

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

[Operator Name & Address]	:	Mines & Permit Nos.
	:	
	:	
	:	
	:	Alternative Financial Assurance Mechanism

**POSTMINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), and [Operator].

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, as amended, 52 P.S. §§ 1396.1 et seq. (“Surface Mining Act”); the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, as amended, 35 P.S. §§ 1406.1 et seq. (Subsidence Act); the Coal Refuse Disposal Control Act, Act of September 24, 1968, P.L. 1040, as amended, 52 P.S. §§ 30.51 et seq. (“Coal Refuse Disposal Act”); the Clean Streams Law, Act of June 22, 1937, P.L. 1987, 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.

B. [Identify Operator. Address, type of mining, etc.]

C. [Operator] is the permittee of the following \_\_\_\_\_ coal mines which are associated with post-mining discharge liability:

NAME	PERMIT NO.	TOWNSHIP	COUNTY

D. [Status of mines identified in C]

E. [Description of treatment system(s) and whether the discharge is located on permit or hydrologically connected to the permit.] (Treatment Systems)

F. [Operator] agrees it has the legal responsibility to treat or abate the discharge(s) identified in Paragraph E.

G. The effluent limits applicable to the discharge(s) is 25 Pa. Code Section [87.102, 88.92, 88.187, 88.292, 89.52, 90.102].

H. [Status of surface and other reclamation.] {E.g. Surface reclamation, sealing and structure demolition is completed at the \_\_\_\_\_ mines, except for areas and facilities needed for mine pool monitoring, pumping and treating.}

I. [Miscellaneous facts relating to the mines.]

J. [Operator's treatment costs and capital costs.]

K. Raw water quality at [discharges/mines] is set forth in Exhibit A.

L. [Bond information.]

M. [Operator] would like to provide an alternative financial assurance mechanism as the financially backed enforceable contract to provide for the long-term treatment of post-mining discharges, and secure the release of reclamation bonds upon completion of all other reclamation requirements.

N. The parties have discussed the need to obtain accurate and timely information on the costs of operating and maintaining the Treatment Systems in order to maintain the proper amount of financial backing. The parties have agreed the current annual cost of operating and maintaining the Treatment Systems is \$ \_\_\_\_\_.

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

## 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 [Operator] as follows:

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

2. Findings

a. [Operator] agrees that the findings in Paragraphs A through \_\_\_ are true and correct and, in any matter or proceeding involving [Operator] and the Department, [Operator] 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. The annual recurrence of the month and day that this Consent Order and Agreement is executed. *[This is the preferred anniversary date. A less preferential option is 30 days after the Operator's fiscal year or thirty (30) days after the last day of any fiscal year which [Operator] 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:

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

\* This assumption will remain the same unless the parties agree otherwise.

h. Primary Basis Valuation. 100% of the present value of the future cost of treatment as determined by the Formula.

i. Primary Target Valuation. [typically 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. [Operator] 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. [Operator] shall keep separate records for each of the following Treatment Systems:

c. [Operator] shall provide an annual accounting of the costs and expenses of annual treatment ("the Accounting") 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 [Month] 1 and continuing through [Month] 31 of each year, or other fiscal year as [Operator] may adopt for its 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 [Operator] and by the President of [Operator] attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

d. [Operator]'s obligation to keep records and provide the Accounting shall continue for the period during which [Operator] is operating the Treatment Systems.

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

5. Treatment Trust

a. [Operator] shall establish an irrevocable trust to be known as the [Operator] Treatment Trust (Trust). The Trust shall secure [Operator's] obligation to treat discharges of mine drainage, including its obligation to operate and maintain the Treatment Systems, in perpetuity, or until water treatment is no longer necessary, and to provide financial resources to the Department and the citizens of the Commonwealth to maintain and operate the Treatment Systems, and to treat the mine drainage in perpetuity in the event [Operator] becomes unable or unwilling to meet these obligations. The Trust shall also provide for the demolition of treatment facilities and reclamation of the treatment site should treatment no longer be needed. The agreement establishing the Trust is attached as Exhibit B.

