

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Docket #
103061
EWA #
263321

In The Matter Of:

Bellaire Corporation : CMAP No. 32891701
P.O. Box 245 : NPDES Permit No. PA0124591
Armagh, PA 15920-0245 : Hutchison Hollow Treatment Facility
: East Wheatfield Township
: Indiana County
: Alternative Financial Assurance Mechanism

POST-MINING TREATMENT TRUST
CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 1st day of October 2010, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Bellaire Corporation ("Bellaire").

A. The Department is the agency with authority to administer and enforce the Surface Mine Conservation and Reclamation Act, Act of May 31, 1945, P. L. 1198, *as amended*, 52 P. S. §§ 1396.1-1396.19a ("Surface Mining Act"); the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, *as amended*, 52 P.S. §§ 1406.1-1406.21 ("Subsidence Act"); the Coal Refuse Disposal Control Act, Act of September 24, 1968, P.L. 1040, *as amended*, 52 P.S. §§ 30.51-30.206 ("Coal Refuse Disposal Act"); the Clean Streams Law, Act of June 22, 1937, P. L. 1987, *as amended*, 35 P. S. §§ 691.1-691.1001 ("Clean Streams Law"); Section 1917-A of the Administrative Code, Act of April 9, 1929, P. L. 177, *as amended*, 71 P.S. § 510-17, and the rules and regulations adopted thereunder.

B. Pursuant to Section 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 may include, but are not

limited to, the establishment of a site-specific trust funded by the 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 Participation Trust Agreement set forth in Exhibit D constitutes an alternative financial assurance mechanism authorized by Section 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 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; 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. Bellaire, formerly known until 1988, as The North American Coal Corporation (“Bellaire”), is an Ohio corporation with a mailing address of P.O. Box 245, Armagh, PA 15920-0245.

D. As explained below in Paragraphs F through L, Bellaire is the entity that pumps and treats mine drainage from the mine pool of the Conemaugh No. 1 Mine and collects and treats mine drainage seeps emanating from the Charles Coal Refuse Disposal Area (“Charles CRDA” or “CRDA” and “CRDA Seeps”) associated with the mine under authorization of Coal Mining Activity Permit (“CMAP”) No. 32891701 and National Pollution Discharge Elimination System (“NPDES”) Permit No. PA0124591.

E. The Conemaugh No. 1 Mine is a sealed underground bituminous coal mine located in East Wheatfield Township, Indiana County. A topographic map depicting the location of the mine is attached hereto as **Exhibit A**.

F. Bellaire conducted coal removal operations at the Conemaugh No. 1 Mine from 1968 to December 1981, under authorization of Permit No. 367M045. In September 1982, Bellaire sealed the mine and fully reclaimed the surface areas associated with the mine site.

G. Groundwater flowed and continues to flow into and form a pool in the large underground void remaining at the Conemaugh No. 1 Mine. Beginning in 1984, the mine pool broke out at the surface discharging polluttional mine drainage that affected various streams and tributaries in the vicinity of the mine. In order to prevent these adverse effects, and to keep the mine pool at a safe level, the mine pool must be pumped and the pumped mine drainage must be treated before it is discharged into the receiving stream; namely, an unnamed tributary to the Conemaugh River ("Unnamed Tributary").

H. From 1973 to 1981, Bellaire conducted coal refuse disposal activities at the Charles CRDA in support of the coal removal operations at the Conemaugh No. 1 Mine under authorization of Permit Nos. 3273203 and 500089. During this time, the CRDA Seeps emerged along the toe of the slope of the CRDA and Bellaire collected and treated them at a down-slope treatment facility ("Down-Slope Treatment Facility"). Following final reclamation of the surface areas associated with the CRDA in September 1982, Bellaire continued to treat the CRDA Seeps at the Down-Slope Treatment Facility. The attached Exhibit A shows the location of the Charles CRDA.

I. In 1989, Bellaire applied for the CMAP/NPDES permits from the Department necessary to construct and operate a new mine drainage treatment facility known as the Hutchinson Hollow Treatment Plant. The attached Exhibit A shows the location of the Hutchinson Hollow Treatment Plant.

J. On September 28, 1989, the Department issued CMAP No. 32891701 and NPDES Permit No. PA0124591 to Bellaire authorizing the construction of the Hutchinson

Hollow Treatment Plant to facilitate treatment of the pumped mine drainage from the Conemaugh No. 1 deep mine pool. Bellaire completed construction of and began operating the plant in 1990.

K. In 1991, Bellaire received authorization from the Department to collect and pump acid mine drainage ("AMD") from the Charles CRDA to the Hutchinson Hollow Treatment Plant, via a four inch diameter underground pipeline ("CRDA Pipeline"), for treatment before discharge to the Unnamed Tributary. The attached **Exhibit A** shows the location of the CRDA Pipeline.

L. In June 2005, Robindale Energy Services, Inc. ("RES") received authorization from the Department under Surface Mining Permit ("SMP") No. 32040202 to remove coal refuse from the Charles CRDA and return Circulating Fluidized Bed Combustion Coal Ash to the Charles CRDA. Pursuant to a separate Water Treatment Agreement dated August 22, 2005, between RES and Bellaire, Bellaire currently collects, pumps and treats AMD from the Charles CRDA at the Hutchinson Hollow Treatment Plant.

