

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

Maple Creek Mining, Inc.	:	Maple Creek Mine
279 Shannon Road	:	Ginger Hill Refuse Disposal Area No. II
Monongahela, PA 15063	:	
	:	Coal Mining Activity Permit
	:	No. 63841302
	:	Coal Refuse Disposal Permit
	:	No. 63723707
	:	
	:	Alternative Financial Assurance
	:	Mechanism

**MAPLE CREEK MINING, INC. POST-MINING WATER TREATMENT
AND GINGER HILL II POND 3 RECLAMATION
CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 23rd day of November, 2010, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (the "Department") and Maple Creek Mining, Inc. ("MCM") (hereinafter the "Parties").

The Department has found and determined the following:

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

B. Pursuant to §§ 4(d) and (d.2) of the Surface Mining Act, 52 P.S. §§ 1396.4(d) and (d.2), the Department may establish alternative financial assurance mechanisms which shall achieve the objectives and purposes of the bonding regulations. These mechanisms include the establishment of a site-specific trust sub-account ("Trust Sub-Account") funded by a mine operator for the reclamation of the land and surface facilities and for the treatment of post-mining water discharges. The MCMI post-mining water treatment and reclamation Trust Sub-Account being established as required by this Consent Order and Agreement through the accompanying Participation Agreement with the April 2001 Declaration of Trust of the Clean Streams Foundation constitutes a collateral bond and an alternative financial assurance mechanism authorized by § 4(d) and 4(d.2) of the Surface Mining Act, 52 P.S. § 1396.4(d) and 1396.4(d.2). Pursuant to § 5, § 315 and § 610 of the Clean Streams Law, 35 P.S. § 691.5, § 691.315 and § 691.610, § 4.3 of SMCRA, 52 P.S. § 1396.4c, § 3.1 and § 9 of the Coal Refuse Disposal Act, 52. P.S. § 30.53a and § 30.59 and § 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 post-mining water discharge treatment and reclamation Trust Sub-Accounts as alternative financial assurance mechanisms for bonding purposes.

C. Under § 1406.5(b) and § 1406.6(b) of the Mine Subsidence Act, 52 P.S. § 1405(b), §1406.6(b) and § 30.56 of the Coal Refuse Disposal Act, 52 P.S. § 30.56, the operator shall file with the Department, a bond or other form of financial surety payable to the Commonwealth and conditioned that the operator shall faithfully perform all of the requirements of the Surface Mining Act, the Mine Subsidence Act, the Coal Refuse Disposal Act and the Clean Streams Law.

D. MCMI is a Pennsylvania corporation with a mailing address of 279 Shannon Road, Monongahela, Pennsylvania 15063.

E. MCMI is engaged in the business of coal mining activities at the Maple Creek Mine and the Ginger Hill II coal refuse disposal area ("CRDA").

F. MCMI is the permittee and operator of the Maple Creek Mine pursuant to Coal Mining Activity Permit ("CMAP") No. 63841302. The mine is located in New Eagle Borough, Washington County, Pennsylvania. MCMI is also the permittee and operator of the Ginger Hill No. II CRDA pursuant to the coal refuse disposal permit, ("CRDP") No. 63723707. The Ginger Hill II CRDA is located in Carroll and Nottingham Townships, Washington County, Pennsylvania. MCMI has previously submitted a permit renewal application for CMAP No. 63841302 and is in the process of submitting a revised renewal application. MCMI has also submitted a permit renewal application for CRDP No. 63723707.

Maple Creek Mine

G. MCMI ceased operation of the Maple Creek Mine in May 2003 and sealed the Maple Creek Mine entry in fall 2005. MCMI has dismantled and substantially reclaimed the New Eagle Coal Preparation Plant and has commenced reclamation of certain surface facilities at the Maple Creek Mine.

Ginger Hill II Refuse Disposal Area

H. Ginger Hill No. II CRDA consists of a slurry impoundment ("Pond 3"), a course coal refuse disposal area and associated buildings, roads and other structures. MCMI disposed of slurry and mine process water from the Maple Creek Mine into Pond 3. MCMI also disposed of coal refuse from the Maple Creek Mine at Ginger Hill II CRDA.

I. MCMI submitted and on May 27, 2009, the Department accepted a permit renewal and revision application for the Ginger Hill II CRDP No. 63723707. Under the proposed renewal and revision, MCMI will construct a new coal preparation plant. Nothing herein shall operate to prevent MCMI from modifying the uses of the Ginger Hill II CRDA (and adjusting the

accompanying bond) provided that MCMC follows the proper regulatory procedure for doing so and obtains all of the necessary approvals from the Department.

J. MCMC also intends to use a portion of the Ginger Hill II Pond 3 slurry impoundment to dispose of coal slurry and mine process water from the High Quality Mine, if the High Quality Mine is reactivated. Nothing herein shall operate to prevent MCMC from modifying the uses of Ginger Hill II Pond 3 slurry impoundment (and adjusting the accompanying bond), provided that MCMC follows the proper regulatory procedure for doing so and obtains all of the necessary approvals from the Department.

