

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

| | | |
|--------------------------------|---|---|
| Keystone Coal Company | : | SMP No. 14860103 (Litke 2) |
| 1375 Jackson Street, Suite 401 | : | SMP No. 14743007 (Hall Mine) |
| Fort Myers, FL 33901-2841 | : | Curtin and Snow Shoe Townships |
| | : | Centre County |
| | : | Alternative Financial Assurance Mechanism |

POST-MINING TREATMENT TRUST
CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 26th day of June 2009, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Keystone Coal Company ("Keystone").

A. The Department is the agency with authority to administer and enforce the Surface Mine 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 ("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"); Section 1917-A of the Administrative Code, Act of April 9, 1929, P. L. 177, *as amended*, 71 P.S. §510-17, and the rules and regulations adopted thereunder.

B. Pursuant to Section 4(d.2) of the Surface Mining Act, 52 P.S. § 1396.4(d.2), the Department may establish alternative financial assurance mechanisms which shall achieve the objectives and purposes of the bonding program. These mechanisms may include, but are not

limited to, the establishment of a site-specific trust funded by the operator for the treatment of post-mining discharges of mine drainage. The post-mining treatment trust being established as required by this Consent Order and Agreement through the accompanying Post-Mining Treatment Trust 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. Keystone is a Pennsylvania corporation with an address of 1375 Jackson Street, Suite 401, Fort Myers, Florida 33901-2841. Keystone was engaged in surface mining of coal in Pennsylvania and was authorized to mine coal at the Litke 2 Mine located on roughly 85.2 acres in Curtin Township, Centre County, pursuant to Surface Mining Permit ("SMP") No. 14860103, and the Hall Mine located on roughly 190.8 acres in Snowshoe Township, Centre County, pursuant to SMP No. 14743007.

D. Thomas L. Scholl is the owner and sole officer of Keystone.

LITKE 2

E. SMP No. 14860103 was originally issued on April 14, 1987, to Lobb Mining Company ("Lobb Mining"). Lobb Mining conducted coal removal operations at the Litke 2 Mine from April 14, 1987, until October 20, 1989.

F. Upon termination of coal removal operations in October 1989, Lobb Mining backfilled and reclaimed the Litke 2 Mine site. Lobb Mining's remaining obligation at the Litke 2 Mine was continued treatment of a post-mining discharge of acid mine drainage ("AMD") identified as TS-1. Treatment of TS-1 is expected to continue indefinitely.

G. TS-1 is located approximately 30 feet below the toe of spoil in the southwest corner of the permit. A topographic map depicting the location of TS-1 is attached hereto as **Exhibit A**. The coordinates for TS-1 are: Latitude: 41 degrees, 6 minutes and 27 seconds; Longitude: 77 degrees, 47 minutes and 44 seconds.

H. On or about October 6, 1994, Lobb Mining began treating TS-1 by means of a chemical treatment system.

I. Following the merger on October 17, 1996, of Lobb Mining and Keystone Coal Company into a single entity called Keystone Coal Company ("Keystone"), SMP Permit 14860103 was revised to identify Keystone as the permittee of the Litke 2 Mine.

J. On April 14, 1997, the Department issued National Pollution Discharge Elimination System Permit ("NPDES") No. PA0115576 (*See* Part A of SMP No. 14860103) to Keystone authorizing the construction and operation of the existing passive treatment system ("Litke 2 Mine Treatment System"). On or about November 1, 2001, Keystone completed the construction of the Litke 2 Mine Treatment System.

K. The Litke 2 Mine Treatment System consists of a 25 foot oxic limestone channel, three synthetically lined Vertical Flow Ponds ("VFPs") and a flushing pond. The TS-1 raw discharge is collected at the mouth of the oxic limestone channel. After flowing through the oxic channel, it is directed through the VFPs and the flushing pond. Treated effluent from the Litke 2 Mine Treatment System is discharged to an unnamed tributary of Beech Creek.

L. NPDES Permit No. PA0115576, which expired on April 14, 2002, contains discharge limitations for iron, manganese, total suspended solids, aluminum, pH, alkalinity and acidity. The effluent limitations applicable to the TS-1 discharge for iron, manganese, suspended solids, pH and alkalinity are those set forth at 25 Pa. Code § 87.102. The NPDES Permit also contains the following effluent limitations expressed in milligrams per liter (mg/l) for aluminum: Average monthly, 2.0 mg/l; maximum daily, 4.0 mg/l and instantaneous maximum, 5.0 mg/l.

M. The raw water quality of the TS-1 discharge is set forth in **Exhibit B**, a compilation dated January 23, 2007 of Department analytical sampling results from September 1994 through April 2006.

HALL MINE

N. The mining permit for the Hall Mine was originally issued on March 28, 1975, as Mine Drainage Permit ("MDP") No. 4774SM6 to Halfway Coal Yard Inc. On January 24, 1985, the permit was reissued as SMP No. 14743007 to Lobb Mining which later changed its name to Lobb Mining Company.

O. On January 24, 1990, the Department issued NPDES Permit No. PA0610691 (*See* Part A of SMP No. 14743007) to Lobb Mining authorizing the discharge of treated acid mine drainage seeps from the active mining operations to Logway Run.

P. Upon termination of coal removal operations in July 1990, Lobb Mining backfilled and reclaimed the surface of the Hall Mine. Lobb Mining's remaining obligation at the Hall Mine was continued treatment of the post-mining AMD discharge identified as MD-14. Treatment of MD-14 is expected to continue indefinitely.

Q. MD-14 is located in the east corner of SMP No. 14743007. The topographic map attached hereto as **Exhibit A** depicts the location of MD-14. The coordinates for MD-14 are:

Latitude: 41 degrees, 5 minutes and 49 seconds; Longitude: 77 degrees, 49 minutes and 30 seconds.

R. Following the merger in 1996 of Lobb Mining and Keystone referenced in Paragraph H hereof, SMP No. 14743007, was revised to identify Keystone as the permittee of the Hall Mine.

S. In 2001, Keystone began treating MD-14 via a passive treatment system that was converted in 2004 to a chemical treatment system.

T. In 2006, Keystone converted the chemical treatment system back to a passive treatment system which is the current Hall Mine treatment system ("Hall Mine Passive Treatment System"). The Hall Mine Passive Treatment System consists of two oxic limestone channels; one that is 200 feet long and one that is 120 feet long, two VFPs and two settling ponds. After collection at the mouth of the first oxic limestone channel (200 foot), the MD-14 raw discharge flows through the channel, the first VFP, a settling pond, a second VFP, a ditch and the second settling pond. After flowing through the second settling pond, the MD-14 discharge is directed through the second oxic limestone channel (120 foot) before finally discharging into Logway Run.

U. NPDES Permit No. PA0610691, which expired on January 24, 1995, contains effluent limits for the MD-14 discharge. The effluent limits for iron, manganese, suspended solids, pH and alkalinity are those set forth at 25 Pa. Code § 87.102.

V. The raw water quality of the MD-14 discharge is set forth in **Exhibit C**, a compilation dated January 23, 2007 of Department analytical sampling results from July 1992 through July 2007.

Keystone's Surface Reclamation Bonds

W. Keystone posted two letters of credit ("LOCs") for the Litke 2 Mine totaling \$80,520.00. The numbers and amounts of the LOCs which are held by First Union Bank are as follows:

| | |
|----------------|-------------|
| LOC #99900HKP9 | \$27,820.00 |
| LOC #9918749B8 | \$52,700.00 |

X. Keystone posted seven LOCs for the Hall Mine totaling \$380,480.00. The numbers and amounts of the LOCS which are also held by First Union Bank are as follows:

| | |
|---------------|--------------|
| LOC#99900GWJ2 | \$9,400.00 |
| LOC#99900GXU6 | \$104,600.00 |
| LOC#99900KPQ5 | \$5,100.00 |
| LOC#99900HJD8 | \$151,380.00 |
| LOC#99900HZY4 | \$34,700 |
| LOC#9900JNA5 | \$72,800.00 |
| LOC#99900CEC6 | \$2,500.00 |

Y. Following the establishment and funding of the Trust pursuant to Paragraphs 5 and 6 hereof, the LOCs identified in Paragraphs W and X will be eligible for release pursuant to 25 Pa. Code §§ 86.170-86.172.

The Post-Mining Treatment Trust for the Litke 2 and Hall Mines

Z. The parties have agreed that the current annual cost of operating and maintaining the Litke 2 Mine Treatment System is \$3,719.00. The present value recapitalization cost is \$7,686.00.

AA. The parties have agreed that the current annual cost to operate and maintain the Hall Mine Treatment System is \$5,957.00. The present value recapitalization cost is \$29,373.00.

AB. Keystone is willing to establish a post-mining treatment trust with the Somerset Trust Company as an alternative financial assurance mechanism in order to provide for the long-term treatment of post-mining discharges and secure the release of the LOCs upon completion of all other reclamation requirements. Keystone agrees to establish the Keystone Treatment Trust by executing a Post-Mining Treatment Trust Agreement with Somerset Trust Company which conforms with the Department's model trust agreement.

AC. The parties have met and discussed the need to obtain accurate and timely information on the costs of operating and maintaining the Litke 2 Mine and Hall Mine Treatment Systems in order to maintain the proper amount of financial assurance. The parties have agreed that the current combined annual costs of operating and maintaining the two Treatment Systems are \$9,676.00 and the ~~current~~ combined present value recapitalization costs are \$37,059.00.

AD. Based on the costs set forth in Paragraph AC above, the parties have agreed that the present value of the fully funded Treatment Trust is \$264,808.00. This sum constitutes the current present value of the estimated future operation and maintenance costs for the Treatment Systems, and the current present value of the estimated future recapitalization costs for the Treatment Systems.

AE. The parties have also agreed to use the information and figures which will be provided by the Accounting required by Paragraph 4 hereof to calculate and adjust the proper amount of the Keystone Treatment Trust as described below in Paragraphs 8 and 10.

Litke 2 and Hall Mine Treatment System Sites

AF. The Litke 2 and Hall Mine Treatment Systems are located on lands owned by the Commonwealth of Pennsylvania, Department of Conservation and Natural Resources ("DCNR"), Bureau of Forestry. The Department intends to negotiate a Memorandum of

Understanding with DNCR that formally authorizes access to the Litke 2 Mine and Hall Mine Treatment System sites by Keystone, the Somerset Trust Company in its capacity as Trustee, and the Successor Trustee, if any, for purposes of operating, maintaining and/or replacing the Treatment Systems.

