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EX-172B

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**UTICA MUTUAL INSURANCE
COMPANY**

v.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

**EHB DOCKET NO. 2005-347-K
(Consolidated with EHB Docket
Nos. 2005-348-K, 2005-349-K,
2005-350-K, 2005-351-K, and
2005-352-K**

**Askey Mine (SMP # 33860114)
Askey #2 Mine (SMP # 33940106)
Askey #3 Mine (SMP # 33970112)
Turkey Hill Mine (SMP # 17870116)
Turkey Hill #2 Mine (SMP #
17900114)
Sanderson Mine (SMP # 17940124)
Keating Mine (SMP # 18840101)**

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 4th day of October

2006, by and between the Commonwealth of Pennsylvania, Department of
Environmental Protection ("Department") and Utica Mutual Insurance Company
("Utica").

FINDINGS

The Department has found and determined the following findings which Utica
agrees are true and correct.

Parties

A. The Department is the agency with the duty and authority to administer
and enforce the Surface Mining Conservation and Reclamation 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, 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 (the “Rules and Regulations”).

B. Utica is a 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.

C. Ed Hanslovan Coal Company, Inc. (“Hanslovan”) is a corporation with a business address of 2021 Allport Cutoff, Morrisdale, Pennsylvania 16858, whose business included the mining of coal by the surface method.

D. At all times material hereto, Hanslovan was authorized to conduct surface mining in Pennsylvania pursuant to Surface Mining Operator’s License No. 1304, which is now expired.

HANSLOVAN RECLAMATION SITES

E. Hanslovan conducted coal surface mining in the Commonwealth at the following sites: Askey Mine in Snyder and Washington Townships, Jefferson County, pursuant to Surface Mining Permit (“SMP”) No. 33860114; the Askey #2 Mine in Snyder and Washington Townships, Jefferson County, pursuant to SMP No. 33940106; the Askey #3 Mine in Washington Township, Jefferson County, pursuant to SMP No. 33970112; the Turkey Hill Mine in Boggs Township, Clearfield County, pursuant to SMP No. 17870116, the Turkey Hill #2 Mine in Boggs Township, Clearfield County, pursuant to SMP No. 17900114, the Sanderson Mine in Morris Township, Clearfield County, pursuant to SMP No. 17940124 (collectively, the “Hanslovan Reclamation Sites”). Those sites are more fully described below.

ASKEY MINE

F. In support of, and as a condition to, the Department's issuance of SMP No. 33860114, Hanslovan posted the following bonds:

Bond No.	Bond Amount
SU1716155	\$ 13,435
SU1716158	\$ 33,400
SU1716160	\$ 14,480
SU1857858	\$ 2,200

G. By letter dated December 19, 2005, the Department notified Hanslovan and Utica of the Department's declaration of bond forfeiture on bonds posted for the Askey Mine. The Department's action was based upon Hanslovan's outstanding violations of the Surface Mining Act, The Clean Streams Law and the rules and regulations promulgated thereunder, including but not limited to: failure to reclaim all affected areas, failure to comply with an Order of the Department, and failure to maintain liability insurance.

ASKEY #2 MINE

H. In support of, and as a condition to, the Department's issuance of SMP No. 33940106, Hanslovan posted the following bonds:

Bond No.	Bond Amount
SU1857863	\$ 2,380
SU1857864	\$ 84,000
SU1857866	\$ 40,400
SU1857869	\$ 11,200
SU2260001	\$ 6,700

I. By letter dated December 19, 2005, the Department notified Hanslovan and Utica of the Department's declaration of bond forfeiture on bonds posted for the Askey #2 Mine. The Department's action was based upon Hanslovan's outstanding

violations of the Surface Mining Act, The Clean Streams Law and the rules and regulations promulgated thereunder, including but not limited to: failure to reclaim all affected areas, failure to monitor the surface water, and failure to comply with an Order of the Department.

ASKEY #3 MINE

J. In support of, and as a condition to, the Department's issuance of SMP 33970112, Hanslovan posted the following bond and certificate of deposit:

Bond No.	Bond Amount
SU 2259999	\$10,780
Cert. of Dep. #1553019769 Northwest Savings Bank	\$12,024.44

K. By letter dated December 19, 2005, the Department notified Hanslovan and Utica of the Department's declaration of bond forfeiture on the bond and the certificate of deposit posted for the Askey #3 Mine. The Department's action was based upon Hanslovan's outstanding violations of the Surface Mining Act, the Clean Streams Law and the rules and regulations promulgated thereunder including, but not limited to: failure to reclaim all affected areas, failure to monitor surface water, and failure to comply with an order of the Department, failure to maintain liability insurance for the duration of mining and reclamation.

