

COA #045100

cc: RAC (2)

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✓ 5/27/09

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

READING ANTHRACITE COMPANY	:	Trevorton Mines Sites, SMP Nos.
P.O. Box 1200	:	49803201 and 49803202
200 Mahantongo Street	:	
Pottsville, PA 17901-7200	:	
	:	Alternative Financial Assurance Mechanism

POSTMINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 27th day of August, 2004, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Reading Anthracite Company (hereinafter "RAC").

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, 35 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.

cc: File (RAC # 49803201)

File (RAC # 49803202)

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B. Reading Anthracite Company (hereinafter "RAC") is a corporation with a business address of P.O. Box 1200, 200 Mahantongo Street, Pottsville, PA 17901-7200, whose business includes the mining of coal by the surface mining method.

C. RAC is the permittee of the following anthracite coal mines which are associated with post-mining discharge liability:

NAME	PERMIT NO.	TOWNSHIP	COUNTY
Trevorton Refuse Bank#228	49803201	Zerbe	Northumberland
Trevorton Slush Bank #1&2	49803202	Zerbe	Northumberland

D. The large refuse bank deposits at the Trevorton sites were placed there from deep mining prior to 1950. The original Mine Drainage Permit for the Trevorton sites was MDP No. 666M018. This permit was repermited as Permit No's. SMP 49803201 and 49803202. The refuse reprocessing and prep plant operations essentially ceased except for limited refuse reprocessing activity on the Trevorton sites in 1980's. RAC is in the process of demolishing all structures located on the site, except for the office/scalehouse.

E. The North Franklin abandoned mine complex is located upgradient and to the south of the Trevorton Surface Mining Permits. This large mine complex has its principal discharge called the "Tender Slope" discharge adjacent to Legislative Route 49012. In 1987 two discharges of concern were identified by Inspector Earl Fraley. The first of these discharges that were investigated was emanating in a culvert from an old wooden pipe close to the prep plant and then flowing across the permitted site and into the stream located at the northern boundary of the site. The "second set of discharges" was a series of seeps located adjacent to two impoundments on the western end of the property. DEP Hydrogeologist Keith A. Laslow and Joe Schueck conducted a hydrogeologic investigation including the use of geophysical

techniques “resistivity and terrain conductivity” to determine whether either of the two discharges in question were related to abandoned mine water from the North Franklin complex. In their report dated August 21, 1989, it was determined that the discharge near the wooden pipe was North Franklin colliery water flowing onto and not related to RAC’s operations at the Trevorton sites. It was also determined that RAC was not liable for the first discharge and therefore, RAC was authorized to divert that discharge around or through the property in a contained manner. The Department did determine that RAC is liable for the second set of discharges, the seep discharges on the western part of the property. RAC’s Engineer Walter Manhart conducted several studies to investigate construction of passive treatment systems in cooperation with the Bureau of Abandon Mine Reclamation and others. However, no passive treatment systems were constructed to treat the seep discharges. On February 11, 1987 the Department cited RAC for the seep discharges. RAC paid a civil penalty for those discharges and began utilizing two existing wetlands to treat the discharges. On May 24, 2002 OSM conducted an oversight inspection with DEP Inspector Ryan Flynn and Inspector Supervisor Thomas N. Flannery. As a result of that inspection the Department issued a Compliance Order to RAC citing the seep discharges. RAC allowed the seep discharges to flow off of SMP# 49803201 and flow onto the adjacent SMP#49803202.

F. RAC agrees to treat the “second set” of discharges identified in Paragraph E, above.

G. Surface reclamation and structure demolition required on SMP# 49803201 and SMP# 49803202 is shown in Exhibit A. These permits have been bonded under Conventional Bonding and therefore are adequately bonded for reclamation.

H. SMP# 49803201 was re-issued on June 27, 2002 for bank removal activities on 162.0 acres in Zerbe Township, Northumberland County. The area consists of large coal refuse banks and a breaker facility. There is a 4.0 acre settling area on the northeast end of the permit which is to remain as a post-mining feature. There is also a 10 acre drainage ditch along the foot of refuse bank which conveys the seepages that require treatment. This drainage ditch collects and conveys several seeps described in paragraph E and the flow drains onto SMP# 49803202.

I. SMP# 49803202 was re-issued on May 23, 2002 for reclamation purposes only for 33.8 acres in Zerbe Township, Northumberland County. In addition to the reclamation areas there is a 2.0 acre settling pond on the eastern end of the permit that is to remain as a post mining feature and a 5.5 acre area that was previously planted.

J. In September 2003 RAC constructed a series of limestone dikes in the drainage ditch on SMP# 49803201 to provide treatment to the discharges. In addition, on SMP# 49803202 the settling pond was modified and compost material was added to establish a wetland for settling metals.

K. The AMD Treat Main Form identifies RAC's planned treatment and capital costs. A copy of the AMD Treat Main Form is attached hereto as Exhibit B.