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 Keystone as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5 of the Clean Streams Law, 35 P.S. § 691.5; Section 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c; Sections 3.1 and 9 of the Coal Refuse Disposal Act, 52 P.S. §§ 30.53a and 30.59; Section 9 of the Subsidence Act, 52 P.S. § 1409.9, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of Keystone to comply with any term or condition of this Consent Order and Agreement shall subject Keystone to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings.

a. Keystone agrees that the findings in Paragraphs A through AF are true and correct and, in any matter or proceeding involving Keystone and the Department relating to this Consent Order and Agreement, Keystone shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. Definitions.

a. Accounting. The accounting required by Paragraph 4 of this Agreement.

b. Actual Treatment Cost. The average of three consecutive years of the costs and expenses of treatment, calculated by using the Accountings for those three years.

c. Annual Anniversary Date. Thirty days after the last day of Keystone's fiscal year or thirty days after the last day of any fiscal year which Keystone 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 | = | $(A/[E-I]) + A$ |
| 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% or 0.0843) |
| | I | = | Inflation Rate (assumed to be 3.1% or 0.031) |

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. Keystone 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. Keystone shall keep separate records for the Litke 2 Mine and Hall Mine Treatment Systems.

c. Keystone 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 1 and continue through December 31 of each year, or other fiscal year as Keystone 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 Keystone and by the President of Keystone attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

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

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

5. Treatment Trust.

a. Keystone shall establish an irrevocable trust to be known as the Keystone Treatment Trust ("Keystone Treatment Trust") by executing a Post-Mining Treatment Trust Agreement with Somerset Trust Company. The Keystone Treatment Trust shall secure Keystone's obligation to treat discharges TS-1 and MD-14, including its legal obligation to operate and maintain the Treatment Systems necessary to treat said discharges, in perpetuity, or until water treatment is no longer necessary. The Keystone Treatment Trust shall also secure Keystone's obligation to provide financial resources to the Department and the citizens of the Commonwealth sufficient to operate and maintain the Treatment Systems and to treat the mine drainage in perpetuity in the event Keystone becomes unable or unwilling to meet these obligations. The Keystone Treatment 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 Keystone Treatment Trust is attached as **Exhibit D**.

b. Keystone shall establish within the Keystone Treatment 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. Upon execution of this Consent Order and Agreement, Keystone shall deposit the amount of Two Hundred Sixty Four Thousand Eight Hundred Eight Dollars (\$264,808.00) into the Primary Trust Account. This sum represents the current present value of the amount necessary to fully fund the Treatment Trust and includes the current present value of the future operation and maintenance of the Treatment Systems and the current amount needed to finance anticipated and periodic capital expenditures for the Treatment Systems.

b. The value; i.e. Primary Target Valuation, of the fully funded Treatment Trust at the end of each year from 2008 to 2041, assuming annual growth of 8.43%, inflation of 3.1%, and no change in operating and maintenance costs, is set forth in **Exhibit E**.

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 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 Keystone. 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 F**.

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 F**.

d. If the Primary Trust Valuation is less than the Primary Basis Valuation, then Keystone 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 F**.

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% or less than or equal to 90% percent of the Calculated Treatment Cost, the Department will calculate a new Primary Basis Valuation using the Formula and the newly determined Actual Treatment Cost. A new Primary Target Valuation will then be determined by calculating 116% percent of the new Primary Basis Valuation. **Exhibit G** is a graphical depiction of the adjustment.

9. Distribution Payments for Adjustments to the Primary Target Valuation.

a. If the newly calculated Primary Target Valuation, which has been adjusted under Paragraph 8 above, is greater than the Primary Trust Valuation, no distribution payment shall be made under this paragraph.

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 Keystone. 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:

$$\text{Or: } DP = TR (1 - (\text{new ATC} / \text{prior ATC}))$$

Where:

| | | |
|-----|---|--------------------------|
| DP | = | TR - new TV |
| DP | = | Distribution Payment |
| TR | = | Primary Trust Valuation |
| TV | = | Primary Target Valuation |
| ATC | = | Actual Treatment Cost |

10. Capital Improvement Account.

a. Assets of the Capital Improvement Account may be commingled with assets of the Primary Trust Account for purposes of investment, but must be accounted for and reported separately as if they are assets of a separate and distinct fund.

b. The required balance in the Capital Improvement Account has been determined by use of the AMDTreat Recapitalization tool based on the following methodology. For each planned capital replacement activity, the current cost and the projected year of replacement are determined. The future cost of each replacement activity is calculated by compounding the present cost at a rate of 3.1% annually. The year in which each replacement activity will be needed is projected based on typical component life cycles. Assuming a net rate of return on investment of 8.43%, the initial amount of the Capital Improvement Account must

be sufficient to cover all anticipated expenditures for capital replacement activities for a 75-year period.

c. A schedule for the Capital Improvement Account balance and projected capital expenditures is made a part of this agreement as **Exhibit H**. The required balance in the Capital Improvement Account may be recalculated on an annual basis or each time a Distribution Payment is contemplated under Paragraph 12. Such recalculation shall be deemed an amendment to **Exhibit H** 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. If the Primary Trust Valuation after any Distribution Payment under Paragraph 7 above, is greater than the Primary Target Valuation, then a transfer of funds to the Capital Improvement Account shall be made if the current balance in the Capital Improvement Account is less than the required balance for the current year as indicated on **Exhibit H**. 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 Keystone any time a planned capital replacement is made as indicated on **Exhibit H**. 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 H** or in an amount equal to the difference between the

current balance in the Capital Improvement Account and the required balance after the capital improvement Distribution Payment, whichever is less.

b. Each time a Distribution Payment from the Capital Improvement Account is contemplated under this Paragraph or Paragraph 13 below, the required balance in the Capital Improvement Account must be recalculated to determine the required balance after the proposed Distribution Payment, and to determine the appropriate Distribution Payment.

13. Miscellaneous Distribution Payments from the Primary Trust Account and the Capital Improvement Account.

If the Primary Trust Valuation exceeds the Primary Target Valuation in the Primary Trust Account, or if the balance in the Capital Improvement Account exceeds the required balance as indicated on **Exhibit H**, 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 Keystone's obligation to make a contribution payment under Paragraph 7.d. This amount is depicted graphically at Point 5 on **Exhibit F**. However, the amount of surplus funds transferred to the Primary Trust Account may exceed Keystone's obligation under Paragraph 7.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 F**.

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

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by Keystone 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 Keystone 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. Permit Renewal Requirements.

a. No later than sixty (60) days after the execution of this Consent Order and Agreement, Keystone shall submit complete permit applications to renew:

- i. the Litke 2 Mine SMP No. 14860103 and the Litke 2 Mine NPDES Permit No. PA0115576.
- ii. the Hall Mine SMP No. 14743007 and the Hall Mine NPDES Permit No. PA0610691.

b. Pending renewal by the Department of the permits referenced in Paragraph 14.a above, Keystone shall at all times operate the Litke 2 Mine and Hall Mine Treatment Systems in accordance with the expired permits identified above in Paragraph 14.a.

15. Public Liability Insurance.

a. Keystone shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the Treatment Systems and the real and personal property which is identified in the Post-Mining Treatment Trust Agreement as part of the trust principal. Keystone shall also provide fire damage insurance for all personal property, if any, 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 insurance requirements of Paragraph 15.a. the public liability insurance shall be written on an occurrence basis and shall provide bodily injury and property damage coverage in the minimum amounts of \$500,000 per person and \$1,000,000 per occurrence. The insurance shall include a rider requiring the insurer to notify the Department 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 Keystone has a public liability insurance policy in force meeting the requirements of this Paragraph.

16. Annual Requirements.

a. The parties will meet on or before the 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 Treatment Systems and any change in the fiscal year; (iii) to resolve any issues which arise as a result of that change or the performance of the Keystone 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 Keystone Treatment Trust; and, (v) to address any other issues that may concern this Consent Order and Agreement or its implementation.

b. Keystone shall provide annually to the Department, on forms furnished by the Department, the information required by 25 Pa. Code §§ 86.62(b) and (c) (relating to identification of interests).

17. Keystone's Continuing Obligation. Neither Keystone's agreement to fund the Keystone Treatment Trust nor the full nor partial funding of the Keystone Treatment Trust, nor the exhaustion of the Keystone Treatment Trust shall in any way limit Keystone's obligation to

operate the Treatment Systems and to treat the discharges covered by this Consent Order and Agreement in a manner which meets the effluent limitations described by Paragraphs L and U above. Furthermore, exhaustion of the Keystone Treatment Trust shall not excuse Keystone from Keystone's obligation to adequately treat or to abate the Litke 2 Mine and the Hall Mine AMD discharges.

18. Stipulated Civil Penalties.

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

District Mining Manager
Department of Environmental Protection
Moshannon District Mining Office
186 Enterprise Drive
Philipsburg, PA 16866

c. Any payment under this paragraph shall neither waive Keystone's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Keystone's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Keystone's liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

19. Additional Remedies.

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

21. Liability of Keystone. Keystone 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. Keystone 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 Litke 2 Mine or the Hall Mine or any part thereof.

b. If Keystone intends to transfer any legal or equitable interest in the Litke 2 Mine or the Hall Mine which is affected by this Consent Order and Agreement, Keystone 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, District Mining Office, 8205 Route 819, Greensburg, PA 15601, Telephone: (724) 925-5500; Facsimile: (724) 925-5557 and the District Mining Manager identified in Paragraph 23 of such intent.

c. The Department in its sole discretion may agree to modify or terminate Keystone's duties and obligations under this Consent Order and Agreement upon transfer of the Litke 2 Mine or the Hall Mine. Keystone waives any right that it may have to challenge the Department's decision in this regard.

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

District Mining Manager
Department of Environmental Protection
Moshannon District Mining Office
186 Enterprise Drive
Philipsburg, PA 16866
Telephone: 814-342-8200
Facsimile: 814 342-8216

24. Correspondence with Keystone. All correspondence with Keystone concerning

this Consent Order and Agreement shall be addressed to:

Thomas Scholl, President
Keystone Coal Company
1375 Jackson Street, Suite 401
Fort Myers, FL 33901-2841
Telephone: 239-848-8408
Facsimile: 239-337-2514

Keystone 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 Keystone 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 Keystone's control and which Keystone, by the exercise of all reasonable diligence, is unable to prevent, then Keystone 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 Keystone's control. Keystone'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. Keystone 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 Keystone 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. Keystone'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 Keystone and other information available to the Department. In any subsequent litigation, Keystone shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

26. Severability. The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

27. Entire Agreement. This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

28. Attorney Fees. The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

29. Modifications. Except as provided in Paragraph 10., no changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

30. Titles. A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but: shall not be treated as controlling.

31. Decisions under Consent Order. Any decision which the Department makes under the provisions of this Consent Order and Agreement is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection, which Keystone may have to a decision, will be preserved until the Department enforces this Consent Order and Agreement.

