

COMMONWEALTH OF PENNSYLVANIA  
Before The  
ENVIRONMENTAL HEARING BOARD

ANTRIM MINING, INC.,

Appellant,

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
RESOURCES,

Appellee.

EHB Docket Nos. 89-056-F  
89-184-F  
90-536-F  
91-290-F

CONSENT ORDER, AGREEMENT, AND ADJUDICATION

NOW, this 31<sup>st</sup> day of December, 1991, Antrim Mining, Inc. ("Antrim"),

Appellant, and the Commonwealth of Pennsylvania, Department of Environmental Resources ("Department"), Appellee, come before the Environmental Hearing Board ("Board") and stipulate to the following Statement of Facts and Order in settlement of the four appeals identified in the caption.

Statement of Facts

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 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. Antrim is a business corporation organized and existing under the laws of Pennsylvania with a registered business address of P.O. Box 38, Blossburg, PA 16912. Antrim has engaged in the

surface mining of bituminous coal in the Commonwealth under the authorization of Surface Mining Operator's License No. 1-02110.

C. Antrim operates the Rock Run Fly Ash Disposal Facility ("Rock Run Facility") in Duncan Township, Tioga County, Pennsylvania. Antrim operates the Rock Run Facility under Solid Waste Disposal Facility Permit No. 301025, which the Department issued to Antrim on February 12, 1986.

D. The officers, directors, and shareholders of Antrim are as follows:

Richard D. Mase -- President, Director, shareholder  
Sylvia Mase -- Vice President, Director, shareholder  
Patricia Warren -- Secretary/Treasurer, Director  
Michelle Mase -- Shareholder  
Lynn Cardoza-Lozano -- Shareholder

E. Phoenix Resources, Inc. ("Phoenix") is a business corporation organized and existing under the laws of Pennsylvania with a registered business address of P.O. Box 38, Blossburg, PA 16912.

F. Antrim has filed an application requesting that the Department transfer the permit for the Rock Run Facility from Antrim to Phoenix.

G. Phoenix has filed Solid Waste Disposal Facility Application No. 301106 for the Antrim Fly Ash Disposal Facility in Duncan Township, Tioga County, Pennsylvania.

H. Throughout this Consent Order, Agreement, and Adjudication, "contaminants associated with acid mine drainage" shall mean acidity in excess of alkalinity, pH below 6.0, and elevated concentrations of iron, manganese, aluminum, and/or sulfates.

I. From approximately June, 1981 through 1983, Antrim operated a surface mine in Morris Township, Tioga County known as the "Rattler Mountain" site pursuant to Department Mine Drainage Permit No. 59810101.

J. The Rattler Mountain site overlies, and is drained by, the "Anna S" deep mine complex, which was operated as an underground mine by mining companies other than Antrim and that are not related parties to Antrim. However, as part of its surface mining operations on the Rattler Mountain site, Antrim "daylighted" (i.e., excavated into) portions of the Anna S deep mine.

K. Three discharges of acid mine drainage known as the "Anna S #1," "Mitchell #2," and "Hunter's Drift" discharges flow into Wilson Creek from portals in the Anna S deep mine. Those three discharges were already degraded at the time that Antrim commenced surface mining activities under Surface Mining Permit No. 59810101.

L. From July, 1990 through June, 1991, the Department took monthly samples and flow measurements of the Anna S #1, Mitchell #2, and Hunter's Drift discharges. That data shows that the average combined load of acidity, iron, and manganese emitted by the three discharges taken together is lower than the corresponding average load for those three parameters during the background period (November 1979 through November 1980) established by Mine Drainage Permit No. 59810101.

M. Beginning in September, 1982, and continuing through the date of this Consent Order, Agreement, and Adjudication, Antrim has operated surface coal mining sites in Duncan Township, Tioga County, that are identified by the following names and surface mining permit numbers: "Antrim #1" (#59820101), "Rolling Run South" (#59820102), "Backswitch" (#59830101), "Devil's Elbow North" (#59850101), and "Van Order" (#59870102). Antrim also has obtained two surface mining permits from the Department for sites located in Duncan Township from which Antrim has not extracted any coal. Those two permits are identified by the following names and permit numbers: "Cushing" (#59840101) and "Devil's Elbow II" (#59870101). Antrim has not activated the Devil's Elbow II permit.

N. Appendix I to this Consent Order, Agreement, and Adjudication is a complete and accurate list of all reclamation bonds posted by Antrim and held by the Department in connection with the activated surface mining permits listed in Paragraph M, above.

O. As part of its mining operations on the Rolling Run South site, Antrim leased from the Commonwealth the surface and mineral rights to approximately ten acres of the Tioga State Forest by Strip Mine Lease No. M-320014-16 dated May 24, 1984. Antrim removed 13,219 tons of coal from this leased area and paid the Commonwealth a royalty of \$26,497.18 under the terms of the Strip Mine Lease.

P. None of the permits listed in Paragraph M, above, is a "Subchapter F" (25 Pa. Code §§ 87.201 - 87.209) permit, nor was the issuance of any of those permits accompanied or preceded by the execution of a consent order and agreement authorizing the remining of areas previously affected by surface mining activities and establishing background contaminant loads or concentrations for pre-existing discharges of mine drainage.

Q. Most of the affected area of the activated mining sites identified in Paragraph M, above, overlies, and is drained by, a large underground coal mine ("Underground Mine Complex") that was operated as an underground mine in the late 1800's and early 1900's, and reopened briefly in the 1940's, by mining companies other than Antrim and that are not related parties to Antrim. As part of its surface mining operations on the Antrim #1, Devil's Elbow North, and Van Order, operations, Antrim daylighted portions of the Underground Mine Complex. The Underground Mine Complex drains approximately 1300 to 1700 acres.

R. A polluttional discharge of mine drainage ("B1-14 Discharge") flows out of the Underground Mine Complex at a portal identified as sampling point number B1-14 . The B1-14 Discharge, which existed and which was polluttional at the time that Antrim commenced operations on the

surface mining sites identified in Paragraph M, above, presently has an average volume of approximately 800 gallons per minute. The B1-14 Discharge flows into Bridge Run, a tributary of Wilson Creek. Wilson Creek, which is degraded considerably by several discharges of acid mine drainage in the vicinity of its confluence with Bridge Run, is a tributary to Babb Creek, which in turn is a tributary to Pine Creek.

S. A hydrologic connection exists between the Underground Mine Complex, on the one hand, and the Antrim #1, Rolling Run South, Devil's Elbow North, and Van Order sites, and phases I and II of the Backswitch site, on the other hand.

T. Antrim's surface mining operations have caused degradation of the B1-14 Discharge beyond the degradation that existed at the time that Antrim commenced operations on the surface mining sites identified in Paragraph M, above.

U. Phases III, IV, and V of the Backswitch surface mine site overlie and are hydrologically connected to a deep mine complex known as the Backswitch deep mine, which was operated, before Antrim began surface mining operations on the Backswitch surface mine, by companies other than Antrim and that are not related parties to Antrim. In addition, a portion of the Backswitch surface mine site was previously surface mined and abandoned in an incompletely reclaimed condition (under current standards) by a company other than Antrim and that is not a related party to Antrim. The area that was surface mined and abandoned prior to Antrim's commencement of operations on the Backswitch surface mine is in the recharge area of the Backswitch deep mine. The Backswitch deep mine complex drains out of a portal identified as sampling point number B1-16 ("the Backswitch Discharge"). The Backswitch Discharge, which existed and which was polluttional at the time Antrim commenced operations on the Backswitch surface mine site, has an average volume of roughly 40 gallons per minute and in its natural watercourse enters Wilson Creek farther upstream than any other deep mine discharge into Wilson Creek at a point

approximately 1000 feet upstream of the point at which the Mitchell #2 discharge from the Anna S deep mine complex enters Wilson Creek.

V. Antrim's surface mining operations on the Backswitch surface mine site have caused degradation of the Backswitch Discharge beyond the degradation that existed at the time that Antrim commenced operations on the Backswitch surface mine site.

W. Neither the B1-14 Discharge nor the Backswitch Discharge meets the effluent limits set forth at 25 Pa. Code § 87.102.

X. Antrim's degradation of the B1-14 Discharge and the Backswitch Discharge constitutes a violation of Sections 301, 307(a), 315(a), and 401 of The Clean Streams Law, 35 P.S. §§ 691.301, 691.307(a), 691.315(a), 691.401, and further constitutes unlawful conduct under Section 611 of The Clean Streams Law, 35 P.S. § 691.611, and a statutory public nuisance that the Department has the authority to order Antrim to abate under Sections 3, 315(a), 401, and 601 of The Clean Streams Law, 35 P.S. § 691.3, 691.315(a), 691.401, 691.601, and under Section 1917-A of the Administrative Code, 71 P.S. § 510-17. These admissions of violations and liability by Antrim may not be used by any person other than the Department in any forum, hearing, or proceeding, whether judicial or administrative. By itself, the Department's finding of the violations set forth in this paragraph does not and shall not constitute a determination by the Department that Antrim lacks the ability or intent to comply with the law.

Y. Antrim has designed, and is in the process of installing, a system for treating the combined flows from the B1-14 and Backswitch Discharges ("Combined Discharge Treatment System"). The Combined Discharge Treatment System consists of the following major components: A collection dam below the B1-14 discharge and a reservoir created by the collection dam ("the reservoir"); a six-inch pipe with a calculated carrying capacity of roughly 400 gallons per minute to convey untreated water by gravity

from the Backswitch Discharge to the reservoir; an emergency treatment system for the Backswitch Discharge; a pumphouse and two pumps; a pipe for carrying the pumped, untreated water uphill from the reservoir to a detention basin; a treatment plant; two series of treatment lagoons with two lagoons per series; as built, a culvert for carrying treated effluent from the treatment lagoons to a point several feet below the collection dam ("the treated effluent culvert"); as planned, a pipe for carrying treated water from the treatment lagoons to a hydroelectric station near Wilson Creek; an emergency treatment system, including a pipe for conveying lime slurry by gravity from the treatment plant to the downstream end of the emergency spillway from the reservoir; a rock-lined trench that will, until any hydroelectric station is placed into operation, collect the flows from the treated effluent culvert, the emergency spillway, and the emergency lime-slurry pipeline ("rock-lined collector"). A schematic diagram of the Combined Discharge Treatment System is attached hereto as Appendix II.

