

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

CUSTOM COALS LAUREL,

Debtor.

CUSTOM COALS LAUREL,

Movant,

V.

NO RESPONDENTS.

Case No. 97-23405-JKF

Chapter 11

Motion No. 02-7888

AMENDED CONSENT ORDER AND AGREEMENT

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of

Utica Mutual Insurance Company
180 Genesee Street
New Hartford, NY 13413
and
Robindale Energy Services Inc.
Suite 130
1001 Broad Street
Johnstown, PA 15906
and
Custom Coals Laurel
Debtor in Possession
700 Fifth Avenue
New Brighton, PA 15066

Reclamation of Custom Coals
Laurel Refuse Site
CMAP No. 56743701

AMENDED CONSENT ORDER AND AGREEMENT

This Amended Consent Order and Agreement is entered into this 2 day of Dec, 2002, by and among the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), Utica Mutual Insurance Company ("Utica"), Custom Coals Laurel, Debtor in Possession ("Custom Coals DIP" or "Debtor") and Robindale Energy Services, Inc. (Robindale).

On September 6, 2002, the Bankruptcy Court in the Custom Coals – Laurel Bankruptcy Proceeding approved a previously submitted Consent Order & Agreement. The parties are Amending this Consent Order & Agreement to reflect a reclamation plan approved by the Department as a substitution for the government financed construction contract ("GFCC") as the regulatory approval for reclamation at the sites. No other significant changes are being made.

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 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 ("The 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. §§10-17 ("Administrative Code"); and the rules and regulations promulgated thereunder ("Rules and Regulations").

B. Custom Coals DIP is a partnership with a business address of 700 Fifth Avenue, New Brighton, PA 15066, whose business has included coal refuse disposal and coal preparation. Custom Coals is a Debtor in Possession, having filed a petition for voluntary relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Western District of Pennsylvania (Bankruptcy Court) at No. 97-23405-JKF.

C. At all times material hereto, Custom Coals operated a coal refuse disposal area in Shade Township, Somerset County, pursuant to Coal Refuse Disposal Permit (CRDP) No. 56743701 (Laurel Refuse Site). Custom Coals also operated a coal preparation plant in Shade Township, Somerset County pursuant to Coal Mining Activity Permit (CMAP) No. 56931601 (Laurel Prep Plant).

D. Custom Coals DIP is the owner of the Laurel Refuse Site and is obligated to treat pollutional discharges as the operator of a mine, and as the owner and/or occupier of the property pursuant to Sections 315 and 316 of The Clean Streams Law, 35 P.S. §691.315 and §691.316 respectively.

E. The Laurel Refuse site is covered by unreclaimed acidic coal refuse, a large impoundment containing coal slurry, sediment and polluted water and is the source of a perpetual acid mine drainage (AMD) pollutional discharge and has been the subject of a conventional chemical water treatment system which is presently being operated by the Department at a cost of approximately \$150,000 a year. As such, the property is a major liability to the Debtor.

F. The Debtor has insufficient funds in the estate with which to meet its obligations under 28 U.S.C. § 959 to manage the property according to the requirements under The Clean Streams Law, the Surface Mining Act and the Coal Refuse Disposal Act.

G. Custom Coals DIP has agreed to transfer ownership of the Laurel Refuse Site, including real and personal property contained thereon to Robindale or its assignee in consideration of Robindale agreeing to undertake pollution treatment, pollutional discharge abatement and reclamation obligations under a site-specific reclamation plan (the "Plan") approved by the Department.

H. Custom Coals DIP sold the Laurel Prep Plant to Shade Coal Technology, LP by Deed dated March 26, 1999, of record in the Recorder's Office of Somerset County, Pennsylvania in Deed Book Vol.1451, Page635.

I. Robindale is a Pennsylvania corporation with a business address of Suite 130 1001 Broad Street, Johnstown, Pa. 15906, whose business includes coal refuse reprocessing and mine land reclamation.

J. Utica is a New York corporation with a business address of 180 Genesee Street, New Hartford, New York 13413, whose business includes, among other things, the issuance of surety bonds for mining operations in Pennsylvania.

