

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

E. M. Brown, Inc.	:	SMP No. 17813024 (Shawville Job)
329 Mount Joy Road	:	SMP No. 17803023 (Basin Run Job)
PO Box 767	:	Bradford and Cooper Townships
Clearfield PA 16830-2925	:	Clearfield County
	:	Alternative Financial Assurance Mechanism
	:	CO&A

**POSTMINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 17<sup>th</sup> day of April 2007, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and E. M. Brown, Inc. ("EM Brown").

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. EM Brown is a corporation with a business address of 329 Mount Joy Road, PO Box 767, Clearfield Pennsylvania 16830-2925, whose business includes the mining of coal by the surface method.

C. The principals of EM Brown are Robert E. Brown President and Treasurer, and Allan M. Brown Vice President and Secretary.

D. At all times material hereto, EM Brown was authorized to conduct surface mining in Pennsylvania pursuant to Surface Mining Operator's License No. 1404.

E. EM Brown is the permittee of the following surface coalmines that are associated with a post-mining discharge:

<b>NAME</b>	<b>SMP</b>	<b>TOWNSHIP</b>	<b>COUNTY</b>
Shawville Job	17813024	Bradford	Clearfield
Basin Run Job	17803023	Cooper	Clearfield

**Shawville Job**

F. The permit for the Shawville Job was originally as SMP # 17810125 issued on February 12, 1982 and re-permitted as SMP# 17813024 issued on July 11, 1984 on the Mervyl Yeager property and the Reese Green, Sylvia Green, Dorothy Shirey property. A copy of the Mervyl Yeager Supplemental C and the Reese Green, Sylvia Green, Dorothy Shirey Supplemental C is attached as Exhibit A and Exhibit B, respectively.

G. All mining has been completed at the Shawville Job. The only activity remaining on the Shawville Job is the treatment of a discharges of acid mine drainage identified as A, B, C, DER2, Y7, Y9, Y11. DER2 was previously known as Old Spring ALD. These discharges are being collected and passively treated in a constructed vertical flow pond. Collection point EMBSR is the total influent flow of discharges A, B, C, DER2, Y7, Y9, Y11.

H. Discharges A, B, C are anoxic limestone drains (ALD) referred to as roadside drains. Construction was completed on or about April 24, 1997. Initially discharges A, B, and C produced water with pH greater than 6 and net alkaline conditions. Due to the retention of metals in the system the effectiveness of the ALD's to treat water decreased. Currently the ALD's do not consistently meet effluent limits. These ALD's have failed and will likely decrease in effectiveness.

I. DER2 was a pre-existing discharge that was further degraded by EM Brown when it mined the Shawville Job. DER2 is a sampling point down gradient from the Old Spring ALD and is representative of the effluent from the Old Spring ALD. Construction was completed of the Old Spring ALD on or about April 24, 1997. Due to the retention of metals in the system the

effectiveness of the Old Spring ALD was limited to approximately one and one half months. Currently the Old Spring ALD and DER2 do not meet effluent limits and have failed and will likely to continue to decrease in effectiveness.

J. Y7 is a spring discharging from what appears to be an exploratory cut north of Township Road 617. Y7 exhibited pre-mining degradation with acidity greater than alkalinity concentrations and elevated manganese and sulfate concentrations. Post mining water quality at Y7 shows further degradation due the mining activities of EM Brown Shawville Job. On or about December 23, 1997, an ALD was constructed on Y7. The effectiveness of the Y7 ALD has not consistently produced acceptable pH values or net alkaline water. Although the Y7 ALD has had marginal effect on the water quality of Y7 the long-term viability of the Y7 ALD is questionable.

K. Y9 is a pre-existing discharge point within the original permit boundaries. Prior to mining of EM Brown Shawville Job Y9 had a slight net acidity and characteristics of mild acid mine drainage. Acidity, manganese, aluminum, and sulfate concentrations have all increased dramatically as the result of the mining activities on the EM Brown Shawville Job. On or about December 23, 1997, an ALD was constructed on Y9. The Y9 ALD initially produced net alkaline water however later samples show evidence that the Y9 ALD was only effective during extremely low flow conditions. The Y9 ALD has failed and is no longer providing a consistent level of treatment.

L. Y11 is a spring north of the permit and was formally used as a domestic water supply for twenty to thirty homes. Current water quality compared to pre-mining water quality is significantly different. Y9 now has a net acidity with manganese, aluminum, and sulfate increased in their concentrations. On or about September 11, 1996, an ALD was constructed on Y11. The Y11 ALD initially produced net alkaline water however later samples show evidence that the Y11 ALD is no longer effective and has failed.

M. On August 31, 2004, EM Brown entered into a Consent Order and Agreement with the Department to construct a vertical flow pond passive treatment system (VFP) that would

collect and treat A, B, C, DER2, Y7, Y9, Y11. Construction of the VFP was completed on August 19, 2005.

N. EM Brown has the legal responsibility to treat or abate the discharge identified in Paragraphs H through L.

O. The effluent limits applicable to the discharges are found at 25 Pa. Code Chapter 87.102.

P. Annual treatment costs for operating and maintaining the treatment system are \$ 3,032.00. Capital costs for that treatment system are \$ 32,602.00.

Q. On the Shawville Job, EM Brown has a surety bond posted by Seaboard Surety Company ("Seaboard") in place in the amount of \$144,000.00.

#### **Basin Run Job**

R. The permit for the Basin Run Job was originally as SMP # 17800135 issued on January 16, 1981 and re-permitted as SMP # 17803023 issued on May 31, 1984 on the Cooper Township property and the Lawrence Folmar heir's property and the Robert E. Bailey Estate property. A copy of the Cooper Township Supplemental C and the Lawrence Folmar heirs Supplemental C and the Robert E. Bailey Estate Supplemental C are attached as Exhibit C through Exhibit F, respectively.

S. All mining has been completed on the Basin Run Job and the mine is totally reclaimed and revegetated. EM Brown is treating a discharge known as D1.

T. D1 appeared as a toe of spoil discharge and originates and is treated entirely on the permit. D1 is an acid mine drainage discharge characterized by low pH, elevated manganese and iron, and acidity greater than alkalinity.

U. D1 is a pre-existing discharge that was degraded by the mining on the EM Brown Basin Run Job.

V. The D1 discharge runs through an ALD into an active chemical treatment system.

W. EM Brown has the legal responsibility to treat or abate the discharge identified in Paragraphs R through V.

X. The effluent limits applicable to the discharges are found at 25 Pa. Code Chapter 87.102.

Y. Annual treatment costs for operating and maintaining the chemical treatment system are \$ 32,414.00. Capital costs for that treatment system are \$ 28,073.00.

Z. On the Basin Run Job, EM Brown has a surety bonds posted be Seaboard in place in the amount of \$194,220.00

AA. EM Brown is willing to provide an alternative financial assurance mechanism as the financially backed enforceable contract to provide for the long-term treatment of post-mining discharges and to secure the release of its reclamation bonds in accordance with this COA.

BB. 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 backing. The parties have agreed the current annual cost of operating and maintaining the treatment systems is \$35,446.00.

CC. The parties agree to use the information and figures which will be provided by the accounting required by Paragraph 4 for the existing treatment systems, or the passive treatment system as provided in Paragraph 14, to calculate and adjust the proper size of the alternative financial assurance mechanism as described below. The parties also agree to use the formulas set forth below to calculate the present value of the alternative financial assurance mechanism.

