

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

IP HARMAR HOLDINGS, LLC	:	Harmar Coal Refuse Disposal Area
2929 Allen Parkway, Suite 2200	:	SMP No. 02860201
Houston, TX 77019	:	NPDES Permit No. PA0588407
	:	Dam Permit No. 02-053A
	:	Alternative Financial Assurance
	:	Mechanism

POST-MINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 13th day of April, 2009, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and IP Harmar Holdings, LLC ("IPHH").

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. §§ 1396.1-1396.19a ("Surface Mining Act"); the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, *as amended*, 52 P.S. §§ 1406.1-1406.21 ("Mine Subsidence Act"); the Coal Refuse Disposal Control Act, Act of September 24, 1968, P.L. 1040, *as amended*, 52 P.S. §§ 30.51-30.206 ("Coal Refuse Disposal Act"); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 ("Clean Streams Law"); 1937, P.L. 1987, *as amended*, the Dam Safety and Encroachments Act, Act of November 26, 1978, P.L. 1375, *as amended*, 32 P.S. §§ 693.1-693.27 ("Dam Safety Act"); 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 Section 4(d.2) of the Surface Mining Act, 52 P.S. § 1396.4(d.2), the Department may establish alternative financial assurance mechanisms which shall achieve the objectives and purposes of the bonding program. These mechanisms include the establishment of a site-specific trust funded by a mine operator for the treatment of post-mining discharges of mine drainage. The post-mining treatment trust being established as required by this Consent Order and Agreement through the accompanying Participation Agreement constitutes an alternative financial assurance mechanism authorized by Section 4(d.2) of the Surface Mining Act.

Pursuant to Sections 5, 315 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.315 and 691.610, Section 4.3 of SMCRA, 52 P.S. § 1396.4c, Sections 3.1 and 9 of the Coal Refuse Disposal Act, 52 P.S. §§ 30.53a and 30.59, and Section 9 of the Subsidence Act, 52 P.S. § 1406.9, the Department has authority to issue such orders as are necessary to aid in the enforcement of the provisions of these acts, including orders compelling an operator to establish a post-mining discharge treatment trust as an alternative financial assurance mechanism.

C. IPHH is a Delaware limited liability company registered to do business in Pennsylvania with a mailing address of 2929 Allen Parkway, Suite 2200, Houston, TX 77019.

Harmar CRDA

D. Minerals Technology, Inc. ("MTI") is the owner and permittee of a coal refuse disposal area located in Harmar Township, Allegheny County ("Harmar CRDA"). MTI's mailing address is 100 High Tower Boulevard, Suite 101, Pittsburgh, PA 15205.

E. The Harmar CRDA was created between approximately 1950 and 1980 by the Harmar Coal Company (“HCC”).

F. The Harmar CRDA contains coarse coal refuse and slurry, which can be used in power plants using Circulating Fluidized Bed Combustion Technology designed to burn waste coal.

G. HCC discontinued operations at the Harmar CRDA in approximately 1985.

H. In 1985, a receiver was appointed for HCC at Allegheny County Court of Common Pleas Docket No. GD 85-7452 (“HCC Receiver”).

I. In 1986, MTI obtained Surface Mine Permit (“SMP”) No. 02860201 from the Department to restart mining on areas of the Harmar CRDA, based on a lease with the HCC Receiver.

J. IPHH represents upon information and belief, that in 1987, MTI acquired the Harmar CRDA property, the coarse coal refuse and fine coal refuse placed on the property, as well as deeds of Easement, and Submerged Lands License E11462 (“SLL”) for the coal docking and mooring facilities associated with the SLL from the HCC Receiver. On March 14, 1991, the Department transferred the SLL from the HCC Receiver to MTI. On February 27, 2008, at IPHH’s request, the Department transferred the SLL to IPHH.

From 1986 to date, MTI has mined the coarse refuse pile and slurry impoundment and coarse waste coal and fine coal refuse from the Harmar CRDA. The Harmar CRDA has been reclaimed except for areas where waste coal is currently extracted.

K. IPHH represents that it has negotiated an agreement with MTI to acquire the real and personal property constituting the Harmar CRDA including the existing treatment system described in Paragraph O hereof in order to continue mining the coarse waste coal and fine coal

refuse from the Harmar CRDA. IPHH further represents that it has contractual commitments to supply coal to the Colver Power Project in Cambria County through 2020 and that its mining operations at the Harmar CRDA may be extended beyond the 2020 time frame if all parties to applicable contracts agree.

