

**PARTICIPATION AGREEMENT**  
**FOR THE CLEANS STREAMS FOUNDATION, INC. TRUST**

This Participation Agreement (“Participation Agreement”) entered into this \_\_\_ day of January, 2003, by and between UTICA MUTUAL INSURANCE COMPANY, a New York corporation, with its principal place of business at 180 Genesee Street, New Hartford, New York 13413 (“Utica”), ROBINDALE ENERGY SERVICES, INC. (“Robindale”), a Pennsylvania corporation, with an address of Suite 130, 1001 Broad Street, Johnstown, PA 15906 (collectively, with Utica, the “Participants”) and the CLEAN STREAMS FOUNDATION, INC. (“Trustee” or “Foundation”), a Pennsylvania nonprofit corporation, with its registered place of business at 160 North McKean Street, Kittanning, Pennsylvania 16201.

WHEREAS, the Participants wish to provide funds or other assets and/or financial guarantees to assure that funds will be available in the future for the operation of certain treatment systems, for the prevention of pollution, and for the protection of natural resources; and

WHEREAS, the Trustee has established through a Declaration of Trust, dated April 7, 2001 which Declaration of Trust establishes a Trust which purpose is to help assure that funds are available to the Commonwealth of Pennsylvania in the future to operate and maintain treatment systems, to prevent pollution, and to protect natural resources from the adverse impacts of untreated discharges into waters of the Commonwealth (the “Trust”); and

WHEREAS, the Trustee has agreed and is willing to accept the Participants’ funds and guarantees and perform the duties as are required to be performed pursuant to this Participation Agreement and the Declaration of Trust; and

NOW THEREFORE, in consideration of the foregoing and of the mutual promises

and undertakings of the parties as set forth herein, and with the intention of being legally bound hereby, the parties agree as follows:

## **ARTICLE ONE**

### **DEFINITIONS**

§1.1 The “Department” means the Pennsylvania Department of Environmental Protection, and its successor if any, which is the governmental agency with responsibilities related to the administration of the water pollution control and mining reclamation programs in Pennsylvania.

§1.2 “Operate” means, but is not limited to, the operation, maintenance, improvement, and replacement of the currently existing and functioning treatment facilities approved by the Department and any other facilities which may be required in the future.

§1.3 “Participant(s)” means one or more individuals, organizations, or corporations that have elected to participate in the Trust pursuant to a Participation Agreement entered into between the Participant(s) and the Foundation, for purposes of providing funds and/or financial guarantees to assure that funds will be available in the future for the operation of certain treatment systems, for the public purpose of prevention or abatement of pollution, and for the protection of natural resources, the environment, and the health and welfare of the public.

§1.4 “Treatment Systems” means those certain treatment systems and activities which are more particularly described in a Participation Agreement for which a Participant or Participants have provided funds and/or financial guarantees to be held in trust by the Foundation as an alternate financial assurance mechanism which provides for the sound future

treatment of discharges for the public purpose of protecting the environment and the health and welfare of the public.

§1.5 “Trustee” means the Foundation acting as trustee under the terms and provisions of this Declaration of Trust and a Participation Agreement entered into with a Participant or Participants.

## ARTICLE TWO

### PARTICIPATION IN THE TRUST

§2.1 The Participants agree to provide certain funds, assets, and/or financial guarantees to be held by the Trustee for purposes of assuring that funds are available in the future for the operation of certain treatment systems, for the prevention of pollution, and for the protection of natural resources; which systems are more particularly described in Exhibit “A” attached hereto (hereinafter “Treatment Systems”).

§2.2 The Trustee agrees to establish within the Trust Fund a Sub-Account designated as “Sub-Account For Custom Coals-Laurel” (“Sub-Account”).

§2.3 The Participants agree to make an initial payment or transfer to the Trust of \$453,000.00 within thirty (30) days of execution of this Participation Agreement.

