

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

Colt Resources, Inc.	:	Valier Mine
8235 Forsythe Boulevard	:	Permit No. 33753031
Suite 400	:	Perry Township
St. Louis, MO 63105	:	Jefferson County
	:	
	:	Fulton/River Hill/No. 12 Mine
	:	Permit No. 3776SM13
	:	Paint Township
	:	Clarion County
	:	
	:	Miller Mine
	:	Permit No. 16830113
	:	Perry Township
	:	Clarion County
	:	
	:	Alternative Financial Assurance Mechanism

**POSTMINING TREATMENT TRUST
CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 22nd day of August, 2005,
by and between the Commonwealth of Pennsylvania, Department of Environmental Protection
("Department"), and Colt Resources, Inc. ("Colt").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, *as amended*, 52 P.S. §§ 1396.1-1396.19a ("Surface Mining Act"); the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, *as amended*, 52 P.S. §§ 1406.1-1406.21 ("Mine Subsidence Act"); the Coal Refuse Disposal Control Act, Act of September 24, 1968, P.L. 1040, *as amended*, 52 P.S. §§ 30.51-30.206 ("Coal Refuse Disposal

Act"); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 ("Clean Streams Law"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative Code"); and the rules and regulations promulgated thereunder.

B. Colt is a corporation with a business address of 8235 Forsythe Boulevard, Suite 400, St. Louis, Missouri 63105, whose business includes the mining of coal by the surface method.

C. Colt is the permittee of the following surface mine sites in Pennsylvania which are associated with post-mining discharge liability:

<u>Permit No.</u>	<u>Name</u>	<u>Township</u>	<u>County</u>
33753031	Valier	Perry	Jefferson
3776SM13	Fulton*	Paint	Clarion
16830113	Miller	Perry	Clarion.

*This mine has been referred to by various names, including the River Hill Mine, Fulton Mine and Colt No. 12 Mine. For purposes of this agreement, it will be referred to simply as the "Fulton Mine."

D. Coal removal at the Valier, Fulton and Miller mines has been completed and most of the area within the permits has been reclaimed. For each of the sites, a water treatment system remains on site to treat post-mining discharges that do not meet regulatory and permit standards.

E. The Valier Mine has a passive treatment system that consists of a wetland, a cattail bog channel and a pond. This system collects and treats two discharges, identified as MD1 and MD2, which emanate within the area of Permit No. 33753031 ("Valier Treatment System").

F. The Fulton Mine has a chemical treatment system that consists of two treatment ponds, a soda ash applicator and a sludge drying pond. This system collects and treats one discharge, identified as MP1, which emanates within the area of Permit No. 3776SM13 ("Fulton Treatment System").

G. The Miller Mine has a passive treatment system that consists of cattail ditches and two small ponds. This system collects and treats one discharge, identified as D1, which emanates within the area of Permit No. 16830113 ("Miller Treatment System").

H. Colt agrees that it has the legal responsibility to treat or abate the discharges identified in Paragraphs D-G.

I. The effluent limits applicable to the discharges are set forth at 25 Pa. Code § 87.102.

J. Regrading, revegetation and other surface reclamation is completed at the Valier, Fulton and Miller mines, except for areas and facilities needed to maintain the Treatment Systems at each site.

K. The annual operating and maintenance costs associated with the Valier Treatment System are \$2007.00 for sampling, labor and maintenance. The initial cost of construction of the facility is \$23,374.00, and it is anticipated that the Treatment System will have a life expectancy of 20 years. The present value of the capital cost of the major components of the Valier Treatment System that will require replacement is \$15,511.00.

L. Composite raw water quality figures for discharge MD1 and discharge MD2 at the Valier Mine are set forth in Exhibit A.