DD. The parties met on April 21, 2006, June 22, 2006, August 17, 2006, November 2, 2006, and January 30, 2007. Nothing in the COA means or implies that the payments required by Paragraph 6 will be sufficient to fully fund the Trust being established pursuant to Paragraph 5.

EE. Among other things, the Supplemental C referred to in Paragraphs F and R grant access to EM Brown and the Commonwealth for a period of five (5) years following the abatement of the pollution.

FF. The EMBSR and D1 discharges will require treatment essentially in perpetuity. That is the reason the Department has asked EM Brown to establish the trust that is the subject of this Agreement. EM Brown and/or its successor and/or the Department and/or its agents will require access as long as the discharges require treatment.

GG. The Department intends to send the landowners who signed the Supplemental C copies of this Agreement.

### **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 EM Brown 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; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of EM Brown to comply with any term or condition of this Consent Order and Agreement shall subject EM Brown to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.
2. Findings
  - a. EM Brown agrees that the findings in Paragraphs A through GG are true and correct and, in any matter or proceeding involving EM Brown and the Department relating to this COA, EM Brown 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. The annual recurrence of the month and day that this Consent Order and Agreement is executed. [This is the preferred anniversary date. A less preferential option is 30 days after the EM Brown's fiscal year or thirty (30) days after the last day of any fiscal year that EM Brown 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:

$$PV = (A/[E-1]) + A$$

Where: PV = Present Value of the O&M Costs

A = Current Actual Treatment Cost

E= Expected annual earnings/Interest Rate (assumed to be 8.43%) \*

I = Inflation Rate (assumed to be 3.1% or .031)

\* This assumption will remain the same unless the parties agree otherwise.

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% 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. EM Brown 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. EM Brown shall keep separate records for the EMBSR and D1 treatment systems.

c. EM Brown shall provide an annual accounting of the costs and expenses of annual treatment ("the Accounting") 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 October 1 and continuing through September 30 of each year, or other fiscal year as EM Brown 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 EM Brown and by the President of EM Brown attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

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

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

5. Treatment Trust

a. EM Brown shall establish an irrevocable trust to be known as the EM Brown Shawville and Basin Run Treatment Trust ("Trust"). The Trust shall secure EM Brown's obligation to treat discharges EMBSR and D1, including its obligation to operate and maintain either the passive treatment systems in perpetuity, as required by law, or until water treatment is no longer necessary, and to provide financial resources to the Department on behalf of the citizens of the Commonwealth to maintain and operate the treatment systems, and to treat the mine drainage in perpetuity in the event EM Brown becomes unable or unwilling to meet its obligations. The Trust shall also provide for the demolition of treatment facilities and reclamation of the treatment site should treatment no longer be needed. The agreement establishing the Trust is attached as Exhibit G.

b. EM Brown shall establish within the Trust two sub-accounts: a sub-account designated as the Primary Trust Account; and a sub-account designated as the Capital Improvement Account.

6. Funding of the Primary Trust Account

a. Initial Payments to the Primary Trust Account: Upon execution of this Consent Order and Agreement, EM Brown shall deposit an amount of \$62,250 into the Primary Trust Account. On or before December 1, 2007, EM Brown shall deposit an amount of \$62,250 into the Primary Trust Account.

b. Ongoing Payments to the Primary Trust Account: EM Brown shall deposit an amount of \$124,500 into the Primary Trust Account on or before December 31 of each year until the trust is fully funded as outlined in Exhibit H. Payment will be required without notice.

c. Periodic and Overpayments: Beginning in 2008 and continuing until the trust is fully funded, EM Brown may make periodic payments to the Primary Trust Account or may make a single payment, provided that by December 31 of each year an amount of at least \$124,500 has been deposited for the current year. If in any year EM Brown deposits into the Primary Trust Account an amount in excess of the amount required to be deposited for that year, EM Brown may count all or part of the excess amount as a credit toward the amount required by this Consent Order and Agreement to be deposited into the Primary Trust Account in a subsequent year or years until the excess amount is fully credited.

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 EM Brown. 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 I.

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 EM Brown in the form of a surety bond reduction of the surety bond(s) identified in Paragraph 6.c. This amount is depicted graphically at Point 1 on Exhibit I. 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 I.

g. If the Primary Trust Valuation is less than the Primary Basis Valuation, then EM Brown 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 I. This provision does not apply until EM Brown has fulfilled its obligations to make ongoing payments under Paragraph 6.b.

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% (\$ 3,335.20 for the Shawville Treatment System or \$ 30,880.30 for the Basin Run Treatment System), adjusted for inflation at the rate of 3.1% per year, or less than or equal to 90% percent (\$ 2,728.80 for the Shawville Treatment System, or \$ 25,265.70 for the Basin Run Treatment System) 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 J 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 less 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 EM Brown. 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, then a distribution payment shall

be made to EM Brown 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. EM Brown shall establish within the Trust a sub-account designated as the Capital Improvement Account. 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. On the date of this Consent Order and Agreement the required annual balance of the Capital Improvement Account for a 75-year period shall be determined and made a part of this agreement as Exhibits K and L, and said balance shall be adjusted in accordance with Paragraph 14 hereof.

c. To determine the required balance in the Capital Improvement Account the following methodology shall be used.

i. For each planned capital replacement component or activity, the current cost of that component or the cost to complete that activity will be determined.

- ii. For each planned capital replacement component or activity, the estimated number of years in the life cycle of the component or the number of years between when the activity is needed will be determined.
- iii. until the next replacement If the treatment system has been in operation for a significant period of time, then for each planned capital replacement component or activity, the estimated number of years until the next replacement or activity is needed will be determined.
- iv. For each planned capital replacement component or activity, the future value of the first replacement or activity will be calculated using a Present Value equal to the current cost, a rate of 3.1 percent, the amount of payment equal to \$ 0.00, the number of payment periods equal to the number of years from the date of this agreement or activity, and a beginning of period payment.
- v. For each planned capital replacement component or activity, the Present Value will be calculated using the Future Value calculated in Paragraph 10.c.iv. above, a rate equal to the assumed net rate of return used elsewhere in this agreement, and all other variables the same as used in Paragraph 10.c.iv. above.
- vi. For each planned capital replacement component or activity, the Future Value of the second and each subsequent capital replacement or activity will be calculated using the same values as in Paragraph 10.c.iv. above except the value for the number of payment periods. The value for the number of payment periods for the second replacement or activity will be equal to the number of years until the next replacement or activity plus the number of years in the expected life cycle as determined in Paragraph 10.c.ii. above. The number of payment periods for the third replacement will be equal to the number of years until the next replacement or activity

plus two times the number of years in the expected life cycle. The number of periods for the fourth replacement will be equal to the number of years until the first replacement plus three times the years in the life cycle. The Future Value of each replacement will be calculated in like manner until the number of periods is equal to the number of years until the last replacement or activity is expected to occur that does not exceed 75 years from the year the calculations are being made.

- vii. For each planned capital replacement component or activity, the Present Value of the second and each subsequent capital replacement or activity will be calculated using the same values as in Paragraph 10.c.v. above except the value for the number of payment periods which shall be determined in like manner to Paragraph 10.c.vi. above.
- viii. The required balance in the Capital Improvement Account for the current year shall be equal to the sum of all Present Values calculated in Paragraph 10.b.v. and vii above.
- ix. The required balance in the Capital Improvement Account shall be recalculated on an annual basis and each time a Distribution Payment is contemplated under Paragraph 12. Such recalculation shall be deemed an amendment to Exhibits K and L 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 Exhibits K and L. The amount of such transfer will be equal to the difference between the required balance and the current balance, or in an amount equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, whichever is less.

