

Amanda Parasiti

STITES & HARBISON PLLC
ATTORNEYS

Dept of Environ Protection
Moshannon District Office
FEB 07 2007
RECEIVED

250 West Main Street
2300 Lexington Financial Center
Lexington, KY 40507-1758
(859) 226-2300
(859) 253-9144 Fax
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November 7, 2006

Ms. Renee Carey
Northcentral Pennsylvania Trust Conservancy
300 Government Place
P.O. Box 2083
Williamsport, Pennsylvania 17703

Jennifer E. Drust, Esq.
(859) 226-2293
(859) 425-7914 FAX
jdrust@stites.com

Mr. Carl Barlett, Esq.
McCormick Law Firm
835 West Fourth Street
P.O. Box 577
Williamsport, Pennsylvania 17703

Re: Trust Agreement; Utica Mutual Insurance Co. & Dept. of Environmental Protection

Dear Ms. Carey and Mr. Barlett:

Yesterday via email you received copies of the Participation Agreement for the Northcentral Pennsylvania Conservancy Trust. Following further review and discussions with DEP counsel we have made minor changes to the Agreement.

The changes made in § 3.4 reflect Utica's status as surety bonding company and not a coal mine operator. Section 7.4 was added to allow for counterpart signatures to the agreement. There are no other changes made from the version previously sent.

Utica is prepared to execute the agreement as revised and remit the \$75,880 for the Keating Mine trust.

Sincerely,

Jennifer E. Drust, Esq.

*Yes deposited
Dec 4, 2006
\$75,880*

*2-26-07
Polly statement
on the trust
Renee is attorney on this trust
ago - will call Eric
to discuss
what is needed.*

BA99:36796:247908:1:LEXINGTON
BA99:36796:247908:1:LEXINGTON

*is per mms
2-26-07
Eric R
to track
trust*

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Enclosures/Attachments

cc: Jason Jaskolka, Esq.
Michael Sokolow, Esq.
Michael Smith, P.G.
William T. Gorton, Esq.

BA99:36796:247908:1:LEXINGTON
BA99:36796:247908:1:LEXINGTON

PARTICIPATION AGREEMENT

FOR THE NORTHCENTRAL PENNSYLVANIA CONSERVANCY TRUST

14th *of* *Nov* *2006*

This Participation Agreement ("Participation Agreement") entered into this ___ day of November, 2006, by and between Utica Mutual Insurance Company ("Utica"), corporation, with its principal place of business at 180 Genesee Street, New Hartford, New York 13413 ("Participant"), and the Northcentral Pennsylvania Conservancy ("Trustee" or "Conservancy"), a Pennsylvania nonprofit corporation, with its registered place of business at 330 Government Place, Williamsport, Pennsylvania 17703.

WHEREAS, the Participant wishes to provide funds or other assets and/or financial guarantees to assure that funds will be available in the future for the operation of certain treatment systems, for the prevention of pollution, and for the protection of natural resources; and

WHEREAS, the Trustee has established through a Declaration of Trust, dated November ___, 2006 which Declaration of Trust establishes a Trust which purpose is to help assure that funds are available to the Commonwealth of Pennsylvania in the future to operate and maintain treatment systems, to prevent pollution, and to protect natural resources from the adverse impacts of untreated discharges into waters of the Commonwealth (the "Trust"); and

WHEREAS, the Trustee has agreed and is willing to accept the Participant's funds and guarantees and perform the duties as are required to be performed pursuant to this Participation Agreement and the Declaration of Trust; and

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

ARTICLE ONE

DEFINITIONS

§1.1 The “Department” means the Pennsylvania Department of Environmental Protection, and its successor if any, which is the governmental agency with responsibilities related to the administration of the water pollution control and mining reclamation programs in Pennsylvania.

§1.2 “Operate” means, but is not limited to, the operation, maintenance, improvement, and replacement of the currently existing and functioning treatment facilities approved by the Department and any other facilities which may be required in the future.

