

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of

Wilson Creek Holdings, Inc. 4600 J. Barry Court Suite 220 Canonsburg, Pennsylvania 15317	:	PBS Coals, Inc. SMP No. 56070103 (Trent Mine) Stoneycreek Township, Somerset County
	:	
PBS Coals, Inc. 1576 Stoystown Road Friedens, Pennsylvania 15541	:	Wilson Creek Energy, LLC SMP No. 56980103 (Acosta Mine No. 2) Jenner and Lincoln Townships, Somerset County
	:	
Wilson Creek Energy, LLC 1576 Stoystown Road Friedens, Pennsylvania 15541	:	Alternative Financial Assurance Mechanism
	:	

**POSTMINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT**

This Post-Mining Treatment Trust Consent Order and Agreement is entered into this 13<sup>th</sup> day of December, 2018, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), and PBS Coals, Inc. (“PBS”), Wilson Creek Energy, LLC (“Wilson Creek”), and, for purposes of Paragraph 6 c., only, as a guarantor, Wilson Creek Holdings, Inc. (“WCH”).

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, 52 P.S. §§ 1396.1 *et seq.* (Surface Mining Act”); the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, 52 P.S. §§ 1406.1 *et seq.* (“Mine Subsidence Act”); the Coal Refuse Disposal Control Act, Act of September 24, 1968, P.L. 1040, 52 P.S. §§ 30.51 *et seq.* (“Coal Refuse Disposal Act”); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, 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, 71 P.S. § 510-17 (“Administrative Code”) and the rules and regulations promulgated thereunder.

B. Pursuant to Section 4(d.2) of the Surface Mining Act, 52 P.S. § 1396.4(d.2), the Department may establish alternative financial assurance mechanisms which shall achieve the objectives and purposes of the bonding program. These mechanisms include the establishment of a site-specific trust fund funded by a mine operator for the treatment of post-mining discharges of mine drainage. The post-mining treatment trust being established as required by this Consent Order and Agreement through the accompanying Post-Mining Discharge Treatment Trust Agreement constitutes an alternative financial assurance mechanism authorized by Section 4(d.2) of the Surface Mining Act. Pursuant to Sections 5, 315 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.315 and 691.610, Section 4.3 of 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, and Section 9 of the Mine Subsidence Act, 52 P.S. § 1406.9, the Department has authority to issue such orders as are necessary to aid in the enforcement of the provisions of these acts, including orders compelling an operator to establish a post-mining discharge treatment trust as an alternative financial assurance mechanism.

C. PBS is a Delaware corporation, with a business address of P.O. Box 260, 1576 Stoystown Road, Friedens, PA 15541. PBS is engaged in surface and underground mining of coal in Pennsylvania pursuant to Surface Mining Operators License No. 1231.

D. The principal officers of PBS are Peter Merritts, President; Robert Bottegal, Vice President, and; Daniel Bonacci, Chief Financial Officer and Secretary.

E. Wilson Creek is a Delaware limited liability company, with a business address of P.O. Box 260, 1576 Stoystown Road, Friedens, PA 15541. Wilson Creek is engaged in surface

and underground mining of coal in Pennsylvania pursuant to Surface Mining Operators License No. 24980.

F. The officers of Wilson Creek are George G. Dethlefsen, Chief Executive Officer, Peter Merritts, President – NAPP Division, Robert Bottegal, Senior Vice President, Daniel Bonacci, Chief Financial Officer and Kenneth J. Lund, Secretary. QKGI Legacy Holdings, LP and Wilson Creek Holdings, Inc. are LLC Members. QKGI Legacy Holdings, LP has a 19% interest in Wilson Creek and WCH has an 81% interest in Wilson Creek. Wilson Creek continues to exist as a separate limited liability company.

G. WCH is a Delaware corporation, with a business address of 4600 J. Barry Court, Suite 220, Canonsburg, Pennsylvania 15317.

H. The principal officers of WCH are George Dethlefsen, CEO, Kevin M. Harrigan, CFO and Secretary, Peter Merritts, President – NAPP Division, Kenneth J. Lund, General Counsel and Vice President – Administration, and Matthew M. Schicke, Chief Commercial Officer.

I. WCH acquired 100% of the issued and outstanding shares of capital stock of PBS. PBS continues to exist as a separate corporate entity.

J. Based upon the definition of “owns or controls” as set forth at 25 Pa. Code §86.1, WCH owns or controls PBS and Wilson Creek.

## **COAL MINE PERMITS**

### **Trent Mine (SMP No. 56070103)**

K. PBS is the permittee and operator of the Trent Mine site, SMP No. 56070103 (“Trent Mine”), a surface coal mine located in Stonycreek Township, Somerset County, Pennsylvania, which is associated with post-mining discharge liability.

L. The Department issued the original Surface Mining Permit (“SMP”) No. 56070103

for the Trent Mine to PBS on October 23, 2007. The SMP was most recently renewed on June 29, 2017 for reclamation only. The only activity remaining on the site is final backfilling requirements and the active treatment of a mine discharge.

M. A summary of the reclamation bond currently posted for the Trent Mine is as follows:

PERMIT NO.	BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT NO.	BOND STATUS	BOND AMOUNT
56070103	Surety	Lexon Ins. Co.	1097628	Active	\$4,728,542.00

**Acosta Mine No. 2 (SMP No. 56980103)**

N. Wilson Creek is the permittee and operator of the Acosta Mine No. 2 site, SMP No. 56980103 (“Acosta Mine No. 2”), a surface coal mine located in Jenner and Lincoln Townships, Somerset County, which is associated with post-mining discharge liability.