L. Raw water quality at the Trevorton seeps is documented from 7 samples from collected in 2002 as shown in the Table in Exhibit C.

M. RAC would like to provide an alternative financial assurance mechanism as the financially backed enforceable contract to provide for the long-term treatment of post-mining discharges, and secure the release of reclamation bonds upon completion of all other reclamation requirements.

N. The parties have discussed the need to obtain accurate and timely information on the costs of operating and maintaining the Treatment Systems in order to maintain the proper amount of financial backing. The parties have agreed the current annual cost of operating and maintaining the Treatment Systems is \$2,440.00.

O. The parties agree to use the information and figures which will be provided by the Accounting required by Paragraph 4 to calculate and adjust the proper size of the alternative financial assurance mechanism as described below. The parties also agree to use the formulas set forth below to calculate the present value of the alternative financial assurance mechanism.

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 RAC 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 RAC to comply with any term or condition of this Consent Order and Agreement shall subject RAC to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

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

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

3. Definitions

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

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

c. Annual Anniversary Date. The annual recurrence of the month and day that this Consent Order and Agreement is executed.

d. Calculated Treatment Cost. The projected future annual cost of treatment, based on the Actual Treatment Cost, compounded at three and one tenth percent (3.1%) annually.

e. Capital Improvement Account. The sub-account within the Trust that is primarily used to finance anticipated and periodic capital expenditures for the Treatment Systems.

f. Distribution Payment. The Trustee's disbursement of money from the Trust made at the written direction of the Department to a person and in an amount specified by the Department and as provided by this Consent Order and Agreement.

g. Formula. The equation used to calculate the Present Value of the future operation and maintenance ("O&M") of the Treatment Systems. The equation is:

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

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

h. Primary Basis Valuation. 100% of the present value of the future cost of treatment as determined by the Formula.

i. Primary Target Valuation. 116% percent of the present value of the future cost of treatment as determined by the Formula.

j. Primary Trust Account. The sub-account within the Trust that is primarily used to finance annual operating and maintenance costs of the Treatment Systems.

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

4. Annual Treatment Costs; Records; Factors; Accounting

a. RAC 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. RAC shall keep separate records for each of the following Treatment Systems:

c. RAC shall provide an annual accounting of the costs and expenses of annual treatment (“the Accounting”) to the Department on or before the 90th day following the last day of the calendar year for which the Accounting is being provided. The Accounting shall cover the period beginning January 1 and continuing through December 31 of each year, or other fiscal year as RAC 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 RAC

and by the President of RAC attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

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

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

5. Treatment Trust

a. RAC shall establish an irrevocable trust to be known as the RAC Treatment Trust (Trust). The Trust shall secure RAC's obligation to treat discharges of mine drainage, including its obligation to operate and maintain the Treatment Systems, in perpetuity, or until water treatment is no longer necessary, and to provide financial resources to the Department and the citizens of the Commonwealth to maintain and operate the Treatment Systems, and to treat the mine drainage in perpetuity in the event RAC becomes unable or unwilling to meet these obligations. The Trust shall also provide for the demolition of treatment facilities and reclamation of the treatment site should treatment no longer be needed. The agreement establishing the Trust is attached as Appendix A.

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

6. Funding of the Primary Trust Account

a. Initial Payment to the Primary Trust Account: Upon its execution of this Consent Order and Agreement, RAC shall deposit an amount of \$55,934 into the Primary Trust Account.

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 RAC. The amount of such Distribution Payment will be equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, or equal to the Calculated Treatment Cost, whichever is less. This amount is depicted graphically at Point 1, 2 & 3 on Exhibit D.

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

d. If the Primary Trust Valuation is less than the Primary Basis Valuation, then RAC shall make an additional contribution into the Primary Trust Account in an amount equal to the difference between the Primary Basis Valuation and the Primary Trust Valuation, or

in an amount equal to the Calculated Treatment Cost, whichever is less except as provided in Paragraph 13.a. This amount is depicted graphically as points 5 & 6 on Exhibit D.

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 116% percent of the new Primary Basis Valuation. Exhibit E 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 less 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 RAC. 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

10. Capital Improvement Account

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

b. On the date of this Consent Order and Agreement the required annual balance of the Capital Improvement Account for a 75 year period shall be determined and made a part of this agreement as Exhibit F.

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

- i. For each planned capital replacement component or activity, the current cost of that component or the cost to complete that activity will be determined.
- ii. For each planned capital replacement component or activity, the estimated number of years in the life cycle of the component or the

number of years between when the activity is needed will be determined.

