

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

KMP Associates, Inc.
1094 Lantz Road
Avonmore, PA 15618
Ehenger and Park Mines
Permit Nos. 32940109 and 32990110
Young Township, Indiana County

POSTMINING TREATMENT TRUST
CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement ("Consent Order and Agreement") is entered into this 8/1st day of October, 2009, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and KMP Associates, Inc. ("KMP").

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, 52 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. Pursuant to § 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 by this Consent Order and Agreement and accompanying Post-Mining Discharge Treatment Trust Agreement constitutes an alternative financial assurance mechanism authorized by § 4(d.2) of the Surface Mining Act.

C. KMP Associates was a general partnership with a business address of 1094 Lantz

Rd., Avonmore, PA 15618, whose business included the mining of coal by the surface method in the Commonwealth of Pennsylvania pursuant to Surface Mining Operator's License No. 1492. Cynthia S. Rupert, Steven P. Kravetsky and William J. Paulisick were the partners of KMP Associates and were the responsible persons for KMP's day to day operations.

D. KMP Associates, Inc. is a Pennsylvania corporation with a business address of

1094 Lantz Rd., Avonmore, PA 15618, whose business includes the mining of coal by the surface method in the Commonwealth of Pennsylvania pursuant to Surface Mining Operator's License No. 14706. Cynthia S. Rupert is the president of KMP Associates, Inc. and is the person responsible for KMP's day to day operations.

E. KMP Associates, Inc. ("KMP") is the permittee of the following bituminous

surface coal mines that are associated with post-mining discharge liabilities:

<u>Name</u>	<u>Permit No.</u>	<u>Township</u>	<u>County</u>
Ehenger Mine	32940109	Young	Indiana
Park Mine	32990110	Young	Indiana

The treatment systems for the MD1 and MD6 discharges are hereinafter collectively referred to as the "Ehenger Discharges". MD6 and MD1 are identified and located on the topographic map attached hereto as Exhibit A.

J. KMP constructed a chemical treatment system to treat the MD1 discharge. Caustic soda is dripped into the discharge, which then flows into four settling basins for solids retention. Alkaline, waste sludge from this chemical treatment system is removed by a vacuum truck and disposed of at a permitted disposal site. A third discharge, Subchapter F point MD-1, is directed to this treatment system for enhancement, only. KMP did not adversely affect MD-1. The treatment systems for the MD1 and MD6 discharges are hereinafter collectively referred to as the "Ehenger Discharges". MD6 and MD1 are identified and located on the topographic map attached hereto as Exhibit A.

I. KMP constructed a passive treatment system to treat the MD6 discharge. This Treatment System consists of a 350 foot open limestone channel that flows into a limestone-filled pond.

H. The MD6 discharge is a degraded Subchapter F point that exceeds the baseline pollution loading rates for iron and manganese set forth in the Subchapter F special conditions of SMP No. 32940109. The MD1 discharge is a below water level, in-pond seep characterized by depressed pH; acidity greater than alkalinity; and iron and manganese concentrations that exceed the limitations of 25 PA Code §87.102. The specific water quality for MD6 and MD1 is more specifically described in Exhibit B, attached hereto.

G. All mining has been completed on the Ehenger Mine. There are two acid mine drainage discharges associated with the Ehenger Mine, which are identified as MD6 and MD1 (collectively referred to as the "Ehenger Discharges"). MD6 and MD1 are identified and located on the topographic map attached hereto as Exhibit A.

F. The permit for Ehenger Mine, Surface Mining Permit ("SMP") No. 32940109, was originally issued on July 14, 1995, to KMP Associates. On November 22, 2004, the permit was transferred to KMP Associates, Inc.

EHENGER MINE

KMP previously obtained Consent to Right of Entry, also known as a Supplemental 'C', granting permission to conduct surface mining activities on the Ehenger property. This document was recorded in the Recorder of Deeds Office of Indiana County on December 5, 1994.

N. The Treatment Systems are constructed on property owned by Joan Ehenger.

- pH not less than 6.0 nor greater than 9.0 at all times.
- Alkalinity must exceed acidity at all times.

