

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Harmony Insurance Company, Inc. : Consensual Bond Forfeiture  
P. O. Box 69 :  
Clarion, Pennsylvania 16214 :

**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement (“COA”) is entered into this 18<sup>th</sup> day of July, 2005, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and Harmony Insurance Company, Inc. (“Harmony”).

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 (“Clean Streams Law”); the Surface Mining Conservation and Reclamation Act of May 31, 1945, P.L. 1198, *as amended*, 52 P.S. §§ 1396.1-1396.19a (“Surface Mining Act”); 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 (“Rules and Regulations”).

B. Harmony is a Pennsylvania corporation with a mailing address of P. O. Box 69, Clarion, Pennsylvania 16214. The President and ultimate controlling person of Harmony is Gary C. Wilson. Harmony, being a licensed surety company under the insurance laws of the Commonwealth of Pennsylvania, has written surety bonds to the

Department in conjunction with various outstanding surface mining permits (“SMPs”) issued by the Department (“Harmony Surety Bonds”) to C & K Coal Company (“C & K”). Exhibit A, attached hereto, sets forth the list of the SMPs and the Harmony Surety Bonds which are the subject of this COA. The total liability under the Harmony Surety Bonds is \$4,309,620.

C. On March 31, 2003, C & K voluntarily filed for protection under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court for the Western District of Pennsylvania (the “Petition Date”).

D. At the time of the Petition Date, incomplete reclamation and/or post-mining discharges existed at sites covered by the SMP’s. Pursuant to the laws identified in Paragraph A above and the SMPs, C & K is legally responsible to complete reclamation and remediate pollutional post-mining discharges (hereinafter referred to as “Environmental Obligations”).

E. On November 19, 2004, C & K filed a Second Amended Plan of Reorganization (the “Plan”) with the Bankruptcy Court. The Plan provides for an orderly liquidation of C & K with distribution of the proceeds over time as allowed by the Bankruptcy Court.

F. Pursuant to the Plan, C & K will be unable to fully comply with its Environmental Obligations in the future. Therefore, all bonds written in conjunction with the SMPs are subject to forfeiture and collection by the Department.

G. The Plan contemplates the forfeiture of all outstanding bonds written in conjunction with the SMPs. The Department and C & K have agreed to establish a trust

for the purpose of addressing C & K's Environmental Obligations (the "Environmental Trust"), primarily funded with the bond forfeiture proceeds and supplemented with distributions established under the Plan.

H. Harmony currently only has \$3,809,620 available in cash to pay towards its pending obligation of \$4,309,620 to the Department.

I. The Plan provides for Harmony's remaining bond obligation of \$500,000 to be paid by C & K on or before December 31, 2005.

J. The Department and Harmony agree no purpose would be served by following the formal notice and forfeiture procedures set forth in the Rules and Regulations for appealing such forfeiture actions to the Environmental Hearing Board.

K. Pursuant to a Consent Order and Agreement entered into between the Department and C & K on this date, C & K consents to the Department's forfeiture of all bonds.

After full and complete negotiation of all matters set forth in this COA, and upon mutual exchange of covenants contained herein, and the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Harmony as follows:

1. **Authority.** This COA is an Order of the Department authorized and issued pursuant to Section 5 of the Clean Streams Law, 35 P.S. § 691.5; Section 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. **Findings.**

a. Harmony agrees the findings in paragraphs A through K above are true and correct and, in any matter or proceeding involving Harmony and the Department, Harmony 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 COA in any matter or proceeding.

3. **Bond Forfeiture.**

a. Harmony consents to the Department's forfeiture of all bonds listed on Exhibit A and further consents to directing payment of all or part of such bond forfeiture proceeds to the Environmental Trust, as directed by the Department. With respect to such bond forfeitures, Harmony waives all formal notice and other procedural provisions set forth in the Rules and Regulations and knowingly waives its right of appeal to the Environmental Hearing Board.

b. All Bonds listed in Exhibit A are hereby declared forfeit.

4. **Collection of Bond Forfeiture.** Within thirty (30) days following the execution of the Participation Agreement with the Clean Streams Foundation creating the Environmental Trust, Harmony shall tender a cash payment of \$3,809,620 to the Environmental Trust, or as otherwise directed by the Department, in partial satisfaction of its obligations under this COA.

5. **Satisfaction.** After Harmony has fully complied with all provisions of this COA, and C & K makes its payment of \$500,000 into the Environmental Trust pursuant to and in accordance with the Plan, Harmony's obligations under this COA shall be fully

satisfied. Until said payment is made, the Department shall retain any and all legal remedies against Harmony, its officers and directors; however, the Department shall not exercise any such rights and remedies against Harmony before January 1, 2006. If C & K fails to make the \$500,000 payment to the Environmental Trust as called for in the Plan, the Department shall be free to exercise any and all legal remedies against Harmony for failing to fully satisfy its bond forfeiture obligations.