O. The Department issued the original Surface Mining Permit (“SMP”) No. 56980103 for the Acosta Mine No. 2 to Godin Brothers, Inc. on February 4, 1999. The SMP was transferred to Wilson Creek on April 21, 2011. The SMP was renewed on May 5, 2014 for reclamation only. The Acosta Mine No. 2 is fully reclaimed, and the only activity remaining on the site is the active treatment of a mine discharge.

P. A summary of the reclamation bond currently posted for the Acosta Mine No. 2 is as follows:

PERMIT NO.	BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT NO.	BOND STATUS	BOND AMOUNT
56980103	Surety	Lexon Ins. Co.	1097569	Active	\$42,312.00

**POST-MINING DISCHARGES**

**Trent Mine (SMP No. 56070103)**

Q. There is a substantial amount of pit water being pumped to a treatment facility on the Trent Mine SMP. The “SUMP discharge”, as the pit water is referred to, originates from a well-sump developed into the Upper Kittanning pit floor (“Trent Mine Sump”). PBS pumps the acid mine drainage (“AMD”) from the Trent Mine Sump to a hydrated lime treatment system for treatment. (“Trent Mine Sump Treatment System”).

R. A topographic map depicting the location of the SUMP discharge is attached as Exhibit A-1. The latitude and longitude coordinates for the SUMP discharge are: latitude 40° 00’ 42” and longitude -78° 55’ 46”.

S. The raw water quality of the SUMP discharge is set forth in Exhibit B-1.

T. The required effluent limits applicable for the SUMP discharge are set forth in NPDES Permit No. PA0262366, which was renewed by Department on June 29, 2017 and expires on October 23, 2022. This Permit is renewed every five years (pursuant to the authority in 25 Pa. Code Chapter 92a) and the effluent limits may change at the time of renewal or as required by the Department. The NPDES Permit for the Trent Mine currently contains Outfalls 001 and 007 for the mine drainage treatment facility which is used to treat the Sump discharge. Outfall 007 is not used and will be backfilled. PBS will revise their NPDES permit to reflect the elimination of this point. The current effluent limits are set forth in the table below.

**Effluent Limits for Trent Mine Sump Treatment System Discharge:**

<b>Parameter</b>	<b>30-Day Average</b>	<b>Daily Maximum</b>	<b>Instantaneous Maximum</b>
Iron (total)	1.5 mg/l	3.0 mg/l	3.7 mg/l
Manganese (total)	1.0 mg/l	2.0 mg/l	2.5 mg/l
Aluminum (total)	0.75 mg/l	1.5 mg/l	1.8 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH <sup>1</sup>		greater than 6.0; less than 9.5	

Alkalinity greater than acidity<sup>1</sup>

**Acosta Mine No. 2 (SMP No. 56980103)**

U. The Acosta Mine No. 2 has an AMD discharge from SP3A. SP3A is a Middle Kittanning pit drain. The AMD discharge from SP3A is diverted to Sediment Pond 2 where it is treated (“Acosta Mine SP3A Treatment System”).

V. A topographic map with the location of the SP3A is attached as Exhibit A-2. The latitude and longitude coordinates for SP3A are: latitude 40° 06’ 14” and longitude -78° 03’ 33”.

W. The raw water quality of SP3A is set forth in Exhibit B-2.

X. The Department renewed NPDES Permit PA0234699 for the Acosta Mine No. 2 on May 4, 2014, and it expires on February 4, 2019. This Permit is renewed every five years (pursuant to the authority in 25 Pa. Code Chapter 92a) and the effluent limits may change at the time of renewal or as required by the Department. The current effluent limits are set forth in the table below.

**Effluent Limits for Acosta Mine SP3A Treatment System Discharge:**

<b>Parameter</b>	<b>30-Day Average</b>	<b>Daily Maximum</b>	<b>Instantaneous Maximum</b>
Iron (total)	1.5 mg/l	3.0 mg/l	3.7 mg/l
Manganese (total)	1.0 mg/l	2.0 mg/l	2.5 mg/l
Aluminum (total)	0.75 mg/l	0.75 mg/l	0.75 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH <sup>1</sup>		greater than 6.0; less than 9.0	
Alkalinity greater than acidity <sup>1</sup>			

Y. PBS and Wilson Creek agree they have the legal responsibility pursuant to, *inter alia*, the Surface Mining Act and the Clean Streams Law to properly treat or abate the discharges identified in Paragraphs Q and U above.

## **POST-MINING TREATMENT TRUST**

Z. To address the post-mining discharge of pit water on the Trent Mine site, PBS pumps the AMD from the Trent Mine Sump through a Malstrom Oxidizer to a hydrated lime treatment system silo for treatment. The treated water flows through two settling basins and then passes through two smaller polishing ponds (T-1 ponds) where hydrochloric acid (HCL) is applied to keep the pH under 9.0 pH. The treated effluent from the Trent Mine Sump Treatment System discharges via Outfall 001 to Schrock Run. The Trent Mine Sump Treatment System is shown in the aerial photo attached as Exhibit C-1.