12. Distribution Payments from the Capital Improvement Account

a. A distribution payment shall be made to EM Brown any time a planned capital replacement is made as indicated on Exhibits K and L. 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 Exhibits K and L, 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 Exhibits K and L, 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 EM Brown's obligation to make a contribution payment under Paragraph 7.g. This amount is depicted graphically at Point 5 on Exhibit I. However, the amount of surplus funds transferred to the Primary Trust Account may exceed EM Brown'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 I.

b. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the EM Brown to pay for unanticipated capital expenditures, or anticipated capital expenditures that exceed the calculated cost of the capital improvement as indicated on Exhibits K and L.

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the EM Brown 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 the EM Brown 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. a. By January 12, 2006, EM Brown submitted an application to revise the NPDES Permit for the Shawville Job.

b. EM Brown shall operate the treatment systems to treat EMBSR and D1 in accordance with plans submitted to, and approved by the Department. EM Brown shall collect monthly samples of the final effluents from the passive treatment system for the EMBSR and D1 discharge and monthly measurements of both the total flow into, and the total flow out of, the passive system. These sample and flow measures shall be submitted quarterly at the same time as EM Brown's regular quarterly monitoring.

c. The attached Exhibit H is the funding schedule for a trust to operate the original EMBSR passive treatment system as well as the D1 chemical treatment system.

15. Public Liability Insurance

a. EM Brown 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 that are 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. 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 \$250,000 per person and \$1,000,000 per occurrence. The insurance shall include a rider requiring the insurer to notify the Department 30 days prior to substantive changes being made to the policy or prior to termination or failure to renew. Proof of insurance shall consist of a certificate of insurance filed annually with the Department that certifies EM Brown has a public liability insurance policy in force meeting the requirements of this paragraph.

16. Annual Meeting

The parties will meet on or before the 30th day following delivery to the Department of the Accounting of each year: to review and discuss the Accounting for the then completed fiscal year; to review the effectiveness of the Treatment Systems and any change in the fiscal year; to resolve any issues which arise as a result of that change or the performance of the trust fund; 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 trust fund; and to address any other issues that may concern this Consent Order and Agreement or its implementation.

17. EM Brown's Continuing Obligation

Neither EM Brown's agreement to fund the Trust nor the full nor partial funding of the Trust, nor the exhaustion of the Trust shall in any way limit EM Brown's obligation to operate the Treatment System.

Furthermore, exhaustion of the Trust shall not excuse EM Brown from EM Brown's obligation to adequately treat or to abate the discharges.

18. Stipulated Civil Penalties

a. In the event EM Brown fails to comply in a timely manner with any term or provision of this Consent Order and Agreement within thirty (30) days after receipt of written notice from the Department specifying the specific provision EM Brown is not in compliance with, EM Brown 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. The payment shall be by corporate check or the like, made payable to the "Commonwealth of Pennsylvania" and submitted to the:

Compliance Manager  
Moshannon District Mining Operations  
186 Enterprise Drive  
Philipsburg, PA 16866

c. Any payment under this paragraph shall neither waive EM Brown's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel EM Brown's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only EM Brown'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 within thirty (30) days after the written notice specified in Paragraph 19(a) above.

19. Additional Remedies

a. In the event EM Brown 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 EM Brown defaults on the obligations of this Consent Order and Agreement EM Brown 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 EM Brown 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. EM Brown reserves the right to challenge any action, which the Department may take to require those measures.

21. Liability of EM Brown

EM Brown 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. EM Brown 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 Shawville Job or the Basin Run Job or any part thereof.

b. If EM Brown intends to transfer any legal or equitable interest in the Shawville Job or the Basin Run Job which is affected by this Consent Order and Agreement, EM Brown

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 of such intent.

c. The Department in its sole discretion may agree to modify or terminate EM Brown's duties and obligations under this Consent Order and Agreement upon transfer of the Shawville Job or the Basin Run Job. EM Brown's 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:

Michael W. Smith, District Mining Manager  
Department of Environmental Protection  
Moshannon District Mining Operations  
186 Enterprise Drive  
Philipsburg, PA 16866  
814-342-8200

24. Correspondence with EM Brown

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

Robert E. Brown, President  
E. M. Brown, Inc.  
P. O. Box 767  
Clearfield, PA 16830  
814-765-7519

b. EM Brown 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 EM Brown 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 EM Brown's control and which EM Brown, by the exercise of all reasonable diligence, is unable to prevent, then EM Brown 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 EM Brown's control. EM Brown'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. EM Brown shall only be entitled to the benefits of this paragraph if it notifies the Department within ten (10) working days by telephone and within twenty (20) 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 EM Brown 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. EM Brown'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 EM Brown and other information available to the Department. In any subsequent litigation, EM Brown 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.c.ix, 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

Except for decisions of the Department under Paragraphs 4 through 14, 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 EM Brown may have to decisions other than those under Paragraphs 4 through 14, 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 EM Brown. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) EM Brown consolidates with or merges into or permits to merge with it and EM Brown is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of EM Brown's properties or assets which include, but is not limited to, voting stock of EM Brown. Successor does not include any corporation or other entity to which EM Brown transfers or assigns all or substantially all of its financial or non-financial liabilities.

EM Brown 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 to execute this Consent Order and Agreement by counterpart signatures transmitted via facsimile.

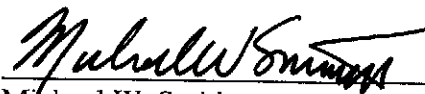


IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of EM Brown certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order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

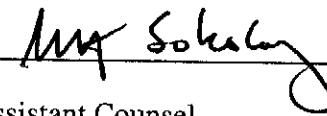
FOR E. M. BROWN, INC.

FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION:

  
\_\_\_\_\_  
Robert E. Brown  
President

  
\_\_\_\_\_  
Michael W. Smith  
District Mining Manager

\_\_\_\_\_  
Attorney for E. M. Brown, Inc.  
(Corporate seal)

  
\_\_\_\_\_  
Assistant Counsel

CONSENT OF LANDOWNER

We the undersigned, the owners of land located in Bradford (Borough) Clearfield (County)  
(Township) upon which E. M. Brown, Incorporated (Name of Operator)

is to conduct a surface mining operation for which an application for permit is being made and of which application this instrument of consent is made a part, do hereby grant irrevocably to the operator named above, his heirs, executors, administrators, successors, transferees and assigns the right to enter upon the land for the purposes of conducting surface mining operations. Furthermore, we do hereby irrevocably grant to the operator, his heirs, executors, administrators, successors, transferees, assigns and the Commonwealth of Pennsylvania or any of its authorized agents, the right to enter upon the aforesaid land during the mine operation and for a period of five (5) years after the termination, completion, or abandonment of the surface mining operation for the purposes of inspection, studying, backfilling, planting, reclaiming and abating pollution in accordance with the provisions of the Surface Mining Conservation & Reclamation Act of May 31, 1945, P.L. 1198, as amended.

In witness whereof we have hereunto set our hands and seal intending to legally bind ourselves, our heirs, executors, administrators, successors, transferees and assigns this 30th day of April, 1981.