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

payment periods. The value for the number of payment periods for the second replacement or activity will be equal to the number of years until the next replacement or activity plus the number of years in the expected life cycle as determined in paragraph 10.c.ii. above. The number of payment periods for the third replacement will be equal to the number of years until the next replacement or activity plus two times the number of years in the expected life cycle. The number of periods for the fourth replacement will be equal to the number of years until the first replacement plus three times the years in the life cycle. The Future Value of each replacement will be calculated in like manner until the number of periods is equal to the number of years until the last replacement or activity is expected to occur that does not exceed 75 years from the year the calculations are being made.

- vii. For each planned capital replacement component or activity, the Present Value of the second and each subsequent capital replacement or activity will be calculated using the same values as in Paragraph 10.c.v. above except the value for the number of payment periods which shall be determined in like manner to Paragraph 10.c.vi. above.

- viii. The required balance in the Capital Improvement Account for the current year shall be equal to the sum of all Present Values calculated in Paragraph 10.b.v. and vii. above.
- ix. The required balance in the Capital Improvement Account shall be recalculated on an annual basis and each time a Distribution Payment is contemplated under Paragraph 12. Such recalculation shall be deemed an amendment to Exhibit F and this Consent Order and Agreement, and shall be used in making all future calculations involving the Capital Improvement Account.

11. Transfer of Funds to the Capital Improvement Account

a. 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 F. The amount of such transfer will be equal to the difference between the required balance and the current balance, or in an amount equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, whichever is less.

12. Distribution Payments from the Capital Improvement Account

a. A distribution payment shall be made to RAC any time a planned capital replacement is made as indicated on Exhibit F. The capital replacement and maintenance activities shall be made as needed, which may be sooner or later than the projected time. The amount of the Distribution Payment shall be equal to the calculated cost of the Capital

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

b. Each time a Distribution Payment from the Capital Improvement Account is contemplated under this Paragraph or Paragraph 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 F, then such surplus funds may be used for the following purposes:

a. Surplus funds in the Capital Improvement Account shall be transferred to the Primary Trust Account to reduce or completely satisfy RAC's obligation to make a contribution payment under Paragraph 7.g. This amount is depicted graphically at Point 5 on Exhibit D. However, the amount of surplus funds transferred to the Primary Trust Account may exceed RAC's obligation under paragraph 7.g. if additional funds are needed so that the Primary Trust Valuation equals the Primary Basis Valuation. This amount is depicted graphically at Point 6 on Exhibit D.

b. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the Operator to pay for unanticipated capital expenditures, or anticipated

capital expenditures that exceed the calculated cost of the capital improvement as indicated on Exhibit F.

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the Operator to finance implementation of a new treatment technology, provided the application of such treatment technology is first approved by the Department.

d. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the Operator 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. Real and Personal Property

RAC has prepared an operations map depicting the site, including all treatment facilities and access roads to those facilities. A copy of the Operations Map is attached hereto as Exhibit G. RAC agrees to record a copy of the Operations Map in the Schuylkill County Courthouse and grant the Department an easement to the treatment facilities including all necessary access to those facilities.

15. Public Liability Insurance

a. RAC shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the Treatment Systems and the real and personal property which is identified in the Post Mining Treatment Trust Agreement as part of the Trust Principal. 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 also be on the terms and conditions required by 25 Pa. Code § 86.168(a)-(e), or, in the alternative, as provided by Paragraph 15.c.

c. In lieu of the insurance requirements of Paragraph 15.b. and, 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 \$250,000 per person and \$1,000,000 per occurrence. The insurance shall include a rider requiring the insurer to notify the Department 30 days prior to substantive changes being made to the policy or prior to termination or failure to renew. Proof of insurance shall consist of a certificate of insurance filed annually with the Department which certifies RAC has a public liability insurance policy in force meeting the requirements of this Paragraph.

16. Annual Meeting

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

17. RAC's Continuing Obligation

Neither RAC'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 RAC's obligation to operate the Treatment Systems. Furthermore, exhaustion of the Trust shall not excuse RAC from RAC's obligation to adequately treat or to abate the discharges.

18. Stipulated Civil Penalties

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

Roger J. Hornberger, District Mining Manager
Department of Environmental Protection
Pottsville District Mining Office
5 West Laurel Blvd.
Pottsville, PA 17901

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

21. Liability of RAC

RAC 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.

RAC 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 RAC Sites or any part thereof.

b. If RAC intends to transfer any legal or equitable interest in the RAC Sites which is affected by this Consent Order and Agreement, RAC shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Director, District Mining Operations of such intent.