M. The raw water quality of the Conemaugh No. 1 pumped mine pool at monitoring Point RAW, and the raw water quality of the CRDA Seeps at monitoring Point P3, are set forth in **Exhibit B**. The locations of the RAW and P3 monitoring points are depicted on the map attached hereto as **Exhibit A**.

N. The required effluent limits applicable for Point RAW and Point P3 are as follows:

<u>Discharge Parameter</u>	<u>Average Monthly</u>	<u>Maximum Daily</u>	<u>Instant Maximum</u>
Total Iron (mg/l)	3.0	6.0	7.0
Total Manganese (mg/l)	2.0	4.0	5.0
Total Suspended Solids (mg/l)	35	70	90

pH not less than 6.0 or greater than 9.0 standard units at all times.
Alkalinity must exceed acidity at all times.

O. The principal components of the Hutchinson Hollow Treatment Plant are a submersible pump, PVC pipe, a pre-aeration basin, aeration basins, mixing tanks, and a static thickener. Raw water is pumped from the Conemaugh No. 1 Mine from a withdrawal well. The raw water flows through a ten inch diameter PVC pipe into the pre-aeration basin. Raw water is also pumped via the CRDA Pipeline from the Charles CRDA into the pre-aeration basin. The raw water from the Mine and the CRDA then flows into a flash mixing tank and then into aeration basins and the static thickener for removal of solids. Solids are recycled for alkaline addition and the Waste sludge is disposed of into two sludge disposal wells. Treated effluent is discharged into the Unnamed Tributary at Outfall 001 also shown on the attached **Exhibit A**.

P. The discharge of treated effluent from the Hutchinson Hollow Treatment Plant on Bellaire's CMAP No. 32891701 is authorized by NPDES Permit No. PA0124591. The CMAP and NPDES must be renewed every five years. Bellaire has submitted complete and timely permit renewal applications for both permits which the Department will act on following Bellaire's establishment and funding of a post-mining treatment trust as discussed below. Currently, both permits have expired but continue to authorize Bellaire to operate under these permits.

Q. The Hutchinson Hollow Treatment Plant including all components of the Plant as described in Paragraph O, above, is situated on land owned by Bellaire. In order to access the Hutchinson Hollow Treatment Plant, it is necessary to traverse three separate properties that are not owned by Bellaire. Bellaire's right to traverse such properties is secured by easement agreements with the property owners.

Post-Mining Treatment Trust

R. Bellaire agrees it has the legal responsibility, pursuant to the statutes and regulations set forth in Paragraph A hereof to properly treat or abate the discharges identified in Paragraph M, above.

S. Bellaire is willing to establish a post-mining treatment trust (“Bellaire Treatment Trust”) with The Clean Streams Foundation, Inc. as an alternative financial assurance mechanism in order to provide for the long-term treatment of post-mining discharges. Bellaire agrees to establish the Bellaire Treatment Trust by executing a Participation Agreement with The Clean Streams Foundation, Inc. that is acceptable to Bellaire, the Department and The Clean Streams Foundation.

T. In order to calculate the amount necessary to fully fund the Bellaire Treatment Trust, the Department and Bellaire agreed to use the actual operation and maintenance (“O&M”) costs from past operations of the Hutchinson Hollow Treatment Plant or AMDTreat cost estimates where insufficient O&M cost data exist. A summary of current annual O&M costs for the Hutchinson Hollow Treatment Plant is as follows:

Table of Current Annual O&M Costs

CATEGORY	SAMPLING	LABOR	MAINTENANCE	CHEMICAL	ELECTRICITY
Rate	\$25/sample	\$35/hr.			
Annual Cost	\$1,000	\$90,266	\$12,437	\$37,572	\$81,286

U. Based on actual O&M costs from 2005 through 2007 and AMDTreat cost estimates, the current annual cost of operating and maintaining the Hutchinson Hollow Treatment Plant is estimated to be \$222,561.00.

V. In order to calculate the amount necessary to fully fund the Bellaire Treatment Trust, the Department and Bellaire 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 \$330,548.00. The AMDTreat Recapitalization Cost schedule for the Hutchinson Hollow Treatment Plant is attached hereto as **Exhibit C**.

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

X. The parties have agreed to use the formulas set forth below to calculate the present value of the Bellaire Treatment Trust. The parties agree that the present value of the fully-funded Bellaire Treatment Trust for the AMD discharges covered by this Consent Order and Agreement is \$4,969,494.89 (0.80% Trustee Fee). This sum constitutes the current present value of the estimated future O&M costs for the Hutchinson Hollow Treatment Plant, and the current present value of the estimated future recapitalization costs for the Hutchinson Hollow Treatment Plant. The parties have also agreed to use the information and figures which will be provided by the Accounting required by Paragraph 4 below to recalculate and adjust the amount of the Bellaire Treatment Trust as described in Paragraphs 8 and 10 below.