Z. By letters dated February 3, 1989, the Department denied Completion Reports numbered 488287, 488288, 488290, and 488291, through which Antrim had requested final (Stage III) release of four surface mining reclamation bonds covering portions of the Rattler Mountain site. Antrim filed an appeal from the February 3, 1989 denial letters, which appeal was docketed at EHB Docket No. 89-056-F. In this Consent Order, Agreement, and Adjudication, the parties resolve the appeal that is pending at EHB Docket No. 89-056-F through the Department's agreement to release all of the reclamation bonds at issue in the appeal, as well as one additional bond covered by Antrim's Completion Report number 488289. See Paragraph 12, below.

AA. By a letter dated June 1, 1989, the Department denied Completion Report number 489011, through which Antrim had requested partial release of a surface mining reclamation bond covering the Devil's Elbow North site. Antrim filed an appeal from the June 1, 1989 denial letter, which appeal was

docketed at EHB Docket No. 89-184-F. In this Consent Order, Agreement, and Adjudication, the parties resolve the appeal that is pending at EHB Docket No. 89-056-F through Antrim's agreement to withdraw Completion Report number 489011. See Paragraph 2, below.

AB. On November 16, 1990, the Department issued Antrim Compliance Order No. 904113, which requires Antrim to provide interim and permanent treatment of the Backswitch Discharge. Antrim filed an appeal from Compliance Order No. 904113, which appeal is docketed at EHB Docket No. 90-536-F. Antrim has complied with the requirement of Compliance Order No. 904114 to provide interim treatment of the Backswitch discharge by implementing the Backswitch Discharge Interim Treatment Plan dated August 29, 1990, which Antrim continues to implement as of the date of this Consent Order, Agreement, and Adjudication.

AC. On June 18, 1991, the Department issued Antrim Compliance Order No. 914044, which requires Antrim to provide interim and permanent treatment of the B1-14 Discharge. Antrim filed an appeal from Compliance Order No. 914044, which appeal is docketed at EHB Docket No. 91-290-F.

AD. The Department and Antrim have entered into a Consent Decree dated September 25, 1991 that was approved by the Commonwealth Court of Pennsylvania at Docket No. 302 M.D. 1991 on October 4, 1991 ("the Consent Decree") and modified by the Court in an Order dated December 17, 1991. Under the Consent Decree, as modified, the deadline for Antrim to provide interim treatment of the B1-14 Discharge is January 31, 1992, and the deadline for Antrim to submit to the Department a plan for providing permanent treatment of the B1-14 Discharge is February 18, 1992.

AE. In this Consent Order, Agreement, and Adjudication, the parties resolve the appeals that are pending at EHB Docket Nos. 90-536-F and 91-290-F through Antrim's agreements to provide interim and permanent treatment of the Backswitch Discharge and the B1-14 Discharge, to allow the relevant

reclamation bonds to remain in place, to limit its right to object to forfeiture of the relevant reclamation bonds, to establish a trust securing its obligation to treat the Backswitch Discharge and B1-14 Discharge, to pay a civil penalty for the violations set forth in Paragraphs M and P through X, above, and to waive any claims that it may have against the Commonwealth arising out of the Commonwealth's ownership and/or leasing of certain surface and mineral rights in the Tioga State Forest, and through the Department's agreements to release the relevant reclamation bonds in proportion to Antrim's funding of the trust, to consider alternatives to the trust as mechanisms for securing Antrim's obligation to treat the Backswitch Discharge and B1-14 Discharge, to specify the maximum sanctions for failure of the combined flows from the treatment lagoons, the emergency spillway, and the emergency lime-slurry pipeline to meet the relevant effluent limits at the designated monitoring points when the total instantaneous flow from the B1-14 and Backswitch Discharges exceeds 2000 gallons per minute, and the Department's agreements that so long as Antrim is complying with the terms of this Consent Order, Agreement, and Adjudication, the Department will not deny any permits or mining authorizations to Antrim or any person that is a related party to Antrim based exclusively on the existence of the violations described in Paragraphs M and P through X, above, and further will not take any enforcement action against various individuals associated with Antrim for those violations. See Paragraphs 3, 5, 7-11, 15, 16, 22, and 23, below.

AF. In consideration of the mutual exchange of covenants contained in this Consent Order, Agreement, and Adjudication, Phoenix has agreed to accept, and to waive any right to appeal or otherwise to challenge, the Department's inclusion of a special condition in the permit for the Rock Run Facility requiring the permittee, for a five year period, to provide a financial guarantee for the treatment of the B1-14 and Backswitch Discharges in accordance with the terms and conditions of this Consent Order,

Agreement, and Adjudication. Said special permit condition shall be included in the permit for the Rock Run Facility upon its transfer from Antrim to Phoenix.

AG. In consideration of the mutual exchange of covenants contained in this Consent Order, Agreement, and Adjudication, Phoenix has agreed to accept, and to waive any right to appeal or otherwise to challenge, the Department's inclusion of a special condition in the permit for the Antrim Fly Ash Facility that provides that if the permit is activated by the disposal of waste in the permitted facility, the permittee shall make specified payments into the Discharge Treatment Trust described in Paragraph 9 of this Consent Order, Agreement, and Adjudication, below.

#### Order and Agreement

After full and complete negotiation of all matters set forth in this Consent Order, Agreement, and Adjudication, the parties, in consideration of the mutual exchange of covenants contained herein, and intending to be legally bound, hereby AGREE, and the Department hereby ORDERS, as follows:

1. This Consent Order, Agreement, and Adjudication is an Order of the Department that is authorized and issued pursuant to Sections 5, 316, 402, and 610 of The Clean Streams Law, 35 P.S. §§ 691.5, 691.316, 691.402, 691.610, Sections 4.2 and 4.3 of the Surface Mining Act, 52 P.S. §§ 1396.4b, 1396.4c, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of Antrim to comply with any term or condition of this Consent Order, Agreement, and Adjudication shall subject Antrim to all penalties and remedies provided by those statutes for failing to comply with an order of the Department. This Consent Order, Agreement, and Adjudication also is an Adjudication of the Environmental Hearing Board that is authorized and issued pursuant to Section 4(a) of the Environmental Hearing Board Act, 35 P.S. § 7514(a), the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A, and 25 Pa. Code § 21.120.

2. Upon the Board's approval of this Consent Order, Agreement, and Adjudication, Antrim will withdraw completion report number 489011. Antrim further shall not submit completion reports for the mine sites listed in Paragraph M, above, and shall not otherwise seek the release of any of the bonds listed in Appendix I hereto, or any bond(s) substituted for all or any portion of the bonds listed in Appendix I hereto, until Antrim is permitted to obtain bond release under the terms of Paragraphs 9.d and/or 11, below.

3. In the event that the Department seeks to forfeit any of the bonds listed in Appendix I to this Consent Order, Agreement, and Adjudication for failure to provide treatment of the B1-14 Discharge or the Backswitch Discharge in accordance with this Consent Order, Agreement, and Adjudication, the only basis upon which Antrim may challenge the Department's forfeiture action is that Antrim has fulfilled all of the obligations under this Consent Order, Agreement, and Adjudication that are relevant to the Department's forfeiture action.

4. Neither Antrim, any related party to Antrim, any successor or assign of either Antrim or any party related to Antrim, nor any transferee of any of the surface mining permits listed in Paragraph M, above, shall extract any additional coal from any of the surface mine sites listed in Paragraph M, above, unless that coal extraction is incidental to some other authorized activity and has been specifically approved in advance by the Department.

5. Neither Antrim, any related party to Antrim, nor any successor or assign of Antrim shall bring any action or assert any claim against the Commonwealth of Pennsylvania in any forum, judicial or administrative, arising out of the Commonwealth's ownership of surface and mineral rights in the Tioga State Forest or its leasing of a portion of those surface and mineral rights to Antrim for the purpose of allowing Antrim to conduct surface mining activities on the Rolling Run South surface mine site.

6. If Antrim, Phoenix, or any of their successors or assigns challenges the validity or enforceability of either of the special permit conditions described in Paragraphs AF and AG, above, the Department shall be relieved of its obligations under this Consent Order, Agreement, and Adjudication, and further shall be free to institute enforcement actions against any responsible parties for the violations set forth in Paragraphs M and P through X, above, without regard to any limitations set forth in this Consent Order, Agreement, and Adjudication.