K. Utica issued the following reclamation bonds for the Laurel Refuse Site and the Laurel Prep Plant.

| <u>Permit Number</u> | <u>Bond Number</u> | <u>Amount</u> |
|----------------------|--------------------|---------------|
| 56743701 (Refuse) | SU 1908650 | \$ 69,000.00 |
| 56931601 (Prep) | SU 1741631 | \$827,440.00 |

In addition to the above bonds posted by Utica, Custom Coals was required to submit a perpetual water treatment bond in the amount of \$453,349.00 by December 15, 1996. Custom Coals failed to post the required bond by December 15, 1996, and never posted any of the required bond amount.

L. The bonds issued by Utica may be forfeited for any violation of the law or regulations including, but not limited to, the Surface Mining Act, The Clean Streams Law, the Coal Refuse Disposal Act, the Rules and Regulations, the terms and conditions of Custom Coals permit and Department orders pertaining to Custom Coals' conduct under the permit.

M. By letter dated April 16, 1997, the Department notified Custom Coals and Utica of the Department's intent to forfeit the bond on the Laurel Refuse Site CMAP No. 56743701 as a result of numerous unabated violations of the statutes and regulations identified in Paragraph A, above. These violations were the subject of Department compliance orders and civil penalties (Docket Nos. 973012, 973031 and 973040) which neither Custom Coals nor Utica appealed to the Environmental Hearing Board (EHB). As such those compliance orders and civil penalties are final as to Custom Coals and as to Utica.

N. By letter dated May 21, 1999, the Department declared forfeit the bond posted for the Laurel Refuse Site (SU 1908650) in the amount of \$69,000.00.

O. Utica appealed the forfeiture to the EHB at EHB Docket No. 99-127-R. Utica withdrew its appeal, and the EHB dismissed the appeal by order dated November 12, 1999.

P. On November 1, 1999, the Department collected bond number SU 1908650 in the amount of \$69,000.00.

Q. By letter dated May 28, 1999, the Department notified Custom Coals and Utica of the Department's intent to forfeit the bond on the Laurel Prep Plant, CMAP No. 56931601 as a result of numerous unabated violations of the statutes and regulations identified in Paragraph A, above. These violations were the subject of Department compliance orders and civil penalties (Docket Nos. 993034 and 993056) which neither Custom Coals nor Utica appealed to the Environmental Hearing Board. As such those compliance orders and civil penalties are final as to Custom Coals and as to Utica.

R. On November 8, 1999, the Department declared forfeit the bond posted for the Laurel Prep Plant.

S. Utica appealed the forfeiture to the EHB at EHB Docket No. 99-235-C.

T. Utica withdrew its appeal of the bond forfeiture, and by order dated September 11, 2000 the EHB dismissed the appeal.

U. Under Section 4(h) the Surface Mining Act, 52 P.S. §1396.4(h), a corporate surety issuing bonds which are forfeited by the Department shall have the option of reclaiming the forfeited site upon the consent and approval of the Department.

V. Through negotiations with the Department, Utica has elected to utilize bond SU 1741631 in the amount of \$827,440 executed on June 30, 1994, for the Laurel Prep Plant to perform reclamation activities on behalf of Custom Coals DIP at the Laurel Refuse Site and the Laurel Prep Plant in return for the Department's waiver of collection of the bond.

W. Robindale on behalf of Utica has agreed to undertake the existing water treatment and reclamation obligations at the Laurel Refuse Site and the Laurel Prep Plant as detailed in

paragraphs 4, 5, 6 and 7 below. Reclamation of the Laurel Refuse Site will be conducted pursuant to the Plan, including all engineering designs and drawings therein, which Plan is incorporated in and made a part of this Amended Consent Order and Agreement as if set forth in full. A copy of the narrative portion of the Plan and the Department's approval thereof is included as Exhibit A hereto.

X. The Department has agreed to waive collection of the bond based upon Utica's satisfactory completion through Robindale of the reclamation activities at the Laurel Refuse Site and the Laurel Prep Plant as described below in paragraphs 4, 5, 6 and 7.

Y. Reclamation of the Laurel Refuse Site and the Laurel Prep Plant can be accomplished more quickly and effectively by Utica and Robindale under this Consent Order and Agreement than it could if the Department forfeited and collected the bond.