M. The Department holds the following collateral bonds posted by Colt to secure its obligations at the Valier Mine:

Certificate of Deposit No. 166346	National City Bank	\$5,000.00
Certificate of Deposit No. 166347	National City Bank	\$5,000.00
Certificate of Deposit No. 166349	National City Bank	\$10,000.00
Certificate of Deposit No. 166350	National City Bank	\$10,000.00
Certificate of Deposit No. 166351	National City Bank	\$10,000.00
Certificate of Deposit No. 166353	National City Bank	\$10,000.00
Certificate of Deposit No. 166355	National City Bank	\$20,000.00
Certificate of Deposit No. 166357	National City Bank	\$20,000.00
Certificate of Deposit No. 166358	National City Bank	\$20,000.00
Certificate of Deposit No. 166359	National City Bank	\$20,000.00
Certificate of Deposit No. 166360	National City Bank	\$20,000.00
Certificate of Deposit No. 166361	National City Bank	\$20,000.00
Certificate of Deposit No. 166362	National City Bank	\$20,000.00
Certificate of Deposit No. 166364	National City Bank	\$20,000.00
Certificate of Deposit No. 166365	National City Bank	\$20,000.00
Certificate of Deposit No. 166366	National City Bank	\$20,000.00
Certificate of Deposit No. 166368	National City Bank	\$20,000.00
Certificate of Deposit No. 166369	National City Bank	\$10,000.00
Certificate of Deposit No. 166370	National City Bank	\$9,105.00
Certificate of Deposit No. 166371	National City Bank	\$5,000.00
Certificate of Deposit No. 166372	National City Bank	\$5,000.00
Certificate of Deposit No. 183151	National City Bank	\$5,000.00
Certificate of Deposit No. 183153	National City Bank	\$5,100.00.

N. The annual operating and maintenance costs associated with the Fulton Treatment System are \$9,349.00 for sampling, labor and maintenance. The initial cost of construction of the facility is \$10,500.00, and it is anticipated that the Fulton Treatment System will have a life

expectancy of 20 years. The present value of the capital cost of the major components of the Fulton Treatment System that will require replacement is \$6,207.00.

O. Composite raw water quality figures for discharge MP1 at the Fulton Mine are set forth in Exhibit A.

P. The Department holds the following surety bond posted by Colt to secure its obligations at the Fulton Mine:

Surety Bond No. 457F9121	Travelers Indemnity Company	\$20,125.00.
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Q. The annual operating and maintenance costs associated with the Miller Treatment System are \$1,741.00 for sampling, labor and maintenance. The initial cost of the construction of the facility is \$11,304.00, and it is anticipated that the Miller Treatment System will have a life expectancy of 20 years. The present value of the capital cost of the major components of the Miller Treatment System that will require replacement is \$6,179.00.

R. Composite raw water quality figures for discharge D1 at the Miller Mine are set forth in Exhibit A.

S. The Department holds the following surety bond posted by Colt to secure its obligations at the Miller Mine:

Surety Bond No. K02082676	Insurance Co. of North America	\$37,838.00.
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T. Colt would like to use the collateral bonds from the Valier Mine and additional cash payment to provide an alternative financial assurance mechanism as the financially backed enforceable contract to provide for the long-term treatment of post-mining discharges at the Valier, Fulton and Miller sites, and secure the release of its remaining surety reclamation bonds upon completion of all other reclamation requirements.

U. The parties have discussed the need to obtain accurate and timely information on the costs of operating and maintaining the Treatment Systems in order to maintain the proper amount of financial backing. The parties have agreed that the current annual cost of operating and maintaining the Valier, Fulton and Miller Treatment Systems is \$13,097.00.

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

W. Colt has ceased the active production of coal, essentially ended its operations in Pennsylvania, and now wishes to wind up its corporate affairs. Colt wants to ensure that its obligations to treat the post-mining discharges at the Valier, Fulton and Miller sites are met in the years to come so that it can proceed to wind up and dissolve the corporation.