TURKEY HILL MINE

L. In support of, and as a condition to the Department's issuance of SMP No. 17870116, Utica posted the following bonds:

Bond No.	Bond Amount
SU1638438	\$ 42,035

M. By letter dated December 19, 2005, the Department notified Hanslovan and Utica of its declaration of bond forfeiture on bonds posted for the Turkey Hill Mine. The Department's action was based upon Hanslovan's outstanding violations of the Surface Mining Act, the Clean Streams Law and the rules and regulations promulgated thereunder, including, but not limited to: failure to reclaim all affected areas, failure to comply with an order of the Department, and failure to revegetate with proper species.

TURKEY HILL #2 MINE

N. In support of, and as a condition to the Department's issuance of SMP No. 17900114, Hanslovan posted the following bonds:

Bond No.	Bond Amount
SU1716136	\$ 13,320

O. By letter dated December 19, 2005, the Department notified Hanslovan and Utica of its declaration of bond forfeiture on bonds posted for the Turkey Hill #2 Mine. The Department's action was based upon Hnaslovan's outstanding violations of the Surface Mining Act, the Clean Streams Law and the rules and regulations promulgated thereunder, including, but not limited to: failure to reclaim all affected areas, failure to revegetate with proper species of trees, failure to comply with an order of the Department, and failure to maintain liability insurance.

SANDERSON MINE

P. In support of, and as a condition to the Department's issuance of SMP No. 17940124, Hanslovan posted the following bonds and cash collateral:

Bond No.	Bond Amount
SU1857865	\$ 11,520
SU1857870	\$ 38,700
Check # 32798	\$ 6,540

Q. By letter dated December 19, 2005, the Department notified Hanslovan and Utica of its declaration of bond forfeiture on the bonds and on the cash collateral posted for the Sanderson Mine. The Department's action was based upon Hanslovan's outstanding violations of the Surface Mining Act, the Clean Streams Law and the rules and regulations promulgated thereunder, including, but not limited to: failure to reclaim all affected areas, failure to submit ground water and surface water monitoring data, failure to comply with an order of the Department, and failure to maintain liability insurance.

R. Utica timely filed appeals of the bond forfeitures on the Hanslovan Reclamation sites with the Environmental Hearing Board (EHB) which were docketed at EHB Docket No. 2005-347-K (Consolidated with EHB Docket Nos. 2005-348-K, 2005-349-K, 2005-350-K, 2005-351-K and 2005-352-K). Hanslovan failed to appeal any of the above referenced bond forfeiture declarations to the EHB.

HANSLOVAN ACID MINE DRAINAGE SITE – KEATING MINE

S. In support of, and as a condition to the Department's issuance of SMP # 18840101, Hanslovan posted the following bond:

Bond No.	Bond Amount
SU1716137	\$75,880

The Department by Administrative Order issued on November 19, 1999 directed Hanslovan to treat and or rebuild existing treatment systems for five discharges on the Keating site. Hanslovan appealed to the EHB and sought and then withdrew its request for a supersedeas. To resolve that litigation, Hanslovan and the Department entered into a Consent Order and Agreement (CO&A) on June 1, 2001, which provided that

Hanslovan would design and construct passive treatment systems for the five discharges. Hanslovan failed to comply with the CO&A and the discharges require construction of treatment systems and/or continued maintenance of existing systems. The cost of construction and maintenance of those treatment systems will exceed the bond amount.

T. By letter dated July 1, 2005, the Department notified Hanslovan and Utica of its declaration of bond forfeiture on bonds posted for the Keating Mine. The Department's action was inter alia based upon Hanslovan's outstanding violations of the June 1, 2001 CO&A, which violations constitute violations of the Surface Mining Act, the Clean Streams Law and the rules and regulations promulgated thereunder.. The forfeiture was not appealed by Utica or by Hanslovan.

U. Parties desire to resolve the foregoing matters without resort to further litigation or administrative process. Pursuant to this Consent Order and Agreement, Utica will perform the activities described herein and the Department will irrevocably waive collection of or release of Utica's bonds according to the conditions described herein, with the exceptions noted for the certificates of deposit and the cash collateral referenced above.