§1.3 “Participant” means an individual, organization, or corporation that has elected to participate in the Trust pursuant to a Participation Agreement entered into between the Participant and the Conservancy, for purposes of providing funds and/or financial guarantees to assure that funds will be available in the future for the operation of certain treatment systems, for the public purpose of prevention or abatement of pollution, and for the protection of natural resources, the environment, and the health and welfare of the public.

§1.4 “Treatment Systems” means those certain treatment systems and activities which are more particularly described in a Participation Agreement for which a Participant has provided funds and/or financial guarantees to be held in trust by the Conservancy as an alternate financial assurance mechanism which provides for the sound future treatment of discharges for the public purpose of protecting the environment and the health and welfare of the public.

§1.5 “Trustee” means the Conservancy acting as trustee under the terms and provisions of this Declaration of Trust and a Participation Agreement entered into with a Participant.

ARTICLE TWO

PARTICIPATION IN THE TRUST

§2.1 The Participant agrees to provide certain funds, assets, and/or financial guarantees to be held by the Trustee for purposes of assuring that funds are available in the future for the operation of certain treatment systems, for the prevention of pollution, and for the protection of natural resources; which systems are more particularly described in Exhibit "A" attached hereto (hereinafter "Treatment Systems").

§2.2 The Trustee agrees to establish within the Trust Fund a Sub-Account designated as "Sub-Account For Keating Mine Treatment System" ("Sub-Account").

§2.3 The Participant agrees to make an initial payment or transfer to the Trust of \$75,880 simultaneously with its execution of this Participation Agreement.

§2.4 The Participant agrees to make total payments or transfers to the Trust as agreed upon between the Participant and the Department pursuant to paragraph 7 of the Agreement between the Department and the Participant dated October 4, 2006, which is attached hereto as Exhibit A.

§2.5 Any guarantees, including but not limited to, letters of credit, insurance, surety bonds, etc., delivered by the Participant shall be held by the Trustee until the Department either directs the Trustee to release such guarantee or portion thereof or the Department directs the Trustee to forfeit said bonds or enforce said guarantee and for the Trustee to deposit the proceeds of such guarantee into the Trust Fund. The Trustee shall be under no obligation to pay any premiums or other costs associated therewith. Instead, all such premiums and costs, as well as the responsibility for maintaining the guarantees in full force and effect, shall remain the obligation of the Participant. The Trustee shall take no action with respect to guarantees except

as directed, in writing, by the Department in accordance with the provisions of this Declaration of Trust, and the Trustee shall not be liable to any party for acting in accordance with such directions.

§2.6 Any payments made by the Participant or on its behalf to the Trustee for deposit into the Trust shall consist of cash, bank checks, bank wire transfers, negotiable instruments, or other property acceptable to the Trustee. The Trustee shall have no responsibility for the amount or adequacy of such payment, but the Trustee shall notify the Department in writing of any deficiencies in the payments agreed to be made by the Participant whenever the Trustee has knowledge of such deficiencies.

ARTICLE THREE

ADMINISTRATION

§3.1 The principal of the Sub-Account shall consist of:

(a) The payments or transfers to the Trustee made by the Participant pursuant to this Agreement for said Sub-Account.

(b) Such payments from time to time and at any time to the Trustee as such may be directed by the Department pursuant to any agreement between the Department and the Participant.

(c) Cash, funds or property transferred from any person to the Trustee and accepted by the Trustee for said Sub-Account.

(d) Any proceeds from surety bonds which are transferred to the Trustee for said Sub-Account.

(e) All investments, reinvestments, assets or proceeds attributable to or derived from the foregoing items in this §3.1.

(f) All earnings, accretions and profits received with respect to the foregoing items in this §3.1.

§3.2 The Trustee shall hold and administer the funds of the Sub-Account in accordance with the terms and conditions of the Declaration of Trust

§3.3 The Trustee shall distribute such amounts from the Sub-Account as the Department shall direct to pay for the operation of the Treatment System or Treatment Systems. This amount shall be paid to a third party administrator by the Trust, who shall be responsible for paying the costs of operating the Treatment System in accordance with any instructions that may be issued by the Department in relation thereto.

