

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

Canterbury Coal Company	:	David/Diane Mine
279 Shannon Road	:	Coal Refuse Disposal Area # 6
Monongahela, PA 15063	:	
	:	Coal Mining Activity Permit
	:	No. 03841302
	:	
	:	Coal Refuse Disposal Permit
	:	No. 03950701
	:	
	:	Alternative Financial Assurance
	:	Mechanism

**CANTERBURY COAL COMPANY POST-MINING WATER TREATMENT
CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 23rd day of November, 2010, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Canterbury Coal Company ("CCC") (hereinafter the "Parties").

The Department has found and determined the following:

A. The Department is the agency 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 Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, *as amended*, 52 P.S. §§ 1406.1 *et seq.* ("Subsidence 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"); § 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.

B. Pursuant to § 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 regulations. These mechanisms include the establishment of a site-specific trust sub-account ("Trust Sub-Account") funded by a mine operator for the treatment of post-mining water discharges. The post-mining water treatment Trust Sub-Account being established as required by this Consent Order and Agreement through the accompanying Participation Agreement and the April 2001 Declaration of Trust of the Clean Streams Foundation constitutes an alternative financial assurance mechanism authorized by § 4(d.2) of the Surface Mining Act, 52 P.S. § 1396.4(d.2). Pursuant to § 5, § 315 and § 610 of the Clean Streams Law, 35 P.S. § 691.5, § 691.315 and § 691.610, § 4.3 of SMCRA, 52 P.S. § 1396.4c, § 3.1 and § 9 of the Coal Refuse Disposal Act, 52 P.S. § 30.53a and § 30.59, and § 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 water discharge treatment Trust Sub-Account as an alternative financial assurance mechanism for bonding purposes.

C. CCC is a Pennsylvania corporation with a mailing address of 683 State Route 7 North, Burlile Building, P.O. Box 278, Gallipolis, OH 45631. CCC is a wholly-owned subsidiary of Mill Creek Mining, Inc., a Pennsylvania corporation with a mailing address of 29325 Chagrin Boulevard #300, Pepper Pike, OH 44122.

D. CCC is engaged in the business of coal mining activities.

E. CCC is the permittee and operator of the David/Diane Mine pursuant to Coal Mining Activity Permit ("CMAF") No. 03841302, and Coal Refuse Disposal Area ("CRDA") #6, pursuant to Coal Refuse Disposal Permit ("CRDP") No. 03950701. The David/Diane Mine and CRDA #6 are located in Kiskiminetas Township, Armstrong County, Pennsylvania.

F. CCC ceased operation of the David/Diane Mine in September 2000 and has completed all reclamation activities, with the exception of the post-mining water treatment, at the David/Diane Mine.

G. CCC ceased operation of CRDA #6 in September 2000, and has completed reclamation of CRDA #6.

H. A summary of the reclamation bonds currently posted for the David/Diane Mine is as follows:

PERMIT NO.	BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT NO.	BOND STATUS	BOND AMOUNT
03841302	Surety	XL Specialty Insurance	SB 0073623	Active	\$2,128,498
03841302	Surety	XL Specialty Insurance	SB 0073629	Active	\$98,980
03841302	Surety	XL Specialty Insurance	SB 0073630	Active	\$20,000
0395071	Surety	XL Specialty Insurance	SB 0073627	Active	\$29,300
0395071	Surety	XL Specialty Insurance	SB 0073624	Active	\$28,700

Post-Mining Water Discharges

I. CCC treats water discharges from CRDA #6 and the David/Diane Mine by the following methods: The water discharge from CRDA #6 flows by gravity from the refuse pile into a series of treatment and polishing ponds and then discharges into Roaring Run. The discharge is located within the permit boundary.

J. The mine pool for the David/Diane Mine is maintained in order to prevent a water discharge.

K. A topographic map depicting the location of the water discharge from CRDA #6 and from the David/Diane Mine and their associated treatment systems is attached as Exhibit A. The latitude and longitude coordinates for the CRDA #6 water discharge are LAT 40°, 35', 22," LONG 79°, 28', 19". The latitude and longitude coordinates for the David/Diane Mine water discharge are LAT 40°, 35', 12" LONG 79°, 28', 35".

L. The raw water quality of the CRDA #6 water discharge, and the David/Diane Mine water discharge, as compiled by the Department from analytical sampling results, is set forth below:

Facility	pH	Fe	Al	Mn	Alk	Acidity	SO4	Flow
David/Diane Mine	6.57 su	7.38 mg/l	0.01 mg/l	2.42 mg/l	597.1 mg/l	<10 mg/l	161.9 mg/l	2000 gpm
CRDA #6	3.04 su	38.82 mg/l	34.89 mg/l	9.62 mg/l	5.0 mg/l	648.3 mg/l	959.9 mg/l	1500 gpm

M. The required effluent limits applicable to CRDA #6 are as follows:

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron	1.6 mg/l	3.2 mg/l	4.0 mg/l
Manganese (total)	1.5 mg/l	3.0 mg/l	3.8 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
Aluminum (Total)	.6 mg/l	1.2 mg/l	1.5 mg/l

pH¹ greater than 6.0; less than 9.0

Alkalinity greater than acidity¹

¹The parameter is applicable at all times.

N. The required effluent limits applicable to the David/Diane Mine water discharge

are as follows:

<u>Parameter</u>	<u>30-Day Average</u>	<u>Daily Maximum</u>	<u>Instantaneous Maximum</u>
Iron (total)	1.6 mg/l	3.2 mg/l	4.0 mg/l
Manganese (total)	1.5 mg/l	3.0 mg/l	3.8 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
Aluminum (Total)	.6 mg/l	1.2 mg/l	1.5 mg/l
Osmotic Pressure	70 mos/kg	140 mos/kg	175 mos/kg

pH¹ greater than 6.0; less than 9.0

Alkalinity greater than acidity¹

¹ The parameter is applicable at all times:

O. The effluent limits applicable to the CRDA # 6 and the David/Diane Mine water discharge described in Paragraphs I, J, L, M and N above are set forth in NPDES Permit No. PA 0214132.