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

6. Funding of the Primary Trust Account

a. Initial Payment to the Primary Trust Account: Upon its execution of this Consent Order and Agreement, [Operator] shall deposit an amount of \$\_\_\_\_\_ into the Primary Trust Account.

- b. Ongoing Payments to the Primary Trust Account: *[describe ongoing payment schedule]*
- c. Surety Bonds as part of the Corpus of the Primary Trust Account: Upon its execution of

this Consent Order and Agreement, [Operator] shall deliver to the Trustee a fully executed rider or riders containing language prepared by the Department, to the \$ \_\_\_\_\_ in surety bonds posted for the mine site(s) prior to this Consent Order and Agreement. These surety bonds are more particularly described as *[describe surety bonds by surety company, amount, and instrument number]*.

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 the Primary Trust Valuation does not include the value of surety bonds, then Distribution Payments shall be made according to paragraph 7.c. Otherwise, Distribution Payments shall be made according to Paragraph 7.d. and e.

c. 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 [Operator]. 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 Point 1, 2 & 3 on Exhibit C.

d. 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 [Operator] in the form of a surety bond reduction of the surety bond(s) identified in Paragraph 6.c. This amount is depicted graphically at Point 1 on Exhibit C. Such surety bond reduction shall be in an amount determined by the following formula:

$$BR = ((1 + RoR) (TR - B) + B) - (1.03(TV))$$

Where:

- BR = surety bond reduction
- B = surety bond amount
- RoR = assumed net rate of return or effective rate of return
- TV = Primary Target Valuation
- TR = Primary Trust Valuation

e. In the year the final bond is released, if the Primary Trust Valuation after the final surety bond release remains greater than the newly calculated Primary Target Valuation, then an additional Distribution Payment shall be made under paragraph 7.c.

f. 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 C.

g. If the Primary Trust Valuation is less than the Primary Basis Valuation, then [Operator] 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 C. This provision does not apply until [Operator] has fulfilled its obligations to make ongoing payments under paragraph 6.b.

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 [typically 110%] percent or less than or equal to [typically 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 [typically 116%] percent of the new Primary Basis Valuation. Exhibit D is a graphical depiction of the adjustment.

9. Distribution Payments for Adjustments to the Primary Target Valuation

a. If the Primary Trust Valuation does not include the value of pledged surety bonds, then Distribution Payments shall be made according to paragraph 9.c. Otherwise, Distribution Payments shall be made according to paragraph 9.d.

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

c. 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 [Operator]. 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

d. If the newly calculated Primary Target Valuation which has been adjusted under paragraph 8. above is based on reduced Actual Treatment Cost, and the Primary Trust Valuation is greater than the newly calculated Primary Target Valuation, than a distribution payment shall be made to [Operator] in the form of a surety bond reduction. Such bond reduction shall be in an amount determined by the following formula:

$$BR = ((1 + \text{RoR}) (TR - B) + B) - (1.03(\text{TV}))$$

Where:

BR	=	surety bond reduction
RoR	=	assumed net rate of return or effective rate of return
TV	=	Primary Target Valuation
TR	=	Primary Trust Valuation
B	=	surety bond amount

e. In the year the final surety bond is released, if the Primary Trust Valuation after the final surety bond release remains greater than the newly calculated Primary Target Valuation, then an additional Distribution Payment shall be made under Paragraph 9.c.

#### 10. Capital Improvement Account

a. [Operator] shall establish within the Trust a sub-account designated as the Capital Improvement Account. Assets of the Capital Improvement Account may be commingled with assets of the Primary



Trust Account for purposes of investment, but must be accounted for and reported separately as if they are assets of a separate and distinct fund.