7. *Treatment of the B1-14 and Backswitch Discharges.* Antrim shall provide interim and permanent treatment of the B1-14 Discharge and the Backswitch Discharge as specified in this Paragraph.

a. *Interim Treatment.*

i. Antrim shall continue to implement the Backswitch Interim Treatment Plan until it begins to treat the combined flow from the Backswitch Discharge and the B1-14 Discharge using the Combined Discharge Treatment System.

ii. By January 31, 1992, Antrim shall provide interim treatment of the combined flow from the B1-14 and Backswitch Discharges so that at all times, the water discharged from the treatment lagoons at the outfalls labeled "#001" and "#002" on Appendix II hereto (which may be consolidated into a single outfall point, and which shall be referred to collectively as "#001/#002"), and the water leaving the rock-lined collector at the outfall labeled "#005" on Appendix II hereto, meets the effluent limits set forth at 25 Pa. Code § 87.102, including an upper limit on pH of 10.0, as authorized by 25 Pa. Code § 87.102(c)(1)(i).

iii. *Monitoring at Outfalls #001/#002.* Antrim shall take daily pH readings of the effluent discharged from the treatment lagoons at outfalls #001/#002 and shall collect 24-hour composite samples at outfalls #001/#002 at least once per week. Antrim shall analyze all of the 24-hour composite samples collected at outfalls #001/#002 for the following parameters: pH (lab and field), total iron, manganese, total suspended solids, alkalinity, and acidity. At least once every two weeks, Antrim shall analyze the 24-hour composite sample collected at outfalls #001/#002 for aluminum and total dissolved solids in addition to the parameters listed immediately above. If the monitoring at outfalls #001/#002 shows a consistent effluent quality, Antrim may petition the Department for a reduction in the frequency of the sampling and analysis and/or the deletion of parameters, but the frequency of sampling and analysis shall not be less than once per month. The Department shall not unreasonably deny such a petition. Antrim shall report the results the monitoring at outfalls #001/#002 (including the daily pH readings) to the Department on a monthly basis.

iv. In treating the combined flow from the B1-14 and Backswitch Discharges, Antrim shall pump all of the water entering the reservoir up to a combined instantaneous flow rate of 2000 gallons per minute.

v. At all times when water is flowing out of the reservoir through the emergency spillway:

(A) Within four hours after water begins to flow out of the reservoir through the emergency spillway, Antrim shall notify the

Department of the occurrence and cause of the release of water through the emergency spillway, and shall report to the Department a field pH reading taken at the outfall labeled #005 on Appendix II hereto. This notification shall be made by calling the Department's Hawk Run District Office at (814) 342-0410. After business hours, a message containing the required information shall be placed on the Hawk Run District Office answering machine at the telephone number listed above and also on the home office answering machine of the Surface Mining Conservation Inspector assigned to inspect the mine sites listed in Paragraph M, above.

(B) Within 30 minutes after water begins to flow through the emergency spillway, Antrim shall activate the emergency system for conveying lime slurry from the treatment plant to the downstream end of the emergency spillway through the emergency lime slurry pipeline. Antrim shall continue to convey lime slurry through the emergency lime slurry pipeline throughout the period in which water is flowing out of the reservoir through the emergency spillway. However, at no time shall Antrim be required to activate or to continue to operate the emergency lime slurry system if pH readings at outfall #005 indicate that the release of lime slurry at the downstream end of the emergency spillway will cause a violation of the pH limit of 10.0 at outfall #005.

(C) Antrim shall keep records showing the duration and cause(s) of all periods during which water flows out of the reservoir through the emergency spillway.

(D) *Monitoring at Outfall #005.*

(1) If the combined instantaneous flow from the B1-14 and Backswitch Discharges exceeds 2000 gallons per minute and Antrim is pumping the water entering the reservoir at a rate of at least 2000 gallons per minute, as required under Paragraph 7.a.iv., above, Antrim shall collect one grab sample at outfall #005 on each day that water flows out of the reservoir through the emergency spillway. Antrim shall analyze each of those grab samples for pH, acidity, and alkalinity, and shall submit the results of the analyses to the Department in the monthly reports required under Paragraph 7.a.iii, above.

(2) Under any circumstances other than those described in Paragraph 7.a.v(D)(2), immediately above, Antrim shall collect a 24-hour composite sample for each day that water flows out of the reservoir through the emergency spillway. Antrim shall analyze each of those 24-hour composite samples for the full range of parameters applicable to outfalls #001/#002 under Paragraph 7.a.iii, above (including aluminum and total dissolved solids, unless the Department has approved the deletion of those

parameters), and shall submit the results of the analyses to the Department in the monthly reports required under Paragraph 7.a.iii, above.

vi. If the combined instantaneous flow from the B1-14 and Backswitch Discharges exceeds 2000 gallons per minute, and all of the following conditions are satisfied:

(1) All water leaving the treatment lagoons at outfalls #001/#002 is meeting the relevant effluent limits under Paragraph 7.a.ii., above; and

(2) Antrim is monitoring the effluent at outfalls #001/#002 and #005 in accordance with Paragraphs 7.a.iii and 7.a.v(D), above; and

(3) Antrim is pumping water from the reservoir at a rate of at least 2000 gallons per minute, as required by Paragraph 7.a.iv., above; and

(4) Antrim has complied with its obligations to notify the Department under Paragraph 7.a.v(A), above, to activate and operate the emergency treatment system under Paragraph 7.a.v(B), above, and to keep records under Paragraph 7.a.v(C), above,

then:

(I) The only enforcement action that the Department may take against Antrim for failure to satisfy the relevant effluent

limits at outfall #005, in violation of Paragraph 7.a.ii, above, is the assessment of a civil penalty of up to five hundred dollars (\$500) per day. However, the Department shall retain the right to take an enforcement action against Antrim in the event that failure to meet the relevant effluent limits at outfall #005 causes or contributes to significant harm to the aquatic community.

(II) The Department shall not consider the failure to meet the relevant effluent limits at outfall #005 to constitute a lack of ability or intent on the part of Antrim to comply with the law, and the Department shall not deny any permits or mining authorizations to Antrim or any person that is a related party to Antrim based upon the failure to meet the relevant effluent limits at outfall #005. Further, the failure to meet the relevant effluent limits at outfall #005 shall not constitute a failure to comply with this Consent Order, Agreement, and Adjudication for the purposes of Paragraphs 12, 20, and 22, below.

vii. At any time after January 31, 1992, Antrim shall use the Backswitch emergency treatment system to treat any water from the from the Backswitch Discharge that Antrim is unable, for any reason, to convey to the reservoir. Antrim shall activate the Backswitch emergency treatment system within 30 minutes after water from the Backswitch Discharge is first unable to enter the pipeline that runs from the Backswitch Discharge to the reservoir, and

shall notify the Department within four hours that it has activated the Backswitch emergency treatment system. The method of notifying the Department shall be the same as provided in Paragraph 7.a.v(A), above. All effluent leaving the Backswitch emergency treatment system at the outfall labeled "004" on Appendix II hereto shall meet the effluent limits set forth at 25 Pa. Code § 87.102, including an upper limit on pH of 10.0, as authorized by 25 Pa. Code § 87.102(c)(1)(i). Within four hours after the Backswitch emergency treatment system begins to discharge effluent at outfall #004, Antrim shall collect a grab sample at outfall #004, and thereafter shall collect grab samples at outfall #004 on the days upon which Antrim is collecting composite samples at outfalls #001/#002. Antrim shall analyze each grab sample collected at outfall #004 for the full range of parameters applicable to outfalls #001/#002 under Paragraph 7.a.iii, above (including aluminum and total dissolved solids, unless the Department has approved the deletion of those parameters), and shall submit the results of the analyses to the Department in the monthly reports required under Paragraph 7.a.iii, above.

viii. Antrim shall continue to provide interim treatment of the B1-14 and Backswitch Discharges until Antrim begins to provide permanent treatment of those discharges under the terms of subparagraph b., immediately below.

b. *Permanent Treatment.*

i. By February 18, 1992, Antrim shall submit to the Department a plan for providing permanent treatment of the combined flow from the B1-14 and Backswitch Discharges ("Combined Discharge Permanent Treatment Plan") that is

consistent with the requirements of subparagraph a, immediately above, together with any permit applications necessary for the implementation of the Combined Discharge Permanent Treatment Plan.

ii. The Combined Discharge Treatment Plan may provide for the eventual installation of a hydroelectric facility near Wilson Creek and for the discharge of water from the Combined Discharge Treatment System at the outfall labeled "#003" on Appendix II hereto. If Antrim installs the planned hydroelectric facility:

(A) All water discharged at outfall #003 shall meet the effluent limits set forth at 25 Pa. Code § 87.102, including an upper limit on pH of 10.0, as authorized by 25 Pa. Code § 87.102(c)(1)(i). This provision is not intended, and shall not be construed, to prevent or restrict the application of additional effluent limits to outfall #003 based upon the installation and operation of the planned hydroelectric facility.

(B) At all times when the treated effluent discharged from the treatment lagoons at outfalls #001/#002 is being conveyed through the treated effluent culvert into the rock-lined collector below the collection dam (i.e., when the treated effluent is being directed through outfall #005 rather than outfall #003), the terms and conditions relating to outfall #005 that are set forth in Paragraphs 7.a.ii, 7.a.iii, 7.a.v., and 7.a.vi, above, shall apply.

(C) At all times when the treated effluent discharged from the treatment lagoons at outfalls #001/#002 is being conveyed to the hydroelectric facility (i.e., when the treated effluent is being directed through outfall #003 rather than outfall #005):

(1) At or upstream of outfall #005, Antrim shall collect all water leaving the reservoir through the emergency spillway, together with any lime slurry being added to that water, and shall combine the collected water with the treated effluent from the treatment lagoons before the combined flow is discharged at outfall #003.

(2) At all times when water is flowing out of the reservoir through the emergency spillway, the requirements of Paragraph 7.a.v., above, shall apply, with the exception that the relevant field pH readings under Subparagraphs 7.a.v(A) and 7.a.v(B) shall be taken at outfall #003 rather than outfall #005.

(3) *Monitoring at Outfall #003.* The monitoring requirements applicable to outfall #003 shall be determined during the process of obtaining the licenses, permits, certifications, and/or approvals necessary for installation and operation of the planned hydroelectric facility. However, the monitoring requirements applicable to outfall #003 shall be no less stringent than the

requirements applicable to outfall #005 under Paragraph 7.a.v(D), above.

(4) If the combined instantaneous flow from the B1-14 and Backswitch Discharges exceeds 2000 gallons per minute, and all of the following conditions are satisfied:

(a) All water leaving the treatment lagoons at outfalls #001/#002 is meeting the relevant effluent limits under Paragraph 7.a.ii., above; and

(b) Antrim is monitoring the effluent at outfalls #001/#002 in accordance with Paragraph 7.a.iii, above, and is performing the required monitoring at outfall #003; and

(c) Antrim is pumping water from the reservoir at a rate of at least 2000 gallons per minute, as required by Paragraph 7.a.iv., above; and

(d) Antrim has complied with its obligations to notify the Department, to activate and operate the emergency treatment system, and to keep records under Paragraph 7.b.ii(C)(2), above;

then:

(I) The only enforcement action that the Department may take against Antrim for failure to satisfy the relevant effluent

limits at outfall #003, in violation of Paragraph 7.b.ii(A), above, is the assessment of a civil penalty of up to five hundred dollars (\$500) per day. However, the Department shall retain the right to take an enforcement action against Antrim in the event that failure to meet the relevant effluent limits at outfall #003 causes or contributes to significant harm to the aquatic community.