X. As an additional guarantee that water treatment at these mine sites will be carried out in the future, Colt has proposed to pay an additional amount of \$82,031.85 (25%) over the parties' calculation of \$328,127.42 for a fully funded trust and to waive any future distribution payments.

Y. Once Colt has established and funded a trust in the amount of \$410,159.27 in accordance with the terms and conditions set forth herein, Colt will have met its current obligation to provide financial assurance.

Z. Colt has filed the following appeals with the Environmental Hearing Board ("EHB"), which have been consolidated at Docket No. 2002-090-R:

<u>Appeal Number</u>	<u>Department Action Appealed</u>
2002-090-R	Civil Penalty Assessment of \$500 for effluent violation at Valier
2002-182-R	Denial of bond release application on Valier
2004-058-R	Order requiring bond adjustment on Fulton
2004-059-R	Order requiring bond adjustment on Miller

ORDER

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Colt as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5 of the Clean Streams Law, 35 P.S. § 691.5; Section 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c; Sections 3.1 and 9 of the Coal Refuse Disposal Act, 52 P.S. §§ 30.53a and 30.59; Section 9 of the Subsidence Act, 52 P.S. § 1409.9, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of Colt to comply with any term or condition of this Consent Order and Agreement shall subject Colt to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings.

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

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

3. Definitions.

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

b. Actual Treatment Cost. The costs and expenses of treatment, calculated by using the Accountings provided by Colt at the end of the monitoring period discussed at Paragraph 4, below. In the event that Colt does not go through corporate dissolution and continues to exist, the Actual Treatment Cost will be the average of three consecutive years of the costs and expenses of treatment, calculated by using the Accountings for those three years.

- c. Annual Anniversary Date. The annual recurrence of the month and day that this Consent Order and Agreement is executed.
- d. Calculated Treatment Cost. The projected future annual cost of treatment, based on the Actual Treatment Cost, compounded at three and one tenth percent (3.1%) annually.
- e. Capital Improvement Account. The sub-account within the Trust that is primarily used to finance anticipated and periodic capital expenditures for the Treatment Systems.
- f. Distribution Payment. The Trustee's disbursement of money from the Trust made at the written direction of the Department to a person and in an amount specified by the Department and as provided by this Consent Order and Agreement.
- g. Formula. The equation used to calculate the Present Value of the future operation and maintenance ("O&M") of the Treatment Systems. The equation is:
- $$PV = (A/[E-I]) + A$$
- where: PV = Present Value of the O&M Costs
A = Current Actual Treatment Cost
E = Expected Annual Earnings/Interest Rate
(assumed to be 8.43% or .0843)*
I = Inflation Rate (assumed to be 3.1% or .031)
- * This assumption will remain the same unless the parties agree otherwise.
- h. Primary Basis Valuation. 100% of the present value of the future cost of treatment as determined by the Formula.
- i. Primary Target Valuation. 116% of the present value of the future cost of treatment as determined by the Formula.
- j. Primary Trust Account. The sub-account within the Trust that is primarily used to finance annual operating and maintenance costs of the Treatment Systems.

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

4. Treatment Costs; Records; Factors; Accounting.

a. Colt shall keep accurate financial records of all the costs and expenses of treatment for each site for a minimum monitoring period beginning on the date of this Consent Order and Agreement and ending on the first Annual Anniversary Date or twelve months from the date when Colt completes any upgrades to the Fulton Treatment System, whichever is later. In no case shall Colt go through corporate dissolution prior to the conclusion of the applicable aforementioned minimum monitoring period. Colt shall continue to keep these financial records on an annual basis until such time as the corporation dissolves. The various cost factors fall into several general categories, including, but not limited to: Reagent; Polymer; Electrical; Sludge Removal; Labor, including benefits; Maintenance; Sampling; Overhead; and Miscellaneous. The individual item shall be tracked and reported for each general category.

