

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Twinbrook Coal Company
135 Twinbrook Road
Marion Center, PA 15759

Mines & Permit Nos.
Degenkalb Mine, SMP 32813001

Alternative Financial Assurance Mechanism

POSTMINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 10th day of April, 2006, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Twinbrook Coal Company ("Twinbrook").

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.

B. Twinbrook Coal Company, 135 Twinbrook Road, Marion Center, PA 15759 is and has been engaged in surface mining of bituminous coal.

C. Twinbrook is the permittee of the following coal mine which is associated with post-mining discharge liability:

NAME	PERMIT NO.	TOWNSHIP	COUNTY
Degenkalb	32813001	Green and Montgomery	Indiana

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D. The Degenkalb mine is inactive and all surface reclamation has been completed. There is a post-mining discharge point known as TB-1 located on the permit.

E. On September 2, 1993 the Department issued compliance order 933144 requiring Twinbrook to collect and treat the discharge identified as TB1. Information about the water quality of TB1 and its flow is attached in Exhibit A. The discharge was collected and treated chemically until December 1999 when Twinbrook installed the following passive treatment system: The raw seep identified as TB1 is collected into the first of three treatment cells. Each cell contains four feet of #3 limestone mixed with limestone fines. The ponds are underlain with 6" schedule 40 PVC pipe. The treated water is then discharged to an unnamed tributary to Cush Cushion Creek. The passive treatment system has been treating the discharge to meet effluent standards without the use of chemicals since December 1999.

F. Twinbrook agrees it has the legal responsibility to treat or abate the discharge(s) identified in Paragraph E.

G. The effluent limits applicable to the discharge are 25 Pennsylvania Code Section 87.102. Water sampling for the treatment system is to be conducted as follows: The final discharge at sample point A, upstream at sample point B, and downstream at sample point MP5 are to be sampled quarterly and the analysis submitted to the Cambria District Mining Office within 30 days of sample collection.

H. Twinbrook's estimated annual cost to operate, maintain and repair the treatment facility is \$790.00. The present value of the capital cost of the major components of the treatment facility that will require replacement is \$5,265.00.

I. Raw water quality at the discharge is set forth in Exhibit A.

J. The following surety bond on the Degenkalb mine was issued by Utica Mutual Insurance Company: #SU41926 - \$20,760.00. The surety bonds are referred to hereafter as "Existing Financial Assurances."

K. Twinbrook 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.

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L. 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 \$790.00. Based on the current annual costs and the present value of the capital cost to replace the trust and facilitate the amount required for a fully funded trust is \$23,374.65.

M. 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.

N. Twinbrook has told the Department that it intends to fully fund the trust with the initial payment required by Paragraph 6 below. None of the Existing Financial Assurance will be pledged or assigned to the trust. Twinbrook has also told the Department that it intends to seek the release of the Existing Financial Assurance in accordance with Paragraph 6.b. below. Because Twinbrook is fully funding the trust with the initial payment, the parties have agreed that any references to surety bonds in Paragraph 3.k., 7.b., 9.a., 9.d., 9.e., and 11.a. is surplusage and of no legal consequence.

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

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2. Findings

a. Twinbrook agrees that the findings in Paragraphs A through N are true and correct and, in any matter or proceeding involving Twinbrook and the Department, Twinbrook 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:

PV	=	$(A/[E-I]) + A$
where: PV	=	Present Value of the O&M Costs
A	=	Current Actual Treatment Cost
E	=	Expected annual earnings/Interest Rate (assumed to be 8.43% or .0843)*
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.

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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. Twinbrook 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. Twinbrook shall keep separate records for the treatment facility.

c. Twinbrook 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 period beginning January 1 and continuing through December 31 of each year, or other fiscal year as Twinbrook 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 Twinbrook and by the President of Twinbrook attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

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

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

5. Treatment Trust

a. Twinbrook shall establish an irrevocable trust to be known as the Twinbrook Treatment Trust (Trust). The Trust shall secure Twinbrook'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 Twinbrook 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 Exhibit B.

b. Twinbrook 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, Twinbrook shall deposit an amount of \$23,374.65 into the Primary Trust Account.

b. Twinbrook may apply for release of Existing Financial Assurances in accordance with the provisions of 25 PA Code 86.170-175. So long as Twinbrook has complied with subparagraph 6.a., the Department agrees that it will not withhold release of the Existing Financial Assurances because of the existence of the post-mining discharge described in paragraphs D-G.

