

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

EME Homer City Generation, L.P. :
: Bituminous Mine Subsidence and
Utica Mutual Insurance Company : Land Conservation Act, Surface
: Mining Conservation and
Blacklick Creek Watershed Association : Reclamation Act, and the
: Clean Streams Law
Chapter 7 Trustee for the Stanford :
Mining Company Bankruptcy Estate : Docket # 063039

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 1st day of June, 2006,
by and between the Commonwealth of Pennsylvania, Department of Environmental
Protection (hereinafter "Department"), and EME Homer City Generation, L.P., Utica
Mutual Insurance Company, Blacklick Creek Watershed Association and Lucinda
Masterton, trustee for the Stanford Mining Company bankruptcy estate.

The Department has found and determined the following:

The Parties to This Consent Order and Agreement

A. The Department is the agency with the duty and authority to administer and
enforce the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27,
1966, Special Sess., No. 1, P.L. 31, *as amended*, 52 P. S. §§ 1406.1-1406.21 ("Mine
Subsidence Act"); the Surface Mining Conservation and Reclamation Act, Act of May 31,
1945, P.L. 1198, *as amended*, 52 P. S. §§ 1396.1-1396.19a ("Surface Mining Act"); The

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Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P. S.

§§ 691.1-691.1001 (“Clean Streams Law”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P. S. § 510-17 (“Administrative Code”); and the rules and regulations (“rules and regulations”) promulgated thereunder.

B. EME Homer City Generation, L.P. is a Pennsylvania limited partnership with a mailing address of 18101 Von Karman Avenue, Suite 1700, Irvine, California 92612 (“EME”). The sole general partner of EME is Mission Energy Westside, Inc., a California corporation with a mailing address of 18101 Von Karman Avenue, Suite 1700, Irvine, California 92612. EME operates a coal-fired electric generating station located in Center Township, Indiana County (“Homer City Power Plant”). The Homer City Power Plant has an address of 1750 Power Plant Road, Homer City, Pennsylvania 15748-9558.

C. Utica Mutual Insurance Company (“Utica”) is a New York corporation with a business address of 180 Genessee Street, New Hartford, New York 13413. Among other things, Utica is in the business of issuing surety bonds for surface and underground mining operations in Pennsylvania.

D. Blacklick Creek Watershed Association (“BCWA”) is an incorporated, non-profit, organization that qualifies for tax-exempt status under Section 501(c) (3) of the Internal Revenue Code. BCWA’s address is 52 Oakland Avenue, Homer City, Pennsylvania 15748.

E. Stanford Mining Company is a Kentucky corporation with a mailing address of 1025 Dove Run Road, Suite 309, Lexington, Kentucky 40502 ("Stanford"). On or about August 31, 1998, Stanford filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Kentucky, Lexington Division. The case was docketed at No. 98-52196. On or about May 24, 1999, upon motion for conversion filed by the U.S. Bankruptcy Trustee, the Bankruptcy Court converted the case to a Chapter 7 liquidation. Approximately three (3) weeks later, upon motion by the Debtor, the Bankruptcy Court converted the case back to a Chapter 11 debtor-in-possession proceeding temporarily until August 1, 1999. On August 1, 1999, the case was converted to a Chapter 7 liquidation for final administration and closure.

F. Lucinda Masterton is the Chapter 7 trustee appointed by the Bankruptcy Court to administer the Stanford bankruptcy estate (the "Stanford Bankruptcy Estate" or "Trustee"). Lucinda Masterton's business address is 4857 Paynes Mill Road, Lexington, Kentucky 40507.

The Mines

G. Stanford operated three underground bituminous coal mines located in Cherryhill Township, Indiana County, within close proximity of one another. These mines are the Dixon Run No. 3 Mine, the Penn Hill No. 2 Mine and the Chestnut Ridge Mine.

H. The Dixon Run No. 3 Mine was operated by Stanford and its predecessors in interest under authorization of Mine Drainage Permit No. 3270311. Stanford ceased coal removal activities at the Dixon Run No. 3 Mine on or about May 13, 1988.

I. The Penn Hill No. 2 Mine was operated by Stanford under authorization of Coal Mining Activity Permit No. 32843109. During coal removal activities at the Penn Hill No. 2 Mine, Stanford pumped mine drainage from the mine workings. This mine drainage was conveyed for treatment to a mine drainage treatment facility located at the Chestnut Ridge Mine ("Central Treatment Facility"). Stanford ceased coal removal activities at the Penn Hill No. 2 Mine on or about April 8, 1988 and timely sealed the mine openings and completed surface reclamation.