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

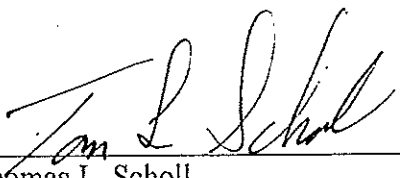
Keystone shall notify the Department, without delay, of any successor as defined herein and shall provide such successor with a copy of this Consent Order and Agreement.

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

FOR KEYSTONE COAL COMPANY:

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



Thomas L. Scholl
Owner, President, Secretary-Treasurer

Michael W. Smith
District Mining Manager
Moshannon District Mining Office



Gregg M. Rosen, Esquire
Attorney for Keystone Coal Company


Gail A. Myers
Assistant Counsel
Southwest Region OCC

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

FOR KEYSTONE COAL COMPANY:

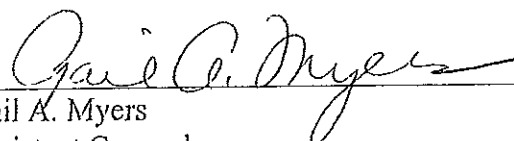
FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

Thomas L. Scholl
Owner, President, Secretary-Treasurer



Michael W. Smith
District Mining Manager
Moshannon District Mining Office

Gregg M. Rosen, Esquire
Attorney for Keystone Coal Company



Gail A. Myers
Assistant Counsel
Southwest Region OCC

EXHIBITS

- Exhibit A: Topographic map showing locations of TS-1 (Litke 2 Mine) and MD-14 (Hall Mine)
- Exhibit B: Raw water quality of TS-1 (Litke 2 Mine)
- Exhibit C: Raw water quality of MD-14 (Hall Mine)
- Exhibit D: Post-Mining Treatment Trust Agreement (Paragraph 5)
- Exhibit E: Value of the Fully Funded Treatment Trust under Certain Assumptions from 2007 to 2040 As Discussed in Paragraph 6
- Exhibit F: Graphical Depiction of Distribution or Contribution Payment Amounts Discussed in Paragraph 7
- Exhibit G: Adjustment to the Primary Target Valuation for Deviations between Actual Treatment Cost and Calculated Treatment Cost Discussed in Paragraph 8
- Exhibit H: Required Annual Balance of Capital Improvement Account for a 75-Year Period Discussed in Paragraph 10

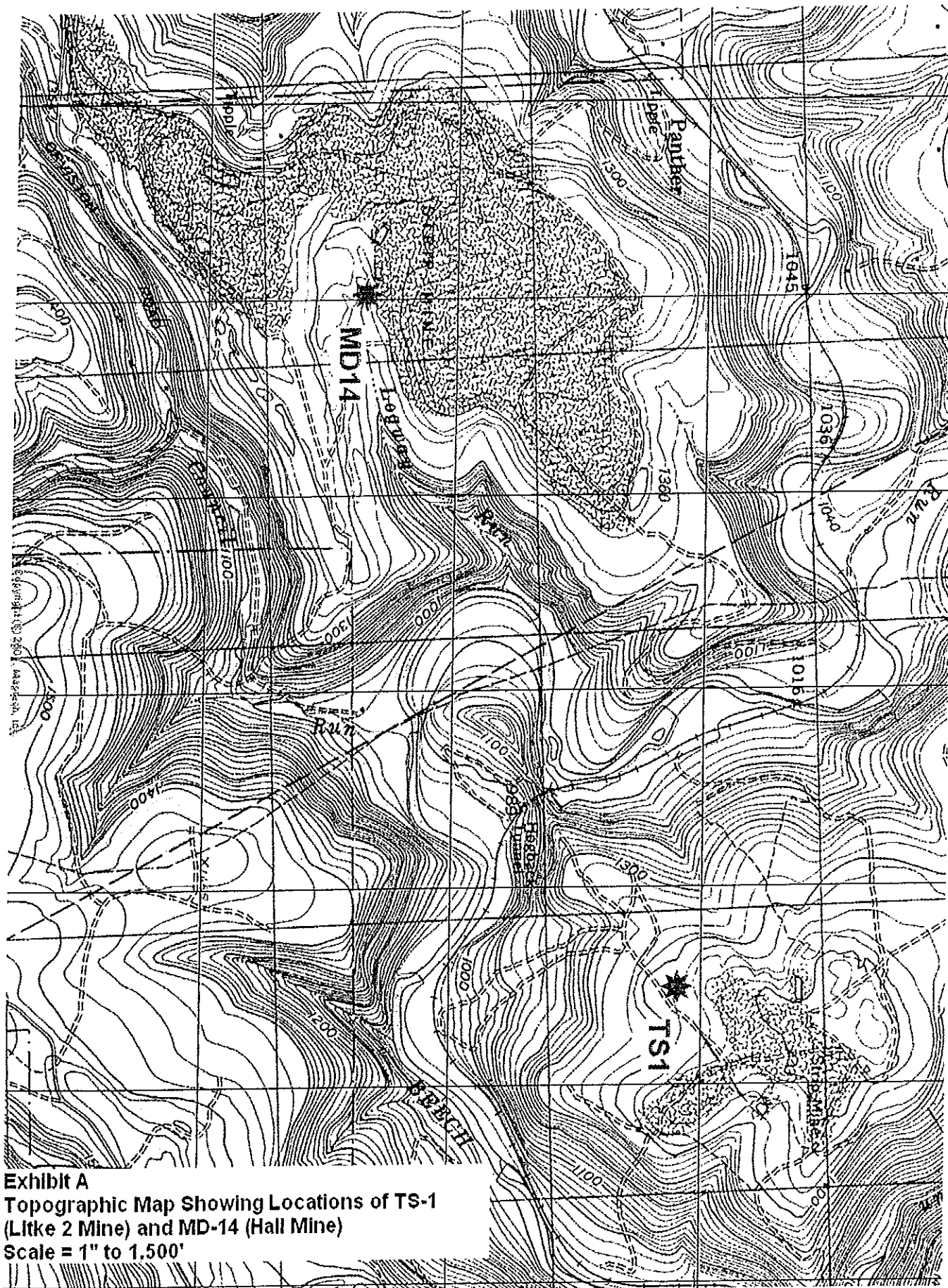


Exhibit A
Topographic Map Showing Locations of TS-1
(Litke 2 Mine) and MD-14 (Hall Mine)
Scale = 1" to 1,500'

Concentrations And Loads Report For 14860103 / LOBB MINING CO/LITKE #2

| Sample Information | | Number Of Samples: | |
|----------------------|--------|--------------------|---------------|
| Monitoring Point ID: | Usable | Dry : | No Flow Data: |
| TSI | 22 | 16 | 1 |
| | | Excluded: | Total: |
| | | 1 | 35 |

| Flow Information (GPM) | | Concentration Information | |
|------------------------|-----------|---------------------------|-----------|
| Max : | Average : | Max : | Average : |
| 150.00 | 15.00 | 614.00 | 203.89 |
| | | Median : | Median : |
| | | 1.50 | 110.30 |
| Acidity (mg/l-CaCO3): | | Alkalinity (mg/l): | |
| | | 0.00 | 0.00 |
| Iron (mg/l): | | Manganese (mg/l): | |
| 5.00 | | 0.60 | 0.30 |
| Aluminum (mg/l): | | pH: | |
| 86.40 | | 7.48 | |
| SO4: | | | |
| 1,683.00 | | | |

| Load Information | | Load Information | |
|-----------------------|-----------|----------------------|-----------|
| Max : | Average : | Max : | Average : |
| 177.44 | 30.74 | 1,683.00 | 613.29 |
| Median : | Median : | | |
| 2.40 | 2.40 | | 300.10 |
| Acidity (Lbs/Day): | | Acidity (Lbs/Day): | |
| | | 0.00 | 0.00 |
| Alkalinity (Lbs/Day): | | Iron (Lbs/Day): | |
| 0.00 | | 0.55 | 0.01 |
| Iron (Lbs/Day): | | Manganese (Lbs/Day): | |
| 15.98 | | 3.04 | 0.21 |
| Aluminum (Lbs/Day): | | Aluminum (Lbs/Day): | |
| 13.71 | | 2.58 | 0.21 |
| SO4 (Lbs/Day): | | SO4 (Lbs/Day): | |
| 461.95 | | 90.16 | 7.61 |

Concentrations And Loads Report For 14743007 / HALL MINE

| Sample Information | | Number Of Samples: | |
|------------------------------------|----------|--------------------|---------------|
| Monitoring Point ID: | Usable | Dry : | No Flow Data: |
| MD-14 | 30 | 9 | 1 |
| | | | Excluded: 4 |
| | | | Total: 38 |
| Flow Information (GPM) | | | |
| | Max : | Average : | Median : |
| | 100.00 | 38.56 | 40.00 |
| Concentration Information | | | |
| | Max : | Average : | Median : |
| Acidity (mg/l-CaCO ₃): | 688.00 | 376.53 | 338.70 |
| Alkalinity (mg/l): | 10.40 | 0.35 | 0.00 |
| Iron (mg/l) | 195.00 | 81.14 | 60.80 |
| Manganese (mg/l): | 134.00 | 71.23 | 63.75 |
| Aluminum (mg/l): | 21.90 | 11.39 | 10.04 |
| pH: | 4.70 | 3.72 | 3.60 |
| SO ₄ : | 3583.00 | 2228.32 | 2043.50 |
| Load Information | | | |
| | Max : | Average : | Median : |
| Acidity (Lbs/Day): | 416.20 | 176.98 | 187.19 |
| Alkalinity (Lbs/Day): | 12.60 | 0.42 | 0.00 |
| Iron (Lbs/Day): | 101.32 | 33.81 | 19.85 |
| Manganese (Lbs/Day): | 82.66 | 34.15 | 30.72 |
| Aluminum (Lbs/Day): | 12.67 | 5.17 | 5.04 |
| SO ₄ (Lbs/Day): | 3,032.06 | 1,084.61 | 933.20 |

Exhibit C
Raw water quality of MD-14 (Hall Mine)

IN THE MATTER OF:

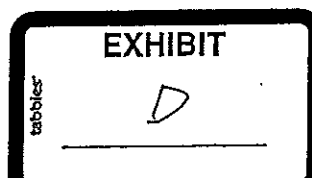
Keystone Coal Company :
Treatment Trust :
Keystone Coal Company :
1375 Jackson Street, Suite 401 :
Fort Myers, FL 33901-2841 :

POST-MINING DISCHARGE TREATMENT TRUST AGREEMENT

This Trust Agreement (“Trust” or “Agreement”) entered into this day of _____, 2009, by and among Keystone Coal Company, with its principal place of business at 1375 Jackson Street, Suite 401, Fort Myers, Florida 33901-2841 (“Settlor”), and the Somerset Trust Company, with its principal place of business at 151 West Main Street, P.O. Box 777, Somerset, PA 15501 and incorporated under the laws of the Commonwealth of Pennsylvania (“Trustee”).