Discharge Parameter	Average Monthly	Maximum Daily	Instant Maximum
Iron, total (mg/l)	3.0	6.0	7.0
Manganese, total (mg/l)	2.0	4.0	5.0
Total suspended solids (mg/l)	35.0	70.0	90.0

M. The effluent limits applicable to the MD1 discharge are as follows:

Discharge Parameter	Average Monthly (Loading in Pounds/Day)	Instantaneous Maximum (Loading in Pounds/Day)
Acidity	4.00	9.00
Iron	.15	.34
Manganese	.08	.18

The effluent limits applicable to the MD6 discharge are as follows:

The effluent limits for the MD6 discharge have been established by the Department in accordance with the requirements of Section 301 and 402 of the Federal Clean Water Act, 33 U.S.C., Sections 1311 and 1342, and represent the Department's best engineering judgment of the capacity of the best available technology economically achievable to treat the discharge.

L. The effluent limits for the MD6 discharge have been established by the

32940109 and NPDES Permit No. PA0212954.

The treated effluent from the Ehenger Mine Treatment Systems discharges to an unnamed tributary to Whisky Run, a water of the Commonwealth, under authority of SMP No.

K. The treated effluent from the Ehenger Mine Treatment Systems discharges to an

as the Ehenger Mine Treatment Systems.

The annual treatment cost for operating and maintaining the Ehenger Mine Treatment Systems is Five Thousand Four Hundred Seventy Three Dollars (\$5,473.00), and the present value of recapitalization costs is Twenty Thousand Three Hundred and Forty Six Dollars (\$20,346.00).

KMP posted the following financial instruments for the Ehenger Mine:

Instrument	Amount
DEF Financial Guarantee (Remining) #484043FG	\$67,500.00
First Commonwealth Bank Letter of Credit #015R0177	\$57,000.00
	\$124,500.00

P. KMP posted the following financial instruments for the Ehenger Mine: Treatment Systems is Five Thousand Four Hundred Seventy Three Dollars (\$5,473.00), and the present value of recapitalization costs is Twenty Thousand Three Hundred and Forty Six Dollars (\$20,346.00).

Q. The permit for Park Mine, SMP No. 32990110, was originally issued on May 15, 2000 to KMP Associates. On February 15, 2005, this permit was transferred to KMP Associates, Inc.

R. All mining has been completed on the Park Mine. There are three acid mine discharges associated with the Park Mine, identified as seeps A, B, and C (hereinafter collectively referred to as the "Park Mine Discharges"). The Park Mine Discharges are identified and located on the topographic map attached hereto as Exhibit A.

S. The Park Mine Discharges are characterized by depressed pH, acidity greater than alkalinity, and manganese concentrations that exceed the limitations of 25 PA Code §87.102. The specific water quality for the Park Mine Discharges is more specifically described in Exhibit B, attached hereto.

T. KMP constructed a chemical treatment system to treat the Park Mine Discharges. The Park Mine Discharges are collected in an open ditch, and caustic soda is dripped into the ditch where the flow of each discharge is combined. This flow is then directed to two settling

Z. Surface reclamation at the Ehenger and Park Mines has been completed, except

Instrument	Amount
DEP Financial Guarantee (Conversion Assistance) #4840104CFG	\$ 6,838.00
DEP Financial Guarantee (Remining) #4840128FG	\$29,600.00
First Commonwealth Bank Letter of Credit #015R0179	\$ 603.00
	<u>\$37,041.00</u>

Y. KMP posted the following financial instruments for the Park Mine:

recapitalization costs is Four Thousand Two Hundred Seventy Eight Dollars (\$4,278.00). System is One Thousand Nine Hundred Fifty Dollars (\$1950.00), and the present value of

X. The annual treatment cost for operating and maintaining the Park Mine Treatment

recorded in the Recorder of Deeds Office of Indiana County on March 8, 1999.

& Delores M. Kravetsky and a Supplemental "C", Contractual Consent of Landowner, was

W. The Park Mine Treatment System is constructed on property owned by Charles S.

- pH not less than 6.0 nor greater than 9.0 at all times.
- Alkalinity must exceed acidity at all times.

Discharge Parameter	Average Monthly	Maximum Daily	Instant Maximum
Iron, total (mg/l)	3.0	6.0	7.0
Manganese, total (mg/l)	2.0	4.0	5.0
Total suspended solids (mg/l)	35.0	70.0	90.0

V. The effluent limits applicable to the Park Mine Discharges are as follows:

32990110 and NPDES Permit No. PA0235164.

unnamed tributary to Harpers Run, a water of the Commonwealth, under authority of SMP No.

