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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Duquesne Light Company	:	Warwick Mine No. 2 Coal Refuse Disposal
411 Seventh Avenue	:	CRDP No. 30743704
Pittsburgh PA 15219	:	
	:	Warwick Mine No. 2 Coal Preparation Plant
	:	Permit No. 30841602
	:	
	:	Alternative Financial Assurance Mechanism

**POSTMINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 26th day of January, 2011, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Duquesne Light "Duquesne").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, as amended, 52 P.S. §§ 1396.1 et seq. ("Surface Mining Act"); the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, as amended, 52 P.S. §§ 1406.1 et seq. (Subsidence Act); the Coal Refuse Disposal Control Act, Act of September 24, 1968, P.L. 1040, as amended, 52 P.S. §§ 30.51 et seq. ("Coal Refuse Disposal Act"); the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.1 et seq. ("Clean Streams Law"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 ("Administrative Code") and the rules and regulations promulgated thereunder.

B. Pursuant to § 4(d.2) of the Surface Mining Act, 52 P.S. § 1396.4(d.2), the Department may establish alternative financial assurance mechanisms which shall achieve the objectives and purposes of the bonding 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 by this Consent Order and Agreement and accompanying Post-Mining Discharge Treatment Trust Agreement constitutes an alternative financial assurance mechanism authorized by § 4(d.2) of the Surface Mining Act.

C. Duquesne is a Pennsylvania corporation with a mailing address of 411 Seventh Ave, Pittsburgh, Pennsylvania, 15219. Duquesne operates and maintains electrical power transmission and distribution systems throughout southwestern Pennsylvania. Duquesne also operated and is the permittee for the Warwick No. 2 underground coal mine, coal refuse disposal area and coal preparation plant located in Monongahela Township, Greene County.

D. Duquesne is the permittee of the following coal mines which are associated with post-mining discharge liability:

NAME	PERMIT NO.	TOWNSHIP	COUNTY
Duquesne Light Co.	30841602	Monongahela	Greene
Duquesne Light Co.	30743704	Monongahela	Greene

E. Coal refuse disposal activities have ceased at the Warwick Mine No. 2 Coal Refuse Disposal Area and the refuse disposal area is partially reclaimed. Surface runoff and seepage from the coal refuse area is collected and conveyed underground via boreholes to the Warwick No. 2 Mine, where the mine pool water is pumped to the surface for treatment at the Warwick Mine No. 2 Preparation Plant treatment facility.

F. Demolition of the Warwick Preparation Plant and surface reclamation has been completed. Mine water treatment activities are the only mining activities still being conducted.

G. A summary of the reclamation bonds currently posted for the Warwick No. 2 Mine is as follows:

PERMIT NO.	BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT NO.	BOND STATUS	BOND AMOUNT
30841602	Surety	Travelers Casualty and Surety Company of America	104379507	Active	\$1,767,694

**Post-Mining Discharges**

H. Surface runoff and seepage from the coal refuse disposal area is collected and conveyed underground via boreholes to the Warwick No. 2 mine pool. The Warwick Mine No. 2 mine pool is maintained at an elevation to prevent a surface discharge. The Warwick Mine pool water is then pumped and treated at the Warwick Mine No. 2 treatment facility. Treated water is discharged from the Warwick Mine No. 2 treatment facility at Outfalls Nos. 002 and 007 under NPDES Permit No. PA0215562.

I. A topographic map depicting the location of the Outfalls Nos. 002 and 007 is attached as **Exhibit A**. The latitude and longitude coordinates for Outfalls Nos. 002 and 007 are as follows: (Outfall No. 002) 39- 49-04 N & 79-57-12 W; and (Outfall No. 007) 39-48-59 N & 79-57-19 W.

J. The raw water quality of the Outfalls Nos. 002 and 007, as compiled by the Department on March 9, 2009 from analytical sampling results is set forth below.

CONSTITUENT	CONCENTRATION
Flow	1042 gpm
Total Iron	227 mg/l
Aluminum	21 mg/l
Manganese	45 mg/l
pH	6
Iron	227 mg/l
Sulfate	2200 mg/l

K. The required effluent limits applicable for Outfall No. 002 is as follows:

**Effluent Limits for Outfall No. 002**

<b>Parameter</b>	<b><u>30-Day</u> <u>Average</u></b>	<b><u>Daily</u> <u>Maximum</u></b>	<b><u>Instantaneous</u> <u>Maximum</u></b>
Iron (total)	3.5 mg/l	7.0 mg/l	9.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
Aluminum (Total)			
pH <sup>1</sup>		greater than 6.0; less than 9.0	
Alkalinity greater than acidity <sup>1</sup>			
<sup>1</sup> The parameter is applicable at all times.			