WHEREAS, the Settlor has entered into a Post-Mining Treatment Consent Order and Agreement dated _____, (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 two mine drainage treatment systems (“Treatment Systems”) to treat and otherwise prevent discharges of mine drainage emanating from or hydrologically connected to the Litke 2 Mine and the Hall Mine (“Post-Mining Discharges”);

WHEREAS, Settlor currently operates the following treatment systems (hereinafter referred to as the “Facilities”):



| <u>Treatment Facility</u> | <u>Township</u> | <u>County</u> |
|----------------------------------|-----------------|---------------|
| Litke #2 Mine Treatment Facility | Curtin | Centre |
| Hall Mine Treatment Facility | Snow Shoe | Centre |

WHEREAS, the Litke 2 Mine Treatment Facility consists of a 25 foot oxic limestone channel, three synthetically lined Vertical Flow Ponds (“VFPs”) and a flushing pond. Treated effluent from the Litke 2 Mine Treatment Facility is discharged into an unnamed tributary of Beech Creek;

WHEREAS, the Hall Mine Treatment Facility consists of two oxic limestone channels; one that is 200 feet long and one that is 120 feet long, two VFPs and a settling pond. Treated effluent from the Hall Mine Treatment Facility is discharged into Logway Run.

WHEREAS, the Pennsylvania Surface Mining Conservation and Reclamation Act (“SMCRA”), requires a permittee to post with the Department a bond for each operation conditioned upon the permittee performing all of the requirements of SMCRA, the Clean Streams Law and the Coal Refuse Disposal Control Act, and SMCRA further provides for the bond to be released where all reclamation standards have been satisfied with the exception of consistently meeting mine drainage effluent standards provided the operator has made provisions with the Department for the sound future treatment of the polluttional discharges, 52 P.S. §1396.4(d) and (g);

WHEREAS, the use of a trust fund is authorized as an alternative financial assurance mechanism under provisions of the Pennsylvania SMCRA which contemplate such a trust is for the public purpose of protecting the environment and the health and welfare of the public, without limitation on duration, and is a means which provides for the sound future treatment of polluttional discharges. 52 P.S. §1396.4(d) and (d.2), 25 Pa. Code §86.158(f);

WHEREAS, the Settlor has elected to establish this Trust pursuant to the CO&A to assure funds are available to provide for Settlor's legal obligation to provide funds for the treatment of the post-mining discharges;

WHEREAS, the Settlor, acting through its duly authorized officers or representatives and with the approval of the Department, has selected the Trustee under this Agreement;

WHEREAS, the Trustee has been induced, and has agreed and is willing to perform the duties as are required to be performed pursuant to this Agreement;

WHEREAS, the Trustee is a Pennsylvania chartered or national bank or financial institution with trust powers or a trust company, with offices in Pennsylvania and whose trust activities are examined or regulated by a state or federal agency;

WHEREAS, the Department has joined in this Agreement to indicate its acceptance of the terms and conditions set forth in, as well as the powers and authorities granted by, this Agreement;

WHEREAS, in Paragraph 14 of the CO&A, the Department has stated that pending Keystone's renewal of expired Surface Mining Permits (SMP) Nos. 14860103 and 14743007 and expired National Pollution Disposal Elimination System ("NPDES") Permits Nos. PA0115576 and PA0610691, Keystone is authorized to operate the Treatment Systems pursuant to the expired permits; and

WHEREAS, except as set forth in the CO&A, Settlor represents that, to the best of its knowledge, there are no violations of any environmental law regulating the Facilities or the Properties, as are hereinafter defined, and that the Facilities are operating in compliance with all applicable permits and approvals.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and undertakings of the parties as set forth herein, and with the intention of being legally bound hereby, the parties agree as follows:

ARTICLE ONE

Establishment of Trust

§1.1 The Settlor and the Trustee hereby establish this Trust for the benefit of the Department, or its successor, to be utilized for the primary purpose of addressing environmental obligations related to Settlor's mining activities permitted under SMCRA or the Coal Refuse Disposal Control Act or the Bituminous Mine Subsidence and Land Conservation Act and under the Clean Streams Law which includes providing for the continued operation and maintenance of the Facilities. For purposes of this Agreement, operation includes, but is not limited to, the operation, maintenance and replacement of the currently existing and functioning treatment facilities approved by the Department and any other facilities which may be required in the future.

§1.2 The Settlor and the Trustee intend for the Department to be legal beneficiary of this Trust and to have all rights of a beneficiary under the law, as well as all rights granted under this Trust Agreement. The Department, as beneficiary, shall have access to the Trust as provided herein.

§1.3 The Trust principal shall consist of:

- (a) The initial payment or transfer to the Trustee of the monetary sum of \$264,808.00 by Settlor.
- (b) Such other payment as may be made from time to time by the Settlor.

- (c) Cash, funds or property transferred from any other person to the Trust and accepted by the Trustee as directed by the Department.
- (d) All investments, reinvestments, assets or proceeds attributable to or derived from the items listed in this subparagraph.

§1.4 All of the preceding payments, proceeds and assets referred to in Sections 1.3 hereof shall constitute the Trust principal, and together with all earnings, accretions and profits therefrom, less any payments or distributions made by the Trustee pursuant to the terms of this Trust Agreement, shall constitute the Trust Fund.

§1.5 The Trustee shall establish within the Trust Fund two subaccounts: a subaccount designated as the Primary Trust Account and a subaccount designated as the Capital Improvement Account. The Trustee shall deposit the Trust principal identified in Section 1.3 into the Primary Trust Account. The Trustee shall transfer funds into the Capital Improvement Account from the Primary Trust Account as directed by the Department and shall deposit into the Capital Improvement Account funds received from any person for deposit into this Account. The Capital Improvement Account principal may be commingled with the principal of the Primary Trust Account for purposes of investment, but must be accounted for and reported separately as if they are assets of separate and distinct funds. The Trustee shall manage and make disbursements from the two subaccounts in accordance with the provisions of ARTICLE TWO, Distribution Payments and ARTICLE THREE, Trust Management, as set forth in this Trust Agreement.

§1.6 The Trust Fund and any other real and personal property held by the Trustee pursuant to this Trust Agreement shall not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration, levy or other legal process, either voluntary, involuntary or by

operation of law, by, on behalf of, or in respect of the Settlor and shall not be subject or applied to the debts, obligations or liabilities of the Settlor, including, without limitation, any direct action or seizure by any creditor or claimant under any writ or proceeding at law or in equity. Furthermore, the Settlor shall have no legal title to any part of the Trust Fund. It is the intention of the parties to this Trust Agreement that Settlor's entry into the Trust shall extinguish and remove all of Settlor's interest in the Trust from Settlor's estate under the Bankruptcy Code or similar laws.

§1.7 All payments made to the Trust or deposits into the Trust by the Settlor shall be irrevocable once made, and upon delivery thereof, by or on behalf of the Settlor, all interest of the Settlor therein shall cease and terminate, and no part thereof, nor any income therefrom, shall be used for or devoted to purposes other than for the exclusive benefit of the Department and the Trust as provided herein.

§1.8 The Trust Fund shall be held, administered, invested and reinvested by the Trustee, IN TRUST, as hereinafter provided, and all distributions therefrom shall be made in accordance with the provisions of this Trust Agreement.

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

ARTICLE TWO

Distribution Payments

§2.1 The Trustee shall make distribution payments from the Trust upon the written order of the Department and the Department shall designate the subaccount from which such disbursement payment shall be made. The Department shall have the authority to designate, in writing, any person or entity to receive distribution payments from the Trust. The Trustee shall, upon receipt of written order for distribution payment from the Department, make distribution payments from the Trust as directed in the Department's written order. The Trustee shall be fully protected and entitled to rely upon the written orders of the Department and shall not be liable to any party for acting in accordance with those directions.

§2.2 The Trustee is authorized and shall, upon the written order of the Department, enter into contracts, and take title to easements, rights of way and other property interests and property as necessary to carry out the purposes of the Trust. The Trustee is authorized, upon the written order of the Department, to contract with or otherwise engage the services of, and pay reasonable compensation to, such persons or entities as the Trustee may require to carry out this provision. This authorization is in addition to the other powers granted to the Trustee by this Trust Agreement with regard to the retention and compensation of agents. Any property acquired or services provided under this provision shall not be deemed to be acquired or provided to the Trustee or the Department, but shall be deemed to be acquired or provided on behalf of the Trust, and the Trustee shall not incur any liability under the Trust when acting in accordance with the provisions of this paragraph.

§2.3 Except as provided by this Trust Agreement, no other disposition of monies shall be made unless directed, in writing, by the Department.

ARTICLE THREE

Trust Management

§3.1 The Trustee shall invest and reinvest the principal and income of the Trust and keep the Trust invested as a single fund, without distinction between principal and income. The Trustee shall add to principal any income not distributed pursuant to the provisions of this Agreement.

§3.2 The Trustee shall discharge its investment duty solely in the interest of the Department as beneficiary of this Trust and, subject to section 3.3(i), the Trustee shall seek to manage the Trust with that degree of judgment, skill and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence, who are familiar with such matters, exercise in the management of their own affairs.