U. The treated effluent from the Park Mine Treatment System discharges into an

for the Park Mine Discharges is hereinafter referred to as the Park Mine Treatment System.

removed by a vacuum truck and disposed of at a permitted disposal site. The treatment system

basins for solids retention. Alkaline, waste sludge from this chemical treatment system is

for elimination or treatment of the Discharges and reclamation of the surface areas occupied by the Treatment Systems.

AA. KMP has the legal responsibility to treat or abate the Ehenger Mine and Park Mine Discharges pursuant to, *inter alia*, the Surface Mining Act and Clean Streams Law.

BB. In accordance with Paragraph 14 of this Consent Order and Agreement, KMP must obtain newly executed "Consent to Right of Entry" forms for both the Ehenger and Park Mines that grant the parties and the trustee a right of access to the properties on which the Treatment Systems are located. A copy of the "Consent to Right" of Entry form is attached hereto as Exhibit E.

CC. KMP desires to establish a irrevocable post-mining treatment trust with First Commonwealth Bank - Trust Division as an alternative financial assurance mechanism in order to provide for the long-term treatment of the Ehenger Mine and Park Mine post-mining discharges and secure the release of reclamation bonds upon completion of all other reclamation requirements. KMP agrees to establish the trust by executing a Post-Mining Treatment Trust Agreement with First Commonwealth Bank - Trust Division which conforms with the Department's model trust agreement ("Trust").

DD. In order to calculate the amount necessary to fully fund the Trust, the Department and KMP have agreed to use actual operation and maintenance costs from past operations of the Treatment Systems, or AMD Treat 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

EB. Based on actual operation and maintenance costs from past operations and AMD Treat cost estimates the current annual cost of operating and maintaining the Treatment Systems is Seven Thousand, Four Hundred and Twenty Three Dollars (\$7,423.00).

FF. In order to calculate the amount necessary to fully fund the Trust, the Department and KMP agree to use recapitalization and demolition cost data generated by the Department's AMD Treat software tool. According to the AMD Treat software tool, the present value of recapitalization costs is Twenty Four Thousand, Six Hundred Twenty Four Dollars (\$24,624.00). The AMD Treat Recapitalization Cost schedule for the Treatment Systems is attached hereto as Exhibit F.

GG. In order to ensure adequate funding of the alternative financial assurance mechanism, the Department requires accurate and timely information on the costs related to operation and maintenance of the Treatment Systems.

HH. The parties have agreed to use the formulas and procedures in this Consent Order and Agreement to determine the present value of the trust. The parties agree that One Hundred Seventy Six Thousand and Five Dollars and Thirty Five Cents (\$176,005.35 @ 0.65% Trustee Fee) represents the current present value of the estimated future operation and maintenance costs for the Treatment Systems, and the current present value of the estimated future recapitalization costs for the Treatment Systems. The parties have also agreed to use the information and figures that will be provided by the Accounting required by Paragraph 4 to

CATEGORY	RATE	ANNUAL COST
SAMPLING	(\$/sample) \$27/sample	\$1,804
LABOR	(\$/hr.) \$35/hour	\$3,412
MAINTENANCE		\$944
CHEMICAL (liquid caustic soda)		\$1,120
SLUDGE REMOVAL		\$143

recalculate and adjust the amount of the Trust as described in Paragraphs 8 and 10 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 KMP 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 KMP to comply with any term or

condition of this Consent Order and Agreement shall subject KMP to all penalties and remedies

provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. KMP agrees that the findings in Paragraphs A through HH are true and

correct and, in any matter or proceeding involving KMP and the Department, KMP 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 method required by Paragraph 4 of this

Consent Order and Agreement.

b. Actual Treatment Cost. The average of three consecutive years of the

costs of treatment, calculated by using the Accounting for those three years.

c. Annual Anniversary Date. Thirty (30) days after the last day of KMP's

fiscal year or thirty (30) days after the last day of any fiscal year that KMP may adopt in the

future.

d. Calculated Treatment Cost. The projected future annual costs 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, 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:

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

h. Primary Basis Valuation. One hundred percent (100%) of the present

value of the future costs of operating and maintaining the Treatment Systems, as determined by

the Formula.

i. Primary Target Valuation. One hundred and sixteen percent (116%) of the

present value of the future costs of operating and maintaining the Treatment Systems as

determined by the Formula.

authorities."