After full and complete negotiation of all matters set forth in the Consent Order and Agreement and upon mutual exchange of covenants contained herein, and intending to be legally bound, the following is hereby ORDERED by the Department and AGREED to by Utica, Robindale and Custom Coals DIP.

1. **Authority.** This Amended Consent Order and Agreement (CO&A) is an Order of the Department authorized and issued pursuant to Section 5 of The Clean Streams Law, 35 P.S. §691.5; Sections 4.2 and 4.3 of the Surface Mining Act, 52 P.S. §§1396.4b and 1396.4c; and Section 1917-A of the Administrative Code, 71 P.S. §510-17.

2. **Findings.**

a. Custom Coals DIP and Utica agree that the Findings in Paragraphs A through X are true and correct, and Robindale agrees that the Findings in Paragraphs A-I and W-Y are true and correct. In any matter or proceeding involving Utica, Robindale or Custom Coals

DIP and the Department, Utica, Robindale or Custom Coals DIP shall not challenge the accuracy or validity of these Findings.

3. **Bankruptcy Court Approval.** The parties acknowledge that Custom Coals DIP is in bankruptcy and subject to the United States Bankruptcy Code 11 U.S.C. §101 et seq.; 28 U.S.C. §1334 et seq., and the rules and regulations promulgated thereunder. The U. S. Bankruptcy Court must approve the entry of this Amended Consent Order and Agreement and the terms therein. The Bankruptcy Court, on September 6, 2002, ordered that title to real property, the coal refuse onsite, and equipment used for water treatment be transferred to Robindale or its assignee prior to initiation of the activities contemplated by this agreement. The parties further agree that unless and until the Bankruptcy Court approves this Amended Consent Order and Agreement, the terms and provisions contained herein shall not be effective or enforceable against any party.

4. **Collection and Treatment of Discharges and Removal of Refuse From Laurel Refuse Site.**

- a. The Department approved and accepted the Plan on November 20, 2002..
- b. Robindale will construct new treatment facilities within 60 days of execution of this Amended CO&A.
- c. Upon installation and operation of Robindale's treatment system and at all times during Robindale's operation, any discharges therefrom must achieve the applicable effluent limitations.

5. **Transfer of Property.** Within 10 days following the execution of this Amended CO&A by all parties, the Debtor will transfer all of its interests in the real property and personal property associated with the Laurel Refuse Site to Robindale or its assignee pursuant to the Order entered by this Court pursuant to 11 U.S.C. §363 on September 6, 2002.

6. **Removal of Coal Refuse and Revegetation of Laurel Prep Plant.** Pursuant to the Plan, Robindale shall remove all coal refuse that is reasonably removable from the Laurel Prep Plant, will apply 20 tons of lime per acre to improve surfaces from which refuse is removed, and revegetate those areas affected by the removal of refuse not later 60 days following execution by all parties of this Amended CO&A. Paved areas of the Laurel Prep Plant are subject to the refuse removal requirement but are not subject to the revegetation requirements. Robindale shall have no other reclamation obligations relative to the Laurel Prep Plant and shall not be responsible for any ongoing maintenance of the reclaimed areas. Utica and the Department shall obtain a right of access to the Laurel Refuse Site in form and substance satisfactory to Robindale.

7. **Financial Guarantee for Treatment.** Within 30 days of the execution by all parties of this Amended CO & A, Utica will establish, and fully fund, a financial mechanism through the Clean Streams Foundation Trust (Trust) as a financial guarantee for the treatment of the discharges from the Laurel Refuse Site in the amount of \$453,000. Within sixty (60) days of the execution of this CO&A, Robindale will join in the trust and post financial assurances with the Department in the form of a \$100,000 performance bond, plus \$10,000 cash which instruments shall be payable to the Clean Streams Foundation Trust. Utica will fund the Trust by contributing \$163,000 (which represents the Department's treatment costs at the refuse site minus the \$69,000 bond forfeited on CMAP 56931601), and an additional \$180,000 cash. So long as Robindale is in compliance with the terms of this CO&A it shall not be required to post any additional bonds or cash sums with the Department or the Trust.