§3.3 In order to accomplish the purpose of the Trust as stated in §1.1, the Trustee shall manage and invest the assets of the Trust, as nearly as reasonably possible, in a manner designed to generate a long-term annualized effective rate of return of 8.43% after subtraction of all fees, taxes and expenses. For purposes of investing or reinvesting the assets in the Trust, the Trustee shall have investment discretion subject to the following guidelines:

- (a) The Trustee may purchase shares of any mutual funds or "money market funds which have their assets invested in equity shares or fixed income securities including any mutual fund for which the Trustee or any affiliate may be an advisor, subadvisor, manager, custodian or trustee.
- (b) The Trustee may purchase any equity shares, listed on a national or regional stock exchange or that are capable of being valued in accordance with any other daily-recognized valuation methodology.

- (c) The Trustee may purchase any bonds listed on a national exchange or that are capable of being valued in accordance with any other daily recognized valuation methodology, including, but not limited to, bonds or obligations of any state or municipality, or that are obligations of or are guaranteed by the United States of America.
- (d) The Trustee may invest in any interest bearing bank account or “money market” account.
- (e) The Trustee may sell at public or private sale any shares acquired under this article.
- (f) In regard to any shares or other equity interests the Trustee may hold, the Trustee may join in any merger, reorganization, voting-trust plan or any other concerted action of owners or shareholders.
- (g) The Trustee, in the exercise of its investment powers, may utilize puts and calls, short sales, options and warrants or other investment strategies generally recognized as prudent when utilized to enhance returns, reduce risk or mitigate loss.
- (h) The Trustee may hold cash awaiting investment or distribution for a reasonable period of time, provided however, where possible and consistent with sound investment practices, shall invest such cash in overnight investments.
- (i) The Trustee shall not be responsible for any losses incurred hereunder whether it is due to market fluctuations or otherwise, except in the case of its gross negligence or willful misconduct or that of its agents.

- (j) The Trustee may not invest in high-risk non-transparent investment instruments, such as collateralized debt obligations, credit-default swaps, hedge funds or derivatives.

ARTICLE FOUR

Express Powers of Trustee

§4.1 Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Trust Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the power herein granted.
- (b) To register any securities held in the Trust in its own name or in the name of a nominee and to hold any security in bearer form or book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such

securities are part of the Trust and that such securities are not co-mingled with or made a part of any other account of another customer of the Trustee or the Trustee itself.

- (c) To deposit any cash in the Trust in interest-bearing accounts maintained by the Trustee, to the extent such are insured by an agency of the Federal or State Government or otherwise secured as provided under the laws of the Commonwealth of Pennsylvania.
- (d) To hold title to real and personal property and to generally exercise all rights and privileges appurtenant to any property held by the Trustee as may be necessary to preserve, protect, maintain, operate, transfer, convey or sell *such* property, and to execute and deliver any and all instruments which may be necessary or expedient in any powers granted under this Trust Agreement.
- (e) To purchase public liability insurance and fire insurance, when directed to do so by the Department, to cover the operation, maintenance, improvement and all other activities associated with the real and personal property held by the Trust. The Trustee and the Commonwealth of Pennsylvania shall be listed on the policy as additional insureds. The insurance shall be written on an occurrence basis and shall provide bodily injury and property damage coverage in the amounts of \$500,000 per person and \$1,000,000 per occurrence. The fire insurance shall be in the amount determined by the Department.

ARTICLE FIVE

Advice of Counsel

§5.1 The Trustee may, from time to time, consult with counsel of its own choosing with respect to any question arising as to the construction or interpretation of this Agreement or any action to be taken hereunder. The Trustee shall be protected, to the extent permitted by law, in acting in good faith on the advice of counsel.

§5.2 The Trustee shall not be required to furnish any bond or security in any jurisdiction.

§5.3 No person dealing with the Trust or the Trustee shall be obligated to inquire as to the authority of the Trustee in connection with the acquisitions, investment, management or disposition of the Trust assets or in connection with the exercise of any other power granted under this Agreement.

ARTICLE SIX

Claims

§6.1 The Trustee shall not initiate, terminate, settle, compromise or otherwise adjust claims in favor of or against the Trust without the written consent of the Department.

§6.2 The Trustee shall give prompt written notice to the Department of each claim in favor of or against the Trust, specifying the amount and nature of such claim. The Trustee shall also give prompt written notice to the Department of any controversies, demands, actions, losses, damages, costs or expenses or any other matter which the Trustee believes is likely to give rise to a claim.

§6.3 The Department shall have the right, but not the duty to: (1) direct the Trustee to initiate, terminate, settle, compromise or otherwise adjust claims in favor of or against the Trust, and (2) participate in the prosecution of or defense against, any claim in favor of or against the Trust. To the extent the Department directs the Trustee to assume prosecution or defense, the Trustee shall

retain counsel of the Department's choosing or counsel selected by the Trustee and approved by the Department. If the Department directs the Trustee to assume prosecution or defense of any claim, the Trustee shall prosecute or defend the claim at the expense of the Trust, and the Trustee shall be entitled to assess against the Trust Fund all costs associated with the prosecution or defense. Upon notice to the Trustee that the Department will assume prosecution or defense, the Trustee will not be responsible for the subsequent prosecution or defense nor for any loss ensuing therefrom. If the Department fails to instruct the Trustee with respect to the prosecution or defense of any claim, the Trustee may prosecute or defend any claim at the expense of the Trust, but shall be under no duty to do so, and shall have no liability for its failure or refusal to prosecute or defend the claim if deems such action to be in the best interest of the Trust.

ARTICLE SEVEN

Evaluation and Reports

§7.1 The Trustee shall at least quarterly furnish to the Department and to the Settlor a statement providing an accounting of all transactions involving the Trust and confirming the value of the Trust. Such statement shall value Trust investments at market value, which shall be that market value, determined not more than thirty (30) days prior to the date of statement. Should the Settlor cease to exist or have its surety bonds forfeited, the Trustee is to discontinue providing any such statement to Settlor.

§7.2 The Trustee shall be responsible for the keeping of all appropriate books and records relating to the receipt and disbursement of all monies and assets under this Trust Agreement. In addition, whenever called upon to do so, the Trustee shall exhibit to the Settlor, should the Settlor be in existence, and the Department all documents, instruments or reports relating to the

Trust or the Trust Fund. The Trustee shall also cause to be prepared all income tax returns required to be filed with respect to the Trust and shall execute and file such returns. The Department, upon request, shall furnish the Trustee with such information as may be reasonably required in connection with the preparation of such income tax returns.

ARTICLE EIGHT

Expenses, Taxes and Trustee Compensation

§8.1 Compensation of the Trustee and all other reasonable and customary expenses incurred by the Trustee, including fees for legal services rendered to the Trustee, shall be taken and paid from the Trust at the time that the Trustee shall deem appropriate. Trustee shall be paid a fee, quarterly in arrears based on the schedule of fees attached hereto and marked **Exhibit A**. The Trustee must provide the Department written notice of any proposed future changes of the Trustee's schedule of fees. The Department has thirty (30) days after receipt of the proposed changes to approve or disapprove the proposed changes to the Trustee's schedule of fees.

§8.2 The Trust is intended to be categorized, for federal income tax purposes, as a grantor trust in accordance with and under the provisions of United States Treasury Regulation Section 301.7701-4(e)(1), (2), (3) and (4) and any implementing regulations cited therein or any corresponding successor provision. All federal taxes of any kind that may be assessed or levied against or in respect of the Trust shall be paid by the Settlor and shall not be taken from the Trust. The Trustee shall enter into such Agreements with the Settlor as are necessary to carry out this provision.

- (a) Should it be determined this Trust is taxable for federal income tax purposes and the Settlor fails, refuses or is unable to pay these taxes, the Settlor and Trustee

agree the Department shall have the right to appeal the decision to the appropriate authority. Should the Department not prevail on appeal or should federal law change such that the Trust becomes taxable for federal income tax purposes, then the Department shall have the right, but not the duty, to petition the appropriate judicial forum to reform the Trust to be a federal charitable trust or to take other measures to meet the requirements of federal law such that the Trust would not be taxable for federal income tax purposes. If the Department elects not to exercise its right to petition to reform the Trust or to take measures to meet the requirements of federal law for the Trust to become tax exempt, then the Trustee is empowered with the right to petition the appropriate judicial forum to reform the Trust to be a federal charitable trust for federal income tax purposes.

Notwithstanding any provision of this subsection (a) to the contrary, the Trust may not be reformed such that the purposes and objectives of the Trust cannot be met or that would alter any of the rights, obligations and duties of the Settlor as are provided in this Trust Agreement and in the CO&A between the Department and the Settlor executed the same day as this Trust Agreement.

§8.3 The Trust is intended to be categorized, for state income tax purposes, as a Pennsylvania charitable trust.

- (a) Should it be determined this Trust is not a charitable trust or Pennsylvania law changes so this Trust becomes taxable for Pennsylvania income tax purposes, then Settlor agrees that Settlor will contribute to the Trustee the amount of the Pennsylvania income tax assessed or levied against or in respect of the Trust. The Trustee shall use the money contributed by the Settlor to pay the income tax

assessed or levied against or in respect of the Trust. The money to pay the tax assessed or levied against the Trust shall not be taken from the Trust. The Trustee shall enter into such agreements with the Settlor as are necessary to carry out this provision.

- (b) If, at any time, it is determined by a taxing authority with jurisdiction in the matter that this Trust is not a Pennsylvania charitable trust, the Settlor and the Trustee agree the Department shall have the right to appeal the decision to the appropriate authority. Should the Department not prevail on appeal or should Pennsylvania law change such that the Trust becomes taxable for Pennsylvania income tax purposes, then the Department shall have the right, but not the duty, to petition the appropriate judicial forum to reform the Trust to be a Pennsylvania charitable trust or to meet the requirements of Pennsylvania law such that the Trust would not be taxable for Pennsylvania income tax purposes. If the Department elects not to exercise its right to petition to reform the Trust, then the Trustee is empowered with the right to petition the appropriate judicial forum to reform the Trust to be a Pennsylvania charitable trust for Pennsylvania income tax purposes. Notwithstanding any provision of this subsection (b) to the contrary, the Trust may not be reformed such that the purpose and objectives of the Trust cannot be met or that would alter any of the rights, obligations and duties of the Settlor as are provided in this Trust Agreement and in the CO&A between the Department and the Settlor executed the same days as this Trust Agreement.