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

23. Correspondence with Department

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

Roger J. Hornberger, District Mining Manager
Department of Environmental Protection
Pottsville District Mining Office
5 West Laurel Blvd.
Pottsville, PA 17901

24. Correspondence with RAC

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

Stephen Shrawder, Environmental Affairs Officer
Reading Anthracite Company
P.O. Box 1200
200 Mahantango Street
Pottsville, PA 17901-7200

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

26. Severability

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

27. Entire Agreement

This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or

admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

28. Attorney Fees

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

29. Modifications

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

30. Titles

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

31. Decisions under Consent Order

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

32. Successors

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


33. Counterpart Signatures

The parties agree to execute this Consent Order and Agreement by counterpart signatures transmitted via facsimile. IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of RAC 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 RAC; that RAC consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that RAC 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

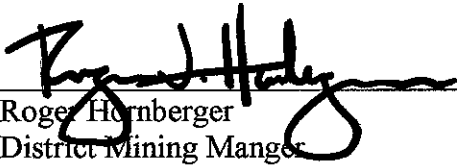
P.S. § 7514; the Administrative Agency Law, 2 Pa.C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by RAC's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR RAC:


FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:



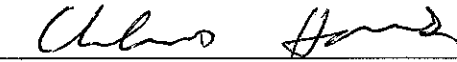
~~President or Vice President~~



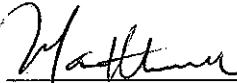
Roger Hornberger
District Mining Manager



Secretary or Treasurer



Charles Haws
Assistant Counsel



Martin J. Cerullo, Esquire
Attorney for RAC

EXHIBIT A**RAC Conversion Assistance Bond Information**

Permit Number	Location	Current Bond Amount	Full Cost Bond Amount	Difference (excess in parenthesis)	Conversion Assistance Calculated for June 30, 2002
54773006	Buck Run	\$3,548,300	\$4,178,726	\$630,426	\$657,960 *3
49850701	Burnside	\$108,280	N/A	N/A	0
54793206	Ellengowan	\$932,698	\$796,688	(\$136,010)	0
54663010	Knickerbocker	\$92,000	\$44,559	(\$47,441)	0
54783702	New St. Nicholas	\$369,669	\$771,830	\$402,161	\$402,161
54860107	Oak Hill Bank	\$168,000	\$74,447	(\$93,553)	0
54643034	Oak Hill Strip	\$41,400	\$9,306	(\$32,094)	0
54663021	Pott & Bannon	\$846,000	\$4,305,800	\$3,459,800	\$2,100,000 *1
54860110	Rhoersville	\$531,000	\$192,958	(\$338,042)	0
54773005	St. Clair	\$1,273,300	\$156,339	(\$1,116,961)	0 *1
49803201	Trevorton 228 Ref.	\$284,330	\$421,760	\$137,430	\$137,430
49803202	Trevorton Slush 57 1-2	\$45,000	\$43,409	(\$1,591)	0
49663004	Trevorton Strip	\$390,305	0	(\$390,305)	0
54860108	Wadesville "doughnut"	\$1,117,500	\$180,000	(\$937,500)	0 *2
54713002	Wadesville P-33 "doughnut hole"	\$1,058,000	\$3,021,053	\$1,963,053	\$1,963,053 *2
49840103	West Spring Slope	\$579,300	0	(\$579,300)	0 *1
	TOTALS	\$11,384,782			

Company Name Reading Anth

Project Trevorton 8-13-04

Site Name Trevorton



AMD TREAT

AMD TREAT MAIN FORM

Costs	
Passive Treatment	
Vertical Flow Pond	0
Anoxic Limestone Drain	0
Anaerobic Wetlands	0
Aerobic Wetlands	26,916
Manganese Removal Bed	0
Oxic Limestone Channel	0
Passive Subtotal:	26,916
Active Treatment	
Caustic Soda	0
Hydrated Lime	0
Pebble Quick Lime	0
Ammonia	0
Soda Ash	0
Active Subtotal:	0
Ancillary Cost	
Primary Retention Pond	0
Secondary Pond	0
Roads	0
Land Access	0
Ditching	0
Engineering Cost	0
Other Cost (Capital Cost)	4,489
Ancillary Subtotal:	4,489
Total Capital Cost:	31,405
Annual Costs	
Sampling	1,297
Labor	0
Maintenance	426
Pumping	0
Chemical Cost	0
Sludge Removal	500
Other Cost (Annual Cost)	217
Total Annual Cost:	2,440

Water Quality	
Calculated Acidity	0.00 mg/L
Alkalinity	0.00 mg/L
<input type="checkbox"/> Calculate Net Acidity (Acid-Alkalinity) <input checked="" type="checkbox"/> Enter Net Acidity manually	
Net Acidity (Hot Acidity)	1005.00 mg/L
Design Flow	25.00 gpm
Average Flow	15.00 gpm
Total Iron	8.70 mg/L
Aluminum	140.00 mg/L
Manganese	14.10 mg/L
pH	2.90 su
Ferric Iron	0.00 mg/L
Ferrous Iron	0.00 mg/L
Sulfate	0.00 mg/L
Filtered Fe	0.00 mg/L
Filtered Al	0.00 mg/L
Filtered Mn	0.00 mg/L
Specific Conductivity	0.00 uS/cm
Total Dissolved Solids	0.00 mg/L
Dissolved Oxygen	0.00 mg/L