L. The Harmar Refuse Bank Dam (“Dam”) is located on the Harmar CRDA. The Dam is partially constructed with coarse coal refuse, has a height of 410 feet and has created a slurry impoundment containing fine coal refuse. On or about July 28, 1983, the Department issued Dam Permit No. D02-053 to HCC authorizing HCC to operate and maintain the Dam. In September 1986, the Department issued Dam Permit No. 02-053A to MTI to authorize MTI’s operation, maintenance and modification of a portion of the dam. In March 2008, the Department approved a transfer of Dam Safety Permit No. D02-053A from MTI to IPHH.

M. Additional modification of the Harmar Refuse Bank Dam as proposed by IPHH requires authorization by the Department under a new dam permit supported by a bond in the appropriate amount. Accordingly, IPHH agrees to submit a permit application and proposed bond for a new dam permit pursuant to the Dam Safety Act for the Harmar Refuse Bank Dam.

N. The Harmar CRDA creates three discharges of acid mine drainage (“AMD Discharges”) which are collected along Guys Run Road in the “acid pond” (“Acid Pond”) and then pumped to the chemical treatment system (“Chemical Treatment System”) located on the Harmar CRDA prior to discharge to Guys Run. Discharge of the treated effluent is authorized by SMP No. 02860201 and National Pollution Discharge Elimination System (“NPDES”) Permit No. PA0588407. Unless renewed, SMP No. 02860201 expires on September 26, 2021, and NPDES Permit No. PA0588407 expires on September 26, 2011.

O. The AMD Discharges consist of three separate seeps. Seep #SW-5 emerges at the toe of the slope located along Guys Run Road, northwest of the Acid Pond and is pumped to the Acid Pond. Seep #SW6 emanates from the underdrain at the base of the Harmar CRDA and flows by gravity to the Acid Pond. The third seep emerges at the outslope toe of the Acid Pond adjacent to Guys Run where it is collected and pumped to the Acid Pond. A topographic map depicting the location of the Existing Treatment System and the AMD Discharges and the latitude and longitude coordinates for each discharge and the Treatment System is attached hereto as **Exhibit A**.

A letter dated March 18, 2009, from IPHH to the Department contains a detailed description of the Chemical Treatment System and a list of all equipment, pumps, plumbing, buildings, structures and other personal property which together comprise the Chemical Treatment System. A copy of the letter is attached hereto as **Exhibit A-1**.

P. Raw water quality of the AMD Discharges is set forth in **Exhibit B**.

Q. The current effluent limits for the Harmar CRDA expressed in milligrams per liter (mg/l) as set forth in NPDES Permit No. PA0588407 are as follows:

EFFLUENT DISCHARGE LIMITATIONS

Discharge Parameters	Average Monthly	Maximum Daily	Instantaneous Maximum
Total Iron (Fe)	3.0	6.0	7.0
Total Suspended Solids (TSS)	35.0	70.0	90.0
Total Manganese (Mn)	2.0	4.0	5.0
Total Aluminum (Al)	1.5	3.0	3.75

pH not less than 6.0 standard units or greater than 9.0 standard units at all times

Transfer of Harmar CRDA Permits

R. On or about December 26, 2007, IPHH submitted an application for the transfer of SMP No. 02860201 and NPDES Permit No. PA0588407 (collectively the "Harmar CRDA Permits").

S. IPHH agrees that upon the Department's transfer of the Harmar CRDA Permits from MTI to IPHH, it will have the legal responsibility either to treat in perpetuity or abate the AMD Discharges identified in Paragraph O hereof.

T. In support of the transfer of SMP No. 02860201, IPHH agrees to post a reclamation bond in the amount of \$1,143,312.00 ("Reclamation Bond").

U. In further support of its application for transfer of SMP. No. 02860201, IPHH is willing to establish a post-mining treatment trust with The Clean Streams Foundation, Inc. as an alternative financial assurance mechanism in order to provide for the long term treatment of the AMD Discharges and secure the release of reclamation bonds upon completion of all other reclamation requirements. IPHH is willing to establish the Trust by executing a Participation Agreement with The Clean Streams Foundation, Inc. in accordance with the model Participation Agreement.