§8.4 If at any time that the Trust itself shall become liable for any taxes, and if the Settlor shall fail, refuse or be unable to pay these taxes from its own funds, then the Trustee shall pay from

the Trust Fund all such taxes then due and owing. As soon as possible after the happening of the Settlor failing, refusing or becoming unable to pay such taxes, except to the extent that the Settlor disputes the payment of such taxes in good faith, the Trustee and the Department shall negotiate and enter into an Agreement in respect of Trustee's payment of the taxes during the continuance of this Agreement. Further, unless the Department and the Trustee otherwise agree to the contrary, immediately upon the happening of the Settlor's failure, refusal or inability to pay any such taxes, the Trustee is directed and empowered (notwithstanding any provision of this Agreement to the contrary) to change the investment objective of the Trust to an objective which minimizes the tax liability of the Trust, giving due consideration to market conditions so as to avoid, to the extent possible, losses on the conversion of existing instruments. In carrying out this investment objective, the Trustee shall invest in the following:

- (a) Any bonds or obligations of any state or municipality that are exempt from federal income tax.
- (b) Shares of any mutual fund or "money market fund" which has one hundred percent (100%) of its assets invested in the investments of the type described in the preceding subsection (a).
- (c) Such other investments as may be approved by the Department.

ARTICLE NINE

Successor Trustee

§9.1 The Trustee may resign or the Settlor may replace the Trustee at Settlor's discretion, which discretion is limited to replacement with a Pennsylvania chartered or national bank or corporate financial institution with trust powers or a trust company with offices in Pennsylvania

and whose trust activities are examined or regulated by a state or federal agency. Any such action, however, shall only be effective by the Settlor after giving sixty (60) days notice to the Department. The Trustee's resignation or replacement shall not be effective until a successor trustee has been appointed and such appointment confirmed, in writing, by the Department, which confirmation will not be unreasonably withheld. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder and shall be subject to the same reservations, limitations, terms and conditions. The successor trustee shall specify the date on which it will assume administration of the Trust, in writing, sent to the Trustee and Department, by certified mail, return receipt requested, not less than ten (10) days before such assumption takes effect. Upon the successor trustee's acceptance of the appointment, the Trustee hereunder shall assign, transfer, convey and pay-over to the successor trustee the funds and properties then constituting the Trust and shall provide the Department and successor trustee a full accounting of all transactions involving the Trust which occurred after the last quarterly statement provided in accordance with Article Seven and shall be discharged from any further liability or responsibility with regard to the administration of the Trust.

§9.2 The Department may replace the Trustee at the Department's discretion with a Pennsylvania chartered or national bank or corporate financial institution with trust powers or a trust company with offices in Pennsylvania and whose trust activities are examined or regulated by a state or federal agency. The trustee's replacement shall not be effective until a successor trustee has been appointed and such appointment confirmed, in writing, by the Department. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder and shall be subject to the same reservations, limitations, terms and conditions. The successor trustee shall specify the date on which it will assume administration of the Trust, in

writing, sent to the Trustee and Department, by certified mail, return receipt request, not less than ten days before such assumption takes effect. Upon the successor trustee's acceptance of the appointment, the Trustee hereunder shall assign, transfer, convey and pay over to the successor trustee the funds and properties in constant between the trust and shall provide the Department and successor trustee a full accounting of all transactions involving the Trust which occurred after the last quarterly statement provided in accordance with Article Seven and shall be discharged from any further liability or responsibility with regard to the administration of the Trust.

ARTICLE TEN

Instructions to the Trustee

§10.1 All orders and instructions by the Department to the Trustee shall be in writing, and signed by the Director of the Bureau of Mining and Reclamation, the Director of the Bureau of District Mining Operations, the District Mining Manager, or such persons as the Department may designate by amendment, in writing, to this Agreement. The Trustee shall be fully protected and shall not be liable to any party while acting in accordance with the Department's orders and instructions when such orders and instructions are authorized by the Agreement, and consistent with the Trustee's fiduciary duty to the Trust, and, to the extent necessary, shall be held harmless from the Trust fund. The Trustee shall not have the right to assume, in the absence of written notice to the contrary, that an event constituting a change or termination of the authority of any person to act on behalf of the Department hereunder has occurred. The Trustee, upon receipt of orders or instructions by the Department which are signed by a person purporting to be designated by the Department, but not listed above or in any written amendment to this

Agreement, shall with due diligence ascertain if such persons are designated by the Department and have authority to act on behalf of the Department hereunder.

§10.2 The Trustee may request and rely upon the written instruction of the Department with respect to decisions concerning the operation of the Facilities and any other treatment facilities which may be required in the future. Decisions concerning investment and disposition of the assets of the Trust are the sole responsibility of the Trustee, and the Trustee shall act in a manner consistent with its fiduciary duty to the Trust, notwithstanding instructions of the Department, related to investment and disposition of assets which may be to the contrary.

ARTICLE ELEVEN

Trustee Exculpation

§11.1 The Trustee shall not be responsible for the enforcement or policing of any environmental action nor be required to defend any claims relating thereto. The Trustee shall be a mere title holder and “fiduciary” as defined in the Pennsylvania Act entitled: “The Economic Development Agency, Fiduciary and Lender Environmental Liability Protection Act,” Act No. 3 of 1995, P.L. 33, 35 P.S. §§6027.1 through 6027.14, and its liability shall be limited as provided under Section 6 of the Act, 35 P.S. §6027.6.

§11.2 As to all actions taken by the Trustee with respect to the administration of the Trust, the Trustee shall not be answerable or liable for the exercise or nonexercise of any discretion or power under this Agreement nor for anything whatever in connection with the Trust hereunder, except for its own gross negligence or willful misconduct or that of its agents. Except in the case of the Trustee’s own gross negligence or willful misconduct, the Trustee shall be entitled to be exonerated and indemnified from the Trust Fund against any and all losses, claims, costs, expenses and liabilities arising out of in connection with the administration or distribution of the

Trust Fund or the affairs of the Trust. The provisions of this section shall also extend to the employees and agents of the Trustee.

ARTICLE TWELVE

Irrevocability and Termination

§12.1 The Trust shall be irrevocable and, except as provide in §16.5 of ARTICLE SIXTEEN hereof, shall continue from the date of inception, unless otherwise terminated by the occurrence of any one of the following:

- (a) The Department determines that the Trust is no longer required.
- (b) The Trustee determines that the size of the Trust does not warrant the continuation of the Trust.
- (c) The Trustee determines administration of the Trust renders it impractical to continue the Trust and the Department agrees.
- (d) Upon termination of the Trust, the Trustee shall distribute any residuum, less final trust administration expenses of the Trustee, to the Department, unless directed otherwise, in writing, by the Department.

ARTICLE THIRTEEN

Amendments

§13.1 This Trust Agreement may be amended by an instrument in writing, executed by the Settlor or Trustee and the Department or by the Trustee and the Department in the event the Settlor ceases to exist or has had its bonds forfeited, but during the existence of the Settlor any amendment of this Trust Agreement cannot in any manner affect the irrevocable nature of the Trust.

ARTICLE FOURTEEN

Notices

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

Department: Moshannon District Mining Office
District Mining Manager
186 Enterprise Drive
Phillipsburg, PA 16866
Telephone: 814-342-8200
Facsimile: 814-342-8216

Trustee: Somerset Trust Company
Trust Department
151 West Main Street
P.O. Box 777
Somerset, PA 15501
Telephone: 814-443-9207
Facsimile: 814-443-9210

§14.2 Any change in the above addresses shall be made by giving notice to all parties to the Trust.

ARTICLE FIFTEEN

Interpretation

§15.1 As used in this Agreement, words in the singular include the plural, and words in the plural include the singular. Words used in this Agreement shall be given their plain and ordinary

meaning, except that, words used in a financial or investment context that are terms of art shall be given their commonly accepted meaning when used in the context of financial services and investment practices. The headings of each section of this Agreement are for descriptive purposes only and shall not affect the interpretation or legal efficacy of this Agreement.

ARTICLE SIXTEEN

Construction

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

§16.2 In case of the merger or consolidation of any corporate Trustee serving hereunder, the resultant company shall become such Trustee's successor without notice to any party.

§16.3 Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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

§16.5 It is the intention of the parties hereto that this Trust remain in existence until terminated in accordance with the provisions of ARTICLE TWELVE hereof and that the Trust be exempt from the application of any rule against perpetuities by reason of the Department's beneficial

interest herein because the Trust is authorized by the Pennsylvania Surface Mining Conservation and Reclamation Act which contemplates no limitation on duration, and because the Trust is for the public purpose of assuring funds will be available in the future to ensure the Facilities will continue to be maintained and operated to protect the environment and the health and welfare of the public. However, in the event that it is ever finally determined by a court with jurisdiction in the matter, that the Trust is subject to any such rule, then the Trust shall terminate twenty-one (21) years less one (1) day, after the death of the last descendent of Ambassador Joseph P. Kennedy living on the date of this Trust Agreement, and the Trust Fund shall be distributed to the Department, less final trust administration expenses of the Trustee.

ARTICLE SEVENTEEN

Situs

§17.1 The Trust created by this Agreement shall have a legal situs in Dauphin County, Pennsylvania.

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

ATTEST:

ATTEST:

ATTEST:

SETTLOR:

BY: _____
Name:
Title:

BY: _____
Name:
Title:

TRUSTEE:

BY: _____
Name:
Title:

BY: _____
Name:
Title:

DEPARTMENT:

BY: _____
Name: Michael W. Smith
Title: Manager
Moshannon District Mining
Office

Approved as to Form:

BY: _____
Name: Gail A. Myers
Title: Assistant Counsel
Office of Chief Counsel
Department of Environmental Protection
Southwest Region

**PERSONAL AND TESTAMENTARY
TRUSTS, MANAGING AGENCY,
GUARDIANSHIPS**

• **ANNUAL CHARGE**

.0065 of first \$500,000 of market value
.004 of market value over \$500,000

• **MINIMUM ANNUAL CHARGE**
\$500.00

Unless otherwise expressed in the instrument all fees for services shall be first charged against income and if income is insufficient, then against principal.

The above fees are based upon market value of the trust on a quarterly basis. When the bank serves with a co-fiduciary, the bank shall be entitled to above fee and the co-fiduciary fee shall be determined at the time the account is opened and shall be in addition to the bank's fee.

• **CHECKWRITING CHARGE**

A fee of \$2.00 per check written is charged after the 5th check written in any month.