Y. The Department is willing to allow Bellaire, upon a date mutually agreed to by the parties and set forth in Paragraph 5 hereof, to deposit an initial payment of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) into the Bellaire Treatment Trust and complete the funding of the Trust no later than one (1) year from the date of the initial payment to the Trust with a second payment in the amount of the balance necessary to fully fund the Trust.

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 Bellaire 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 Bellaire to comply with any term or condition of this Consent Order and Agreement shall subject Bellaire to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings.

a. Bellaire agrees that the findings in Paragraphs A through Y are true and correct and, in any matter or proceeding involving Bellaire and the Department relating to this Consent Order and Agreement, Bellaire 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 (3) consecutive years of the costs and expenses of treatment, calculated by using the Accountings for those three (3) years.

c. Annual Anniversary Date. Thirty (30) days after the last day of Bellaire's fiscal year or thirty (30) days after the last day of any fiscal year which Bellaire 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 Bellaire Treatment Trust that is primarily used to finance anticipated and periodic capital expenditures for the Hutchinson Hollow Treatment System.

f. Distribution Payment. The Trustee's disbursement of money from the Bellaire Treatment 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 Hutchinson Hollow Treatment Plant. The equation is:

	PV	=	$(A/[E-I]) + A$
Where:	PV	=	Present Value of the O&M Costs
	A	=	Current Actual Treatment Cost
	E	=	Expected annual earnings/Interest Rate (assumed to be 9.13% or 0.913)
	I	=	Inflation Rate (assumed to be 3.1% or 0.031)

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 Bellaire Treatment Trust that is primarily used to finance annual O&M costs of the Hutchinson Hollow Treatment Plant.

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 Bellaire Treatment Trust in the Primary Trust Account.

4. Annual Treatment Costs; Records; Factors; Accounting.

a. Bellaire 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. Bellaire shall provide an annual accounting of the costs and expenses of annual treatment ("Accounting") to the Department on or before the 90th day following the last day of the fiscal year for which the Accounting is being provided. The Accounting shall cover the period beginning January 1 and continuing through December 31 of each year, or other fiscal year as Bellaire 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 and other corporate officer responsible for the financial affairs of Bellaire attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

c. Bellaire's obligation to keep records and provide the Accounting shall continue for the period during which Bellaire is operating the Hutchinson Hollow Treatment Plant.

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

5. Treatment Trust.

On or before October 1, 2010, Bellaire shall:

a. Establish the Bellaire Treatment Trust, an irrevocable trust, by executing a Participation Agreement with The Clean Streams Foundation, Inc. The Bellaire Treatment Trust shall secure Bellaire's obligation to treat the Point RAW and Point P3 mine drainage discharges covered by this Consent Order and Agreement including Bellaire's legal obligation to operate and maintain the Hutchinson Hollow Treatment Plant necessary to treat said discharges, in perpetuity, or until water treatment is no longer necessary. The Bellaire Treatment Trust shall also secure Bellaire's obligation to provide financial resources to the Department and the citizens of the Commonwealth sufficient to maintain and operate the Hutchinson Hollow Treatment Plant and to treat the mine drainage in perpetuity in the event Bellaire becomes unable or unwilling to meet these obligations. The Bellaire Treatment Trust shall also provide for the demolition of treatment facilities and reclamation of the treatment site should treatment no longer be needed. The Participation Agreement establishing the Bellaire Treatment Trust is attached as **Exhibit D**.

b. Establish within the Bellaire Treatment Trust two sub-accounts: a sub-account designated as the Primary Trust Account; and a sub-account designated as the Capital Improvement Account.

c. Make an initial payment of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) into the Primary Trust Account to partially fund the Bellaire Treatment Trust. The sum of \$4,969,494.89 constitutes the current present value of the amount necessary to fully fund the Bellaire Treatment Trust and includes the current present value of the future operation

and maintenance of the Hutchinson Hollow Treatment Plant and the current amount needed to finance anticipated and periodic capital expenditures for the Hutchinson Hollow Treatment Plant.

6. Ongoing Payments to the Primary Trust Account. No later than one (1) year from the date of the initial payment to the Bellaire Treatment Trust, Bellaire shall contribute the balance of the present value of the Bellaire Treatment Trust in a second payment in order to complete the funding of the Bellaire Treatment Trust.

7. Annual Distribution or Contribution Payments - Primary Trust Account.

a. All calculations under this Paragraph 7 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 Bellaire or Bellaire's designee. The amount of such Distribution Payment will be equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, or equal to the Calculated Treatment Cost, whichever is less. This amount is depicted graphically at Points 1, 2 and 3 on **Exhibit E**.

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 at Point 4 on **Exhibit E**.

d. If the Primary Trust Valuation is less than the Primary Basis Valuation, then Bellaire 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 at Points 5 and 6 on **Exhibit E**.

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

a. All calculations under this Paragraph 8 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% 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 F 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 9.

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 Bellaire. 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 9.13%, 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 Consent Order and Agreement as **Exhibit C**. 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 **Exhibit C** 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.

