groundwater divide currently discharges at Outfall 005. The vast majority of the area east of the groundwater divide was affected and abandoned before the enactment of the 1965 amendments to the Surface Mining Act and the passage of SMCRA. LCN affected minimal areas east of the groundwater divide. LCN did not affect the Lausanne Tunnel discharge.

GG. Slum Creek is a tributary to Panther Creek. The Slum Creek watershed consists of abandoned mine lands which were affected and abandoned before the enactment of the 1965 amendments to the Surface Mining Act and the passage of SMCRA. During normal flows, Slum Creek has a substantial impact on levels of manganese in Panther Creek; during rainfall events, Slum Creek also contributes significant amounts of sediment which is high in aluminum and iron to Panther Creek.

HH. The parties have discussed restoration of Slum Creek. As is more fully set forth below in Paragraph 8, BET Associates is willing to conduct restoration activities in and around Slum Creek. This restoration could generate both a manganese credit and a bond credit. The Department advised BET Associates that the Department would not require BET Associates to post a bond for this restoration work.

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 desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by BET Associates:

1. **Authority.** This Second BET Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 5, 402, and 610 of The Clean Streams Law, 35 P.S. §§ 691.5, 691.402, 691.610; Section 4.3 of Surface Mining Conservation and Reclamation Act, 52 P.S. § 1396.4c; Section 9 of the Coal Refuse Disposal Act, 52 P.S. § 30.59; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. **Findings.**

a. BET Associates agrees that the findings in Paragraphs A through HH are true and correct and, in any matter or proceeding involving BET Associates and the Department, BET Associates 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 Second BET Consent Order and Agreement in any matter or proceeding.

3. **Reclamation Plan.** No later than 30 days after the date of this Second BET Consent Order and Agreement, BET Associates shall submit a mining and reclamation plan. The plan shall include a schedule and, upon transfer of the Permit for the Site and approval by the Department, shall be incorporated in the Permit. That plan, once accepted by the Department, will supersede any and all previous reclamation plans and schedules. In the event that the Permit is transferred before the approval of the mining and reclamation plan, BET Associates shall have no obligation to implement any reclamation plan and schedule previously agreed to by LCN.

4. **Reclamation Bonds.**

a. So long as BET Associates complies with the provisions of this Second BET Consent Order and Agreement and the Post-Mining Treatment Trust Consent Order and Agreement which is being executed simultaneously with this agreement, and notwithstanding any language in the Department's mining bond forms, the Department agrees that BET Associates, as part of the Permit transfer, may post bonds in the amount of \$10,523,000 (including the \$2,100,000 LRFG referenced in subparagraph b.), which cover land reclamation only. For purposes of this Paragraph, land reclamation shall include all activities under the approved reclamation plan, including without limitation, backfilling, grading, planting, demolition of structures and sealing of boreholes and mine openings and shall specifically exclude treatment of the Route 309 Discharge. A copy of this Second BET Consent Order and Agreement will be attached as a rider to the Department's standard bond form. None of the new bonds being posted pursuant to this Paragraph are replacement bonds for any bonds which may have been posted by LCN and/or any of its predecessors. In the event of a conflict between the terms of the surety bond form and this Paragraph, the terms of this Paragraph are controlling.

b. So long as BET Associates complies with the provisions of this Second BET Consent Order and Agreement, the Department will allow the \$2,100,000 LRFG to be reassigned to BET Associates. The LRFG will be the first amount released; that is, once BET Associates reduces its reclamation obligations, the LRFG will be released in part or in whole before any bonds posted by BET Associates. BET Associates shall submit an application for the LRFG. Upon approval of the application, the existing LRFG (4810-57-LRFG) will be reassigned to the bond(s) posted by BET Associates for the

Permit. A new number will be assigned to the LRFG for tracking purposes. BET Associates shall not be responsible for any past annual fees that LCN failed to pay. In the event of a conflict between the LRFG documents and this agreement, the LRFG documents are controlling.

c. So long as BET Associates complies with the provisions of this Second BET Consent Order and Agreement, the First BET Consent Order and Agreement and the Permit once transferred, the Department will consider proposals to credit/reduce BET Associates' reclamation bond liability through the restoration of areas on the site that were abandoned prior to the enactment of SMCRA and which are not part of BET's mining and reclamation plan. With the exception of the Slum Creek proposal which is set forth in Paragraph 8 below, BET waives any right it may have to challenge the Department's decision concerning any proposal.