**LIFE INSURANCE
TRUSTS**

When activated during lifetime or upon the death of the insured, the charges as trustee are identical with those rendered in personal trusts.

| Keystone | | | | |
|---|------|-----------|--|-----------------|
| Amount Required for Full Funding of Trust by Year | | | | |
| Date | Year | Amount | | Annual O&M Cost |
| 31-Dec | 2007 | \$256,846 | | \$9,385 |
| 31-Dec | 2008 | \$264,808 | | \$9,676 |
| 31-Dec | 2009 | \$273,017 | | \$9,976 |
| 31-Dec | 2010 | \$281,481 | | \$10,285 |
| 31-Dec | 2011 | \$290,207 | | \$10,604 |
| 31-Dec | 2012 | \$299,203 | | \$10,933 |
| 31-Dec | 2013 | \$308,478 | | \$11,272 |
| 31-Dec | 2014 | \$318,041 | | \$11,621 |
| 31-Dec | 2015 | \$327,901 | | \$11,981 |
| 31-Dec | 2016 | \$338,065 | | \$12,353 |
| 31-Dec | 2017 | \$348,545 | | \$12,736 |
| 31-Dec | 2018 | \$359,350 | | \$13,130 |
| 31-Dec | 2019 | \$370,490 | | \$13,537 |
| 31-Dec | 2020 | \$381,975 | | \$13,957 |
| 31-Dec | 2021 | \$393,817 | | \$14,390 |
| 31-Dec | 2022 | \$406,025 | | \$14,836 |
| 31-Dec | 2023 | \$418,612 | | \$15,296 |
| 31-Dec | 2024 | \$431,589 | | \$15,770 |
| 31-Dec | 2025 | \$444,968 | | \$16,259 |
| 31-Dec | 2026 | \$458,762 | | \$16,763 |
| 31-Dec | 2027 | \$472,984 | | \$17,283 |
| 31-Dec | 2028 | \$487,646 | | \$17,818 |
| 31-Dec | 2029 | \$502,763 | | \$18,371 |
| 31-Dec | 2030 | \$518,349 | | \$18,940 |
| 31-Dec | 2031 | \$534,418 | | \$19,527 |
| 31-Dec | 2032 | \$550,985 | | \$20,133 |
| 31-Dec | 2033 | \$568,065 | | \$20,757 |
| 31-Dec | 2034 | \$585,675 | | \$21,400 |
| 31-Dec | 2035 | \$603,831 | | \$22,064 |
| 31-Dec | 2036 | \$622,550 | | \$22,748 |
| 31-Dec | 2037 | \$641,849 | | \$23,453 |
| 31-Dec | 2038 | \$661,746 | | \$24,180 |
| 31-Dec | 2039 | \$682,260 | | \$24,929 |
| 31-Dec | 2040 | \$703,410 | | \$25,702 |

Exhibit E
Value of Fully Funded Treatment Trust under Certain
Assumptions from 2007 to 2040
(Paragraph 6)

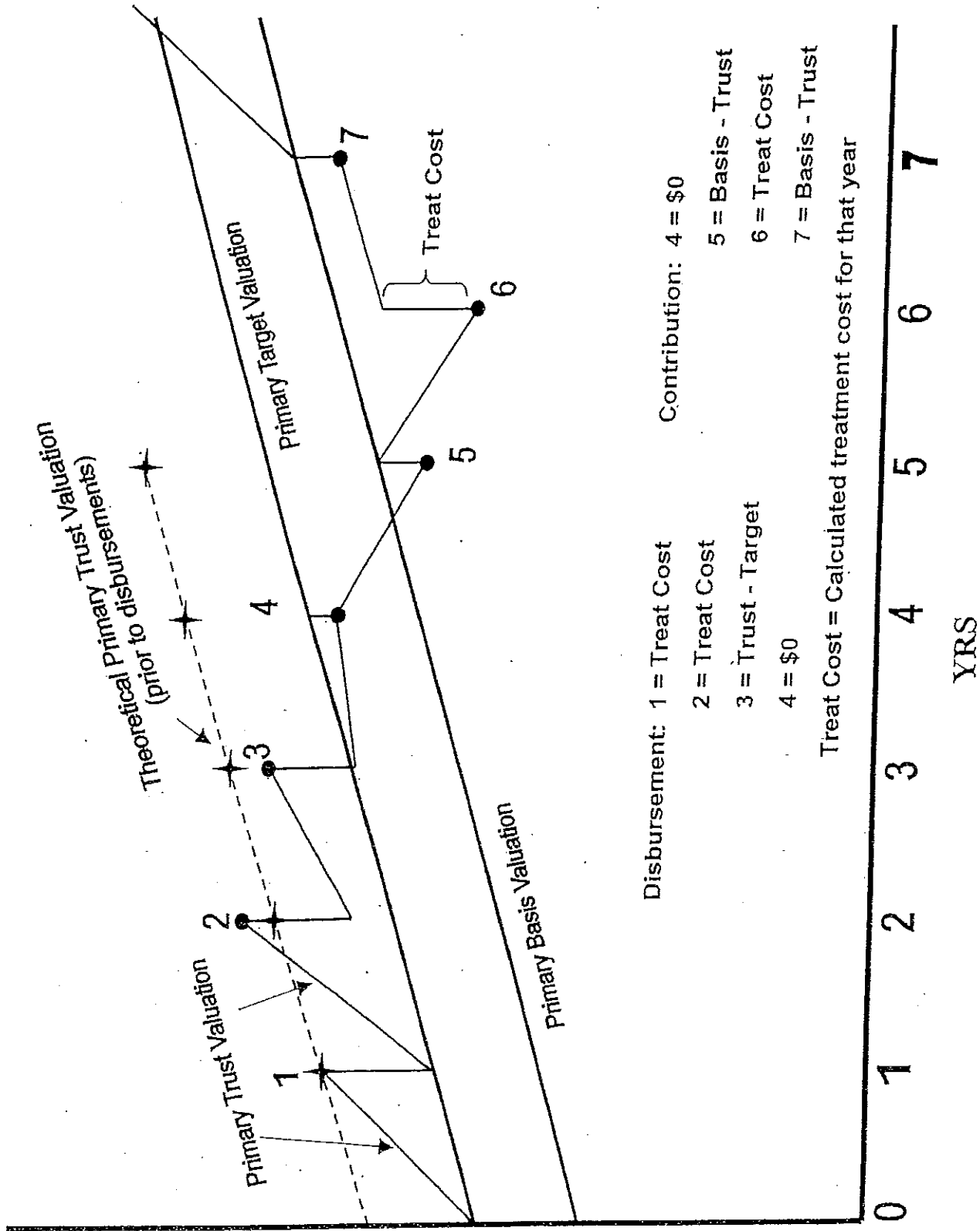
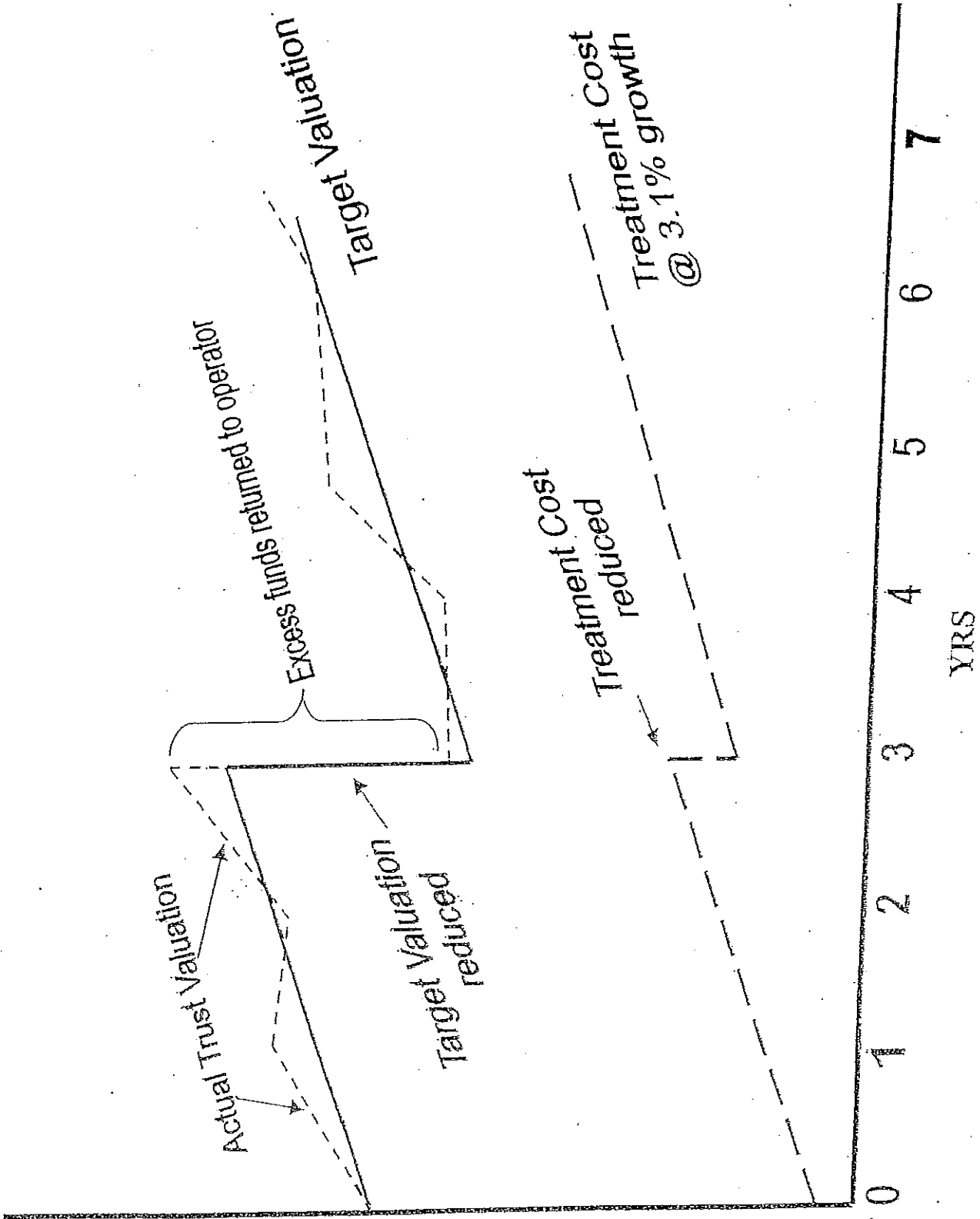


