

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

Cooney Brothers Coal Company. : SMP No. 11803038 (Pot Ridge 2 Strip)
P. O. Box 246 : SMP No. 11800102 (Pot Ridge 2 Strip)
Cresson, PA 16630 : SMP No. 56743138 (Pot Ridge Strip Lasky)
: SMP No. 11860104 (Bethlehem Strip)
: MDP No. 4270BSM1 (Dean No. 3)
: SMP No. 11813039 (Feller No. 2 Strip)
: SMP No. 11813040 (Dunlo No. 1 Strip)
: SMP No. 11773037 (Caroff Strip)
: Cambria and Somerset Counties
: Alternative Financial Assurance Mechanism

**POSTMINING TREATMENT TRUST
CONSENT ORDER AND AGREEMENT**

FEBRUARY 4, 2014

FOR COONEY BROTHERS
COAL COMPANY

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Coal Company

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Daniel Sammarco, P.E.
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Regional Counsel

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	:	SMP No. 11773037 (Caroff Strip)
	:	Cambria and Somerset Counties
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POSTMINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 4th day of February, 2014, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Cooney Brothers Coal Company ("Cooney").

The Department has found and determined the following:

A. The Department is the agency with authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P. L. 1987, as amended, 35 P. S. §§ 691.1 et seq., ("Clean Streams Law"); the Surface Mine Conservation and Reclamation Act, Act of May 31, 1945, P. L. 1198, as amended, 52 P. S. § 1396.1 et seq., ("Surface Mining Act"), 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 include the establishment of a site-specific trust fund funded by a mine 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 Post-Mining Discharge Treatment Trust Agreement constitutes an alternative financial assurance mechanism authorized by Section 4(d.2) of the Surface Mining Act, 52 P.S. § 1396.4(d.2). 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 SMCRA, 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. Cooney is a partnership with a business address of P. O. Box 246, Cresson, Pennsylvania 16630. Paul A. Cooney is the sole surviving partner and is in charge of day to day operation of the business. Cooney's business included the mining of bituminous coal by the surface method in the Commonwealth of Pennsylvania pursuant to Surface Mining Operator's License No. 1232, which expired on June 30, 2007.

D. Cooney is the permittee of the following bituminous surface coal mines that are associated with post-mining discharge liability:

NAME	SMP	TOWNSHIP	COUNTY
Pot Ridge No. 2 Strip	11803038	Adams	Cambria
Pot Ridge No. 2 Strip	11800102	Adams	Cambria
Pot Ridge Strip Lasky	56743138	Ogle	Somerset
Bethlehem Strip	11860104	Conemaugh	Cambria
Dean No. 3	4270BSM1	Dean	Cambria
Feller No. 2 Strip	11813039	Adams	Cambria
Dunlo No. 1 Strip	11813040	Adams	Cambria
Caroff Strip	11773037	Conemaugh	Cambria

E. A summary of the reclamation bonds currently posted for the mine sites listed in Paragraph D, above, is attached as Exhibit 1.

F. Beginning in 2006, the Department and Cooney began negotiating a post-mining treatment trust Consent Order and Agreement to address long term financial assurances for the treatment of the discharge associated with the mine sites listed in Paragraph D.

G. As part of the ongoing negotiations of this Consent Order and Agreement, the Department required Cooney to evaluate the status, operation and maintenance of the mine drainage treatment systems associated with the mine sites listed in Paragraph D, and to submit plans to improve, augment, replace, reconstruct, or otherwise change the treatment systems and/or method of treatment.

H. On September 12, 2008, Cooney submitted a report evaluating the treatment systems. The report was prepared by Cooney's consultant, Todd E. Coleman, P.E. of Minetech Engineering.

I. On September 18, 2008, the Department, Cooney and the Clean Streams Foundation, Inc. entered into an escrow agreement ("2008 Escrow Agreement") pursuant to which Cooney agreed to escrow certain money and other assets during the pendency of the negotiations of this Consent Order and Agreement. (A copy of the 2008 Escrow Agreement is attached as Exhibit 2).

J. On October 29, 2008, Cooney submitted an updated report which included, among other things, one year's worth of flow and water quality data ("Coleman Report"). (Attached as Exhibit 3).

K. On March 25, 2009, the parties entered into a Consent Order and Agreement ("2009 COA") in which Cooney agreed, among other things, to construct and/or reconstruct the treatment systems.

L. Since March, 2009, the parties have continued to meet on a periodic basis to discuss, among other things, Cooney's compliance with the requirements of the 2009 COA, the

terms and conditions of this Consent Order and Agreement and related regulatory and compliance matters.

M. On July 19, 2010, Cooney and the Clean Streams Foundation (“CSF”) executed a Participation Agreement which replaced the 2008 Escrow Agreement. (The Participation Agreement is attached as Exhibit 4). Cooney Brothers Coal Company entered into the Participation Agreement with the CSF to establish the Sub-Account For Cooney under the CSF Declaration of Trust for purposes of securing funding for certain treatment systems and sites in Cambria and Somerset Counties as provided for in the 2009 COA between Cooney and the DEP.

N. Commencing in September 2008 and continuing to the present, Cooney has made certain payments and assigned certain assets to the Sub-Account established with the CSF pursuant to the Participation Agreement (“CSF Account”) which assignments were Collateral Assignments to collateralize the amount required to be paid by or on behalf of Cooney to CSF to secure and provide for Cooney's treatment obligations. A summary of the payments and assignments as of June 17, 2013 is contained in a letter from the CSF dated June 17, 2013. (Attached as Exhibit 5).

O. On December 3, 2010, the Department and Angels Coal Trust (“Angel”) signed a Consent Order and Agreement (“Angels COA”) in which Angel agreed to assign as collateral certain royalties and other payments that Angel was/is receiving from Heritage Mining Company in connection with the mining of a site known as the Coupon Mine to the CSF Account. (A copy of the Angels COA is attached as Exhibit 6).

P. As of June 17, 2013 Cooney and Angels have collectively deposited \$2,668,205.79 into the CSF Account. As a result of investments made by the Clean Streams Foundation and additional deposits, the CSF Account is currently valued at \$3,039,671.28 as of December 10, 2013.

Q. All of the discharges which are the subject of this Consent Order and Agreement drain to Paint Creek, Babcock Creek, the Little Conemaugh River or other streams which are part of the Kiskiminetas Conemaugh Watershed, with the exception of the discharges from the Dean site, which drains to Brubaker Run. There is a January 29, 2010 TMDL for the Kiskiminetas-Conemaugh River Watershed which was prepared by the United States Environmental Protection Agency. There is a June 29, 2004 TMDL for Brubaker Run prepared by the Department of Environmental Protection and approved by EPA.

R. Federal and state law requires the Department to establish effluent limits that are consistent with TMDLs. As noted in Paragraphs Z, HH, RR, XX, GG, QQQ, ZZZ, SSSS and YYYYY, below, the effluent limits in all existing permits are subject to change when each permit is renewed. These changes may require treatment system upgrades or changes and/or may increase operating and maintenance costs which may result in an increase in the cost of the treatment trust set forth in Paragraph HHHHH, below.

POT RIDGE 2 STRIP (11803038 and 11800102)

S. On the Pot Ridge No. 2 Strip, Cooney treats numerous acid mine drainage discharges, identified collectively as the Pot Ridge Discharges. The area associated with SMP 11800102 is hydrologically connected to these discharges. The Pot Ridge Discharges include: a) the Murphy Hill (MHILLR) and Capanarri (CPNR) discharges; b) the Powerline discharge (PLRAW); c) the discharge near Sedimentation Pond 31 (LASKYR); and d) the low flow seeps near Pond 19 (19RDITCH and 19R-BANK1). With the exception of the LASKYR discharge which flows to an Unnamed Tributary to Babcock Creek, these discharges flow into Paint Creek.