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 C. 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 Bellaire any time a planned capital replacement is made as indicated on Exhibit C. The capital replacement and maintenance activities shall be made as needed, which may be sooner or later than the projected time. The amount of the Distribution Payment shall be equal to the calculated cost of the Capital Improvement as indicated on Exhibit C, 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 12 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.

Subject to the provisions of Paragraphs 7 (Annual Distribution or Contribution Payments – Primary Trust Account) and 9 (Distribution Payments for Adjustments to the Primary Target Valuation), 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 C**, 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 Bellaire's obligation to make a contribution payment under Paragraph 7.d. This amount is depicted graphically at Point 5 on **Exhibit E**. However, the amount of surplus funds transferred to the Primary Trust Account may exceed Bellaire's obligation under Paragraph 7.d. 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 E**.

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

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

14. Real and Personal Property.

a. No later than thirty (30) days from the date of this Consent Order and Agreement, Bellaire shall submit to the Department a fully executed instrument recorded in

Indiana County assigning to the Clean Streams Foundation, Inc. easements given to Bellaire by three property owners over whose properties it is necessary to cross to access the Hutchinson Hollow Treatment Plant and conveying an easement over the property owned by Bellaire on which the Hutchinson Hollow Treatment Plant is located.

b. No later than thirty (30) days from the date of this Consent Order and Agreement, Bellaire shall transfer to the Clean Streams Foundation, Inc. Bellaire's right, title and interest in the personal property comprising the Hutchinson Hollow Treatment Plant as identified in Exhibit A attached to the Participation Agreement. As provided in the Participation Agreement, the Clean Streams Foundation, Inc. agrees to provide Bellaire a perpetual and irrevocable license to use, operate, maintain, construct or reconstruct said equipment at the Hutchinson Hollow Treatment Plant so long as Bellaire continues to conduct the necessary water treatment operations.

15. Public Liability Insurance.

a. Bellaire shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the Hutchinson Hollow Treatment Plant and the real and personal property which is identified in the Participation Agreement as part of the Bellaire Treatment Trust principal. Bellaire shall also provide fire damage insurance in an appropriate amount based on the list of equipment attached as Exhibit A to the Participation Agreement. The Trustee and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policy for liability insurance and as loss payees on the policy for property damage.

b. In addition to the insurance 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 (30) 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 that certifies Bellaire has a public liability insurance policy in force meeting the requirements of this Paragraph 15.

16. Annual Requirements.

a. The parties will meet on or before the 30th 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 Hutchinson Hollow Treatment Plant 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 Bellaire 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 Bellaire Treatment Trust, and (v) to address any other issues that may concern this Consent Order and Agreement or its implementation.

b. Bellaire 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. Bellaire's Continuing Obligation. Neither Bellaire's agreement to fund the Bellaire Treatment Trust nor the full nor partial funding of the Bellaire Treatment Trust, nor the exhaustion of the Bellaire Treatment Trust shall in any way limit Bellaire's obligation to operate the Hutchinson Hollow Treatment Plant and to treat the mine drainage discharges covered by this Consent Order and Agreement in a manner which meets the effluent limitations described by Paragraph N above. Furthermore, exhaustion of the Bellaire Treatment Trust shall not excuse Bellaire from Bellaire's obligation to adequately treat or to abate the discharges.

18. Stipulated Civil Penalties.

a. In the event Bellaire fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, Bellaire 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. The payment shall be by corporate check or the like, made payable to the "Commonwealth of Pennsylvania" and submitted to the:

District Mining Manager
Department of Environmental Protection
Cambria District Mining Office
286 Industrial Park Road
Ebensburg, PA 15931-4119

c. Any payment under this Paragraph 18 shall neither waive Bellaire's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Bellaire's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Bellaire'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 Bellaire 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 Bellaire defaults on the obligations of this Consent Order and Agreement, Bellaire 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 Bellaire 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. Bellaire reserves the right to challenge any action, which the Department may take to require those measures.

21. Liability of Bellaire. Bellaire 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. Bellaire 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 Hutchinson Hollow Treatment Plant or any part thereof.

b. If Bellaire intends to transfer any legal or equitable interest in the Hutchinson Hollow Treatment Plant which is affected by this Consent Order and Agreement, Bellaire 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 provide written notice to the following individuals:

Director, District Mining Operations
Department of Environmental Protection, District Mining Office
8205 Route 819
Greensburg, PA 15601
Telephone: 724-925-5500
Facsimile: 724-925-5557

and the District Mining Manager identified in Paragraph 23 of such intent.

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
Cambria District Mining Office
286 Industrial Park Road
Ebensburg, PA 15931-4119
Telephone: 814-472-1900
Facsimile: 814 472-1898

24. Correspondence with Bellaire. All correspondence with Bellaire concerning this Consent Order and Agreement shall be addressed to:

Bellaire Corporation
Attn: Manager - Eastern Operations
P.O. Box 245
Armagh, PA 15920-0245
Telephone: 814 446-5631
Facsimile: 814 446-6854

With a copy to:

Bellaire Corporation
Attn: Vice President - Law and Administration, and Secretary
14785 Preston Road, Suite 1100
Dallas, TX 75254
Telephone: 972-387-1031
Facsimile: 972-239-2625

Bellaire 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 address set forth in Paragraph 23.