Mervyl Yeager (SEAL)  
Signature of Landowner

Kathryn Yeager (SEAL)  
Signature of Landowner

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF Clearfield SS.

On this the 30th day of April, 1981, before me, the subscriber, a Notary Public, personally appeared the above named people Mervyl and Kathryn Yeager who after being duly sworn according to law acknowledge that they have read this instrument, that it is true and correct and that it is their act and deed and desire the same might be recorded as such.

WITNESS my hand and seal the day and year aforesaid.

(SEAL)

Mary M. Campalongo  
MARY M. CAMPALONGO, Notary Public  
Clearfield, Clearfield Co., Pa.  
My Commission Expires Mar. 29, 1982

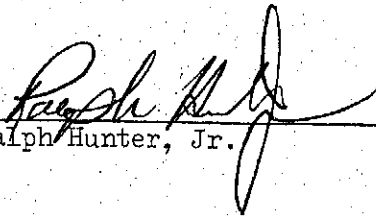
- INSTRUCTIONS:
1. File one (1) copy for each landowner.
  2. If the land is owned by one or more persons, all owners must sign.
  3. If owned by an Estate, authority for signing must be established.



TO WHOM IT MAY CONCERN

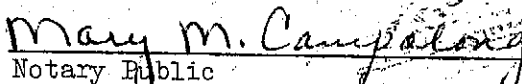
I, the undersigned, Ralph Hunter, Jr., being the owner of trailer #39 located in Yeager's Trailer Court, in Bradford Township, Clearfield County, Pennsylvania, upon which E. M. Brown, Inc. purposes to conduct surface mining operations (Mervyl Yeager property) do hereby state and authorize E. M. Brown, Inc. to conduct said surface mining operations to within one hundred (100) feet of the trailer on the said property for the purpose of a coal haulage road and mine site access.

IN WITNESS WHEREOF, I have hereunto set my hands and seal intending to legally bind myself, my heirs, executors, administrators, transferres, and assigns this 20th day of July, 1981.

  
\_\_\_\_\_  
Ralph Hunter, Jr.

On this, the 20th day July, 1981, before me, the undersigned officer, personally appeared Ralph Hunter, Jr., known to me (or satisfactorily proven) to be the persons whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hands and official seal.

  
\_\_\_\_\_  
Notary Public

MARY M. CAMPOLONG, Notary Public  
Clearfield, Clearfield Co., Pa.  
My Commission Expires Mar. 29, 1982

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL RESOURCES  
BUREAU OF MINING AND RECLAMATION

APPL. NO. (Department Use Only)

CONTRACTUAL CONSENT OF LANDOWNER

(I) (We), the undersigned, being the owner(s) of 140 acres of land located in Bradford Township Clearfield County, as  
(Township, Borough, City)  
described in the deed(s) recorded in the Recorder of Deeds Office at Deed Book(s) and page(s) 496-524 and shown by crosshatched lines on the map attached hereto which is signed in the original by the landowner upon which

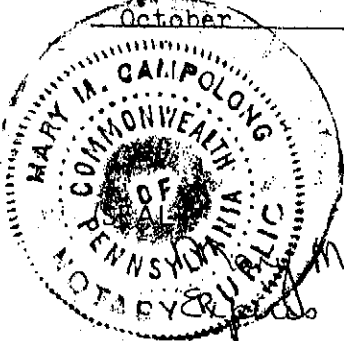
E. M. Brown, Inc. proposes to engage in surface  
(Name of Mining Operator)

mining activities for which application for permit will be made to the Department of Environmental Resources and of which application this consent will be made a part, DO HEREBY ACKNOWLEDGE THAT THE MINING OPERATOR HAS THE RIGHT TO ENTER UPON AND USE THE LAND FOR THE PURPOSES OF CONDUCTING SURFACE MINING ACTIVITIES. Furthermore, (I) (We), the undersigned, do hereby irrevocably grant to the Mining Operator, and the Commonwealth of Pennsylvania or any of its authorized agents, the right to enter upon the aforesaid land before beginning the mining activity(ies), during the mining activity(ies) and for a period of five (5) years after the completion or abandonment of the mining activity(ies) for the purposes of inspecting, studying, backfilling, planting and reclaiming the land and abating pollution in accordance with the provisions of the Surface Mining Conservation and Reclamation Act, The Clean Streams Law, and The Coal Refuse Disposal Act, as amended, rules and regulations promulgated thereunder, and the provisions of permit(s) issued to the Mining Operator. (I) (We) do hereby grant in addition to the Commonwealth, for the aforesaid period of time, a right of entry across any adjoining or contiguous lands owned by (us) (me) in order to have access to the land described herein. It is specifically agreed and understood that this contractual consent gives the Commonwealth the right to enter, inspect, study, backfill, plant and reclaim the land and abate pollution therefrom as a matter within the police power but does not obligate the Commonwealth to do so, and does not constitute any ownership interest by the Commonwealth in the aforesaid land.

THE LANDOWNER does not TO ALLOW THE ABOVE NAMED MINE  
(agrees or does not agree)  
OPERATOR TO TRANSFER OR ASSIGN, BY WRITTEN AGREEMENT, THIS CONTRACTUAL CONSENT TO ANOTHER MINING OPERATOR.

This Consent shall terminate and become null and void if the Mining Operator does not apply to the Department of Environmental Resources for a permit to conduct surface mining activities on the aforesaid land within 5 year(s) from the date of this Consent. Nothing in this Consent shall preclude or limit the Landowner's authority to terminate the right or privilege of the Mine Operator to mine the aforesaid land.

In witness whereof and intending to legally bind (myself) (ourselves), (my) (our) heirs, successors and assigns (I) (we) have hereunto set (my) (our) hand(s) and seal this 12th day of October, 1982.



Dorothy Shirey  
Reese Green & Sylvia Green  
LANDOWNER (Print Name)

By: Reese Green & Sylvia Green  
(Signature)

Reese Green - Sylvia Green  
(Print Name)

By: Dorothy Shirey  
(Signature)

Dorothy Shirey  
(Print Name)

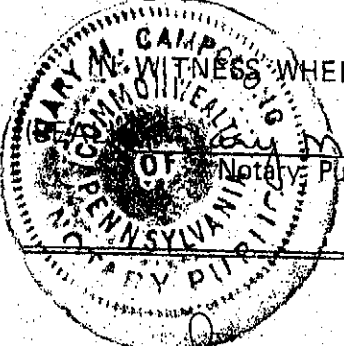
ACKNOWLEDGMENT OF INDIVIDUALS OR PARTNERS

STATE OF Pennsylvania :  
COUNTY OF Clearfield : SS

On October 12, 1982 (date), before me, the undersigned Notary, personally appeared

Dorothy Shirey, Sylvia Green and Reese Green (Name(s))

known to me (or satisfactorily proven) to be the person whose name is subscribed to this instrument, and who acknowledged that they (Name of they) executed the same and desires it to be recorded.



WHEREOF, I have hereunto set my hand and official seal.