Murphy Hill Discharges

T. The MHILLR discharges, which are located on SMP 11803038, originate at numerous locations as either point sources or extended seep zones over a distance of

approximately 7,000 feet along the northern perimeter of the permit boundary. The MHILLR discharges are collected and treated at the Murphy Hill treatment plant. The CPNR discharge originates on the northern side of Paint Creek just below Sedimentation Pond 19. Due to the local topography and CPNR's proximity to Paint Creek, there is insufficient space to allow for treatment of the discharge. The CPNR discharge is collected in two basins and piped across Paint Creek into the collection ditch that runs to the Murphy Hill treatment plant. Historically, the pipe conveying the CPNR discharge across Paint Creek has been susceptible to clogging. The pipe will require periodic maintenance and cleaning to allow unobstructed flow to the treatment plant.

U. Cooney originally attempted to treat the MHILLR discharges with an extended, continuous series of vertical flow ponds ("VFPs") utilizing more than 77 ponds prior to discharge to Paint Creek. However, these VFPs ultimately failed as the high metals content in the raw water eventually clogged the limestone and piping in the systems. The treatment system was modified in 2003 with the installation of a collection channel to direct the combination of all water requiring treatment to a single location, the Mine 42 Treatment System. A treatment plant utilizing a lime slaker was constructed in 2009. The treatment plant treats the combined discharges and the water is alternately directed to one of two primary ponds for settling. Common secondary and final ponds are used for additional settling prior to discharge to Paint Creek. A caustic soda tank is in place as an emergency backup. Annotated aerial photographs of the Mine 42 Treatment System are found at page 55 (old system) and page 60 (new system) of the Coleman Report. While some of the original VFPs are still providing some level of treatment and aeration from the residual limestone, other ponds now provide no treatment. Many of the nonworking VFP's have been removed, although some additional reclamation and

reseeding may be required. Flows measured at a point before the settling ponds range from approximately 207.2 gallons per minute (“gpm”) to 3,300 gpm. The average flow is 717.2 gpm.

V. Sludge disposal is a major concern with the Mine 42 Treatment System. Sludge is currently pumped to a series of boreholes in the backfill in the area above the Mine 42 Treatment system. Permanent pumps have been installed on the first settling basins and a hard eight inch pipeline has been installed to carry the sludge to the boreholes. Several of the original VFP basins nearest to the Mine 42 Treatment system remain to be used for sludge storage should that become necessary. To date, the existing boreholes have been taking the sludge but the longevity is uncertain and an alternate long-term solution may be necessary.

W. The access road to the Murphy Hill discharges is approximately 4750 feet in length and is currently well maintained but does and will require normal maintenance.

X. A topographic map depicting the permit on which the MHILLR discharges is located is attached as Exhibit 7. The latitude and longitude coordinates for the MHILLR discharge are as follows: Latitude 40° 14’ 57” Longitude -78° 45’ 50”. The latitude and longitude coordinates for the CPNR discharge are as follow: Latitude 40° 15’ 24” Longitude -78° 44’ 38”.

Y. The raw water quality of the MHILLR and CPNR discharges is set forth in Exhibit 8.

Z. The required effluent limits applicable for the MHILLR and CPNR discharges are found in Exhibit 9.

AA. NPDES Permit No. PA0121533 was originally issued on September 17, 1985, and contains outfalls for four mine drainage treatment facilities, 014, 015, 045, and 046. Cooney submitted a timely renewal application to the Department and the application was approved by the Department on September 27, 2010. The 2010 NPDES renewal was appealed to the

Environmental Hearing Board by citizens for Pennsylvania's Future ("Penn Future"). As part of a March 26, 2011 Joint Stipulation and Settlement Agreement, the Department agreed to revoke the permit renewal and submit new draft permit by March 1, 2012.

BB. The Mine 42 Treatment System is situated on land owned by Cooney. The access road to the system is on land owned by Wilmore Coal Company. Pursuant to the requirements of Paragraph 14.c., below, Cooney will be obtaining and submitting to the Department and the Trustee a properly executed Consent to Right of Entry from Wilmore Coal Company granting Cooney, the Department and the Trustee access to the Mine 42 Treatment System. In addition, Cooney, as the property owner where the Mine 42 Treatment System is located, will also be executing and submitting to the Department and the Trustee a Consent to Right of Entry granting the Department and the Trustee access to the Treatment System.

Powerline Discharges

CC. Cooney originally attempted to treat the Powerline discharge, PLRAW, which is on the SMP with a series of passive VFPs, utilizing approximately 15 ponds, prior to discharge to Paint Creek. However, the VFPs ultimately failed due to the high metal content of the raw water. A treatment plant utilizing a lime slaker that was constructed in 2010 treats the discharge and the water is directed to a series of seven ponds for settling. Annotated aerial photographs of the Powerline discharge treatment system are found at page 45 (old system) and page 50 (new system) of the Coleman Report. Flows were measured as high as 205.4 gpm and average 74.5 gpm.

DD. Disposal of the sludge from the Powerline discharge treatment system is a major concern. Sludge is currently pumped to a series of boreholes in the backfill above the Powerline treatment system. The pumping is accomplished using a six inch portable sludge pump and pump hose. Six of the original passive treatment basins remain and could be utilized for sludge storage

if needed. To date the boreholes have been taking the sludge but the longevity is uncertain and an alternative long-term solution may be necessary.

EE. The primary access road from T-303 is basically in good condition but does and will continue to require normal maintenance and grading on an annual basis. The branch road to the Powerline treatment site is also currently in good condition.

FF. A topographic map depicting the permit on which the Powerline Discharge, PLRAW is located is attached as Exhibit 7. The latitude and longitude coordinates for Powerline Discharge are as follows: Latitude 40° 15' 17" Longitude -78° 44' 05".

GG. The raw water quality of the Powerline Discharge, PLRAW, is set forth in Exhibit 8.

HH. The required effluent limits applicable for the Powerline discharge are found in Exhibit 9.

II. The NPDES permit for the Powerline discharge is described in Paragraph AA, above.

JJ. The Powerline Treatment System is situated on land owned by the Commonwealth of Pennsylvania, DCNR. Pursuant to the requirements of Paragraph 14.c., below, Cooney will be obtaining and submitting to the Department and the Trustee a properly executed Consent to Right of Entry from DCNR granting Cooney, the Department and the Trustee access to the Powerline Treatment System.

KK. The discharge near Sedimentation Pond 31, LASKYR, is on the SMP. The treatment system for this discharge consists of a ditch that collects the discharge and directs the flow to a treatment plant where it is treated with hydrated lime.

LL. The current treatment unit consists of an electric powered hydrated lime treatment plant with a series of four ponds in place for sludge settling prior to discharge to an Unnamed

Tributary to Babcock Creek. A caustic tank is in place as an emergency backup. Annotated aerial photographs of the treatment system for this discharge are found at page 36 (existing system) and page 41 (proposed system) of the Coleman Report. The flows vary widely (0.0 gpm to 381.5 gpm) and average 158.5 gpm.

MM. Currently the sludge is pumped to a series of boreholes in the backfill adjacent to the treatment system. This is accomplished with a six inch portable sludge pump and pump hose. Several of the original treatment ponds remain to be used as sludge storage as needed. To date, the boreholes have been taking the sludge but the longevity is uncertain and a long-term solution may be necessary.

NN. The primary access road from T-303 is approximately 4,900 feet in length. The road is basically in good condition but does and will require normal maintenance and grading on an annual basis.