b. Colt shall provide an accounting of the costs and expenses of treatment ("the Accounting") to the Department on or before the 90th day following the last day of the monitoring period discussed at paragraph 4.a., above. The Accounting shall be in accordance with Generally Accepted Accounting Principles. The Accounting shall be accompanied by an affidavit of the treasurer or other corporate officer responsible for the financial affairs of Colt and by another corporate officer of Colt attesting to the completeness and accuracy of the records of the costs and expenses of treatment as reported in the Accounting.

c. Colt's obligation to keep records and provide the Accounting shall continue for the period during which Colt continues to exist and is operating the Treatment Systems.

d. In the event of a dispute about the costs and expenses of treatment incurred by Colt, Colt shall bear the burden of proving the accuracy and completeness of the Accounting and the records upon which the Accounting is based. A special report prepared under Generally Accepted Accounting Principles as to the treatment costs incurred by Colt, prepared by an independent licensed public or certified public accountant, shall satisfy Colt's burden of proof as to any of these matters.

5. Treatment Trust.

a. Colt shall establish an irrevocable trust to be known as the Colt Treatment Trust (Trust) with the non-profit Clean Streams Foundation ("CSF"), by way of a Participation Agreement with CSF. The Trust shall secure Colt's obligation to treat discharges of mine drainage at the Valier, Fulton and Miller Mines, including its obligation to operate and maintain the Treatment Systems, in perpetuity, or until water treatment is no longer necessary, and to provide financial resources to the Department and the citizens of the Commonwealth to maintain and operate the Treatment Systems, and to treat the mine drainage in perpetuity. The Trust shall also provide for the removal of treatment facilities and reclamation of the treatment sites should treatment no longer be needed at one or more of the sites. The Participation Agreement with the CSF establishing the Trust is attached as Exhibit B.

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

6. Funding of the Primary Trust Account. Upon the execution of this Consent Order and Agreement, the amount of \$410,159.27 shall be deposited into the Primary Trust Account in the following manner:

a. The Department and Colt shall execute a memorandum to National City Bank advising the bank of the agreement between the parties and directing the bank to liquidate the certificates of deposit identified in Paragraph M, above, and forward the face amount of the certificates, \$309,205.00, to the Clean Streams Foundation for deposit into the Primary Trust Account of the Colt Treatment Trust, and any remaining interest on the instruments to Colt.

b. Colt shall deposit into the Primary Trust Account cash in the amount of \$100,954.27.

7. The parties agree that the execution of this Consent Order and Agreement and establishment of a treatment trust as described herein will resolve all four of the EHB appeals identified in Paragraph Z, above. Accordingly, upon execution of the Consent Order and Agreement and funding of the Primary Trust Account in accordance with Paragraph 6, above, the Department shall mark the \$500 civil penalty on the Valier Mine satisfied and Colt shall withdraw its EHB appeals at Docket Nos. 2002-090-R, 2002-182-R, 2004-058-R and 2004-059-R.

8. Annual Distribution or Contribution Payments - Primary Trust Account.

a. All calculations under this paragraph shall be based on values as determined on the Annual Anniversary Date, except as provided in paragraph 8.e., below.

b. If the Primary Trust Valuation does not include the value of surety bonds, then Distribution Payments shall be made according to paragraph 8.c. Otherwise, Distribution Payments shall be made according to Paragraphs 8.d. and 8.e.

c. If at the end of any year the Primary Trust Valuation is greater than the Primary Target Valuation, then any excess funds over the Primary Trust Valuation shall remain in the Trust or, if Colt has dissolved and is no longer in business, then a Distribution Payment may be made to a third party to fund other water treatment, at the discretion and direction of the

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

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

e. If, based on any of the Accountings discussed at paragraph 4, above, the Primary Trust Valuation is less than the Primary Basis Valuation, then unless Colt has ceased to exist, Colt shall make an additional contribution into the Primary Trust Account in an amount equal to the difference between the Primary Basis Valuation and the Primary Trust Valuation, or in an amount equal to the Calculated Treatment Cost, whichever is less, except as provided in Paragraph 14.a. This amount is depicted graphically as points 5 & 6 on Exhibit C.