Mary M. Campalony Notary Public

My Commission Expires: 4/7/86 (date)

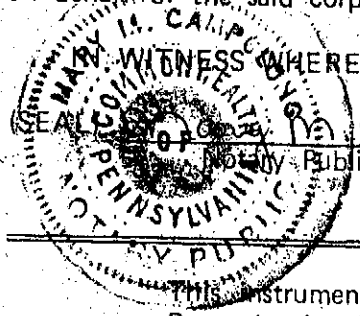
ACKNOWLEDGMENT OF CORPORATIONS

STATE OF Pennsylvania :  
COUNTY OF Clearfield : SS

On October 12, 1982 (date), before me, the undersigned Notary, personally appeared

Robert E. Brown (Name of Person), who acknowledged (~~himself~~) (himself) to be the President (Title of Person) of E.M. Brown, Inc. (Name of Corporation)

a corporation, and that (s)he, as such officer, being authorized to do so, executed the foregoing instrument on behalf of the said corporation and desires that this instrument be recorded.



WHEREOF, I have hereunder set my hand and official seal.

Mary M. Campalony Notary Public

My Commission Expires: 4/7/86 (date)

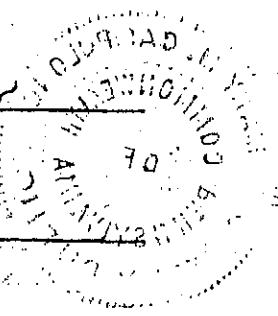
This instrument has been recorded in Clearfield County, Pennsylvania, this 19th day of October, 1982, at 3:07 PM  
Deeds & Records Book 858, Page(s) 247

CLEARFIELD COUNTY  
ENTERED OF RECORD  
TIME 3:07 PM 10-19-82  
BY E.M. Brown Inc  
FEES \_\_\_\_\_  
TIM MORGAN, Recorder



Tim Morgan (Print Name)

My Commission Expires First Monday in January 1984



ASSESSMENT MAP  
BRADFORD TOWNSHIP  
CLEARFIELD COUNTY  
PENNSYLVANIA

ALE - 1" = 660'

AD-1955

MAP NO.  
M 7

100 A.  
Penna. Electric Company



Penna. Electric Company

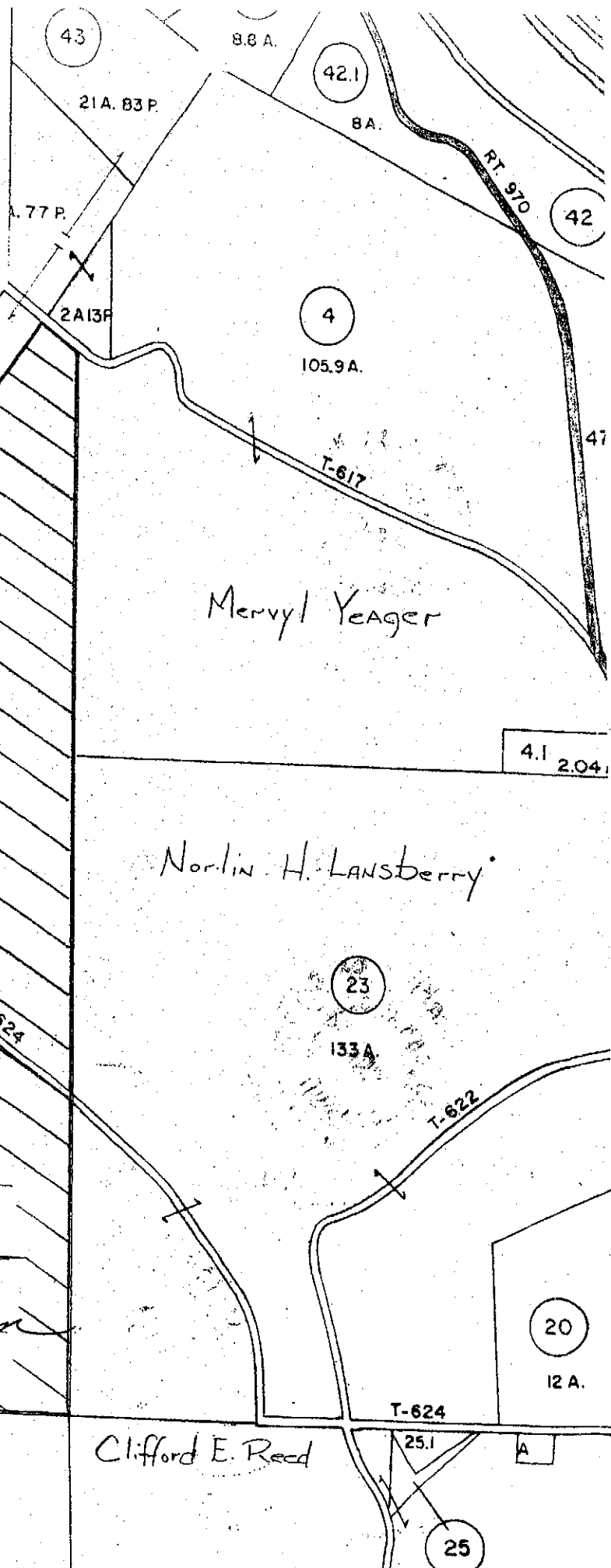
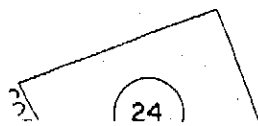
*Dorothy Shirey*  
Dorothy Shirey  
*Reese Green*  
Reese Green  
*Sylvia Green*  
Sylvia Green

Michael Killen

Clifford E. Reed

Mervyl Yeager

Norlin H. Lansberry



We, the undersigned, Reese Green, Sylvia Green, and Dorothy Shirey, being the owners of record of a parcel of land located in Bradford Township, Clearfield County, Pennsylvania, upon which E. M. Brown, Inc. proposes to conduct surface mining operations, do hereby state and acknowledge that said lands where mining will take place have not been utilized for agricultural purposes for five (5) of the past ten (10) years.

Reese Green  
Reese Green

Sylvia Green  
Sylvia Green

Dorothy Shirey  
Dorothy Shirey

On this, the 19th day of October, 1982, before me, the undersigned officer, personally appeared Reese Green, Sylvia Green, and Dorothy Shirey, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledge that they executed the same for the purposes therein contained.

In Witness Whereof, I have hereunto set my hands and official seal.

Mary M. Campbell  
Notary Public Expires 4/7/86

BRADFORD COUNTY, PENNSYLVANIA

21 1982

Hawk Run District Office



CONSENT OF LANDOWNER

We the undersigned, the owners of land located in \_\_\_\_\_  
(Borough)

Cooper Township Clearfield  
(Township) (County)

upon which EARL M. BROWN COMPANY  
(Name of Operator)

is to conduct a surface mining operation for which an application for permit is being made and of which application this instrument of consent is made a part, do hereby grant irrevocably to the operator named above, his heirs, executors, administrators, successors, transferees and assigns the right to enter upon the land for the purpose of conducting surface mining operations, if commenced within a period of five (5) years from the date of execution of this instrument. Furthermore, we do hereby irrevocably grant to the operator, his heirs, executors, administrators, successors, transferees, assigns and the Commonwealth of Pennsylvania or any of its authorized agents, the right to enter upon the aforesaid land during the mine operation and for a period of five (5) years after the termination, completion, or abandonment of the surface mining operation for the purposes of inspection, studying, backfilling, planting, reclaiming and abating pollution in accordance with the provisions of the Surface Mining Conservation & Reclamation Act of May 31, 1945, P.L. 1198, as amended.

In witness whereof we have hereunto set our hands and seal intending to legally bind ourselves, our heirs, executors, administrators, successors, transferees and assigns this 27th day of March, 1980.