OO. The low flow seeps near Pond 19R, 19R DITCH and 19R-BANK1, are on the SMP and are treated by lime and/or soda ash briquettes in a collection ditch. An annotated aerial photograph showing the location of the treatment system is found on page 52 of the Coleman Report.

PP. A topographic map depicting the permit on which the Sedimentation Pond 31 Discharge and Pond 19R Discharges are located is attached in Exhibit 7. The latitude and longitude coordinates for the Sedimentation Pond 31 and Pond 19R Discharges are as follows: Sediment Pond 31 Discharge Latitude 40° 14' 49" Longitude -78° 44' 03" and Pond 19R Discharge Latitude 40° 15' 26" Longitude -78° 44' 40" .

QQ. The raw water quality of the Sedimentation Pond 31 and Pond 19R discharges is set forth in Exhibit 8.

RR. The required effluent limits applicable for the Sedimentation Pond 31 and Pond 19R Discharges are found in Exhibit 9.

SS. The NPDES permit for the other Pot Ridge discharges is described in Paragraph AA, above.

TT. The treatment systems described in Paragraphs KK through OO, above, (“Treatment Systems”) are situated on land owned by Commonwealth of Pennsylvania, DCNR (“DCNR”) and Francis M. Stewart (“Stewart”). Pursuant to the requirements of Paragraph 14.c., below, Cooney will be obtaining and submitting to the Department and the Trustee properly executed Consents to Right of Entry from DCNR and Stewart granting Cooney, the Department and the Trustee access to the Treatment Systems.

POT RIDGE STRIP LASKY (56743138)

UU. On the Pot Ridge Strip Lasky, Cooney treats an acid mine drainage discharge identified as SP23, a discharge on the SMP along the access road near the former Lasky shop which flows to an Unnamed Tributary to Babcock Creek. The discharge has a low flow and often dries up during the year. Cooney uses caustic soda which is dispensed from a bulk tank and two settling ponds to treat the discharge. Sludge must be removed on a routine basis and is typically handled by pumping to an adjacent drying basin or mechanically removed by truck. See page 43 of the Coleman Report.

VV. A topographic map depicting the permit on which the SP23 Discharge is located is attached in Exhibit 7. The latitude and longitude coordinates for the SP23 Discharge are as follows: Latitude 40° 13’ 38” Longitude -78° 43’ 40”.

WW. The raw water quality of the SP23 Discharge is set forth in Exhibit 8.

XX. The required effluent limits applicable for the SP23 Discharge are found in Exhibit 9.

YY. NPDES Permit No. PA0606511 was originally issued on September 9, 1995, and contains outfalls for two mine drainage treatment facilities, 001 and 002. Cooney submitted a timely renewal application to the Department, and the application was approved by the Department on September 27, 2010. The 2010 NPDES renewal was appealed to the Environmental Hearing Board by Citizens for Pennsylvania's Future ("Penn Future"). As part of a March 26, 2011 Joint Stipulation and Settlement Agreement, the Department agreed to revoke the permit renewal and submit new draft permit by March 1, 2012.

ZZ. The Lasky SP23 Treatment System is situated on land owned by the Commonwealth of Pennsylvania, DCNR. Pursuant to the requirements of Paragraph 14.c., below, Cooney will be obtaining and submitting to the Department and the Trustee a properly executed Consent to Right of Entry from DCNR granting Cooney, the Department and the Trustee access to the Lasky SP23 Treatment System.

BETHLEHEM STRIP (11860104)

AAA. On the Bethlehem Strip, Cooney treats four separate discharges of acid mine drainage: MD1, which flows into pond 1; MD2, which flows into pond 4; and two discharges (3A and 3B) which flow into pond 3 (collectively, the Bethlehem Discharges). All the Bethlehem Discharges flow into an Unnamed Tributary to the Little Conemaugh River.

BBB. MD1 originates just north of Pond 1 as a seep. As measured from September 2007 through April 2008, the flow ranged from 0.4 gpm to 36.8 gpm and averaged 17.5 gpm. MD2 originates west of Pond 4 and averages almost 14 gpm. Discharge 3A originates as a seep and flows at an average of 13.4 gpm. Discharge 3B which averages 16.5 gpm originates at two locations adjacent to the access road leading to Pond 3. Each of the four treatment systems constructed in 2011 is of the same basic design. The discharges are collected in a basin and directed to an automatic caustic flush tank inside a small shed. The discharge is then batch

treated within the flush tank then discharged to a series of two settling ponds prior to final discharge. A separate bulk caustic tank is used for each system. The pond 1 and pond 3 systems have a 50 gallon flush tanks while the pond 3A and pond 4 systems have 150 gallon flush tanks. Annotated aerial photographs of the treatment system for the Bethlehem Discharges are found at page 9 (existing system) and page 12 (proposed system) of the Coleman Report.

CCC. Sludge disposal is a concern at Bethlehem strip. Sedimentation ponds 1, 3 and 4 remain in place for sludge disposal and should have adequate sludge storage capacity for years.

DDD. The primary access road extends approximately 5,500 feet from SR-3035 and leads to all four discharge points. The road has a good base, and is well maintained but will require normal maintenance.

EEE. A topographic map depicting the permit on which the Bethlehem Discharges are located is attached in Exhibit 7. The latitude and longitude coordinates for the Bethlehem Discharges are as follows: MD1 Latitude 40° 22' 13" Longitude -78° 50' 23"; MD2 Latitude 40° 22' 14" Longitude -78° 50' 34", and MD3 Latitude 40° 21' 54" Longitude -78° 50' 08".

FFF. The raw water quality of the Bethlehem Discharges is set forth in Exhibit 8.

GGG. The required effluent limits applicable for the Bethlehem Discharges are found in Exhibit 9.

HHH. NPDES Permit No. PA0597724 was originally issued on October 3, 1988, and contains outfalls for four mine drainage treatment facilities, 001, 002, 003, and 004. The most recent renewal was approved by the Department on December 2, 2009.

III. The Bethlehem Treatment Systems are situated on land owned by Cooney. The access road crosses property owned by Cooney, Daniel R. Yahnert ("Yahnert"), Lois R. Rockey ("Rockey"), and David J. Locher, Jr. ("Locher"). Pursuant to the requirements of Paragraph 14.c., below, Cooney will be obtaining and submitting to the Department and the Trustee

properly executed Consents to Right of Entry from Yahnert, Rockey, and Locher granting Cooney, the Department and the Trustee access to the Bethlehem Treatment Systems. In addition, Cooney, as the property owner where the Bethlehem Treatment Systems are located, will also be executing and submitting to the Department and the Trustee a Consent to Right of Entry granting the Department and the Trustee access to the Bethlehem Treatment Systems.

DEAN NO. 3 (4270BSM1)

JJJ. On the Dean No. 3 site, Cooney treats a discharge of acid mine drainage identified as 305.

KKK. The treatment system for Dean No. 3 consists of a collection channel and four ponds from which the discharge waters flow down an 800 foot long rock lined channel. Caustic soda is added and sludge settling occurs in a series of three ponds prior to discharge to Brubaker Run. Annotated aerial photographs of the Dean No. 3 treatment system are found at page 4 (existing system) and page 7 (proposed system) of the Coleman Report.

LLL. The existing caustic treatment system uses a siphon activated flush tank which clogs frequently. With the normal seasonal variation in flow, the unmonitored application of caustic soda is resulting in erratic treatment with either too much or too little treatment medium being dispensed. The flows averaged 64 gpm.