8. **Release of Financial Guarantee.** Terms of release for the \$453,000 financial guarantee are as follows:

a. \$110,000 to be released to Utica upon execution by all parties of the this Amended CO&A and Robindale's posting of the required financial assurances described in Paragraph No. 7 above;

b. \$110,000 to be released to Robindale upon completion by Robindale of the reclamation of the refuse pile at the Laurel Refuse Site and installation by Robindale of a BPJ passive treatment system if such a system is required by the Department.

c. \$180,000 to be released to Robindale as follows:

(1) \$100,000 will be released when modified treatment facilities at the Laurel Refuse Site are constructed and treating water;

(2) \$40,000 will be released when six (6) consecutive monthly samples from the treatment facilities referenced above indicate compliance with the effluent limits at 25 Pa. Code 87.102;

(3) The remaining \$40,000 will be released when Robindale effectively demonstrates an annual treatment cost savings of \$25,000 or more per year when compared to the Department's annual treatment costs of \$150,000 per year.

d. \$163,000 will be released to the Coal Refuse Disposal Fund when Robindale effectively demonstrates that the reclamation of the refuse pile at the Laurel Refuse Site will go forward with an expected reduction in treatment costs.

9. **Waiver of Collection of Prep Plant Bond.** The Department will waive collection of the \$827,440 bond posted for the prep plant upon execution by all parties of this Amended CO&A, completion of the previously described reclamation at the Laurel Prep Plant, and full funding of the \$453,000 financial guarantee for reclamation of the refuse pile.

10. **Limitation of Liability.** For the purposes of this Amended Consent Order and Agreement, neither Utica nor Robindale, by virtue of this Amended Consent Order and Agreement or any activities hereunder shall: (i) be deemed on "operator of a mine" or "occupier of land" or a party related to Custom Coals DIP under Section 315 or 316 of The Clean Streams Law, 35 P.S. §§ 691.315 or 691.316, or under the Surface Mining Act, the Coal Refuse Disposal Act or any regulations promulgated thereunder; or (ii) be deemed to have assumed any liabilities or obligations of Custom Coals DIP or its predecessors in title, except to the extent expressly set forth in this Amended Consent Order and Agreement and the Plan. This Amended Consent Order and Agreement is not intended to create rights in any party other than the parties who have signed this Consent Order and Agreement.

11. **Stipulated Civil Penalties.**

a. If Utica or Robindale fail to comply in a timely manner with any term or provisions of Paragraphs 4 or 7 above, Utica or Robindale 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 \$150.00 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the 15th day of each succeeding month, and shall be payable to and shall be sent to the District Mining Manager, with a copy to Dennis Whitaker, at the address set forth in paragraph 14 below.

12. **Additional Remedies.**

a. If Utica or Robindale fail to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this Paragraph and Paragraph 11 (Stipulated Civil Penalties) 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.

13. **Liability of Operator.** Utica and Robindale 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. Utica and Robindale also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

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

District Mining Manager
Commonwealth of Pennsylvania
Department of Environmental Protection
Bureau of District Mining Operations
286 Industrial Park Road
Ebensburg, PA 15931-4119

with a copy to:

Dennis Whitaker
Assistant Counsel
Commonwealth of Pennsylvania
Department of Environmental Protection
Office of Chief Counsel
909 Elmerton Avenue
Harrisburg, PA 17110-8200

15. **Correspondence with Utica, Robindale and Custom Coal DIP.**

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

Frank L. Madia, Esq.
Utica Mutual Insurance Company
P.O. Box 6568
Utica, New York 13504-6568

with a copy to:

William T. Gorton III, Esquire
Stites and Harbison
2300 Lexington Financial Center
250 West Main Street
Lexington, KY 40507

b. All correspondence with Robindale concerning this Consent Order and Agreement shall be addressed to:

Neil W. Hedrick, President
Robindale Energy Services, Inc.
Suite 130
1001 Broad Street
Johnstown, PA 15906

c. All correspondence to Custom Coals DIP concerning this Consent Order and Agreement shall be addressed to:

Custom Coals Laurel Debtor in Possession
700 Fifth Avenue
New Brighton, PA 15066

with a copy to:

Mark E. Freedlander, Esq.
McGuireWoods, LLP
Frick Building, Seventh Floor
Pittsburgh, PA 15219-6003

Utica, Robindale and Custom Coals DIP 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.