L. The required effluent limits applicable for Outfall No. 007 is as follows:

**Effluent Limits for Outfall No. 007**

	<b><u>30-Day</u></b>	<b><u>Daily</u></b>	<b><u>Instantaneous</u></b>
<b><u>Parameter</u></b>	<b><u>Average</u></b>	<b><u>Maximum</u></b>	<b><u>Maximum</u></b>
Iron (total)	3.5 mg/l	7.0 mg/l	9.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
Aluminum (Total)			
pH <sup>1</sup>		greater than 6.0; less than 9.0	
Alkalinity greater than acidity <sup>1</sup>			
<sup>1</sup> The parameter is applicable at all times.			

M. Duquesne Light 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 Paragraph H above.

**Post-Mining Treatment Trust**

N The treatment system currently consists of one coal refuse sump pump, one sludge pump, one 100 hp raw water feed pump, one lime feeder, one lime mixer, one aerator, one clarifier, one equalization pond, one polishing pond, one treatment building, two pump houses, four dewatering boreholes and pipeline, and two sludge disposal boreholes. A schematic drawing of the Treatment System is attached as **Exhibit B**.

O. The Treatment System is situated on land owned by Duquesne Light.

P. The capital cost to initially construct the Warwick Mine No. 2 Treatment System is \$426,172.

Q. In order to calculate the amount necessary to fully fund the trust, the Department and Duquesne have agreed to use actual operation and maintenance costs from past operations of the Treatment System, or AMDTreat cost estimates where insufficient operation and

maintenance cost data exist. A summary of current annual operation and maintenance costs for the Treatment System is as follows:

**Table of Current Annual Operation and Maintenance Costs**

CATEGORY	SAMPLING	LABOR	MAINTENANCE	PUMPING	CHEMICAL	SLUDGE REMOVAL
Rate		\$35/hr				
Annual Cost	\$1,598	\$54,600	\$114,482	\$29,851	\$159,600	\$00

Based on actual operation and maintenance costs from past operations and AMDTreat cost estimates, the current annual cost of operating and maintaining the Treatment System is \$360,131.

R. In order to calculate the amount necessary to fully fund the trust, the Department and Duquesne 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 \$237,659.00. Attached as Exhibit C is the AMDTreat Recapitalization Cost schedule for the Treatment System.

S. Duquesne is willing to establish a post-mining treatment trust with Huntington National Bank as an alternative financial assurance mechanism 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. Duquesne agrees to establish the Warwick Mine No.2 Treatment Trust by executing a Post-Mining Treatment Trust Agreement with Huntington National Bank which conforms with the Department's Model Treatment Trust Agreement.

T. The Department and Duquesne 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.

U. The Department and Duquesne have agreed to use the formulas set forth below to calculate the present value of the Warwick Mine No. 2 Treatment Trust. The Department and Duquesne agree that the present value of the agreed upon Warwick Mine No.2 Treatment Trust for the discharges covered by this Consent Order and Agreement is \$8,611,133.33. This sum constitutes the current present value of the estimated future operation and maintenance costs for the Treatment System, and the current present value of the estimated future recapitalization costs for the Treatment System. 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 Warwick Mine No.2 Treatment Trust as described in Paragraphs 8 and 10 below.

V. The Department and Duquesne have agreed that in order to fund the Warwick Mine No.2 Treatment Trust, Duquesne shall make an annual payment of \$300,000.00 to the trust until such time as the trust is fully funded as the Warwick Mine No.2 Treatment Trust may be adjusted as described in Paragraphs 8 and 10 below.

W. The Department and Duquesne have agreed that until such time as the Warwick Mine No.2 Treatment Trust is fully funded as the amount may be adjusted as described in Paragraphs 8 and 10 below, Duquesne shall maintain a reclamation bond in the amount currently posted (\$1,767,694) as described in Paragraph G above, and shall not seek release of said bond until such time as the Warwick Mine No.2 Treatment Trust is fully funded.

## 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 Duquesne as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5 of the Clean Streams Law, 35 P.S. § 691.5; Section 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c; 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 Duquesne to comply with any term or condition of this Consent Order and Agreement shall subject Duquesne to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. Duquesne agrees that the findings in Paragraphs A through W are true and correct and, in any matter or proceeding involving Duquesne and the Department, Duquesne 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. The average of three 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 Duquesne's fiscal year or thirty (30) days after the last day of any fiscal year which Duquesne 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 \_\% or} \\ &\text{\_\_\)*} \\ 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 the operator can select a more conservative investment strategy. The trustee's fee schedule must be negotiated by the operator. The rate of return used to calculate a trust amount is determined as part of the negotiation process for the COA and accompanying Trust Agreement.