Michael B. Frank (SEAL)  
(Signature of Landowner)

Michael A. Rudelle  
William M. Malachuk (SEAL)  
(Signature of Landowner)

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF Clearfield : SS.

On this the 27th day of March, 1980, before me, the subscriber, a Notary Public, personally appeared the above named Michael B. Frank, Michael A. Rudelle, William M. Malachuk who after being duly sworn according to law acknowledge that they have read this instrument, that it is true and correct and that it is their act and deed and desire the same might be recorded as such.

WITNESS my hand and seal the day and year aforesaid.

(SEAL)

Mary M. Campolong  
NOTARY PUBLIC  
MARY M. CAMPOLONG, Notary Public  
Clearfield, Clearfield County  
My Comm. Expires August 22, 1981

- INSTRUCTIONS:
1. File one (1) copy for each landowner.
  2. If the land is owned by one or more persons, all owners must sign.
  3. If owned by an Estate, authority for signing must be established.





Supplement "C"

CONSENT OF LANDOWNER

We the undersigned, the owners of land located in \_\_\_\_\_

COOPER

(Township)

(Borough)

CLEARFIELD

(County)

upon which E. M. BROWN, INCORPORATED

(Name of Operator)

is to conduct a surface mining operation for which an application for permit is being made and of which application this instrument of consent is made a part, do hereby grant irrevocably to the operator named above, his heirs, executors, administrators, successors, transferees and assigns the right to enter upon the land for the purposes of conducting surface mining operations. Furthermore, we do hereby irrevocably grant to the operator, his heirs, executors, administrators, successors, transferees, assigns and the Commonwealth of Pennsylvania or any of its authorized agents, the right to enter upon the aforesaid land during the mine operation and for a period of five (5) years after the termination, completion, or abandonment of the surface mining operation for the purposes of inspection, studying, backfilling, planting, reclaiming and abating pollution in accordance with the provisions of the Surface Mining Conservation & Reclamation Act of May 31, 1945, P.L. 1198, as amended.

In witness whereof we have hereunto set our hands and seal intending to legally bind ourselves, our heirs, executors, administrators, successors, transferees and assigns this 11<sup>th</sup> day of September, 1980.

Wendell Bailey (SEAL)  
(Signature of Landowner)

Carl J. Peterson (SEAL)  
(Signature of Landowner)

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF Clearfield : SS.

On this the 11<sup>th</sup> day of September, 1980, before me, the subscriber, a Notary Public, personally appeared the above named Wendell Bailey + Carl J. Peterson who after being duly sworn according to law acknowledge that they have read this instrument, that it is true and correct and that it is their act and deed and desire the same might be recorded as such.

WITNESS my hand and seal the day and year aforesaid.

(SEAL)

Susan Jo Shimmel  
NOTARY PUBLIC

Susan Jo Shimmel, Notary Public  
Clearfield, Clearfield Co. Pa.

My commission expires Jan. 16, 1984

- INSTRUCTIONS:
1. File one (1) copy for each landowner.
  2. If the land is owned by one or more persons, all owners must sign.
  3. If owned by an Estate, authority for signing must be established.

Bureau of Surface Mine Reclamation  
**RECEIVED**  
SEP 17 1980

Exhibit E

Hawk Run District Office



CONSENT OF LANDOWNER

We the undersigned, the owners of land located in \_\_\_\_\_  
(Borough)

Cooper \_\_\_\_\_ Clearfield \_\_\_\_\_  
(County) (County)

is/are known \_\_\_\_\_ Marl M. Brown Company \_\_\_\_\_  
(Name of Operator)

I do consent - surface mining operation for which an application for permit is being made and of which application and execution of consent is made a part, do hereby grant irrevocably to the operator named above, his heirs, administrators, successors, transferees and assigns the right to enter upon the land for the purpose of conducting surface mining operations; if commenced within a period of five (5) years from the date of execution of this instrument. Furthermore, we do hereby irrevocably grant to the operator, his heirs, executors, administrators, successors, transferees, assigns and the Commonwealth of Pennsylvania or any of its authorized agents, the right to enter upon the abovementioned land during the mine operation and for a period of five (5) years after the termination, completion or abandonment of the surface mining operation for the purpose of inspection, studying, backfilling, grading, recontouring and abating sediment in accordance with the provisions of the Surface Mining Conservation & Reclamation Act of May 21, 1946, P.L. 1108, as amended.

In witness whereof we have hereunto set our hands and seal intending to legally bind ourselves, our heirs, executors, administrators, successors, transferees and assigns this \_\_\_\_\_ 12<sup>th</sup> day of \_\_\_\_\_  
June 1980

COUNTY NATIONAL BANK CLEARFIELD, PA.  
[Signature] (SEAL)  
(Signature of Landowner) VICE PRES. & TRUST OFFICER

\_\_\_\_\_  
(Signature of Landowner)

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF Clearfield SS

On this the 12th day of June 1980, before me, the undersigned, a Notary Public, personally appeared the above named Cari J. Peterson, Vice President & Trust Officer County National Bank who being duly sworn according to law acknowledge that he has read this instrument, that it is true and correct and that it is his act and deed and desire the same might be recorded as such.

WITNESS my hand and seal this day and year aforesaid.

(SEAL)

[Signature]  
NOTARY PUBLIC

CLEARFIELD COUNTY, PA.  
JAY C. [Signature]

- INSTRUCTIONS:
- 1. This form is to be used for each instrument.
  - 2. If the land is owned by one or more persons, an owner must sign.
  - 3. If owned by a firm or partnership, the identity must be ascertained.

**RECEIVED**  
Bureau of Mining & Reclamation

JUN 25 1981

Hawk Run - District 5E

TO **TIM MORGAN, DR.**

REGISTER OF WILLS  
RECORDER OF DEEDS



CLERK OF THE ORPHAN'S COURT

Clearfield, Pa. 16830 June 11 1981

*Carl M Brown &*

\_\_\_\_\_  
ATTORNEY

Please return this bill with remittance for receipt.  
Make all checks payable to Tim Morgan

R N<sup>o</sup> 1985 M

<i>44-C</i>	<i>Carl J Peterson</i>				
	<i>Carl M Brown &amp;</i>		<i>8.00</i>		

**PAID**  
JUN 11 1981  
TIM MORGAN  
Register & Recorder

The above mentioned instruments are received subject to the provision of Acts of Assembly requiring payment of fees in advance.