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 Twinbrook. 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 C.

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 Twinbrook 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 C. 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 C.

g. If the Primary Trust Valuation is less than the Primary Basis Valuation, then Twinbrook 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 C. This provision does not apply until Twinbrook has fulfilled its obligations to make ongoing payments under paragraph 6.b.

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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 D 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 Twinbrook. 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:

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

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 Twinbrook 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. Twinbrook 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

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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

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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 E and this Consent Order and Agreement, and shall be used in making all future calculations involving the Capital Improvement Account.

11. Transfer of Funds to the Capital Improvement Account

- a. The provisions of this Paragraph do not apply if the Primary Trust Valuation includes the value of surety bonds.

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

12. Distribution Payments from the Capital Improvement Account

a. A distribution payment shall be made to Twinbrook any time a planned capital replacement is made as indicated on Exhibit E. The capital replacement and maintenance activities shall be made as needed, which may be sooner or later than the projected time. The amount of the Distribution Payment shall be equal to the calculated cost of the Capital Improvement as indicated on Exhibit E, or in an amount equal to the difference between the current balance in the Capital Improvement Account and the required balance after the capital improvement Distribution Payment, whichever is less.

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

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

If the Primary Trust Valuation exceeds the Primary Target Valuation in the Primary Trust Account, or if the balance in the Capital Improvement Account exceeds the required balance as indicated on Exhibit E, then such surplus funds may be used for the following purposes:

a. Surplus funds in the Capital Improvement Account shall be transferred to the Primary Trust Account to reduce or completely satisfy *Twinbrook's* obligation to make a contribution payment under Paragraph 7.g. This amount is depicted graphically at Point 5 on Exhibit C. However, the amount of surplus funds transferred to the Primary Trust Account may exceed *Twinbrook'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

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graphically at Point 6 on Exhibit C.

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 E.

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

Within 30 days of the signing of this agreement, Twinbrook must assign to the trust all rights of access or an easement giving access as necessary for the purposes described in the Postmining Treatment Trust Agreement.

15. Public Liability Insurance

a. Twinbrook 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 insured 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 Twinbrook 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 Twinbrook Treatment 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 Twinbrook Treatment Trust ; and to address any other issues that may concern this Consent Order and Agreement or its implementation.

17. Twinbrook's Continuing Obligation

Neither Twinbrook's agreement to fund the Twinbrook Treatment Trust nor the full or partial funding of the Trust, nor the exhaustion of the Trust shall in any way limit Twinbrook's obligation to operate the Treatment Systems. Furthermore, exhaustion of the Trust shall not excuse Twinbrook from Twinbrook's obligation to adequately treat or to abate the discharges.

18. Stipulated Civil Penalties

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

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

c. Any payment under this paragraph shall neither waive Twinbrook's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Twinbrook's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Twinbrook's liability for civil penalties arising from the violation of this Consent Order and

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

21. Liability of Twinbrook

Twinbrook 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. Twinbrook 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

Twinbrook Sites or any part thereof.

b. If Twinbrook intends to transfer any legal or equitable interest in the Twinbrook Sites which is affected by this Consent Order and Agreement, Twinbrook 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 Twinbrook's duties and obligations under this Consent Order and Agreement upon transfer of the Twinbrook Sites. Twinbrook 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:

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

With copy to : Samuel C. Faith
Department of Environmental Protection
California District Office
25 Technology Drive
California technology Park
Coal Center, PA 15423

24. Correspondence with Twinbrook

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

Dennis Bence
135 Twinbrook Road
Marion Center, PA 15759

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

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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 Paragraphs 7,12 and 13, 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 Twinbrook 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 Twinbrook. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) Twinbrook consolidates with or merges into or permits to merge with it and Twinbrook is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of Twinbrook's properties or assets which include, but is not limited to, voting stock of Twinbrook. Successor does not include any corporation or other entity to which Twinbrook transfers or assigns all or substantially all of its financial or non-financial liabilities.

Twinbrook 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.

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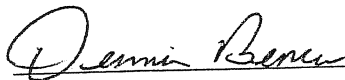
DEP CAMBRIA OFFICE

33. Counterpart Signatures

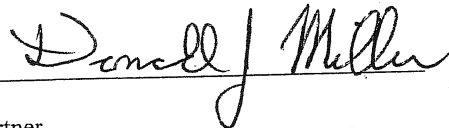
The parties agree to execute this Consent Order and Agreement by counterpart signatures transmitted via facsimile.