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

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

- i. For each planned capital replacement component or activity, the current cost of that component or the cost to complete that activity will be determined.
- ii. For each planned capital replacement component or activity, the estimated number of years in the life cycle of the component or the number of years between when the activity is needed will be determined.
- iii. If the water treatment facility has been in operation for a significant period of time, then for each planned capital replacement component or activity, the estimated number of years until the next replacement or activity is needed will be determined.
- iv. For each planned capital replacement component or activity, the future value of the first replacement or activity will be calculated using a Present Value equal to the current cost, a rate of 3.1 percent, the amount of payment equal to \$0.00, the number of payment periods equal to the number of years from the date of this agreement until the next replacement or activity, and a beginning of period payment.
- v. For each planned capital replacement component or activity, the Present Value will be calculated using the Future Value calculated in paragraph 10.c.iv. above, a rate equal to the assumed net rate of return used elsewhere in this agreement, and all other variables the same as used in paragraph 10.c.iv. above.
- vi. For each planned capital replacement component or activity, the Future Value

of the second and each subsequent capital replacement or activity will be calculated using the same values as in paragraph 10.c.iv. above except the value for the number of payment periods. The value for the number of payment periods for the second replacement or activity will be equal to the number of years until the next replacement or activity plus the number of years in the expected life cycle as determined in paragraph 10.c.ii. above. The number of payment periods for the third replacement will be equal to the number of years until the next replacement or activity plus two times the number of years in the expected life cycle. The number of periods for the fourth replacement will be equal to the number of years until the first replacement plus three times the years in the life cycle. The Future Value of each replacement will be calculated in like manner until the number of periods is equal to the number of years until the last replacement or activity is expected to occur that does not exceed 75 years from the year the calculations are being made.

- vii. For each planned capital replacement component or activity, the Present Value of the second and each subsequent capital replacement or activity will be calculated using the same values as in Paragraph 10.c.v. above except the value for the number of payment periods which shall be determined in like manner to Paragraph 10.c.vi. above.
- viii. The required balance in the Capital Improvement Account for the current year shall be equal to the sum of all Present Values calculated in Paragraph 10.b.v. and vii. above.
- ix. The required balance in the Capital Improvement Account shall be recalculated on an annual basis and each time a Distribution Payment is contemplated under Paragraph 12. Such recalculation shall be deemed an amendment to Exhibit E and this Consent Order and Agreement, and shall be used in making all future calculations involving the Capital Improvement Account.

11. Transfer of Funds to the Capital Improvement Account

a. The provisions of this Paragraph do not apply if the Primary Trust Valuation includes the value of surety bonds.

b. 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 Exhibit E. The amount of such transfer will be equal to the difference between the required balance and the current balance, or in an amount equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, whichever is less.

12. Distribution Payments from the Capital Improvement Account

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

b. Each time a Distribution Payment from the Capital Improvement Account is contemplated under this Paragraph or Paragraph 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 Exhibit E, then such surplus funds may be used for the following purposes:

a. Surplus funds in the Capital Improvement Account shall be transferred to the Primary Trust Account to reduce or completely satisfy [Operator's] obligation to make a contribution payment under

Paragraph 7.g. This amount is depicted graphically at Point 5 on Exhibit C. However, the amount of surplus funds transferred to the Primary Trust Account may exceed *[Operator'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 C.

b. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the Operator to pay for unanticipated capital expenditures, or anticipated capital expenditures that exceed the calculated cost of the capital improvement as indicated on Exhibit E.

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the Operator 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 the Operator 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

*[Add a detailed explanation of how all property, real and personal, including easements and right of ways, is to be handled in the event the Operator enters bankruptcy or will cease to exist in order to ensure the treatment facilities and real property will not be sold and will continue to be available to the Department at no charge for treatment of the discharge. For example – title to the property can be conveyed to the trust at the time the CO&A is executed.]*

15. Public Liability Insurance

a. *[Operator]* 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. *[Operator]* shall also provide fire damage insurance in the amount of *[determine amount appropriate based on facilities in question]*. 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 also be on the terms and conditions required by 25 Pa. Code § 86.168(a)-(e), or, in the alternative, as provided by Paragraph 15.c.

c. In lieu of the insurance requirements of Paragraph 15.b. and, 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 \$250,000 per person and \$1,000,000 per occurrence. The insurance shall include a rider requiring the insurer to notify the Department 30 days prior to substantive changes being made to the policy or prior to termination or failure to renew. Proof of insurance shall consist of a certificate of insurance filed annually with the Department which certifies [*Operator*] has a public liability insurance policy in force meeting the requirements of this Paragraph.