J. The Chestnut Ridge Mine was operated by Stanford under authorization of Coal Mining Activity Permit No. 32841315. During coal removal activities at the Chestnut Ridge Mine, Stanford pumped mine drainage from the mine workings. This mine drainage was conveyed for treatment to the Central Treatment Facility. The Central Treatment Facility discharges to Allen Run, a water of the Commonwealth. Sludge from the Central Treatment Facility was disposed in the Chestnut Ridge Mine. Stanford ceased coal removal activities at the Chestnut Ridge Mine on or about December 1987 and timely sealed all of the mine openings except for those necessary for continued operation of the Central Treatment Facility and completed all of the surface reclamation except for that

associated with demolition of the Central Treatment Facility. The Central Treatment Facility remains at the Chestnut Ridge Mine.

Discharges from the Mines

K. Two Lick Reservoir is a man made reservoir formed when Penelec and New York State Electric and Gas ("NYSEG"), EME's predecessors in interest, created a dam in Two Lick Creek. The dam was created for the purpose of ensuring an adequate source of water for the operation of the Homer City Power Plant. Penelec and NYSEG originally owned, and EME now owns, the Two Lick Reservoir. The water in the Two Lick Reservoir is a water of the Commonwealth. The Two Lick Reservoir has good quality water and is widely used for recreational activities, including fishing, boating, and swimming. Downstream from the Two Lick Reservoir is the public water supply intake for the Pennsylvania American Water Company.

L. Commencing on or before 1980 and continuing to July 1992, numerous discharges of acid mine drainage from the Dixon Run No. 3 Mine arose in the vicinity of the coal cropline which is located adjacent to Two Lick Reservoir. These discharges flowed into and polluted Two Lick Reservoir. On November 25, 1986, Stanford entered into a Consent Order and Agreement with the Department whereby it agreed to implement measures to eliminate these discharges. The measures which Stanford agreed to implement, and did implement, beginning in August of 1988, were to dewater the mine pool in the mine by pumping the mine drainage out of the mine via a borehole and

conveying it to the Central Treatment Facility at the Chestnut Ridge Mine for treatment prior to discharge into Allen Run. Stanford conducted these pumping and conveyance activities under authorization of Industrial Waste Permit No. 32821701.

M. EME owns the area where the discharges from the Dixon Run No. 3 Mine originally expressed themselves and the area where the pumping activities have been conducted. Solely as a consequence of its status as a landowner, EME is subject to liability under Section 316 of the Clean Streams Law, 35 P. S. §691.316, for abating the discharges from the Dixon Run No. 3 Mine.

N. Shortly after the mine openings at the Penn Hill No. 2 Mine were sealed, on or about April of 1988, certain of the mine seals failed and acid mine drainage began to discharge from the mine on a continuous basis. The discharges arise on property owned by the Indiana County Police Association. If the discharges were not collected and treated, the mine drainage would flow to the Two Lick Reservoir and would pollute the Reservoir. Beginning in December 1988, Stanford collected the mine drainage and conveyed it to the Central Treatment Facility at the Chestnut Ridge Mine for treatment prior to discharge.

O. There are no known discharges from the Chestnut Ridge Mine.

Operation of the Central Treatment Facility

P. Stanford and the Stanford Bankruptcy Estate continued operation of the Central Treatment Facility at the Chestnut Ridge Mine and the related pumping and conveyance of mine drainage from the Dixon Run No. 3 Mine and the Penn Hill No. 2

Mine, until May 17, 1999. At that time, the monthly operational costs for the pumping/conveyance/treatment costs were roughly \$11,000.00. The Stanford Bankruptcy Estate notified the Department in May 1999 that it intended to cease operation of the Central Treatment Facility because it had exhausted those of its funds which could be allocated for this responsibility.

Q. Discharges of untreated mine drainage from the Dixon Run No. 3 Mine and from the Penn Hill No. 2 Mine constitute violations of Sections 5, 301, 307, 315 and 401 of the Clean Streams Law, 35 P. S. §§ 691.5, 691.301, 691.307, 691.315, and 691.401; Section 4 of the Surface Mining Act, 52 P. S. §1396.4; and Section 5 of the Mine Subsidence Act, 52 P. S. §1406.5. In addition, such discharges constitute unlawful conduct under Section 611 of the Clean Streams Law, 35 P. S. § 691.611; Section 18.6 of the Surface Mining Act, 52 P. S. §1396.18f; and Section 17.1 of the Mine Subsidence Act, 52 P. S. § 1406.17a; and a statutory nuisance under Section 601 of the Clean Streams Law, 35 P. S. § 691.601; and Section 4.2 of the Surface Mining Act, 52 P. S. § 1396.4b. As the permittee of the Dixon Run No. 3 Mine and the Penn Hill No. 2 Mine, the Stanford Bankruptcy Estate is responsible for preventing these violations and conditions.

