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COMMONWEALTH OF PENNSYLVANIA - 8 2006
DEPARTMENT OF ENVIRONMENTAL PROTECTION

A.P.

FEB - 8 2006

In the Matter of:

A.P.

River Hill Coal Company, Inc.
P. O. Box 141
Kylertown, PA 16847-0141

: SMP No. 17793044 (McCloskey Mine)
: SMP No. 17910114 (Dutch Hollow Mine)
: Karthaus Township, Clearfield County
: Alternative Financial Assurance Mechanism
: CO&A 064002

POSTMINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 18th day of January 2006
by and between the Commonwealth of Pennsylvania, Department of Environmental Protection
("Department"), and River Hill Coal Co., Inc. ("River Hill").

A. The Department is the agency with authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P. L. 1987, as amended, 35 P. S. §691.1 et seq., ("Clean Streams Law"), the Surface Mine Conservation and Reclamation Act, Act of May 31, 1945, P. L. 1198, as amended, 52 P. S. §1396.1 et seq., ("Surface Mining Act"), Section 1917-A of the Administrative Code, Act of April 9, 1929, P. L. 177, as amended, 71 P.S. §510-17, and the Rules and Regulations adopted thereunder.

B. River Hill is a corporation with a business address of P.O. Box 141, Kylertown, Pennsylvania 16847-0141, whose business includes the mining of coal by the surface method.

C. AME Enterprises, Inc. ("AME") was a corporation with a business address of Kylertown, PA 16847, whose business included the mining of coal by the surface method.

D. On or about November 21, 1987, AME and River Hill were purchased by Harry J. Hanchar. There was a Pennsylvania statutory merger of AME and River Hill and a simple name change of AME to River Hill.

E. The principal and sole officer of River Hill is Harry J. Hanchar, who is President, Secretary, and Treasurer.

F. At all times material hereto, River Hill was authorized to conduct surface mining in Pennsylvania pursuant to Surface Mining Operator's License No. 1190.

G. River Hill is the permittee of the following surface coal mines that are associated with a post-mining discharge:

NAME	SMP	TOWNSHIP	COUNTY
McCloskey Mine	17793044	Karthus	Clearfield
Dutch Hollow Mine	17910114,	Karthus	Clearfield

H. The permit for the McCloskey Mine was originally issued in 1957 to Teeter Coal Company. On February 16, 1981, the permit was transferred to AME. On March 6, 1981, Harold Boulton, on behalf of himself and Joseph Mulson, executed a Consent of Landowner form (commonly known as a "Supplemental C") which was recorded in the Clearfield County Land Records (Vol. 243, Page 462). A copy of the Boulton Supplemental C is attached as Exhibit A.

I. All mining has been completed at the McCloskey Mine. The only activities remaining on the McCloskey Mine are the construction of a flyash cap and treatment of a discharge of acid mine drainage identified as T5.

J. T5 appears as an area of diffuse surface seeps that originate and are treated entirely on permit. The discharge is gathered in a collection sump and is pumped to River Hill's treatment system, on an as needed basis. River Hill pumps approximately six hours per day at a rate of 200 gallons per minute for a flow rate of approximately 72,000 gallons per day. The water quality data for T5 is set forth in Exhibit B.

K. T5 was a pre-existing discharge that was further degraded by River Hill when it mined the McCloskey Mine. On June 15, 1989, the Department issued AME a Compliance Order ("Order") No. 894072. The Order directed AME to submit a treatment plan and after approval of the Department to implement the treatment plan. The treatment plan was submitted on June 21, 1989 and revised on July 11, 1989. The Department approved the treatment plan on July 13, 1989.

L. The T5 treatment system consisted of a series of four wetland cells followed by chemical treatment/polishing ponds. T5 was pumped approximately 3300 feet from the collection sump to the treatment system. Hydrated lime was added just prior to T5 entering the chemical treatment/polishing ponds.

M. The permit for the Dutch Hollow Mine was issued on October 13, 1992. On May 2, 1991, George and Avenel Kolivoski executed a Supplemental C which was recorded in the Clearfield County Land Records (Vol. 1396, Page 119). A copy of the Kolivoskis' Supplemental C is attached as Exhibit C.

N. All mining has been completed on the Dutch Hollow Mine and the mine is totally reclaimed and revegetated. River Hill is treating a discharge known as MGK3.

O. MGK3 appeared as a toe of spoil spring and originates and is treated entirely on the permit. MGK3 is now intercepted such that the raw water quality can no longer be sampled. Water quality data for the MGK3 discharge is set forth in Exhibit D.

P. MGK3 is a pre-existing spring that was degraded by the mining on River Hill's Dutch Hollow Mine. River Hill voluntarily started treating MGK3 on or about June, 1995.