(II) The Department shall not consider the failure to meet the relevant effluent limits at outfall #003 to constitute a lack of ability or intent on the part of Antrim to comply with the law, and the Department shall not deny any permits or mining authorizations to Antrim or any person that is a related party to Antrim based upon the failure to meet the relevant effluent limits at outfall #003. Further, the failure to meet the relevant effluent limits at outfall #003 shall not constitute a failure to comply with this Consent Order, Agreement, and Adjudication for the purposes of Paragraphs 12, 20, and 22, below.

iii. The Department shall respond to the Combined Discharge Permanent Treatment Plan and any associated permit applications by a review letter. Within forty-five (45) days after receiving the Department's review letter, Antrim shall submit a written response to the review letter. Upon receiving written approval of the Combined Discharge Permanent Treatment Plan from the Department, Antrim shall implement the plan. The Department's approval of the

Combined Discharge Permanent Treatment Plan shall in no way limit Antrim's obligation under this Paragraph to treat the combined B1-14 and Backswitch Discharges to meet the relevant effluent limits set forth herein, nor shall such approval excuse or justify any failure by Antrim to meet the effluent limits.

8. Within sixty (60) days after the execution date of this Consent Order, Agreement, and Adjudication, Antrim shall submit to the Department a plan for the disposal of mine drainage treatment sludge generated during Antrim's interim and permanent treatment of the B1-14 Discharge and the Backswitch Discharge ("Sludge Disposal Plan"), which may include a provision for the ultimate disposal of the mine drainage treatment sludge in the Underground Mine Complex. The Department shall not unreasonably withhold approval of the Sludge Disposal Plan.

9. *Discharge Treatment Trust.* Within five years after the date of this Consent Order, Agreement, and Adjudication, Antrim shall enter into an agreement with the Department and a mutually-acceptable trustee to establish a trust to secure Antrim's obligations to treat the B1-14 Discharge and the Backswitch Discharge ("Discharge Treatment Trust"). The full amount of the corpus (principal) of the Discharge Treatment Trust shall be based upon the average annual costs incurred by Antrim in operating the Combined Discharge Treatment System during the four-year period beginning on the first day of the sixth month after the Combined Discharge Treatment System is operated pursuant to this Consent Order, Agreement, and Adjudication and/or the Consent Decree. The full amount of the corpus of the Discharge Treatment Trust shall be determined by the following formula:

$$C = (29.91 \times A)$$

Where C = full amount of corpus of trust

A = average annual cost of operating the Combined Discharge Treatment System

a. *Calculation of "A"*. The average annual cost of operating the Combined Discharge Treatment System over the relevant four-year period (the variable "A" in the equation appearing immediately above) shall be calculated using a composite index giving equal weight to the prices of lime, power, and labor. For each year during the relevant four-year period (which will not correspond to calendar years), the price index for lime shall be the last version of the United States Department of Labor, Bureau of Labor Statistics Producer Price Index for quicklime (Product Identification Code # 3274-111) applicable before the end of the year in question. (For example, if the year in question runs from June 1, 1993 to May 31, 1994 and the Producer Price Index for quicklime is determined on a monthly basis, the applicable index would be the one for May, 1994.) The applicable price index for power shall be the last version of the industrial power rate index published by Penelec/GPU that is applicable before the end of the year. The applicable price index for labor shall be based upon the median wage rate paid to the operators of the treatment system at the end of the year in question, as determined from the W-2 or 1099 federal income tax reporting forms for those employees or independent contractors. The composite index for each of the four years shall be calculated in the following manner:

- 1) For lime and power, divide the index for the year in question by the index for that factor in the fourth year, and multiply the resulting quotient by 100. For labor, divide the median wage of the operators at year's end by the median wage at the end of the fourth year, and multiply the quotient by 100.

- 2) For each year, divide each of the adjusted index numbers calculated under the preceding step by three and add the three quotients together. The resulting figure is the composite index for the year in question (which will be 100 for year four).

The value of "A" shall be calculated in the following manner using the composite indices for the relevant four years and the actual treatment costs incurred during those years:

1) For each year, multiply the treatment costs actually incurred by 100 and divide the resulting product by the composite index for the year in question. The resulting quotient is the adjusted treatment cost for the year in question (which will be equal to the treatment costs actually incurred for year four).

2) Add the four adjusted annual treatment costs and divide the sum by 4. The resulting quotient is the value of the variable "A".

In the event of a dispute about the treatment costs incurred by Antrim, or about an applicable price index or median wage rate, Antrim shall bear the burden of proving the accuracy of its reported treatment costs, the accuracy and completeness of the records upon which those cost reports are based, and/or the appropriate value for the disputed price index or median wage rate. An example showing the calculation of the variable "A" using hypothetical price indices, median wage rates, and treatment costs is attached hereto as Appendix III.

b. *The Trust Agreement.* The trust agreement shall be in substantially the same form as the draft agreement attached hereto as Appendix IV. However, to the extent that the draft agreement attached hereto as Appendix IV is inconsistent with the provisions set forth in this subparagraph b, these provisions shall take precedence and shall be included, in material form, in the final trust agreement between the parties. The trust agreement shall provide that:

i. The Department is the named beneficiary of the trust and has the sole authority to authorize withdrawals from the trust;

ii. Antrim may fully fund the trust over a period of eight (8) years (as is more fully explained in subparagraph c, immediately below);

iii. The trustee shall make no disbursements from the trust until the trust is fully funded (i.e., until Antrim makes all of the payments into the trust in accordance with subparagraph c, immediately below), with the exception that the trustee may make disbursements from the trust before the trust is fully funded in the event that Antrim, or its successor or assign, or any other responsible party, defaults on any obligation to make a payment into the trust, or any obligation to perform treatment of the B1-14 and Backswitch Discharges.

iv. After the trust is fully funded, the trustee shall, upon receiving written approval from the Department, make disbursements from the trust to Antrim, or its successor, assign, or designee, or the Department's designee, to pay for all costs and expenses associated with operation and maintenance of the Combined Discharge Treatment System in accordance with the terms and conditions of this Consent Order, Agreement, and Adjudication.

c. *Funding of the Discharge Treatment Trust.* Antrim shall guarantee that at the time the trust agreement is executed, an initial payment(s) is made into the Discharge Treatment Trust in the minimum amount of twelve and one-half percent of the full amount of the corpus of the trust (i.e.,  $C \times .125$ ). That initial payment(s) shall satisfy Antrim's obligation to fund the Discharge Treatment Trust during the first year of the Trust's

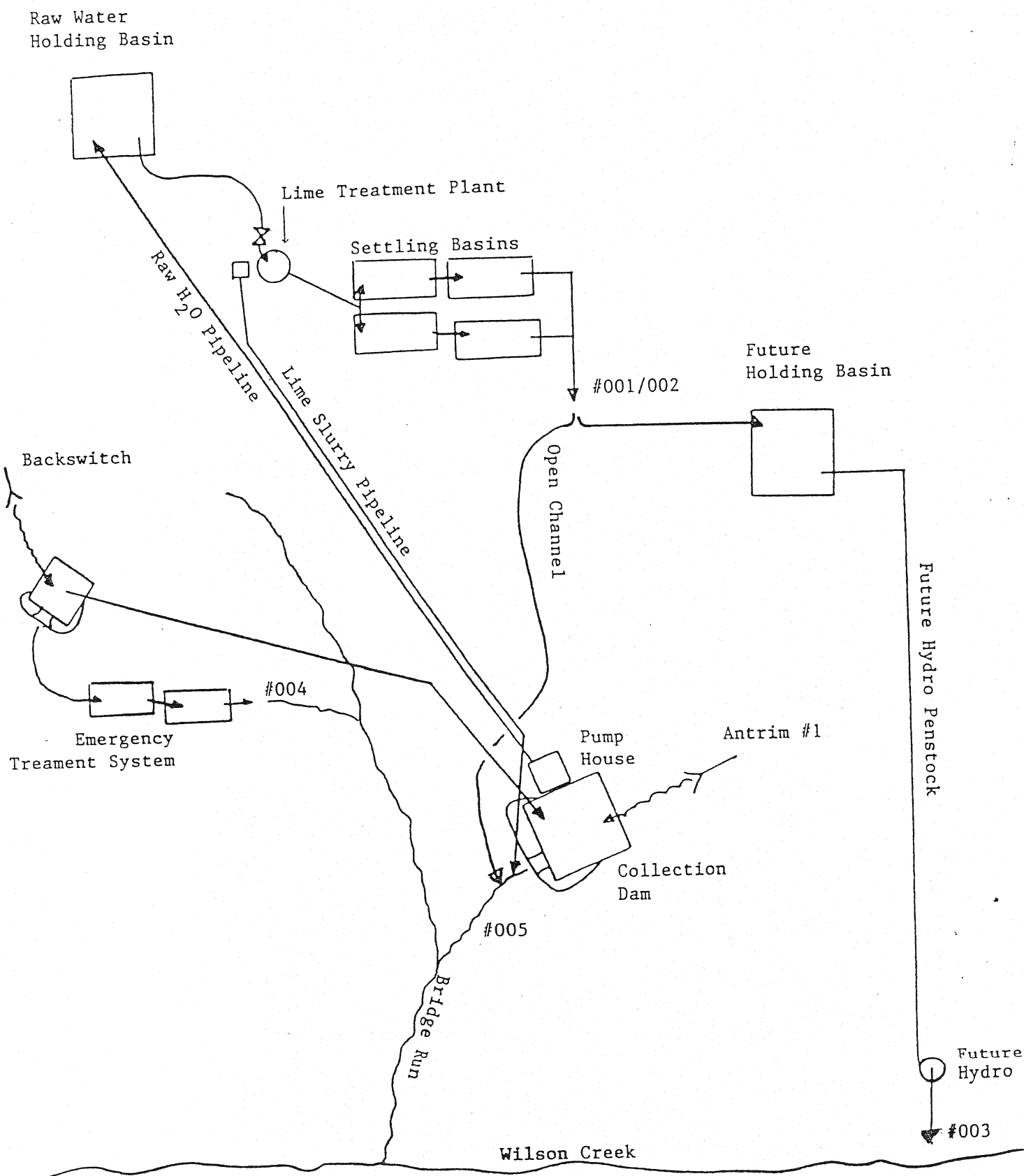
existence. Antrim shall guarantee that on or before the anniversary date of the trust agreement for the succeeding seven years, a payment(s) is made into the Trust in the minimum amount of an additional twelve and one-half percent of the full amount of the corpus of the trust. Antrim shall guarantee that by the beginning of the eighth year after execution of the trust agreement, the Discharge Treatment Trust is fully funded by guaranteeing that payments have been made into the trust in the full amount of the corpus of the trust (i.e., the value of "C" as determined by the formula presented in this paragraph).