R. Because EME wanted to prevent the discharges from the Penn Hill No. 2 Mine and the Dixon Run No. 3 Mine from entering and polluting the Two Lick Reservoir as a result of the Stanford Bankruptcy Estate's abandonment of the Penn Hill No. 2 Mine, the Dixon Run No. 3 Mine, and the Chestnut Ridge Mine, EME, without any admission of

liability, assumed financial responsibility for continued operation of the pumping and conveyance facilities at the Penn Hill No. 2 Mine and the Dixon Run No. 3 Mine and of the Central Treatment Facility at the Chestnut Ridge Mine in May of 1999. EME did this with the understanding that BCWA would actually carry out the necessary work and with the intent of continuing such an arrangement only until the Department made a determination as to how liability for the discharges should be assigned and until a more permanent solution to the treatment of the discharges could be implemented. EME, BCWA, the Trustee and the Department entered into a Post-Mining Discharge Treatment Agreement on July 7, 1999 to memorialize this arrangement. The Post-Mining Discharge Treatment Agreement was amended on February 9, 2000. Consistent with the terms of the Post-Mining Discharge Treatment Agreement and its Amendment, EME provided BCWA with sufficient funds to cover the expenses to pump and convey mine drainage from the Dixon Run No. 3 Mine and the Penn Hill No. 2 Mine and to operate the Central Treatment Facility from May 17, 1999 to December 31, 2001, and to pump and convey mine drainage from the Dixon Run No. 3 Mine and to operate the Central Treatment Facility from January 1, 2002 to October 31, 2004. BCWA hired a contractor to conduct the pumping, conveyance and treatment work and paid that contractor with funds provided by EME. From May 17, 1999 to October 31, 2004, EME provided \$854,188 to BCWA to fund the operation and maintenance of the pumping and conveyance system and the Central Treatment Facility. On November 1, 2004, EME directly assumed the costs of pumping

and conveying mine drainage from the Dixon Run No. 3 Mine and operating the Central Treatment Facility. From November 1, 2004 to May 31, 2005, EME expended \$175,000 to pump and convey mine drainage from the Dixon Run No. 3 Mine and operate the Central Treatment Facility. In addition, EME expended \$200,000 to investigate options for the treatment of the Dixon Run No. 3 discharge.

Bond Forfeiture

S. Because the Stanford Bankruptcy Estate abandoned its pumping, conveyance, and treatment obligations at the Dixon Run No. 3 Mine, the Penn Hill No. 2 Mine, and the Chestnut Ridge Mine, the Department forfeited all remaining permit bonds at each mine on March 23, 2000. These bonds consisted of the following four surety bonds written by Utica Mutual Insurance Company:

<i>Bond No.</i>	<i>Amount</i>	<i>Type</i>	<i>Mine</i>
SU1464428	\$172,517.00	Reclamation	Penn Hill No. 2 Mine
SU1464429	\$ 10,000.00	Subsidence	Penn Hill No. 2 Mine
SU1464430	\$ 92,496.00	Reclamation	Chestnut Ridge Mine
SU1464431	\$ 10,000.00	Subsidence	Chestnut Ridge Mine

T. Utica filed appeals with the Environmental Hearing Board ("EHB") from the forfeiture actions. These appeals were docketed at EHB Docket Nos. 2000-094-R and 2000-095-R. Utica withdrew these appeals on or about December 31, 2003 based on the Department's commitment to waive collection of \$56,496 of the bond amounts and to direct payment of the remainder of the bond amounts to EME, BCWA and to the Clean

Streams Foundation as described in Paragraph AC below. The appeals have been marked closed and discontinued by the EHB.

Permanent Treatment of Discharges from Penn Hill No. 2 Mine

U. The Department has evaluated how best to assign responsibility for preventing pollutional discharges from the Penn Hill No. 2 Mine and the Dixon Run No. 3 Mine on a permanent basis. The Department determined that it should assume primary responsibility for addressing the discharges from the Penn Hill No. 2 Mine and that EME should assume primary responsibility for addressing the discharges from the Dixon Run No. 3 Mine.

