

MODEL SMCRA WATER SUPPLY SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into on this _____ day of _____, 20____ between the Operator and the Water Supply Owners listed below.

Operator: _____ Address: _____

Water Supply Owner(s): List everyone with an ownership interest in the water supply which is the subject of this Agreement.

Name: _____ Name: _____
Address: _____ Address: _____

WHEREAS, the Water Supply Owners own surface property located in _____ Township, _____ County, Pennsylvania, and described in Deed Book Volume _____, Page _____, in the _____ County Recorder's Office (the "Property").

WHEREAS, the Operator operates the _____ Mine located in _____ Township, _____ County, Mining Permit No. _____. The Operator [has mined/will be mining] beneath and/or adjacent to the Property during the period from approximately 20____ through 20____. *{Provide further description of the specific mining activities covered by this Agreement}.*

WHEREAS, the water supply which is the subject of this Agreement (the "Water Supply") is located on the Property and is a _____ (describe nature of the Water Supply, e.g., spring or well). The Water Supply is identified as sample point _____ in the Operator's mining permit application.

WHEREAS, the Surface Mining Conservation and Reclamation Act (SMCRA) 52 P.S. § 1396.4b, and the regulations in 25 Pa. Code Ch. 87, provide certain rights to surface land and water supply owners relating to impacts of surface coal mining operations on water supplies, and these rights include the following:

- (i) A mining operator must promptly restore or replace a water supply if the operator's mining activities cause contamination, interruption, or a decrease of that water supply;
- (ii) A mining operator must restore or replace an affected water supply at the operator's expense;
- (iii) The replacement water supply must be of adequate quantity and quality for the purposes served by the original water supply as well as the reasonably foreseeable uses of the original water supply;
- (iv) The operator must pay for all operation and maintenance costs of the replacement water supply that exceed the operation and maintenance costs of the original water supply;
- (v) The water supply owner's access to and control over the replacement water supply must be equivalent to the access and control the owner had over the original water supply;

- (vi) A replacement water supply cannot require excessive maintenance, or be less reliable or less permanent than the original affected water supply.

{WHEREAS, in anticipation of the possibility that the Operator's surface mining activities will result in contamination, diminution or interruption of the Water Supply, the Operator and the Water Supply Owners have agreed to a settlement, as provided for in this Agreement, of the Water Supply Owners' potential claim for a replacement water supply. Except for the Operator's obligations provided for in this Agreement, the Water Supply Owners have agreed to release the Operator of any further obligations under SMCRA to restore or replace the Water Supply.} *(Use this paragraph for a pre-mining agreement.)*

OR

{WHEREAS, the Water Supply Owners have experienced contamination, diminution or interruption of the Water Supply which the Water Supply Owners believe to have occurred as a result of the Operator's surface coal mining activities described above. The Operator and the Water Supply Owners have agreed to a settlement of all the Water Supply Owners' claims under SMCRA with respect to restoration or replacement of the Water Supply, as provided for in this Agreement. As part of this settlement, the Water Supply Owners have agreed to release the Operator from any further obligations under SMCRA with respect to restoration or replacement of the Water Supply.} *(Use this paragraph for a post-mining agreement.)*

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

1. This Agreement is entered into pursuant to (SMCRA) 52 P.S. § 1396.4b and regulations in 25 Pa. Code Ch. 87, and applicable principles of common law and equity.

2. In consideration of the sum of _____ dollars (\$ _____), the receipt of which is hereby acknowledged by the Water Supply Owners, [and in consideration of the actions [to be taken, or taken], by or on behalf of the Operator to restore or replace the Water Supply as follows:] *{describe specific actions to be taken in addition to payment which have been agreed upon, or an agreement that operator will take no further actions to restore or replace after payment of monetary sum described in this paragraph}*, the Water Supply Owners hereby acknowledge full satisfaction by the Operator of all obligations relative to restoration or replacement of the Water Supply, including the payment of increased operation and maintenance costs. The Water Supply Owners understand and agree that the remedies provided to them according to this Agreement satisfy all the Water Supply Owners' rights under SMCRA, and the applicable regulations, concerning restoration or replacement of the Water Supply.

4. The Water Supply Owners hereby release the Operator, its successors, assigns and agents from any and all liability and demands of any kind whatsoever related to restoration or replacement of the Water Supply.

5. The Water Supply Owners acknowledge that the release granted by this Agreement is given in exchange for the compensation provided by the Operator pursuant to this Agreement.

6. The release of the SMCRA water supply restoration/replacement rights given by the Water Supply Owners in this Agreement shall have a term of no more than thirty-five (35) years. The release granted by this Agreement is limited to effects on the Water Supply caused by the surface mining activities specifically described in this Agreement.

7. The Water Supply Owners agree to execute and deliver any documents that may be required by the Pennsylvania Department of Environmental Protection or any other regulatory agency or court to verify that the matters covered by this Agreement have been fully and amicably resolved. They also agree to cooperate to the extent necessary with the Operator in obtaining the termination of any legal or administrative proceedings related to the matters covered by this Agreement.

8. In the event that the Water Supply Owners sell, lease, or otherwise transfer any interest in the Property, the Water Supply Owners shall disclose in the transfer documents and include in any deed a recital of this Agreement and the release contained in this Agreement. [The Water Supply Owners shall not disclose the amount of any monetary payment made as part of this Agreement.] *{This statement on confidentiality of the monetary amount is optional.}*

9. In conjunction with the signing of this Agreement, the Water Supply Owners shall execute and deliver to the Operator a Memorandum of Agreement which will summarize the terms of this Agreement and describe the release granted to the Operator by this Agreement. The Memorandum of Agreement shall be recorded by the Operator in the _____ County Recorder's Office within thirty days of its execution.

10. The Water Supply Owners represent that they are the only persons or entities who have any legal interest in the Water Supply and that they are the only persons or entities with any claims for restoration or replacement of the Water Supply. [The Water Supply Owners each represent and declare that he or she is a United States citizen who is not a foreign person for United States tax purposes.] *{This statement on U.S. citizenship is optional.}*

11. All the covenants, representations, consents, waivers and agreements contained herein shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

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12. This Agreement shall be governed in all respects in accordance with the laws of the Commonwealth of Pennsylvania.

13. This Agreement contains the entire settlement agreement and release of the parties and there are no other understandings, representations or warranties, oral or written, pertaining to the subject matter of this Agreement.

14. Any modification or amendment to the terms or provisions of this Agreement shall be valid and effective only if made in writing and duly executed on behalf of the parties or their respective heirs, successors or assigns.

15. The Water Supply Owners hereby acknowledge that they have executed this Agreement voluntarily and with the full authority to do so, after having had advice, or the opportunity to have advice, of legal counsel, and being fully aware of the respective rights and obligations of the parties to this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement or have caused it to be executed by their respective duly authorized representatives or officers as of the date written above.

The Water Supply Owner(s)

(Each owner sign and print their name under the signature.)

The Operator

Name:

(Insert name of Company)

Name:

Name:

Name:

Title:

Name:

Title:

ACKNOWLEDGEMENT

STATE OF _____

:
:
:
:

ss

COUNTY OF _____

On this, the _____ day of _____, 20____, before me, the undersigned Notary, personally appeared _____

(Name(s))

known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to this instrument, and who acknowledged that (he, she or they) have executed the same and desire it to be recorded.

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

(SEAL) _____

Notary Public

My Commission Expires: _____