K. MCMC submitted, with its permit renewal application for CRDP No. 63723707, a reclamation plan for Ginger Hill II Pond 3 slurry impoundment, detailing the method for reclamation.

Reclamation Bonds

L. A summary of the reclamation bonds currently posted for the Maple Creek Mine and Ginger Hill No. II CRDA is as follows:

PERMIT NUMBER	BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT	BOND STATUS	BOND AMOUNT
63841302	Surety	Lincoln General Insurance Co.	SUR No. 005670	Active	\$3,973,829
63723707	Surety	Lincoln General Insurance Co.	SUR No. 005670	Active	\$241,000

Post-Mining Water Discharges

M. MCMC currently treats post-mining water discharges from the Maple Creek Mine by the following methods: Water from the Maple Creek Mine is pumped from the Maple Creek mine pool through a pipeline to an AMD treatment system. The treated mine water is discharged in the Ginger Hill II Pond 3 slurry impoundment. Pond 3 is located at Latitude 40°-11'-32" and

Longitude 79°-58'-59". A topographic map depicting the location of the water discharge from the Maple Creek Mine and the AMD treatment system is attached as Exhibit A.

N. The raw water quality of the Maple Creek Mine water discharge, as compiled by the Department from analytical sampling results, is set forth below:

Locality	pH	Fe	Al	Mn	Alk	Acidity	SO4	TSS	Flow
Maple Creek Mine	7.31	5.7 mg/l	.92 mg/l	2.31 mg/l	427.5	Negative	2190 mg/l	41 mg/l	1.2-1.4 mgd

O. The required effluent limits applicable for the Maple Creek Mine water discharge are as follows:

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (total)	1.5 mg/l	3.0 mg/l	3.8 mg/l
Manganese (total)	1.0 mg/l	2.0 mg/l	2.5 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
Osmotic Pressure	50 mos/kg	100 mos/kg	125 mos/kg
Aluminum (Total)	.5 mg/l	1.0 mg/l	1.3 mg/l
pH ¹	greater than 6.0; less than 9.0		
Alkalinity	greater than acidity ¹		

¹ The parameter is applicable at all times.

P. The effluent limits applicable to the Maple Creek Mine water discharge described in Paragraphs M, N and O above are set forth in NPDES Permit No. PA0090689.

Q. MCFI agrees that it has the legal responsibility, pursuant to the Surface Mining Act, the Subsidence Act, the Coal Refuse Disposal Act, the Clean Streams Law, the Administrative Code and the rules and regulations promulgated thereunder to reclaim Ginger Hill II Pond 3 slurry

impoundment and to properly treat or abate the water discharge from the Maple Creek Mine identified in Paragraphs M, N and O above.

R. The treatment system for the Maple Creek Mine water discharge consists of a vertical pump, lime silo, slurry trough, maelstrom oxidizer and slurry impoundment. Water is pumped from the mine, treated with lime and oxidized. The treated water is then discharged to the Ginger Hill II Pond 3 slurry impoundment. A schematic drawing of the water treatment system is attached as Exhibit B.

S. The Maple Creek Mine water discharge treatment system is located on land owned by MCMI.

T. The capital cost incurred to initially construct the entire Maple Creek Mine water discharge treatment system is not known. The capital cost to construct the major components of the Maple Creek Mine water discharge treatment system, expressed in 2008 dollars, is \$166,726.

U. In order to calculate the amount necessary to fully fund the Maple Creek Mine post-mining water discharge treatment liability, the Department and MCMI have agreed to use actual operation and maintenance costs from past operations of the water discharge treatment system, or AMD Treat cost estimates where insufficient operation and maintenance cost data exist. A summary of current annual operation and maintenance costs for the Maple Creek Mine water discharge treatment system is as follows:

Table of Current Annual Operation and Maintenance Costs for Maple Creek Mine Water Discharge Treatment System

Category	Sampling	Labor	Maintenance	Electricity	Chemical	Solids Removal
Annual Cost	\$3,616	\$40,320	\$0	\$33,093.47	\$240,000	\$0

V. Based on actual operation and maintenance costs from past operations and AMD Treat cost estimates, the current annual cost of operating and maintaining the Maple Creek Mine water discharge treatment system is approximately \$317,029.

W. In order to calculate the amount necessary to fully fund the Maple Creek Mine post-mining water discharge treatment liability, the Department and MCFMI have agreed to use recapitalization and demolition cost data generated by the Department's AMD Treat software. According to the AMD Treat software tool, the present value of recapitalization cost for the Maple Creek Mine water discharge treatment system is approximately \$143,911. The AMD Treat Recapitalization Cost schedule for the Maple Creek Mine water discharge treatment system is attached as Exhibit C.

X. MCFMI is willing to establish a Trust Sub-Account through a Participation Agreement with the Clean Streams Foundation as an alternative financial assurance mechanism and a financially-backed enforceable contract, in order to provide for financial assurance for the reclamation of the Ginger Hill II Pond 3 slurry impoundment and the long-term treatment of post-mining water discharges from Maple Creek Mine and secure the release of reclamation bonds upon completion of all other reclamation requirements.