P. CCC agrees that it has the legal responsibility, pursuant to the Surface Mining Act, the Subsidence Act, the Coal Refuse Disposal Act, the Clean Streams Law, the Administrative Code and the rules and regulations promulgated thereunder to properly treat or abate the water discharges identified in Paragraphs I, J, L, M, and N above.

Q. The treatment system for the water discharge from the CRDA #6 under drain was constructed in 1986 or 1987. The treatment system consists of a primary settling pond with desludging equipment, a secondary pond, sump/pump building, 150 hp pump, lime silo, manifold system, clarifier, final polishing pond with caustic tanks for backup treatment and a sludge disposal borehole into the David/Diane deep mine. Water flows by gravity from the refuse area into the settling pond where the first desludging occurs. Water then flows into the secondary pond. Water is pumped from the secondary pond, treated with lime and clarified. The

treated water flows through the final polishing pond and discharges into Roaring Run. Sludge from the primary settling pond and the clarifier is pumped via the borehole into the David/Diane Mine. A schematic drawing of the treatment system is attached as Exhibit B. ("CRDA #6 Water Discharge Treatment System")

R. The treatment system for the David/Diane Mine was constructed in the late 1970s to regulate the mine pool in order to prevent a water discharge from the David/Diane Mine. The treatment system consists of a 500 hp vertical turbine pump, two lime silos, a slurry trough, maelstrom oxidizer, sludge basin, suspended piping and a final polishing pond. Water is pumped from the mine, treated with lime and oxidized. The treated water is then discharged to the sludge basin. The water is then conveyed via a suspended pipeline over Roaring Run to the polishing pond before being discharged into Roaring Run. Sludge from the sludge basin is pumped via the borehole into the David/Diane Mine. A schematic drawing of the treatment system is attached as Exhibit C. ("David/Diane Mine Water Treatment System").

S. The CRDA #6 and the David/Diane Mine Water Treatment Systems are located on land owned by CCC.

T. The capital cost incurred to initially construct the CRDA #6 Water Treatment System is not known. The capital costs to construct the major components of the CRDA # 6 Water Treatment System, expressed in 2008 dollars, are \$124,114.

U. The capital costs incurred to initially construct the Dave/Diane Mine Water Treatment System are not known. The capital costs to construct the major components of the David/Diane Mine Water Treatment System, expressed in 2008 dollars, are \$196,028.

V. In order to calculate the amount necessary to fully fund the Trust Sub-Account, the Department and CCC have agreed to use actual operation and maintenance costs from past

operations of the Water Treatment Systems, or AMD Treat cost estimates where insufficient operation and maintenance cost data exist. A summary of current annual combined operation and maintenance costs for the CRDA #6 and the David/Diane Mine Water Treatment Systems is as follows:

Table of Current Annual Operation and Maintenance Costs for the CRDA #6 and David/Diane Mine Water Treatment Systems Combined

Category	Sampling	Labor	Maintenance	Electricity	Chemical	Sludge Removal
Annual Cost	\$4,541	\$41,470	\$00	\$143,398	\$66,682	\$18,850

W. Based on actual operation and maintenance costs from past operations and AMD Treat cost estimates, the combined current annual cost of operating and maintaining the CRDA #6 Water Treatment System and David/Diane Mine Water Treatment System is approximately \$274,941.

X. In order to calculate the amount necessary to fully fund the Trust Sub-Account, the Department and CCC have agreed to use recapitalization and demolition cost data generated by the Department's AMD Treat software. According to the AMD Treat software, the combined present value of recapitalization costs for the CRDA #6 Water Treatment System together with the David/Diane Mine Water Treatment System is approximately \$243,182. Attached as Exhibit D is the AMD Treat Recapitalization Cost schedule for the CRDA # 6 and David/Diane Mine Water Treatment Systems.

Y. CCC is willing to establish a post-mining water treatment Trust Sub-Account through a Participation Agreement and the April 2001 Declaration of Trust of the Clean Streams Foundation as an alternative financial assurance mechanism, and a financially-backed enforceable contract, in order to provide for the long-term treatment of post-mining water

discharges and secure the release of reclamation bonds upon completion of all other reclamation requirements. CCC agrees to establish the Canterbury Water Treatment Trust Sub-Account for the CRDA #6 Treatment System and the David/Diane Mine Water Treatment System ("Canterbury Water Treatment Systems") by executing a Trust Participation Agreement with the Clean Streams Foundation.

Z. The Parties have discussed the need to obtain accurate and timely information on the costs of operating and maintaining the Canterbury Water Treatment Systems in order to maintain the proper amount of financial assurance.

AA. The Parties have agreed to use the formulas set forth below to calculate the present value of the Trust Sub-Account. The Parties agree that the present value of the fully-funded Canterbury Water Treatment Trust Sub-Account for the water discharges covered by this Consent Order and Agreement is \$5,100,000. This sum constitutes the current present value of the estimated future operation and maintenance costs for the Canterbury Water Treatment Systems, and the current present value of the estimated future recapitalization costs for the Canterbury Water Treatment Systems. 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 Trust Sub-Account as described in Paragraphs 8 and 10 below. The parties have agreed to a payment schedule of eleven payments over ten years as set forth in Paragraph 6(b).

BB. The Parties also agree that, based on Paragraph 3.2 of the May 26, 2009 Binding Memorandum of Global Settlement Agreement that the total amount of remaining financial liability for the Canterbury Water Treatment is \$2,800,000 except that this amount may be adjusted based on the annual adjustments in accordance with Paragraphs 8 and 10 below.