9. Adjustments to the Primary Target Valuation for Deviations
Between Actual Treatment Cost and Calculated Treatment Cost.

a. All calculations under this paragraph shall be based on values as determined on the Annual Anniversary Date, except as provided in paragraph 9.b., below, and before any Distribution Payment.

b. If, based on any of the Accountings discussed at paragraph 4, above, the Actual Treatment Cost for the Trust is greater than or equal to 110% of the Calculated Treatment Cost, the Department will calculate a new Primary Basis Valuation using the Formula and the newly determined Actual Treatment Cost. A new Primary Target Valuation will then be determined by calculating 116% of the new Primary Basis Valuation. Exhibit D is a graphical depiction of the adjustment.

c. In the event that Colt does perform upgrades to the Fulton Treatment System, with the prior approval of the Department, the parties shall recalculate 125% funding of the Trust as discussed at Paragraph X, above, using the Formula defined herein and using the monthly costs and expenses of treatment at Fulton for 12 full months from the date when any upgrades to the Fulton Treatment System are completed. If, based on this recalculation, additional funds are required to achieve 125% funding of the Trust, Colt shall deposit the additional funds into the Trust. If, based on the recalculation, the Trust contains funds in excess of 125%, the Department shall authorize the release of the amount in excess of 125% by the Trustee to Colt.

10. Distribution Payments for Adjustments to the Primary Target Valuation.

a. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 9, above, is less than the Primary Trust Valuation, then no distribution payment shall be made under this paragraph.

b. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 9, above, is based on a reduced Actual Treatment Cost, and the Primary Trust Valuation is greater than the newly calculated Primary Target Valuation, then any excess funds shall remain in the Trust or, if Colt has dissolved and is no longer in business, then a Distribution Payment may be made to a third party to fund other water treatment, at the discretion and direction of the Department. The amount of any such Distribution Payment will be equal to the percent change in Actual Treatment Cost times the Primary Trust Valuation, or in an amount equal to the difference between the Primary Trust Valuation and the newly calculated Primary Target Valuation, whichever is less. The amount of such Distribution Payment shall be determined by the following formulas:

	DP	=	TR (1 - (new ATC/ prior ATC))
Or			
	DP	=	TR - new TV
Where:	DP	=	Distribution Payment
	TR	=	Primary Trust Valuation
	TV	=	Primary Target Valuation
	ATC	=	Actual Treatment Cost.

11. Capital Improvement Account.

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

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

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

i. For each planned capital replacement component or activity, the current cost of that component or the cost to complete that activity will be determined.

ii. For each planned capital replacement component or activity, the estimated number of years in the life cycle of the component or the number of years between when the activity is needed will be determined.

iii. If the water treatment facility has been in operation for a significant period of time, then for each planned capital replacement component or activity, the estimated number of years until the next replacement or activity is needed will be determined.

iv. For each planned capital replacement component or activity, the future value of the first replacement or activity will be calculated using a Present Value equal to the current cost, a rate of 3.1 percent, the amount of payment equal to \$0.00, the number of payment periods equal to the number of years from the date of this agreement until the next replacement or activity, and a beginning of period payment.

v. For each planned capital replacement component or activity, the Present Value will be calculated using the Future Value calculated in paragraph 11.c.iv., above, a rate equal to the assumed net rate of return used elsewhere in this agreement, and all other variables the same as used in paragraph 11.c.iv., above.

vi. For each planned capital replacement component or activity, the Future Value of the second and each subsequent capital replacement or activity will be calculated using the same values as in paragraph 11.c.iv., above, except the value for the number of payment periods. The value for the number of payment periods for the second replacement or activity will be equal to the number of years until the next replacement or activity plus the number of years in the expected life cycle as determined in paragraph 11.c.ii., above. The number of payment periods for the third replacement will be equal to the number of years until the next replacement or activity plus two times the number of years in the expected life cycle. The number of periods for the fourth replacement will be equal to the number of years until the next replacement plus three times the years in the life cycle. The Future Value of each replacement will be calculated in like manner until the number of periods is equal to the number of years until the last replacement or activity is expected to occur that does not exceed 75 years from the year the calculations are being made.