made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to shall be accompanied by a written statement as follows: "The statements contained herein are officer responsible for the financial affairs of KMP and by the President of KMP. Each signature Accounting Principles. The Accounting shall be signed by the treasurer or other corporate adopt for its corporate finances in the future, and shall be in accordance with Generally Accepted continuing through the final day of December of each year, or other fiscal year as KMP may Accounting"). The Accounting shall cover the period beginning the first day of January and days following the last day of the fiscal year for which the Accounting is being provided ("the operating and maintaining the Treatment Systems to the Department on or before ninety (90) b. KMP shall provide an annual accounting of the costs and expenses of

records for each of the three Treatment Systems listed in Paragraphs I, J and T. and report each individual item that comprises each general category. KMP shall keep separate including benefits; Maintenance; Sampling; Overhead; and Miscellaneous. KMP shall maintain reported using the following categories: Reagent; Polymer; Electrical; Sludge Removal; Labor, associated with operation and maintenance of the Treatment Systems. The various costs shall be a. KMP shall maintain accurate financial records of all costs and expenses

4. Annual Treatment Costs; Records; Factors; Accounting

Trust Account.

investments, and the face amount of surety bonds currently held by the Trust in the Primary

k. Primary Trust Valuation. The cash, cash equivalents, the market value of

used to finance annual operating and maintenance costs of the Treatment Systems.

j. Primary Trust Account. The sub-account within the Trust that is primarily

6. Funding of the Primary Trust Account

Improvement Account.

designated as the Primary Trust Account; and a sub-account designated as the Capital

b. KMP shall establish within the Trust two sub-accounts: a sub-account

establishing the Trust is attached hereto as Exhibit G.

reclamation of the treatment sites should treatment no longer be needed. The agreement

obligations. The Trust shall also provide for the demolition of treatment facilities and

Discharges in perpetuity in the event KMP becomes unable or unwilling to meet these

the citizens of the Commonwealth to maintain and operate the Treatment System, and to treat the

Trust shall also secure KMP's obligation to provide financial resources to the Department and

maintain the Treatment Systems in perpetuity or until treatment is no longer necessary. The

secure KMP's obligation to treat the Discharges, including its legal obligation to operate and

Treatment Trust Agreement with First Commonwealth Bank - Trust Division. The Trust shall

a. KMP shall establish an irrevocable Trust by executing a Post-Mining

5. Treatment Trust

accountant, shall satisfy KMP's burden of proof under this paragraph.

expenses incurred by KMP, prepared by an independent licensed public or certified public

prepared pursuant to Generally Accepted Accounting Principles as to the treatment costs and

of the Accounting and the records upon which the Accounting is based. A Special Report

Systems incurred by KMP, KMP shall bear the burden of proving the accuracy and completeness

d. In the event of a dispute about the costs and expenses of the Treatment

continue for the period during which KMP is operating the Treatment Systems.

c. KMP's obligation to keep records and provide the Accounting shall

Primary Target Valuation, then a Distribution Payment shall be made to KMP. 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 C.

b. If at the end of any year the Primary Trust Valuation is greater than the determined on the Annual Anniversary Date.

a. All calculations under this Paragraph shall be based on the values as

7. Annual Distribution or Contribution Payments - Primary Trust Account

Payments will be required without notice. payment amount may need adjusted to correspond with the performance of the Trust Fund. Account on or before the anniversary date of this Consent Order and Agreement. The final additional payments of Forty Two Thousand Dollars (\$42,000.00) into the Primary Trust

c. Ongoing Payments to the Primary Trust Account: KMP shall make three

(\$42,000.00) into the Primary Trust Account.

Consent Order and Agreement, KMP shall deposit an amount of Forty Two Thousand Dollars

b. Initial Payment to the Primary Trust Account: Upon execution of this

and periodic capital expenditures for the Treatment Systems. and maintenance of the Treatment Systems and the current amount needed to finance anticipated

to fully fund the Treatment Trust, and includes the current present value of the future operation @ 0.65% Trustee Fee). This sum constitutes the current present value of the amount necessary

One Hundred Seventy Six Thousand and Five Dollars and Thirty Five Cents (\$176,005.35

Order and Agreement, KMP shall make four (4) deposits to the Primary Trust Account totaling

a. Payments to the Primary Trust Account: Upon execution of this Consent

payment shall be made under this paragraph.

under Paragraph 8 above is greater than the Primary Trust Valuation, then no distribution

a. If the newly calculated Primary Target Valuation which has been adjusted

9. Distribution Payments for Adjustments to the Primary Target Valuation

adjustment.