- h. Primary Basis Valuation. 100% of the present value of the future cost of treatment as determined by the Formula.
- i. Primary Target Valuation. Typically 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 the face amount of surety bond currently held by the Trust in the Primary Trust Account.

4. Annual Treatment Costs; Records; Factors; Accounting

- a. Duquesne 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: Reagent; Polymer; Electrical; Sludge Removal; Labor, including benefits; Maintenance; Sampling; Overhead; and Miscellaneous. The individual item shall be tracked and reported for each general category.
- b. Duquesne shall provide an annual accounting of the costs and expenses of annual treatment to the Department on or before the 90<sup>th</sup> 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 Duquesne may adopt for its corporate finances in the future, and shall be in accordance with Generally Accepted Accounting Principles. The Accounting shall be accompanied by an affidavit of the treasurer or other corporate officer responsible for the financial affairs of

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

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

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

5. Bond

Duquesne shall continue to maintain a reclamation bond in the amount of \$1,767,694 in substantially the form as the bond currently posted for the Warwick No. 2 Mine and provided by Bond Instrument No. 104379507 as further described in Paragraph G above. Said bond shall be maintained by Duquesne until such time as the trust provided in Paragraph 6 below is fully funded, as that amount may be adjusted as described in Paragraphs 8 and 10 below.

6. Treatment Trust

a. Duquesne shall establish an irrevocable trust to be known as the Warwick Mine No. 2 Treatment Trust by executing a Post-Mining Treatment Trust Agreement with Huntington National Bank. The Warwick Mine No. 2 Treatment Trust along with the bond required by Paragraph 5 above shall secure Duquesne's obligation to treat the discharge from the Warwick Mine No.2 mine pool at Outfalls Nos. 002 and 007, including its legal obligation to

operate and maintain the Treatment Systems in perpetuity or until water treatment is no longer necessary. The Warwick Mine No. 2 Treatment Trust shall also secure Duquesne'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 Duquesne becomes unable or unwilling to meet these obligations. The Warwick Mine No. 2 Treatment 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 Warwick Mine No. 2 Treatment Trust shall be substantially in the form that is attached as **Exhibit D**.

Upon execution of the Treatment Trust Agreement with Huntington National Bank, the parties shall replace the standard form Treatment Trust Agreement with the fully execute Treatment Trust Agreement with Huntington National Bank.

b. Duquesne shall establish within the Warwick Mine No. 2 Treatment 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.

7. Funding of the Primary Trust Account

a. Initial Payment to the Primary Trust Account: Within 30 days of its execution of this Consent Order and Agreement, Duquesne shall finalize all documentation establishing the Warwick Mine No. 2 Treatment Trust as between Duquesne and Huntington National Bank, shall deposit an amount of \$ 300,000 into the Primary Trust Account, and shall provide the Department with an execution copy of the Warwick Mine No. 2 Treatment Trust Agreement for the Department's signature and approval as to form.

b. Ongoing Payments to the Primary Trust Account On or before each Annual Anniversary Date Duquesne shall deposit \$300,000 into the Primary Trust Account, and

shall continue to do so until such time as the Primary Trust Target Valuation is achieved, subject to the adjustments pursuant to Paragraphs 8 and 10 below.

c. Surety Bond The Surety Bond posted by Duquesne and required by Paragraph 5 above will not be considered part of the Warwick Mine No. 2 Treatment Trust but Duquesne shall continue to maintain such security and shall not seek the release of said bond until such time as the Primary Trust Target Valuation is achieved.

8. 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. The provisions of this Paragraph, relating to distribution and contribution payments, shall only apply once the Warwick No. 2 Treatment Trust is fully funded.

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 Duquesne. 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 E**

d. 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 E**.

e. If the Primary Trust Valuation is less than the Primary Basis Valuation, then Duquesne 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 & 6 on Exhibit F.

9. 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. The provisions of this Paragraph, relating to adjustments to the Primary Target Valuation, shall only apply once the Warwick No. 2 Treatment Trust is fully funded.
- c. If the Actual Treatment Cost for any year is greater than or equal to 110 percent or less than or equal to 90 % 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 % of the new Primary Basis Valuation. Exhibit F is a graphical depiction of the adjustment.

10. Distribution Payments for Adjustments to the Primary Target Valuation

- a. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 9. above is greater than the Primary Trust Valuation, no distribution payment shall be made under this paragraph.
- b. The provisions of this Paragraph, relating to distribution payments and adjustments to the Primary Target Valuation, shall only apply once the Warwick No. 2 Treatment Trust is fully funded.
- c. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 9. 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 Duquesne. 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

11. 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 C**. 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 D and this Consent Order and Agreement, and shall be used in making all future calculations involving the Capital Improvement Account.