vii. For each planned capital replacement component or activity, the Present Value of the second and each subsequent capital replacement or activity will be calculated using the same values as in Paragraph 11.c.v., above, except the value for the number of payment periods which shall be determined in like manner to Paragraph 11.c.vi., above.

viii. The required balance in the Capital Improvement Account for the current year shall be equal to the sum of all Present Values calculated in Paragraph 11.b.v. and vii., above.

ix. The required balance in the Capital Improvement Account shall be recalculated on an annual basis and each time a Distribution Payment is contemplated under Paragraph 13. Such recalculation shall be deemed an amendment to Exhibit E and this Consent Order and Agreement, and shall be used in making all future calculations involving the Capital Improvement Account.

12. Transfer of Funds to the Capital Improvement Account. If the Primary Trust Valuation after any Distribution Payment under paragraph 8, above, is greater than the Primary Target Valuation, then a transfer of funds to the Capital Improvement Account shall be made if the current balance in the Capital Improvement Account is less than the required balance for the current year as indicated on Exhibit E. The amount of such transfer will be equal to the

difference between the required balance and the current balance, or in an amount equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, whichever is less.

13. Distribution Payments from the Capital Improvement Account.

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

b. Each time a Distribution Payment from the Capital Improvement Account is contemplated under this Paragraph or Paragraph 14, below, the required balance in the Capital Improvement Account must be recalculated to determine the required balance after the proposed Distribution Payment, and to determine the appropriate Distribution Payment.

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

a. Surplus funds in the Capital Improvement Account shall be transferred to the Primary Trust Account. This amount is depicted graphically at Point 5 on Exhibit C.

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

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

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used to finance implementation of a new treatment technology at the discretion and direction of the Department.

d. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used to implement remediation or abatement activities to reduce or eliminate the discharge, or to improve the quality of the discharge at the discretion and direction of the Department.

e. If Colt has dissolved and is no longer in business, surplus funds in the Capital Improvement Account or the Primary Trust Account may be used to fund water treatment at other sites at the discretion and direction of the Department.

15. Real and Personal Property.

a. Colt shall use good faith best efforts to obtain easements from each of the landowners at the Valier, Fulton and Miller mines on which access to and treatment of the post-mining discharges occurs. At a minimum, these easements shall permit ingress and egress and all necessary maintenance, improvement and reconstruction of the Valier Treatment System, the Fulton Treatment System and the Miller Treatment System. These easements shall run in favor of Colt, the Clean Streams Foundation and the DEP, and agents thereof, and shall expire upon the Department's determination that water treatment is no longer required at the site in question.

b. Prior to going through corporate dissolution, Colt shall convey title to any and all equipment that is associated with the existing treatment facilities at the Valier, Fulton and Miller mines to the Colt Treatment Trust.

16. Public Liability Insurance.

a. So long as Colt continues to exist and to operate the Valier, Fulton and Miller Treatment Systems, Colt shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the Treatment Systems and the real and personal property which is identified in the Post Mining Treatment Trust Agreement as part of the Trust Principal. The Trustee and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policy.

b. In addition to the requirements of Paragraph 16.a., the public liability insurance shall also be on the terms and conditions required by 25 Pa. Code § 86.168(a)-(e), or, in the alternative, as provided by Paragraph 16.c.

c. In lieu of the insurance requirements of Paragraph 16.b. and, in addition to the requirements of Paragraph 16.a., the public liability insurance shall be written on an occurrence basis and shall provide bodily injury and property damage coverage in the minimum amounts of \$250,000 per person and \$1,000,000 per occurrence. The insurance shall include a rider requiring the insurer to notify the Department 30 days prior to substantive changes being made to the policy or prior to termination or failure to renew. Proof of insurance shall consist of a certificate of insurance filed annually with the Department which certifies that Colt has a public liability insurance policy in force meeting the requirements of this Paragraph.