5. Treatment Systems.

a. No later than 180 days after the date of this Second BET Consent Order and Agreement, BET Associates shall submit a written proposal to relocate the Route 309 Discharge. The proposal shall include design plans and a schedule for relocation of the Route 309 Discharge and construction of a new treatment system(s) by no later than July 1, 2013. The new treatment system(s) shall be capable, among other things, of treating enough water so that the flows of the existing Route 309 Discharge cease, except for any de minimis amount as described in Paragraph CC above.

b. The design and operation of each new treatment system shall include a system of settling ponds and incorporate neutralization, mechanical mixing, mechanical aeration, pH adjustment or such other treatment components or techniques as will

maximize manganese precipitation. The system of settling ponds shall be designed with sufficient capacity and retention time to treat the maximum flow pumped from the mine pool(s) and provide reserve capacity when one or more of the ponds must be emptied and cleaned.

c. The new treatment system(s) shall be designed in a manner such that, for flows up to 14,000 gpm, the manganese concentration in the discharge from the new treatment system will not exceed the criterion for manganese established in 25 Pa. Code § 93.7. BET Associates shall monitor the performance of each new treatment system and shall provide a quarterly report to the Department. The report, which shall be submitted within 15 days of the end of each quarter, shall include all monitoring data gathered by the company, a discussion of any trends and an evaluation of the performance of each system. The Department will review the report to determine whether the system's design and operation meets the standard in this Paragraph. In the event that sampling data for the discharge from the new treatment system exhibit a trend of exceedances of the design standard over a period of two successive quarters, BET Associates shall construct, operate and maintain any additional components or facilities which, in the Department's judgment after consultation with BET Associates, will enable the new treatment system to meet the design standard set forth in this Paragraph.

d. In addition to the information about each treatment system required by subparagraphs a. and b., BET Associates shall submit a proposal to monitor and manage the elevation of all mine pools which will be affected. The proposal shall include, among other things, maps showing the interconnections between the mine pools and the amount of storage capacity available at a variety of elevations, including 740, 750, 760 and 770 feet

MSL. BET Associates shall submit a quarterly report describing, among other things, the mine pool elevations and quantities of water pumped daily.

e. Within 90 days of the Department's approval of any proposal submitted in accordance with subparagraph a. above, BET Associates shall commence construction of the treatment system.

f. BET Associates shall operate and maintain any and all new treatment systems so that each functions as designed.

g. BET Associates reserves its right to challenge the Department's decision to require any additional components or facilities.

h. Within 60 days of the date of this agreement, BET Associates shall submit an application for a revision to the NPDES Permit to include the discharge points at or near previous Outfalls 001 and 004 and/or at any other location where BET Associates intends to propose a new treatment system.

i. For a period of up to 18 months after the first new treatment system becomes operational, and for a period of up to 18 months after each additional treatment system becomes operational, but in no event later than April 1, 2014, the following effluent limitations and monitoring requirements shall apply to any discharges at or near Outfall 001 or 004 or from any new outfall:

DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
Parameter	Average Monthly	Maximum Daily	Instantaneous Maximum	Measurement Frequency	Sample Type
Total Iron	3.0 mg/l	6.0 mg/l	7.0 mg/l	monthly	Grab
Total Manganese	2.0 mg/l	4.0 mg/l	5.0 mg/l	monthly	Grab
Total Aluminum	2.0 mg/l	4.0 mg/l	5.0 mg/l	monthly	Grab
Total Suspended Solids	35.0 mg/l	70.0 mg/l	90.0 mg/l	monthly	Grab
pH	6.0 – 9.0 standard units				
Alkalinity must exceed acidity at all times.					

6. **Use of Existing Treatment System.**

a. Nothing in this Paragraph shall preclude BET Associates from utilizing the Route 309 Discharge Treatment System during the construction and startup of the new treatment system(s), or from discharging at Outfall 005 in the event of an extraordinary precipitation event or other Department approved emergency.

b. BET Associates may use the existing Route 309 Treatment System to treat any de minimis discharge. If the de minimis discharge is still flowing one year after the mine pool elevation has dropped below 782 feet MSL as measured at the Arlington Borehole described in Paragraph CC, BET Associates shall provide a report to the Department describing the source of the discharge and the reasons for its continuation.

c. So long as BET Associates maintains the existing Route 309 Treatment System in accordance with good operating practices, and until such time as the new treatment system becomes operational, but no later than July 1, 2013, the Department agrees to exercise its enforcement discretion and will not cite BET Associates for any violations related to the manganese effluent limitation at Outfall 005.