V. Because, *inter alia*, primary responsibility for each discharge rested with a different party and the quality of the two discharges differed, the parties decided that separate treatment systems would be the most appropriate approach to treatment of the two discharges.

W. The Department's Bureau of Abandoned Mine Reclamation developed a plan for a passive mine drainage treatment system for the Penn Hill No. 2 Mine discharges. (This plan is identified as Contract DMF008-101.1 and is incorporated herein by reference.) BCWA agreed to construct the treatment system using the plan developed by the Department. In order to finance the construction work, BCWA applied for and was awarded a "Growing Greener" grant in the amount of \$1,032,415.56, pursuant to the Environmental Stewardship and Watershed Protection Act, 27 Pa. C. S. § 6101, *et seq.*

BCWA completed the construction of the treatment system in November 2001, and the treatment system became fully operational in January 2002. All of the discharges from the Penn Hill No. 2 Mine have been conveyed to the new treatment system since January 1, 2002 and none have been conveyed to the Central Treatment System. The treatment system is located on property owned by EME; access to this property is gained in part via a road constructed on property owned by EME and property owned by the Indiana County Police Association.

X. In order to obtain access to EME's property for the purpose of finalizing the plan identified as Contract DMF008-101.1, the Department requested EME to execute a Consent for Right of Entry. EME agreed to do so provided it would be afforded the immunities provided by Section 8106 of the Environmental Good Samaritan Act, 27 Pa. C. S. § 8106, to landowners who provide access for Water Pollution Abatement Projects. In order to facilitate this grant of immunity, BCWA submitted a Project Plan outlining its plan and the Department advertised the plan for public comment. The Consent for Right of Entry was executed on September 12, 2000, and the Project Plan was approved by the Department on October 31, 2001. EME also executed a separate Consent for Right of Entry with BCWA on July 24, 2000.

Permanent Treatment of Discharges from Dixon Run No. 3 Mine

Y. EME has evaluated alternatives for a treatment system for the discharges from the Dixon Run No. 3 Mine and concluded that continued operation of the Central

Treatment Facility is the most economical and environmentally feasible alternative, provided that the Stanford Bankruptcy Estate is willing to convey the Central Treatment Facility and Dixon Run conveyance system to EME and convey or assign the necessary property rights to operate the conveyance system, and the Central Treatment Facility and dispose of sludge from the Central Treatment Facility. EME has developed a plan for modifications to the Central Treatment Facility and has submitted to the Department an application for a permit to operate the Central Treatment Facility. That application proposes to discharge sludge from the Central Treatment Facility into the Chestnut Ridge Mine and, as a backup, into the Dixon Run No. 3 Mine. The Department has reviewed the permit application and is prepared to issue the permit to EME as soon as EME provides the Department with documentation that satisfies the right-of-entry provisions of 25 Pa. Code § 86.64. EME estimates that construction of the modifications to the Central Treatment Facility can be completed within a year of issuance of the permit. In the meantime, EME will continue to operate the Central Treatment Facility.

Z. The Stanford Bankruptcy Estate is willing, subject to the approval of the Bankruptcy Court, to convey the Central Treatment Facility and the Dixon Run conveyance system to EME, as well as to convey or assign to EME the necessary property rights to operate the Dixon Run conveyance system and the Central Treatment Facility and discharge sludge from the Central Treatment Facility into the Chestnut Ridge and Dixon Run No. 3 Mines.

Funding Issues

AA. EME has requested the Department to assume financial responsibility for a portion of the costs associated with the pumping, conveyance, and treatment activities conducted from May 1999 to December 31, 2001. The Department has agreed to provide funds in the amount of \$133,258.50. Such contribution is not an admission or acceptance of liability for these activities by the Department and shall not operate in any way to create any such liability.

AB. The treatment system at the Penn Hill No. 2 Mine must be monitored, maintained, and replaced on a regular basis. BCWA has agreed to assume responsibility for monitoring, maintaining and replacing the treatment system provided that there are funds available to finance the work. A treatment trust must be established to ensure that there are funds available in the future for this monitoring, maintenance and replacement. The Department, Utica and BCWA have agreed to establish such a trust for the Penn Hill No. 2 Mine.