AA. The Trent Mine Sump Treatment System is situated on land owned by Roger W. Bisick Sr. and Kathleen Bisick; Rhonda and Douglas A. Henry; Brian E. and Selina I. Critchfield; and James A. and Gertrude E. Bell. PBS has obtained properly executed Consent to Right of Entry forms from Rhonda and Douglas A. Henry; Brian E. and Selina I. Critchfield; and James A. and Gertrude E. Bell which grant the Department, PBS, and the Trustee access to the Trent Mine Sump Treatment System. Copies of the executed Consent to Right of Entry forms are attached as Exhibit D-1. Despite offering fair and reasonable terms, PBS has been unable to obtain a Consent to Right of Entry form from Roger W. Bisick Sr. and Kathleen Bisick which grants the Department, PBS, and the Trustee access to the Trent Mine Sump Treatment System. PBS will extend its existing offer indefinitely to the Bisicks and/or their successors-in-title to obtain a Consent to Right of Entry which grants the Department, PBS, and the Trustee access to the Trent Mine Sump Treatment System and if it is able to obtain same, will submit such Consent to Right of Entry to the Department within 60 days of obtaining a fully executed version thereof. A copy of the Department's model treatment trust Consent to Right of Entry form is attached as Exhibit D-2.

BB. To address the post-mining discharge on the Acosta Mine No. 2 site, the AMD

discharge from SP3A is diverted to Sediment Pond 2 where it is treated with liquid caustic soda in the form of sodium hydroxide (NaOH). The treated effluent from the Acosta Mine SP3A Treatment System discharges via Outfall 004 to an Unnamed Tributary to Quemahoning Creek. The SP3A Treatment System is shown in the aerial photograph attached as Exhibit C-2.

CC. The Acosta Mine SP3A Treatment System is situated on land formerly owned by SWRCDR, LP. At the time the Acosta Mine SP3A Treatment System was situated on land formerly owned by SWRCDR, LP, Wilson Creek obtained from SWRCDR LP a properly executed Consent to Right of Entry form which grants the Department, Wilson Creek, and the Trustee access to the Acosta Mine SP3A Treatment System. A copy of the executed Consent to Right of Entry is attached as Exhibit D-3 and was recorded with Somerset County Recorder of Deeds on September 6, 2017 at Instrument No. 2017006431 and Deed Book 2654, page 221. On March 29, 2018, SWRCDR, LP conveyed such land to Stone Fence Farm LLC.

DD. In order to calculate the amount necessary to fully fund the trust, the Department, PBS, Wilson Creek, and WCH have agreed to use actual operation and maintenance costs from past operation of the Trent Mine Sump Treatment System and the Acosta Mine SP3A Treatment System (herein collectively referred to as the “Treatment Systems”) and AMDTreat software tool cost estimates where insufficient operation and maintenance cost data exist. A summary of current annual operation and maintenance costs for the Treatment Systems is as follows:



**Table of Current Annual Operation and Maintenance Costs**

<b>CATEGORY</b>	<b>SAMPLING</b>	<b>LABOR</b>	<b>MAINTENANCE</b>	<b>SLUDGE &amp; ELECTRIC</b>	<b>CHEMICAL</b>	<b>OTHER</b>
<b>Rate</b>	(\$35/sample)	(\$35/hr.)	(3.5% of total)			
<b>Trent Mine Annual Cost</b>	\$1,026	\$25,480	\$5,247	\$36,929	\$85,016	\$1,451
<b>Acosta Mine No. 2 Annual Cost</b>	\$1,026	\$6,720	\$596	\$1,000	\$8,125	\$150

EE. Based on actual operation and maintenance costs from the year 2017 and AMDTreat cost estimates, the current annual cost of operating and maintaining the Treatment Systems is \$155,149.00 for the Trent Mine Sump Treatment System and \$17,617.00 for the Acosta Mine SP3A Treatment System; for a total of \$172,766.00. The AMDTreat cost estimates are attached as Exhibits E-1 and E-2.

FF. In order to calculate the amount necessary to fully fund the trust, the Department, PBS, Wilson Creek, and WCH have agreed to use recapitalization and demolition cost data generated by the AMDTreat software tool. According to AMDTreat, the present value of recapitalization costs for the Trent Mine Sump Treatment System is \$143,926.00, and the present value of recapitalization costs for the Acosta Mine SP3A Treatment System is \$6,273.00; for a total recapitalization cost of \$150,199.00. The AMDTreat Recapitalization Cost schedules for the Treatment Systems are attached as Exhibits F-1 and F-2.

GG. PBS, Wilson Creek, and WCH are willing to establish a Post-Mining Treatment Trust with First National Trust Company as an alternative financial assurance mechanism, (and a financially-backed enforceable contract), in order to provide for the long-term treatment of their respective post-mining discharges and to secure the release of reclamation bonds upon completion of all other reclamation and bond release requirements and full funding of the trust. PBS, Wilson

Creek, and WCH agree to establish the PBS Wilson Creek Treatment Trust by executing a Post-Mining Treatment Trust Agreement with First National Trust Company which conforms with the Department's model trust agreement.

HH. 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 assurance.

II. The parties have agreed to use the formulas set forth below to calculate the present value of the PBS Wilson Creek Treatment Trust. The parties agree that the present value of the fully-funded PBS Wilson Creek Treatment Trust for the discharges covered by this Consent Order and Agreement is \$4,204,848.24. This sum constitutes the current present value of the estimated future operation and maintenance costs for the Treatment Systems in the amount of \$3,960,419.07, the current present value of the estimated future recapitalization costs for the Treatment Systems in the amount of \$150,199.00, and the current present value of the estimated future liability insurance costs for the Treatment Systems in the amount of \$94,230.17 as shown on the AMDTreat Treatment Bond/Trust Calculator attached as Exhibit G. The parties have also agreed to use the information and figures which will be provided by the Accounting required by Paragraph 4, below to recalculate and adjust the amount of the PBS Wilson Creek Treatment Trust as described in Paragraphs 8 and 10, below. The parties have agreed to the payment schedule set forth in Paragraph 6b, below.