d. *Release of Bonds.* The reclamation bonds that are listed in Appendix I to this Consent Order, Agreement, and Adjudication shall be released by the Department on a pro rata basis in accordance with the funding of the Discharge Treatment Trust, provided that all other requirements for bond release have been satisfied. Specifically, upon the deposit of twelve and one-half percent (12.5%) of the full corpus amount into the trust, the Department will release twelve and one-half percent (12.5%) of the total amount of the relevant surface mine reclamation bonds, provided that all other requirements for bond release have been satisfied. The Department shall release an additional increment of twelve and one-half percent of the total amount of the relevant reclamation bonds upon each subsequent deposit of an additional increment of twelve and one-half percent of the full trust corpus amount, provided that all other requirements for bond release have been satisfied.

10. Neither Antrim's agreement to fund the Discharge Treatment Trust, nor the full or partial funding of the Discharge Treatment Trust, nor the exhaustion of the Discharge Treatment Trust shall in

## Backswitch and B1-14 Treatment Plan

12-31-91



### APPENDIX III

Example of the calculation of the average annual cost of operating the Combined Discharge Treatment System over the relevant four-year period (the variable "A" in the equation appearing in Paragraph 10 of the Consent Order, Agreement, and Adjudication).

#### Assumptions for this Illustration:

- The years in question run from June 1 through May 31, with Year 1 beginning on June 1, 1992 and Year 4 ending on May 31, 1996.
- The Producer Price Index for quicklime is determined on a monthly basis, making the applicable index for each year in the calculation the index for May, 1993 (Year 1), May, 1994 (Year 2), May, 1995 (Year 3), and May, 1996 (Year 4).
- The Penelec/GPU industrial power rate index is published shortly after the end of each calendar year, making the applicable index for each year in the calculation the index for the calendar year that ends roughly in the middle of the calculation year (e.g., for Year 1, the applicable index is the one for calendar year 1992).
- The median wage rate of the operators of the Combined Discharge Treatment System are determined using the W-2 and/or 1099 forms for the calendar year that ends roughly in the middle of the calculation year (e.g., for Year 1, the relevant wage rates are those reported for calendar year 1992)
- The actual treatment costs incurred in operating the Combined Discharge Treatment System are: Year 1: \$10,000; Year 2: \$10,000; Year 3: \$24,000; Year 4: \$25,000
- The applicable median wage rates and price indices for the four relevant one-year periods are as follows:

	Year 1	Year 2	Year 3	Year 4
Median Wage	\$5.00	\$5.25	\$6.00	\$6.00
Quicklime Index	140	150	155	175
Power Index	110	115	135	140

Calculation of Adjusted Indices for Year 1:

Labor             $\$5.00/\$6.00 = 83.33$

Lime             $140/175 = 80.00$

Power            $110/140 = 78.57$

Adjusted Indices:

	Year 1	Year 2	Year 3	Year 4
Labor	83.33	87.50	100.00	100.00
Lime Index	80.00	85.71	88.57	100.00
Power Index	78.57	82.14	96.43	100.00

Calculation of Composite Index for Year 1:

Labor            $83.33/3 = 27.78$

Lime        +    $80.00/3 = 26.67$

Power       +    $78.57/3 = 26.19$

---

80.64

<u>Composite Indices:</u>	Year 1	Year 2	Year 3	Year 4
	80.64	85.12	94.99	100.00

<u>Actual Treatment Costs:</u>	Year 1	Year 2	Year 3	Year 4
	\$10,000	\$10,000	\$24,000	\$25,000

Calculation of Adjusted Treatment Costs for Year 1:

$$\$10,000 \times 100 / 80.64 = \$12,400.79$$

<u>Adjusted Treatment Costs:</u>	Year 1	Year 2	Year 3	Year 4
	\$12,400.79	\$11,748.12	\$25,265.82	\$25,000

Calculation of Variable "A":

$$\begin{array}{r}
 \$12,400.79 \\
 + \$11,748.12 \\
 + \$25,265.82 \\
 + \underline{\$25,000.00} \\
 \$74,414.73
 \end{array}$$

$$A = \$74,414.73 / 4 = \$18,603.68$$

APPENDIX IV

SITE-SPECIFIC MINE DRAINAGE  
LONG-TERM TREATMENT  
TRUST AGREEMENT

This trust agreement ("Trust" or "Agreement") entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_ a \_\_\_\_\_, with its principal place of business at \_\_\_\_\_, (Settlor") and \_\_\_\_\_ a \_\_\_\_\_, with its principal place of business at \_\_\_\_\_, incorporated or chartered under the laws of \_\_\_\_\_, ("Trustee").

WHEREAS, the Settlor is required under provisions of Section 315(b) of the Clean Streams Law (35 P.S. §691.315) and regulations of the Department of Environmental Resources, to provide financial assurances that no polluting discharges of mine drainage will occur at the Settlor's mine located at \_\_\_\_\_; and

WHEREAS, the Settlor has elected to establish a trust fund to assure funds will be available for meeting Settlor's legal obligation to assure no polluting discharges of mine drainage will occur and which obligation includes, but is not limited to, the provision of continuous long-term treatment of mine drainage emanating or which may emanate from the Settlor's mine; and

WHEREAS,, the Settlor has established this trust to provide funds to meet its legal obligation to assure no polluting discharges of mine drainage will occur at the Settlor's mine; and

WHEREAS, the Settlor, acting through its duly authorized officials or representatives and with the Department of Environmental Resources approval, has selected the Trustee under this Agreement; and

WHEREAS, the trustee has agreed and is willing to perform the duties as are required to be performed pursuant to this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and undertakings of the parties as set forth herein, and with the intention of being legally bound hereby, the parties agree as follows:

ESTABLISHMENT OF TRUST

The Settlor and the Trustee hereby establish a Trust for the benefit of the Commonwealth of Pennsylvania, Department of Environmental Resources ("Beneficiary") to be utilized for the sole

purpose of preventing, abating or treating polluting discharges of mine drainage emanating or which, in the determination of the Beneficiary, may emanate from the Settlor's mine.

- (a) The Settlor and the Trustee intend that the Beneficiary shall have access to the Trust as provided herein.
- (b) The Trust shall consist of the following:
  - (i) The immediate deposit of \$\_\_\_\_\_.
  - (ii) The payment by the Settlor to the Trustee for deposit in the Trust of \_\_\_\_\_.
  - (iii) The Settlor shall make the payments described in (b)(ii) to the Trustee \_\_\_\_\_.
- (c) Payments by the Settlor shall continue until such time as the principal amount (excluding any earnings and profits of the Trust) of \$\_\_\_\_\_ has been paid into the Trust.

Any and all of the preceeding are referred to as the Trust, together with all earnings and profits therefrom, less any payments or distributions made by the Trustee pursuant to the terms of this Agreement.

- (d) Trust funds and any other property of the Trust shall not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration, other legal process or to the claims of creditors.
- (e) The Trust shall be held by the Trustee, IN TRUST, as hereinafter provided.
- (f) Any payments made by the Settlor or on its behalf to the Trustee for the Trust shall consist of cash, bank checks, bank wire transfers or other negotiable instruments acceptable to the Trustee and the Beneficiary. The Trustee shall have no responsibility for the amount or adequacy of such payment.

#### Payment

The Trustee shall make payments from the Trust to the Beneficiary upon the written order of the Beneficiary. The Trustee shall discharge this duty and responsibility subject to the following conditions:

- (a) The Trustee shall not require the Settlor to approve any payments from the Trust and the Settlor hereby waives any and all rights to approve any payments by the Trustee of whatsoever kind and nature.
- (b) Except as provided by this Agreement, no other disposition of monies shall be made unless directed, in writing, by the Beneficiary.

### Trustee Management

The Trustee shall invest and reinvest the principal and income of the Trust and keep the Trust invested as a single fund, without distinction between principal and income.

- (a) The Trustee shall discharge this duty solely in the interest of the Beneficiary and the Trustee shall manage the Trust with that degree of judgment, skill and care under the circumstances then prevailing which persons of prudence, discretion and intelligence, who are familiar with such matters, exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of funds, considering the probable income to be derived therefrom as well as the probable safety of their capital.
- (b) For purposes of investing or reinvesting the monies in the Trust, the Trustee is authorized to invest in any of the following:
  - (i) Direct obligations of the United States of America or any of its agencies or instrumentalities backed by the full faith and credit of the United States of America.
  - (ii) Obligations of any agency or instrumentality of the United States Government.
  - (iii) Obligations of the Commonwealth of Pennsylvania or any of its agencies or instrumentalities backed by the full faith and credit of the Commonwealth.
  - (iv) Obligations of any political subdivisions of the Commonwealth of any of its agencies or instrumentalities backed by the full faith and credit of the political subdivisions.