MMM. Sludge disposal is a major problem at Dean No. 3. The three settling ponds are currently full of sludge and are in immediate need of attention. In the past, Cooney was able to transport sludge to the E.P. Bender Coal Co., Inc. treatment system on an adjacent surface mine permit where Cooney's sludge was mixed with Bender's sludge for placement via borehole to an underlying deep mine. However, Bender is no longer interested in disposing of the sludge from the Cooney site. The current treatment unit and settling ponds are bounded on the east by the 100 foot stream barrier on Brubaker Run and on the west by steep topography. This precludes

the construction of either a sludge drying bed or a sludge disposal area immediately contiguous to this treatment unit.

NNN. The initial 2,200 feet of the access road from SR 1016 is a common road shared with Bender for its nearby treatment system and is in good condition. The 1,850 feet of branch road to this treatment site is also currently in good condition but will require normal maintenance.

OOO. A topographic map depicting the permit on which the 305 Discharge is located is attached in Exhibit 7. The latitude and longitude coordinates for the 305 Discharge are as follows: Latitude 40° 36' 52" Longitude -78° 28' 36".

PPP. The raw water quality of the 305 Discharge is set forth in Exhibit 8.

QQQ. The required effluent limits applicable for the 305 Discharge are set forth in Exhibit 9.

RRR. The mine drainage permit for the Dean No. 3 Mine has never received an NPDES permit. Cooney will be submitting an application for an NPDES permit. The Department will review the application and issue a NPDES permit that conforms to the Brubaker Run Total Maximum Daily Load report.

SSS. The Dean No. 3 Treatment System is situated on land owned by Cooney and Benjamin J. & Lynn M. Watt ("Watt"). The access road to the treatment system is located on lands owned by the PA Game Commission. Pursuant to the requirements of Paragraph 14.c., below, Cooney will be obtaining and submitting to the Department and the Trustee properly executed Consents to Right of Entry from the PA Game Commission and Watt granting Cooney, the Department and the Trustee access to the Dean No. 3 Treatment System. In addition, Cooney, as the property owner where the Dean No. 3 Treatment System is located, will also be

executing and submitting to the Department and the Trustee a Consent to Right of Entry granting the Department and the Trustee access to the Dean No. 3 Treatment System.

FELLER NO. 2 STRIP (11813039)

TTT. On the Feller No. 2 Strip, Cooney treats three discharges of acid mine drainage identified as DUN1 (also known as “Krayn SAPS”), DUN2, and DUN3.

DUN1

UUU. Cooney originally attempted to treat DUN1 with a series of VFPs prior to discharge to an Unnamed Tributary to Sulphur Creek. The system utilized approximately 17 ponds, but the VFPs failed due to the high metal content of the raw water. Currently the discharge is treated using two hundred and fifty gallon caustic flush tanks at two separate locations within a series of settling ponds. The system is split into two separate sides to facilitate desludging. The initial caustic treatment is discharged to either of two settling ponds that discharge to a common settling pond and then directed to the final caustic treatment and discharged to either of two sets of two additional settling ponds and then to a final common settling pond prior to final discharge. Each of the caustic flush tanks is enclosed in a small shed. Annotated aerial photographs of the DUN1 treatment system are found at page 22 (existing system) and page 27 (proposed system) of the Coleman Report. Flows range from 19 gpm to 149 gpm and average 85.5 gpm. Issues with groundwater infiltration require Cooney to redesign the settling ponds to incorporate a liner and underdrain system. That redesign and the accompanying reconstruction of the DUN1 treatment system will be addressed in a separate Consent Order and Agreement to be entered into between Cooney and the Department.

VVV. Sludge disposal is a major concern. Sludge disposal is accomplished by pumping the sludge with a six inch portable sludge pump and pump hose to the remaining unused passive

treatment basins. However a viable long-term solution must be found as the current method is short-term.

WWW. The primary access road in this area extends from SR 2003 just south of Beaverdale through the Dunlo No. 1 (SMP 11813040) and Feller No. 2 Strip (SMP 11813039). EverPower Renewables has developed a windmill farm in this area and has executed a 20 year lease to use and maintain this road. The access road to DUN1 treatment system extends approximately 2,800 feet from the EverPower road. The access road is stable and well maintained and will require normal maintenance.

XXX. A topographic map depicting the permit on which the DUN1 Discharge is located is attached in Exhibit 7. The latitude and longitude coordinates for the DUN1 Discharge are as follows: Latitude 40° 15' 49" Longitude -78° 42' 36".

YYY. The raw water quality of the DUN1 Discharge is set forth in Exhibit 8.

ZZZ. The required effluent limits applicable for the DUN1 Discharge are found in Exhibit 9.

AAAA. NPDES Permit No. PA0125474 was originally issued on September 9, 1985, and contains outfalls for two mine drainage treatment facilities, 044 and 011. Cooney submitted a timely renewal application to the Department, and the application was approved by the Department on October 4, 2010. The 2010 NPDES renewal was appealed to the Environmental Hearing Board by citizens for Pennsylvania's Future ("Penn Future"). As part of a March 26, 2011 Joint Stipulation and Settlement Agreement, the Department agreed to revoke the permit renewal and submit new draft permit by March 1, 2012.

BBBB. The DUN1 Treatment System is situated on land owned by the DCNR. Pursuant to the requirements of Paragraph 14.c., below, Cooney will be obtaining and submitting to the

Department and the Trustee a properly executed Consent to Right of Entry from DCNR granting Cooney, the Department and the Trustee access to the DUN1 Treatment System.

DUN2

CCCC. The current treatment for DUN2 consists of an electric powered hydrated lime treatment plant with sludge settling occurring in a series of three ponds prior to discharge to an Unnamed Tributary to Sulphur Creek. The flow from this discharge is intermittent and often dries up from approximately June until February or March, depending upon yearly precipitation. Flows have ranged from 0 gpm to 299 gpm during the period of September 2007 through October 2008. The average flow for this period has been 208.6 gpm. Annotated aerial photographs of the DUN2 treatment system are found at page 15 (existing system) and page 20 (proposed system) of the Coleman Report.

DDDD. Sludge disposal at the Dunlo treatment plant is a major concern. Sludge is pumped to a sludge drying bed just east of the treatment plant building by a six inch portable sludge pump and pump hose. Once dewatered, the dried sludge can then be transported by truck approximately 4,500 feet to the abandoned Sedimentation Pond VI-1 for disposal.

EEEE. The access road to the DUN2 treatment system unit from the village of Krayn is approximately 10,900 feet in length. This road is mostly stable but does and will require normal maintenance and regrading.

FFFF. A topographic map depicting the permit on which the DUN2 Discharge is located is attached as Exhibit 7. The latitude and longitude coordinates for the DUN2 Discharge are as follows: Latitude 40° 16' 48" Longitude -78° 43' 06".

GGGG. The raw water quality of t the DUN2 Discharge is set forth in Exhibit 8.

HHHH. The required effluent limits applicable for the DUN2 Discharge are found in Exhibit 9.

III. The NPDES permit for the DUN2 Discharge is set forth in Paragraph ZZZ, above.

JJJ. The DUN2 Treatment System is situated on land owned by the Commonwealth of Pennsylvania, DCNR. Pursuant to the requirements of Paragraph 14.c., below, Cooney will be obtaining and submitting to the Department and the Trustee a properly executed Consent to Right of Entry from DCNR granting Cooney, the Department and the Trustee access to the DUN2 Treatment System.

DUN3

KKKK. The discharge identified as DUN3 is physically located on adjoining SMP# 11813040 but has been determined to be hydrologically connected to the mining on SMP 11313039 is intermittent with a flow frequency apparently similar in nature to that seen at DUN2. The area around the DUN3 discharge has been regraded and contoured to allow the flow to be redirected to and combined with the DUN2 discharge and treated at the DUN2 treatment plant. Annotated aerial photographs of the DUN3 treatment system are found at page 15 (existing system) and page 20 (proposed system) of the Coleman Report.