116% percent of the new Primary Basis Valuation. Exhibit D is a graphical depiction of the

Actual Treatment Cost. A new Primary Target Valuation will then be determined by calculating

will calculate a new Primary Basis Valuation using the Formula and the newly determined

percent or less than or equal to 90% percent of the Calculated Treatment Cost, the Department

b. If the Actual Treatment Cost for any year is greater than or equal to 110%

determined on the Annual Anniversary Date and before any Distribution Payment.

a. All calculations under this paragraph shall be based on values as

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

provision does not apply until KMP has fully funded the Trust under Paragraph 6a.

Paragraph 13.a. This amount is depicted graphically as Points 5 and 6 on Exhibit C. This

in an amount equal to the Calculated Treatment Cost, whichever is less except as provided in

equal to the difference between the Primary Basis Valuation and the Primary Trust Valuation, or

then KMP shall make an additional contribution into the Primary Trust Account in an amount

d. If the Primary Trust Valuation is less than the Primary Basis Valuation,

depicted graphically as Point 4 on Exhibit C.

Payment shall be made and no additional contribution shall be required. This provision is

Valuation, but greater than or equal to the Primary Basis Valuation, then no Distribution

c. If the Primary Trust Valuation is less than or equal to the Primary Target

activity will be needed is projected based on typical component life cycles. Assuming a net rate compounding the present cost at a rate of 3.1% annually. The year in which each replacement replacement, are determined. The future cost of each replacement activity is calculated by For each planned capital replacement activity, the current cost and the projected year of determined by use of the AMD Treat Recapitalization tool based on the following methodology:

b. The required balance in the Capital Improvement Account has been

reported separately as if they are assets of a separate and distinct fund.

assets of the Primary Trust Account for purposes of investment, but must be accounted for and

a. Assets of the Capital Improvement Account may be commingled with

10. Capital Improvement Account

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

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

or

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

determined by the following formulas:

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 KMP. 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

of return on investment of 8.43% 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 Agreement as Exhibit F. 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. Such recalculation shall be deemed an amendment to Exhibit F 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

If the Primary Trust Valuation after any Distribution Payment under Paragraph 7 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 F. 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 KMP any time a planned capital replacement is made as indicated on Exhibit F. 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, or in an amount equal to the difference between the

c. Surplus funds in the Capital Improvement Account or the Primary Trust

Exhibit F.

Account may be used by KMP to pay for unanticipated capital expenditures, or anticipated capital expenditures that exceed the calculated cost of the capital improvement as indicated on

Point 6 on Exhibit C.

Trust Valuation equals the Primary Basis Valuation. This amount is depicted graphically at Exhibit C. However, the amount of surplus funds transferred to the Primary Trust Account may exceed KMP's obligation under paragraph 7.d. if additional funds are needed so that the Primary contribution payment under Paragraph 7.d. This amount is depicted graphically at Point 5 on the Primary Trust Account to reduce or completely satisfy KMP's obligation to make a

a. Surplus funds in the Capital Improvement Account shall be transferred to

following purposes:

required balance as indicated on Exhibit F, then such surplus funds may be used for the Primary Trust Account, or if the balance in the Capital Improvement Account exceeds the If the Primary Trust Valuation exceeds the Primary Target Valuation in the

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

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

improvement Distribution Payment, whichever is less. current balance in the Capital Improvement Account and the required balance after the capital

b. In addition to the requirements of Paragraph 15 a, the public liability Pennsylvania shall be listed as additional insureds on the policy.

Trust Agreement as part of the Trust Principal. The Trustee and the Commonwealth of Systems and the real and personal property which is identified in the Post Mining Treatment operation, maintenance, improvement and all other activities associated with the Treatment

a. KMP shall maintain in effect public liability insurance coverage for the

15. Public Liability Insurance

delivered to the Trustee on or before execution of this Consent Order and Agreement.

Post-Mining Discharge Treatment Trust Agreement attached hereto as Exhibit G. Title shall be structures, tanks, etc., that together compose the Treatment Systems, which are described in the

b. KMP shall convey to the Trustee title to all equipment, pumps, plumbing, to the Ehenger Mine and Park Mine possessed by KMP.

of access concerning the Treatment Systems. KMP shall assign to the Trustee all rights of access Charles S. & Delores M. Kravetsky properties granting access, operation, and maintenance rights shall submit original, recorded "Consent to Right of Entry" documents for the Joan Ehenger and

a. Within one (1) year of executing this Consent Order and Agreement, KMP

14. Real and Personal Property

first approves such activities.

eliminate the discharges, or to improve the quality of the discharges, provided the Department Account may be used by KMP to implement remediation or abatement activities to reduce or

d. Surplus funds in the Capital Improvement Account or the Primary Trust provided the application of such treatment technology is first approved by the Department.