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

7. **Harmony Liability.** Harmony shall be liable for any violations of this COA, including those caused by, contributed to, or allowed by its officers, agents, employees or contractors. Harmony also shall be liable for any violation of this COA caused by, contributed to or allowed by its successors and assigns.

8. **Correspondence with Department.** All correspondence with the Department concerning this COA shall be addressed to:

Javed I. Mirza (or successor)  
District Mining Manager  
Knox District Office  
White Memorial Building  
P.O. Box 669  
Knox, PA 16840-0209  
Phone: 814-797-1191  
Fax: 814-797-2706

Donald Barnes (or successor)  
District Mining Manager  
Cambria District Office  
286 Industrial Park Road  
Ebensburg, PA 15931-4119  
Phone: 814-472-1900  
Fax: 814-472-1898

9. **Correspondence with Harmony.** All correspondence with Harmony concerning this COA shall be addressed to:

Gary C. Wilson, President  
Harmony Insurance Company, Inc.  
P.O. Box 69  
Clarion, PA, 16204  
Phone: 814-226-6911  
Fax: 814-226-9517

With a copy to:  
Howard J. Wein, Esquire  
Klett Rooney Lieber & Schorling  
40<sup>th</sup> Floor, One Oxford Centre  
Pittsburgh, PA 15219  
Phone: 412-392-2160  
Fax: 412-392-2128

Harmony 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 COA, including its enforcement, may be made by mailing a copy by first class mail to the above address.

10. **Severability.** The paragraphs of this COA 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.

11. **Entire Agreement.** This COA 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.

12. **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 COA.

13. **Modifications.** No changes, additions, modifications or amendments of this COA shall be effective unless they are set out in writing and signed by the parties hereto.

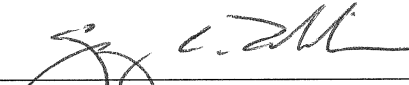
14. **Titles.** A title used at the beginning of any paragraph of this COA may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

15. **Decisions Under Consent Order.** Any decision which the Department makes under the provisions of this COA is intended to be neither a final action under 25 Pa. Code § 1021.2, nor adjudication under 2 Pa. C.S. § 101. Any objection which Harmony may have to the decision will be preserved until the Department enforces this COA.

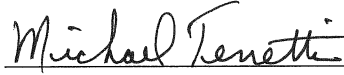
IN WITNESS WHEREOF, the parties hereto have caused this COA to be executed by their duly authorized representatives. The undersigned representative of Harmony certifies under penalty of law, as provided by 18 Pa. C.S. § 4904, that he is authorized to execute this COA on behalf of Harmony; that Harmony consents to the

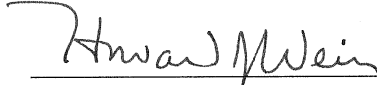
entry of this COA as a final ORDER of the Department; and that Harmony hereby knowingly waives its right to appeal this COA and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by C & K's attorney certifies only that the agreement has been signed after consulting with counsel.

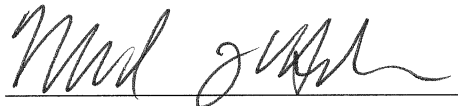
**FOR HARMONY INSURANCE  
COMPANY, INC.:**

  
\_\_\_\_\_  
Gary C. Wilson  
President

**FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT  
OF ENVIRONMENTAL  
PROTECTION:**

  
\_\_\_\_\_  
Michael Terretti  
Director, District Mining Operations

  
\_\_\_\_\_  
Howard J. Wein, Esquire  
Counsel for Harmony  
Insurance Company, Inc.

  
\_\_\_\_\_  
Michael J. Heilman  
Assistant Regional Counsel



C & K Coal Company  
 Consensual Bond Forfeiture List  
 HARMONY INSURANCE COMPANY, INC.