25. Force Majeure.

a. In the event that Bellaire 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 Bellaire's control and which Bellaire, by the exercise of all reasonable diligence, is unable to prevent, then Bellaire 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 Bellaire's control. Bellaire'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. Bellaire shall only be entitled to the benefits of this Paragraph 25 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 Bellaire 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. Bellaire's failure to comply with the requirements of this Paragraph 25 specifically and in a timely fashion shall render this Paragraph 25 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 Bellaire and other information

available to the Department. In any subsequent litigation, Bellaire 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. 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 Bellaire may have to a 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 Bellaire. For purposes of this Paragraph, successor shall mean any corporation or entity: a) Bellaire consolidates with or merges into or permits to merge with it and Bellaire is not the surviving corporation or entity; or b) which acquires, by purchase or otherwise, all or substantially all of Bellaire's properties or assets which include, but is not limited to, voting stock of Bellaire. Successor does not include any corporation or other entity to which Bellaire transfers or assigns all or substantially all of its financial or non-financial liabilities.

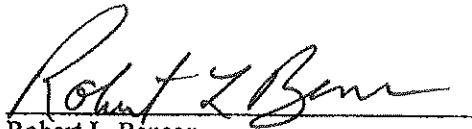
Bellaire shall notify the Department, without delay, of any successor as defined herein and shall provide such successor with a copy of this Consent Order and Agreement.

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

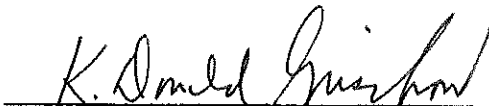
IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Bellaire certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Bellaire; that Bellaire consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Bellaire 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 Bellaire's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR BELLAIRE CORPORATION:



Robert L. Benson
President and Chief Executive Officer



K. Donald Grischow
Treasurer



Thomas A. Koza
Vice President - Law and Administration,
and Secretary

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

John P. Varner
District Mining Manager
Cambria District Mining Office

Gail A. Myers
Assistant Counsel
Southwest Region OCC

List of Exhibits Attached on Next Page

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FOR BELLAIRE CORPORATION:

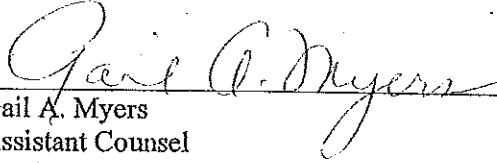
FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

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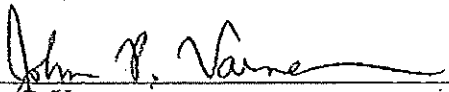
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FOR BELLAIRE CORPORATION:

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EXHIBITS

- Exhibit A: Topographic map showing locations of the Conemaugh No. 1 Mine, the Charles CRDA, the Hutchinson Hollow Treatment Plant, the CRDA Pipeline, the RAW and P3 monitoring points, and Outfall 001 as Discussed in Paragraphs E, I, K, M and O.
- Exhibit B: Raw water quality of Conemaugh No. 1 Mine and Charles CRDA discharges As Discussed in Paragraph M.
- Exhibit C: Required Annual Balance of Capital Improvement Account for a 75-Year Period Discussed in Paragraphs V, 10, 11, 12 and 13.
- Exhibit D: Participation Agreement As Discussed in Paragraphs S and 5.
- Exhibit E: Graphical Depiction of Distribution or Contribution Payment Amounts Discussed in Paragraphs 7 and 13
- Exhibit F: Adjustment to the Primary Target Valuation for Deviations Between Actual Treatment Cost and Calculated Treatment Cost Discussed in Paragraph 8