17. Annual Meeting. So long as Colt continues to exist and to operate the Valier, Fulton and Miller Treatment Systems, the parties will meet on or before the 30th day following delivery to the Department of each of the Accountings discussed at paragraph 4, above; to review and discuss the Accounting for the then completed period; to review the effectiveness of the Treatment Systems and any change during the period under review; to resolve any issues which arise as a result of that change or the performance of the Colt Treatment Trust; to calculate,

recalculate or adjust the size of the Primary Target Valuation, the Calculated Treatment Cost, and additional payments into the Colt Treatment Trust; and to address any other issues that may concern this Consent Order and Agreement or its implementation.

18. Corporation Dissolution.

a. Upon execution of this Consent Order and Agreement and funding of the Trust by Colt in accordance with the terms and conditions herein, the Trust shall be an alternative financial assurance mechanism for the Valier, Fulton and Miller sites and the Department shall release the surety bonds held on the Fulton and Miller sites. In the event that Colt does dissolve, the parties agree that the permits for the Valier, Fulton and Miller sites shall be revoked by the Department, which will also result in a permit block against Colt and its individual officers and directors on both the Department's and the federal Office of Surface Mining, Reclamation and Enforcement's compliance tracking systems. Colt shall provide the Department with a copy of any Articles of Dissolution that it files with the Pennsylvania Department of State.

b. So long as Colt funds the Trust in accordance with this Consent Order and Agreement and otherwise complies with all other terms and conditions of this Consent Order and Agreement, the Department will not pursue individual civil penalties against officers and directors of Colt, its subsidiaries or its parent corporation in connection with the dissolution of Colt Resources, Inc. or the revocation of the permits for the Valier, Fulton and Miller sites.

c. Should the Department discover, at some time subsequent to the execution of this Consent Order and Agreement, any act or omission on the part of an individual officer or director of Colt, its subsidiaries or its parent corporation which could subject that person to individual civil penalty liability, the provisions of Paragraph 18.b shall be null and void with

respect to that particular individual and the act(s) and/or omission(s) forming the basis for the individual civil penalty liability.

19. Colt's Continuing Obligation. In the event that Colt does not dissolve, neither Colt's agreement to fund the Colt Treatment Trust, nor the full or partial funding of the Trust, nor the exhaustion of the Trust shall in any way limit Colt's obligation to operate the Treatment Systems and maintain the Valier, Fulton and Miller sites in accordance with the Department's Rules and Regulations and the terms of the individual permits for each site. Furthermore, in the event Colt does not dissolve, exhaustion of the Trust shall not excuse Colt from Colt's obligation to adequately treat or to abate the discharges.

20. Stipulated Civil Penalties.

a. In the event Colt fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, Colt shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$100.00 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded to:

Javed I. Mirza
District Mining Manager
Department of Environmental Protection
Knox District Mining Office
P.O. Box 669
Knox, PA 16232-0669.

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

d. Stipulated civil penalties shall be due automatically and without notice.

21. Additional Remedies.

a. In the event Colt fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. In the event Colt defaults on the obligations of this Consent Order and Agreement, Colt will be subject to a permit block on the Department's compliance tracking system and the federal Applicant Violator System and the Department will, in addition to any other remedy or penalty prescribed herein, list Colt as a violator on the Department's compliance tracking system and on the federal Applicant Violator System.

c. The remedies provided by this Consent Order and Agreement are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.

22. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. Colt reserves the right to challenge any action which the Department may take to require those measures.

