

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Marquise Mining Corporation	:	MF Land Operation Mine
101 Screll Drive	:	SMP No. 56950105
P. O. Box 338	:	Stonycreek Township
Blairsville, PA 15717	:	Somerset County
	:	Alternative Financial Assurance Mechanism

POSTMINING TREATMENT TRUST
CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 17th day of August, 2011, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Marquise Mining Corporation ("Marquise").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, *as amended*, 52 P.S. §§ 1396.1-1396.19a ("Surface Mining Act"); the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, *as amended*, 52 P.S. §§ 1406.1-1406.21 ("Mine Substance 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 of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative Code") and the rules and regulations promulgated thereunder.

B. Pursuant to Section 4(d.2) of the Surface Mining Act, 52 P.S. § 1396.4(d.2), the Department may establish alternative financial assurance mechanisms which shall achieve the objectives and purposes of the bonding program. These mechanisms include the establishment of a site-specific trust funded by 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 Discharge 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 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, 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. Marquise is a Pennsylvania corporation with a business address of 101 Serell Drive, P. O. Box 338, Blairsville, Pennsylvania 15717. Marquise's business includes the mining of bituminous coal by the surface method in Pennsylvania pursuant to Surface Mining Operator's License No. 1504. John M. Lee and David A. Swank are the President and Secretary of Marquise, respectively, and are authorized to legally bind Marquise.

D. Marquise is the permittee of the following bituminous surface coal mine which is associated with post-mining discharge liability:

<u>NAME</u>	<u>SMP</u>	<u>TOWNSHIP</u>	<u>COUNTY</u>
MF Land Operation	56950105	Stonycreek	Somerset

E. Surface Mining Permit ("SMP") No. 56950105, which includes NPDES Permit No. PA0213136, was originally issued on May 3, 1996 to Pennsylvania Coal Company, Inc. Pennsylvania Coal Company, Inc. operated the MF Land Operation Mine from May 3, 1996 to June 22, 2006. On June 22, 2006, SMP No. 56950105 and NPDES Permit No. PA0213136 were renewed, and Pennsylvania Coal Company, Inc. transferred SMP No. 56950105 and NPDES Permit No. PA0213136 to Marquise. On June 22, 2006 and continuing thereafter, Marquise operated the MF Land Operation Mine.

F. Coal removal was completed at the MF Land Operation Mine on or about September 15, 1998, and backfilling, grading and revegetation of the mine were completed on or about June 25, 2000. On or about April 30, 2003, three discharges of acid mine drainage identified as MD1, MD2, and MD3 (collectively "Discharges") appeared within the boundaries of SMP No. 56950105. The latitude and longitude coordinates for the Discharges are as follows: MD1 is located at N40° 03' 15", W78° 56' 27"; MD2 is located at N40° 03' 14", W78° 56' 29"; and MD3 is located at N40° 03' 12", W78° 56' 31". The Discharges are identified and located on the topographic map attached hereto as **Exhibit A**.

G. The general raw water quality of the Discharges is characterized by a pH less than 6.0, acidity greater than alkalinity, an iron concentration in excess of 7.0 mg/l and a manganese concentration in excess of 5.0 mg/l. The flows and specific raw water quality of each of the Discharges are set forth in **Exhibit B**.

H. Marquise agrees it has the legal responsibility to treat or abate the Discharges pursuant to, *inter alia*, the Surface Mining Act and Clean Streams Law.

I. On or about September 2005, Marquise installed an active treatment system to treat the Discharges. The treatment system consists of buried limestone sumps which collect the

Discharges, and plastic piping that conveys the Discharges under Township Road T-667 to an open ditch where caustic soda is added as a treatment agent before the Discharges enter a large settling basin (“MF Land Treatment System” or “Treatment System”). The MF Land Treatment System is depicted on the map attached hereto as **Exhibit C**.

J. The treated effluent from the MF Land Treatment System flows to an unnamed tributary to the Stonycreek River, a water of the Commonwealth, under authority of SMP No. 56950105 and NPDES Permit PA0213136.