- (v) Obligations of any state of the United States or their agencies and instrumentalities backed by the full faith and credit of such state.
- (vi) Obligations of any political subdivision of any state of the United States backed by the full faith and credit of such political subdivision.
- (vii) Shares of any investment company registered under the Investment Company Act of 1940 (15 U.S.C.A. §80a-1 et seq.) provided that the total of shares, purchased in accordance with this provision shall not, in the aggregate, exceed twenty-five (25) percent of the principal and income of the Trust.
- (viii) Prime commercial paper, defined as meaning unsecured promissory notes issued at a discount from par or an interest bearing bond by an industrial, common carrier, public utility, finance company, real estate investment trust, commercial bank holding company, or corporations whose credit shall have been approved by any one of Moody's Investors Service, Incorporated, Standard and Poor's Corporation, Fitch Investors Services, Incorporated, or their successors. The Trustee shall not purchase commercial paper under this provision without first determining that the commercial paper is rated Prime-1 or Prime 1-LOC or Prime 2 by Standard and Poor's, or Fitch 1 by Fitch Investors Service, or the equivalent.
- (ix) Time or demand deposits of Trustee or other financial institutions to the extent such are insured by an agency of the Federal or State Government or otherwise secured as provided under the laws of the Commonwealth of Pennsylvania.
- (x) Repurchase agreements with respect to obligations listed in (i) and (ii) above if entered into with a bank, trust company or a broker or dealer (as defined by the Securities Exchange Act of 1934) which broker or dealer is a dealer in government bonds which reports to, trades with and is recognized as a primary dealer by a Federal Reserve Bank, and which is a member of the Securities Investors Protection Corporation

if, (1) such obligations that are the subject of such repurchase agreement are delivered to the Trustee or are supported by a safekeeping receipt issued by a depository satisfactory to the Trustee, provided that such repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated no less frequently than monthly, of not less than the purchase price, (2) a prior perfected security interest in the obligations which are the subject of such repurchase agreement has been granted to the Trustee and (3) such obligations are free and clear of any adverse third-party claims.

- (xi) Banker's acceptances, defined as meaning short-term trade financing agreements secured by the accepting bank and the goods being purchased. Banker's acceptances purchased under this provision shall be limited to banks whose credit, or whose parent company credit, bears a "AA" rating by Moody's Credit Service or the equivalent rating by Standard and Poor or Fitch's Rating Services, or their successors.
- (c) The Trustee may hold cash awaiting investment or distribution for a reasonable period of time, provided however, where possible and consistent with sound investment practices, the Trustee shall invest such cash in overnight investments.
- (d) The Trustee shall not be responsible for any losses incurred hereunder, whether it be due to market fluctuations or otherwise, except in the case of its gross negligence or willful misconduct or that of its agents.

#### Express Powers of Trustee

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.
- (b) To register any securities held in the Trust in its own name or in the name of a nominee and to hold any

security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Trust.

- (c) To deposit any cash in the Trust in interest-bearing accounts maintained by the Trustee, to the extent such are insured by an agency of the Federal or State Government or otherwise secured as provided under the laws of the Commonwealth of Pennsylvania.

#### Advice of Counsel

The Trustee may, from time to time, consult with counsel with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting on the advice of counsel, subject to the following conditions:

- (a) The Trustee shall not compromise or otherwise adjust claims in favor of or against the Trust without the written consent of the Beneficiary.
- (b) The Trustee shall give prompt written notice to the Beneficiary of each claim in favor or against the Trust, specifying the amount and nature of such claim. The Trustee shall also give prompt written notice to the Beneficiary of any controversies, demands, actions, losses, damages, costs, expenses or any other matter which is likely to give rise to a claim.
- (c) The Beneficiary shall have the right, but not the duty, to participate in the prosecution of or defense against, any claim in favor of or against the Trust, and, to the extent the Beneficiary wishes, to assume prosecution or defense thereof, with counsel of the Beneficiary's choosing. Upon notice to the Trustee that the Beneficiary will assume prosecution or defense, neither the Trust nor the Beneficiary will be liable to the Trustee for

any subsequent costs of prosecution or defense which the Trustee may incur. No claims in favor of or against the Trust may be settled without the written consent of the Beneficiary, provided that such consent shall not be unreasonably withheld.

### Valuation

The Trustee shall semi-annually furnish to the Beneficiary and the Settlor a statement confirming the value of the Trust.

### Expenses, Taxes and Trustee Compensation

Until such time as the trust is fully funded by the payment of the principal amount of \$\_\_\_\_\_, compensation of the Trustee and all other reasonable and customary expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, and all taxes of any kind that may be assessed or levied against or in respect of the Trust, shall be paid directly by the Settlor and shall not be taken from the Trust.

Upon the full funding of the Trust, all compensation, expenses and taxes as heretofore stated shall be paid from the Trust.

Until such time as the Trust is fully funded, the Trustee shall be entitled to reasonable compensation and expenses as agreed upon in writing from time to time with the Settlor. Upon the full funding of the Trust, the Trustee shall be entitled to reasonable compensation and expenses as agreed upon in writing from time to time with the Beneficiary.

### Successor Trustee

Until the Trust is fully funded, the Trustee may resign only after giving 120 days notice to the Settlor and the Beneficiary. Upon the full funding of the Trust, the Trustee may resign only after giving 120 days notice to the Beneficiary. The Trustee's resignation shall not be effective until a successor trustee has been appointed by the Settlor, and approved in writing by the Beneficiary and the successor trustee accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. The successor trustee shall specify the date on which he assumes administration of the trust, in writing sent to the Settlor and the Beneficiary, by certified mail, ten (10) days before such assumption takes effect. Upon the successor trustee's acceptance of the appointment, the Trustee hereunder shall assign, transfer, convey and pay-over to the successor trustee the funds and properties then constituting the Trust. If for any reason the Settlor or the Beneficiary cannot or does not act in the event of resignation of the Trustee, the Trustee may apply to a court of

competent jurisdiction for the appointment of a successor trustee or for instructions.

Upon the full funding of the Trust, any expenses incurred by the Trustee as a result of any of the acts contemplated in the preceding paragraph shall be paid from the Trust.

#### Instructions to the Trustee

All orders, requests and instructions by the Beneficiary to the Trustee shall be in writing, signed by such persons as are designated by the Beneficiary in the attached Schedule A or such other designees as Beneficiary may designate by amendment, in writing, to Schedule A. The Trustee shall be fully protected in acting in accordance with the Beneficiary's orders, requests and instructions. The Trustee shall not have the right to assume, in the absence of written notice to the contrary, that an event constituting a change or termination of the authority of any person to act on the behalf of the Beneficiary hereunder has occurred. The Trustee, upon receipt of orders, requests or instructions by the Beneficiary which are signed by persons purported to be designated by the Beneficiary, shall with due diligence ascertain if such persons are designated by the Beneficiary and have the authority to act on behalf of the Beneficiary hereunder.

The Trustee shall not be responsible for enforcing or policing any required payments to this Trust but shall simply be required to accept such funds as and when received by it and provide the appropriate accounting thereof.

The Trustee shall have no responsibility relating to the enforcement or policing of any environmental action nor be required to defend any claims relating thereto.

The Trustee shall not be answerable for the exercise of any discretion or power under this Agreement nor for anything whatever in connection with the Trust hereunder, except only its own gross negligence or willful misconduct or that of its agents.

#### Amendment of Agreement

Until such time as the trust is fully funded, this Agreement may be amended by an instrument in writing executed by the Settlor, the Trustee, and with the written consent of the Beneficiary, or by the Trustee and the Beneficiary if the Settlor ceases to exist, becomes insolvent or enters into liquidation, receivership or bankruptcy or is legally incompetent.

Upon the full funding of the Trust, this Agreement may be amended by an instrument in writing executed only by the Beneficiary and the Trustee.

### Irrevocability and Termination

Subject to the rights of the parties to amend this Agreement as provided herein, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Beneficiary and the Trustee or a date which occurs fifty (50) years after the date of establishment of this Trust. At any time during the 50 year period the Beneficiary may, but shall not be required or obligated to, determine the Settlor has met its obligations to prevent, abate or treat polluting discharges and request the Trustee to terminate the Trust and pay-over to the Settlor, its successors, assigns or designees, all monies and other property of the Trust, less final trust administration expenses of the Trustee. Any such determination by the Beneficiary shall be within the sole discretion of the Beneficiary. Unless otherwise terminated, upon the occurrence of the date fifty years after the date of establishment of this Trust, the Trustee shall pay over to the Settlor or its successors, assigns or designees all monies and other property of the Trust, less final trust administration expenses of the Trustee if, and only if, during the fifty year period no corrective work to prevent, abate or treat polluting discharges of mine drainage has been performed at the Settlor's mine.

If at any time during the fifty year period, the Settlor fail, refuses or otherwise becomes unable to fulfill its obligations to prevent, abate or treat polluting discharges or if the Settlor ceases to exist, becomes insolvent or enters into liquidation, receivership or bankruptcy, dissolves or becomes legally incompetent, the Trust shall not be released to the Settlor and the Trustee shall vest all rights, title and interest in the funds and other property of the Trust in the Beneficiary. Upon vesting of full and complete ownership of the funds and other property of the Trust, the Beneficiary may, in its sole discretion, direct the Trustee to continue the Trust and make such disbursements as the Beneficiary directs or direct the Trustee to pay to the Beneficiary any funds remaining in the Trust together with any other property of the Trust, less final trust administration expenses of the Trustee.

### Notices

All notices, inquiries, directions, or other written communications made or given pursuant to this Trust shall be given to the Settlor, the Beneficiary, and the Trustee by certified mail addressed to the following addresses, and shall be deemed to be received upon the earlier of the date of signed receipt of the certified mailing or seven days following the date of mailing:

Settlor:

Beneficiary:

Trustee:

Any change in the above addresses shall be made by giving notice to all parties to this Trust.

Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. Words used in this Agreement shall be given their plain and ordinary meaning. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

Construction

This Trust shall be construed and governed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

ATTEST:

By: \_\_\_\_\_  
(Seal)

ATTEST:

By: \_\_\_\_\_  
(Seal)

ATTEST:

By: \_\_\_\_\_  
(Seal)

ATTEST:

By: \_\_\_\_\_

SETTLOR

By: \_\_\_\_\_  
Name and Title

SETTLOR

By: \_\_\_\_\_  
Name and Title

TRUSTEE

By: \_\_\_\_\_  
Name and Title

TRUSTEE

By: \_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF

)  
)  
)

SS

On this, the \_\_\_\_\_ of \_\_\_\_\_,  
before me, a Notary Public, personally appeared \_\_\_\_\_,  
who acknowledge \_\_\_\_\_ to be \_\_\_\_\_,  
of \_\_\_\_\_ and that \_\_\_\_\_,  
being authorized to do so, executed the foregoing instrument for  
the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and  
official seal.

\_\_\_\_\_  
Notary Public

On this, the \_\_\_\_\_ of \_\_\_\_\_,  
before me, a Notary Public, personally appeared \_\_\_\_\_,  
who acknowledged \_\_\_\_\_ to be \_\_\_\_\_,  
of \_\_\_\_\_ and that \_\_\_\_\_,  
being authorized to do so, executed the foregoing instrument for  
the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and  
official seal.

\_\_\_\_\_  
Notary Public

any way limit Antrim's obligation under this Consent Order, Agreement, and Adjudication to provide permanent treatment for the B1-14 Discharge and the Backswitch Discharge. Furthermore, exhaustion of the Discharge Treatment Trust shall not excuse Antrim from providing permanent treatment for the B1-14 Discharge and the Backswitch Discharge.

11. Nothing in Paragraph 9, above, shall prohibit Antrim, any party related to Antrim, or any successor of Antrim or any party related to such successor, from securing the obligation to provide permanent treatment of the B1-14 Discharge and the Backswitch Discharge through another mechanism approved by the Department in lieu of the Discharge Treatment Trust described in Paragraph 9, above. In order to substitute an alternative security mechanism for the Discharge Treatment Trust, the parties must modify or amend this Consent Order, Agreement, and Adjudication in accordance with Paragraph 30, below. Provided that all other requirements for bond release have been satisfied, the Department shall release the surface mine reclamation bonds for the mine sites that are identified in Paragraph M, above, upon this Board's approval of a modification or amendment of this Consent Order, Agreement, and Adjudication providing for an alternative security mechanism in lieu of the Discharge Treatment Trust, and the full funding of that alternative mechanism.

12. *Liability as Landowner or Land Occupier.* The Order of the Department that is part of this Consent Order, Agreement, and Adjudication is issued in part pursuant to Section 316 of The Clean Streams Law, 35 P.S. § 691.316. Provided that Antrim is complying with its obligations under this Consent Order, Agreement, and Adjudication, the Department shall not take any enforcement action against Antrim to provide treatment of the B1-14 and Backswitch Discharges for contaminants associated with acid mine drainage, other than actions for civil penalties that are consistent with Paragraph 7, above, based upon Antrim's ownership or occupancy of land, or any interest in land (including mineral rights).

This Paragraph is not intended, and shall not be construed, to limit the Department's right to seek enforcement of this Consent Order, Agreement, and Adjudication. This Paragraph further is not intended, and shall not be construed, to waive or to limit the Department's right to bring an enforcement action against Antrim, or any other owner(s) or occupier(s) of land or an interest in land, for degradation of the B1-14 Discharge or the Backswitch Discharge by contaminants other than those associated with acid mine drainage.

13. *Rattler Mountain Surface Mine --Bond Release.* The Department shall release all bonds posted by Antrim pertaining to the Rattler Mountain surface mine (Mine Drainage Permit No. 59810101) and shall initiate the procedure for releasing those bonds within five (5) days after the date of this Consent Order, Agreement, and Adjudication.

14. *Rattler Mountain Surface Mine -- Covenant Not to Sue.*

a. The Department shall take no enforcement action against Antrim for degradation of the Anna S #1, Mitchell #2, or Hunter's Drift discharges by contaminants associated with acid mine drainage unless:

i. The Department proves that the combined average monthly load of acidity, iron, and manganese emitted by the three discharges taken together over a period of at least one year is higher, at a statistically significant level, than the average monthly load of those three parameters over the baseline period established by Mine Drainage Permit No. 59810101 (November, 1979 through November, 1980); and

ii. The Department proves that such statistically significant increase in the average monthly contaminant load is solely attributable to

the surface mining activities conducted by Antrim under Mine Drainage Permit No. 59810101.

b. With respect to any discharge other than the Anna S #1, Mitchell #2, and Hunter's Drift that existed at the time of the issuance of Mine Drainage Permit No. 50910101 and that is hydrologically connected to or within the area permitted under Mine Drainage Permit No. 59810101, the Department shall take no enforcement action against Antrim for degradation of the particular discharge by contaminants associated with acid mine drainage unless:

i. The Department proves that the combined average monthly load of acidity, iron, and manganese emitted by the discharge over a period of at least one year is higher, at a statistically significant level, than the average monthly load of those three parameters over the baseline period established by Mine Drainage Permit No. 59810101; and

ii. The Department proves that such statistically significant increase in the average monthly contaminant load is solely attributable to the surface mining activities conducted by Antrim under Mine Drainage Permit No. 59810101.

c. Subparagraphs a and b, immediately above, are not intended, and shall not be construed, to establish a standard of liability or to limit in any way the defenses that Antrim may raise to the Department's institution of an enforcement action against Antrim arising from alleged degradation of the Anna S #1, Mitchell #2, and Hunter's Drift discharges, or any other discharge that is hydrologically connected to area permitted under

Mine Drainage Permit No. 59810101, by contaminants associated with acid mine drainage. Subparagraphs a and b, immediately above, also are not intended, and shall not be construed, to limit the Department's right to take an enforcement action against Antrim as a result of any future actions taken by Antrim, or as a result of the degradation of any of the discharges described in subparagraphs a or b, immediately above, by contaminants other than those associated with acid mine drainage.

15. *Permitting Decisions.*

a. Upon execution of this Consent Order, Agreement, and Adjudication, and at all time thereafter, provided that Antrim is complying with the terms of this Consent Order, Agreement, and Adjudication, Antrim shall have demonstrated to the satisfaction of the Department that the violations described in Paragraphs M and P through X, above, are being corrected, and the Department shall not deny any permits or mining authorizations to Antrim or any person that is a related party to Antrim based exclusively on the existence of the violations described in Paragraphs M and P through X, above. However, the violations described in Paragraphs M and P through X, above, shall constitute part of Antrim's compliance history.

b. Nothing in this Consent Order, Agreement, and Adjudication is intended or shall be construed to require the Department to issue any permit or mining authorization to Antrim or parties related to Antrim. The Department shall not issue a particular permit or mining authorization to Antrim or a party related to Antrim unless the relevant application meets all applicable technical and legal requirements. Antrim and parties

related to Antrim retain the right to challenge all future permitting and licensing decisions or actions of the Department that affect their interests.

16. *Civil Penalties.* Within five (5) days of the date of this Consent Order, Agreement, and Adjudication, Antrim shall pay a civil penalty of two thousand dollars (\$2,000.00) for the violations set forth in Paragraphs M and P through X, above, covering the dates specifically identified and no others. The payment shall be made by corporate check or the like made payable to the "Commonwealth of Pennsylvania, Surface Mining Conservation and Reclamation Fund" and sent to the attention of the District Mining Manager at the address listed in Paragraph 25, below.

17. *Stipulated Penalties.* Except as specified in Paragraphs 7.a.vi and 7.b.ii(C)(4), above, and further except for violations of the applicable effluent limits established in Paragraph 7, above, in the event Antrim fails to comply in a timely manner with any term or provision of this Consent Order, Agreement, and Adjudication, or any term or provision of either the Combined Discharge Permanent Treatment Plan or the Sludge Disposal Plan, as approved by the Department, Antrim shall be in violation of this Consent Order, Agreement, and Adjudication and, in addition to other applicable remedies, shall pay a civil penalty in the amount of Seven Hundred Fifty Dollars (\$750.00) per day for each violation. The penalty shall be due automatically and without notice. Such penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, shall be made by corporate check or the like made payable to the "Commonwealth of Pennsylvania, Surface Mining Conservation and Reclamation Fund," and shall be forwarded to the District Mining Manager at the address listed in Paragraph 25, below. It is understood by the parties hereto that payment of any money hereunder shall neither constitute a waiver of Antrim's duty to meet its obligations under this Consent Order, Agreement, and Adjudication nor preclude the Department from commencing an action to compel Antrim's compliance with the terms and conditions of

this Consent Order, Agreement, and Adjudication, or any applicable statute, rule, regulation, permit, or order of the Department, or plan approved by the Department.

18. *Existing Obligations Unaffected.* Except as provided in this Consent Order, Agreement, and Adjudication, nothing set forth in this Consent Order, Agreement, and Adjudication is intended, nor shall be construed, to relieve or limit Antrim's obligation to comply with any existing or subsequent statute, regulation, permit or order. In addition, nothing set forth in this Consent Order, Agreement, and Adjudication is intended, nor shall be construed, to authorize any violation of any statute, regulation, order, or permit issued or administered by the Department.

19. *Reservation of Rights.* With regard to matters not addressed by this Consent Order, Agreement, and Adjudication, the Department specifically reserves all rights to institute equitable, administrative, civil and criminal actions, for any past, present or future violation of any statute, regulation, permit or order, or for any pollution or potential pollution to the air, land or waters of the Commonwealth.

20. *Remedies for Breach.* Antrim's failure to comply with any provision of this Consent Order, Agreement, and Adjudication shall be deemed a material breach, and in the event of any such breach, the Department may, in addition to the remedies prescribed herein, institute any equitable, administrative, civil or criminal action, including an action to enforce this Consent Order, Agreement, and Adjudication and an action to obtain any civil penalties. These remedies 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.