Bellaire Corp. East Wheatfield Twp, Indiana Co

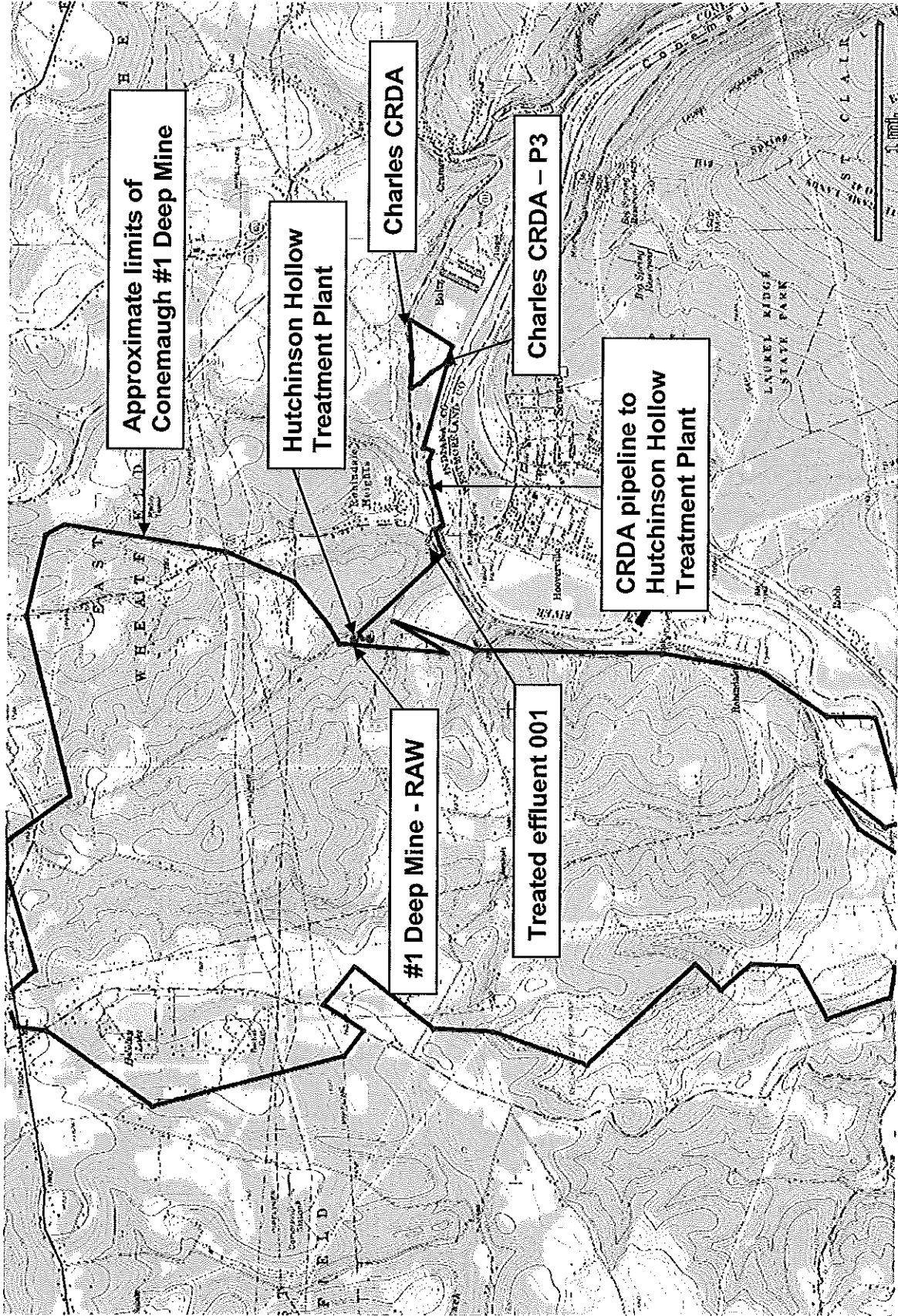


Exhibit A

	<u>Flow</u> <u>Gallons/minute</u>	<u>pH</u>	<u>Fe</u> <u>(mg/l)</u>	<u>Mn</u> <u>(mg/l)</u>	<u>Al</u> <u>(mg/l)</u>	<u>Acidity</u> <u>(mg/l)</u>	<u>Alkalinity</u> <u>(mg/l)</u>	<u>Sulfates</u> <u>(mg/l)</u>
Conemaugh No. 1 – RAW	2100	6.7	30	0.6	<0.5	0.0	178	320
Charles CRDA - P3	50	2.5	2758	15	402	7525	0.0	7904

- Compilation of the Department's analytical sampling results from December 1995 thru December 2008 for RAW and P3.