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

FOR Twinbrook:



Partner



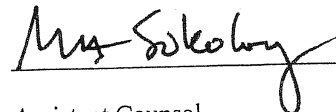
Partner

Attorney for Twinbrook

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



District Mining Manger



Assistant Counsel
[Southwest] Region OCC

Exhibit A

**Twinbrook Coal Co. "Degenkalb"
Average raw discharge water quality**

TB1

Alkalinity = 0.0 mg/l

Net Acidity = 150.0 mg/l

Total iron = 6.0 mg/l

Manganese = 12.0 mg/l

Aluminum = <0.5 mg/l

Sulfates = 500 mg/l

Design flow = 15.0 gpm

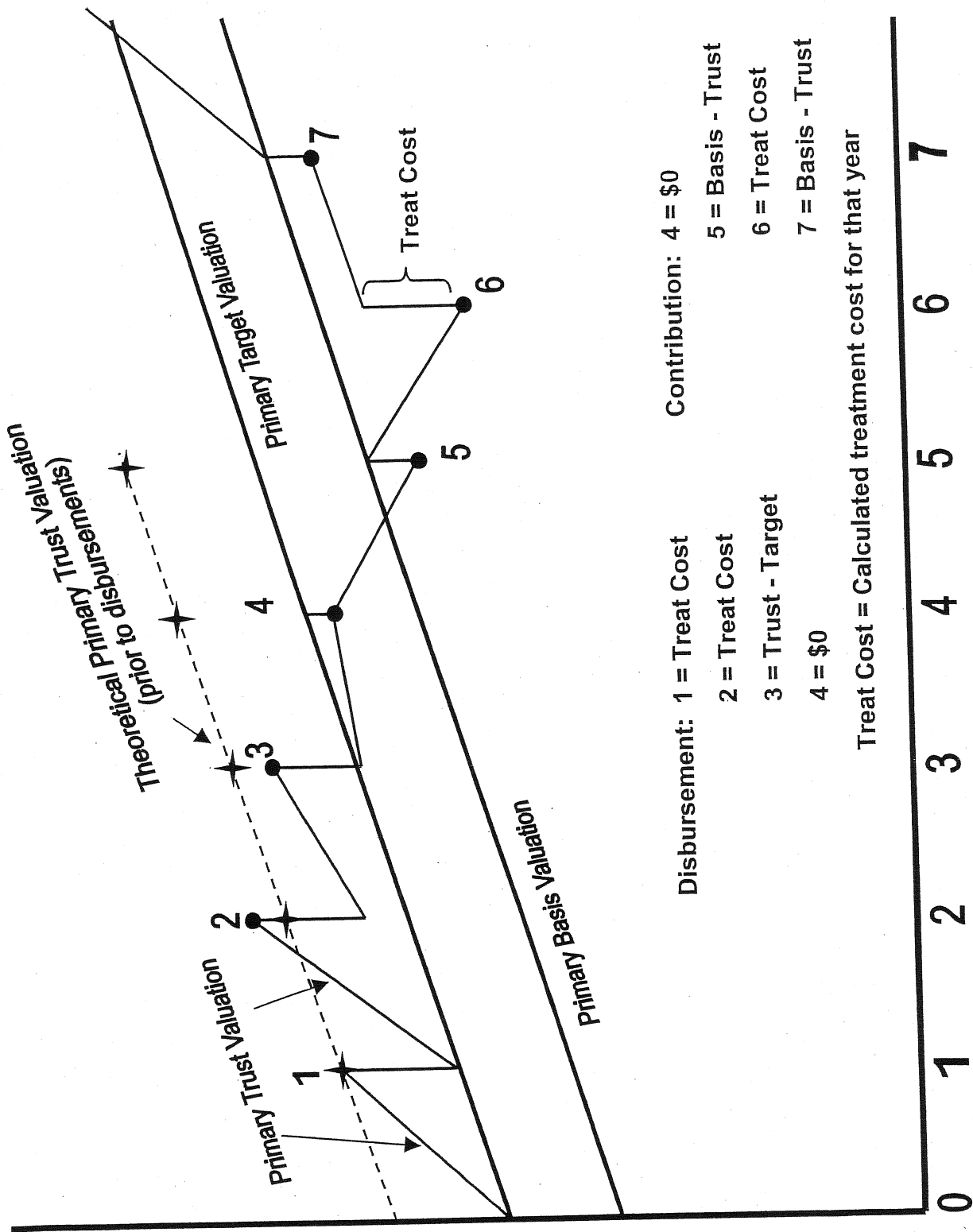
Average flow = 3.0 gpm

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Theoretical Primary Trust Valuation
(prior to disbursements)