§2.4 The Participants agree to make total payments or transfers to the Trust as agreed upon between the Participants, the Department and others pursuant to the Amended Consent Order and Agreement between the Department, the Participants and others (“CO&A”), approved by the United States Bankruptcy Court for the Western District of Pennsylvania in Case No. 97-23405 on December 2, 2002, which is attached hereto as Exhibit A.

§2.5 Any guarantees, including but not limited to, letters of credit, insurance, surety bonds, etc., delivered by the Participant or others pursuant to the CO&A shall be held by the Trustee until the Department either directs the Trustee to release such guarantee or portion thereof or the Department directs the Trustee to forfeit said bonds or enforce said guarantee and for the Trustee to deposit the proceeds of such guarantee into the Trust Fund. The Trustee shall be under no obligation to pay any premiums or other costs associated therewith. Instead, all such premiums and costs, as well as the responsibility for maintaining the guarantees in full force and effect, shall remain the obligation of the Participant(s). The Trustee shall take no action with respect to guarantees except as directed, in writing, by the Department in accordance with the provisions of this Declaration of Trust, and the Trustee shall not be liable to any party for acting in accordance with such directions.

§2.6 Any payments made by the Participants or on its behalf to the Trustee for deposit into the Trust shall consist of cash, bank checks, bank wire transfers, negotiable instruments, or other property acceptable to the Trustee. The Trustee shall have no responsibility for the amount or adequacy of such payment, but the Trustee shall notify the Department in writing of any deficiencies in the payments agreed to be made by the Participants whenever the Trustee has knowledge of such deficiencies.

### **ARTICLE THREE**

#### **ADMINISTRATION**

§3.1 The principal of the Sub-Account shall consist of:

(a) The payments or transfers to the Trustee made by the Participants pursuant to this Agreement for said Sub-Account.

(b) Such payments from time to time and at any time to the Trustee as such may be directed by the Department pursuant to any agreement between the Department and the Participants.

(c) Cash, funds or property transferred from any person to the Trustee and accepted by the Trustee for said Sub-Account.

(d) Any proceeds from surety bonds which are transferred to the Trustee for said Sub-Account.

(e) All investments, reinvestments, assets or proceeds attributable to or derived from the foregoing items in this §3.1.

(f) All earnings, accretions and profits received with respect to the foregoing items in this §3.1.

§3.2 The Trustee shall hold and administer the funds of the Sub-Account in accordance with the terms and conditions of the Declaration of Trust.

§3.3 The Trustee shall distribute such amounts from the Sub-Account as the Department shall direct pursuant to the CO&A or to pay for the operation of the Treatment System or Treatment Systems. This amount shall be paid to a third party administrator to the Trust, who shall be responsible for paying the costs of operating the Treatment System in accordance with any instructions that may be issued by the Department in relation thereto.

§3.4 The Participant understands that the Trust is intended to be categorized, for federal and state income tax purposes, as a charitable trust in accordance with and under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and any implementing regulation cited therein or any corresponding successor provision. Should it be determined that the Trust is not a charitable trust or the law changes so that the Trust becomes

taxable for income tax purposes, then the Participants agree that it will contribute to the Trustee the amount of the income tax assessed or levied against or in respect of the particular Sub-Account. The Trustee shall use the money contributed by the Participants to pay the income tax assessed or levied against or in respect of the Sub-Account established pursuant to this Participation Agreement.

§3.5 The Participants hereby adopt the Declaration of Trust as the document which governs the administration of this Participation Agreement and the Sub-Account and directs the Trustee to hold and administer the Sub-Account in accordance with the terms and conditions of the Declaration of Trust. The Participant acknowledges that the Commonwealth of Pennsylvania acting through the Department is the legal beneficiary of the Trust and has all rights of a beneficiary under the law, as well as the rights granted under the Declaration of Trust. The Department shall have access to the Trust as provided therein.

§3.6 The funds in the Sub-Account and any other property held by the Trustee pursuant to this Participation Agreement shall not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration, levy or other legal process, either voluntary, involuntary or by operation of law, by, on behalf of, or in respect of the Participant and shall not be subject or applied to the debts, obligations or liabilities of the Participant, including, without limitation, any direct action or seizure by any creditor or claimant under any writ or proceeding at law or in equity. Furthermore, the Participants shall have no legal title to any part of the Trust Fund, and it is the intention of the parties to this Participation Agreement that the Participants' entry into the Trust shall extinguish and remove all of Participants' interest in the Trust from Participants' estate under the Bankruptcy Code or similar laws.