## **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 PBS, Wilson Creek,

and WCH as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 5 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5 and 691.610; 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 PBS, Wilson Creek, and WCH to comply with any term or condition of this Consent Order and Agreement shall subject PBS, Wilson Creek, and WCH to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. PBS, Wilson Creek, and WCH agree that the findings in Paragraphs A through II are true and correct, and in any matter or proceeding involving PBS, Wilson Creek, and WCH, PBS, Wilson Creek, and WCH shall not challenge the accuracy or validity of these findings.

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

3. Definitions

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

b. Actual Treatment Cost. The average of three consecutive years of the costs and expenses of treatment, calculated by using the Accountings for those three years.

c. Annual Anniversary Date. Thirty (30) days after the last day of the fiscal year or thirty (30) days after the last day of any fiscal year which PBS and Wilson Creek may adopt in the future.

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:

$$\begin{aligned} \text{PV} &= (A/[E-I]) + A \\ \text{where: PV} &= \text{Present Value of the O\&M Costs} \\ A &= \text{Current Actual Treatment Cost} \\ E &= \text{Expected annual earnings/Interest Rate (assumed to be} \\ &\text{8.43\% or .0843)} \\ I &= \text{Inflation Rate (assumed to be 3.1\% or .031)} \end{aligned}$$

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% percent of the present value of the future cost of treatment as determined by the Formula.

j. Primary Trust Account. The sub-account within the Trust that is primarily used to finance annual operating and maintenance costs of the Treatment Systems.

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

#### 4. Annual Treatment Costs; Records; Factors; Accounting

a. PBS and Wilson Creek shall keep accurate financial records of all the costs

and expenses of annual treatment for each year. The various cost factors fall into several general categories, including, but not limited to: Reagent; Polymer; Electrical; Sludge Removal; Labor, including benefits; Maintenance; Sampling; Overhead; and Miscellaneous. The individual item shall be tracked and reported for each general category.

b. PBS and Wilson Creek shall keep separate records for each of the Treatment Systems covered by this Consent Order and Agreement.

c. PBS and Wilson Creek shall provide an annual accounting of the costs and expenses of annual treatment to the Department on or before the 90<sup>th</sup> day following the last day of the fiscal year for which the Accounting is being provided. The Accounting shall cover the period beginning on January 1 and continuing through December 31 of each year, or other fiscal year as PBS and Wilson Creek may adopt for their corporate finances in the future, and shall be in accordance with Generally Accepted Accounting Principles. The Accounting shall be accompanied by an affidavit of the treasurer or other corporate officer responsible for the financial affairs of PBS and Wilson Creek and by the President of PBS and Wilson Creek attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

d. PBS and Wilson Creek's obligation to keep records and provide the Accounting shall continue for the period during which PBS and Wilson Creek are operating the Treatment Systems.

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

5. Treatment Trust

a. Simultaneously with execution of this Consent Order and Agreement, PBS and Wilson Creek, and WCH, solely in its capacity as a guarantor, shall establish an irrevocable trust to be known as the **PBS Wilson Creek Treatment Trust** by executing a Post-Mining Treatment Trust Agreement with First National Trust Company. The PBS Wilson Creek Treatment Trust shall secure PBS and Wilson Creek's respective obligations to treat the SUMP discharge located on the Trent Mine SMP and the SP3A discharge located on the Acosta Mine No. 2 SMP, including their respective legal obligations to operate and maintain the Treatment Systems in perpetuity or until water treatment is no longer necessary. The PBS Wilson Creek Treatment Trust shall also secure PBS, Wilson Creek, and WCH, as a guarantor, obligation to provide financial resources to the Department and the citizens of the Commonwealth sufficient to operate and maintain the Treatment Systems and to treat the mine drainage in perpetuity in the event PBS, Wilson Creek, and WCH, as a guarantor, become unable or unwilling to provide these financial obligations. The PBS Wilson Creek Treatment Trust Agreement shall provide for the demolition of treatment facilities and reclamation of the treatment site should treatment no longer be needed. The PBS Wilson Creek Treatment Trust Agreement establishing the PBS Wilson Creek Treatment Trust is attached as Exhibit H.

b. PBS and Wilson Creek shall establish within the PBS Wilson Creek Treatment Trust two sub-accounts: (i) a sub-account designated as the Primary Trust Account; and, (ii) a sub-account designated as the Capital Improvement Account.

c. Upon 30 days prior notice to the Department, PBS and Wilson Creek may

post an appropriate bond or bonds with the Department, in the amount determined by the Department in accordance with applicable bonding requirements, in order to guarantee PBS and Wilson Creek's obligation to treat or abate the SUMP discharge and the SP3A discharge, and PBS, Wilson Creek and WCH, as their interests appear, may subsequently petition the Department to terminate the PBS Wilson Creek Treatment Trust. Upon termination of the Trust following the posting of sufficient bonds to guarantee the PBS and Wilson Creek's obligation, the Department shall direct the Trustee to distribute any residuum, less final trust administration expenses of the Trustee, to the Settlor in accordance with Articles 4 and 12 of the Post-Mining Discharge Treatment Trust Agreement attached as Exhibit H.