23. Liability of Colt. Colt shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Colt also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

24. Transfer of Sites.

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Valier, Fulton or Miller sites or any part thereof.

b. If Colt intends to transfer any legal or equitable interest in the Valier, Fulton or Miller sites which is affected by this Consent Order and Agreement, Colt shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the following parties of such intent:

Javed I Mirza
District Mining Manager
Department of Environmental Protection
Knox District Mining Office
P.O. Box 669
Knox, PA 16232-0669

and

Samuel C. Faith
Mineral Resources Program Specialist
Department of Environmental Protection
California District Mining Office
25 Technology Drive
California Technology Park
Coal Center, PA 15423

and

Gail Guenther
Assistant Counsel
Office of Chief Counsel
400 Waterfront Drive
Pittsburgh, PA 15222-4745.

c. The Department in its sole discretion may agree to modify or terminate Colt's duties and obligations under this Consent Order and Agreement upon transfer of the

Valier, Fulton or Miller sites. Colt waives any right that it may have to challenge the Department's decision in this regard.

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

Javed I Mirza
District Mining Manager
Department of Environmental Protection
Knox District Mining Office
P.O. Box 669
Knox, PA 16232-0669

and

Samuel C. Faith
Mineral Resources Program Specialist
Department of Environmental Protection
California District Mining Office
25 Technology Drive
California Technology Park
Coal Center, PA 15423

and

Gail Guenther
Assistant Counsel
Office of Chief Counsel
400 Waterfront Drive
Pittsburgh, PA 15222-4745.

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

Deborah Weedman, Esq.
Colt Resources, Inc.
8235 Forsythe Boulevard
Suite 400
St. Louis, MO 63105

and

Stephen G. Allen, Esq.
Stites & Harbison
250 W. Main Street
Suite 2300
Lexington, KY 40507.

Colt shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

27. Force Majeure.

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

b. Colt shall only be entitled to the benefits of this paragraph if it notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by Colt to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) working days of its submission. Colt'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 Colt and other information available to the Department. In any subsequent litigation, Colt shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

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

29. Entire Agreement. This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

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

31. Modifications. Except as provided in Paragraph 11.c.ix, no changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

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

33. Decisions under Consent Order. Any decision which the Department makes under the provisions of this Consent Order and Agreement is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection that Colt may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

34. Successors.

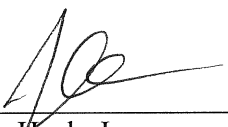
a. This Consent Order and Agreement shall be fully and completely binding upon any successor of Colt. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) Colt consolidates with or merges into or permits to merge with it and Colt is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of Colt's properties or assets which includes, but is not limited to, voting stock of Colt. Successor does not include any corporation or other entity to which Colt transfers or assigns all or substantially all of its financial or non-financial liabilities.

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


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

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Colt certify under penalty of law, as provided by 18 Pa.C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Colt; that Colt consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Colt hereby knowingly waives its rights to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa.C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by Colt's attorneys certifies only that the agreement has been signed after consulting with counsel.

FOR COLT RESOURCES, INC.:



John L. Hank, Jr.
Vice President and Treasurer



Deborah A. Weedman, Esquire
Attorney for Colt Resources, Inc.

Stephen G. Allen, Esquire
Attorney for Colt Resources, Inc.

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

Michael Terretti
Director of District Mining Operations
Greensburg District Mining Office

Gail Guenther
Assistant Counsel
Southwest Region OCC

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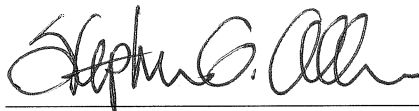
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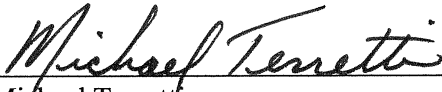
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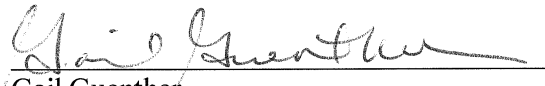
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