LLLL. A topographic map depicting the permit on which the DUN3 Discharge is located is attached as Exhibit 7. The latitude and longitude coordinates for the DUN2 Discharge are as follows: Latitude 40° 16' 59" Longitude -78° 43' 02".

MMMM. The raw water quality data for the DUN3 Discharge is set forth in Exhibit 8.

NNNN. The required effluent limits applicable for the DUN3 Discharge are found in Exhibit 9.

DUNLO NO. 1 STRIP (11813040)

OOOO. On the Dunlo Strip, Cooney treats a discharge of acid mine drainage identified as JON1. JON1 is treated passively with a VFP and a settling pond the water then

flows into Sediment Pond 6 prior to final discharge. Annotated aerial photographs of the JON1 treatment system are found at page 29 (existing system) and page 33 (proposed system) of the Coleman Report. Flows average 6.8 gpm. The treatment system discharges to a tributary of the South Fork of the Little Conemaugh River.

PPPP. The access road to the JON1 treatment system extends approximately 1,400 feet from a road that EverPower uses for windmill access. The access road is stable and well maintained but will require normal maintenance.

QQQQ. A topographic map depicting the permit on which the JON1 Discharge is located is attached as Exhibit 7. The latitude and longitude coordinates for the JON1 Discharge are as follows: Latitude 40° 18' 03" Longitude -78° 41' 59".

RRRR. The raw water quality of the JON1 Discharge is set forth in Exhibit 8.

SSSS. The required effluent limits applicable for the JON1 Discharge are found in Exhibit 9.

TTTT. NPDES Permit No. PA0125423 was originally issued on September 9, 1985, and contains outfalls for one mine drainage treatment facility 010. The most recent renewal was on October 4, 2010.

UUUU. The JON1 Treatment System is situated on land owned by Richard L. Brown ("Brown"). The access road to the treatment system is on land owned by Cooney and Brown. Pursuant to the requirements of Paragraph 14.c., below, Cooney will be obtaining and submitting to the Department and the Trustee a properly executed Consent to Right of Entry from Brown granting Cooney, the Department and the Trustee access to the JON1 Treatment System. In addition, Cooney, as the property owner of a portion of the access road to the JON1 Treatment System, will also be executing and submitting to the Department and the Trustee a

Consent to Right of Entry granting the Department and the Trustee access to the JON1 Treatment System.

CAROFF STRIP (SMP 11773037)

VVVV. On the Caroff Strip, Cooney treats a discharge of acid mine drainage identified as the 288 Discharge, a seep at the back of sedimentation pond (“pond”) 16. The 288 Discharge is treated passively with a settling pond prior to final discharge. Flows average 6.8 gpm. The treatment system discharges to a tributary of the South Fork of the Little Conemaugh River.

WWWW. A topographic map depicting the permit on which the 288 Discharge is located is attached as Exhibit 7. The latitude and longitude coordinates for the 288 Discharge are as follows: Latitude 40° 21’ 42” Longitude -78° 50’ 23”.

XXXX. The raw water quality of the 288 Discharge is set forth in Exhibit 8.

YYYY. The required effluent limits applicable for the 288 Discharge are found in Exhibit 9.

ZZZZ. NPDES Permit No. PA0069159 was originally issued on September 9, 1985, and contains outfalls for one mine drainage treatment facility, 001. Cooney submitted a timely renewal application to the Department on February 8, 2010, and the effluent limitations are currently under review by the Department.

AAAAA. The 288 Treatment System is situated on land owned by Cooney. Pursuant to the requirements of Paragraph 14.c., below, Cooney, as the property owner where the 288 Treatment System is located, will be executing and submitting to the Department and the Trustee a Consent to Right of Entry granting the Department and the Trustee access to the 288 Treatment System.

BBBBB. Cooney agrees it has the legal responsibility, pursuant inter alia to the Surface Mining Act and the Clean Streams Law, to properly treat or abate the discharge(s) identified in Paragraphs S through VVVV, above.

Post-Mining Treatment Trust

CCCCC. AMDTreat has been utilized to calculate the recapitalization cost of the combined treatment systems at a total of \$497,292.00. (See Exhibit 12).

DDDDD. In order to calculate the amount necessary to fully fund the trust, the Department and Cooney have agreed to use actual operation and maintenance costs from past operations of the Treatment Systems or *AMDTreat* cost estimates where insufficient operation and maintenance cost data exist. A summary of current annual operation and maintenance costs for each Treatment Systems is attached as Exhibit 11. Based on actual operation and maintenance costs from past operations and *AMDTreat* cost estimates, the current annual cost of operating and maintaining the Treatment Systems is \$ 779,607.00. (See Exhibit 11).

EEEEEE. In order to calculate the amount necessary to fully fund the trust, the Department and Cooney 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 \$560,532.00. The *AMDTreat* Recapitalization Cost schedule for the Treatment Systems is attached as Exhibit 12.

FFFFF. Cooney has established a post-mining treatment trust with 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 discharges and secure the release of reclamation bonds upon completion of all other reclamation requirements. Cooney has established the Cooney Brothers Global Trust by executing a Post-

Mining Treatment Trust [Participation] Agreement with Clean Streams Foundation on July 19, 2010, which conforms with the Department's model trust agreement.

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

HHHHH. The parties have agreed to use, in part, the formulas set forth below in Paragraph 3.g. to calculate the present value of the Cooney Brothers Global Trust. As set forth in Exhibit 13, the parties agree that the present value of the fully-funded Cooney Brother Global Trust for the discharges covered by this Consent Order and Agreement is \$ 18,302,608.18. This sum constitutes the current present value of the estimated future operation and maintenance costs for the Treatment System, the current present value of the estimated future recapitalization costs for the Treatment System, and the cost of all required insurance. The parties have also agreed to use the information and figures which will be provided by the Accounting required by Paragraph 4 to recalculate and adjust the amount of the Cooney Brothers Global Trust as described in Paragraphs 8 and 10 below. The parties have agreed to an annual payment of \$200,000.00 into the Trust as described in Paragraph 6.c., below. In addition, Cooney has agreed to pursue the sale of approximately 2,785 acres, which on which the Trustee holds a mortgage through one or more transactions. (See Exhibits 17.e. and 17.f.). As described below in Paragraph 6.b.iv., at closing, the Trustee shall, as appropriate, release from its mortgage such tract or portion thereof. After payment of all reasonable closing costs, Cooney shall deposit all net proceeds of each transaction into the Cooney Treatment Trust in a timely manner.

IIII. Cooney has represented that the annual treatment costs to Cooney to treat the existing AMD sites are projected to be approximately \$650,000. Cooney has further represented that these costs will be paid from several sources. These sources include the annual income from

one lease, the Interpower lease, in the amount of \$300,000 that has been pledged by Angels Coal Trust to Cooney for use in meeting Cooney's current treatment obligations. In addition, Angels Coal Trust has pledged annual contributions, for a minimum of ten years, to Cooney in the amount of \$90,000 to also be used to pay for treatment costs. These contributions total \$390,000, leaving an annual shortfall of \$260,000. Other available annual income consists of payments from Windmill leases in the amount of approximately \$310,000, and coal royalty payments in the amount of approximately \$150,000. The money from the Windmill leases and the coal royalty payments, totaling approximately \$460,000 on an annual basis, is committed to funding the Trust as a result of Cooney's assignment of its rights to those monies to the Trust. As is more fully set forth below in Paragraph 6, the Department has agreed that at least \$260,000 of those funds can, on an annual basis, be used to pay for Cooney's annual treatment costs.

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

2. Findings

a. Cooney agrees that the findings in Paragraphs A through IIII are true and correct and, in any matter or proceeding involving Cooney and the Department, Cooney 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. Commencing with the costs and expenses for calendar year 2012, the average of the three most recent consecutive years of the costs and expenses of treatment, calculated by using the Accountings for those three years.