V. In order to calculate the present value of the fully funded Trust, the parties have agreed to use re-capitalization and demolition costs generated by the Department's AMDTreat software and actual operation and maintenance ("O&M") costs from past operations where possible, or AMDTreat cost estimates where no existing O&M costs exist. Based on AMDTreat and actual O&M costs from past operations, the current annual treatment cost of operating and maintaining the Existing Chemical Treatment System is \$101,717.00. The present value

recapitalization cost is \$40,655.00. Attached as **Exhibit F** is the AMDTreat Recapitalization Cost Worksheet from the AMDTreat analysis for the Treatment System.

W. Based on the costs and AMDTreat software set forth in Paragraph V above, the parties agree that the present value of the fully funded Trust is \$2,426,760.00. 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 recapitalization costs for the Treatment System.

X. The Department is willing to allow IPHH to deposit an initial payment of \$404,460.00 into the Treatment Trust and complete the funding of the Trust as required under this Consent Order and Agreement, if IPHH provides a written guaranty of IPHH's funding of the Trust in a separate Consent Order and Agreement between the Department and IPHH's parent company.

Y. The parties have discussed the need to obtain accurate and timely information on the costs of operating and maintaining the Treatment System in order to maintain the proper amount of financial assurance. The parties have agreed to use the information and figures which will be provided by the Accounting required by Paragraph 5 hereof to calculate and adjust the proper amount of the Trust as described in Paragraphs 10 and 12 below.

Z. The parties have agreed that following:

- (i) the Department's approval and acceptance of IPHH's Reclamation Bond for the Harmar CRDA,
- (ii) IPHH's execution of a Participation Agreement with The Clean Streams Foundation, Inc. establishing the IPHH Treatment Trust,
- (iii) IPHH's initial payment of \$404,460 into the Trust, and

- (iv) the execution by IPHH's parent company and the Department of a Consent Order and Agreement by which the parent company guarantees IPHH's funding of the Trust ("Guaranty Consent Order and Agreement"),

the Department will transfer the Harmar CRDA Permits to IPHH.

ORDER

After full and complete negotiation of all matters set forth in this Post-Mining Treatment Trust 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 IPHH as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5, 316, 402 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.316, 691.402, 691.611; 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; Section 20 of the Dam Safety Act, 32 P.S. § 693.20, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of IPHH to comply with any term or condition of this Consent Order and Agreement shall subject IPHH to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. IPHH agrees that the findings in Paragraphs A through Z are true and correct and, in any matter or proceeding involving IPHH and the Department, IPHH 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 5 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 IPHH's fiscal year or thirty (30) days after any fiscal year which IPHH 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:

$$\begin{aligned} PV &= (A/[E-I]) + A \\ \text{where: } PV &= \text{Present Value of the O\&M Costs} \\ A &= \text{Current Actual Treatment Cost} \\ E &= \text{Expected annual earnings/Interest Rate (assumed to be} \\ &\quad \text{8.43\% or 0.0843)} \\ I &= \text{Inflation Rate (assumed to be 3.1\% or .031)} \end{aligned}$$

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. Upon the Department's transfer of the Harmar CRDA Permits from MTI to IPHH, IPHH shall either continue treating the AMD Discharges until the raw water meets the current effluent criteria set forth in NPDES Permit PA0588407 or until IPHH abates the AMD Discharges and completes reclamation of the CRDA.

5. Annual Treatment Costs; Records; Factors; Accounting

a. IPHH 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. IPHH 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 January 1st and continue through December 31st of each year, or other fiscal year as IPHH 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 IPHH and authorized to bind IPHH attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

c. IPHH's obligation to keep records and provide the Accounting shall continue for the period during which IPHH is operating the Treatment System.

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

6. Establishment and Initial Funding of IPHH Treatment

On or before April 13, 2009, IPHH shall:

a. Submit the Harmar CRDA Reclamation Bond in an amount and form acceptable to the Department;

b. Establish an irrevocable trust to be known as the IPHH Treatment Trust ("Trust") by executing a Participation Agreement with The Clean Streams Foundation, Inc. The Trust shall secure IPHH's obligation to treat the Harmar CRDA AMD Discharges, including IPHH's obligation to operate and maintain the Existing Chemical Treatment System or a replacement system approved by the Department, in perpetuity, or until water treatment is no longer necessary. The IPHH Treatment Trust shall also secure IPHH's obligation to provide financial resources to the Department and the citizens of the Commonwealth to maintain and operate the Treatment System, and to treat the mine drainage in perpetuity in the event IPHH

becomes unable or unwilling to meet these obligations. The IPHH Treatment Trust shall also provide for the demolition of the Harmar CRDA Treatment System and reclamation of the treatment site should treatment no longer be needed. The Participation Agreement establishing the Trust is attached hereto as **Exhibit C**.