12. Distribution Payments from the Capital Improvement Account

a. At such time as the trust is fully funded and the bond provided in Paragraph 5 is no longer required, a distribution payment shall be made to Duquesne any time a planned capital replacement is made as indicated on **Exhibit C**. 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 C**, 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 F**, 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 Duquesne's obligation to make a contribution payment under Paragraph 8.e. This amount is depicted graphically at Point 5 on **Exhibit E**. However, the amount of surplus funds transferred to the Primary Trust Account may exceed Duquesne's obligation under paragraph 8.e. 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 E**.

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

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by Duquesne 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 Duquesne 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. Real and Personal Property

Duquesne currently owns the property on which the treatment system is located. In the event that the property on which the treatment system is sold or transferred, Duquesne agrees to convey the property subject to a continued easement, right of access, or right of way in favor of the Department and Duquesne to maintain and continue access to the treatment system.

15. Public Liability Insurance

a. Duquesne 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. 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 Duquesne 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 Warwick Mine No. 2 treatment 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 Warwick Mine No. 2 treatment Trust; and, (v) to address any other issues that may concern this Consent Order and Agreement or its implementation.

b. The Operator 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. Duquesne's Continuing Obligation

Neither Duquesne's agreement to fund the Warwick Mine No. 2 Treatment Trust nor the full or partial funding of the Warwick Mine No. 2 Treatment Trust, nor the exhaustion of the Warwick Mine No. 2 Treatment Trust, shall in any way limit Duquesne'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 Paragraph K above. Furthermore, exhaustion of the Warwick Mine No. 2 Treatment Trust shall not excuse Duquesne from Duquesne's obligation to adequately treat or to abate the discharges.

18. Stipulated Civil Penalties

a. In the event Duquesne fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, Duquesne 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  
Greensburg District Mining Office  
Armbrust Professional Center  
8205 Route 819  
Greensburg, PA 15601

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

21. Liability of Duquesne

Duquesne 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. Duquesne 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 Warwick Mine No. 2 Mine, the treatment system, or any part thereof.

b. If Duquesne intends to transfer any legal or equitable interest in the Warwick Mine No. 2 Mine, the treatment system, or any part thereof which is affected by this Consent Order and Agreement, Duquesne 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 Director, District

Mining Operations, Greensburg District Mining Office, Armbrust Professional center, 8205 Route 819, Greensburg, PA, 15601, 724/925-5500, 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 Duquesne's duties and obligations under this Consent Order and Agreement upon transfer of the Warwick Mine No. 2 Mine, the treatment system, or any part thereof.

Duquesne 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  
Greensburg District Mining Office  
Armbrust Professional Center  
8205 Route 819  
Greensburg, PA 15601

24. Correspondence with Duquesne

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

Legal Office  
411 Seventh Ave  
Pittsburgh, PA 15219

b. Duquesne 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 Duquesne 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 Duquesne's control and which Duquesne, by the exercise of all reasonable diligence, is unable to prevent, then Duquesne 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 Duquesne's control. Duquesne'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. Duquesne 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 Duquesne 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. Duquesne'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 Duquesne and other information available to the Department. In any subsequent litigation, Duquesne 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

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 Duquesne may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

32. Successors

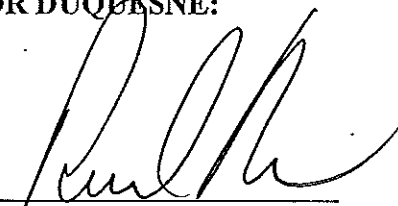
This Consent Order and Agreement shall be fully and completely binding upon any successor of Duquesne. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) Duquesne consolidates with or merges into or permits to merge with it and Duquesne is not the surviving corporation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

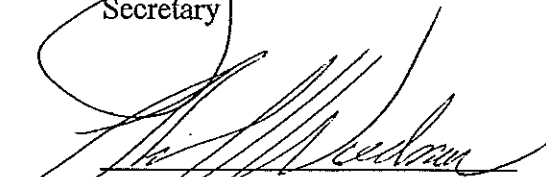
The parties agree that this Consent Order and Agreement may be executed by counterpart signatures transmitted via electronic means.

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 Duquesne 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 Duquesne; that Duquesne consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Duquesne 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 Duquesne's attorney certifies only that the agreement has been signed after consulting with counsel.


**FOR DUQUESNE:**


  
Richard Riazzi  
President

  
Joanne E. Noble, Esq.  
Secretary

  
Richard S. Wiedman, Esq.  
Attorney for Duquesne

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

  
Joseph Leone  
Acting District Mining Manager  
Greensburg District Mining Office

  
Barbara J. Grabowski  
Assistant Counsel