16. Force Majeure.

a. If Utica and Robindale is prevented from complying in a timely manner with any time limit imposed in this Amended Consent Order and Agreement because of strike, fire, flood, act of God, or other circumstances beyond Utica and Robindale's control and which Utica and Robindale, by the exercise of all reasonable diligence, is unable to prevent, then Utica and Robindale may petition the Department for an extension of time, which extension will not unreasonably be refused. An increase in the cost of performing the obligations set forth in paragraphs 4 or 6 of this Amended CO&A shall not constitute circumstances beyond Utica and Robindale's control. Utica and Robindale's economic inability to comply with any of the obligations of this Amended CO&A shall not be grounds for any extension of time.

b. Utica and Robindale 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 Utica and Robindale to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within 10 working days of its submission. Utica and Robindale'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, acting reasonably, will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by Utica and Robindale and other information available to the Department. In any subsequent litigation, Utica and Robindale 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.

17. **Reservation of Rights.** The Department reserves the right to require additional measures to achieve compliance with applicable law. Utica and Robindale reserves the right to challenge any action which the Department may take to require those measures.

18. **Severability.** The paragraphs of this Amended CO&A 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.

19. **Entire Agreement.** This Amended CO&A shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or intent of any provisions herein in any litigation or any other proceeding.

20. **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 Amended CO&A.

21. **Modifications.** No changes, additions, modifications, or amendments of this Amended CO&A shall be effective unless they are set out in writing and signed by the parties hereto.

22. **Effective Date.** This Amended CO&A is effective upon execution of the Amended CO&A by all parties.

23. **Titles.** A title used at the beginning of any paragraph of this Amended CO&A may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

24. **Counterparts.** This Amended CO&A may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Facsimile signatures shall be valid and effective.

IN WITNESS WHEREOF, the parties hereto have caused this Amended CO&A to be executed by their duly authorized representatives. The undersigned representatives of Utica and Robindale certify under penalty of law, as provided by 18 Pa. C.S. §4904, that they are authorized to execute this Amended CO&A on behalf of Utica and Robindale, that Utica and Robindale consents to the entry of this Amended CO&A as a final ORDER of the Department; and that Utica and Robindale hereby knowingly waives their rights to appeal this Amended CO&A and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. §7514; the Administrative Agency Law, 2 Pa. C.S. §103(a) and Chapters 5A and 7A thereof, or any other provision of law. Signature by the attorney for Utica and Robindale certifies only that the agreement has been signed after consulting with counsel.

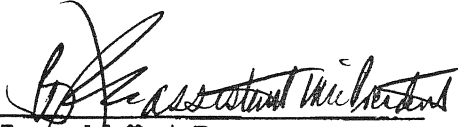
Counsel for the Debtor, Custom Coals Laurel, is directed to serve copies of this Order of Court on all creditors and parties-in-interest in the above-captioned proceeding. Any objection to this Order of Court must be filed with the Clerk of the Bankruptcy Court within ten (10) days of the date of this Order.


BY THE COURT:


Judith H. Fitzgerald

cc: Sally E. Edison, Esq.

FOR UTICA


Bernard J. Turi, Esq.
Assistant Vice President


George Wardley
Secretary


William T. Gorton III, Esq.
Counsel for Utica Mutual Insurance Co.

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

Donald R. Barnes
District Mining Manager

Dennis A. Whitaker
Assistant Counsel

FOR ROBINDALE

Neil Hedrick
President

**FOR CUSTOM COALS LAUREL
DEBTOR IN POSSESSION**

Robin Godfrey
President

Mark E. Freedlander, Esq.
Counsel for Custom Coals Laurel
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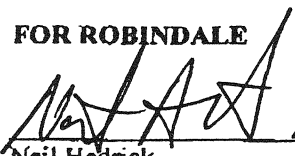
Donald R. Barnes
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Counsel for Utica Mutual Insurance Co.