c. 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.

d. Deposit the initial sum of \$404,460.00 into the Primary Trust Account. This sum constitutes a portion of \$2,426,760.00, the current present value of the amount necessary to fully fund the Trust, and includes the current present value of the future operation and maintenance of the Treatment System and the current amount needed to finance anticipated and periodic capital expenditures for the Treatment System, and

e. Provide the Department with a copy of the Guaranty Consent Order and Agreement approved by the Department and executed by IPHH's parent company pursuant to which IPHH's parent company guarantees IPHH's funding of the Trust

7. Transfer of Harmar CRDA Permits

Upon the Department's receipt of notification of IPHH's establishment and initial funding of the IPHH Treatment Trust, IPHH's posting of the Harmar CRDA Reclamation Bond as approved by the Department, and IPHH's submittal of a Guaranty Consent Order and Agreement approved by the Department and signed by IPHH's parent company, the Department will transfer the Harmar CRDA Permits to IPHH.

8. Ongoing Payments to the Primary Trust Account

IPHH shall contribute the balance of the present value of the Trust in five (5) installment payments in the following amounts in accordance with the following schedule of payments:

- a. Installment Payment 1 in the amount of \$404,460.00 no later than March 31, 2010.
- b. Installment Payment 2 in the amount of \$404,460.00 no later than March 31, 2011.
- c. Installment Payment 3 in the amount of \$404,460.00 no later than March 31, 2012.
- d. Installment Payment 4 in the amount of \$404,460.00 no later than March 31, 2013.
- e. Installment Payment 5 in the amount required to fully fund the present value of the Treatment Trust as re-calculated by the Department in accordance with the Formula no later than March 31, 2014.

9. 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, 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 IPHH. 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 & 3 on **Exhibit D**.
- c. If the Primary Trust Valuation is less than or equal to the Primary Target Valuation, but greater than or equal to the Primary Basis Valuation, then no Distribution Payment shall be made and no additional contribution shall be required. This provision is depicted graphically as Point 4 on **Exhibit D**.

d. If the Primary Trust Valuation is less than the Primary Basis Valuation, then IPHH 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 15.a. This amount is depicted graphically as points 5 & 6 on **Exhibit D**. This provision does not apply until IPHH has fulfilled its obligations to make ongoing payments under Paragraph 8.

10. 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% 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 E** is a graphical depiction of the adjustment.

11. Distribution Payments for Adjustments to the Primary Target Valuation

a. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 10. above is greater than the Primary Trust Valuation, no distribution payment shall be made under this paragraph.

b. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 8. above is based on a reduced Actual Treatment Cost, and the Primary Trust Valuation is greater than the newly calculated Primary Target Valuation, then a Distribution Payment shall be made to IPHH. 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:

$$\begin{aligned} DP &= TR (1 - (\text{new ATC} / \text{prior ATC})) \\ \text{Or} \\ DP &= TR - \text{new TV} \end{aligned}$$

Where: DP = Distribution Payment
TR = Primary Trust Valuation
TV = Primary Target Valuation
ATC = Actual Treatment Cost

12. Capital Improvement Account

a. Assets of the Capital Improvement Account may be comingled 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 component or 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 F**. 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 14. Such recalculation shall be deemed an amendment to **Exhibit F** and this Consent Order and Agreement, and shall be used in making all future calculations involving the Capital Improvement Account.

13. Transfer of Funds to the Capital Improvement Account

If the Primary Trust Valuation after any Distribution Payment under paragraph 9 above is greater than the Primary Target Valuation, then a transfer of funds to the Capital Improvement Account shall be made if the current balance in the Capital Improvement Account is less than the required balance for the current year as indicated on **Exhibit F**. 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.

14. Distribution Payments from the Capital Improvement Account

a. A distribution payment shall be made to IPHH any time a planned capital replacement is made as indicated on **Exhibit F**. 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 F**, 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 15. 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.

15. 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 IPHH's obligation to make a contribution payment under Paragraph 9.d. This amount is depicted graphically at Point 5 on **Exhibit D**. However, the amount of surplus funds transferred to the Primary Trust Account may exceed IPHH's obligation under Paragraph 9.d. 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 D**.

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

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by IPHH 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 IPHH 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.