Exhibit B

Company Name Bellaire Corp
 Project Bellaire Recap
 Site Name Hutchinson Hollow

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

AMD TREAT RECAPITIALIZATION COST



AMDTREAT

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
	330,548	330,548	Initial Fund Amount				
1	358,412	358,412	0	51	2,167,648	2,167,648	0
2	388,627	388,627	0	52	2,350,381	2,350,381	0
3	421,388	421,388	0	53	2,548,518	2,548,518	0
4	456,911	456,911	0	54	2,763,358	2,763,358	0
5	495,429	495,429	0	55	2,996,309	2,996,309	0
6	537,193	537,193	0	56	3,248,898	3,194,182	54,716
7	582,479	575,049	7,429	57	3,463,451	3,463,451	0
8	623,526	618,547	4,978	58	3,755,420	3,755,420	0
9	670,690	670,690	0	59	4,072,002	4,072,002	0
10	727,230	723,159	4,071	60	4,415,272	950,958	3,464,313
11	784,121	784,121	0	61	1,031,124	1,031,124	0
12	850,222	850,222	0	62	1,118,048	1,118,048	0
13	921,896	921,896	0	63	1,212,299	1,171,236	41,062
14	999,612	990,412	9,199	64	1,269,972	1,242,454	27,518
15	1,073,904	768,887	305,017	65	1,347,192	1,347,192	0
16	833,704	827,348	6,356	66	1,460,761	1,460,761	0
17	897,093	897,093	0	67	1,583,903	1,583,903	0
18	972,718	972,718	0	68	1,717,426	1,717,426	0
19	1,054,718	1,054,718	0	69	1,862,205	1,862,205	0
20	1,143,631	1,114,351	29,279	70	2,019,189	1,942,920	76,269
21	1,208,291	1,196,899	11,391	71	2,106,708	2,106,708	0
22	1,297,798	1,297,798	0	72	2,284,304	2,249,173	35,130
23	1,407,203	1,407,203	0	73	2,438,778	2,438,778	0
24	1,525,830	1,517,715	8,114	74	2,644,367	2,644,367	0
25	1,645,658	1,436,502	209,156	75	2,867,287	0	2,867,287
26	1,557,599	1,557,599	0	76	0	0	0
27	1,688,905	1,688,905	0	77	0	0	0
28	1,831,280	1,817,174	14,105	78	0	0	0
29	1,970,362	1,970,362	0	79	0	0	0
30	2,136,463	782,400	1,354,063	80	0	0	0
31	848,356	848,356	0	81	0	0	0
32	919,872	909,513	10,359	82	0	0	0
33	986,185	986,185	0	83	0	0	0
34	1,069,320	1,069,320	0	84	0	0	0
35	1,159,464	1,141,998	17,466	85	0	0	0
36	1,238,268	1,238,268	0	86	0	0	0
37	1,342,654	1,342,654	0	87	0	0	0
38	1,455,840	1,455,840	0	88	0	0	0
39	1,578,567	1,578,567	0	89	0	0	0
40	1,711,640	1,644,496	67,144	90	0	0	0
41	1,783,127	1,783,127	0	91	0	0	0
42	1,933,444	1,911,816	21,627	92	0	0	0
43	2,072,983	2,072,983	0	93	0	0	0
44	2,247,735	2,247,735	0	94	0	0	0
45	2,437,219	1,674,992	762,227	95	0	0	0
46	1,816,193	1,816,193	0	96	0	0	0
47	1,969,299	1,969,299	0	97	0	0	0
48	2,135,310	2,118,426	16,884	98	0	0	0
49	2,297,010	2,270,229	26,780	99	0	0	0
50	2,461,609	1,999,122	462,486	100	0	0	0

Participation Agreement
Between Bellaire Corporation
And The Clean Streams Foundation, Inc.