<u>Permit No.</u>	<u>County</u>	<u>Township</u>	<u>Bond ID</u>	<u>Date</u>	<u>Balance</u>
10860118	Butler	Allegheny	9410008	03-30-94	\$ 68,900
11783035	Cambria	Reade	9410018	03-30-94	637,500
11823002	Cambria	Reade	9410020	03-30-94	47,060
11823002	Cambria	Reade	9910009	01-11-99	193,260
11850106	Cambria	Reade	9410026	03-30-94	570,000
16713004	Clarion	Limestone	9910023	01-11-99	219,900
1679110	Clarion	Monroe	9910020	01-11-99	67,000
16830114	Clarion	Toby	9910002	01-11-99	82,000
16831602	Clarion	Toby	9310008	05-11-93	71,675
16840103	Clarion	Perry	9410039	11-21-94	36,850
2769BSM1	Clarion	Piney	9910024	04-05-99	101,100
2769BSM1	Clarion	Piney	9910025	04-05-99	10,500
2769BSM1	Clarion	Piney	9910026	04-05-99	52,000
2769BSM1	Clarion	Piney	9910027	04-05-99	24,000
2769BSM1	Clarion	Piney	9910028	04-05-99	90,000
2769BSM1	Clarion	Piney	9910029	04-05-99	3,000
2769BSM1	Clarion	Piney	9910049	04-09-99	21,250
2769BSM1	Clarion	Piney	9910060	04-12-99	61,000
3671BSM4	Clarion	Limestone	9910085	04-16-99	57,500
3671BSM4	Clarion	Limestone	9910086	04-16-99	13,000
3671BSM4	Clarion	Limestone	9910087	04-16-99	33,000
3672SM18	Clarion	Piney	9910030	04-05-99	11,000
3672SM18	Clarion	Piney	9910031	04-05-99	4,200
3672SM18	Clarion	Piney	9910032	04-05-99	8,000
3672SM18	Clarion	Piney	9910033	04-05-99	15,000
3672SM18	Clarion	Piney	9910034	04-05-99	13,000
3672SM18	Clarion	Piney	9910035	04-05-99	9,500
3672SM18	Clarion	Piney	9910048	04-09-99	32,800
3673SM1	Clarion	Limestone	9910074	04-16-99	16,150
3673SM1	Clarion	Limestone	9910075	04-16-99	7,800
3673SM1	Clarion	Limestone	9910076	04-16-99	22,300
3673SM1	Clarion	Limestone	9910077	04-16-99	32,900
3673SM1	Clarion	Limestone	9910078	04-16-99	15,000
3673SM1	Clarion	Limestone	9910079	04-16-99	3,000
3673SM1	Clarion	Limestone	9910080	04-16-99	10,000
3673SM1	Clarion	Limestone	9910081	04-16-99	21,000
3673SM1	Clarion	Limestone	9910082	04-16-99	5,000
3673SM1	Clarion	Piney	9910040	04-09-99	48,000
3673SM15	Clarion	Piney	9910047	04-09-99	10,000
3674SM24	Clarion	Porter	9910005	01-11-99	82,600

<u>Permit No.</u>	<u>County</u>	<u>Township</u>	<u>Bond ID</u>	<u>Date</u>	<u>Balance</u>
3674SM25	Clarion	Monroe	9910006	01-11-99	\$ 32,600
3674SM25	Clarion	Monroe	9910007	01-11-99	11,600
3674SM25	Clarion	Monroe	9910010	01-11-99	45,500
3674SM25	Clarion	Monroe	9910011	01-11-99	5,500
3674SM25	Clarion	Monroe	9910012	01-11-99	20,400
3674SM29	Clarion	Toby	9910021	01-11-99	63,100
3674SM30	Clarion	Toby	9910003	01-11-99	32,300
3674SM37	Clarion	Toby	9910067	04-16-99	24,000
3674SM37	Clarion	Toby	9910068	04-16-99	11,920
3674SM37	Clarion	Toby	9910069	04-16-99	168,240
3675SM40	Clarion	Toby	9910041	04-09-99	1,940
1675SM40	Clarion	Toby	9910042	04-09-99	44,720
3675SM40	Clarion	Toby	9910043	04-09-99	45,400
3675SM40	Clarion	Toby	9910044	04-09-99	81,000
3675SM40	Clarion	Toby	9910045	04-09-99	9,750
3675SM40	Clarion	Toby	9910046	04-09-99	30,000
3775SM28	Clarion	Beaver	9910004	01-11-99	64,000
3777SM10	Clarion	Highland	9910001	01-11-99	60,000
3874SM15	Jefferson	Union	9910008	01-11-99	1,000
3874SM15	Jefferson	Union	9910013	01-11-99	7,100
3874SM15	Jefferson	Union	9910014	01-11-99	10,000
3874SM15	Jefferson	Union	9910015	01-11-99	77,000
3874SM15	Jefferson	Union	9910016	01-11-99	34,000
3874SM15	Jefferson	Union	9910017	01-11-99	8,900
3874SM15	Jefferson	Union	9910018	01-11-99	1,100
3874SM15	Jefferson	Union	9910019	01-11-99	31,600
3875SM37	Jefferson	Eldred	9310014	07-15-93	3,000
43820102	Mercer	Pine	9210011	12-04-92	100,205
61783001	Venango	Scrubgrass	9910022	01-11-99	456,000
					<u>\$4,309,620</u>