Y. The parties have discussed the need to obtain accurate and timely information on the costs of operating and maintaining the Maple Creek Mine water discharge treatment system and reclaiming Ginger Hill II Pond 3 slurry impoundment in order to maintain the proper amount of financial assurance.

Z. The parties have agreed to use the formulas set forth below to calculate the present value of the cost to treat the water discharge from the Maple Creek Mine. The Parties agree that the present value of the fully-funded Trust Sub-Account for the water discharges covered by this Consent Order and Agreement is \$7,600,000. This sum constitutes the current present value of the

estimated future operation and maintenance costs for the Maple Creek Mine water discharge treatment system and the current present value of the estimated future recapitalization costs for the Maple Creek Mine water discharge treatment system. The Parties have also agreed to use the information and figures which will be provided by the Accounting required by Paragraph 4 below to recalculate and adjust the amount of the cost to treat the water discharge from the Maple Creek Mine as described in Paragraphs 8 and 10 below. The parties have agreed to use the Department's bond rate guidelines to determine the cost to reclaim the remaining portions of Ginger Hill Pond 3 slurry impoundment as MCMI completes the reclamation of that CRDA. The parties have agreed to a payment schedule of eleven (11) payments over ten (10) years as set forth in Paragraph 5(b) below to satisfy the agreed-upon financial assurance amount.

AA. The Parties also agree that, based on Paragraph 3.1 of the May 26, 2009 Binding Memorandum of Global Settlement Agreement, the total remaining amount of MCMI's financial liability for the financial assurance of the Maple Creek Mine water discharge treatment is \$2,100,000 except that this amount may be adjusted based on the annual adjustments in accordance with Paragraphs 8 and 10 below.

AB. The Parties agree that the total amount of reclamation liability for the Ginger Hill II Pond 3 slurry impoundment is \$4,800,000. MCMI previously posted and the Department has on deposit, reclamation bond in the amount of \$200,000 for this CRDA. The Parties further agree that MCMI shall establish a Trust Sub-Account with the Clean Streams Foundation to fund the remainder of MCMI's reclamation liability for this CRDA as a condition of receiving its permit renewal and revision for the Ginger Hill II CRDA Permit, CRDP No. 63733707. The Parties have agreed to a payment schedule for this reclamation liability of eleven (11) payments over ten (10) years as set forth in Paragraph 5(b) below.

AC. The Parties also agree, based on Paragraph 3.1 of the May 26, 2009 Binding Memorandum of Global Settlement Agreement, that the total amount of MCMI's remaining financial assurance liability for the reclamation of Ginger Hill II Pond 3 Slurry Impoundment is \$4,600,000 except that this amount may be adjusted based on the annual adjustments in accordance with Paragraphs 8 and 10 below.

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 MCMI as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to § 5 and § 610 of the Clean Streams Law, 35 P.S. § 691.5 and § 691.610; § 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c; § 3.1 and § 9 of the Coal Refuse Disposal Act, 52 P.S. § 30.53a and § 30.59; § 9 of the Subsidence Act, 52 P.S. § 1409.9 and § 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of MCMI to comply with any term or condition of this Consent Order and Agreement shall subject MCMI to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. MCMI agrees that the findings in Paragraphs A through AC above are true and correct and, in any matter or proceeding involving MCMI and the Department, MCMI 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 below.

b. Actual Treatment Cost. The average of three (3) consecutive years of the costs and expenses of treatment, calculated by using the Accountings for those three years.

c. Annual Anniversary Date. Thirty (30) days after the last day of MCMI's fiscal year or thirty (30) days after the last day of any fiscal year which MCMI may adopt in the future.

d. Calculated Treatment Cost. The projected future annual cost of treatment, based on the Actual Treatment Cost, compounded at 3.1% annually.

e. Capital Improvement Account. The account within the Trust Sub-Account that is primarily used to finance anticipated and periodic capital expenditures for the water treatment system.

f. Distribution Payment. The Trustee's disbursement of money from the Trust Sub-Account 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 water discharge treatment system. 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 .843)
	I	=	Inflation Rate (assumed to be 3.1% or .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% percent of the present value of the future cost of treatment as determined by the Formula.

j. Primary Trust Account. The account within the Trust Sub-Account that is primarily used to finance annual operating and maintenance costs of the water discharge treatment system.

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 and Reclamation Costs; Records; Factors; Accounting

a. MCMI 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. MCMI shall keep accurate financial records of all the costs and expenses of any reclamation of the Ginger Hill II Pond 3 slurry impoundment for each year.

c. MCMI shall provide an annual accounting of the costs and expenses of annual Maple Creek Mine water discharge treatment and reclamation of Ginger Hill II Pond 3 slurry impoundment to the Department on or before the ninetieth (90th) day following the last day of the fiscal year for which the Accounting is being provided. The Accounting shall cover the period beginning on January 1 and continuing through December 31 of each year, or other fiscal year as MCMI 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 MCMI and by the Vice President of MCMI attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

d. MCMI's obligation to keep records and provide the Accounting shall continue for the period during which MCMI is operating the water discharge treatment system and reclamation.