7. **Contingent Flow Management.** In the event that BET Associates must pump water from the Number 10 or Number 14 shaft, as provided in the contingent flow management plan submitted pursuant to Paragraph 5(c) of the First BET Consent Order and Agreement, to prevent a threat to public health and safety by avoiding a catastrophic failure of the Route 309 Treatment System, BET Associates may discharge such pumped water into Panther Creek via Outfall 004 or Outfall 001 or some other discharge point approved by the Department, as necessary. BET Associates shall provide a suitable level of treatment, taking into account the duration and severity of the precipitation event.

8. Slum Creek Project.

a. Within 180 days of the date of this agreement, BET Associates shall submit a plan and schedule to conduct restoration activities in the Slum Creek watershed. The proposal shall include construction/reconstruction of the stream channel, sampling of all coal refuse materials encountered, a plan to monitor Slum Creek at its confluence with Panther Creek and Panther Creek above and below the Slum Creek confluence, the estimated cost of the restoration based on current bonding guidelines, and such other information as is required by §4.13 of SMCRA and 25 Pa. Code § 86.292.

b. Upon approval of the proposal, BET Associates and the Department shall execute an agreement (“Restoration Agreement”) as provided in 25 Pa. Code § 86.292. The Department will not require BET Associates to submit a performance bond for the restoration work.

c. Within 90 days of the execution of the Restoration Agreement, BET Associates shall commence implementation of the restoration work. BET Associates shall complete all restoration work within three years of the date of the Restoration Agreement.

d. The Department shall issue a bond credit to BET Associates upon its determination that the restoration work has been completed in accordance with the Restoration Agreement.

e. Once the restoration work has been completed and sufficient water quality loading data compiled, BET Associates may apply for a credit or offset for manganese or any other parameter in the Panther Creek TMDL.

9. **Monitoring.**

a. No later than 60 days after the date of this Second BET Consent Order and Agreement, BET Associates shall commence monthly sampling of water to be pumped from the Number 14 shaft or any other location under consideration for the location of new treatment system(s). To the extent BET Associates drills any new boreholes or wells, it shall commence monthly sampling within 60 days of the drilling of the new borehole(s).

b. Within 60 days after the date of drilling a new Arlington Borehole, BET Associates shall commence weekly monitoring of the water elevation at the borehole.

10. **Additional Remedies.**

a. In the event BET Associates fails to comply with any provision of this Second BET 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 Second BET Consent Order and Agreement.

b. The remedies provided by this Paragraph 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.

11. **Reservation of Rights.** The Department reserves the right to require additional measures to achieve compliance with applicable law. BET Associates reserves the right to challenge any action which the Department may take to require those measures.

12. **Liability.** BET Associates shall be liable for any violations of its obligations under this Second BET Consent Order and Agreement, including those caused by, contributed to, or allowed by its members, agents, employees, or contractors. BET Associates shall also be liable for

any violations of its obligations under this Second BET Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

13. **Transfer of Site.**

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

b. If BET Associates intends to transfer any legal or equitable interest in the Site which is affected by this Second BET Consent Order and Agreement, it shall serve a copy of this Second BET 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 Pottsville District Mining Office of the Department of such intent.

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

14. **Correspondence with Department.** All correspondence with the Department concerning this Second BET Consent Order and Agreement shall be addressed to:

Michael J. Menghini
District Mining Manager
Pottsville District Office
5 West Laurel Boulevard
Pottsville, PA 17901-2522
570.621.3118
570.621.3110 (facsimile)

15. **Correspondence with BET Associates.** All correspondence with BET Associates concerning this Second BET Consent Order and Agreement shall be addressed to:

Douglas Topkis, Member
BET Associates IV, LLC
1233 East Broad Street
Post Office Box 150
Tamaqua, PA 18252-2229
570.668.9062

BET Associates 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 Second BET Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

16. **BET Liability for LCN Obligations.**

a. BET Associates' liability for the Route 309 Discharge and its relocation and treatment is established by the terms and conditions of this Second BET Consent Order and Agreement, the First BET Consent Order and Agreement, and the Permit, once transferred.

b. BET Associates shall not have any obligation for reclamation or water treatment under the Permit as held by LCN, the 1988 COA, the 2002 COA, the First Amended COA or the Second Amended COA, unless such an obligation is a term or condition of this Second BET Consent Order and Agreement, the First BET Consent Order and Agreement, or the Permit, as transferred.

c. The bonds being posted by BET Associates will not replace the bonds posted by LCN and/or any of its predecessors, and BET Associates is not responsible for any financial assurance obligations of LCN and/or its predecessors under the Clean Streams Law, the Coal Refuse Act or SMCRA.

d. In the event of a conflict between the language of the surety bond form and the terms of this Paragraph, the terms of this Paragraph are controlling.