AC. In exchange for the Department's release of Utica's liability to pay under the four forfeited surety bonds, Utica has agreed to:

(i) pay EME \$133,258.50 which represents the Department's portion of the costs associated with EME's operation of the conveyance system at the Penn Hill No. 2 Mine and its operation of the Central Treatment Facility from May 17, 1999 to December 31, 2001;

(ii) place \$83,758.50 into a trust fund which will be established for the purpose of ensuring that there are sufficient funds to pay for the long-term monitoring, maintenance, and replacement activities associated with the treatment system at the Penn Hill No. 2 Mine; and

(iii) pay BCWA \$9,000 to cover the costs it incurred to cap pipes on the collection pond at the Penn Hill No. 2 Mine, and \$2,500 to cover the costs that BCWA incurred to monitor and maintain the passive treatment system at the Penn Hill No. 2 Mine from January 2002 to December 1, 2003.

AD. Because BCWA needed to pay the contractors who performed the work involved in capping the pipes on the sedimentation pond at the Penn Hill No. 2 Mine and the work related to monitoring and maintaining the passive treatment system at the Penn Hill No. 2 Mine, Utica made the payment required by Paragraph AC(iii) above in January 2004.

Other Reclamation Work

AE. EME has fully cooperated with the Department in providing necessary rights of access for the purpose of building, operating and monitoring the Penn Hill No. 2 Mine Treatment System. EME also assisted BCWA with excavation and demolition work associated with the start-up of the Penn Hill No. 2 Mine Treatment System.

AF. EME has expended and will continue to expend significant efforts and funds in securing easements, rights of way and other property rights necessary to operate the conveyance system from the Dixon Run No. 3 Mine and the Central Treatment Facility and discharge sludge from the Central Treatment Facility into the Chestnut Ridge and Dixon Run No. 3 Mines because Stanford apparently did not hold all necessary rights. Due to the condition of the Central Treatment Facility and the Dixon Run No. 3 Mine pumping and conveyance system, EME has made various operational changes to improve the short term

efficiency and reliability of the conveyance and treatment system, including, *inter alia*, cleaning the piping in part of the conveyance system, upgrading the control probes at the Dixon Run No. 3 Borehole, and installing a variable speed frequency pump at the Central Treatment Facility that adds lime based on pH. After the issuance of the permit, EME intends to make additional modifications to the conveyance and treatment system, including installing a new deep well pump at the Dixon Run No. 3 Borehole to more efficiently maintain the elevation of the mine pool, cleaning out approximately 9000 feet of piping from the Dixon Run No. 3 Borehole to the Central Treatment System, and upgrading the sludge management system at the Central Treatment Facility. These modifications, which are estimated to cost \$80,000, will enhance the long-term efficiency and reliability of the pumping and treatment system.

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 desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by EME, Utica, BCWA, and the Trustee as follows:

1. Authority. 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 4.2 of the Surface Mining Act, 52 P. S. § 1396.4b; Section 9 of the Mine Subsidence Act, 52 P. S. § 1406.9; and Section 1917-A of the Administrative Code, 71 P. S. § 510-17.

2. Findings.

a. EME, Utica, BCWA, and the Trustee agree that the findings in Paragraphs A through AE are true and correct and, in any matter or proceeding involving EME, Utica, BCWA, and the Trustee and the Department, none of the parties shall 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. Central Treatment Facility.

a. Subject to the approval of the Bankruptcy Court, the Stanford Bankruptcy Estate shall convey the Central Treatment Facility and the conveyance system for the Dixon Run No. 3 Mine to EME and shall convey or assign to EME the property rights necessary to operate the conveyance system and the Central Treatment Facility and discharge sludge into the Chestnut Ridge and Dixon Run No. 3 Mines.

b. After this Consent Order and Agreement has been executed and EME provides the Department with documentation that satisfies the right-of-entry provisions of 25 Pa. Code § 86.64, the Department will issue Post-Mining Activity Permit No. 32031701 to EME.

c. EME shall modify the Central Treatment Facility, if necessary, to comply with all requirements of Post-Mining Activity Permit No. 32031701 and to assure that:

i. the mine pool in the Dixon Run No. 3 Mine is maintained at a maximum elevation of 1225 feet above mean sea level, or at whatever level is necessary in order to prevent the emergence of any polluttional seeps along the coal cropline at the Two Lick Reservoir; and

ii. all discharges from the Central Treatment Facility comply with the permitted effluent limitations for the Facility.

d. The Stanford Bankruptcy Estate shall cooperate with EME in obtaining any permits, approvals, or waivers necessary to modify and operate the Central Treatment Facility or the conveyance system from the Dixon Run No. 3 Mine Facility and discharge sludge into the Chestnut Ridge and Dixon Run No. 3 Mines.