Exhibit D

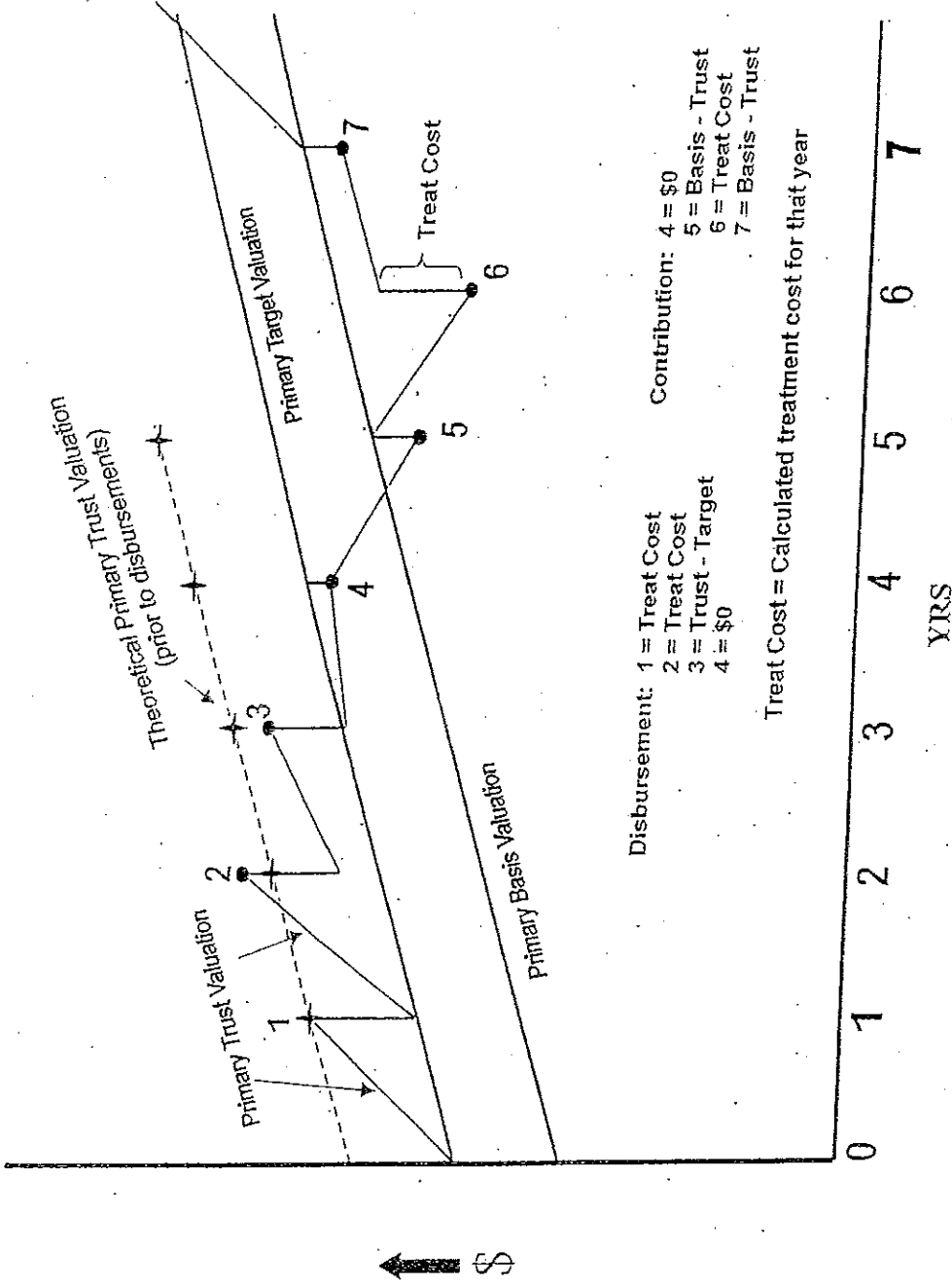


Exhibit E

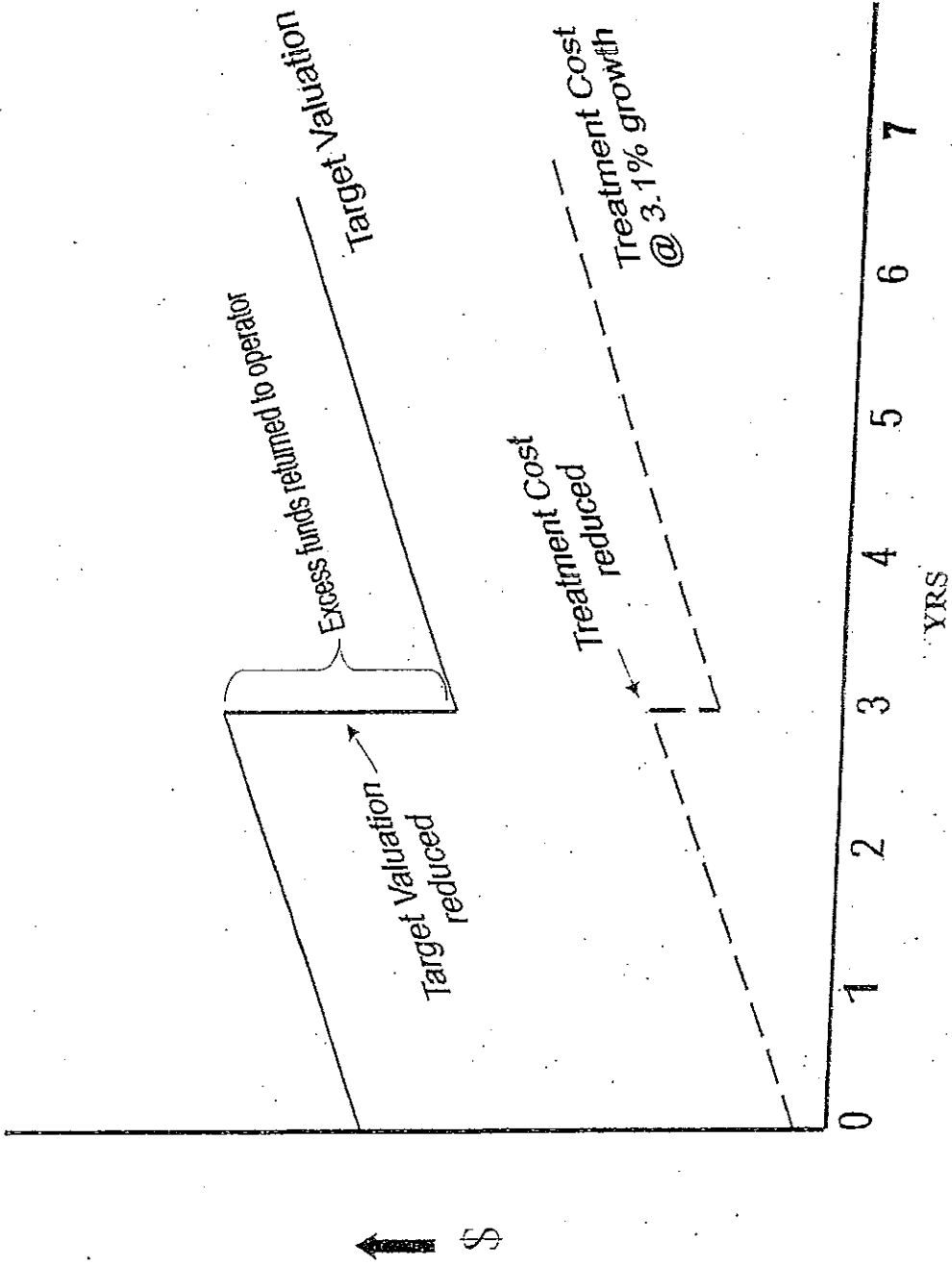


Exhibit F