§3.7 Except as otherwise provided in this Participation Agreement, all payments made to the Trustee or deposits into the Trust by the Participants shall be irrevocable once made, and upon delivery thereof by the Participants, all interest of the Participants therein shall cease and terminate, and no part thereof, nor any income therefrom, shall be used for or devoted to purposes other than for the exclusive benefit of the Department and the Trust as provided herein.

§3.8 Any payments made by the Participants or on their behalf to the Trustee for deposit into the Trust shall consist of cash, bank checks, bank wire transfers or other negotiable instruments acceptable to the Trustee. The Trustee shall have no responsibility for the amount or adequacy of such payment, but the Trustee shall notify the Department of any deficiencies in the payments agreed to be made by the Participant whenever the Trustee has knowledge of such deficiencies.

§3.9 The Trustee shall at least quarterly furnish the Participants a statement providing an accounting of all transactions involving the Sub-Account and confirming the value of the Sub-Account. Such statement shall value Trust investments at market value which shall be that market value determined not more than thirty (30) days prior to the date of statement.

§3.10 The Trustee shall be responsible for the keeping of all appropriate books and records relating to the receipt and disbursement of all moneys and assets under this Agreement. The Trustee shall also cause to be prepared all income tax or information returns required to be filed with respect to the Trust and shall execute and file such returns. Each Participant, upon request, shall furnish the Trustee with such information as may be

reasonably required in connection with the preparation of such income tax or information returns.

#### **ARTICLE FOUR**

##### **AMENDMENTS**

§4.1 This Participation Agreement may be amended by an instrument in writing, executed by all of the Participants and the Trustee, with the consent and acknowledgment of the Department, or by the Trustee and the Department in the event a Participant ceases to exist or defaults, but during the existence of the Participant any amendment under this paragraph cannot in any manner affect the irrevocable nature of the Trust.

#### **ARTICLE FIVE**

##### **NOTICES**

§5.1 All notices, inquiries, directions or other written communications made or given pursuant to the Trust shall be given to the Participants, the Department and the Trustee by certified mail, return receipt requested, addressed to the following addresses, and shall be deemed to be received upon the earlier of the date of signed receipt of the certified mailing or seven (7) days following the date of mailing:

Participant: Utica Mutual Insurance Company  
180 Genesee Street  
New Hartford, NY 13413

With a copy to:

William T. Gorton III  
Stites & Harbison PLLC  
250 W. Main Street, Suite 2300  
Lexington, KY 40507

Participant: Robindale Energy Services, Inc.  
Attn: Neil Hedrick, President  
Suite 130



1001 Broad Street  
Johnstown, PA 15906

With a copy to:

Thomas E. Boettger  
c/o Tanoma Energy  
1 Energy Place #1000  
Latrobe, PA 15650

Trustee: Clean Streams Foundation, Inc.  
c/o Jack J. Steiner, Esq.  
160 north McKean Street  
Kittanning, Pennsylvania 16201

With a copy to:

Clean Streams Foundation, Inc.  
c/o Dean K. Hunt, Esq.  
520 West Short Street  
Lexington, Kentucky 40507-1252

Beneficiary: Pennsylvania Department of Environmental Protection  
Director, Bureau of Mining and Reclamation  
Fifth Floor, Rachel Carson Building  
400 Market Street  
Harrisburg, PA 17105-8461

§5.2 Any change in the above addresses shall be made by giving notice to all parties to this Participation Agreement.

## **ARTICLE SIX**

### **DISPUTES**

§6.1 In the event of any dispute between the parties, the parties agree to attempt to resolve the dispute through negotiation or a method of alternative dispute resolution. No litigation shall be commenced without a certification by an authorized officer, employee, or agent of any party that the dispute cannot be resolved by negotiation or alternative dispute resolution provided in writing at least 20 days before commencing legal action.