6. Funding of the Primary Trust Account

a. Initial Payment to the Primary Trust Account: Upon execution of this Consent Order and Agreement, and upon creation of the PBS Wilson Creek Treatment Trust, PBS and Wilson Creek shall deposit an amount of \$ 467,670.00 on January 15, 2019 into the Primary Trust Account.

b. Ongoing Payments to the Primary Trust Account: PBS and Wilson Creek shall make subsequent payments into the Primary Trust Account in the amount of \$467,670.00 per quarter beginning on April 15, 2019 until the trust is fully funded in accordance with the payment schedule set forth in Exhibit I. This sum constitutes the current present value of the amount necessary to fully fund the PBS Wilson Creek Treatment Trust, and includes the current present value of the estimated future operation and maintenance costs for the Treatment Systems, the current present value of the estimated future recapitalization costs for the Treatment Systems, and the current present value of the liability insurance costs for the Treatment Systems. The final payment amount may need adjustment to correspond with the performance of the trust fund.

Payments will be required without notice.

c. WCH hereby agrees to make any payments to the Primary Trust Account that PBS and Wilson Creek fail to make. Any payments to the Primary Trust Account that PBS and Wilson Creek fail to make shall be made by WCH within 7 days after the payment due date is missed and notice is provided to WCH of any such failure by PBS and Wilson Creek to make such payment.

7. Annual Distribution or Contribution Payments – Primary Trust Account

a. All calculations under this Paragraph shall be based on values as determined on the Annual Anniversary Date.

b. If at the end of any year the Primary Trust Valuation is greater than the Primary Target Valuation, then a Distribution Payment shall be made to PBS, Wilson Creek, and WCH, as a guarantor. The amount of such Distribution Payment will be equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, or equal to the Calculated Treatment Cost, whichever is less. This amount is depicted graphically at Points 1, 2 and 3 on Exhibit J.

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

d. If the Primary Trust Valuation is less than the Primary Basis Valuation, then PBS, Wilson Creek, and WCH, as a guarantor, shall make an additional contribution into the Primary Trust Account in an amount equal to the difference between the Primary Basis Valuation and the Primary Trust Valuation, or in an amount equal to the Calculated Treatment Cost,



whichever is less, except as provided in Paragraph 13.a. This amount is depicted graphically as Points 5 & 6 on Exhibit J. This provision does not apply until PBS, Wilson Creek, and WCH, as a guarantor, have fulfilled their obligations to make ongoing payments under Paragraph 6.b, above, and the PBS Wilson Creek Trust is fully funded.

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

a. All calculations under this paragraph shall be based on values as determined on the Annual Anniversary Date and before any Distribution Payment.

b. If the Actual Treatment Cost for any year is greater than or equal to 110 percent or less than or equal to 90 percent of the Calculated Treatment Cost, the Department will calculate a new Primary Basis Valuation using the Formula and the newly determined Actual Treatment Cost. A new Primary Target Valuation will then be determined by calculating 116 percent of the new Primary Basis Valuation. Exhibit K is a graphical depiction of the adjustment.

9. Distribution Payments for Adjustments to the Primary Target Valuation

a. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 8. above is greater than the Primary Trust Valuation, no distribution payment shall be made under this paragraph.

b. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 8, above is based on a reduced Actual Treatment Cost, and the Primary Trust Valuation is greater than the newly calculated Primary Target Valuation, then a Distribution Payment shall be made to PBS, Wilson Creek, and WCH, as a guarantor. The amount of such Distribution Payment will be equal to the percent change in Actual Treatment Cost times the Primary Trust Valuation, or in an amount equal to the difference between the Primary Trust Valuation and the newly calculated Primary Target Valuation, whichever is less. The amount of

such Distribution Payment shall be determined by the following formulas:

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

Or

$$DP = TR - \text{new TV}$$

Where: DP = Distribution Payment  
TR = Primary Trust Valuation  
TV = Primary Target Valuation  
ATC = Actual Treatment Cost

10. Capital Improvement Account

a. 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. The required balance in the Capital Improvement Account has been determined by use of the AMDTreat Recapitalization tool based on the following methodology: For each planned capital replacement activity, the current cost and the projected year of replacement, are determined. The future cost of each replacement activity is calculated by compounding the present cost at a rate of 3.1% annually. The year in which each replacement activity will be needed is projected based on typical component life cycles. Assuming a net rate of return on investment of 8.43 percent, the initial amount of the Capital Improvement Account must be sufficient to cover all anticipated expenditures for capital replacement activities for a 75-year period.

c. A schedule for the Capital Improvement Account balance and projected capital expenditures is made a part of this Consent Order and Agreement as Exhibits F-1 and F-2. The required balance in the Capital Improvement Account may be recalculated on an annual basis or each time a Distribution Payment is contemplated under Paragraph 12, below. Such recalculation shall be deemed an amendment to Exhibits F-1 and F-2 and this Consent Order and

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

11. Transfer of Funds to the Capital Improvement Account

a. If the Primary Trust Valuation after any Distribution Payment under Paragraph 7, above is greater than the Primary Target Valuation, then a transfer of funds to the Capital Improvement Account shall be made if the current balance in the Capital Improvement Account is less than the required balance for the current year as indicated on Exhibits F-1 and F-2. The amount of such transfer will be equal to the difference between the required balance and the current balance, or in an amount equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, whichever is less.