Company Name Reading Anth
 Project Trevorton 8-13-04
 Site Name Trevorton



AMD TREAT AEROBIC WETLANDS

SIZING METHODS Select One

Aerobic Wetland Based on Metal Removal Rates

g/m²/day

g/m²/day

1. Iron Removal Rate

2. Mn Removal Rate

Aerobic Wetland Based on Dimensions

ft

ft

3. Top Length at Freeboard

4. Top Width at Freeboard

5. Length to Width Ratio :

6. Slope of Wetland Sides :

7. Freeboard Depth ft

8. Free Standing Water Depth ft

9. Organic Matter Depth ft

10. Organic Matter Unit Cost \$/yd³

11. Organic Matter Spreading Unit Cost \$/yd³

12. Excavation Unit Cost \$/yd³

13. Wetland Planting Unit Cost \$/acre

14. Clearing and Grubbing?

15a. Land Multiplier

15b. Clear/Grub Acres

16. Clear and Grub Unit Cost

Liner Cost

No Liner

Clay Liner

17. Clay Liner Unit Cost

18. Thickness of Clay Liner

Synthetic Liner

19. Synthetic Liner Unit Cost

Aerobic Wetland Sizing Summaries

20. Length at Top of Freeboard	550.00	ft
21. Width at Top of Freeboard	208.00	ft
22. Freeboard Volume	6,229	yd ³
23. Water Surface Area	109,888	ft ²
24. Water Volume	2,021	yd ³
25. Organic Matter Volume	3,960	yd ³
26. Excavation Volume	5,981	yd ³
27. Clear and Grub Area	0.0	acres
28. Liner Area	0	ft ²

Aerobic Cost Summaries

29. Organic Matter Cost	0	\$
30. Excavation Cost	26,916	\$
31. Liner Cost	0	\$
32. Clear and Grub Cost	0	\$
33. Wetland Planting Cost	0	\$

34. Total Cost	26,916	\$
----------------	--------	----

Exhibit B

Company Name Reading Anth
Project Trevorton 8-13-04
Site Name Trevorton

Printed on 08/18/2004



AMD TREAT SAMPLING

Estimate Sampling Cost

- | | | |
|-------------------------------|------------------------------------|--------------|
| 1. Unit Labor Cost | <input type="text" value="35.00"/> | \$/hr |
| 2. Collection Time per Sample | <input type="text" value="0.33"/> | hours/sample |
| 3. Travel Time | <input type="text" value="1.00"/> | hr |
| 4. Sample Frequency | <input type="text" value="1.00"/> | samples/mo |
| 5. Lab Cost Per Sample | <input type="text" value="25.00"/> | \$/sample |
| 6. Number of Sample Points | <input type="text" value="2"/> | points |

Enter Established Annual Sampling Cost

- | | | |
|--------------------------------|----------------------|----|
| 7. Actual Annual Sampling Cost | <input type="text"/> | \$ |
|--------------------------------|----------------------|----|

Sampling Sub-Totals

- | | | |
|--------------------------------|----------------------------------|----|
| 8. Yearly Sample Analysis Cost | <input type="text" value="600"/> | \$ |
| 9. Yearly Travel Cost | <input type="text" value="420"/> | \$ |
| 10. Yearly Collection Cost | <input type="text" value="277"/> | \$ |

- | | | |
|-------------------|------------------------------------|----|
| 11. Sampling Cost | <input type="text" value="1,297"/> | \$ |
|-------------------|------------------------------------|----|