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

5. MCMI Water Treatment and Reclamation Trust Sub-Account

a. MCMI shall establish a water treatment Trust Sub-Account and a reclamation Trust Sub-Account within the Declaration of Trust, established by The Clean Streams Foundation on April 7, 2001. The MCMI Water Treatment Trust Sub-Account and MCMI Reclamation Trust Sub-Account shall be established via execution of a Participation Agreement with the Clean Streams Foundation. The MCMI Water Treatment Sub-Account shall secure MCMI's obligation to treat the Maple Creek Mine water discharge, including its legal obligation to operate and maintain the water treatment system in perpetuity or until water treatment is no longer necessary. The MCMI Reclamation Trust Sub-Account shall secure MCMI's obligation to reclaim Ginger Hill II Pond 3 slurry impoundment. The MCMI Water Treatment Sub-Account shall provide for the demolition of water treatment facilities and reclamation of the treatment site should treatment no longer be needed. The Participation Agreement establishing the MCMI Water Treatment Trust Sub-Account and the MCMI Reclamation Trust Sub-Account is attached as Exhibit D.

b. As set forth in Paragraph 3.1 of the May 26, 2009 Binding Memorandum of Global Settlement Agreement, MCMI shall fund the MCMI Water Treatment Sub-Account and the

MCFMI Reclamation Trust Sub-Account by making eleven (11) annual payments of \$533,816 each.

The eleven (11) annual payments shall be allocated as follows:

(1) eleven (11) annual payments of \$177,938 each into the Primary Trust Account of the MCFMI Water Treatment Trust Sub-Account; and

(2) eleven (11) annual payments of \$355,877 each into the MCFMI Reclamation Trust Sub-Account.

The first payment of \$533,816 shall be made within ninety (90) days of execution of the Participation Agreement. The subsequent ten (10) annual payments of \$533,816 each shall be made on or before each anniversary of the execution of the Participation Agreement.

6. Primary and Capital Improvement Accounts for the MCFMI Water Treatment Trust Sub-Account

MCFMI and the Clean Streams Foundation shall establish, within the MCFMI Water Treatment Trust Sub-Account:

(1) an account designated as the Primary Trust Account; and

(2) an account designated as the Capital Improvement Account.

7. Annual Distribution or Contribution Payments to the Primary Trust Account for the Water Treatment Trust Sub-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 MCFMI. 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 Points 1, 2 and 3 on Exhibit E. The provisions of this Paragraph

do not apply until MCMI has fulfilled its obligation to make ongoing payments under Paragraph 6.b above.

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 E.

d. If the Primary Trust Valuation is less than the Primary Basis Valuation, then MCMI 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 below. This amount is depicted graphically as Points 5 and 6 on Exhibit E.

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% percent 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 typically 116% percent of the new Primary Basis Valuation. Exhibit F 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 MCMI. This provision does not apply until MCMI has fulfilled its obligations to make ongoing payments under Paragraph 6.b above. The amount of such Distribution Payment will be equal to the percent change in Actual Treatment Cost times the Primary Trust Valuation, or in an amount equal to the difference between the Primary Trust Valuation and the newly calculated Primary Target Valuation, whichever is less. The amount of such Distribution Payment shall be determined by the following formulas:

$$\begin{array}{l} \text{Or:} \quad \text{DP} = \text{TR} (1 - (\text{new ATC} / \text{prior ATC})) \\ \text{Where:} \quad \text{DP} = \text{TR} - \text{new TV} \\ \quad \quad \quad \text{DP} = \text{Distribution Payment} \\ \quad \quad \quad \text{TR} = \text{Primary Trust Valuation} \\ \quad \quad \quad \text{TV} = \text{Primary Target Valuation} \\ \quad \quad \quad \text{ATC} = \text{Actual Treatment Cost} \end{array}$$

10. Capital Improvement Account

a. Assets of the Capital Improvement Account may be commingled with assets of the Primary Trust Account of the MCMI Water Treatment Trust Sub-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 AMD Treat 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 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 seventy-five (75) year period.

c. A schedule for the Capital Improvement Account balance and projected capital expenditures is made a part of this agreement as Exhibit C. The required balance in the Capital Improvement Account may be recalculated on an annual basis or each time a Distribution Payment is contemplated under Paragraph 12 below. Such recalculation shall be deemed an amendment to Exhibit C 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 C. 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 MCMI any time a planned capital replacement is made as indicated on Exhibit C. The capital replacement and maintenance activities shall be made as needed, which may be sooner or later than the projected time. The amount of the

Distribution Payment shall be equal to the calculated cost of the Capital Improvement as indicated on Exhibit C, or in an amount equal to the difference between the current balance in the Capital Improvement Account and the required balance after the capital improvement Distribution Payment, whichever is less.