**IN THE MATTER OF: E.M. Brown Inc & Shawville Job and Basin Run Job**

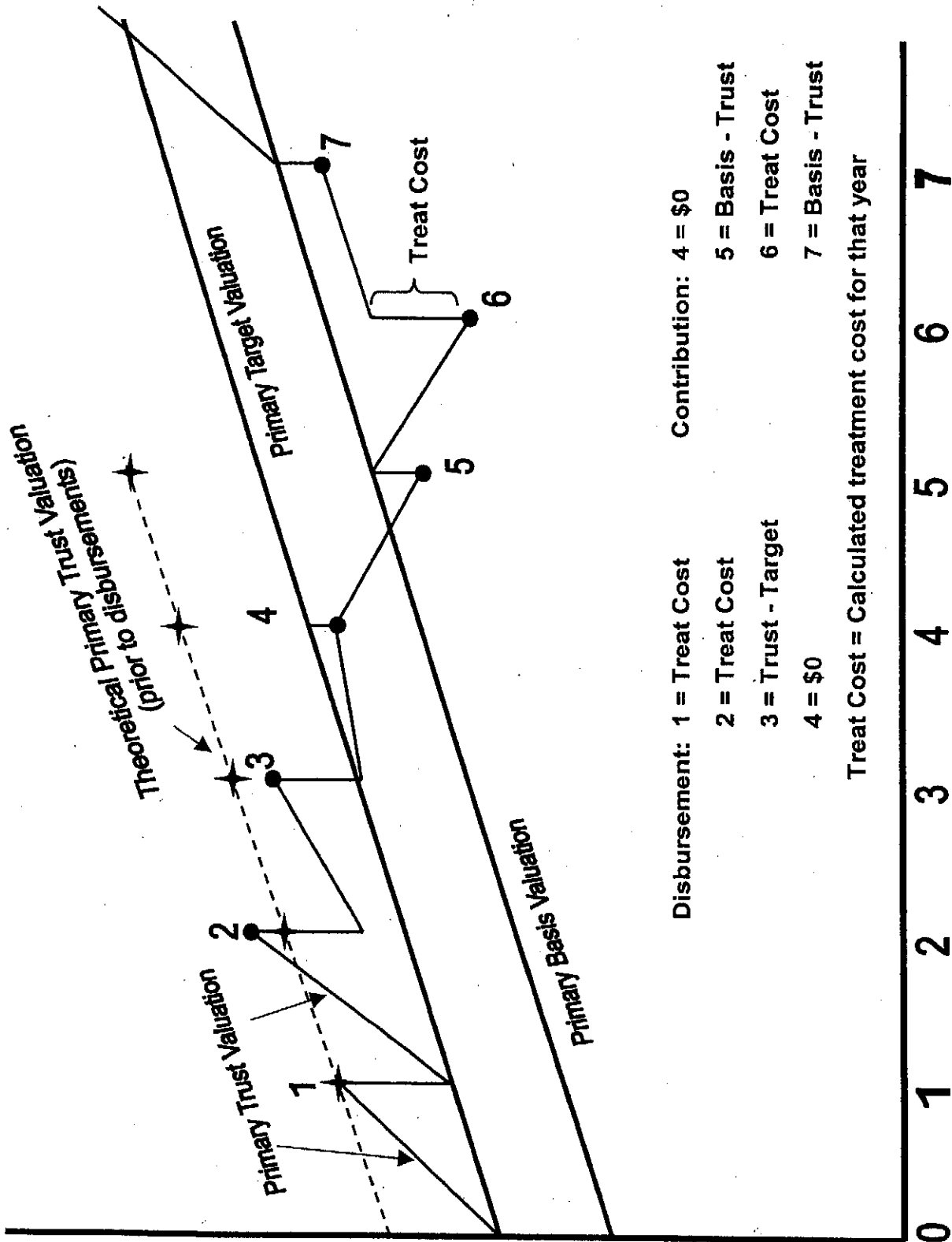
**POST-MINING DISCHARGE TREATMENT TRUST AGREEMENT**

This Trust Agreement , the E.M. Brown Inc., Shawville and Basin Run Post Mining Discharge Treatment Trust, entered into this day of \_\_\_\_\_, 2007, by and among E. M. Brown, Inc., with its principal place of business at 329 Mount Joy Road, P.O. Box 767, Clearfield, PA 16830 (“Settlor”), and CNB Bank, with its principal place of business at Main and Market Streets, P. O. Box 42, Clearfield Pennsylvania, and incorporated under the laws of the Commonwealth of Pennsylvania (“Trustee”).

WHEREAS, the Settlor has entered into a Consent Order and Agreement dated \_\_\_\_\_, 2007, (such Consent Order and Agreement, as amended hereafter referred to as the “CO&A”), with the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter referred to as “Department” or “Beneficiary”) which is incorporated by reference and which contains, among other things, a requirement that the Settlor provide financial guarantees to assure that funds will be available to provide for the Settlor’s legal obligation to operate a mine drainage treatment system to treat and otherwise prevent discharges of mine drainage emanating from or hydrologically connected to Settlor’s mines;

WHEREAS, the treatment systems consists of the Basin Run Site , a Chemical Treatment System and the Shawville Site; a vertical flow pond Passive Treatment System(VFP) located in Cooper and Bradford Townships respectively,



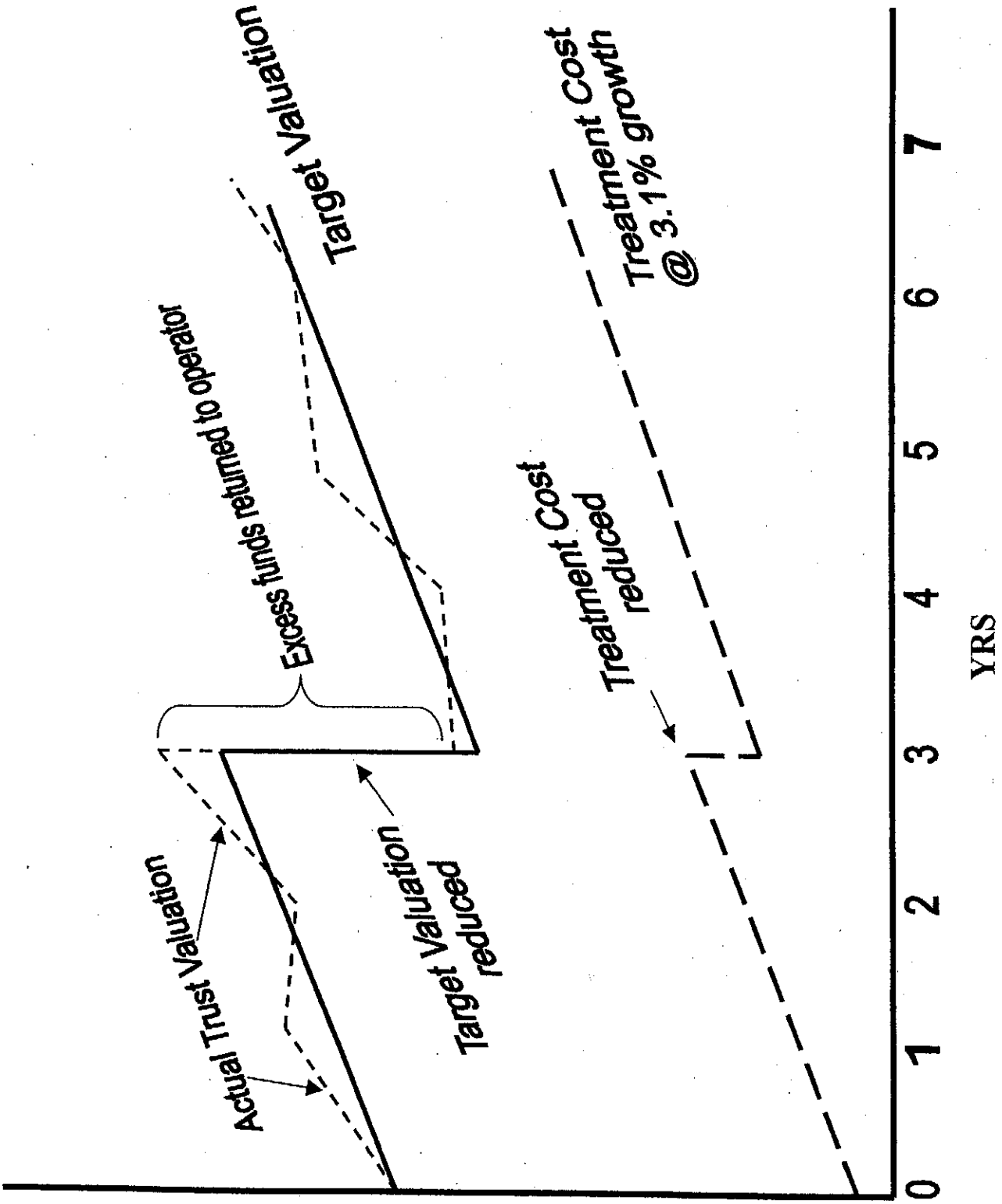


Disbursement: 1 = Treat Cost      Contribution: 4 = \$0  
 2 = Treat Cost                      5 = Basis - Trust  
 3 = Trust - Target                    6 = Treat Cost  
 4 = \$0                                      7 = Basis - Trust