Primary Trust Valuation

Primary Target Valuation

Primary Basis Valuation

Treat Cost

- Disbursement: 1 = Treat Cost
- 2 = Treat Cost
- 3 = Trust - Target
- 4 = \$0
- Contribution: 4 = \$0
- 5 = Basis - Trust
- 6 = Treat Cost
- 7 = Basis - Trust

Treat Cost = Calculated treatment cost for that year

0 1 2 3 4 5 6 7

YRS

↑ \$

Exhibit "C"

APR 19 2006

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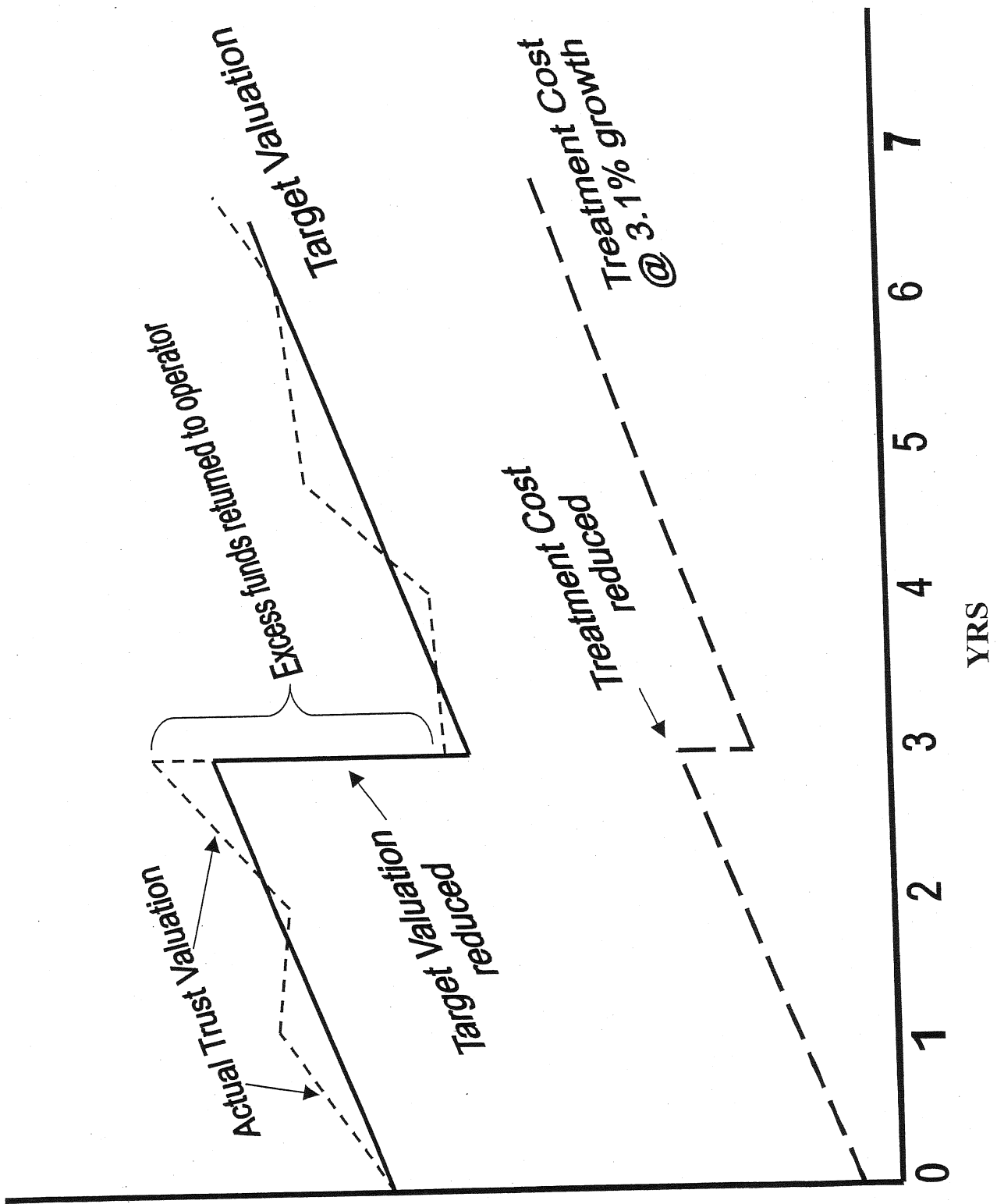