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

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

If the Primary Trust Valuation exceeds the Primary Target Valuation in the Primary Trust Account, or if the balance in the Capital Improvement Account exceeds the required balance as indicated on Exhibit C, 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 MCMI's obligation to make a contribution payment under Paragraph 7.g above. This amount is depicted graphically at Point 5 on Exhibit E. However, the amount of surplus funds transferred to the Primary Trust Account may exceed MCMI's obligation under Paragraph 7.g. above if additional funds are needed so that the Primary Trust Valuation equals the Primary Basis Valuation. This amount is depicted graphically at Point 6 on Exhibit E.

b. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by MCMI to pay for unanticipated capital expenditures, or anticipated capital expenditures that exceed the calculated cost of the capital improvement.

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by MCMI 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 MCMI 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. MCMI Reclamation Trust Sub-Account

a. MCMI and the Clean Streams Foundation shall establish, as set forth in Paragraph 5 above, a MCMI Reclamation Trust Sub-Account for the reclamation of Ginger Hill II Pond 3 slurry impoundment. The MCMI Reclamation Trust Sub-Account shall be funded in accordance with Paragraph 5(b) above.

b. The MCMI Reclamation Trust Sub-Account shall be reviewed on an annual basis as part of the annual review set forth in Paragraph 16 above. MCMI shall submit, on an annual basis, and thirty (30) days in advance of the annual review, a statement outlining the reclamation conducted during the previous year, the amount of reclamation remaining and the estimated costs to complete the remaining reclamation, using the Department's bond rate guidance and as set forth in 25 Pa Code § 86.149. If, following the annual review set forth in Paragraph 16 below, MCMI completes the reclamation of Ginger Hill II Pond 3 slurry impoundment such that the \$241,000 of bond posted by MCMI is sufficient to cover the cost of any remaining reclamation, then the funds in the MCMI Reclamation Trust Sub-Account shall be transferred to the Primary Trust Account of the MCMI Water Treatment Trust Sub-Account.

15. Liability Insurance

a. MCMI shall maintain in effect liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the water treatment system and the real and personal property which is identified in the Participation Agreement as part of the trust principal. The Trustee and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policy.

b. In addition to the requirements of Paragraph 15.a above., the liability insurance shall be written on an occurrence basis and shall provide bodily injury and property damage coverage in the minimum amounts of \$500,000 per person and \$1,000,000 per occurrence. The insurance shall include a rider requiring the insurer to notify the Department thirty (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 which certifies MCMI has a public liability insurance policy in effect, meeting the requirements of this Paragraph.

16. Annual Requirements

a. The Parties will meet on or before the thirtieth (30th) day following delivery to the Department of the Accounting of each year: (1) to review and discuss the Accounting for the then completed fiscal year; (2) to review the effectiveness of the Maple Creek Mine water discharge treatment system and any change in the fiscal year; (3) to resolve any issues which arise as a result of that change or the performance of the MCMI Water Treatment Trust Sub-Account or the MCMI Reclamation Trust Sub-Account; (4) 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 MCMI Water Treatment Trust Sub-Account; (5) review the status of reclamation at Ginger Hill II Pond 3 slurry impoundment, the amount of reclamation not completed and the approximate

time line for completing reclamation; and (6) to address any other issues that may concern this Consent Order and Agreement or its implementation.

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

17. MCMI's Continuing Obligation

MCMI's agreement to fund MCMI's Water Treatment Trust Sub-Account and MCMI's Reclamation Trust Sub-Account, the full or partial funding of these Trust Sub-Accounts or the exhaustion of these Trust Sub-Accounts shall not limit in any way MCMI's obligation to reclaim Ginger Hill II Pond 3 slurry impoundment, operate the Maple Creek Mine water discharge treatment system, and to treat the water discharge(s) covered by this Consent Order and Agreement in a manner which meets the effluent limitations described in Paragraphs M, N and O above. Furthermore, exhaustion of the MCMI Water Treatment and the MCMI Reclamation Trust Sub-Accounts shall not excuse MCMI from MCMI's obligation to reclaim Ginger Hill II Pond 3 slurry impoundment and adequately treat or to abate the Maple Creek Mine water discharge.

18. Stipulated Civil Penalties

a. In the event MCMI fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, MCMI 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 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth (15th) day of each succeeding month and shall be forwarded to:

District Mining Manager
Greensburg District Mining Office
Armbrust Building
R.D. 2, Box 603-B
Greensburg, PA 15601-0982

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

21. Liability of MCFI

MCFI 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.

22. Transfer of MCFI 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 MCFI mine water discharge treatment and CRDA reclamation.

b. If MCFI intends to transfer any legal or equitable interest in the MCFI Sites which is effected by this Consent Order and Agreement, MCFI 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 individuals identified in Paragraph 23 below of such intent.

c. Upon MCFI's request, the Department may agree to modify or terminate MCFI's duties and obligations under this Consent Order and Agreement upon transfer of the MCFI Sites.