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 CCC as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to § 5 and § 610 of the Clean Streams Law, 35 P.S. § 691.5 and § 691.610; § 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c; § 3.1 and § 9 of the Coal Refuse Disposal Act, 52 P.S. § 30.53a and § 30.59; § 9 of the Subsidence Act, 52 P.S. § 1409.9 and § 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of CCC to comply with any term or condition of this Consent Order and Agreement shall subject CCC to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. CCC agrees that the findings in Paragraphs A through BB above are true and correct and in any matter or proceeding involving CCC and the Department, CCC 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 below of this Agreement.

b. Actual Treatment Cost. The average of three (3) consecutive years of the costs and expenses of water treatment, calculated by using the Accountings for those three (3) years.

c. Annual Anniversary Date. Thirty (30) days after the last day of CCC's fiscal year or thirty (30) days after the last day of any fiscal year which CCC may adopt in the future.

d. Calculated Treatment Cost. The projected future annual cost of water treatment, based on the Actual Treatment Cost, compounded at three and one tenth percent (3.1%) annually.

e. Capital Improvement Account. The account within the Trust Sub-Account that is primarily used to finance anticipated and periodic capital expenditures for the Canterbury Water Treatment Systems.

f. Distribution Payment. The Trustee's disbursement of money from the 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 Canterbury Water Treatment Systems. 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 8.43% or .843)*
	I	=	Inflation Rate (assumed to be 3.1% or .031)

h. Primary Basis Valuation. 100% of the present value of the future cost of water treatment as determined by the Formula.

i. Primary Target Valuation. 116% percent of the present value of the future cost of water treatment as determined by the Formula.

j. Primary Trust Account. The account within the Trust Sub-Account that is primarily used to finance annual operating and maintenance costs of the Canterbury Water Treatment Systems.

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 Trust in the Primary Trust Account.

4. Annual Treatment Costs; Records; Factors; Accounting

a. CCC shall keep accurate financial records of all the costs and expenses of annual water 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. CCC shall keep separate records for each of the Canterbury Water Treatment Systems.

c. CCC shall provide an annual accounting of the costs and expenses of annual water treatment to the Department on or before the ninetieth (90th) day following the last day of the fiscal year for which the Accounting is being provided. The Accounting shall cover the period beginning on January 1 and continuing through December 31 of each year, or other fiscal year as CCC 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 or other corporate officer responsible for the financial affairs of CCC

and by the President of CCC attesting to the completeness and accuracy of the records of the costs and expenses of annual water treatment as reported in the Accounting.

d. CCC's obligation to keep records and provide the Accounting shall continue for the period during which CCC is operating the Canterbury Water Treatment Systems.

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

5. Canterbury Water Treatment Trust Sub-Account

a. CCC shall establish a water discharge treatment Trust Sub-Account within the Declaration of Trust established by the Clean Streams Foundation on April 7, 2001. The Canterbury Water Treatment Trust Sub-Account shall be established via execution of a Participation Agreement with the Clean Streams Foundation. The Canterbury Treatment Water Trust Sub-Account shall secure CCC's obligation to treat the CRDA #6 and the David/Diane Mine water discharge, including its legal obligation to operate and maintain the Canterbury Water Treatment Systems in perpetuity or until water treatment is no longer necessary. The Canterbury Water Treatment Trust Sub-Account shall also secure CCC's obligation to provide financial resources to the Department and the citizens of the Commonwealth sufficient to operate and maintain the Canterbury Water Treatment Systems and to treat the water discharges in perpetuity or until water treatment is no longer necessary. The Canterbury Water Treatment Trust Sub-Account shall provide for the demolition of treatment facilities and reclamation of the

treatment sites should treatment no longer be needed. The Participation Agreement establishing the Canterbury Water Treatment Trust Sub-Account is attached as Exhibit E.

b. CCC shall establish within the Canterbury Water Treatment Trust Sub-Account two accounts:

- (1) an account designated as the Primary Trust Account; and
- (2) an account designated as the Capital Improvement Account.

6. Funding of the Primary Trust Account

a. Initial Payment to the Primary Trust Account. Within ninety (90) days of the formation of the Canterbury Water Treatment Trust Sub-Account, CCC shall deposit \$233,087 into the Primary Trust Account. The total agreed upon sum includes the current present value of the future operation and maintenance of the Canterbury Water Treatment Systems and the current amount needed to finance anticipated and periodic capital expenditures for the Canterbury Water Treatment Systems.

b. Ongoing Payments to the Primary Trust Account. Beginning on the first year anniversary date of the execution of the Participation Agreement, CCC shall each year deposit \$233,087 for a period of ten (10) consecutive years into the Primary Trust Account.

7. Annual Distribution or Contribution Payments to the Primary Trust Account

a. All calculations under this Paragraph 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 CCC. 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 Point 1, 2 and 3 on Exhibit F. The provisions of this Paragraph do not apply until CCC has fulfilled its obligation to make all the ongoing payments under Paragraph 6.b above.

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 as Point 4 on Exhibit F.

d. If the Primary Trust Valuation is less than the Primary Basis Valuation, then CCC 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 below. This amount is depicted graphically as points 5 & 6 on Exhibit F.

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

a. All calculations under this Paragraph 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% percent 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 typically 116% percent of the new Primary Basis Valuation. Exhibit G 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.