ORDER AND AGREEMENT

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

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5 of the Clean Streams Law, 35

P.S. § 691.5; 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. Utica agrees that the findings in Paragraph A through U are true and correct and, in any matter or proceeding involving Utica and the Department, Utica shall not challenge the accuracy or validity of the 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. **Withdrawal of Appeals.** Within ten (10) days of the date of this Consent Order and Agreement, Utica shall withdraw its six appeals of the Bond Forfeiture Declarations related to the Hanslovan Reclamation Sites which are presently before the Environmental Hearing Board docketed at EHB Docket No. 2005-347-K (Consolidated).

4. **The Bonds.**

a. The surety bonds and other financial assurances described in Paragraphs F, H, J, L, N, P, S and T are forfeit and final.

b. As is fully described in Paragraph 8, the Department agrees to release or waive collection of the surety bonds on a site by site basis upon completion of the tasks described below.

c. The non-surety financial assurances identified in Paragraphs J and P above which includes the certificate of deposit and/or cash collateral are assigned to the Hanslovan Treatment Trust which will be established by the Department for use in maintaining the Keating site as referenced in Paragraph 7 below. The surety bond for the Keating site identified in Paragraph S above likewise is assigned to the Hanslovan Treatment Trust as described in Paragraph 7 below.

5. **The Reclamation Plans.** The Reclamation Plans for the Hanslovan Reclamation Sites are attached as Exhibit A and are approved by the Department and incorporated herein as an obligation of Utica under this Consent Order and Agreement. Utica need not obtain any additional authorizations from the Department. With the Department's consent, the Reclamation Plans may include or be amended to include proposed land use changes or requests for retention of ponds, ditches or other facilities to remain as permanent structures if accompanied by landowner requests on forms approved by the Department. The Department's waiver of collection in accordance with Paragraph 8 and agreement to settlement and release in Paragraph 11 are in consideration of Utica's implementation of the approved Reclamation Plan in accordance with Paragraph 6. The Reclamation Plans comprise Utica's full and total obligation regarding reclamation of the Hanslovan Mines subject to this Consent order and Agreement, as authorized by Section 4(h) of the SMCRA. Waiver of bond collection will be in accord with Paragraph 8.

6. **Schedule of Reclamation Activities.** Utica shall complete the construction and reclamation activities identified in the Reclamation Plans no later than May 30, 2007. Trees will be planted during the dormant season, but no later than April 15, 2007.

7. **Keating Mine Trust.** Within thirty (30) days of execution of this Consent Order and Agreement, Utica will deposit the full bond amount of \$75,880 related to SMP # 18840101 into a Post-mining treatment trust for the operation and maintenance of the Keating Mine treatment system.

8. **Procedures Relating to the Department's Release or Waiver of Bond Collection.**

Waiver of Bond Collection.

a. The Department agrees to waive collection of Utica's bonds upon completion of reclamation on a site by site basis described in this Agreement. Although Utica is required to complete the work set forth in the Reclamation Plan no later than the dates set forth in Paragraph 6 above, Utica may request that the Department waive collection of any applicable portion of Utica's bonds at any time by submitting a written notice to the Department that specifies the work that has been completed in accordance with the Reclamation Plan. The Department has agreed to respond in writing to any such request within forty-five (45) days of receipt of notice. In the event that the Department disapproves of Utica's , the Department's response will identify specific actions that must be undertaken in order for the Department to approve of the requested waiver.

b. The Department will waive collection of Bond No. SU1716137 on SMP # 18840101, the Keating Mine upon a demonstration that payment to the Trust described in paragraph 7 has been made.

9. **Limitation of Liability.** Utica's performance of reclamation obligations under this Consent Order and Agreement shall be in Utica's role solely as a surety. For purposes of this Consent Order and Agreement, Utica shall not by virtue of this Consent Order and Agreement or any activities hereunder; (i) be deemed an "operator of a mine" or an "occupier of land" or a party related to Hanslovan under Section 315 or 316 of The Clean Streams Law, 35 P.S. §§ 691.315 or 691.316, or under the Surface Mining act or any regulations promulgated thereunder; or, (ii) be deemed to have assumed any

liabilities or obligations of Hanslovan except to the extent expressly set forth in this Consent Order and Agreement. This Consent Order and Agreement is not intended to create rights in any parties other than those who have signed below.