23. Correspondence with Department

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

District Mining Manager
Greensburg District Mining Office
Armbrust Building
R.D. 2, Box 603-B
Greensburg, PA 15601-0982

and

District Mining Manager
California District Mining Office
California Technology Park
25 Technology Drive
Coal Center, PA 15423

24. Correspondence with MCMI

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

Ronnie Dietz
Vice President and Treasurer
Maple Creek Mining, Inc.
153 Highway 7 South
Powhatan Point, OH 43942

and

John E. Jevicky, Esq.
Dinsmore & Shohl, LLP
255 East Fifth Street, Suite 1900
Cincinnati, OH 45202

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

The Parties shall bear their respective attorney's 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 above, 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 regarding intended or potential enforcement 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

MCMI may have to the decision will be preserved until the Department seeks to enforce this Consent Order and Agreement.

32. Successors

This Consent Order and Agreement shall be fully and completely binding upon any successor of MCMI. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) MCMI consolidates with or merges into or permits to merge with it and MCMI is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of MCMI's properties or assets which include, but is not limited to, voting stock of MCMI. Successor does not include any corporation or other entity to which MCMI transfers or assigns all or substantially all of its financial or non-financial liabilities. MCMI shall notify the Department, without delay, of any successor as defined herein and shall provide such successor with a copy of this Consent Order and Agreement.

33. Counterpart Signatures


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

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

[SIGNATORIES APPEAR ON THE FOLLOWING PAGE]

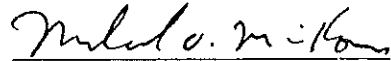
FOR MAPLE CREEK MINING, INC.:



Ronnie Dietz
Vice President

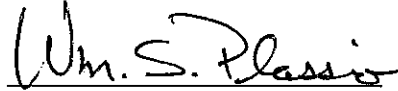


Ronnie Dietz
Treasurer



Michael O. McKown
Attorney for Maple Creek Mining, Inc.

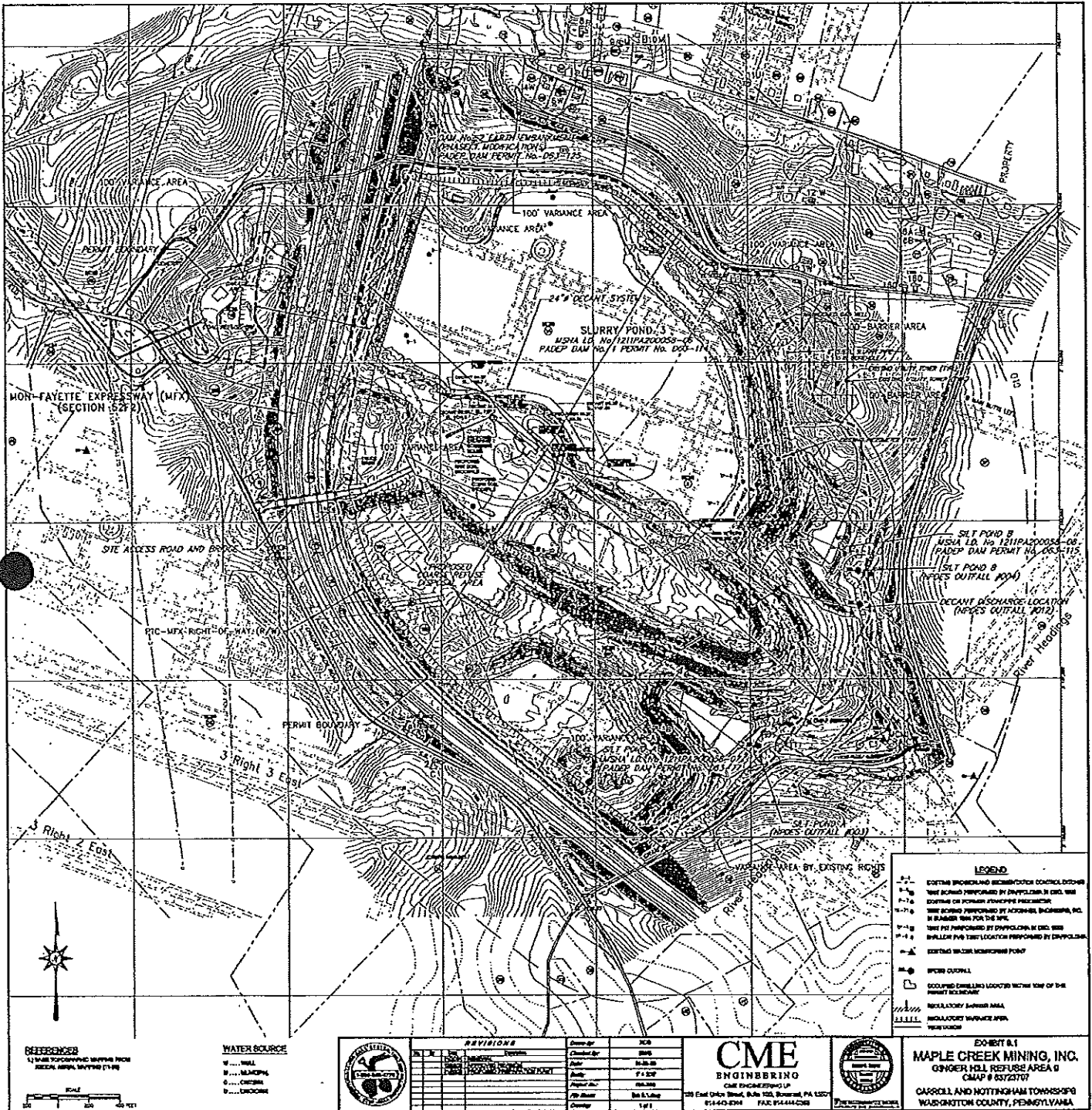
FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