FOR ROBINDALE

 1/3/2003

Neil Hedrick
President

**FOR CUSTOM COALS LAUREL
DEBTOR IN POSSESSION**

Robin Godfrey
President

Mark E. Freedlander, Esq.
Counsel for Custom Coals Laurel
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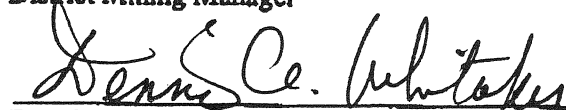
**FOR CUSTOM COALS LAUREL
DEBTOR IN POSSESSION**

Robin Godfrey
President

Mark E. Freedlander, Esq.
Counsel for Custom Coals Laurel
Debtor in Possession

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


Donald R. Barnes
District Mining Manager


Dennis A. Whitaker
Assistant Counsel



Pennsylvania Department of Environmental Protection

Bureau of District Mining Operations
286 Industrial Park Road
Ebensburg, PA 15931-4119
November 20, 2002

Cambria Office

814-472-1900
FAX NUMBER 814-472-1898

Rusty Taylor
Robindale Energy Services, Inc.
Suite 130
1001 Broad Street
Johnstown, PA 15906

Dear Mr. Taylor:

My staff has reviewed the revised reclamation proposal for the Laurel Refuse Pile in Shade Township, Somerset County.

This plan is approved and will be accepted in lieu of the Government Financed Construction Contract application previously referenced in a draft Consent Order and Agreement between Robindale, Utica, and the Department and will be an attachment to the final executed Consent Order and Agreement between all parties.

As per your telephone conversation with Joel Pontorero and Tim Kania, this approval is subject to the following conditions:

1. There shall be no stockpiling of off-site coal refuse without approval from the Department.
2. You may not remove any coal refuse from the site until the Supplemental 'C' for Robindale Energy has been recorded in the Somerset County Recorder of Deeds Office.
3. You may not conduct mining activities within 100 feet of the Stump Cemetery.
4. You must submit a revegetation plan in accordance with 25 PA Code 90.33 prior to replanting the site.

If you have any questions, please contact me. Otherwise we will proceed with final execution of the appropriate documents.

Sincerely,

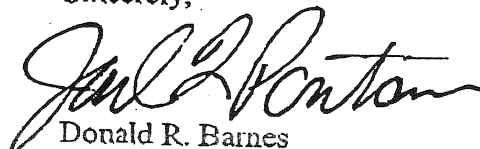

Donald R. Barnes
District Mining Manager

EXHIBIT
A



Project Narrative:

- Custom Coals is a Debtor in Possession (DIP), filed a petition for voluntary relief under Chapter 11.
- Custom Coals operated a coal refuse disposal area (CRDP #56743701) in Shade Township, Somerset County.
- Custom Coals DIP is the owner of the Laurel refuse site and is obligated to treat pollutional discharges as the operator of a mine and as the owner of the property.
- The Laurel refuse site is the source of a perpetual acid mine drainage pollutional discharge which is being treated with a conventional chemical water treatment system.
- Custom Coal DIP has agreed to transfer ownership of the Laurel refuse site, including real and personal property contained thereon to Robindale in consideration of Robindale assuming the abatement and reclamation of the property.
- Robindale is a PA Corporation whose business includes coal refuse reprocessing and mine land reclamation.
- Utica is a New York Corporation with a business address of 180 Genesee Street, New Hartford, NY 13413, whose business includes the issuance of surety bonds for mining operations in PA.
- DEP notified Custom Coals and Utica on 4/16/97 of its intent to forfeit the bond on the Laurel refuse site (CRDP #56743701) as a result of numerous unabated violations.
- By letter dated 5/21/99, DEP forfeited the bond posted for the Laurel refuse site (bond number SU 1908650) in the amount of \$69,000.
- Utica appealed unsuccessfully and on 11/1/99, DEP collected the above bond.
- On 11/8/99, the DEP declared forfeit the bond posted for the Laurel Prep Plant, CMAP #56931601, bond number SU 1741631, in the amount of \$827,440.
- Utica appealed the forfeiture, then later withdrew and by order dated 9/11/00 the EHB dismissed the appeal to bond forfeiture.
- Under the Surface Mining Act, a corporate surety issuing bond which is forfeited shall have the option of reclaiming the forfeited site upon the consent and approval of the Department.
- Through negotiations with the DEP, Utica has elected to utilize bond number SU 1741631 in the amount of \$827,440 for the Laurel prep plant to perform reclamation activities on behalf of Custom Coals DIP at the Laurel refuse site and the Laurel prep plant in return for the Department's waiver of collection of the bond.
- Robindale, on behalf of Utica, has agreed to undertake the existing water treatment and reclamation obligation at the Laurel refuse site and the Laurel prep plant.
- Robindale's abatement and reclamation include the following;
 - Construct new treatment facilities.
 - Collect and treat AMD water from the Laurel refuse site.
 - Temporary coal waste storage.
 - Remove all useable coal refuse from the site for use in combustion.