4. Department's Share of Costs of Operation of Central Treatment Facility and Penn Hill No. 2 Mine Conveyance System. Within thirty (30) days of the date of this Consent Order and Agreement, Utica shall pay EME \$133,258.50. This sum of money represents the Department's share of the costs of conveying mine drainage from the Penn Hill No. 2 Mine to the Central Treatment Facility and operating the Central Treatment Facility from May 1999 until December 31, 2001.

5. Right of Entry. EME grants and conveys to the Department, its employees, agents, servants, contractors and subcontractors a right of entry into, under, over, and upon the property at the Dixon Run No. 3 Mine, the Chestnut Ridge Mine and the Penn Hill No. 2 Mine that will be used for operation and maintenance of the two treatment systems,

including all necessary or convenient rights of ingress, egress and regress, with all necessary or convenient personnel, materials and equipment, in order for the Department to inspect the Penn Hill No. 2 Mine Treatment System, the pumping and conveyance system from the Dixon Run Mine to the Central Treatment Facility System, and the Central Treatment Facility.

6. Grant of Immunity to EME. As of the date of execution of this Consent Order and Agreement, the immunities described in Section 8106 of the Environmental Good Samaritan Act, 27 Pa. C. S. § 8106, shall apply to and benefit EME.

7. Establishment of Treatment Trust Fund for Penn Hill No. 2 Mine. Within sixty (60) days of the date of this Consent Order and Agreement, Utica shall place \$83,758.50 into a trust fund to ensure that there are funds to pay for future monitoring, maintenance, and replacement activities at the Penn Hill No. 2 Mine Treatment System. The trustee shall be the Clean Streams Foundation and the beneficiary shall be the Department. The terms of the trust shall be set forth in a separate agreement ("Participation Agreement"), which shall be incorporated herein by reference upon execution. Pursuant to the Participation Agreement, the Clean Streams Foundation will be authorized to make payments to the BCWA.

8. Long Term Monitoring and Maintenance of Passive Systems at Penn Hill No. 2 Mine. BCWA shall conduct long-term monitoring, maintenance, and replacement activities at the treatment system constructed at the Penn Hill No. 2 Mine so as to assure

that the system operates as designed and that all discharges comply with the applicable water quality standards. BCWA shall be entitled to draw upon the trust funds created for the treatment system in order to finance this work.

9. Release of Utica's Liability under Bonds. Once Utica has completed its obligations under Paragraphs 4 and 7 of this Consent Order and Agreement, the Department will release Utica from liability for payment under the forfeited surety bonds Nos. SU1464428, and SU1464430. Utica shall advise the Department in writing when it has completed its obligations under Paragraphs 4 and 7 and shall request the Department to provide a written release of its liability.

10. Role of Trustee. The Trustee enters into this Consent Order and Agreement solely in her capacity as Trustee for the Stanford Bankruptcy Estate. The Trustee shall not, by virtue of this Consent Order and Agreement or any of her activities hereunder, be deemed to have assumed any personal liability or obligations whatsoever; provided, however, that the Trustee does hereby consent and agree, on behalf of the Stanford Bankruptcy Estate, to enter into this Consent Order and Agreement, to effectuate and implement its provisions and to seek any relief from the Bankruptcy Court required by this Consent Order and Agreement or reasonably necessary to its implementation and effectuation, and provided further that the Trustee does hereby agree to cooperate with the other parties hereto in accordance with Paragraph 11 of this Consent Order and Agreement.

11. Cooperation of Trustee.

a. The Trustee agrees to cooperate in the preparation, execution and filing, on behalf of the Stanford Bankruptcy Estate, of any pleadings, consents, applications or other documents reasonably required in connection with the implementation and effectuation of this Consent Order and Agreement.

b. The Trustee hereby grants EME, BCWA, and Utica all rights of access to the Chestnut Ridge Mine, the Central Treatment Facility, the Penn Hill No. 2 Mine, and the Dixon Run No. 3 Mine that accrue to the Stanford Bankruptcy Estate for the purposes of conducting the remedial activities required by this Consent Order and Agreement. In any future agreements to transfer any legal or equitable rights to the mines which are subject to the remedial requirements of this Consent Order and Agreement, the Trustee shall include language in the agreements specifically stating:

(i) EME, BCWA, and Utica reclamation contractors shall have reasonable access to the mines after the sale to perform the remedial obligations of the Stanford Bankruptcy Estate;

(ii) The purchaser specifically agrees not to interfere with such remedial activities; and

(iii) Reclamation shall be accomplished consistent with the approved reclamation plans.