12. Distribution Payments from the Capital Improvement Account

a. A distribution payment shall be made to PBS, Wilson Creek, and WCH, as a guarantor, any time a planned capital replacement is made as indicated on Exhibits F-1 and F-2. 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 F-1 and F-2, or in an amount equal to the difference between the current balance in the Capital Improvement Account and the required balance after the capital improvement Distribution Payment, whichever is less.

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

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

If the Primary Trust Valuation exceeds the Primary Target Valuation in the Primary Trust Account, or if the balance in the Capital Improvement Account exceeds the required balance as indicated on Exhibits F-1 and F-2, then such surplus funds may be used for the following purposes:

a. Surplus funds in the Capital Improvement Account shall be transferred to the Primary Trust Account to reduce or completely satisfy PBS and Wilson Creek's obligation to make a contribution payment under Paragraph 7.g. This amount is depicted graphically at Point 5 on Exhibit J. However, the amount of surplus funds transferred to the Primary Trust Account may exceed PBS and Wilson Creek's obligation under Paragraph 7.g. if additional funds are needed so that the Primary Trust Valuation equals the Primary Basis Valuation. This amount is depicted graphically at Point 6 on Exhibit J.

b. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by PBS and Wilson Creek to pay for unanticipated capital expenditures, or anticipated capital expenditures that exceed the calculated cost of the capital improvement as indicated on Exhibits F-1 and F-2.

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by PBS and Wilson Creek to finance implementation of a new treatment technology, provided the application of such treatment technology is first approved by the Department.

d. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by PBS and Wilson Creek to implement remediation or abatement activities to reduce or eliminate the discharge, or to improve the quality of the discharge, provided the Department first approves such activities.

14. Real and Personal Property

a. Within 60 days of the effective date of this Consent Order and Agreement, PBS and Wilson Creek will create an inventory of all the equipment, facilities, and other personal property used for the treatment of the mine discharges associated with the Trent Mine and the Acosta Mine No. 2 (“Personal Property”). Upon completion of the inventory, PBS and Wilson Creek shall submit the inventory to the Department for review and approval in a similar form as the Personal Property List attached as Exhibit L. Upon Department approval of the inventory, which approval shall not be unreasonably withheld, the Personal Property and PBS’ and Wilson Creek’s management of the Personal Property shall be subject to the terms and conditions set forth in Paragraphs 14.b. and c., below.

b. Within 60 days of receipt of written approval of the inventory by the Department, PBS and Wilson Creek shall transfer and convey to the Trustee, without reservation, a security interest in all Personal Property including, but not limited to, the equipment and other property listed in the inventory in order to ensure continued treatment of the discharges in the event PBS and/or Wilson Creek enter bankruptcy, cease to exist, or are unable or unwilling to continue treatment. Said security interest shall be in substantially the same form as the Security Agreements attached as Exhibits M-1 and M-2. For so long as PBS and Wilson Creek are continuing treatment, PBS and Wilson Creek shall be responsible for maintaining and replacing or upgrading, as appropriate, the Personal Property used for the treatment of the mine discharges described above in Paragraphs Q and U. All parts, additional equipment, replacements, and upgrades to the Personal Property shall immediately and automatically become subject to the security interest as set forth in the Security Agreement. Notwithstanding anything in this Post-Mining Treatment Trust Consent Order and Agreement to the contrary, the Department acknowledges that as of the date hereof, the Personal Property is subject to an existing, valid first lien previously granted to

PBS' and Wilson Creek's lender, and that PBS' and Wilson Creek's obligations in Paragraphs 14 b. and c. are made under and subject to such existing lien. PBS and Wilson Creek shall make a commercially good faith effort to obtain a release of the lien for the Personal Property from such existing lien holder but cannot assure that such release will be granted.

c. With respect to the equipment located at the Treatment Sites, PBS and/or Wilson Creek will not sell, transfer or otherwise dispose of such equipment without the permission of the Department unless such equipment (i) has reached the end of its useful life (in which case such equipment shall be replaced) or (ii) is otherwise replaced in the ordinary course of business for the purpose of repairing and maintaining such equipment to facilitate the treatment of the subject discharges, in the case of either of which such permission shall not be required. Should PBS and/or Wilson Creek file for bankruptcy protection, PBS and/or Wilson Creek will, to the extent possible: (1) take whatever steps are necessary with the Bankruptcy Court to ensure that the equipment continues to be available for use in operating the Treatment Systems, and (2) join in any request by the Department which seeks to preserve the use of the equipment for the continued operation of the Treatment Systems. Furthermore, should PBS and/or Wilson Creek file a Petition for Bankruptcy, PBS and/or Wilson Creek shall notify the Department of the filing within three (3) business days in accordance with Paragraph 23, below, and shall also provide a courtesy copy of notification to the Department's Southcentral Office of Chief Counsel, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

d. Despite offering fair and reasonable terms, PBS has been unable to obtain a Consent to Right of Entry form from Roger W. Bisick Sr. and Kathleen Bisick which grants the Department, PBS, and the Trustee access to the Trent Mine Sump Treatment System. PBS will extend its existing offer indefinitely to the Bisicks and/or their successors-in-title to obtain a

Consent to Right of Entry which grants the Department, PBS, and the Trustee access to the Trent Mine Sump Treatment System and if it is able to obtain same, will submit such Consent to Right of Entry to the Department within 60 days of obtaining a fully executed version thereof. A copy of the Department's model treatment trust Consent to Right of Entry is attached as Exhibit D-2. If any portion of a property subject to a Right of Entry is sold, PBS and Wilson Creek shall obtain a properly executed Consent to Right of Entry form from the new owner and submit it to the Department and the Trustee.