21. *Liability of Operator.* Antrim shall inform all persons necessary for the implementation of this Consent Order, Agreement, and Adjudication of the terms and conditions of this Consent Order,

Agreement, and Adjudication. Antrim shall be liable for any violations of the Consent Order, Agreement, and Adjudication, including those caused by, contributed to, or allowed by its directors, officers, agents, managers, servants and privies and any persons, contractors and consultants acting under or for Antrim. Except as provided in Paragraph 24 (Transfer of Site), Antrim remains liable for any violation of this Consent Order, Agreement, and Adjudication caused, contributed to or allowed by its successors and assigns.

22. By itself, this Consent Order, Agreement, and Adjudication, is not intended, and shall not be construed, to impose personal liability on any past, present, or future officer, director, shareholder, employee, agent, consultant, contractor, or subcontractor of Antrim, their successors, heirs, or assigns, for the violations set forth in Paragraphs M and P through X, above. Provided that Antrim is complying with its obligations under this Consent Order, Agreement, and Adjudication, the Department agrees that it will not take any enforcement action against any past, present, or future officer, director, shareholder, employee, agent, consultant, contractor, or subcontractor of Antrim, their successors, heirs, or assigns, for the violations set forth in Paragraphs M and P through X, above. The Department further agrees that it will not take enforcement action against any past, present, or future officer, director, shareholder, employee, agent, consultant, contractor, or subcontractor of Antrim, their successors, heirs, or assigns, for Antrim's failure to make required payments into the Discharge Treatment Trust unless such individual is personally responsible for such a breach by Antrim under applicable principles of Pennsylvania corporate law.

23. Paragraphs 21 and 22, immediately above, are not intended, and shall not be construed, to alter the legal standards governing the personal liability of Antrim's officers, directors, shareholders,

employees, agents, consultants, contractors, or subcontractors for violations of this Consent Order, Agreement, and Adjudication.

24. *Transfer of Site.*

a. The parties expressly intend that the duties and obligations under this Consent Order, Agreement, and Adjudication shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the surface mine sites identified in Paragraph M, above, or any part thereof. Should Antrim intend to transfer any legal or equitable interest in the surface mine sites identified in Paragraph M, above, or any part thereof, Antrim shall serve a copy of this Consent Order, Agreement, and Adjudication upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to contemplated transfer and shall simultaneously inform the Department's Hawk Run District Office of such intent.

b. Even if the Department has signed a Consent Order, Agreement, and Adjudication, a Consent Decree, or a Consent Adjudication, in which the transferee of an interest in the surface mine sites identified in Paragraph M, above, or any part thereof, agrees to comply with the terms and conditions of this Consent Order, Agreement, and Adjudication, Antrim's duties and obligations under this Consent Order, Agreement, and Adjudication are not modified, diminished, terminated or otherwise altered. Where the Department has signed a Consent Order, Agreement, and Adjudication, a Consent Decree, or a Consent Adjudication in which a transferee of an interest in the surface mine sites identified in Paragraph M, above, or any part thereof, agrees to comply with the terms and conditions of this Consent Order, Agreement, and Adjudication, Antrim may request, in writing, that the Department modify or terminate Antrim's duties and obligations under this Consent Order, Agreement, and Adjudication. The

Department's decision to modify or terminate Antrim's duties and obligations under this Consent Order, Agreement, and Adjudication shall be in the sole discretion of the Department.

25. *Correspondence with Department.* All correspondence with the Department concerning this Consent Order, Agreement, and Adjudication shall be addressed to:

District Mining Manager  
Hawk Run District Mining Office  
Department of Environmental Resources  
P.O. Box 209  
Hawk Run, PA 16840

26. *Correspondence with Antrim.* All correspondence with Antrim concerning this Consent Order, Agreement, and Adjudication shall be addressed to:

Mr. Richard D. Mase  
President  
Antrim Mining, Inc.  
P.O. Box 38  
Blossburg, PA 16912

In addition, Antrim agrees that service of any notice or any legal process for any purpose under this Consent Order, Agreement, and Adjudication, including its enforcement, may be made by mailing a copy by first class mail to its attorney or to the above address.

27. *Force Majeure.*

a. In the event that Antrim is prevented from complying in a timely manner with any time limit imposed in this Consent Order, Agreement, and Adjudication solely because of a strike, fire, flood, act of God, or other circumstances entirely beyond Antrim's control and which Antrim, by the exercise of all reasonable diligence, is unable to prevent, or mitigate then Antrim may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order, Agreement, and Adjudication shall not constitute circumstances beyond Antrim's

control. Antrim expressly agrees that its economic inability to comply with any of the obligations of this Consent Order, Agreement, and Adjudication shall not be grounds for any extension of time otherwise available under this paragraph.

b. Antrim shall only be entitled to the benefits of this paragraph if it notifies the Department within five (5) days by telephone and within ten (10) 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 related documentation, as well as a notarized affidavit from a responsible corporate official specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by Antrim to minimize the length of the delay. Antrim'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 Antrim and other information available to the Department. Only a letter which has been signed by the Department and its counsel will constitute an extension under this paragraph.

d. Antrim shall have the burden of proof as to the justification for an extension and the length of such extension pursuant to this paragraph, both to the Department and in the event that compliance with the terms and conditions of this Consent Order, Agreement, and Adjudication becomes an issue in any subsequent litigation. Such burden of proof shall be by clear and convincing evidence. The total of all extensions under this paragraph, individually or in addition to previous extensions, shall in no event exceed one hundred twenty (120) days.

28. *Severability.* The paragraphs of this Consent Order, Agreement, and Adjudication 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.

29. *Entire Agreement.* This Consent Order, Agreement, and Adjudication 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.

30. *Modifications.* Except as provided in Paragraph 27 (Force Majeure), no changes, additions, modifications, or amendments of this Consent Order, Agreement, and Adjudication shall be effective unless they are set out in writing and signed by the parties hereto, and approved by the Board.

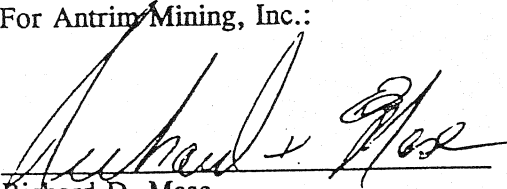
31. *Attorney Fees.* The parties agree to bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order, Agreement, and Adjudication.

32. *Decisions under Consent Order.* Any decision that the Department makes under the provisions of this Consent Order, Agreement, and Adjudication shall not be deemed to be a final action of the Department, and shall not be appealable to the Environmental Hearing Board or to any court. Any objection which Antrim may have to the decision will be preserved until the Department enforces this Consent Order, Agreement, and Adjudication. At no time, however, may Antrim challenge the content or validity of this Consent Order, Agreement, and Adjudication, or challenge the Findings agreed to in this Consent Order, Agreement, and Adjudication.

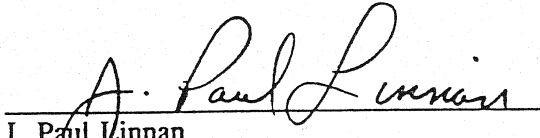
33. *Titles.* A title used at the beginning of any paragraph of this Consent Order, Agreement, and Adjudication is provided solely for the purpose of identification and shall not be used to interpret that paragraph.

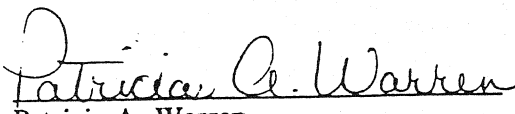
IN WITNESS WHEREOF, the parties hereto have caused this Consent Order, Agreement, and Adjudication to be executed by their duly authorized representatives. The undersigned representatives of the Department and Antrim certify under penalty of law, as provided by 18 Pa.C.S. §4904, that they are authorized to execute this Consent Order, Agreement, and Adjudication on behalf of the party they represent. The representatives of Antrim further certify under penalty of law, as provided by 18 Pa.C.S. § 4904, that Antrim consents to the entry of this Consent Order, Agreement, and Adjudication and the foregoing Findings as an ORDER of the Department, and that Antrim hereby knowingly waives its right to appeal this Consent Order, Agreement, and Adjudication and the foregoing Findings, which rights may be available under Section 4 of the Environmental Hearing Board Act, 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.

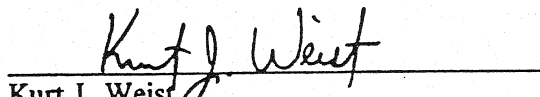
For Antrim Mining, Inc.:

  
Richard D. Mase  
President

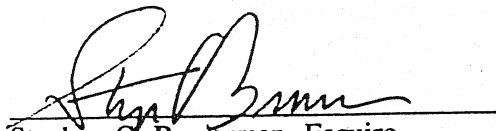
For the Commonwealth of Pennsylvania,  
Department of Environmental Resources:

  
J. Paul Linnan  
Director of District Mining Operations

  
Patricia A. Warren  
Secretary / Treasurer

  
Kurt J. Weist  
Assistant Counsel

CORPORATE SEAL

  
Stephen C. Braverman, Esquire  
BUCHANAN INGERSOLL, P.C.  
Attorneys for Antrim Mining, Inc.

# APPENDIX I

<u>SITE NAME</u>	<u>PERMIT NUMBER</u>	<u>BOND NUMBER AND (DATE)</u>		<u>AMOUNT REMAINING</u>
Antrim #1	59820101	904866	(5/10/84)	\$ 57,525.00
Rolling Run	59820102	904851	(2/8/84)	\$ 34,940.00
South		904869	(5/18/84)	\$ 12,040.00
		928206	(1/24/85)	\$ 10,000.00
Backswitch	59830101	2624374	(11/30/84)	\$125,180.00
		175190220237225	(3/31/91)	5,500.00
Cushing	59840101	2638626	(10/21/85)	\$ 10,000.00
Devil's Elbow	59850101	2645604	(4/29/86)	\$169,220.00
North		2657146	(10/23/87)	\$ 76,300.00
Van Order	59870102	11126916227	(7/8/88)	\$293,500.00
		2657145	(10/23/87)	\$ 97,700.00