Project Narrative continued:

- Return / receive the bottom / fly ash resulting from the combustion of this coal refuse on a ton for ton basis to mix with unusable coal refuse and aid in regrading site.
- Revegetate site.
- After completion of the abatement plan, construct passive treatment facilities to aid in final and permanent treatment of discharges from the site, will be to Best Professional Judgments (BPJ) standards.

Robindale Energy Services, Inc.
 Laurel Reclamation Plan
 CRDP # 56743701
 Shade Township, Somerset County

Timetable of events:

4 th Quarter of 2002

- conduct site reconnaissance to collect appropriate water samples for mine parameter analysis, including domestic wells within 1000 feet.
- analyze down-gradient MW's, upstream and downstream in Miller Run, and refuse pile leachate for MOD 25 parameters.
- all MW's that are not going to be used for this project will be filled in.
- verify that upslope diversion channel is functioning.
- enlarge existing primary AMD treatment pond.
- excavate additional primary and secondary AMD treatment ponds.
- excavate several AMD sludge holding basins.
- begin interim AMD treatment with liquid caustic wheel treater.
- move existing hydrated lime silo from current location at top of hill down to new AMD treatment located below refuse pile near Miller Run.
- begin chemical treatment of raw waste coal pile leachate, treatment to continue until all waste coal has been removed and the ash pile is vegetated.
- perform clean up work around prep plant, as per CO & A and upon DEP obtaining access approval from landowner.

Prior to waste coal removal activities:

- at various times fuel quality refuse may be stockpiled on-site. If such refuse is stockpiled, it will be laid down in maximum two feet thick lifts and compacted. The surface of this pile will be watered as needed to avoid blowing dust.

August, September and October 2006

- collect and submit to DEP 3 rounds of water sample analyses for all MW's, Miller Run, refuse pile leachate and NPDES discharge of treated AMD water.

March, April and May 2007

- collect and submit to DEP 3 rounds of water sample analyses for all MW's, Miller Run, refuse pile leachate and NPDES discharge of treated AMD water.

Waste coal / ash disposal activities: beginning in June 2007

- construct new upslope diversion channel.
- clear and grub vegetation.
- stockpile at least 2 feet of soil / subsoil from area where ash disposal is anticipated.
- seed and mulch topsoil when appropriate.

Timetable of events continued -

- direction of waste coal removal will be from south to north.
- waste coal will be removed at 2500 tons per day.
- ash will be returned at a rate not to exceed the waste coal removal rate.
- any coal refuse that is deemed unusable will be mixed in with the returning ash.
- a water truck will be available on-site to water roads and ash.
- initial ash will be placed upslope to the east immediately adjacent to the waste coal pile.
- once waste coal removal activities have uncovered enough original ground then ash operations will move from the adjacent upslope area.
- any groundwater encountered will be analyzed.
- ash disposal activities will then chase the waste coal removal operations from south to north.
- each ash lift will be limited to no greater than two feet in thickness and a percentage compaction standard will be established at 90% of maximum dry density.
- place soil (1 foot min.) once final contours achieved and vegetate spring and fall.
- every effort will be made to blend ash into surrounding topography.
- all AMD sludge that has been accumulated in holding ponds will be moved up and blended into the ash.

Post removal / disposal operations; December 2010

- convert primary and secondary ponds to shallow water wetlands for potential passive treatment.
- fix any rills or gullies that may develop, reseed if necessary.
- oversee final reclamation for one year beyond successful vegetation.