15. Public Liability Insurance

a. PBS and Wilson Creek 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. PBS and Wilson Creek shall also provide fire damage insurance in the amount of \$1,000,000.00. The Trustee and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policy.

b. In addition to the requirements of Paragraph 15.a., the public liability insurance shall be written on an occurrence basis and shall provide bodily injury and property damage coverage in the minimum amounts of \$500,000 per person and \$1,000,000 per occurrence. The insurance shall include a rider requiring the insurer to notify the Department thirty 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 PBS and Wilson Creek each have a public liability insurance policy in force meeting the requirements of this Paragraph.

c. In addition to the requirements of Paragraph 15.a., above, PBS and Wilson

Creek shall ensure that the public liability insurance policy is at all times consistent with the requirements of 25 Pa. Code § 86.168(a) - (f). Pursuant to the requirement set forth at 25 Pa. Code § 86.168(a) that a permittee submit proof which certifies that a public liability insurance policy is in force meeting the requirements of Chapter 86, PBS and Wilson Creek shall submit such proof to the Department at the Annual Meeting described in Paragraph 16, below.

d. In the event PBS and/or Wilson Creek fail to maintain a public liability insurance policy that meets the requirements of Paragraphs 15.a. and 15.b., above, WCH shall take immediate steps to remedy PBS' and/or Wilson Creek's failure to maintain public liability insurance and submit such proof which certifies that a public liability insurance policy is in force meeting the requirements of Chapter 86 within 30 calendar days of PBS' and/or Wilson Creek's violation of this Consent Order and Agreement.

16. Annual Requirements

a. The parties will meet on or before the thirtieth day following delivery to the Department of the Accounting of each year: (i) to review and discuss the Accounting for the then completed fiscal year; (ii) to review the effectiveness of the Treatment Systems and any change in the fiscal year; (iii) to resolve any issues which arise as a result of that change or the performance of the PBS Wilson Creek Treatment Trust; (iv) to calculate, recalculate or adjust the size of the Primary Target Valuation, the Calculated Treatment Cost, and distribution payments from or additional payments into the PBS Wilson Creek Treatment Trust; and, (v) to address any other issues that may concern this Consent Order and Agreement or its implementation.

b. The Operator shall provide annually to the Department, on forms furnished by the Department, the information required by 25 Pa. Code §§ 86.62(b) and (c) (relating to identification of interests).



17. PBS and Wilson Creek's Continuing Obligation

Neither PBS and Wilson Creek's agreement to fund the PBS Wilson Creek Treatment Trust, nor the full or partial funding of the PBS Wilson Creek Treatment Trust, nor the exhaustion of the PBS Wilson Creek Treatment Trust shall in any way limit PBS and Wilson Creek's obligation to operate the Treatment Systems and to treat the discharge(s) covered by this Consent Order and Agreement in a manner which meets the effluent limitations described in Paragraphs T and X, above. Furthermore, exhaustion of the PBS Wilson Creek Treatment Trust shall not excuse PBS and Wilson Creek from PBS and Wilson Creek's obligation to adequately treat or to abate the discharges.

18. Stipulated Civil Penalties

a. In the event PBS or Wilson Creek fail to comply in a timely manner with any term or provision of this Consent Order and Agreement, PBS or Wilson Creek, as the case may be, 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:

District Mining Manager  
Department of Environmental Protection  
Cambria District Mining Office  
286 Industrial Park  
Ebensburg, PA 15931

c. Any payment under this paragraph shall neither waive PBS and Wilson Creek's duty to meet their obligations under this Consent Order and Agreement, nor preclude the Department from commencing an action to compel PBS and Wilson Creek's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only PBS and

Wilson Creek'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.

19. Additional Remedies

a. In the event PBS and/or Wilson Creek fail to comply with any provision of this Consent Order and Agreement, or WCH fails to comply with Paragraph 6.c., the Department may, in addition to the remedies prescribed herein, pursue any remedy available against the Party who is responsible for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. In the event PBS, Wilson Creek, or WCH default on their respective obligations of this Consent Order and Agreement, then depending on the ownership and control structure of PBS, Wilson Creek and WCH at the time of any such default, and in accordance with the Department's ownership and control regulations at the time of any such default, PBS, Wilson Creek, and WCH 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 PBS, Wilson Creek, and WCH as violators on the Department's compliance tracking system and on the federal Applicant Violator System.

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

20. Reservation of Rights

The Department reserves the right to require additional measures to achieve compliance with applicable law. PBS, Wilson Creek, and WCH reserve the right to challenge any action which the Department may take to require those measures.

21. Liability of PBS, Wilson Creek, and WCH

PBS and Wilson Creek, severally, and not jointly and severally, shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by their officers, agents, employees, or contractors. PBS and Wilson Creek severally, and not jointly and severally, also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by their successors and assigns. Notwithstanding the above, PBS and Wilson Creek shall be jointly and severally liable to make the contributions to the PBS Wilson Creek Treatment Trust pursuant to the Post-Mining Discharge Treatment Trust Agreement attached hereto as Exhibit H, and WCH shall be liable to make contributions to the PBS Wilson Creek Treatment Trust in the event of a default by PBS and/or Wilson Creek within 7 days after the payment due date and notice to WCH of any such failure by PBS and Wilson Creek to make such payment.

