

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Old Republic Surety Company and : Consensual Bond Forfeiture  
Old Republic Insurance Company :  
P. O. Box 1635 :  
Milwaukee, Wisconsin 53201 :

**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 f/k/a Department of Environmental Resources ("Department"), party of the first part, and Old Republic Surety Company ("ORSC") and Old Republic Insurance Company ("ORINSCO" and, collectively with ORSC, sometimes referred to as "Old Republic"), parties of the second part. .

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. § 5 10-17 ("Administrative Code"); and the rules and regulations promulgated thereunder ("Rules and Regulations").

B. ORINSCO and ORSC are Pennsylvania and Wisconsin corporations, respectively. Each has a mailing address of P. O. Box 1635, Milwaukee, Wisconsin 53201. The President of ORSC and a Vice President of ORINSCO is James E. Lee. ORSC and Northwestern National Insurance Company ("NW"), as authorized under the insurance laws of the Commonwealth of

Pennsylvania, have written surety bonds to the Department in conjunction with various outstanding surface mining permits (“SMPs”) issued by the Department to C&K Coal Company (“C & K”); ORINSCO and NW entered into a Portfolio Surety Quota Share Reinsurance Treaty effective January 1, 1986 with respect to the bonds issued by NW; and ORINSCO issued assumption certificates with respect to three of the bonds issued by NW. Exhibit A, attached hereto, sets forth the list of the SMPs and the surety bonds (the "Old Republic Surety Bonds") which are the subject of this COA. The bond issued by ORSC is identified by Bond ID No. 1151682OR. The three bonds with respect to which ORINSCO issued assumption certificates are identified by Bond ID Nos. 487403, 600778 and 602395. The total liability under the Old Republic Surety Bonds is \$3,290,370.

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 SMPs. Pursuant to the laws identified in paragraph A. above and the SMPs, C & K is legally responsible to complete reclamation and remediate polluttional post-mining discharges (hereinafter referred to as “Environmental Obligations”).

E. By Amended Order dated April 5, 2005, the Bankruptcy Court confirmed C & K's Second Amended Plan of Reorganization dated November 19, 2004 as amended by the Second Amended Exhibit A to the Order (as so amended, the “Plan”). The Plan provides for an orderly liquidation of C & K with distribution of the proceeds over time to claims allowed by the Bankruptcy Court.

F. Due to the financial condition of C & K and 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 according to the Rules and Regulations.

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. The Department and Old Republic 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.

I. 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 of the Old Republic 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 Old Republic 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.** Old Republic agrees the findings in paragraphs A through I above are true and correct and, in any matter or proceeding involving Old Republic and the Department,

Old Republic shall not challenge the accuracy or validity of these findings. The parties do not authorize any other persons to use the findings in this COA in any matter or proceeding.

3. **Bond Forfeiture.** Old Republic consents to the Department's forfeiture of the Old Republic Surety Bonds 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, Old Republic 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; however the Department shall provide Old Republic with notice pursuant to paragraph 8 below.

4. **Collection of Bond Forfeiture.** Within twenty (20) days following the date on which the Department represents to Old Republic that a release, in the form attached hereto as Exhibit B has been prepared, with the blanks appropriately filled in, and executed by the Department with respect to each of the Old Republic Surety Bonds, Old Republic shall tender a cash payment of \$3,290,370 to the Environmental Trust, or as otherwise directed by the Department, and said payment shall fully satisfy Old Republic's obligations under this COA and the obligations of Old Republic and of NW under the Old Republic Surety Bonds. Within 8 days after such payment is made the Department shall deliver to Old Republic a duly executed and acknowledged individual Release of each of the Old Republic Surety Bonds, including those bonds listed on Exhibit A which were originally written by NW but either reinsured by or assumed by Old Republic.

5. **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

6. **Correspondence with Old Republic.** All correspondence with Old Republic concerning this COA shall be addressed to:

James E. Lee, President  
Old Republic Surety Company  
P. O. Box 1635  
Milwaukee, Wisconsin 53201  
Phone: 262-797-2640  
Fax: 262-797-9495

With a copy to:  
George L. Cass  
Buchanan Ingersoll PC  
One Oxford Centre  
301 Grant Street, 20th Floor  
Pittsburgh, PA 15219-1410  
Phone: (412) 562-8914 Fax: (412) 562-1041

Old Republic 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.

7. **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.

8. **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.

9. **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.

10. **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.

11. **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.

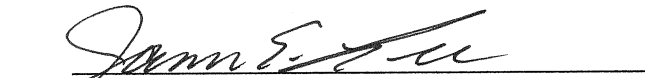
12. **Decisions under Consent Order**. Any decision which the Department makes under the provisions of this COA is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection which Old Republic may have to the decision will be preserved 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 Old Republic certifies under penalty of law, as provided by 18 Pa. C.S. § 4904, that he is authorized to execute this COA on behalf of Old Republic; that Old Republic consents to the entry of this COA as a final ORDER of the Department; and that Old Republic 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. An attorney's signature under that of Old Republic's representative only acknowledges Old Republic has entered this COA after legal consultation.