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

$$\begin{aligned}
 PV &= (A/[E-I]) + A \\
 \text{where: PV} &= \text{Present Value of the O\&M Costs} \\
 A &= \text{Current Actual Treatment Cost} \\
 E &= \text{Expected annual earnings/Interest Rate (assumed to be 8.43\% or} \\
 .0843) & \\
 I &= \text{Inflation Rate (assumed to be 3.1\% or .031)}
 \end{aligned}$$

**{The expected annual earnings of the trust will depend on the trust's investment parameters, including the amount of the trustee's fee. The Department will consider a fairly aggressive investment strategy consisting of up to 80% stocks and 20% bonds, however Cooney can select a more conservative investment strategy. The trustee's fee schedule must be negotiated by Cooney.}*

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% percent of the present value of the future cost of treatment as determined by the Formula.

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

k. Primary Trust Valuation. The cash, cash equivalents, investments at market value of investments and, as applicable, the face amount of any surety bond currently held by the Trust in the Primary Trust Account.

4. Annual Treatment Costs; Records; Factors; Accounting

a. Cooney 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: Administrative expenses, labor including benefits, employee travel, supplies, utilities, reagents, polymers, sludge removal, maintenance, equipment usage, repairs, sampling, anticipated capital expenditures, liability insurance, miscellaneous, and the anticipated sources of revenue. The individual item shall be tracked and reported for each general category.

b. Cooney shall keep separate records for each of the Treatment Systems set forth in

Exhibit 11.

c. Cooney shall provide an annual accounting of the costs and expenses of annual treatment 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 on January 1 and continuing through December 31 of each year, or other fiscal year as Cooney may adopt for its finances in the future, and shall be in accordance with Generally Accepted Accounting Principles. The Accounting shall be accompanied by an affidavit of the individual responsible for the financial affairs of Cooney and by Cooney, or his legal representative, attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

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

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

5. Treatment Trust

a. Cooney has established an irrevocable trust known as the Cooney Brothers Global Treatment Trust by executing a Post-Mining Treatment Trust Agreement with Clean Streams Foundation on July 19, 2010. The Cooney Brothers Global Trust shall secure Cooney's obligation to treat the discharges covered by the COA, including its legal obligation to operate and maintain the Treatment Systems in perpetuity or until water treatment is no longer necessary.

The Cooney Brothers Global Trust shall also secure Cooney's obligation to provide financial resources to the Department and the citizens of the Commonwealth sufficient to operate and maintain the Treatment Systems and to treat the mine drainage in perpetuity in the event Cooney becomes unable or unwilling to meet these obligations. The Cooney Brothers Global Trust shall provide for the demolition of treatment facilities and reclamation of the treatment site should treatment no longer be needed. The agreement establishing the Cooney Brothers Global Trust is attached as Exhibit 4.

b. Cooney shall establish within the Cooney Brothers Global Trust two sub-accounts: (i) a sub-account designated as the Primary Trust Account; and, (ii) a sub-account designated as the Capital Improvement Account.

6. Funding of the Primary Trust Account

a. Bond Collateral

As bonds are released for any site for which Cooney holds a surface mining permit issued by the Department, the cash equivalent of the collateral used to secure those bonds shall be deposited into the Primary Trust Account by Cooney, or by the Surety at Cooney's direction, at the time of the bond release. If the released bonds are secured by collateral held by the Surety and the Surety fails to timely release the collateral at the time of bond release for reasons not attributable to Cooney or his representatives, Cooney shall be under no obligation to deposit an equivalent amount of money into the CSF Account until the Surety has released collateral as the result of bond release or pursuant to the agreement negotiated pursuant to Paragraph 6. b. ii. of this COA.

b. Collateralization of Existing Bonds

i. The bonds for the sites listed in this COA (and additionally listed in Exhibit 20) are currently under collateralized. Cooney shall fully collateralize these bonds under the

following schedule: \$800,000.00 cash shall be deposited into the Trust by March 31, 2014, and \$176,530.00 cash shall be deposited into the Trust by December 31, 2014. In addition, Cooney shall submit completion reports to the Department on or before October 1, 2014 for all of the sites listed in Exhibit 20. For the sites that are not deemed to be releasable, Cooney shall fully collateralize the bonds for those sites on or before December 31, 2014 by means of deposit/assignment into the Trust of the cash equivalent (or equivalent land value at \$500/ acre).

ii. The Department shall negotiate a separate agreement with the Sureties for the transfer into the Trust of the Collateral held by them, valued at \$4,706,605.50 . Cooney shall cooperate, as necessary, to facilitate the transfer of the funds into the Trust.

iii. The Department shall also transfer \$10,190 which it currently holds as a cash bond for the Bethlehem Strip and Feller No. 2 sites into the Trust on or before January 31, 2015.

iv. With regard to the property currently held by the Trust pursuant to the mortgage described above in Paragraph HHHHH, Cooney shall sell that acreage through one or more arms length transactions for fair market value on or before December 31, 2017. As the property is sold, the Trustee shall, at each closing, release from its mortgage the appropriate tract, or portion thereof. After payment of all reasonable closing costs, Cooney shall deposit all net proceeds of each transaction into the Cooney Treatment Trust within 30 days of closing.

c. Ongoing Annual Payments to the Primary Trust Account

i. In accordance with the Schedule of Payments set forth below in subparagraph 6.c.ii, Cooney's minimum annual net cash contribution to the Trust (not including cash deposited in the Trust as a result of the sale of the approximately 2,785 acres described above in Paragraph HHHHH) shall be no less than \$200,000.00, and shall be paid in full into the Cooney Treatment Trust on or before December 31st of each year commencing with calendar year 2014.

ii. Schedule of Payments:

Year	Minimum Annual Payment
2014	\$200,000.00
2015	\$200,000.00
2016	\$200,000.00
2017	\$200,000.00
2018	\$200,000.00
2019	\$200,000.00
2020	\$200,000.00
2021	\$200,000.00
2022	\$200,000.00
2023	\$200,000.00
2024	\$200,000.00
2025	\$200,000.00
2026	\$200,000.00*

* or the amount necessary to complete funding of the Trust if less than \$200,000.

iii. On or before December 31, 2026, Cooney shall make a cash contribution to the Trust in the amount necessary to complete the funding of the Trust unless that amount exceeds \$200,000.00 as shown in Exhibit 16. If the amount necessary to complete the funding of the Trust by December 31, 2026, exceeds \$200,000.00, Cooney shall contribute \$200,000.00 on or before December 31, 2026, and thereafter continue to make cash payments into the Trust until December 31, 2027, at which time Cooney shall fully fund the Trust, with the final payment amount on December 31, 2027, being matched to that needed to fully fund the Trust.

d. In accordance with Article Two of the Participation Agreement of July 19, 2010,

except as provided for in this COA, all funds and all escrowed assets shall remain in the Cooney Global Trust (the "Trust") until such time as the Trust is determined to be fully funded.

i. Subject to the provisions of Paragraph 6.d.iii., below, payments due pursuant to the Windmill Leases attached as Exhibit 17, and mining royalties referenced in Exhibit 6, shall be directly collected by the Trustee and placed into the Primary Trust Account when received.

ii. Subject to the provisions of Paragraph 6.d.iii., below, until such time as the Trust is determined to be fully funded, the bond premium payments totaling \$76,048, as reflected in Exhibit 19, that would otherwise have been paid to maintain the bonds for the sites listed in Paragraph D, above, shall be paid into the Primary Trust Account by Cooney at the rate of \$19012 per quarter, with the quarterly payments due each year on or before March 31, June 30, September 30 and December 31 ("bond premium payments"). These payments shall commence when the bonds set forth in Exhibit 19 are released or forfeited by the Department. These funds shall be considered to be part of the annual contributions made by Cooney to achieve the annual \$200,000 Minimum Annual Payment referenced in Paragraph 6.c., above.