22. Transfer of Sites

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

b. If PBS and Wilson Creek intend to transfer any legal or equitable interest in the PBS and Wilson Creek Sites which are the subject of this Consent Order and Agreement, PBS and Wilson Creek shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated

transfer and shall simultaneously inform the Director, District Mining Operations 131 Broadview Road, New Stanton, PA 15672; 724-925-5500; and the District Mining Manager identified in Paragraph 23, below of such intent.

c. The Department, in its sole discretion, may agree to modify or terminate PBS and Wilson Creek's duties and obligations under this Consent Order and Agreement upon transfer of the PBS and Wilson Creek Sites. PBS, Wilson Creek, and WCH waive any right that they may have to challenge the Department's decision in this regard.

23. Correspondence with Department

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

District Mining Manager  
Department of Environmental Protection  
Cambria District Mining Office  
286 Industrial Park  
Ebensburg, PA 15931

24. Correspondence with PBS, Wilson Creek, and WCH

a. All correspondence with PBS, Wilson Creek, and WCH concerning this Consent Order and Agreement shall be addressed to:

Wilson Creek Holdings, Inc.  
4600 J. Barry Court  
Suite 220  
Canonsburg, PA 15317

PBS Coals, Inc.  
P.O. Box 260  
Friedens, PA 15541

Wilson Creek Energy, LLC  
P.O. Box 260  
Friedens, PA 15541

b. PBS, Wilson Creek, and WCH 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 addresses.

25. Force Majeure

a. In the event that PBS, Wilson Creek, and WCH are 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 PBS, Wilson Creek, and WCH's control and which PBS, Wilson Creek, and WCH, by the exercise of all reasonable diligence, are unable to prevent, then PBS, Wilson Creek, and WCH 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 PBS, Wilson Creek, and WCH's control. PBS, Wilson Creek, and WCH'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. PBS, Wilson Creek, and WCH shall only be entitled to the benefits of this paragraph if they notify the Department within five (5) working days by telephone and within ten (10) working days in writing of the date they become 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 PBS, Wilson Creek, and WCH 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. PBS, Wilson Creek, and WCH'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 PBS, Wilson Creek, and WCH, and other information available to the Department. In any subsequent litigation, PBS, Wilson Creek, and WCH shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

26. Severability

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

27. Entire Agreement

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

28. Attorney Fees

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

29. Modifications

Except as provided in Paragraph 10, above, no changes, additions, modifications, or

amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

30. Titles

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

31. Decisions under Consent Order

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

32. Successors

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

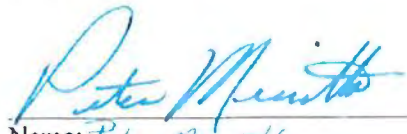
PBS, Wilson Creek, and WCH shall notify the Department, without delay, of any successor as defined herein and shall provide such successor with a copy of this Consent Order and Agreement.

33. Counterpart Signatures

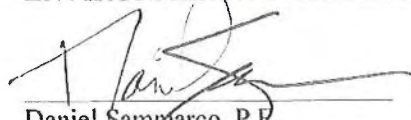
The parties agree that this Consent Order and Agreement may be executed by counterpart signatures, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Facsimile or electronic signatures shall be valid and effective.

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 PBS, Wilson Creek, and WCH 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 PBS, Wilson Creek, and WCH ; that PBS, Wilson Creek, and WCH consent to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that PBS, Wilson Creek, and WCH hereby knowingly waive their 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 PBS, Wilson Creek, and WCH's attorney certifies only that the agreement has been signed after consulting with counsel.

**FOR WILSON CREEK HOLDINGS,  
INC.:**

  
Name: Peter Mecca  
President or Vice President  
NAPP Division

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

  
Daniel Sammarco, P.E.  
District Mining Manager



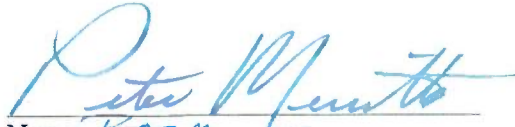
  
Name: *Kevin Harrison*  
Secretary or Treasurer


Robyn Katzman Bowman  
Assistant Counsel  
Southcentral Region OCC


Name:  
Attorney for Wilson Creek Holdings, Inc

**FOR PBS COALS, INC.:**

**FOR WILSON CREEK ENERGY, LLC:**

  
Name: *Peter Merritts*  
President or ~~Vice President~~  
*NAPP Division*

  
Name: *Peter Merritts*  
President or ~~Vice President~~ *NAPP Division*

  
Name: *DAVID BONAGELLI*  
Secretary or Treasurer

  
Name: *Kenneth J. Lund*  
Secretary or Treasurer

Name: Gregg M. Rosen  
Attorney for PBS Coals, Inc.

Name: Gregg M. Rosen  
Attorney for Wilson Creek Energy, LLC

\_\_\_\_\_  
Name:  
Secretary or Treasurer

Robyn Katzman Bowman  
Robyn Katzman Bowman  
Assistant Counsel  
Southcentral Region OCC

Gregg M. Rosen  
Name: Gregg M. Rosen  
Attorney for Wilson Creek Holdings, Inc

**FOR PBS COALS, INC.:**

**FOR WILSON CREEK ENERGY,  
LLC:**

\_\_\_\_\_  
Name:  
President or Vice President

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Name:  
President or Vice President

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Name:  
Secretary or Treasurer

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Secretary or Treasurer

Gregg M. Rosen  
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Attorney for PBS Coals, Inc.

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Attorney for Wilson Creek Energy, LLC