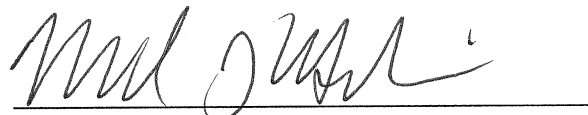
**FOR OLD REPUBLIC SURETY  
COMPANY AND OLD REPUBLIC  
INSURANCE COMPANY:**

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

  
James E. Lee  
President of Old Republic Surety Company  
and Vice President of Old Republic  
Insurance Company

  
Name MICHAEL TERRETTI  
Title DIRECTOR, DISTRICT MINING OPERATIONS

  
George L. Cass  
Attorney for Old Republic Surety Company  
Old Republic Insurance Company

  
Michael J. Heilman  
Assistant Regional Counsel

C & K Coal Company  
Consensual Bond Forfeiture List

OLD REPUBLIC SURETYCOMPANY

<u>Permit No.</u>	<u>County</u>	<u>Township</u>	<u>Bond ID</u>	<u>Date</u>	<u>Balance</u>
11783035	Cambria	Reade	487403	02-04-85	\$ 1,484,360
16800102	Clarion	Limestone	297139	12-26-79	125,000
16803030	Clarion	Toby	600767	05-07-85	193,250
16810104	Clarion	Piney	421562	11-16-81	256,500
16810104	Clarion	Piney	430225	07-06-82	241,500
16810104	Clarion	Piney	453871	05-05-83	22,000
16810104	Clarion	Piney	454468	05-20-83	31,000
16810122	Clarion	Monroe	419472	03-12-82	154,000
16810122	Clarion	Monroe	419498	05-05-82	7,000
2768BSM25	Clarion	Limestone	296840	12-03-79	86,000
2769BSM15	Clarion	Piney	249583	06-18-75	80,000
2769BSM15	Clarion	Piney	252262	10-15-75	3,000
33773143	Jefferson	Union	600778	05-10-85	45,500
33773143	Jefferson	Union	602395	08-13-85	32,500
3676SM9	Clarion	Toby	1151682OR	05-18-98	114,000
3676SM21	Clarion	Clarion	276980	04-22-80	46,000
3676SM21	Clarion	Clarion	283091	01-29-81	55,000
3676SM21	Clarion	Clarion	410677	04-20-81	20,000
3676SM21	Clarion	Clarion	411881	10-28-81	12,000
3676SM21	Clarion	Clarion	411884	10-29-81	6,000
3676SM21	Clarion	Clarion	421561	11-16-81	3,000
3775SM5	Clarion	Paint	246782	04-16-75	10,000
3775SM5	Clarion	Paint	258092	05-27-76	66,000
3775SM5	Clarion	Paint	273088	04-20-78	44,000
3775SM5	Clarion	Paint	487998	03-29-85	8,500
3776SM6	Jefferson	Union	288656	11-20-78	57,300
3776SM6	Jefferson	Union	289434	03-22-79	4,500
3776SM6	Jefferson	Union	295028	07-20-79	1,000
3875SM37	Jefferson	Eldred	250727	09-02-75	33,500
3875SM37	Jefferson	Eldred	257362	04-05-76	23,000
38A76SM9	Jefferson	Eldred	289007	01-12-79	24,960
					\$ 3,290,370



**DO ON DEPT LETTERHEAD**

**RELEASE**

This hereby acknowledges Old Republic Insurance Company or Old Republic Surety Company(**INS CO**) paid the sum of (**spell out figure**) (\$ \_\_\_\_\_), to the Commonwealth of Pennsylvania. The Commonwealth of Pennsylvania hereby releases and forever discharges Northwestern National Insurance Company, Old Republic Surety Company and Old Republic Insurance Company (**INS CO**) from any and all liability, known and unknown, under the following bond:

( **OPER** )

Forfeiture Case # 40-

Date of Forfeiture:

Bond # \_\_\_\_\_ - \$ \_\_\_\_\_

Nothing in this release shall be construed as a waiver of, or shall affect in any way, the Department's right to seek other remedies under the law against ( **OPER** ) or anyone else other than Northwestern National Insurance Company, Old Republic Surety Company or Old Republic Insurance Company (**INS CO**) for any other loss, damage or penalty related to SMP # \_\_\_\_\_ located in \_\_\_\_\_ Township, \_\_\_\_\_ Co unty.

Signed, sealed and delivered at Harrisburg this \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_\_

Protection

Commonwealth of Pennsylvania  
Department of Environmental

By:

\_\_\_\_\_

\_\_\_\_\_  
Kathy W. Keyes, Chief  
Division of Certification, Licensing and

Bonding

Bureau of Office Systems and Services

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_\_

\_\_\_\_\_  
Notary Public