10. **Force Majeure.**

a. In the event that Utica is prevented from complying in a timely manner with any time limit in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstances beyond Utica's control and which Utica, by the exercise of all reasonable diligence, is unable to prevent, then Utica 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 Utica's control.

b. Utica 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) 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 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'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 to grant all or part of the extension requested on the basis of all documentation submitted by Utica and other information

available to the Department. In any subsequent litigation, Utica 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.

11. **Settlement and Release.** The Department accepts Utica's performance of the Reclamation Plans as full settlement and compromise of the Department's claims concerning Utica's bonds so long as Utica complies with this Consent Order and Agreement, the Department releases and forever discharges Utica and its officers, shareholders, agents, attorneys, employees, successors and assigns from any and all claims and demands of whatsoever nature or kind, at law or in equity Utica's bonds and the Hanslovan Mines.

12. **Decisions Under the Consent Order and Agreement.** With the exception of any determinations by the Department under Paragraph 8 or 16 of this Consent Order and Agreement (i.e., waivers of collection of Utica's Bonds), any decision or determination made by the Department regarding the terms and obligations of this Consent Order and Agreement 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 Utica may have to the decision will be preserved until the Department enforces this Consent Order and Agreement. In the event of any appeal of a determination by the Department under Paragraph 8 or 16 of this Consent Order and Agreement, the Department agrees not to take action to collect Utica's bonds unless and until the appeal is resolved in favor of the Department.

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

Michael W. Smith
District Mining Manager
Moshannon Office
186 Enterprise Drive
Phillipsburg, Pennsylvania 16866

Javid Mirza
District Mining Manager
Knox Office
White Memorial Building, P.O. Box 669
Knox, Pennsylvania 16232-0669

With a courtesy copy to:

Dennis A. Whitaker, Esq.
South Central Regional Counsel's Office
Pennsylvania Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, Pennsylvania 17110

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 addresses. Either or both of the foregoing addresses may be changed by the Department providing written notice to the parties. Any notice provided hereunder shall be deemed delivered and effective seven days after the date of mailing as aforesaid.

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

Jason Jaskolka, Esq.
Utica Mutual Insurance Company
P.O. Box 6568
Utica, New York 13504-6568

with a courtesy copy to:

William T. Gorton III, Esq.
Stites & Harbison, PLLC
250 West Main Street
Lexington, Kentucky 40507
(859) 226-2241

Service of any notice or any legal process under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first-class mail to the above addresses. Either or both of the foregoing addresses may be changed by Utica providing written notice to the parties. Any notice provided hereunder shall be deemed delivered and effective seven days after the date of mailing as aforesaid.

15. **Entire Agreement.** This Consent Order and Agreement shall contain 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.

16. **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.

17. **Modifications.** No changes, additions, modifications or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the Parties hereto.

18. **Effectiveness.** This Consent Order and Agreement shall not become effective unless and until: (a) this Consent Order and Agreement is executed by Utica and the Department.

19. **Notice; Collection.**

a. If the Department determines that Utica has failed to comply in a timely manner with any requirements of this Consent Order and Agreement, the Department shall give written notice to Utica stating in detail in what respect(s) the Sureties have failed to comply with these requirements. Utica shall reply to the Department in a timely manner, but in no event later than 30 days after receipt of the notice, and identify actions Utica has taken and/or proposes to take, if any, to address the Department's concerns, including a proposed schedule of work.

b. The Department agrees that it will not seek to collect all or any portion of Utica's bonds prior to following the procedure set forth in Paragraph 19a.

20. **Counterparts.** This Consent Order and Agreement may be executed in counterparts, each of which is an original for all purposes.

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 Utica 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 Utica; that Utica consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Utica hereby knowingly waives its rights to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by Utica's attorney certifies only that the agreement has been signed after consulting with counsel.

UTICA MUTUAL INSURANCE
COMPANY

Name:
Title:

PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

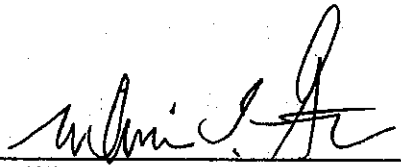


Name:
Title:

COUNSEL TO PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION



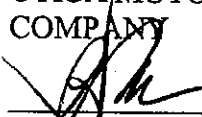
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William T. Gorton III, Esq.
Attorney for Utica Mutual Insurance Company

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UTICA MUTUAL INSURANCE
COMPANY


Name: Bernard J. Turci
Title: Assistant Vice President

PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Name:
Title:

COUNSEL TO PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Name:
Title:

William T. Gorton III, Esq.
Attorney for Utica Mutual Insurance Company