c. The Trustee hereby waives any and all claims against EME, BCWA and Utica relating to their activities at the Penn Hill No. 2 Mine, Dixon Run No. 3 Mine, the Chestnut Ridge Mine, and the Central Treatment Facility including, without limitation,

the demolition and removal of the conveyance system for the Penn Hill No. 2 Mine, reclamation activities at the Chestnut Ridge Mine, and the discharge of sludge into the Chestnut Ridge and Dixon Run No. 3 Mines.

d. The Trustee, EME, BCWA, Utica and the Department will submit this Consent Order and Agreement to the Bankruptcy Court to advise the Court of the terms and conditions of this Consent Order and Agreement and to request authorization for the Trustee to enter into this Consent Order and Agreement.

12. Chestnut Ridge Mine. The Department and Utica hereby agree that EME's acquisition and operation of the Central Treatment Facility, including disposal of sludge from the Central Treatment Facility into the Chestnut Ridge or Dixon Run No. 3 Mines, for the purposes of treating the Dixon Run No. 3 Mine Discharge shall not impose any liability on EME for operation of the Chestnut Ridge Mine. However, EME shall be liable for any violations of law that it causes or allows by virtue of its operation of the Central Treatment Facility.

13. Additional Remedies.

a. In the event EME, Utica, BCWA, or the Trustee fail 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. The remedies provided by this paragraph 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.

14. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. Further, the Department reserves the right to require EME to establish a financial guarantee to assure that there are sufficient funds available to operate the pumping and conveyance system at the Dixon Run No. 3 Mine and the Central Treatment Facility, or any other system or systems that are necessary to assure that there are no pollutional discharges from the Dixon Run No. 3 Mine. EME, Utica, BCWA, and the Trustee reserve the right to challenge any action which the Department may take under this paragraph.

15. Liability of Operator. Each Party shall be liable for any violations of the Consent Order and Agreement which it causes, contributes to, or allows, including those caused, contributed to or allowed by its officers, agents, employees, or contractors. Each party also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

16. Transfer of Site.

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 Dixon Run No. 3 Mine, the Penn Hill No. 2 Mine, the

Central Treatment Facility or the Chestnut Ridge Mine or any part thereof, including the surface land overlying the mines.

b. If EME or the Trustee intends to transfer any legal or equitable interest that it has in the Dixon Run No. 3 Mine, the Penn Hill No. 2 Mine, the Central Treatment Facility or the Chestnut Ridge Mine, or the surface land overlying the mines which is affected by this Consent Order and Agreement, that party 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 Cambria District Mining Office of the Department of such intent.

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

Donald Barnes
Department of Environmental Protection
Cambria District Office
286 Industrial Park Road
Ebensburg, PA 15931-119
Phone: 814-472-1900
Facsimile: 814-472-1898

18. Correspondence with Parties.

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

Alfred A. Slowik
EME Homer City Generation, L.P.
1750 Power Plant Road
Homer City, PA 15748-9558
Phone: 724-479-6142
Facsimile: 724-479-6300

with a copy to:

Daniel McDevitt, Esquire
Midwest Generation EME L.L.C.
One Financial Place
440 South LaSalle, Suite 3410
Chicago, IL 60605
Phone: 312-583-6000
Facsimile: 312-583-4998

b. Correspondence with Utica. All correspondence with Utica

concerning this Consent Order and Agreement shall be addressed to:

William T. Gorton III, Esquire
Stites and Harbison
2300 Lexington Financial Center
250 West Main Street
Lexington, KY 40507
Phone: 859-226-2241
Facsimile: 859-253-9144

c. Correspondence with Blacklick Creek Watershed Association. All

correspondence with BCWA concerning this Consent Order and Agreement shall be

addressed to:

Robert Eppley
Blacklick Creek Watershed Association
52 Oakland Avenue
Homer City, PA 15748
Phone: 724-479-0172
Facsimile: 724-479-0172

d. Correspondence with Trustee. All correspondence with Stanford Bankruptcy Estate concerning this Consent Order and Agreement shall be addressed to:

Lucinda Masterton
Trustee for Stanford Mining Company Bankruptcy Estate
4857 Paynes Mill Road
Lexington, KY 40507
Phone: 859-225-7737
Facsimile: 859-252-6501

with a copy to her counsel:

John O. Morgan, Jr., Esquire
333 West Vine Street, Suite 310
Lexington, KY 40507-1713
Phone: 859-253-6500
Facsimile: 859-253-6508

EME, Utica, BCWA, and the Trustee 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.

19. 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.