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 CCC. The provisions of this Paragraph do not apply until CCC has fulfilled its obligations to make all the ongoing payments under Paragraph 6.b above. 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 - (new ATC/ prior ATC))
Or:	DP	=	TR - 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 AMD Treat 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 8.43% the initial amount of the Capital Improvement Account must be sufficient to cover all anticipated expenditures for capital replacement activities for a seventy-five (75) year period.

c. A schedule for the Capital Improvement Account balance and projected capital expenditures is made a part of this agreement as Exhibit D. 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 below. Such recalculation shall be deemed an amendment to Exhibit D 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 D. 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 CCC any time a planned capital replacement is made as indicated on Exhibit D. 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 D, 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 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

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 D, 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 CCC's obligation to make a contribution payment under Paragraph 7.g above. This amount is depicted graphically at Point 5 on Exhibit F. However, the amount of surplus funds transferred to the Primary Trust Account may exceed CCC's obligation under Paragraph 7.g above 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 F.

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

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

14. Liability Insurance

a. CCC shall maintain in effect liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the Canterbury Water Treatment Systems and the real and personal property which is identified in the Participation Agreement as part of the trust principal. The Trustee and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policy.

b. In addition to the requirements of Paragraph 15.a below., the 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 which certifies CCC has a public liability insurance policy in effect, meeting the requirements of this Paragraph.

15. Annual Requirements

a. The Parties will meet on or before the thirtieth (30th) day following delivery to the Department of the Accounting of each year: (1) to review and discuss the Accounting for the then completed fiscal year; (2) to review the effectiveness of the Canterbury Water Treatment Systems and any change in the fiscal year; (3) to resolve any issues which arise as a result of that change or the performance of the Canterbury Water Treatment Trust Sub-Account; (4) 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 Canterbury Water Treatment Trust Sub-Account; and (5) to address any other issues that may concern this Consent Order and Agreement or its implementation.

b. CCC shall provide annually to the Department, on forms furnished by the Department, the information required by 25 Pa. Code § 86.62(b) and § 86.62(c) (relating to identification of interests).

16. CCC's Continuing Obligation

CCC's agreement to fund the Canterbury Water Treatment Trust Sub-Account, the full or partial funding of the Canterbury Water Treatment Trust Sub-Account or the exhaustion of the Canterbury Water Treatment Trust Sub-Account shall not in any way limit CCC's obligation to operate the Canterbury Water Treatment Systems and to treat the water discharge(s) covered by this Consent Order and Agreement in a manner which meets the effluent limitations described in Paragraphs M, N and O above. Furthermore, exhaustion of the

Canterbury Water Treatment Trust Sub-Account shall not excuse CCC from CCC's obligation to adequately treat or to abate the water discharges.

17. Stipulated Civil Penalties

a. In the event CCC fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, CCC 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 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded to:

District Mining Manager
Greensburg District Mining Office
Armbrust Building
R.D. 2, Box 603-B
Greensburg, PA 15601-0982

c. Any payment under this Paragraph shall neither waive CCC's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel CCC's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only CCC'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.

18. Additional Remedies

a. In the event CCC 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 CCC defaults on the obligations of this Consent Order and Agreement, CCC 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 CCC 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.

19. Reservation of Rights

The Department reserves the right to require additional measures to achieve compliance with applicable law. CCC reserves the right to challenge any action which the Department may take to require those measures.

20. Liability of CCC

CCC 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.

21. Transfer of the CCC CRDA #6 and David/Diane Mine Pool Water Treatment 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 CCC CRDA #6 and David/Diane Mine pool Water Treatment.

b. If CCC intends to transfer any legal or equitable interest in the CCC Sites which is affected by this Consent Order and Agreement, CCC 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 inform the individuals identified in Paragraph 22 below of such intent.

c. Upon CCC's request, the Department may agree to modify or terminate CCC's duties and obligations under this Consent Order and Agreement upon transfer of the CCC Sites.

22. Correspondence with Department

All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

District Mining Manager
Greensburg District Mining Office
Armbrust Building
R.D. 2, Box 603-B
Greensburg, PA 15601-0982

and

District Mining Manager
California District Mining Office
California Technology Park
Coal Center, PA 15423

23. Correspondence with CCC

a. All correspondence with CCC concerning this Consent Order and Agreement shall be addressed to:

Neil Kok
Vice President
Canterbury Coal Company
56854 Pleasant Ridge Rd.
Alledonia, OH 43902

and

John E. Jevicky, Esq.
Dinsmore & Shohl, LLP
255 East Fifth Street, Suite 1900
Cincinnati, OH 45202

b. CCC 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 above address.

24. Force Majeure

a. In the event that CCC 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 CCC's control and which CCC, by the exercise of all reasonable diligence, is unable to prevent, then CCC 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 CCC's control. CCC'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. CCC 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 CCC 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. CCC's failure 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 CCC and other information available to the Department. In any subsequent litigation, CCC 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.

25. 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.

26. 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.

27. Attorney's Fees

The Parties shall bear their respective attorney's 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.

28. Modifications

Except as provided in Paragraph 10 above, 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.

29. 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.

30. Decisions under Consent Order

Any decision regarding intended or potential enforcement 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 CCC may have to the decision will be preserved until the Department seeks to enforce this Consent Order and Agreement.

31. Successors

This Consent Order and Agreement shall be fully and completely binding upon any successor of CCC. For purposes of this Paragraph, successor shall mean any corporation or entity: (1) CCC consolidates with or merges into or permits to merge with it and CCC is not the surviving corporation or entity or (2) which acquires, by purchase or otherwise, all or substantially all of CCC's properties or assets which include, but is not limited to, voting stock of CCC. Successor does not include any corporation or other entity to which CCC transfers or assigns all or substantially all of its financial or non-financial liabilities. CCC 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.

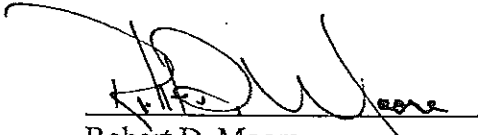
32. Counterpart Signatures

The Parties agree that this Consent Order and Agreement may be executed by counterpart signatures transmitted via electronic means.