William S. Plassio
District Mining Manager



Barbara J. Grabowski
Assistant Counsel



LEGEND

- 1:10' EARTH SHIELDING ENCLOSURE CONTROLS
- 2:10' WET SCUMS PERFORMED BY DRYPOLDA IN DEC. 1988
- 3:10' EXISTING OR FORMER FENCE LINE
- 4:10' WET SCUMS PERFORMED BY ACKERMAN ENGINEERING, INC. IN JANUARY 1988 FOR THE MFL
- 5:10' WET PFD PERFORMED BY DRYPOLDA IN DEC. 1988
- 6:10' WET PFD TEST LOCATION PERFORMED BY DRYPOLDA
- 7:10' EXISTING WATER MONITORING POINT
- 8:10' SPILLER OUTFALL
- 9:10' OCCUPIED BUILDING LOCATED WITHIN 100' OF THE PERMIT BOUNDARY
- 10:10' REGULATORY BUFFER AREA
- 11:10' REGULATORY VARIANCE AREA
- 12:10' WATER SOURCE

EXHIBIT B.1
MAPLE CREEK MINING, INC.
 GINGER HILL REFUSE AREA 9
 CMAP # 8372777
 CARROLL AND NOTTINGHAM TOWNSHIPS
 WASHINGTON COUNTY, PENNSYLVANIA



REVISIONS

NO.	DATE	DESCRIPTION	BY	CHKD.
1	01/15/88	ISSUED FOR PERMIT	...	...
2	02/15/88	...	...	...
3	03/15/88	...	...	...
4	04/15/88	...	...	...
5	05/15/88	...	...	...
6	06/15/88	...	...	...
7	07/15/88	...	...	...
8	08/15/88	...	...	...
9	09/15/88	...	...	...
10	10/15/88	...	...	...
11	11/15/88	...	...	...
12	12/15/88	...	...	...

CME ENGINEERING
 CME ENGINEERING LP
 28 East Oak Street, Suite 102, Bensalem, PA 18901
 610-443-8261 FAX: 610-444-0268



REFERENCE
 1) 1:10' UNCOMPILED SURFACE FROM AERIAL PHOTO, 1974 (1:25,000)

WATER SOURCE
 W... WELLS
 M... MINEPITS
 C... CREEKS
 P... PONDINGS

SCALE
 1" = 100'