Exhibit B

Printed on 08/18/2004

Company Name Reading Anth
Project Trevorton 8-13-04
Site Name Trevorton



AMD TREAT MAINTENANCE

Estimate Maintenance Cost

1. Percent of Active Cost %

2. Percent of Passive Cost %

Enter Established Annual Maintenance Cost

3. Annual Maintenance Cost \$

Maintenance Sub-Totals

4. Total Maintenance Active Cost \$

5. Total Maintenance Passive Cost \$

\$

Exhibit B

Printed on 08/18/2004

Company Name Reading Anth
 Project Trevorton 8-13-04
 Site Name Trevorton



AMD TREAT SLUDGE REMOVAL

1. Select One Selection for Method of Removing Sludge

Sludge Removal by \$ per Gallon

2. Sludge Removal Unit Cost \$/gal

Sludge Removal by Vacuum Truck

3. Vacuum Truck Unit Cost \$/hr

4. Mobilization Cost \$

5. Hours to be Used hr

Sludge Removal by Mechanical Excavation

6. Mechanical Excavation Unit Rate \$/hr

7. Mobilization Cost \$

8. Hours to be Used hr

Sludge Removal by Lagoon Cleaner

9. Lagoon Cleaning Unit Rate \$/hr

10. Mobilization Cost \$

11. Hours to be Used hr

Actual Sludge Removal Cost

12. Actual Sludge Removal Cost \$

13. Off Site Disposal Cost \$

14. Iron Concentration mg/L

15. Manganese Concentration mg/L

16. Aluminum Concentration mg/L

17. Total Miscellaneous Concentration mg/L

18. Percent Solids %

19. Sludge Density lbs/gal

20 Titration?

21. Gal. of Sludge per Gal of Water Treated gal

22. Estimated Sludge Volume yd³/yr

Cost for Sludge Removal Types

23. Removal by \$ per Gallon \$

24. Removal by Vacuum Truck \$

25. Removal by Mechanical Excavation \$

26. Removal by Lagoon Cleaner \$

27. Actual Sludge Removal Cost \$

Sludge Removal Sub-Totals

28. Currently Selected Removal Cost Plus Off Site Disposal Cost \$

Exhibit B

Printed on 08/18/2004

Company Name Reading Anth
 Project Trevorton 8-13-04
 Site Name Trevorton



AMD TREAT OTHER COST

A. Description of Item	B. Unit Cost Per Item	C. Quantity	D. Total Item Cost	E. Capital Cost Annual Cost
1. Limestone Fines	7.00	31	217	<input type="radio"/> Capital Cost <input checked="" type="radio"/> Annual Cost
2. Construction of Limestone Dikes	4,489.00	1	4,489	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
3.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
4.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
5.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
6.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
7.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
8.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
9.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
10.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
11.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
12.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
13.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
14.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
15.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost

11. Capital Cost 4,489 \$
 12. Annual Cost 217 \$

Exhibit C

Reading Anthracite Company - SMP# 49803201 Trevorton Refuse Bank 228

<u>Date</u>	<u>pH</u>	<u>Alk</u>	<u>Acidity</u>	<u>Fe</u>	<u>Mn</u>	<u>Al</u>	<u>S04</u>	<u>TSS</u>
10/4/2002	2.8	0.0	1074.0	9.8	14.3	144.0	1163.0	4.0
10/22/2002	2.9	0.0	913.0	7.7	13.4	133.0	1452.9	<3
10/24/2002	2.9	0.0	1021.8	7.4	13.0	136.0	1138.1	10.0
10/31/2002	2.9	0.0	1001.6	8.8	14.5	144.0	1443.9	<3
10/9/2002	3.0	0.0	1056.8	8.4	17.1	172.0	1693.0	<3
11/13/2002	2.8	0.0	1008.2	9.2	12.7	125.0	1517.6	20.0
<u>11/19/2002</u>	<u>2.8</u>	<u>0.0</u>	<u>961.4</u>	<u>9.2</u>	<u>13.7</u>	<u>130.0</u>	<u>985.4</u>	<u>6.0</u>
Max	3.0	0.0	1074.0	9.8	17.1	172.0	1693.0	20.0
Min	2.8	0.0	913.0	7.4	12.7	125.0	985.4	4.0
Avg	2.9	0.0	1005.3	8.7	14.1	140.6	1342.0	10.0
Median	2.9	0.0	1008.2	8.8	13.7	136.0	1443.9	8.0