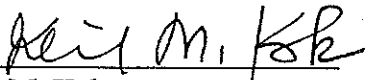
IN WITNESS WHEREOF, the Parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of CCC certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and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

[SIGNATORIES APPEAR ON THE FOLLOWING PAGE]


FOR CANTERBURY COAL COMPANY:



Robert D. Moore
President



Neil M. Kok
Vice President



Michael O. McKown
Attorney for Canterbury Coal Company

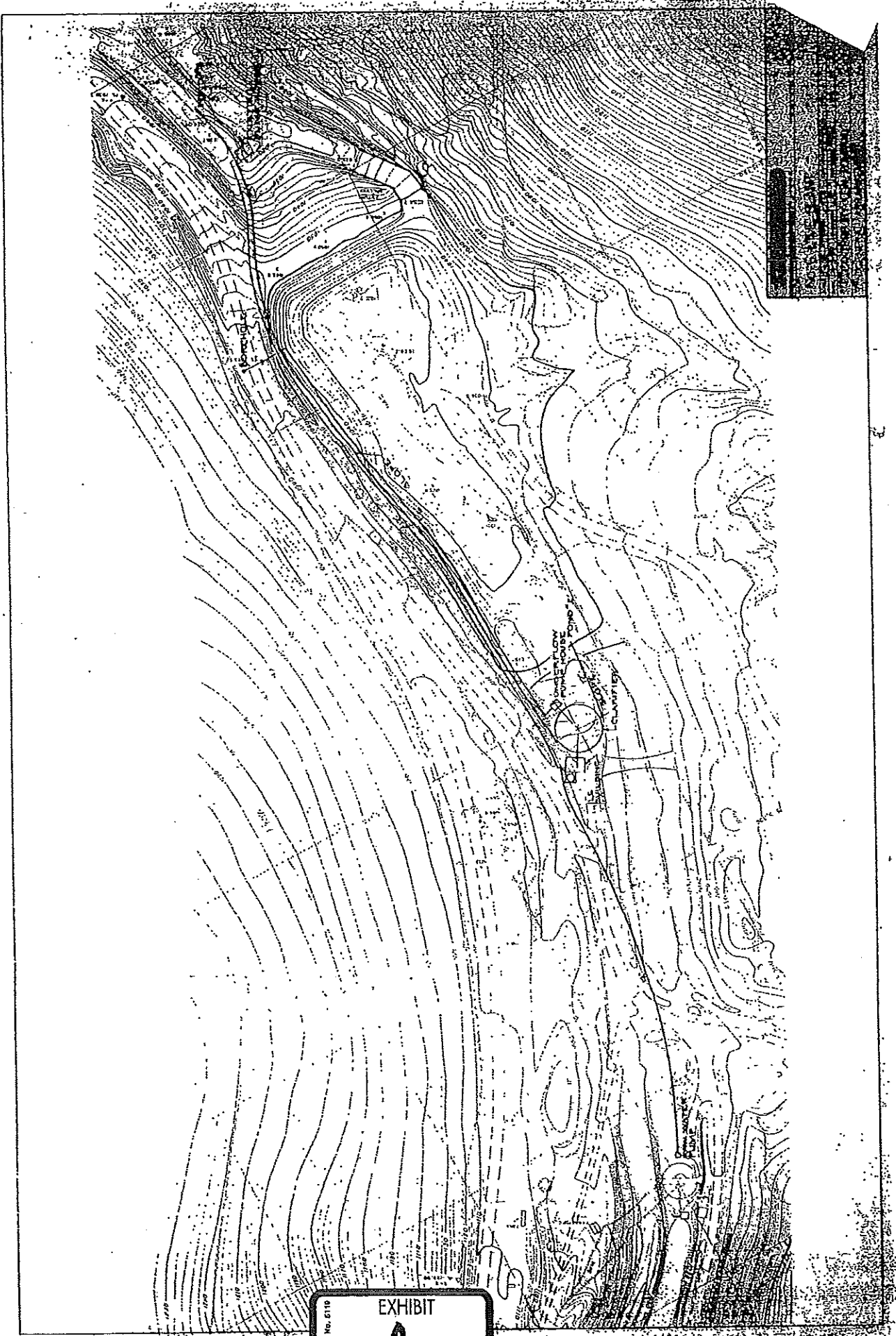
FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