Blumberg No. 6119
EXHIBIT
A

Maple Creek Treatment System

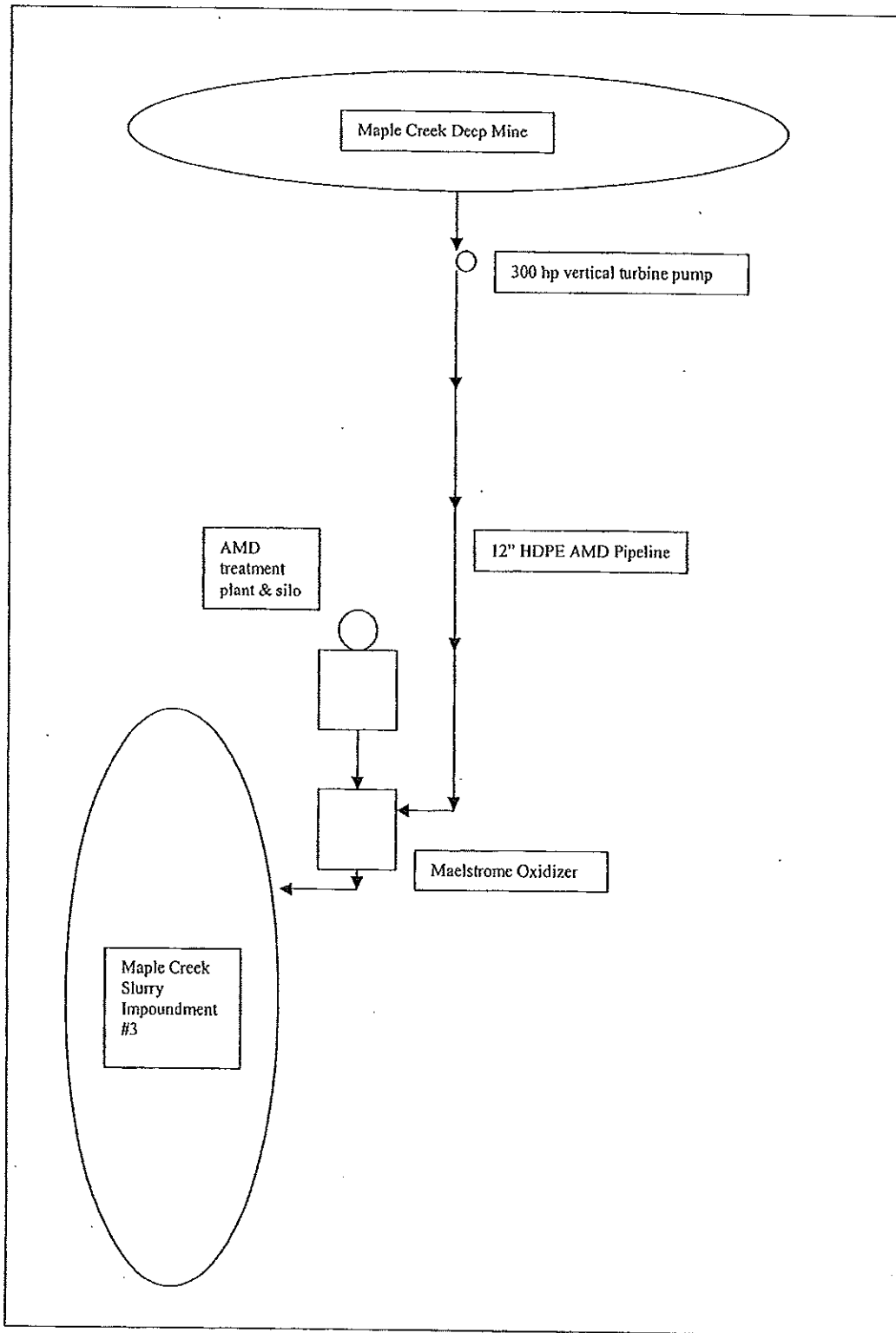


EXHIBIT
B
Drawing No. 5119

Company Name Maple Creek Mining Co.

Printed on 09/08/2009

Project 002

Site Name Ginger Hill 2 Pond 3

Life of Trust Fund 75 yrs

Inflation Rate 3.10 %

Return Rate 8.43 %



AMD TREAT RECAPITIALIZATION COST

AMDTREAT

Year	Trust Fund Growth Fund Before Payout	Trust Fund Growth Fund After Payout	Payout Schedule	Year	Trust Fund Growth Fund Before Payout	Trust Fund Growth Fund After Payout	Payout Schedule
	143,911	143,911	Initial Fund Amount				
1	156,042	156,042	0	51	484,164	484,164	0
2	169,197	169,197	0	52	524,979	524,979	0
3	183,460	183,460	0	53	569,235	569,235	0
4	198,926	198,926	0	54	617,221	617,221	0
5	215,695	215,695	0	55	669,253	669,253	0
6	233,878	233,878	0	56	725,671	725,671	0
7	253,594	253,594	0	57	786,845	786,845	0
8	274,972	274,972	0	58	853,176	853,176	0
9	298,152	298,152	0	59	925,099	925,099	0
10	323,287	224,793	98,493	60	1,003,085	549,830	453,255
11	243,743	243,743	0	61	596,181	596,181	0
12	264,290	264,290	0	62	646,439	646,439	0
13	286,570	286,570	0	63	700,933	700,933	0
14	310,728	310,728	0	64	760,022	760,022	0
15	336,922	336,922	0	65	824,092	824,092	0
16	365,325	365,325	0	66	893,563	893,563	0
17	396,122	396,122	0	67	968,890	968,890	0
18	429,516	429,516	0	68	1,050,568	1,050,568	0
19	465,723	465,723	0	69	1,139,131	1,139,131	0
20	504,984	371,325	133,658	70	1,235,160	620,083	615,077
21	402,628	402,628	0	71	672,356	672,356	0
22	436,570	436,570	0	72	729,035	729,035	0
23	473,372	473,372	0	73	790,493	790,493	0
24	513,278	513,278	0	74	857,131	857,131	0
25	556,547	354,588	201,959	75	929,388	0	929,388
26	384,480	384,480	0	76	0	0	0
27	416,891	416,891	0	77	0	0	0
28	452,035	452,035	0	78	0	0	0
29	490,142	490,142	0	79	0	0	0
30	531,461	350,084	181,377	80	0	0	0
31	379,596	379,596	0	81	0	0	0
32	411,596	411,596	0	82	0	0	0
33	446,293	446,293	0	83	0	0	0
34	483,916	483,916	0	84	0	0	0
35	524,710	524,710	0	85	0	0	0
36	568,943	568,943	0	86	0	0	0
37	616,905	616,905	0	87	0	0	0
38	668,910	668,910	0	88	0	0	0
39	725,299	725,299	0	89	0	0	0
40	786,442	540,309	246,132	90	0	0	0
41	585,857	585,857	0	91	0	0	0
42	635,245	635,245	0	92	0	0	0
43	688,796	688,796	0	93	0	0	0
44	746,862	746,862	0	94	0	0	0
45	809,822	809,822	0	95	0	0	0
46	878,090	878,090	0	96	0	0	0
47	952,113	952,113	0	97	0	0	0
48	1,032,376	1,032,376	0	98	0	0	0
49	1,119,406	1,119,406	0	99	0	0	0
50	1,213,772	446,522	767,249	100	0	0	0