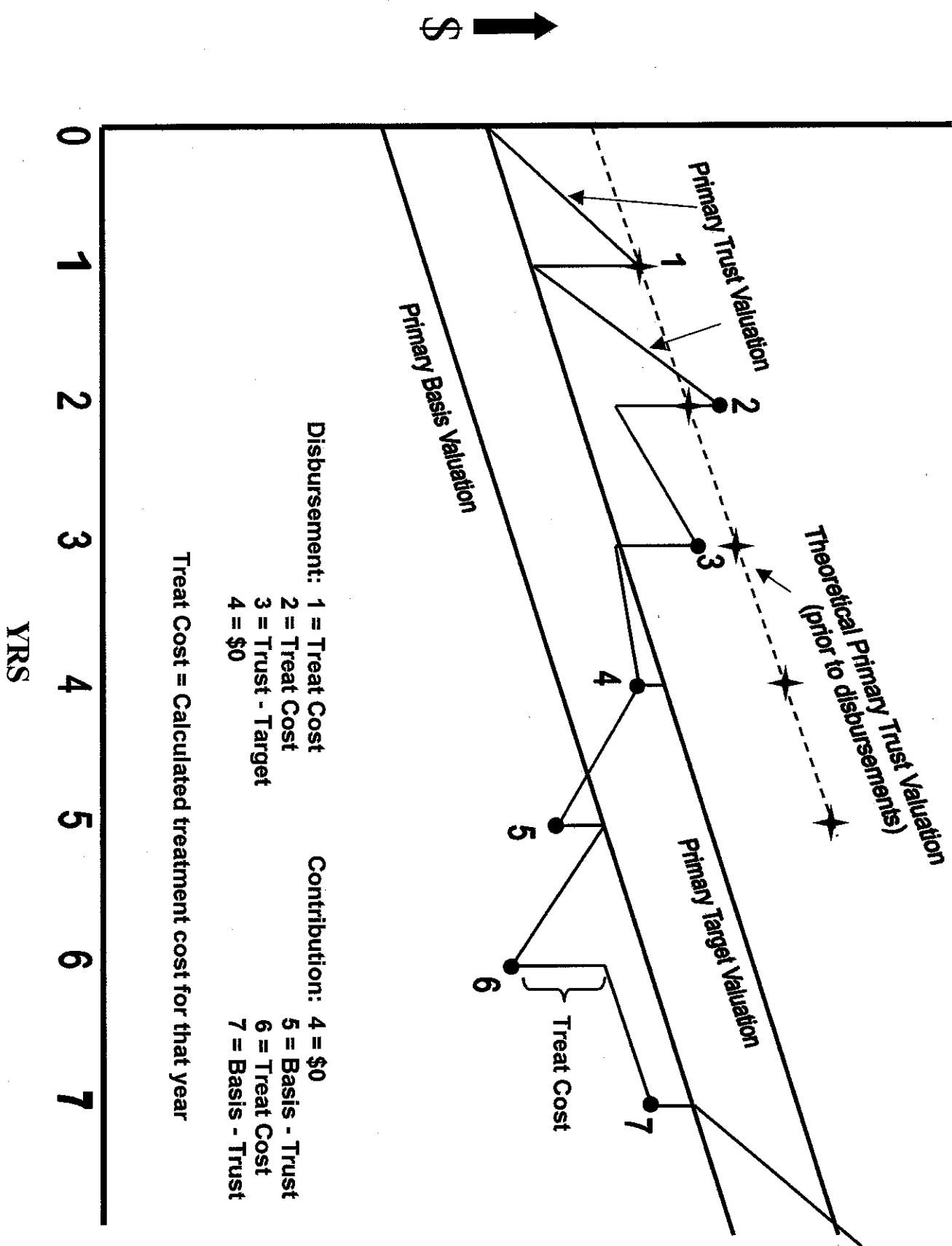


Exhibit D

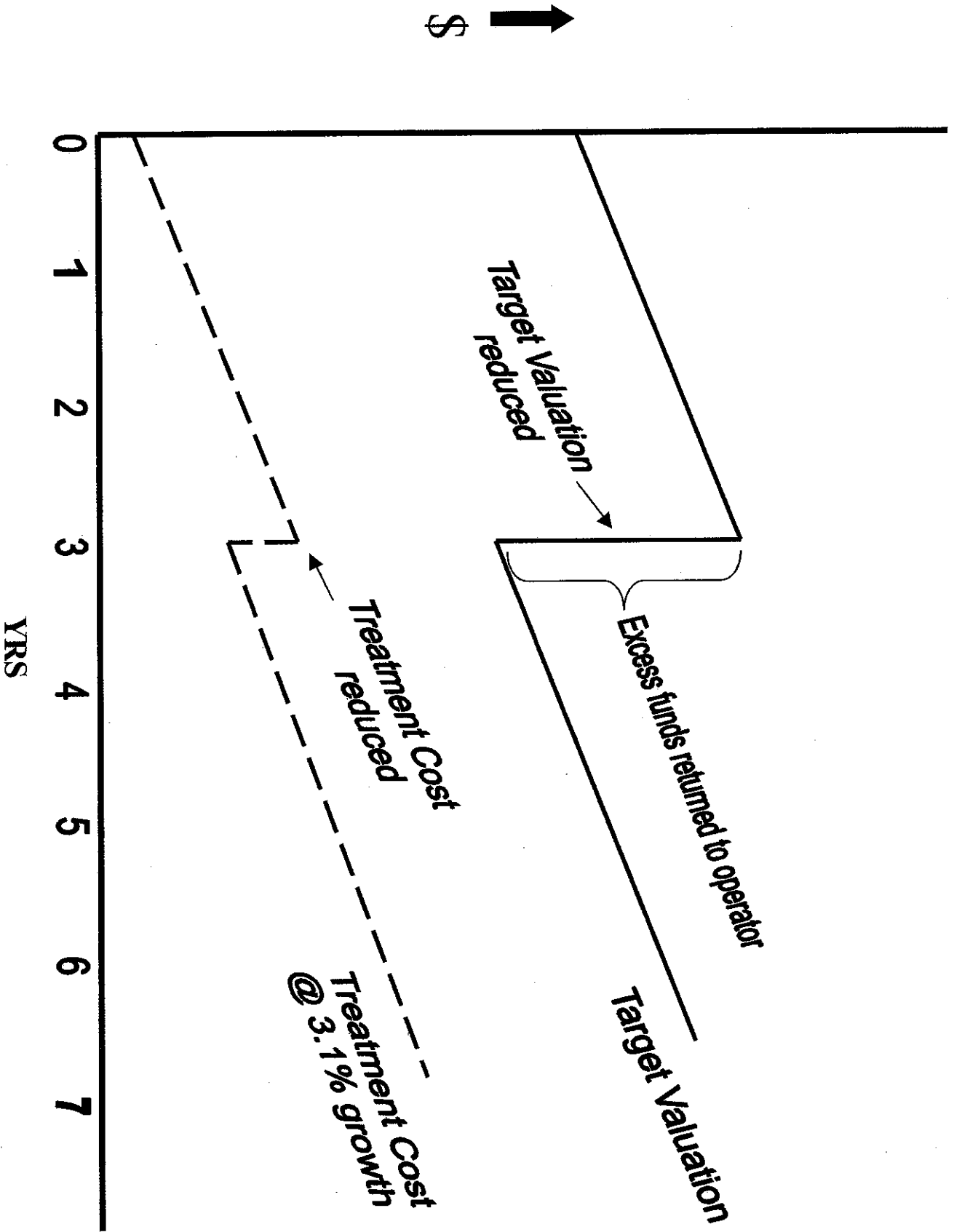


Exhibit E

Exhibit F				
	Capital	Anticipated		
	Improvement	Capital		Recap Cost
Year	Target	Expenditure	Comment	at 3.1%/yr
0	\$6,302.00			\$31,405.00
1	\$6,833.26			\$32,378.56
2	\$7,409.30			\$33,382.29
3	\$8,033.91			\$34,417.14
4	\$8,711.16			\$35,484.07
5	\$9,445.52			\$36,584.08
6	\$10,241.77			\$37,718.19
7	\$11,105.15			\$38,887.45
8	\$12,041.32			\$40,092.96
9	\$13,056.40			\$41,335.84
10	\$14,157.06			\$42,617.25
11	\$15,350.50			\$43,938.39
12	\$16,644.54			\$45,300.48
13	\$18,047.68			\$46,704.79
14	\$19,569.10			\$48,152.64
15	\$21,218.77			\$49,645.37
16	\$23,007.52			\$51,184.38
17	\$24,947.05			\$52,771.10
18	\$27,050.09			\$54,407.00
19	\$29,330.41			\$56,093.62
20	\$31,802.96			\$57,832.52
21	\$34,483.95			\$59,625.33
22	\$37,390.95			\$61,473.71
23	\$40,543.00			\$63,379.40
24	\$43,960.78			\$65,344.16
25	\$47,666.67			\$67,369.83
26	\$51,684.97			\$69,458.29
27	\$56,042.02			\$71,611.50
28	\$60,766.36			\$73,831.45
29	\$65,888.96			\$76,120.23
30	\$71,443.40			\$78,479.96
31	\$77,466.08			\$80,912.84
32	\$83,996.47			\$83,421.13
33	\$91,077.38			\$86,007.19
34	\$98,755.20			\$88,673.41
35	\$15,657.97	\$91,422.29	Replace wetland, ponds & dikes	\$91,422.29
36	\$16,977.94			\$94,256.38