§3.4 The Participant understands that the Trust is intended to be categorized, for federal and state income tax purposes, as a charitable trust in accordance with and under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and any implementing regulation cited therein or any corresponding successor provision.

§3.5 The Participant hereby adopts the Declaration of Trust as the document which governs the administration of this Participation Agreement and the Sub-Account and directs the Trustee to hold and administer the Sub-Account in accordance with the terms and conditions of the Declaration of Trust. The Participant acknowledges that the Commonwealth of Pennsylvania acting through the Department is the legal beneficiary of the Trust and has all rights of a beneficiary under the law, as well as the rights granted under the Declaration of Trust. The Department shall have access to the Trust as provided therein.

§3.6 The funds in the Sub-Account and any other property held by the Trustee pursuant to this Participation Agreement shall not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration, levy or other legal process, either voluntary, involuntary

or by operation of law, by, on behalf of, or in respect of the Participant and shall not be subject or applied to the debts, obligations or liabilities of the Participant, including, without limitation, any direct action or seizure by any creditor or claimant under any writ or proceeding at law or in equity. Furthermore, the Participant shall have no legal title to any part of the Trust Fund, and it is the intention of the parties to this Participation Agreement that the Participant's entry into the Trust shall extinguish and remove all of Participant's interest in the Trust from Participant's estate under the Bankruptcy Code or similar laws.

§3.7 Except as otherwise provided in this Participation Agreement, all payments made to the Trustee or deposits into the Trust by the Participant shall be irrevocable once made, and upon delivery thereof by the Participant, all interest of the Participant therein shall cease and terminate, and no part thereof, nor any income therefrom, shall be used for or devoted to purposes other than for the exclusive benefit of the Department and the Trust as provided herein.

§3.8 Any payments made by the Participant or on its behalf to the Trustee for deposit into the Trust shall consist of cash, bank checks, bank wire transfers or other negotiable instruments acceptable to the Trustee. The Trustee shall have no responsibility for the amount or adequacy of such payment, but the Trustee shall notify the Department of any deficiencies in the payments agreed to be made by the Participant whenever the Trustee has knowledge of such deficiencies.

§3.9 The Trustee shall at least quarterly furnish the Participant a statement providing an accounting of all transactions involving the Sub-Account and confirming the value of the Sub-Account. Such statement shall value Trust investments at market value which shall be that market value determined not more than thirty (30) days prior to the date of statement.

§3.10 The Trustee shall be responsible for the keeping of all appropriate books and records relating to the receipt and disbursement of all moneys and assets under this Agreement. The Trustee shall also cause to be prepared all income tax or information returns required to be filed with respect to the Trust and shall execute and file such returns. Each Participant, upon request, shall furnish the Trustee with such information as may be reasonably required in connection with the preparation of such income tax or information returns.

ARTICLE FOUR

AMENDMENTS

§4.1 This Participation Agreement may be amended by an instrument in writing, executed by the Participant and the Trustee, with the consent and acknowledgment of the Department, or by the Trustee and the Department in the event Participant ceases to exist or defaults, but during the existence of the Participant any amendment under this paragraph cannot in any manner affect the irrevocable nature of the Trust.

ARTICLE FIVE

NOTICES

§5.1 All notices, inquiries, directions or other written communications made or given pursuant to the Trust shall be given to the Participant, the Department and the Trustee by certified mail, return receipt requested, addressed to the following addresses, and shall be deemed to be received upon the earlier of the date of signed receipt of the certified mailing or seven (7) days following the date of mailing:

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

With a copy to:

William T. Gorton, III
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241

Trustee: Northcentral Pennsylvania Conservancy
c/o Renee Carey
300 Government Place
P.O. Box 2083
Williamsport, Pennsylvania 17703

With a copy to:

Carl Barlett, Esquire
McCormick Law Firm
835 West Fourth Street
P.O. Box 577
Williamsport, Pennsylvania 17703

Beneficiary: Pennsylvania Department of Environmental Protection
Director, Bureau of Mining and Reclamation
Fifth Floor, Rachel Carson Building
400 Market Street
Harrisburg, PA 17105-8461

*570-323-6222
need acct # of this trust
document*

*Name Keating Mini Trust
Acct # 80-0018-01*

*Woodlands Bank
Tom Burkholder
570-320-2467*

§5.2 Any change in the above addresses shall be made by giving notice to all parties to this Participation Agreement.