Q. The MGK3 passive treatment system consists of a triangular ditch that is four feet wide by three feet deep by seventy-five feet long filled with limestone. MGK3 is a low flow discharge usually running less than one gallon per minute.

R. River Hill has the legal responsibility to treat or abate the discharges identified in Paragraphs I - K and M - P.

S. The effluent limits applicable to the discharges are found at 25 Pa. Code Chapter 87.102.

T. Annual treatment costs for operating and maintaining the chemical/passive treatment system are \$25,514.00 for T5 on the McCloskey Mine. Capital costs for that treatment system are \$114,072.00.

U. Annual treatment costs for operating and maintaining the existing treatment system are \$428.00 for MGK3 on the Dutch Hollow Mine. Capital costs for the existing treatment system are \$3,277.00

V. On the McCloskey Mine, River Hill has a surety bond in place in the amount of \$144,590.00, a cash bond of \$1000.00, and a certificate of deposit for \$732.50 for a total of \$146,322.50 bond.

W. On the Dutch Hollow Mine, River Hill has surety bonds in place in the amount of \$321,240.00 and a land reclamation financial guarantee issued by the Department in the amount of \$497,700.00 for a total bond of \$818,940.00.

X. River Hill is willing 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 to secure the release of its reclamation bonds in accordance with this COA.

Y. 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 \$25,942.00.

Z. The parties agree to use the information and figures which will be provided by the accounting required by Paragraph 4 for the existing treatment systems, or the passive treatment system as provided in Paragraph 14, 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.

AA. The parties met on April 15, 2005 and November 16, 2005. River Hill told the Department that the company replaced the existing passive/chemical treatment system at the McCloskey Mine (described in Paragraph K above) with a passive treatment system. River Hill has agreed to submit, by January 15, 2006, treatment system designs and as-built drawings as part of a revision to its NPDES permit. River Hill will collect monthly samples of the final effluent and monthly measurements of both the total volumes pumped into, and total flow out of, the passive system. These samples and flow measurements shall be submitted quarterly at the same time as River Hill's regular quarterly monitoring. After April 20, 2007, all the monitoring data will be used to evaluate the performance of the passive treatment system. So long as the new treatment system has met effluent limits at 25 Pa. Code 87.102(e) for twelve consecutive months and the flow measurements (inflow versus final discharges) demonstrates that the system does not leak, the Department has agreed to recalculate the amount of the trust in accordance

with the provisions of this COA that address cost recalculations. Nothing in the COA means or implies that the payments required by Paragraph 6 will be sufficient to fully fund the Trust being established pursuant to Paragraph 5.

BB. Among other things, the Supplemental C referred to in Paragraphs H and M grant access to River Hill and the Commonwealth for a period of five (5) years following the abatement of the pollution.

CC. The T5 and MGK5 discharges will require treatment essentially in perpetuity. That is the reason the Department has asked River Hill to establish the trust that is the subject of this Agreement. River Hill and/or its successor and/or the Department and/or its agents will require access as long as the discharges require treatment.

DD. The Department intends to send the landowners who signed the Supplemental C copies of this Agreement.

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 River Hill 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; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of River Hill to comply with any term or condition of this Consent Order and Agreement shall subject River Hill to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. River Hill agrees that the findings in Paragraphs A through DD are true and correct and, in any matter or proceeding involving River Hill and the Department relating to this COA, River Hill 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. [This is the preferred anniversary date. A less preferential option is 30 days after the River Hill's fiscal year or thirty (30) days after the last day of any fiscal year that River Hill may adopt in the future.]

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

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

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

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

$$PV = (A/[E-1]) + A$$

where: PV = Present Value of the O&M Costs

A = Current Actual Treatment Cost

E= Expected annual earnings/Interest Rate (assumed to be 8.43 %) *

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

* 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% 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. River Hill 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. River Hill shall keep separate records for the T5 and MGK3 passive treatment systems.

c. River Hill shall provide an annual accounting of the costs and expenses of annual treatment ("the Accounting") to the Department on or before the 90th day following the last day of the fiscal year for which the Accounting is being provided. The Accounting shall cover the

90 days
after
sept 30 = Dec 30

period beginning October 1 and continuing through September 30 of each year, or other fiscal year as River Hill 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 River Hill and by the President of River Hill attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

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

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

5. Treatment Trust

a. River Hill shall establish an irrevocable trust to be known as the River Hill McCloskey and Dutch Hollow Treatment Trust ("Trust"). The Trust shall secure River Hill's obligation to treat discharges T5 and MGK3, including its obligation to operate and maintain either the passive treatment systems in perpetuity, as required by law, or until water treatment is no longer necessary, and to provide financial resources to the Department on behalf of the citizens of the Commonwealth to maintain and operate the treatment systems, and to treat the mine drainage in perpetuity in the event River Hill becomes unable or unwilling to meet its 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 Exhibit E.