16. New Harmar Refuse Dam Permit

Within one hundred eighty (180) days of the date of this Consent Order and Agreement, IPHH shall submit to the Department a complete permit application for a new permit authorizing IPHH's proposed modifications to the Harmar Refuse Bank Dam pursuant to the Dam Safety Act. During the period of time, if any, between the transfer of the Harmar CRDA Permits from MTI to IPHH and the Department's issuance to IPHH of a new dam permit for the Harmar Refuse Bank Dam, IPHH shall operate and maintain the Harmar Refuse Bank Dam in accordance with existing Dam Permit No. D02-053A, the Dam Safety Act and the rules and regulations promulgated under the Dam Safety Act.

17. Real and Personal Property

a. No later than sixty (60) days after the establishment of the Treatment Trust, IPHH shall convey to the Trust, its agents, contractors, successors and assigns, an easement to provide access to all real property necessary to operate, maintain and construct or reconstruct the Harmar CRDA Treatment System.

b. No later than sixty (60) days after the establishment of the Trust, IPHH shall convey the personal property identified in Paragraph 17.a. above to the Trust in accordance with the terms of the Participation Agreement.

18. Public Liability Insurance

a. IPHH shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the Treatment System and the real and personal property which are identified in the Post Mining Treatment

Trust Agreement as part of the Trust Principal. IPHH shall also provide fire damage insurance in an appropriate amount. The Trustee and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policy.

b. In addition to the requirements of Paragraph 18.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 per occurrence and \$1,000,000 in the aggregate. The insurance shall include a rider requiring the insurer to notify the Department thirty (30) days prior to termination or failure to renew or any change that is not in accordance with the requirements of 25 Pa. Code § 86.168. Proof of insurance shall consist of a certificate of insurance filed annually with the Department which certifies IPHH has a public liability insurance policy in force meeting the requirements of this Paragraph.

19. Annual Requirements

a. The parties will meet on or before the 30th 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 Harmar CRDA Treatment System 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 IPHH 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 IPHH Treatment Trust; and (v) to address any other issues that may concern this Consent Order and Agreement or its implementation.

b. IPHH 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).

20. IPHH's Continuing Obligation

Neither IPHH's agreement to fund the IPHH Treatment Trust nor the full or partial funding of the IPHH Treatment Trust, nor the exhaustion of the IPHH Treatment Trust shall in any way limit IPHH's obligation to operate the Harmar CRDA Treatment System and to treat the AMD Discharges covered by this Consent Order and Agreement in a manner that meets the effluent limitations described in Paragraph Q above. Furthermore, exhaustion of the IPHH Treatment Trust shall not excuse IPHH from IPHH's obligation to adequately treat or to abate the AMD Discharges.

21. Stipulated Civil Penalties

a. In the event IPHH fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, IPHH shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$100.00 per day for each violation.

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

District Mining Manager
Department of Environmental Protection
Greensburg District Mining Office
8205 Route 819
Greensburg, PA 15601

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

22. Additional Remedies

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

23. Reservation of Rights

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

24. Liability of IPHH

IPHH 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.

IPHH also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

25. Transfer of Harmar CRDA

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 Harmar CRDA or any part thereof.

b. If IPHH intends to transfer any legal or equitable interest in the Harmar CRDA which is affected by this Consent Order and Agreement, IPHH 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 (Department of Environmental Protection, Greensburg District Mining Office, 8205 Route 819, Greensburg, PA 15601, 724-925-5500) and the District Mining Manager identified in Paragraph 26 below of such intent.

26. Modification or Termination of IPHH's Duties and Obligations to Treat AMD Discharges Covered Under This Consent Order and Agreement

a. Except as provided below, the duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by another entity's assumption of responsibility for the treatment of the AMD Discharges covered under this Consent Order and Agreement.

b. If IPHH negotiates an agreement with an entity to assume full responsibility for the treatment of the AMD Discharges covered under this Consent Order and Agreement, the Department will agree to modify or terminate some or all of IPHH's duties and obligations under this Consent Order and Agreement provided:

- i. the Treatment Trust established by IPHH pursuant to Paragraph 6. hereof is funded in accordance with the schedule set forth in Paragraph 8 hereof and all other terms and provisions of this Consent Order and Agreement;
- ii. the entity who agrees to assume perpetual liability for the treatment of the AMD Discharges covered under this Consent Order and Agreement successfully procures all permits necessary from the Department to treat said AMD Discharges; and
- iii. the entity who assumes perpetual liability for the treatment of the AMD Discharges covered under this Consent Order and Agreement establishes a trust or alternate financial assurance mechanism approved by the Department, and funds the trust or alternative financial assurance mechanism to the satisfaction of the Department.