17. **BET Associates Liability for Lausanne Tunnel.** Nothing in this Second BET Consent Order and Agreement shall affect BET Associates' liability, if any, for the Lausanne Tunnel discharge. BET Associates may apply for a permit or permit revision under subchapter G of 25 Pa. Code Chapter 88 with respect to the Lausanne Tunnel discharge.

18. **Force Majeure.**

a. In the event that BET Associates is prevented from complying in a timely manner with any time limit imposed in this Second BET Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstance beyond the control of either and which either, by the exercise of all reasonable diligence, is unable to prevent, then BET Associates may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Second BET Consent Order and Agreement shall not constitute circumstances beyond the control of BET Associates. The economic inability of BET Associates to comply with any of the obligations of this Second BET Consent Order and Agreement shall not be grounds for any extension of time.

b. BET Associates 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 BET Associates to mitigate the effects of the

event and to minimize the length of the delay. The initial written submission may be supplemented within ten working days of its submission. The failure by BET Associates 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 BET Associates and other information available to the Department. In any subsequent litigation, BET Associates 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.

19. **Panther Creek TMDL.** In the event that EPA refuses to approve or modifies the revision to the Panther Creek TMDL submitted by the Department, BET Associates' obligations to design and construct new treatment system(s) for the Route 309 Discharge shall be suspended and the parties shall meet expeditiously to negotiate modifications to the affected provisions of this Second BET Consent Order and Agreement.

20. **Severability.** The Paragraphs of this Second BET 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.

21. **Entire Agreement.** This Second BET 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.

22. **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 Second BET Consent Order and Agreement.

23. **Modifications.** No changes, additions, modifications, or amendments of this Second BET Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

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

25. **Decisions Under Consent Order.** Unless otherwise provided herein, any decision which the Department makes under the provisions of this Second BET 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 BET Associates may have to the decision will be preserved until the Department enforces this Second BET Consent Order and Agreement.

26. **Execution of Agreement.** This Second BET Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Facsimile signatures shall be valid and effective.

IN WITNESS WHEREOF, the parties hereto have caused this Second BET Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of BET Associates certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Second BET Consent Order and Agreement on behalf of BET Associates; that BET Associates consents to the entry of this Second BET Consent Order and Agreement as a final ORDER of the Department; and that BET Associates hereby knowingly

waives its right to appeal this Second BET 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, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by BET Associates' attorney certifies only that the agreement has been signed after consulting with counsel.

FOR BET ASSOCIATES IV, LLC:

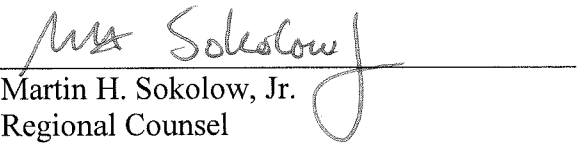
Douglas Topkis
Member

Maxine M. Woelfling
Attorney for BET Associates IV, LLC

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



Michael J. Menghini
District Mining Manager



Martin H. Sokolow, Jr.
Regional Counsel

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FOR BET ASSOCIATES IV, LLC:

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

Douglas Topkis
Member

Michael J. Menghini
District Mining Manager

Maxine M. Woelfling

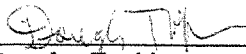
Maxine M. Woelfling
Attorney for BET Associates IV, LLC

Martin H. Sokolow, Jr.
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FOR BET ASSOCIATES IV, LLC:

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

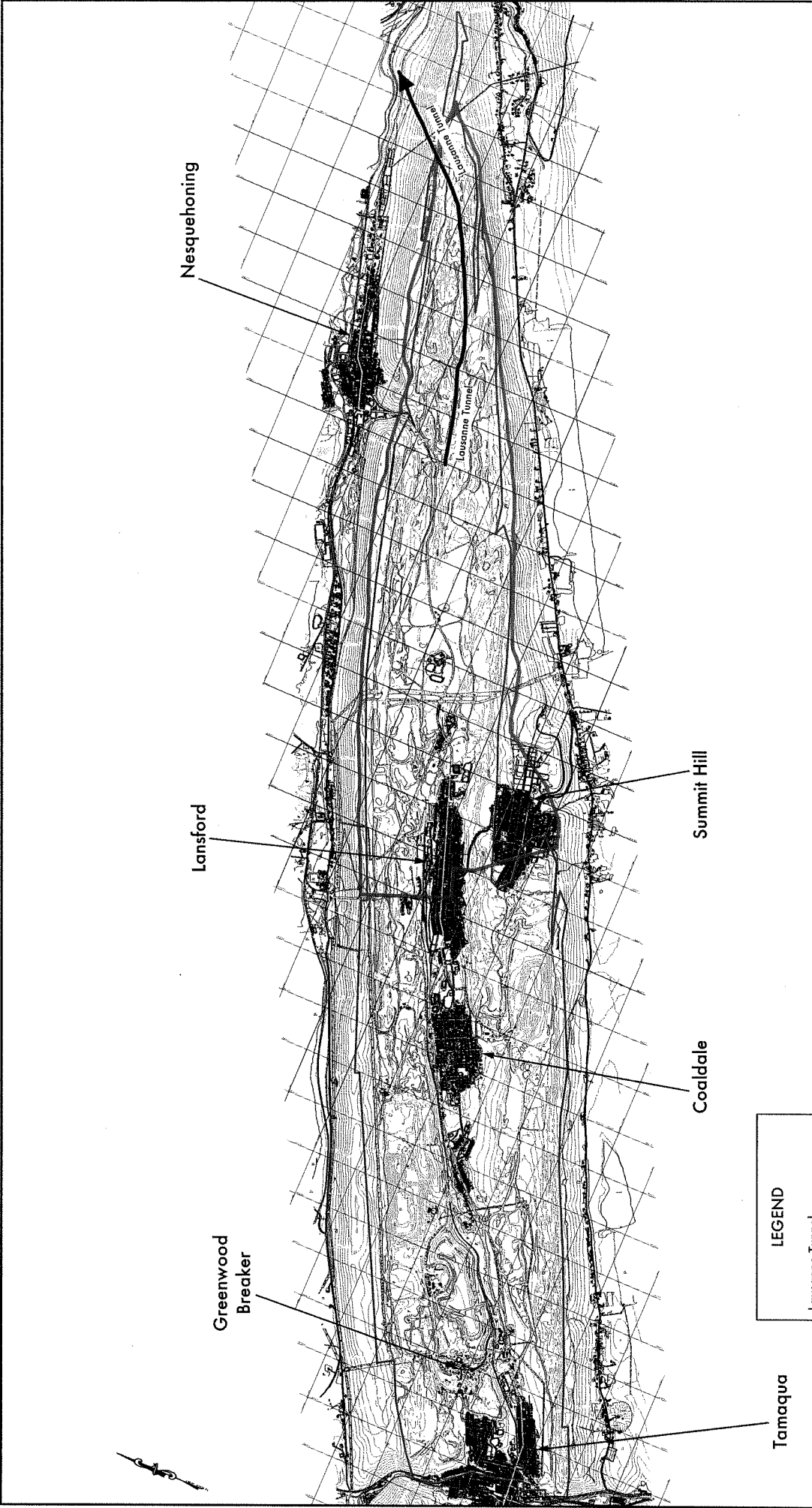



Douglas Topkis
Member

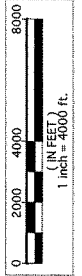
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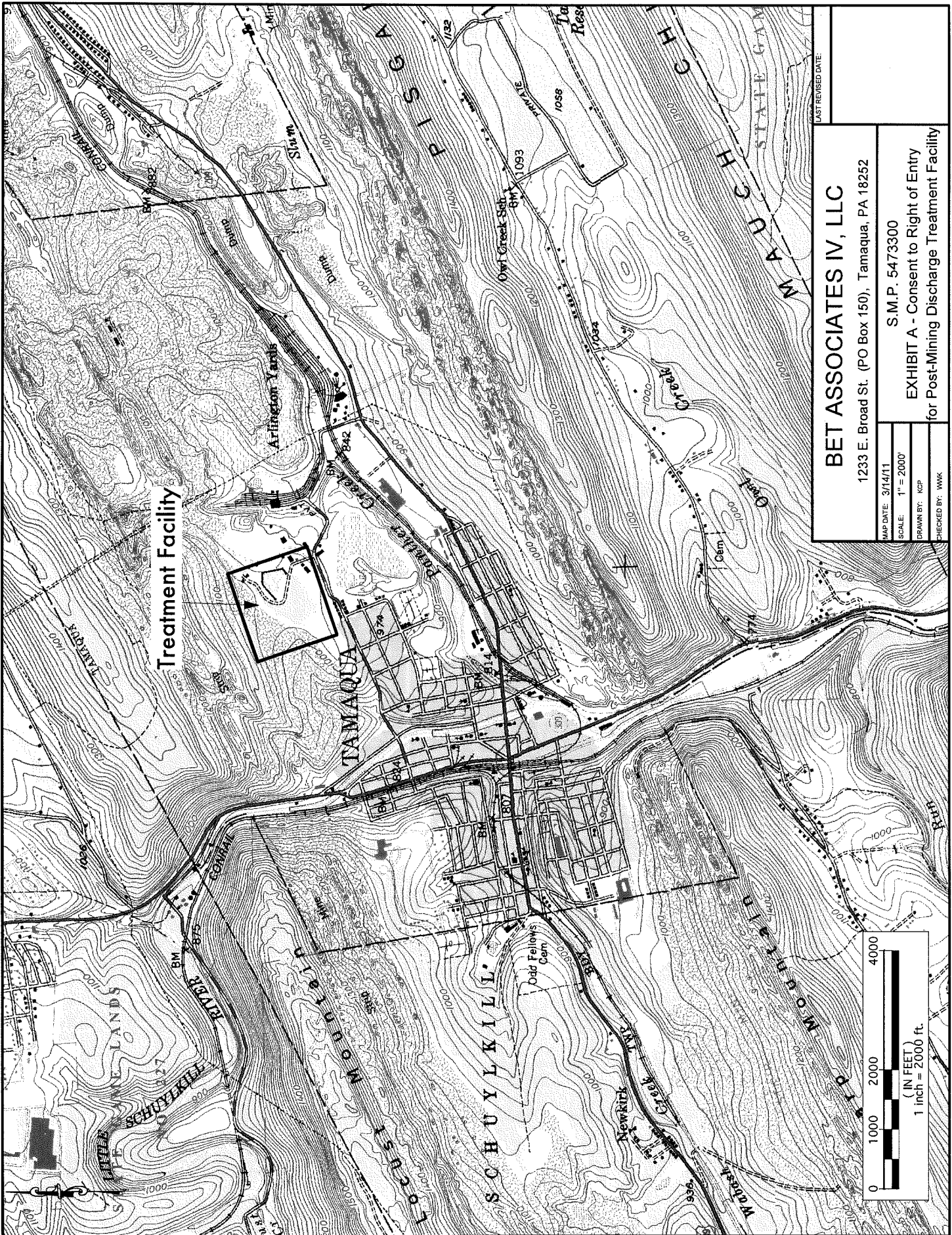


 <p>K E</p> <p>Kaufman Engineering, Inc. Rock Creek Corporate Center Suite 209 1444 E. 30th Ave. Clydeport, Pennsylvania 18447 T (570) 307-1267 F (570) 307-1304</p>	<p>BET ASSOCIATES IV, LLC 1233 E. Broad St. (PO Box 150), Tamaqua, PA 18252</p>		<p>REVISIONS</p>	<p>Date: April 1, 2011</p>
	<p>Exhibit 1 - Lausanne Tunnel Drainage Area</p>		<p>Drawn By: WWK & AJK</p>	<p>Checked By: WWK</p>
	<p>Township</p>	<p>County</p>	<p>Site Pennsylvania</p>	<p>Sheet No. 1 of 1</p>
	<p>Sheet No. 1 of 1</p>			



LEGEND

- Lausanne Tunnel
- Drainage Area
- Property Line
- Route 209



Treatment Facility

LAST REVISED DATE:

BET ASSOCIATES IV, LLC

1233 E. Broad St. (PO Box 150), Tamaqua, PA 18252

S.M.P. 5473300

EXHIBIT A - Consent to Right of Entry
for Post-Mining Discharge Treatment Facility

MAP DATE: 3/14/11
SCALE: 1" = 2000'
DRAWN BY: KCP
CHECKED BY: WAK