16. Annual Meeting

The parties will meet on or before the 30<sup>th</sup> day following delivery to the Department of the Accounting of each year: to review and discuss the Accounting for the then completed fiscal year; to review the effectiveness of the Treatment Systems and any change in the fiscal year; to resolve any issues which arise as a result of that change or the performance of the \_\_\_\_\_; 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 \_\_\_\_\_; and to address any other issues that may concern this Consent Order and Agreement or its implementation.

17. [*Operator*]'s Continuing Obligation

Neither [*Operator*]'s agreement to fund the \_\_\_\_\_ nor the full or partial funding of the Trust, nor the exhaustion of the Trust shall in any way limit [*Operator*]'s obligation to operate the Treatment Systems. Furthermore, exhaustion of the Trust shall not excuse [*Operator*] from [*Operator*]'s obligation to adequately treat or to abate the discharges.

18. Stipulated Civil Penalties

a. In the event [*Operator*] fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, [*Operator*] 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:

Director, District Mining Operations  
Department of Environmental Protection  
\_\_\_\_\_ District Mining Office  
[Address]

c. Any payment under this paragraph shall neither waive [*Operator*]'s duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel [*Operator*]'s compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only [*Operator*]'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 [*Operator*] fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. In the event [*Operator*] defaults on the obligations of this Consent Order and Agreement [*Operator*] 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 [*Operator*] as a violator on the Department's compliance tracking system and on the federal Applicant Violator System.

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

20. Reservation of Rights

The Department reserves the right to require additional measures to achieve compliance with applicable law. [*Operator*] reserves the right to challenge any action which the Department may take to require those measures.

21. Liability of [Operator]

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

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 [Operator] Sites or any part thereof.

b. If [Operator] intends to transfer any legal or equitable interest in the [Operator] Sites which is affected by this Consent Order and Agreement, [Operator] 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 of such intent.

c. The Department in its sole discretion may agree to modify or terminate [Operator]'s duties and obligations under this Consent Order and Agreement upon transfer of the [Operator] Sites. [Operator] waives any right that it 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:

Director, District Mining Operations  
Department of Environmental Protection  
\_\_\_\_\_ District Mining Office  
[Address]

24. Correspondence with [Operator]

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

[Title]  
[Address]

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

25. Force Majeure

a. In the event that [Operator] is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstances beyond [Operator]'s control and which [Operator], by the exercise of all reasonable diligence, is unable to prevent, then [Operator] 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 [Operator]'s control. [Operator]'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. [Operator] shall only be entitled to the benefits of this paragraph if it notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by [Operator] 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. [Operator]'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 [Operator] and other information available to the Department. In any subsequent litigation, [Operator] 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.c.ix, no changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

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

Except for Paragraphs \_\_\_ and \_\_\_, 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 [*Operator*] 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 [*Operator*]. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) [*Operator*] consolidates with or merges into or permits to merge with it and [*Operator*] is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of [*Operator*]'s properties or assets which include, but is not limited to, voting stock of [*Operator*]. Successor does not include any corporation or other entity to which [*Operator*] transfers or assigns all or substantially all of its financial or non-financial liabilities.

[Operator] 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 to execute this Consent Order and Agreement by counterpart signatures transmitted via facsimile.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of [Operator] 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 [Operator]; that [Operator] consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that [Operator] 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 [Operator]'s attorney certifies only that the agreement has been signed after consulting with counsel.