Treat Cost = Calculated treatment cost for that year

↑ \$

Exhibit I



↑ \$

Exhibit J

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

## AMD TREAT RECAPITIALIZATION COST



AMDTREAT

Year	Trust Fund Growth Fund Before Payout	Trust Fund Growth Fund After Payout	Payout Schedule	Year	Trust Fund Growth Fund Before Payout	Trust Fund Growth Fund After Payout	Payout Schedule
	9,975	9,975	Initial Fund Amount				
1	10,815	10,815	0	51	53,565	53,565	0
2	11,727	11,727	0	52	58,081	58,081	0
3	12,716	12,716	0	53	62,977	62,977	0
4	13,788	13,788	0	54	68,286	68,286	0
5	14,950	14,950	0	55	74,043	74,043	0
6	16,211	16,211	0	56	80,284	80,284	0
7	17,577	17,577	0	57	87,052	87,052	0
8	19,059	19,059	0	58	94,391	94,391	0
9	20,666	20,666	0	59	102,348	102,348	0
10	22,408	22,408	0	60	110,976	5,863	105,112
11	24,297	24,297	0	61	6,358	6,358	0
12	26,345	26,345	0	62	6,894	6,894	0
13	28,566	28,566	0	63	7,475	7,475	0
14	30,974	30,974	0	64	8,105	8,105	0
15	33,585	33,585	0	65	8,788	8,788	0
16	36,417	36,417	0	66	9,529	9,529	0
17	39,487	39,487	0	67	10,333	10,333	0
18	42,816	42,816	0	68	11,204	11,204	0
19	46,425	46,425	0	69	12,148	12,148	0
20	50,339	19,342	30,996	70	13,172	13,172	0
21	20,973	20,973	0	71	14,283	14,283	0
22	22,741	22,741	0	72	15,487	15,487	0
23	24,658	24,658	0	73	16,793	16,793	0
24	26,737	26,737	0	74	18,208	18,208	0
25	28,991	24,700	4,290	75	19,743	-0	19,743
26	26,783	26,783	0	76	0	0	0
27	29,041	29,041	0	77	0	0	0
28	31,489	31,489	0	78	0	0	0
29	34,143	34,143	0	79	0	0	0
30	37,022	37,022	0	80	0	0	0
31	40,142	40,142	0	81	0	0	0
32	43,527	43,527	0	82	0	0	0
33	47,196	47,196	0	83	0	0	0
34	51,175	51,175	0	84	0	0	0
35	55,489	55,489	0	85	0	0	0
36	60,166	60,166	0	86	0	0	0
37	65,238	65,238	0	87	0	0	0
38	70,738	70,738	0	88	0	0	0
39	76,701	76,701	0	89	0	0	0
40	83,167	26,087	57,079	90	0	0	0
41	28,287	28,287	0	91	0	0	0
42	30,671	30,671	0	92	0	0	0
43	33,257	33,257	0	93	0	0	0
44	36,060	36,060	0	94	0	0	0
45	39,100	39,100	0	95	0	0	0
46	42,397	42,397	0	96	0	0	0
47	45,971	45,971	0	97	0	0	0
48	49,846	49,846	0	98	0	0	0
49	54,048	54,048	0	99	0	0	0
50	58,604	49,401	9,203	100	0	0	0

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

## AMD TREAT RECAPITIALIZATION COST



**AMDTREAT**

Year	Trust Fund Growth Fund Before Payout	Trust Fund Growth Fund After Payout	Payout Schedule	Year	Trust Fund Growth Fund Before Payout	Trust Fund Growth Fund After Payout	Payout Schedule
	29,322	29,322	Initial Fund Amount				
1	31,793	31,793	0	51	128,277	128,277	0
2	34,474	34,474	0	52	139,091	139,091	0
3	37,380	37,380	0	53	150,817	150,817	0
4	40,531	40,531	0	54	163,530	163,530	0
5	43,948	38,735	5,212	55	177,316	153,327	23,989
6	42,000	42,000	0	56	166,252	166,252	0
7	45,541	45,541	0	57	180,267	180,267	0
8	49,380	49,380	0	58	195,464	195,464	0
9	53,543	53,543	0	59	211,941	211,941	0
10	58,056	51,984	6,072	60	229,808	95,701	134,107
11	56,366	56,366	0	61	103,768	103,768	0
12	61,118	61,118	0	62	112,516	112,516	0
13	66,270	66,270	0	63	122,001	122,001	0
14	71,857	71,857	0	64	132,286	132,286	0
15	77,914	47,128	30,786	65	143,438	110,883	32,554
16	51,101	51,101	0	66	120,231	120,231	0
17	55,409	55,409	0	67	130,366	130,366	0
18	60,080	60,080	0	68	141,356	141,356	0
19	65,144	65,144	0	69	153,273	153,273	0
20	70,636	58,712	11,923	70	166,194	128,271	37,922
21	63,662	63,662	0	71	139,084	139,084	0
22	69,029	69,029	0	72	150,809	150,809	0
23	74,848	74,848	0	73	163,522	163,522	0
24	81,157	81,157	0	74	177,307	177,307	0
25	87,999	78,399	9,599	75	192,254	-0	192,254
26	85,008	85,008	0	76	0	0	0
27	92,175	92,175	0	77	0	0	0
28	99,945	99,945	0	78	0	0	0
29	108,370	108,370	0	79	0	0	0
30	117,506	68,839	48,667	80	0	0	0
31	74,642	74,642	0	81	0	0	0
32	80,934	80,934	0	82	0	0	0
33	87,757	87,757	0	83	0	0	0
34	95,155	95,155	0	84	0	0	0
35	103,177	90,149	13,027	85	0	0	0
36	97,749	97,749	0	86	0	0	0
37	105,989	105,989	0	87	0	0	0
38	114,924	114,924	0	88	0	0	0
39	124,612	124,612	0	89	0	0	0
40	135,117	113,160	21,957	90	0	0	0
41	122,699	122,699	0	91	0	0	0
42	133,043	133,043	0	92	0	0	0
43	144,258	144,258	0	93	0	0	0
44	156,419	156,419	0	94	0	0	0
45	169,605	92,672	76,933	95	0	0	0
46	100,484	100,484	0	96	0	0	0
47	108,955	108,955	0	97	0	0	0
48	118,140	118,140	0	98	0	0	0
49	128,099	128,099	0	99	0	0	0
50	138,898	118,304	20,593	100	0	0	0