b. River Hill 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, River Hill shall deposit an amount of \$20,000 into the Primary Trust Account.

b. Ongoing Payments to the Primary Trust Account: River Hill will deposit a payment of \$30,000 into the Primary Trust Account on or before March 31, 2006 and subsequent payments of \$50,000 each on or before May 15, 2006, August 15, 2006, November 15, 2006, February 15, 2007 and May 15, 2007. Payment 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 the Primary Trust Valuation does not include the value of surety bonds, then Distribution Payments shall be made according to Paragraph 7.c. Otherwise, Distribution Payments shall be made according to Paragraph 7.d. and e.

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

d. 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 River Hill in the form of a surety bond reduction of the surety bond(s) identified in Paragraph 6.c. This amount is depicted

graphically at Point 1 on Exhibit G. Such surety bond reduction shall be in an amount determined by the following formula:

$$BR = ((1 + RoR) (TR - B) + B) - (1.03(TV))$$

Where: BR = surety bond reduction
B = surety bond amount
RoR = assumed net rate of return or effective rate of return
TV = Primary Target Valuation
TR = Primary Trust Valuation

e. In the year the final bond is released, if the Primary Trust Valuation after the final surety bond release remains greater than the newly calculated Primary Target Valuation, then an additional Distribution Payment shall be made under paragraph 7.c.

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

g. If the Primary Trust Valuation is less than the Primary Basis Valuation, then River Hill shall make an additional contribution into the Primary Trust Account in an amount equal to the difference between the Primary Basis Valuation and the Primary Trust Valuation, or in an amount equal to the Calculated Treatment Cost, whichever is less except as provided in Paragraph 13.a. This amount is depicted graphically as points 5 and 6 on Exhibit G. This provision does not apply until River Hill has fulfilled its obligations to make ongoing payments under Paragraph 6.b.

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% (\$28,065.00 for the McCloskey Treatment System or \$471.00 for the Dutch Hollow Treatment System), adjusted for inflation at the rate of 3.1% per year, or less than or equal to 90% percent (\$22,962.00 for the McCloskey Treatment System, or \$385.00 for the Dutch Hollow Treatment System) 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 H is a graphical depiction of the adjustment.

9. Distribution Payments for Adjustments to the Primary Target Valuation

a. If the Primary Trust Valuation does not include the value of pledged surety bonds, then Distribution Payments shall be made according to Paragraph 9.c. Otherwise, Distribution Payments shall be made according to Paragraph 9.d.

b. 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.

c. 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 River Hill. 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

d. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 8 above is based on 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 River Hill in the form of a surety bond reduction. Such bond reduction shall be in an amount determined by the following formula:

$$BR = (1 + RoR) (TR - B) + B - (1.03(TV))$$

Where: BR = surety bond reduction
RoR = assumed net rate of return or effective rate of return
TV = Primary Target Valuation
TR = Primary Trust Valuation
B = surety bond amount

e. In the year the final surety bond is released, if the Primary Trust Valuation after the final surety bond release remains greater than the newly calculated Primary Target Valuation, then an additional Distribution Payment shall be made under Paragraph 9.c.

10. Capital Improvement Account

a. River Hill 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 Exhibits I and J, and said balance shall be adjusted in accordance with Paragraph 14 hereof.

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. until the next replacement If the treatment system 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 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 Exhibits I and J 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. The provisions of this Paragraph do not apply if the Primary Trust Valuation includes the value of surety bonds.

b. 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 Exhibits I and J. 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 River Hill any time a planned capital replacement is made as indicated on Exhibits I and J. 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 Exhibits I and J, 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 Exhibits I and J, 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 River Hill's obligation to make a contribution payment under Paragraph 7.g. 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 River Hill'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 G.

b. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the River Hill to pay for unanticipated capital expenditures, or anticipated capital expenditures that exceed the calculated cost of the capital improvement as indicated on Exhibits I and J.