Exhibit "D"

APR 18 2006

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Company Name Twinbrook Coal Co

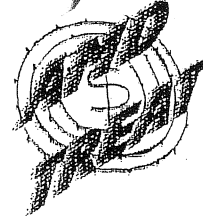
Project TB1

Site Name Degenkalb

Inflation Rate %

Return Rate %

AMD TREAT RECAPITIALIZATION COST



Year	Trust Fund Growth Fund Before Payout	Trust Fund Growth Fund After Payout	Payout Schedule	Year	Trust Fund Growth Fund Before Payout	Trust Fund Growth Fund After Payout	Payout Schedule
	5,265	5,265	Initial Fund Amount				
1	6,190	5,709	0	40	35,787	35,787	0
2	6,190	6,190	0	41	38,804	38,804	0
3	6,712	6,712	0	42	42,075	42,075	0
4	7,278	7,278	0	43	45,622	45,622	0
5	7,891	7,891	0	44	49,468	49,468	0
6	8,556	8,556	0	45	53,638	53,638	0
7	9,278	9,278	0	46	58,160	58,160	0
8	10,060	10,060	0	47	63,063	63,063	0
9	10,908	10,908	0	48	68,379	68,379	0
10	11,828	11,828	0	49	74,144	74,144	0
11	12,825	12,825	0	50	80,394	17,763	62,631
12	13,906	13,906	0	51	19,260	19,260	0
13	15,078	15,078	0	52	20,884	20,884	0
14	16,349	16,349	0	53	22,644	22,644	0
15	17,728	17,728	0	54	24,553	24,553	0
16	19,222	19,222	0	55	26,623	26,623	0
17	20,843	20,843	0	56	28,868	28,868	0
18	22,600	22,600	0	57	31,301	31,301	0
19	24,505	24,505	0	58	33,940	33,940	0
20	26,571	26,571	0	59	36,801	36,801	0
21	28,810	28,811	0	60	39,903	39,903	0
22	31,239	31,239	0	61	43,267	43,267	0
23	33,873	33,873	0	62	46,915	46,915	0
24	36,728	36,728	0	63	50,870	50,870	0
25	39,825	10,628	29,196	64	55,158	55,158	0
26	11,524	11,524	0	65	59,808	59,808	0
27	12,496	12,496	0	66	64,850	64,850	0
28	13,549	13,549	0	67	70,317	70,317	0
29	14,692	14,692	0	68	76,245	76,245	0
30	15,930	15,930	0	69	82,672	82,672	0
31	17,273	17,273	0	70	89,641	89,641	0
32	18,729	18,729	0	71	97,198	97,198	0
33	20,308	20,308	0	72	105,392	105,392	0
34	22,020	22,020	0	73	114,277	114,277	0
35	23,877	23,877	0	74	123,910	123,910	0
36	25,890	25,890	0	75	134,356	-0	134,356
37	28,072	28,072	0				
38	30,439	30,439	0				
39	33,005	33,005	0				

Exhibit E

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Company Name Twinbrook Coal Co

Project TB1

Site Name Degenkalb



AMD TREAT RECAPITIALIZATION COST

Inflation Rate %

Return Rate %

A. Description of Item	B Unit Cost Per Item	C Quantity	D Total Item Cost	E Life Cycle	F Number of Periods	G Total PV
1. total rebuild of system	13,610	1	13,610	25	3	5,265
2.	0	0	0	0	0	0
3.	0	0	0	0	0	0
4.	0	0	0	0	0	0
5.	0	0	0	0	0	0
6.	0	0	0	0	0	0
7.	0	0	0	0	0	0
8.	0	0	0	0	0	0
9.	0	0	0	0	0	0
10.	0	0	0	0	0	0
11.	0	0	0	0	0	0
12.	0	0	0	0	0	0
13.	0	0	0	0	0	0
14.	0	0	0	0	0	0
15.	0	0	0	0	0	0

PV Grand Total \$

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 DEP CANBRIA OFFICE
 APR 19 2006
 Exhibit E