**FOR [Operator]:**

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

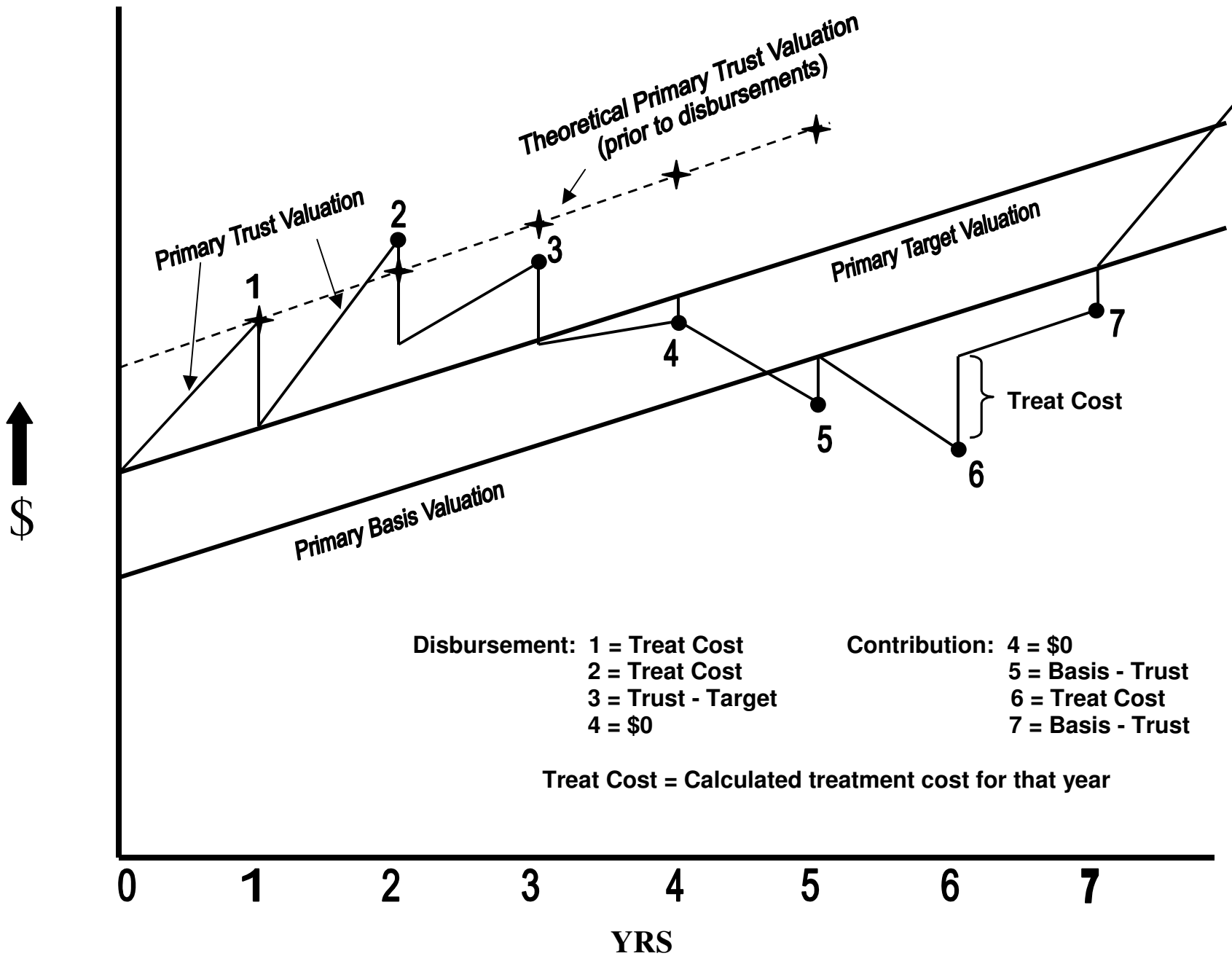
\_\_\_\_\_  
President or Vice President

\_\_\_\_\_  
District Mining Manger

\_\_\_\_\_  
Secretary or Treasurer

\_\_\_\_\_  
Assistant Counsel  
[Southwest] Region OCC

\_\_\_\_\_  
Attorney for [Operator]



Disbursement: 1 = Treat Cost  
 2 = Treat Cost  
 3 = Trust - Target  
 4 = \$0

Contribution: 4 = \$0  
 5 = Basis - Trust  
 6 = Treat Cost  
 7 = Basis - Trust