§6.2 A party receiving such notice shall have 10 days after receipt of said notice to demand that said dispute be resolved by binding arbitration. If arbitration is requested, the dispute shall be resolved in accordance with the arbitration rules of the American Arbitration Association then in effect without regard to the date of execution of this Agreement.

## **ARTICLE SEVEN**

### **CONSTRUCTION**

§7.1 As used in this Agreement, words in the singular include the plural and words in the plural include the singular. Words used in this Agreement shall be given the meaning set forth in the Declaration of Trust, or in the absence of a definition therein, their plain and ordinary meaning, except that, words used in a financial or investment context that are terms of art shall be given their commonly accepted meaning when used in the context of financial services and investment practices. The headings of each section of this Agreement are for descriptive purposes only and shall not affect the interpretation or legal efficacy of this Agreement.

§7.2 Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability. Such prohibition or unenforceability shall not invalidate the remaining provisions hereof; nor shall such prohibition or unenforceability in a jurisdiction render any provision invalid or unenforceable in any other jurisdiction.

§7.3 All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Participants, the Department and the Trustee, as well as their successors and assigns. Similarly, any request, notice, direction, consent, waiver or other writing or

action taken by the Participants, the Department or the Trustee shall bind their successors and assigns.

§7.4 This Agreement shall be construed and governed in all respects in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or representatives duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written above.

**PARTICIPANT:**

UTICA MUTUAL INSURANCE COMPANY

By \_\_\_\_\_

Its \_\_\_\_\_

**PARTICIPANT:**

ROBINDALE ENERGY SERVICES, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

**TRUSTEE:**

THE CLEAN STREAMS FOUNDATION, INC.

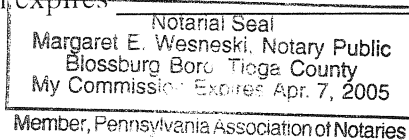
By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF PA,  
COUNTY OF Tioga, to-wit:

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of  
January, 2003, by Neil W Hedrick, the President of  
the Robin Dale Energy Services, Inc

My commission expires \_\_\_\_\_.



Margaret E Wesneski  
Notary Public

STATE OF NEW York,  
COUNTY OF ONEIDA, to-wit:

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of  
January, 2003, by BERNARD J. TURI, the ASSISTANT VICE PRES of  
the Utica Mutual INS Company.

My commission expires 3/12/03  
NOTARY PUBLIC, STATE OF NEW YORK  
APPOINTED IN HERKIMER COUNTY  
My Commission Expires 03/12 2003  
Registration No. 6055971

Frank L. Madia  
Notary Public

STATE OF Kentucky,  
COUNTY OF Fayette to-wit:

The foregoing instrument was acknowledged before me this 7 day of  
February, 2003, by Wayne Maternow, the Chairman of  
the CLEAN STREAMS FOUNDATION, INC.

My commission expires July 10, 2006.

Debra L. Harbitt  
Notary Public

This instrument was prepared by Jeff Yost, Esq., Jackson & Kelly PLLC, 175 East Main Street, Suite 500, P.O. Box 2150, Lexington, Kentucky 40588-9945, (859) 255-9500.

## CONSENT AND ACKNOWLEDGMENT

The Department of Environmental Protection hereby consents to Participants entering into this Participation Agreement pursuant to the Amended Consent Order and Agreement between the Participant, the Department and others ("CO&A"), approved by the United States Bankruptcy Court for the Western District of Pennsylvania in Case No. 97-23405 on December 2, 2002, and acknowledges the Commonwealth of Pennsylvania's and the Department's status as the beneficiary of the Trust and to evidence its consent and acknowledgment of the terms and conditions set forth herein, as well as the powers and authorities granted to the Department hereunder.

### **BENEFICIARY:**

THE DEPARTMENT OF ENVIRONMENTAL PROTECTION  
COMMONWEALTH OF PENNSYLVANIA

By Ronald L. Barnes

Its District Mining Manager