20. 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 intent of any provisions herein in any litigation or any other proceeding.

21. 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.

22. Modifications. 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.

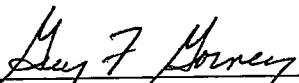
23. Titles. A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

24. Decisions under Consent Order. Except as provided in Paragraph 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 EME, Utica, BCWA, or the Trustee may have to such decision will be preserved until the Department enforces this Consent Order and Agreement.

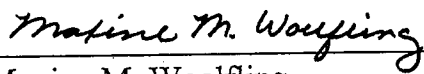
25. Counterparts. The parties agree to execute the Consent Order and Agreement by counterpart signatures transmitted via facsimile.

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 EME, Utica, BCWA, and the Trustee 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 EME, Utica, BCWA, and the Trustee; that EME, Utica, BCWA, and the Trustee consent to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that EME, Utica, BCWA, and the Trustee hereby knowingly waives any 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 attorneys for EME, Utica, BCWA, and the Trustee certifies only that the agreement has been signed after consulting with counsel.

FOR EME HOMER CITY
GENERATION, L.P.:



Mission Energy Westside
General Partner



Maxine M. Woelfling
Morgan, Lewis & Bockius LLP
Attorney for EME Homer City
Generation, L.P

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

Donald Barnes
District Mining Manager
Cambria District Mining Office

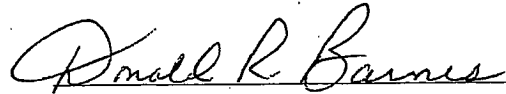
Diana J. Stares
Regional Counsel
Southwest Regional Office

FOR EME HOMER CITY
GENERATION, L.P.:


Mission Energy Westside
General Partner

Maxine M. Woelfling
Morgan, Lewis & Bockius LLP
Attorney for EME Homer City
Generation, L.P

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



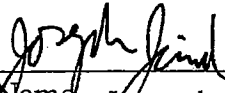
Donald Barnes
District Mining Manager
Cambria District Mining Office

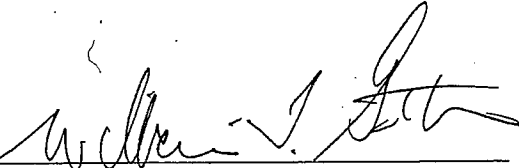


Diana J. Stares
Regional Counsel
Southwest Regional Office

JUN 19 2006

FOR UTICA MUTUAL
INSURANCE COMPANY:


Name Joseph Juidiciani
Title Home office claims - Legal


William T. Gorton III, Esquire
Stites and Harbison
Attorney for Utica Mutual
Insurance Co.

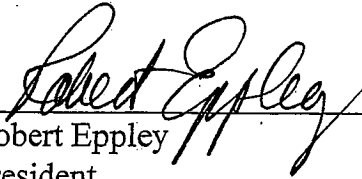
FOR BLACKLICK CREEK
WATERSHED ASSOCIATION:

Robert Eppley
President

FOR UTICA MUTUAL
INSURANCE COMPANY:

FOR BLACKLICK CREEK
WATERSHED ASSOCIATION:

Name
Title

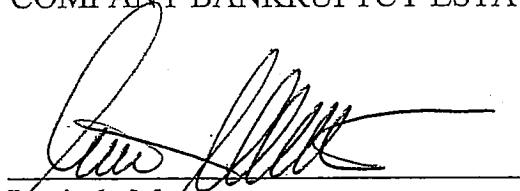


Robert Eppley
President

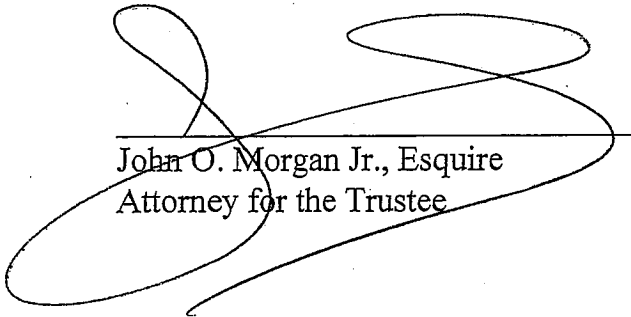
2/23/06

William T. Gorton III, Esquire
Stites and Harbison
Attorney for Utica Mutual
Insurance Co.

FOR STANFORD MINING
COMPANY BANKRUPTCY ESTATE:



Lucinda Masterton
Trustee for Stanford Mining
Company Bankruptcy Estate



John O. Morgan Jr., Esquire
Attorney for the Trustee