c. In order to be effective, any modification or termination of IPHH's duties and obligations under this Consent Order and Agreement by the Department must be in writing.

d. Upon IPHH's satisfaction of the requirements set forth in Paragraph 26.b. above, pursuant to Article Thirteen (Irrevocability and Termination) of the Clean Streams Foundation's Declaration of Trust and the Participation Agreement, the Department will determine if the IPHH Treatment Trust is no longer required and if it is not, request the Trustee to refund the residuum of the IPHH Treatment Trust to IPHH.

e. In the event the Department refuses to modify or terminate some or all of IPHH's duties and obligations in accordance with the provisions of Paragraph 26.b. above, IPHH may initiate the following dispute resolution procedures.

- i. IPHH shall provide written notice to the Department within 10 days of the refusal. The parties will endeavor to reach agreement as to the matter for an additional 30 days.
- ii. If the parties are unable to reach agreement within 15 days after the end of such 30 day period, IPHH may raise objections to the Department's refusal to the Deputy Secretary for Mineral Resources Management ("Deputy Secretary") by written notice. The Deputy Secretary shall determine if the Department's refusal

to modify or terminate IPHH's duties and obligations is inconsistent with the provisions of Paragraph 26.b. above, within 15 days of such written notice.

- iii. The determination by the Deputy Secretary provided for in Paragraph 26. e.ii. above, shall be appealable to the Environmental Hearing Board. IPHH and the Department will request the Environmental Hearing Board to handle any appeal that is filed pursuant to this paragraph on an expedited basis.

27. Correspondence with Department

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

District Mining Manager
Department of Environmental Protection
Greensburg District Mining Office
8205 Route 819
Greensburg, PA 15601
Telephone: (724) 925-5500
Facsimile: (724) 925-5557

28. Correspondence with IPHH

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

Vice President – Environment, Health and Safety
IP Harmar Holdings, LLC
2929 Allen Parkway, Suite 2200
Houston, TX 77019
Telephone: (713) 580-6368
Facsimile: (713) 580-6320

IPHH 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.

29. Force Majeure

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

30. 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.

31. 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.

32. 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.

33. Modifications

Except as provided in Paragraph 11, 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.

34. 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.

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

36. Successors

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

IPHH 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.

37. Counterpart Signatures

The parties agree to execute this Consent Order and Agreement by counterpart signatures transmitted via facsimile.

38. Execution of Agreement

This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Facsimile signatures shall be valid and effective.

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 IPHH certify under penalty of law, as provided by 18 Pa.C.S. § 4904, that it is authorized to execute this Consent Order and Agreement on behalf of IPHH; that IPHH consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that IPHH 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 IPHH's attorneys certifies only that the agreement has been signed after consulting with counsel.

FOR IP HARMAR HOLDINGS, LLC:

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



David A. Kellermeyer
Vice President, Environment,
Health and Safety

Joel Q. Pontorero
District Mining Manager
Greensburg District Mining Office



David R. Roth
Secretary

Gail A. Myers
Assistant Counsel
Southwest Region OCC

Harry F. Klodowski, Esquire
Attorney for IP Harmar Holdings, LLC

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FOR IP HARMAR HOLDINGS, LLC:

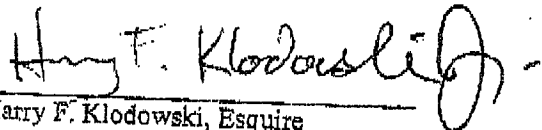
FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

 David A. Kellerneyer
 Vice President, Environment,
 Health and Safety

 Joel Q. Pontorero
 District Mining Manager
 Greensburg District Mining Office

 David R. Roth
 Secretary

 Gail A. Myers
 Assistant Counsel
 Southwest Region OCC



 Harry F. Klodowski, Esquire
 Attorney for IP Harmar Holdings, LLC

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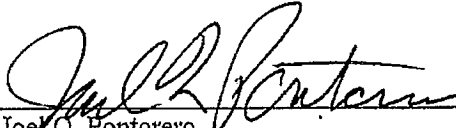
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David A. Kellermeyer
Vice President, Environment,
Health and Safety

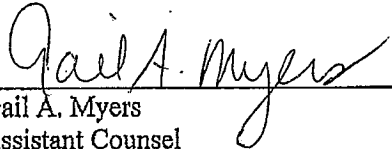
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