William S. Plassio
District Mining Manager



Barbara J. Grabowski
Assistant Counsel



Blumberg No. 6119
EXHIBIT
A



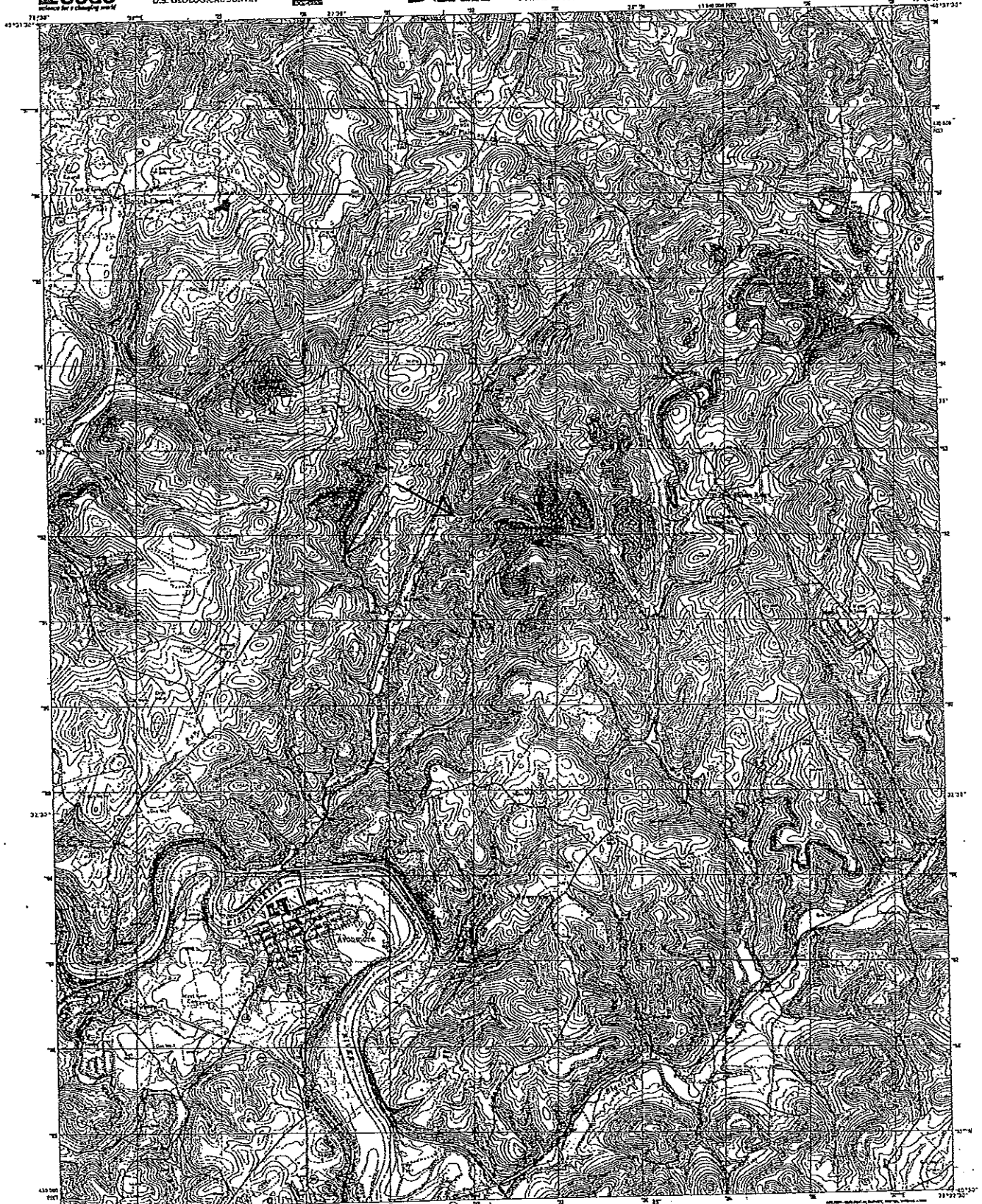
U.S. DEPARTMENT OF THE INTERIOR
U.S. GEOLOGICAL SURVEY



DGNR

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
BUREAU OF TOPOGRAPHIC AND GEOLOGIC SURVEY

AVONMORE QUADRANGLE
PENNSYLVANIA
7.5-MINUTE SERIES (TOPOGRAPHIC)



Produced by the United States Geological Survey
in cooperation with Pennsylvania Department of Conservation
and Natural Resources, Bureau of Topographic and Geologic Survey
Topographic control (1962), Pennsylvania State University
1984 and other sources. Pennsylvania State University
has major control in the Avonmore area. Survey control
extends to 1964. Boundaries shown are current, verified 1999.
North American Datum of 1983 (NAD 83). Projection and
10 000-foot UTM zone 18Q. Pennsylvania coordinate system, south zone.
1000-foot Universal Transverse Mercator (UTM) zone 17.
North American Datum of 1983 (NAD 83) is shown by dashed
lines. The values of the UTM zone 18Q are shown by solid
lines. The values of the UTM zone 17Q are shown by dotted
lines. The values of the UTM zone 18Q are shown by
solid lines. The values of the UTM zone 17Q are shown
by dotted lines. The values of the UTM zone 18Q are
shown by solid lines. The values of the UTM zone 17Q
are shown by dotted lines. Light brown ink indicates
reworked strip area.