In addition, as bonds are released for any other site for which Cooney holds a surface mining permit beyond those listed in Exhibit 19, the bond premium payments for those bonds shall also be deposited into the Primary Trust Account on a quarterly basis in accordance to the schedule set forth above in the preceding paragraph. Prior to any bond release, Cooney shall provide a full accounting of the annual bond premium payment for the bond under consideration for bond release. The amount to be paid on a quarterly basis in accordance with this Paragraph 6.d. shall be adjusted to account for the bond premium payment for the soon to be released bond. These funds shall also be considered to be part of the annual contributions made by Cooney to achieve the \$200,000 minimum annual contribution referenced in Paragraph 6.c., above.

iii. Until such time as annual cash contributions from the Windmill leases, mining

royalties and bond premium payments have satisfied Cooney's obligation to deposit \$200,000 into the Trust by the end of any given calendar year, as well as the costs to the Trust for any disbursements made pursuant to Paragraph 6.e.i.a)2, all deposits from each of those sources shall remain in the Trust. Once cash contributions from those three sources have satisfied the annual \$200,000 contribution and the cost of the disbursements made pursuant to Paragraph 6.e.i.a)2, whenever that might be in any given calendar year, for that calendar year only, Cooney shall be excused from making further bond premium payments and the Trustee shall be excused from making further disbursements to the Cooney Operating Account in accordance with the provisions of Paragraph 6.e.i.a)2. Instead, for the duration of that calendar year, any further payments received by the Trust from the Windmill leases and mining royalties shall be transferred by the Trustee, as they are received, to Cooney's Operating Account to be used by Cooney to pay for those items set forth in that calendar year's budget and to address unexpected changes in Cooney's annual treatment costs in that calendar year.

For example, by May 1 of a given calendar year, deposits of funds from bond premium payments, Windmill lease payments and mining royalties totals \$330,000. By May 1, disbursements pursuant to Paragraph 6.e.i.a)2. have totaled \$130,000. Accordingly, the \$200,000 annual contribution has been satisfied and the Trust has been made whole for disbursements made through May 1. On May 1, Cooney would be excused from further bond premium payments and the Trustee would not make any further \$65,000 disbursements. Instead, any additional money received by the Trustee from the Windmill leases and the mining royalties from May 1 to December 31 for that year would be dispersed to Cooney as those monies are received.

e. Moneys deposited into the Primary Trust Account shall be available to be disbursed as follows:

i. Subject to the provisions of Paragraph 6.d.iii., above, for the money deposited into the Trust each year from the multiple sources detailed herein, \$260,000 of that money shall be available to Cooney to cover up to \$260,000.00 of the annual treatment costs pursuant to the following procedure:

a) Each calendar year, Cooney will prepare a budget that details the anticipated operating expenses to run the systems addressed by this COA for the next calendar year. Each year, this budget will be submitted to the Department for approval on or before October 15. For calendar year 2014, the budget shall be submitted to the Department on or before March 1, 2014.

1. At a minimum, the budget will itemize costs under the following categories: administrative expenses, labor including benefits, employee travel, supplies, utilities, reagents, polymers, sludge removal, maintenance, equipment usage, repairs, sampling, anticipated capital expenditures, liability insurance, miscellaneous, and the anticipated sources of revenue. The budget will include a summary of the expenses incurred during the first six months of the current calendar year and the sources of revenue for payment of those expenses.

2. The Department will have 30 days from receipt of the proposed budget to determine whether the costs set forth therein are reasonably necessary and appropriate for annual treatment costs and raise any objections to the proposed budget. After review and resolution of all objections, the Department will authorize funds to be transferred from the Trust to a special operating account maintained by Cooney (the "Operating Account") in quarterly installments of \$65,000 on January 1, April 1, July 1 and October 1, or, as appropriate, the first business day following those dates. Any objections that the Department might have to the proposed budget shall not delay the transfer of the January 1 installment unless the costs in dispute exceed \$195,000. For calendar year 2014, the installment for the first and, if necessary

because of delays in approval of the budget, second quarter of 2014, will be distributed within 15 days of approval of the 2014 budget.

3. Cooney may request an acceleration of the quarterly payments if operating and maintenance requirements so warrant. A request for an acceleration of one or more quarterly payment must be submitted to the Department for special authorization. The decision to accelerate one or more quarterly payment is within the Department's sole discretion. Cooney waives any right that it may have to challenge the Department's decision in this regard.

b) In the event the Department determines the costs are excessive or otherwise not reasonable and appropriate for annual treatment costs, the Department will indicate its objections to Cooney in writing. The Department's written objection(s) shall include a written list of objections to the decision in dispute, the relevant facts, analysis and opinions and other supporting data ("Statement of Position"). Cooney and the Department will meet within 14 days of Cooney's receipt of the Department's objection(s) in an attempt to resolve the Department's objection(s) ("Meeting"). In the event Cooney and the Department are unable to mutually reach a resolution of the Department's objection(s), within 10 days from the date of the Meeting, Cooney shall provide its Statement of Position to the Department's district mining staff. The Statements of Position shall be provided to the Department's Deputy Secretary for Active and Abandoned Mining Operations to issue a final decision resolving the dispute.

ii. Any of the monies transferred to Cooney pursuant to the procedures set forth in Paragraph 6.d.iii. and/or 6.e.i., that are not spent or otherwise encumbered by the end of the calendar year will be remitted by Cooney to the Trust at the time of the annual accounting. All invoicing for the year and uncleared checks shall be accounted for within 30 days of the end of each year.

iii. The Department shall have the right to review all financial and transaction records

of Cooney at any time between 8:00 a.m. and 4:00 p.m., Monday through Friday, excepting federal, state or county holidays.

f. After the Trust is determined to be fully funded, the Primary Trust Account and Capital Improvement Account will be held by the Trust in perpetuity. Once fully funded, a full accounting shall be on or before March 31 to determine the amount of money needed to maintain full funding of the Trust. Based upon that accounting, any surplus funds not needed to maintain full funding of the Trust for the given year shall be refunded to Cooney within 60 days after the full annual accounting has been completed.

7. Annual Distribution or Contribution Payments – Primary Trust Account

a. All calculations under this Paragraph shall be based on values as determined on the Annual Anniversary Date.

b. If the Primary Trust Valuation does not include the value of surety bonds, then Distribution Payments shall be made according to Paragraph 7.c. Otherwise, Distribution Payments shall be made according to Paragraph 7.d. and e.

c. 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 Cooney. 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 14.

d. 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 Cooney in the form of a surety bond reduction of the surety bond(s) identified in Exhibit 1. This amount is depicted graphically at Point 1 on Exhibit 14. Such surety bond reduction shall be in an amount determined by the following formula:

$$BR = ((1 + RoR) (TR - B) + B) - (1.03(TV))$$

Where:

- BR = surety bond reduction
- B = surety bond amount
- RoR = assumed net rate of return or effective rate of return
- TV = Primary Target Valuation
- TR = Primary Trust Valuation

e. In the year the final bond is released, if the Primary Trust Valuation after the final surety bond release remains greater than the newly calculated Primary Target Valuation, then an additional Distribution Payment shall be made under Paragraph 7.c.

f. 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 14.

g. If the Primary Trust Valuation is less than the Primary Basis Valuation, then Cooney 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 as points 5 and 6 on Exhibit 14. This provision does not apply until Cooney has fulfilled its obligations to make ongoing payments under Paragraph 6.d.