Exhibit F

Graphical Depiction of Distribution or Contribution Amounts Discussed in Paragraph 7



↑ \$

Exhibit G

Adjustment to the Primary Target Valuation for Deviations Between Actual Treatment Cost and Calculated Treatment Cost Discussed in Paragraph B

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

AMD TREAT RECAPITIALIZATION COST



AMD TREAT

| 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 |
|------|---|--|---------------------|------|---|--|--------------------|
| | 7,462 | 7,462 | Initial Fund Amount | | | | |
| 1 | 8,090 | 8,090 | 0 | 51 | 41,144 | 41,144 | 0 |
| 2 | 8,772 | 8,772 | 0 | 52 | 44,612 | 44,612 | 0 |
| 3 | 9,512 | 9,512 | 0 | 53 | 48,373 | 48,373 | 0 |
| 4 | 10,314 | 10,314 | 0 | 54 | 52,451 | 52,451 | 0 |
| 5 | 11,183 | 11,183 | 0 | 55 | 56,872 | 56,872 | 0 |
| 6 | 12,126 | 12,126 | 0 | 56 | 61,667 | 61,667 | 0 |
| 7 | 13,149 | 13,149 | 0 | 57 | 66,865 | 66,865 | 0 |
| 8 | 14,257 | 14,257 | 0 | 58 | 72,502 | 72,502 | 0 |
| 9 | 15,459 | 15,459 | 0 | 59 | 78,614 | 78,614 | 0 |
| 10 | 16,762 | 16,762 | 0 | 60 | 85,241 | 0 | 85,241 |
| 11 | 18,175 | 18,175 | 0 | 61 | 0 | 0 | 0 |
| 12 | 19,707 | 19,707 | 0 | 62 | 0 | 0 | 0 |
| 13 | 21,369 | 21,369 | 0 | 63 | 0 | 0 | 0 |
| 14 | 23,170 | 23,170 | 0 | 64 | 0 | 0 | 0 |
| 15 | 25,124 | 25,124 | 0 | 65 | 0 | 0 | 0 |
| 16 | 27,242 | 27,242 | 0 | 66 | 0 | 0 | 0 |
| 17 | 29,538 | 29,538 | 0 | 67 | 0 | 0 | 0 |
| 18 | 32,028 | 32,028 | 0 | 68 | 0 | 0 | 0 |
| 19 | 34,728 | 34,728 | 0 | 69 | 0 | 0 | 0 |
| 20 | 37,656 | 12,519 | 25,136 | 70 | 0 | 0 | 0 |
| 21 | 13,575 | 13,575 | 0 | 71 | 0 | 0 | 0 |
| 22 | 14,719 | 14,719 | 0 | 72 | 0 | 0 | 0 |
| 23 | 15,960 | 15,960 | 0 | 73 | 0 | 0 | 0 |
| 24 | 17,305 | 17,305 | 0 | 74 | 0 | 0 | 0 |
| 25 | 18,764 | 18,764 | 0 | 75 | 0 | 0 | 0 |
| 26 | 20,346 | 20,346 | 0 | 76 | 0 | 0 | 0 |
| 27 | 22,061 | 22,061 | 0 | 77 | 0 | 0 | 0 |
| 28 | 23,921 | 23,921 | 0 | 78 | 0 | 0 | 0 |
| 29 | 25,938 | 25,938 | 0 | 79 | 0 | 0 | 0 |
| 30 | 28,124 | 28,124 | 0 | 80 | 0 | 0 | 0 |
| 31 | 30,495 | 30,495 | 0 | 81 | 0 | 0 | 0 |
| 32 | 33,066 | 33,066 | 0 | 82 | 0 | 0 | 0 |
| 33 | 35,853 | 35,853 | 0 | 83 | 0 | 0 | 0 |
| 34 | 38,876 | 38,876 | 0 | 84 | 0 | 0 | 0 |
| 35 | 42,153 | 42,153 | 0 | 85 | 0 | 0 | 0 |
| 36 | 45,707 | 45,707 | 0 | 86 | 0 | 0 | 0 |
| 37 | 49,560 | 49,560 | 0 | 87 | 0 | 0 | 0 |
| 38 | 53,738 | 53,738 | 0 | 88 | 0 | 0 | 0 |
| 39 | 58,268 | 58,268 | 0 | 89 | 0 | 0 | 0 |
| 40 | 63,180 | 16,891 | 46,289 | 90 | 0 | 0 | 0 |
| 41 | 18,315 | 18,315 | 0 | 91 | 0 | 0 | 0 |
| 42 | 19,859 | 19,859 | 0 | 92 | 0 | 0 | 0 |
| 43 | 21,533 | 21,533 | 0 | 93 | 0 | 0 | 0 |
| 44 | 23,348 | 23,348 | 0 | 94 | 0 | 0 | 0 |
| 45 | 25,316 | 25,316 | 0 | 95 | 0 | 0 | 0 |
| 46 | 27,451 | 27,451 | 0 | 96 | 0 | 0 | 0 |
| 47 | 29,765 | 29,765 | 0 | 97 | 0 | 0 | 0 |
| 48 | 32,274 | 32,274 | 0 | 98 | 0 | 0 | 0 |
| 49 | 34,995 | 34,995 | 0 | 99 | 0 | 0 | 0 |
| 50 | 37,945 | 37,945 | 0 | 100 | 0 | 0 | 0 |



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

AMD TREAT RECAPITIALIZATION COST

AMD TREAT

| 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 |
|------|--------------------------------------|-------------------------------------|---------------------|------|--------------------------------------|-------------------------------------|-----------------|
| | 28,490 | 28,490 | Initial Fund Amount | | | | |
| 1 | 30,891 | 30,891 | 0 | 51 | 157,089 | 157,089 | 0 |
| 2 | 33,495 | 33,495 | 0 | 52 | 170,331 | 170,331 | 0 |
| 3 | 36,319 | 36,319 | 0 | 53 | 184,690 | 184,690 | 0 |
| 4 | 39,380 | 39,380 | 0 | 54 | 200,260 | 200,260 | 0 |
| 5 | 42,700 | 42,700 | 0 | 55 | 217,141 | 217,141 | 0 |
| 6 | 46,300 | 46,300 | 0 | 56 | 235,446 | 235,446 | 0 |
| 7 | 50,203 | 50,203 | 0 | 57 | 255,295 | 255,295 | 0 |
| 8 | 54,435 | 54,435 | 0 | 58 | 276,816 | 276,816 | 0 |
| 9 | 59,024 | 59,024 | 0 | 59 | 300,152 | 300,152 | 0 |
| 10 | 64,000 | 64,000 | 0 | 60 | 325,455 | -0 | 325,455 |
| 11 | 69,395 | 69,395 | 0 | 61 | -0 | -0 | 0 |
| 12 | 75,245 | 75,245 | 0 | 62 | -0 | -0 | 0 |
| 13 | 81,588 | 81,588 | 0 | 63 | -0 | -0 | 0 |
| 14 | 88,466 | 88,466 | 0 | 64 | -0 | -0 | 0 |
| 15 | 95,924 | 95,924 | 0 | 65 | -0 | -0 | 0 |
| 16 | 104,010 | 104,010 | 0 | 66 | -0 | -0 | 0 |
| 17 | 112,778 | 112,778 | 0 | 67 | -0 | -0 | 0 |
| 18 | 122,285 | 122,285 | 0 | 68 | -0 | -0 | 0 |
| 19 | 132,594 | 132,594 | 0 | 69 | -0 | -0 | 0 |
| 20 | 143,772 | 47,800 | 95,971 | 70 | -0 | -0 | 0 |
| 21 | 51,830 | 51,830 | 0 | 71 | -0 | -0 | 0 |
| 22 | 56,199 | 56,199 | 0 | 72 | -0 | -0 | 0 |
| 23 | 60,936 | 60,936 | 0 | 73 | -0 | -0 | 0 |
| 24 | 66,073 | 66,073 | 0 | 74 | -0 | -0 | 0 |
| 25 | 71,643 | 71,643 | 0 | 75 | -0 | -0 | 0 |
| 26 | 77,683 | 77,683 | 0 | 76 | 0 | 0 | 0 |
| 27 | 84,232 | 84,232 | 0 | 77 | 0 | 0 | 0 |
| 28 | 91,333 | 91,333 | 0 | 78 | 0 | 0 | 0 |
| 29 | 99,032 | 99,032 | 0 | 79 | 0 | 0 | 0 |
| 30 | 107,380 | 107,380 | 0 | 80 | 0 | 0 | 0 |
| 31 | 116,433 | 116,433 | 0 | 81 | 0 | 0 | 0 |
| 32 | 126,248 | 126,248 | 0 | 82 | 0 | 0 | 0 |
| 33 | 136,891 | 136,891 | 0 | 83 | 0 | 0 | 0 |
| 34 | 148,430 | 148,430 | 0 | 84 | 0 | 0 | 0 |
| 35 | 160,943 | 160,943 | 0 | 85 | 0 | 0 | 0 |
| 36 | 174,511 | 174,511 | 0 | 86 | 0 | 0 | 0 |
| 37 | 189,222 | 189,222 | 0 | 87 | 0 | 0 | 0 |
| 38 | 205,174 | 205,174 | 0 | 88 | 0 | 0 | 0 |
| 39 | 222,470 | 222,470 | 0 | 89 | 0 | 0 | 0 |
| 40 | 241,224 | 64,491 | 176,733 | 90 | 0 | 0 | 0 |
| 41 | 69,928 | 69,928 | 0 | 91 | 0 | 0 | 0 |
| 42 | 75,822 | 75,822 | 0 | 92 | 0 | 0 | 0 |
| 43 | 82,214 | 82,214 | 0 | 93 | 0 | 0 | 0 |
| 44 | 89,145 | 89,145 | 0 | 94 | 0 | 0 | 0 |
| 45 | 96,660 | 96,660 | 0 | 95 | 0 | 0 | 0 |
| 46 | 104,809 | 104,809 | 0 | 96 | 0 | 0 | 0 |
| 47 | 113,644 | 113,644 | 0 | 97 | 0 | 0 | 0 |
| 48 | 123,224 | 123,224 | 0 | 98 | 0 | 0 | 0 |
| 49 | 133,612 | 133,612 | 0 | 99 | 0 | 0 | 0 |
| 50 | 144,875 | 144,875 | 0 | 100 | 0 | 0 | 0 |