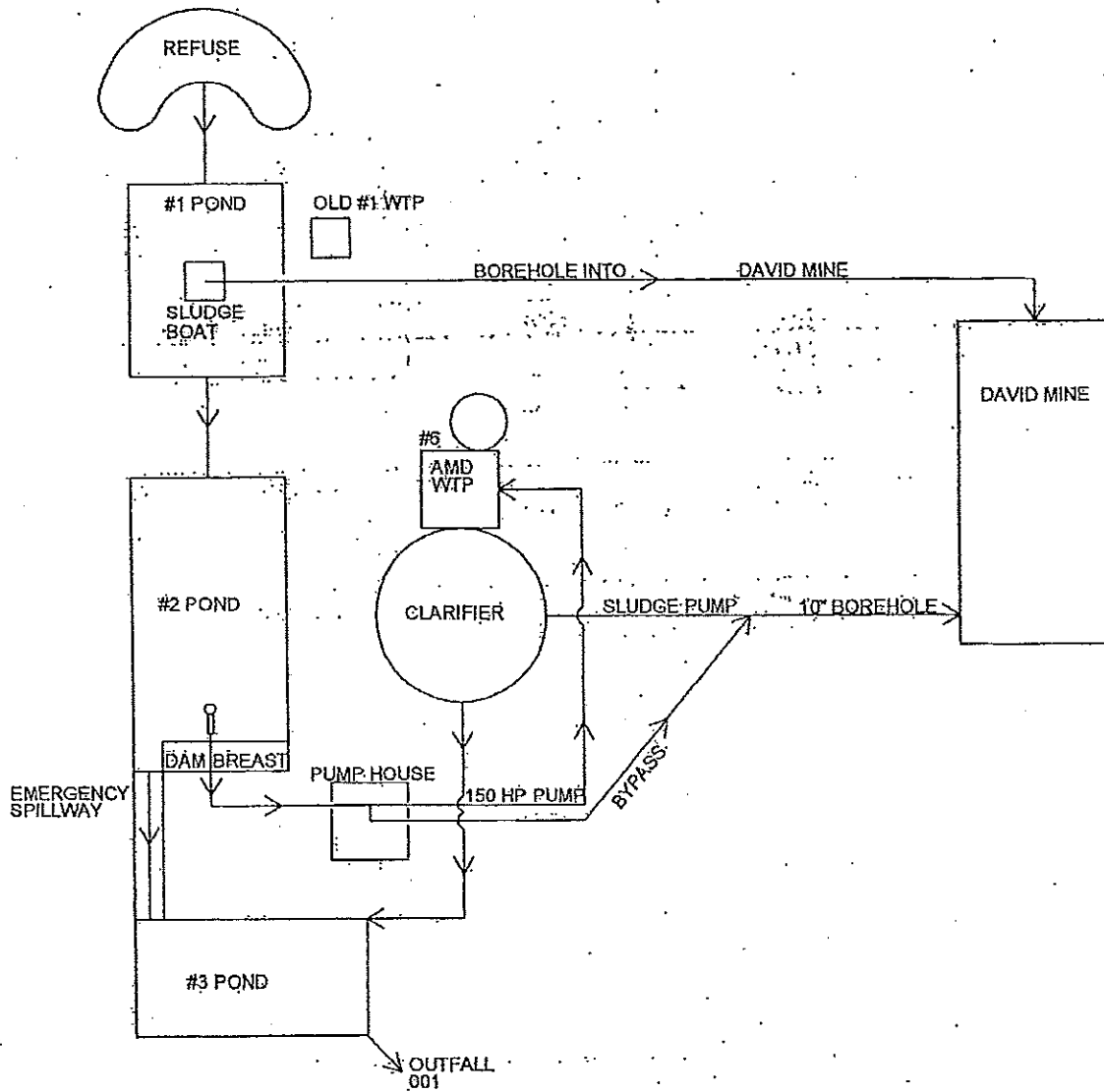
ROAD CLASSIFICATION
Light blue line, line of
roadway
Dashed line, line of
railroad
Dotted line, line of
roadway
Dotted line, line of
railroad

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----

AVONMORE, PA
1998

1848 510 0100 0000 0000

CONTOUR INTERVAL 20 FEET
NATIONAL GEODESIC REFERENCE SYSTEM OF 1983
IN CONFORMITY WITH THE NORTH AMERICAN DATUM OF 1983
DATE AND CONTROL DATA FOR THIS QUADRANGLE
FOR SALE BY U.S. GEOLOGICAL SURVEY, P.O. BOX 246, DENVER, COLORADO 80226
A POLAR PROJECTION TOPOGRAPHIC MAP IS AVAILABLE IN AVONMORE, PENNSYLVANIA