37	\$18,409.18			\$97,178.33
38	\$19,961.08			\$100,190.85
39	\$21,643.79			\$103,296.77
40	\$23,468.37			\$106,498.97
41	\$25,446.75			\$109,800.44
42	\$27,591.91			\$113,204.25
43	\$29,917.91			\$116,713.58
44	\$32,439.99			\$120,331.70
45	\$35,174.68			\$124,061.99
46	\$38,139.90			\$127,907.91
47	\$41,355.10			\$131,873.05
48	\$44,841.33			\$135,961.12
49	\$48,621.46			\$140,175.91
50	\$52,720.25			\$144,521.37

Exhibit F				
	Capital	Anticipated		
	Improvement	Capital		Recap Cost
Year	Target	Expenditure	Comment	at 3.1%/yr
51	\$57,164.56			\$149,001.53
52	\$61,983.53			\$153,620.58
53	\$67,208.75			\$158,382.82
54	\$72,874.44			\$163,292.68
55	\$79,017.76			\$168,354.76
56	\$85,678.96			\$173,573.75
57	\$92,901.69			\$178,954.54
58	\$100,733.31			\$184,502.13
59	\$109,225.12			\$190,221.70
60	\$118,432.80			\$196,118.57
61	\$128,416.69			\$202,198.24
62	\$139,242.21			\$208,466.39
63	\$150,980.33			\$214,928.85
64	\$163,707.97			\$221,591.64
65	\$177,508.56			\$228,460.98
66	\$192,472.53			\$235,543.27
67	\$208,697.96			\$242,845.11
68	\$226,291.20			\$250,373.31
69	\$245,367.55			\$258,134.89
70	-\$85.04	\$266,137.07	Replace wetland, ponds & dikes	\$266,137.07
71	-\$92.20			\$274,387.32
72	-\$99.98			\$282,893.32
73	-\$108.40			\$291,663.02
74	-\$117.54			\$300,704.57
75	-\$127.45			\$310,026.41