ARTICLE SIX

DISPUTES

§6.1 In the event of any dispute between the parties, the parties agree to attempt to resolve the dispute through negotiation or a method of alternative dispute resolution. No litigation shall be commenced without a certification by an authorized officer, employee, or agent of any party that the dispute cannot be resolved by negotiation or alternative dispute resolution provided in writing at least 20 days before commencing legal action.

§6.2 A party receiving such notice shall have 10 days after receipt of said notice to demand that said dispute be resolved by binding arbitration. If arbitration is requested, the dispute shall be resolved in accordance with the arbitration rules of the American Arbitration Association then in effect without regard to the date of execution of this Agreement.

ARTICLE SEVEN

CONSTRUCTION

§7.1 As used in this Agreement, words in the singular include the plural and words in the plural include the singular. Words used in this Agreement shall be given the meaning set forth in the Declaration of Trust, or in the absence of a definition therein, their plain and ordinary meaning, except that, words used in a financial or investment context that are terms of art shall be given their commonly accepted meaning when used in the context of financial services and investment practices. The headings of each section of this Agreement are for descriptive purposes only and shall not affect the interpretation or legal efficacy of this Agreement.

§7.2 Any provision of this Agreement which is prohibited or unenforceable in any

jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability. Such prohibition or unenforceability shall not invalidate the remaining provisions hereof; nor shall such prohibition or unenforceability in a jurisdiction render any provision invalid or unenforceable in any other jurisdiction.

§7.3 All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Participant, the Department and the Trustee, as well as their successors and assigns. Similarly, any request, notice, direction, consent, waiver or other writing or action taken by the Participant, the Department or the Trustee shall bind their successors and assigns.

§7.4 This Agreement may be executed in counterparts, each of which is an original for all purposes.

§7.5 This Agreement shall be construed and governed in all respects in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or representatives duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written above.

PARTICIPANT:

Utica Mutual Insurance Company

By _____

Its _____

TRUSTEE:

THE NORTHCENTRAL PENNSYLVANIA CONSERVANCY

By _____

Its _____

STATE OF _____,
COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of
_____, 2006, by _____, the _____ of the
_____.

My commission expires _____.

Notary Public

STATE OF _____,
COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____, the _____ of the
NORTHCENTRAL PENNSYLVANIA CONSERVANCY, INC.

My commission expires _____.

Notary Public

DEC. 19. 2006 11:36AM MINE. & RECLAMATION. 7177834675

NO. 215 P. 3

CONSENT AND ACKNOWLEDGMENT

The Department of Environmental Protection hereby consents to Participant entering into this Participation Agreement pursuant to the Agreement between the Participant and the Department dated October 4, 2006 and acknowledges the Commonwealth of Pennsylvania's and the Department's status as the beneficiary of the Trust and to evidence its consent and acknowledgment of the terms and conditions set forth herein, as well as the powers and authorities granted to the Department hereunder.

BENEFICIARY:

THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
COMMONWEALTH OF PENNSYLVANIA

By Joseph A. Pizorelli
Its Director, Bureau of Mining & Reclamation

Schedule B

Deputy Secretary for Mineral Resources Management
16th Floor
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

Director, District Mining Operations
Armbrust Professional Center
8205 Route 819
Greensburg, PA 15601-5982

and

5th Floor
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

District Mining Manager
Moshannon District Office
186 Enterprise Drive
Philipsburg, PA 16866

EXHIBIT "A"
CONSENT ORDER & AGREEMENT BETWEEN
THE PARTICIPANT AND THE DEPARTMENT