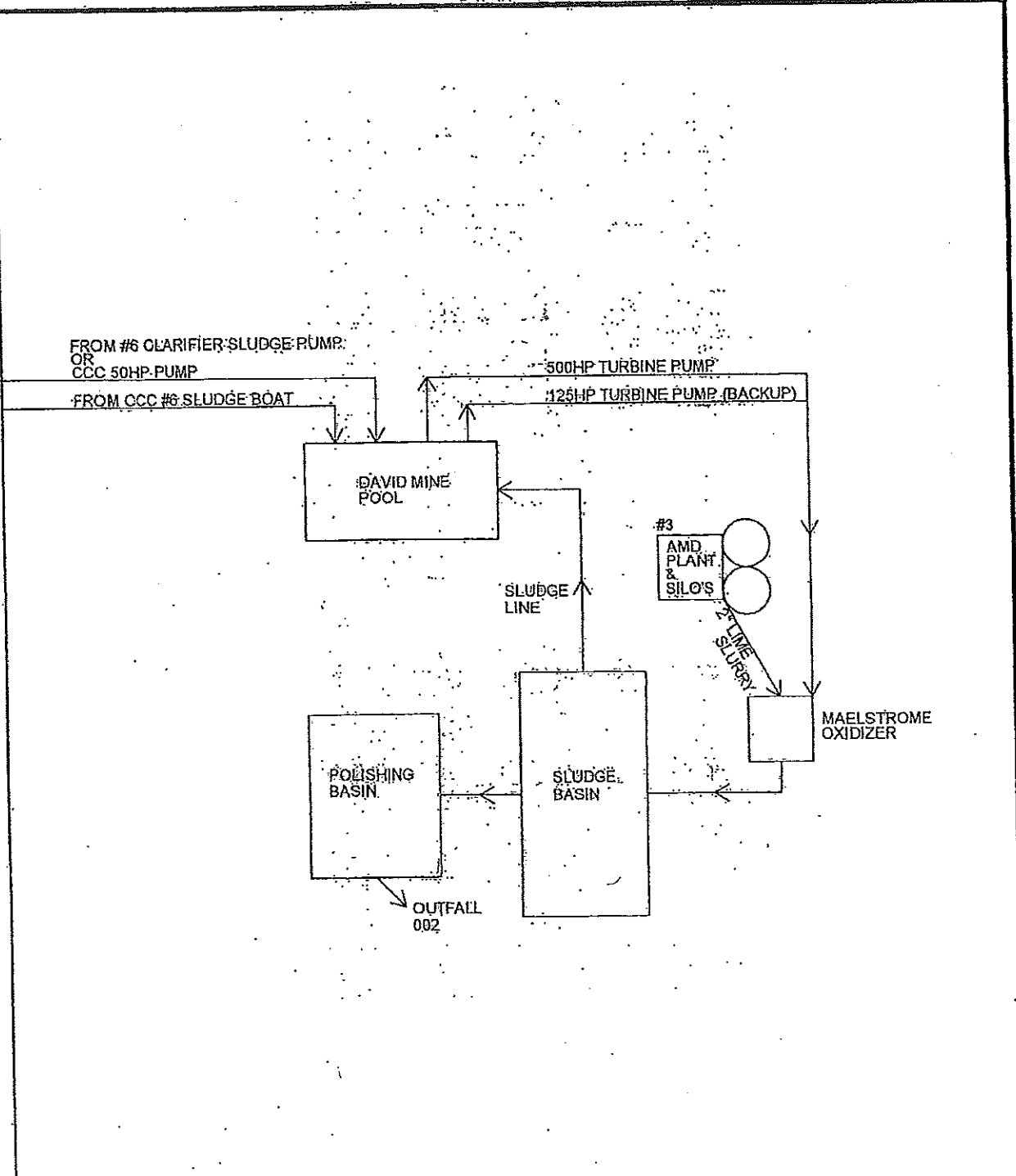


Drawn By:	RDS
Checked By:	RWS
Date:	01/28-09
Scale:	N.T.S.
Project No.:	0032-622
File Name:	Flow Diagram.dwg
Drawn By:	1 of 1

CME
ENGINEERING
 CME ENGINEERING LP
 165 East Union Street, Suite 100, Somerset, PA 15501
 814-443-3344 FAX: 814-444-0365

FLOW DIAGRAM FOR CCC WTP #6
MAPLE CREEK MINING, INC.
 AMD BONDING
 KISKIMINETAS TOWNSHIP
 ARMSTRONG COUNTY, PENNSYLVANIA





Drawn By:	RDS
Checked By:	RWS
Date:	01/28/09
Scale:	N.T.S.
Project No.:	0032-22
File Name:	Flow Diagram.dwg
Drawings:	1 of 1

CME
ENGINEERING
 CME ENGINEERING LP
 185 East Union Street, Suite 100, Somerset, PA 15501
 814-443-3344 FAX: 814-444-0365

FLOW DIAGRAM FOR CCC WTP #3
MAPLE CREEK MINING, INC.
 AMD BONDING
 KISKIMINETAS TOWNSHIP
 ARMSTRONG COUNTY, PENNSYLVANIA



Company Name Canterbury Coal Co.
 Project 003.
 Site Name Plant #3 and #6

Printed on 09/04/2009

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

**AMD TREAT
 RECAPITIALIZATION COST**



AMD TREAT

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
	243,182	243,182	Initial Fund Amount				
1	263,682	263,682	0	51	860,193	860,193	0
2	285,910	285,910	0	52	932,707	932,707	0
3	310,013	310,013	0	53	1,011,335	1,011,335	0
4	336,147	336,147	0	54	1,096,590	1,096,590	0
5	364,484	364,484	0	55	1,189,033	1,189,033	0
6	395,210	395,210	0	56	1,289,268	1,289,268	0
7	428,526	428,526	0	57	1,397,954	1,397,954	0
8	464,651	464,651	0	58	1,515,801	1,515,801	0
9	503,821	503,821	0	59	1,643,583	1,643,583	0
10	546,293	384,740	161,553	60	1,782,137	1,038,691	743,445
11	417,174	417,174	0	61	1,126,253	1,126,253	0
12	452,341	452,341	0	62	1,221,196	1,221,196	0
13	490,474	490,474	0	63	1,324,143	1,324,143	0
14	531,821	531,821	0	64	1,435,769	1,435,769	0
15	576,653	576,653	0	65	1,556,804	1,556,804	0
16	625,265	625,265	0	66	1,688,043	1,688,043	0
17	677,975	677,975	0	67	1,830,345	1,830,345	0
18	735,129	735,129	0	68	1,984,643	1,984,643	0
19	797,100	797,100	0	69	2,151,948	2,151,948	0
20	864,296	645,064	219,231	70	2,333,357	1,324,486	1,008,871
21	699,443	699,443	0	71	1,436,140	1,436,140	0
22	758,406	758,406	0	72	1,557,206	1,557,206	0
23	822,340	822,340	0	73	1,688,479	1,688,479	0
24	891,663	891,663	0	74	1,830,818	1,830,818	0
25	966,831	599,805	367,025	75	1,985,166	0	1,985,166
26	650,369	650,369	0	76	0	0	0
27	705,195	705,195	0	77	0	0	0
28	764,643	764,643	0	78	0	0	0
29	829,102	829,102	0	79	0	0	0
30	898,995	601,494	297,501	80	0	0	0
31	652,200	652,200	0	81	0	0	0
32	707,180	707,180	0	82	0	0	0
33	766,795	766,795	0	83	0	0	0
34	831,436	831,436	0	84	0	0	0
35	901,527	901,527	0	85	0	0	0
36	977,525	977,525	0	86	0	0	0
37	1,059,931	1,059,931	0	87	0	0	0
38	1,149,283	1,149,283	0	88	0	0	0
39	1,246,167	1,246,167	0	89	0	0	0
40	1,351,219	947,503	403,716	90	0	0	0
41	1,027,378	1,027,378	0	91	0	0	0
42	1,113,986	1,113,986	0	92	0	0	0
43	1,207,895	1,207,895	0	93	0	0	0
44	1,309,721	1,309,721	0	94	0	0	0
45	1,420,130	1,420,130	0	95	0	0	0
46	1,539,847	1,539,847	0	96	0	0	0
47	1,669,656	1,669,656	0	97	0	0	0
48	1,810,408	1,810,408	0	98	0	0	0
49	1,963,026	1,963,026	0	99	0	0	0
50	2,128,509	793,316	1,335,192	100	0	0	0

Blumberg No. 0118
EXHIBIT
D