Treat Cost = Calculated treatment cost for that year

Exhibit C

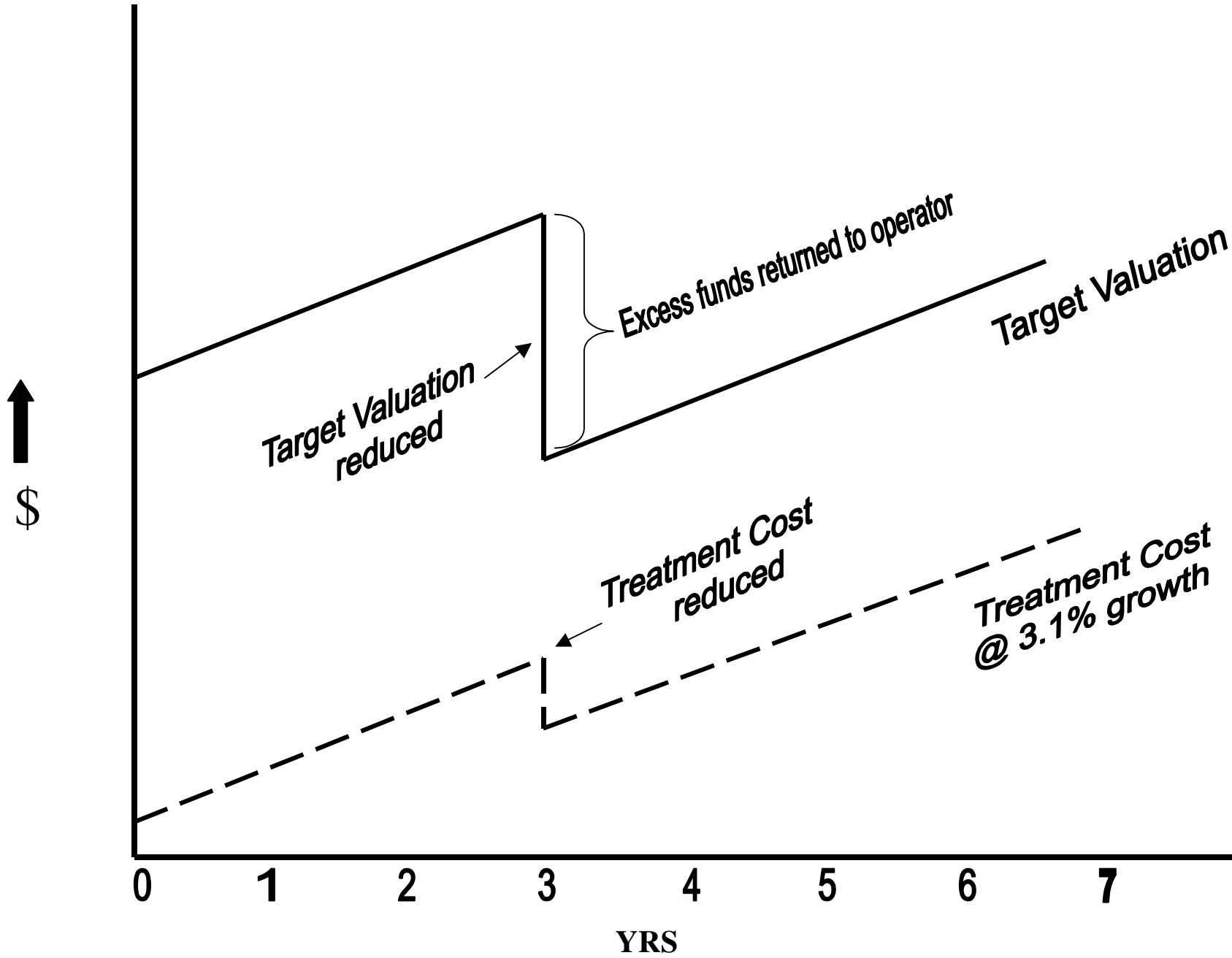


Exhibit D