K. The effluent limitations applicable to the Discharges and the treated effluent from the MF Land Treatment System are as follows:

<u>Discharge Parameter</u>	<u>Average Monthly</u>	<u>Maximum Daily</u>	<u>Instant Maximum</u>
Iron, total (mg/l)	3.0	6.0	7.0
Manganese, total (mg/l)	2.0	4.0	5.0
Total suspended solids (mg/l)	35.0	70.0	90.0

- pH not less than 6.0 nor greater than 9.0 at all times.
- Alkalinity must exceed acidity at all times.

L. The MF Land Treatment System is located on property previously owned by MF Land Company. The current property owners are Terry L. Johnson, Jr. of 205 Technology Drive, Somerset, PA 15501; Eric D. Alumbaugh of 175 Kent Lane, Friedens, PA 15541; and James Enos of 669 Main Street, Rockwood, PA 15557.

M. In order to assure that Marquise, the Trustee, and the Department have a right of access to the property currently owned by Terry L. Johnson, Jr., Eric D. Alumbaugh, and James Enos, upon which the MF Land Treatment System is located, to construct, operate, maintain, and inspect the MF Land Treatment System described in Paragraph I, Marquise must obtain a newly

executed "Consent to Right of Entry" document from each of the current property owners that grants a right of access to Marquise, the Department and the Trustee. A copy of the Department's model "Consent to Right of Entry" document is attached here to as **Exhibit D**. Marquise has informed the Department that it may not be able to obtain the signatures from each of the current property owners. Marquise has agreed to use its best efforts to obtain the signatures from the property owners, and in accordance with Paragraph 14 below, provide documentation of its efforts with respect to any property owner whose signature it is unable to obtain.

N. Marquise posted a collateral bond in the amount of \$11,600.00 supported by Certificate of Deposit No. 31700289091 ("CD") with PNC Bank to ensure reclamation of the MF Land Operation Mine.

O. Marquise desires to establish a post-mining treatment trust ("Trust") with Somerset Trust Company as an alternative financial assurance mechanism (and a financially-backed enforceable contract) to provide for the long-term treatment of the Discharges from the MF Land Operation Mine, and secure the release of the reclamation bond upon completion of all other reclamation requirements. Marquise agrees to establish the Trust by executing a Post-Mining Discharge Treatment Trust Agreement with Somerset Trust Company which conforms with the Department's model trust agreement.

P. Marquise intends to use the CD posted for the MF Land Operation Mine identified in Paragraph N as part of the final payment into the Trust, and will seek release of this financial instrument in accordance with 25 Pa. Code §§ 86.170-175 approximately ninety (90) days before the final Trust payment is due.

Q. In order to calculate the amount necessary to fully fund the Trust, the Department and Marquise have agreed to use actual operation and maintenance costs from past operation of the MF Land Treatment System, or AMDTreat cost estimates where insufficient operation and maintenance cost data exist. Based on actual operation and maintenance costs from past operations and AMDTreat cost estimates, the current annual cost of operating and maintaining the MF Land Treatment System is **Six Thousand, Seven Hundred Seventy One Dollars (\$6,771.00)**.

R. In order to calculate the amount necessary to fully fund the Trust, the Department and Marquise have agreed to use recapitalization and demolition cost data generated by the Department's AMDTreat software tool. According to the AMDTreat software tool, the present value of recapitalization cost for the Treatment System is **Eight Thousand Seven Hundred Twenty Seven Dollars (\$8,727.00)**. The AMDTreat Recapitalization Cost Schedule for the Treatment System is attached hereto as **Exhibit E**.

S. Marquise is willing to establish a post-mining treatment trust with 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 reclamation bonds upon completion of all other reclamation requirements. Marquise agrees to establish the Marquise Treatment Trust by executing a Post-Mining Treatment Trust Agreement with Somerset Trust Company which conforms with the Department's model trust agreement.

T. In order to ensure adequate funding of the financial assurance mechanism, the Department requires accurate and timely information on the costs related to operation and maintenance of the Treatment System.