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the River Hill 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 River Hill 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. a. By January 15, 2006, River Hill shall submit an application to revise the NPDES Permit for the McCloskey Mine. The application shall include the treatment system design and as-built drawings for the T5 passive treatment system.

b. River Hill shall operate the treatment systems to treat T5 and MGK3 in accordance with plans submitted to, and approved by the Department. River Hill shall collect monthly samples of the final effluents from the passive treatment system for the T5 discharge and monthly measurements of both the total volume pumped into, and the total flow out of, the passive system. These sample and flow measures shall be submitted quarterly at the same time as River Hill's regular quarterly monitoring.

c. The attached Exhibit F is the funding schedule for a trust to operate the original T5 chemical treatment systems as well as the MGK passive treatment system. So long as River Hill has made the payments required by Paragraph 6 and the new T5 treatment system has both met the effluent limits at 25 Pa. Code § 87.201(e) for twelve consecutive months and does not leak (outflow is the same as inflow), the Department will recalculate the amount of the Trust. The parties will meet to discuss the performance of the treatment systems and the Trust reevaluations to determine, among other things, the need for additional payments into the Trust and a schedule and amount for those payments.

15. Public Liability Insurance

a. River Hill 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 that are 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. 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 that certifies River Hill 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 fund; 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 fund; and to address any other issues that may concern this Consent Order and Agreement or its implementation.

17. River Hill's Continuing Obligation

Neither River Hill'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 River Hill's obligation to operate the Treatment System.

Furthermore, exhaustion of the Trust shall not excuse River Hill from River Hill's obligation to adequately treat or to abate the discharges.

18. Stipulated Civil Penalties

a. In the event River Hill fails to comply in a timely manner with any term or provision of this Consent Order and Agreement within thirty (30) days after receipt of written notice from the Department specifying the specific provision River Hill is not in compliance with, River Hill shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$100.00 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month. The payment shall be by corporate check or the like, made payable to the "Commonwealth of Pennsylvania" and submitted to the:

Compliance Manager
Moshannon District Mining Operations
186 Enterprise Drive
Philipsburg, PA 16866

c. Any payment under this paragraph shall neither waive River Hill's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel River Hill's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only River Hill'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 within thirty (30) days after the written notice specified in Paragraph 19(a) above.

19. Additional Remedies

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

21. Liability of River Hill

River Hill 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. River Hill 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 McCloskey Mine or the Dutch Hollow Mine or any part thereof.

b. If River Hill intends to transfer any legal or equitable interest in the McCloskey Mine or the Dutch Hollow Mine which is affected by this Consent Order and Agreement, River Hill 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 River Hill's duties and obligations under this Consent Order and Agreement upon transfer of the McCloskey Mine or the Dutch Hollow Mine. River Hill's 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:

Michael W. Smith, District Mining Manager
Department of Environmental Protection
Moshannon District Mining Operations
186 Enterprise Drive
Philipsburg, PA 16866

24. Correspondence with River Hill

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

Harry J. Hanchar, President
River Hill Coal Company, Inc.
P.O. Box 141
Kylertown, PA 16847-0141

b. River Hill 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 River Hill 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 River Hill's control and which River Hill, by the exercise of all reasonable diligence, is unable to prevent, then River Hill 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 River Hill's control. River Hill'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. River Hill shall only be entitled to the benefits of this paragraph if it notifies the Department within ten (10) working days by telephone and within twenty (20) 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 River Hill 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. River Hill'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 River Hill and other information available to the Department. In any subsequent litigation, River Hill 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

Except for decisions of the Department under Paragraphs 4 through 14, 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 River Hill may have to decisions other than those under Paragraphs 4 through 14 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 River Hill. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) River Hill consolidates with or merges into or permits to merge with it and River Hill is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of River Hill's properties or assets which include, but is not limited to, voting stock of River Hill. Successor does not include any corporation or other entity to which River Hill transfers or assigns all or substantially all of its financial or non-financial liabilities.

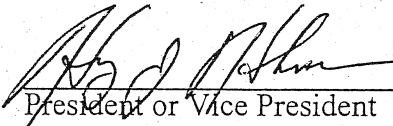
River Hill shall notify the Department, without delay, of any successor as defined herein and shall provide such successor with a copy of this Consent Order and Agreement.

33. Counterpart Signatures

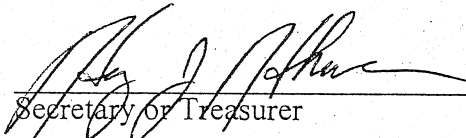
The parties agree to execute this Consent Order and Agreement by counterpart signatures transmitted via facsimile.

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 River Hill 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 River Hill; that River Hill consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that River Hill 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 River Hill's attorney certifies only that the agreement has been signed after consulting with counsel.

**FOR RIVER HILL
COAL CO., INC.:**



President or Vice President



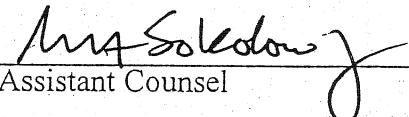
Secretary or Treasurer

Attorney for River Hill

**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**



District Mining Manager



Assistant Counsel