

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Utica Mutual Insurance Company : Consensual Bond Forfeiture
180 Genesee St., P. O. Box 530 :
Utica, New York 13503-0530 :

CONSENT ORDER AND AGREEMENT 1973

This Consent Order and Agreement ("COA") is entered into this ~~13~~ ^{July} day of ~~JUNE~~ ^{July}, 2005, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Utica Mutual Insurance Company ("Utica").

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. Utica is a New York corporation with a mailing address of 180 Genesee St., P. O. Box 530, Utica, New York 13503-0530. Utica, as authorized 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 ("Utica Surety Bonds") to C & K Coal Company ("C & K"). Exhibit A, attached hereto, sets forth the list of the SMPs and the Utica Surety Bonds which are the subject of this COA. The total liability under Utica Surety Bonds is \$236,480.

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 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 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 Utica 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 voluntarily defaults 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 Utica 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.** Utica agrees the findings in paragraphs A through I above are true and correct and, in any matter or proceeding involving Utica and the Department, Utica 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.**
a. **Utica consents to the Department's forfeiture of all bonds listed on Exhibit A, and further consents to the 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, Utica 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 on Exhibit A are hereby declared forfeit.**

4. **Collection of Bond Forfeiture.** On or before June 30, 2005, ^{August 15, 2005} Utica shall tender a cash payment of \$236,480 to the Environmental Trust, or as otherwise directed by the Department, and said payment shall fully satisfy Utica's obligations under this COA.

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

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

7. **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

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

Jennifer Dougherty
Utica Mutual Insurance Company
180 Genesee St., P. O. Box 530
Utica, NY 13503-0530
Phone: 315-734-2412
Fax: 315-734-2198

With a copy to:

William T. Gorton III, Esq.
Stites & Harbison PLLC
250 West Main Street
Lexington, Kentucky 40507
Phone: 859-226-2241
Fax: 859-253-9144

Utica 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.

9. **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.

10. **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.

11. **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.

12. **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.

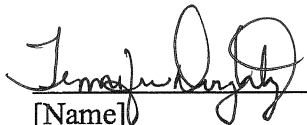
13. **Titles.** A title used at the beginning of any paragraph of this COA may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

14. **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 Utica may have to the decision will be preserved until the Department enforces this COA.

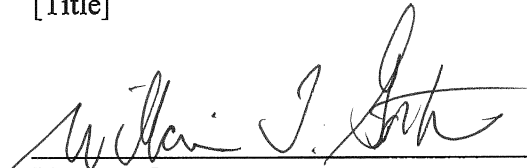
15. **Termination.** This COA shall terminate upon Utica's satisfaction of paragraph 5, above.

IN WITNESS WHEREOF, the parties hereto have caused this COA to be executed by their duly authorized representatives. The undersigned representative of Utica certifies under penalty of law, as provided by 18 Pa. C.S. § 4904, that he is authorized to execute this COA on behalf of Utica; that Utica consents to the entry of this COA as a final ORDER of the Department; and that Utica 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 Utica's representative only acknowledges Utica has entered this COA after legal consultation.

FOR UTICA MUTUAL INSURANCE COMPANY:

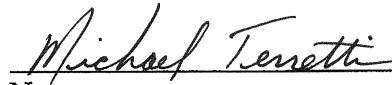


[Name] *HD-Claims/legal*
[Title]

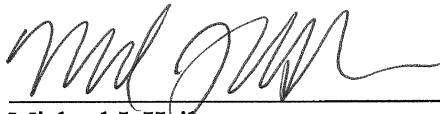


[Attorney]

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:



Name *MICHAEL TERRETTI*
Title *DIRECTOR, DISTRICT MINING OPERATIONS*



Michael J. Heilman
Assistant Regional Counsel

C & K Coal Company
Consensual Bond Forfeiture List

UTICA INSURANCE COMPANY

<u>Permit No.</u>	<u>County</u>	<u>Township</u>	<u>Bond ID</u>	<u>Date</u>	<u>Balance</u>
11783035	Cambria	Reade	1443328	04-25-91	\$ 148,500
11783035	Cambria	Reade	1443330	04-25-91	36,000
11783035	Cambria	Reade	1477177	07-08-91	12,500
11783035	Cambria	Reade	1706670	11-08-93	20,000
11823002	Cambria	Reade	1443329	04-25-91	15,600
17890112	Clearfield	Beccaria	1706671	11-08-93	<u>3,880</u>
					\$ 236,480