U. The parties have agreed to use the formulas and procedures set forth below in this Consent Order and Agreement to determine the present value of the treatment trust. The parties agree that **One Hundred Forty Six Thousand, Five Hundred Thirty Eight Dollars and Three Cents (\$146,538.03)** represents the current present value of the fully funded trust for the discharges covered by this Consent Order and Agreement. This sum constitutes the current present value of the estimated future operation and maintenance costs for the Treatment System, and the current present value of the estimated future recapitalization costs for the Treatment System. The parties have also agreed to use the information and figures that will be provided by the Accounting required by Paragraph 4 below to recalculate and adjust the amount of the Trust as described in 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 Marquise 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 Marquise to comply with any term or condition of this Consent Order and Agreement shall subject Marquise to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings.

a. Marquise agrees that the findings in Paragraphs A through U are true and correct and, in any matter or proceeding involving Marquise and the Department, Marquise shall not challenge the accuracy or validity of these findings.

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

3. Definitions.

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

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

c. Annual Anniversary Date. Thirty (30) days after the last day of Marquise's fiscal year or thirty (30) days after the last day of any fiscal year that Marquise 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 System.

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 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 9.28%)
 I = Inflation Rate (assumed to be 3.1% or .031)

h. Primary Basis Valuation. 100% of the present value of the future costs of operating and maintaining the Treatment System, as determined by the Formula.

i. Primary Target Valuation. 116% of the present value of the future costs of operating and maintaining the Treatment System 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 System.

k. Primary Trust Valuation. The cash, cash equivalents, and the market value of investments currently held by the Trust in the Primary Trust Account.

4. Annual Treatment Costs; Records; Factors; Accounting.

a. Marquise shall keep accurate financial records of all the costs and expenses of annual treatment for each year. The various cost factors fall into general categories, including, but not limited to: Reagent; Polymer; Electrical; Sludge Removal; Labor, including benefits; Maintenance; Sampling; Overhead; and Miscellaneous. Marquise shall track and report each individual item for each general category.

b. Marquise shall provide an annual accounting of the costs and expenses of annual treatment 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"). The Accounting shall cover the period beginning the first day of January and continuing through the final day of December of each year, or other fiscal year as Marquise 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 Marquise and by the President of Marquise attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting. Each affidavit shall be accompanied by a written statement as follows: "The statements contained herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities."

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

d. In the event of a dispute about the costs and expenses of the Treatment System incurred by Marquise, Marquise 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 pursuant to Generally Accepted Accounting Principles as to the treatment costs incurred by Marquise, prepared by an independent licensed public or certified public accountant, shall satisfy Marquise's burden of proof as to any of these matters.

5. Treatment Trust.

a. Marquise shall establish an irrevocable Trust to be known as the Marquise Treatment Trust ("Trust") by executing a Post-Mining Discharge Treatment Trust Agreement with Somerset Trust Company. The Trust shall secure Marquise's obligation to treat the Discharges, including its legal obligation to operate and maintain the Treatment System in perpetuity, or until water treatment is no longer necessary. The Trust shall also secure Marquise's obligation to provide financial resources to the Department and the citizens of the Commonwealth sufficient to maintain and operate the Treatment System, and to treat the

Discharges in perpetuity in the event Marquise becomes unable or unwilling to meet these obligations. The Trust shall also provide for the demolition of any treatment facilities and reclamation of the treatment site should treatment no longer be needed. The agreement establishing the Marquise Treatment Trust is attached hereto as **Exhibit F**.

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

c. Upon 30 days prior notice to the Department, Marquise may post an appropriate bond or bonds with the Department, in the amount determined by the Department in accordance with applicable bonding requirements, in order to guarantee Marquise's obligation to treat or abate the Discharges, and Marquise may subsequently petition the Department to terminate the Marquise Trust. Upon termination of the Trust following the posting of sufficient bonds to guarantee Marquise's obligation, the Department shall direct the Trustee to distribute any residuum, less final trust administration expenses of the Trustee, to the Settlor in accordance with Articles 4 and 12 of the Post-Mining Discharge Treatment Trust Agreement attached as **Exhibit F**.