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 116% percent of the new Primary Basis Valuation. Exhibit 15 is a graphical depiction of the adjustment.

9. Distribution Payments for Adjustments to the Primary Target Valuation

a. If the Primary Trust Valuation does not include the value of pledged surety bonds, then Distribution Payments shall be made according to Paragraph 9.c. Otherwise, Distribution Payments shall be made according to Paragraph 9.d.

b. 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.

c. 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 Cooney. 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

d. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 8, above, is based on reduced Actual Treatment Cost, and the Primary Trust Valuation

is greater than the newly calculated Primary Target Valuation, than a distribution payment shall be made to Cooney in the form of a surety bond reduction. Such bond reduction shall be in an amount determined by the following formula:

$$BR = ((1 + RoR) (TR - B) + B) - (1.03(TV))$$

Where:

BR	=	surety bond reduction
RoR	=	assumed net rate of return or effective rate of return
TV	=	Primary Target Valuation
TR	=	Primary Trust Valuation
B	=	surety bond amount

e. In the year the final surety bond is released, if the Primary Trust Valuation after the final surety bond release remains greater than the newly calculated Primary Target Valuation, then an additional Distribution Payment shall be made under Paragraph 9.c.

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 8.43% 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 agreement as Exhibit 12. 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 12 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

a. The provisions of this Paragraph do not apply if the Primary Trust Valuation includes the value of surety bonds.

b. 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 16. 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. Once the Primary Account and Capital Improvement Account are fully funded, a distribution payment shall be made to Cooney any time a planned capital replacement is made as indicated on Exhibit 12. 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 12, 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 16, 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 Cooney's obligation to make a contribution payment under Paragraph 7.g. This amount is depicted graphically at Point 5 on Exhibit 14. However, the amount of surplus funds transferred to the Primary Trust Account may exceed Cooney's obligation under Paragraph 7.g. 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 14.

b. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by Cooney to pay for unanticipated capital expenditures, or anticipated capital expenditures that exceed the calculated cost of the capital improvement as set forth in Exhibit 12.

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by Cooney 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 Cooney 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. Personal Property and Right of Entry

a. Within 60 days of the effective date of this Consent Order and Agreement, Cooney shall create an inventory of all the equipment, facilities, and other personal property used for the treatment of the mine discharges described above in Paragraphs S through VVVV (“Personal Property”). Upon completion of the inventory, Cooney shall submit the inventory to the Department for review and approval. Within 30 days of receipt of written approval of the inventory by the Department, Cooney shall transfer and convey to the Trustee, without reservation, all Personal Property including, but not limited to, the equipment and other property listed in the inventory in order to ensure continued treatment of the discharges in the event Cooney enters bankruptcy, ceases to exist, or is unable or unwilling to continue treatment. Said transfer and conveyance shall be substantially in the same form as the Bill of Sale and License Agreement attached hereto as Exhibit 18.

b. The provisions of Paragraph 14.a. notwithstanding, for so long as Cooney is continuing treatment, Cooney shall be responsible for maintaining and replacing/upgrading, as appropriate, the Personal Property used for the treatment of the mine discharges described above in Paragraphs S through VVVV. Cooney’s replacement/upgrade of any of the Personal Property previously conveyed as set forth in Paragraph 14.a. to the Trustee shall only be done with the express written consent of the Trustee and the Department. All parts, additional equipment, replacements, and upgrades to the Personal Property shall immediately and automatically become the property of the Clean Streams Foundation, Inc. as Trustee of the Cooney Brothers Trust.

c. Within 180 days of the effective date of this Consent Order and Agreement, Cooney shall submit to the Department and the Trustee all Rights of Entry needed by the Department and the Trustee to gain legal access to the real property containing the equipment

and facilities for the treatment of the mine discharges described above in Paragraphs S through VVVV. These Rights of Entry are more fully described in Paragraphs BB, JJ, TT, ZZ, III, SSS, BBBB, JJJJ, UUUU, and AAAAA, above. Each Right of Entry shall be substantially in the same form as the Right of Entry attached hereto as Exhibit 10. If any portion of a property subject to a Right of Entry is sold, Cooney shall obtain a properly executed Consent to Right of Entry form from the new owner and submit it to the Department and the Trustee.

15. Public Liability Insurance

a. Cooney shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the Treatment Systems and the real and personal property which is identified in the Post Mining Treatment Trust Agreement as part of the trust principal. Cooney shall also provide fire damage insurance in the amount of \$1,000,000.00. 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. 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 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 Cooney has a public liability insurance policy in force meeting the requirements of this Paragraph.

16. Annual Requirements

a. The parties will meet on or before the thirtieth 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 Treatment Systems 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 Cooney Brothers Global 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 Cooney Brothers Global Trust; and, (v) to address any other issues that may concern this Consent Order and Agreement or its implementation.

b. Cooney 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. Cooney's Continuing Obligation

Neither Cooney's agreement to fund the Cooney Brothers Global Trust nor the full or partial funding of the Cooney Brothers Global Trust, nor the exhaustion of the Cooney Brothers Global Trust shall in any way limit Cooney's obligation to operate the Treatment Systems and to treat the discharge(s) covered by this Consent Order and Agreement in a manner which meets the effluent limitations described in Paragraphs Z, HH, RR, XX, GGG, QQQ, ZZZ, HHHH, NNNN, RRRR, and YYYY, above, and Exhibit 9. Furthermore, exhaustion of the Cooney Brothers Global Trust shall not excuse Cooney from Cooney's obligation to adequately treat or to abate the discharges.

18. Stipulated Civil Penalties

a. In the event Cooney fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, Cooney 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, and shall be forwarded to:

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

21. Liability of Cooney

Cooney 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. Cooney 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 Cooney Sites or any part thereof.

b. If Cooney intends to transfer any legal or equitable interest in the Cooney Sites which is affected by this Consent Order and Agreement, Cooney 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 Department's Director of District Mining Operations, and the District Mining Manager identified in Paragraph 23 of such intent.

c. The Department in its sole discretion may agree to modify or terminate Cooney's duties and obligations under this Consent Order and Agreement upon transfer of the Cooney Sites. Cooney waives any right that it may have to challenge the Department's decision in this regard.

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

24. Correspondence with Cooney

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

Paul Cooney, Partner
Cooney Brothers Coal Company
P. O. Box 246
Cresson, PA 16631

b. Cooney 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.

25. Force Majeure

a. In the event that Cooney 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 Cooney's control and which Cooney, by the exercise of all reasonable diligence, is unable to prevent, then Cooney 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 Cooney's control. Cooney'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. Cooney 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 Cooney 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. Cooney'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 Cooney and other information available to the Department. In any subsequent litigation, Cooney 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 Cooney may have to the 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 Cooney. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) Cooney consolidates with or merges into or permits to merge with it and Cooney is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of Cooney's properties or assets which include, but is not limited to, voting stock of Cooney. Successor does not include any corporation or other entity to which Cooney transfers or assigns all or substantially all of its financial or non-financial liabilities.


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

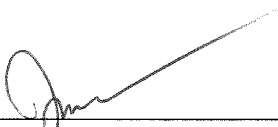
IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Cooney certify under penalty of law, as provided by 18 Pa.C.S. § 4904, that they are authorized to execute this Consent Order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

FOR COONEY BROTHERS COAL COMPANY: FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:



Paul A. Cooney
Partner

Daniel Sammarco, P. E.
District Mining Manager



James R. Walsh
Attorney for Cooney

Martin H. Sokolow, Jr.
Regional Counsel

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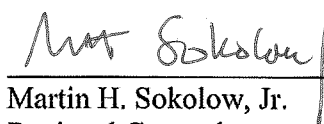
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