6. Funding of the Primary Trust Account.

a. Payments to the Primary Trust Account: In accordance with the following schedule, Marquise shall make five (5) deposits to the Primary Trust Account totaling **One Hundred Forty Six Thousand, Five Hundred Thirty Eight Dollars and Three Cents (\$146,538.03)**. This sum constitutes the current present value of the amount necessary to fully fund the Trust, and includes the current present value of the future operation and maintenance of

the Treatment System and the current amount needed to finance anticipated and periodic capital expenditures for the Treatment System.

b. Initial Payment to the Primary Trust Account: Upon its execution of this Consent Order and Agreement, Marquise shall deposit the amount of \$30,000.00 into the Primary Trust Account.

c. Ongoing Payments to the Primary Trust Account:

i. On or before one year after the date of execution of this Consent Order and Agreement, Marquise shall deposit an amount of \$30,000.00 into the Primary Trust Account.

ii. On or before two years after the date of execution of this Consent Order and Agreement, Marquise shall deposit an amount of \$30,000.00 into the Primary Trust Account.

iii. On or before three years after the date of execution of this Consent Order and Agreement, Marquise shall deposit an amount of \$30,000.00 into the Primary Trust Account.

iv. On or before four years after the date of execution of this Consent Order and Agreement, Marquise shall deposit an amount of \$20,000.00 into the Primary Trust Account. This final payment amount may need to be adjusted to correspond with the performance of the Trust Fund. As provided in Paragraph P, above, Marquise will seek release of the CD and use the proceeds as part of the final payment to the Trust.

Payments will be required without notice.

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 Marquise. 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 G**.

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 at Point 4 on **Exhibit G**.

d. If the Primary Trust Valuation is less than the Primary Basis Valuation, then Marquise 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 at Points 5 and 6 on **Exhibit G**.

e. No Distribution Payments under this Paragraph 7 shall be made until Marquise has fully funded the Trust under Paragraph 6.

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% of the Calculated Treatment Cost, the Department will calculate a new Primary Basis Valuation using the Formula and the newly determined Actual Treatment Cost. A new Primary Target Valuation will then be determined by calculating 116% of the new Primary Basis Valuation. **Exhibit H** 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 Marquise. The amount of such Distribution Payment will be equal to the percent change in Actual Treatment Cost times the Primary Trust Valuation, or in an amount equal to the difference between the Primary Trust Valuation and the newly calculated Primary Target Valuation, whichever is less. The amount of such Distribution Payment shall be determined by the following formulas:

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

Or

$$DP = TR - \text{new TV}$$

where: DP = Distribution Payment

TR = Primary Trust Valuation

TV = Primary Target Valuation

ATC = Actual Treatment Cost

c. No Distribution Payments under this Paragraph 9 shall be made until Marquise has fully funded the Trust under Paragraph 6.

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 9.28% 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 E**. 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 E** 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 E**. 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 Marquise any time a planned capital replacement is made as indicated on **Exhibit E**. 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 E**, 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 E**, 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 Marquise's obligation to make a contribution payment under Paragraph 7.d above. This amount is depicted graphically at Point 5 on **Exhibit G**. However, the amount of surplus funds transferred to the Primary Trust Account may exceed Marquise's obligation under Paragraph 7.d 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 G**.

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

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by Marquise 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 Marquise to implement remediation or abatement activities to reduce or eliminate the Discharges, or to improve the quality of the Discharges, provided the Department first approves such activities.

14. Real and Personal Property

a. Within one year of executing this Consent Order and Agreement, Marquise must submit an original, recorded "Consent to Right of Entry" document from each of the three landowners: Terry L. Johnson, Jr., Eric D. Alumbaugh, and James Enos. To the extent that Marquise is unable to obtain the signature of any one of the three property owners, Marquise shall submit an affidavit documenting the efforts Marquise expended in attempting to obtain this signature. Marquise shall take whatever additional reasonable steps are directed by the Department after the Department reviews the affidavit. Marquise shall assign to the Trustee all rights of access to the MF Land Operation Mine possessed by Marquise.

b. Marquise shall convey to the Trustee title to the tank, pipe and valves that together compose the MF Land Treatment System, which are described in the Post-Mining

Discharge Treatment Trust Agreement attached hereto as **Exhibit F**. Title shall be delivered to the Trustee on or before execution of this Consent Order and Agreement.

15. Public Liability Insurance.

a. Marquise shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the MF Land Treatment System and the real and personal property which is identified in the Post Mining Discharge Treatment Trust Agreement as part of the Trust Principal. The Trustee and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policy.

b. In addition to the requirements of Paragraph 15.a, the public liability insurance shall be written on an occurrence basis and shall provide bodily injury and property damage coverage in the minimum amounts of \$500,000 per person and \$1,000,000 per occurrence. The insurance shall include a rider requiring the insurer to notify the Department 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 Marquise 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 MF Land Treatment System and any change in the fiscal year; (iii) to resolve any issues which arise as a result of that change or the performance of the Marquise 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 Trust; and (v) to address any other issues that may concern this Consent Order and Agreement or its implementation.

b. Marquise 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. Marquise's Continuing Obligation. Neither Marquise's agreement to fund the Trust, nor the full or partial funding of the Trust, nor the exhaustion of the Trust, shall in any way limit Marquise's obligation to operate the MF Land Treatment System in a manner that meets all applicable effluent limitations. Furthermore, exhaustion of the Trust shall not excuse Marquise from Marquise's obligation to adequately treat or to abate the Discharges.

18. Stipulated Civil Penalties.

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

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

District Mining Manager
Department of Environmental Protection
Cambria District Mining Office
286 Industrial Park Road
Ebensburg, PA 15931

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

Consent Order and Agreement. The payment resolves only Marquise'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 Marquise 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 Marquise defaults on the obligations of this Consent Order and Agreement Marquise 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 Marquise 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. Marquise reserves the right to challenge any action which the Department may take to require those measures.

21. Liability of Marquise

Marquise 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. Marquise 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 MF Land Operation Mine or any part thereof.

b. If Marquise intends to transfer any legal or equitable interest in the MF Land Operation Mine, Marquise 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 Marquise's duties and obligations under this Consent Order and Agreement upon transfer of the MF Land Operation Mine. Marquise hereby knowingly waives any right that it may have to challenge the Department's decision under this Paragraph.

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
Cambria District Mining Office
286 Industrial Park Road
Ebensburg, PA 15931

with a copy to:

Director, District Mining Operations
Department of Environmental Protection
Greensburg District Mining Office
Armbrust Professional Center
8205 Route 819
Greensburg, PA 15601

24. Correspondence with Marquise

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

John M. Lee, President
Marquise Mining Corporation
101 Serell Drive
P. O. Box 338
Blairsville, PA 15717

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

26. Severability.

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

27. Entire Agreement

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

28. Attorney Fees

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

29. Modifications

Except as provided in Paragraph 10.c, 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 Marquise may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

32. Successors

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

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


IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Marquise 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 Marquise; that Marquise consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Marquise 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 Marquise's attorney certifies only that the agreement has been signed after consulting with counsel.

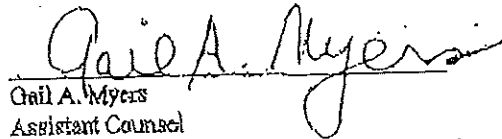
FOR MARQUISE MINING CORPORATION:

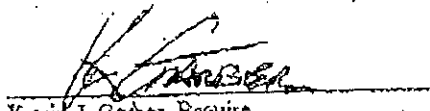
FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:


John M. Lee, President


Daniel Sammarco
Acting District Mining Manager


David A. Swank, Secretary


Gail A. Myers
Assistant Counsel


Kevin J. Gabor, Esquire
Bisht, Calland, Clements and Zomnik, P.C.
Counsel for Marquise Mining Corporation