Account may be used by KMP to finance implementation of a new treatment technology.

Neither KMP's agreement to fund the Trust nor the full or partial funding of the Trust, nor the exhaustion of the Trust shall in any way limit KMP's obligation to operate the Treatment Systems and to treat the Discharges in a manner that meets all applicable effluent

17. KMP's Continuing Obligation

identification of interests).

Department, the information required by 25 Pa. Code § 86.62(b) and (c) (relating to

b. KMP shall provide annually to the Department, on forms furnished by the

this Consent Order and Agreement or its implementation.

additional payments into the KMP Trust; and (v) to address any other issues that may concern

Primary Target Valuation, the Calculated Treatment Cost, and distribution payments from or

that change or the performance of the Trust; (iv) to calculate, recalculate or adjust the size of the

Systems and any change in the fiscal year; (iii) to resolve any issues which arise as a result of

Accounting for the then completed fiscal year; (ii) to review the effectiveness of the Treatment

delivery to the Department of the Accounting of each year; (i) to review and discuss the

a. The parties will meet on or before the thirtieth (30th) day following

16. Annual Requirements

requirements of this Paragraph.

the Department which certifies KMP has a public liability insurance policy in force meeting the

failure to renew. Proof of insurance shall consist of a certificate of insurance filed annually with

thirty (30) days prior to substantive changes being made to the policy or prior to termination or

occurrence. The insurance shall include a rider requiring the insurer to notify the Department

damage coverage in the minimum amounts of \$500,000 per person and \$1,000,000 per

insurance shall be written on an occurrence basis and shall provide bodily injury and property

limitations. Furthermore, exhaustion of the Trust shall not excuse KMP's obligation to

adequately treat or abate the discharges.

18. Stipulated Civil Penalties

a. In the event KMP fails to comply in a timely manner with any term or

provision of this Consent Order and Agreement, KMP 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 one hundred dollars (\$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 Road
Ebensburg, PA 15931

c. Any payment under this paragraph shall neither waive KMP's duty to

meet its obligations under this Consent Order and Agreement nor preclude the Department from

commencing an action to compel KMP's compliance with the terms and conditions of this

Consent Order and Agreement. The payment resolves only KMP'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 KMP 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.

equitable interest in the Ehenger or Park Mines.

not be modified, diminished, terminated or otherwise altered by the transfer of any legal or

a. The duties and obligations under this Consent Order and Agreement shall

22. Transfer of Interest

caused by, contributed to, or allowed by its successors and assigns.

contractors. KMP also shall be liable for any violation of this Consent Order and Agreement

including those caused by, contributed to, or allowed by its officers, agents, employees, or

KMP shall be liable for any violations of the Consent Order and Agreement,

21. Liability of KMP

Department may take to require those measures.

compliance with applicable law. KMP reserves the right to challenge any action that the

The Department reserves the right to require additional measures to achieve

20. Reservation of Rights

penalties for the violation for which the stipulated civil penalty is paid.

payment of a stipulated civil penalty, however, shall preclude any further assessment of civil

the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The

cumulative and the exercise of one does not preclude the exercise of any other. The failure of

c. The remedies provided by this Consent Order and Agreement are

compliance tracking system and on the Federal Applicant Violator System.

other remedy or penalty prescribed herein, list KMP as a violator on the Department's

system and the Federal Applicant Violator System and the Department will, in addition to any

Agreement, KMP will be subject to a permit block on the Department's compliance tracking

b. In the event KMP defaults on the obligations of this Consent Order and

Agreement shall be addressed to:

a. All correspondence with KMP concerning this Consent Order and

24. Correspondence with KMP

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

With a copy to:

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

Agreement shall be addressed to:

All correspondence with the Department concerning this Consent Order and

23. Correspondence with Department

decision under this paragraph.

interest. KMP hereby knowingly waives any right that it may have to challenge the Department's

KMP's duties and obligations under this Consent Order and Agreement upon such transfer of

c. The Department in its sole discretion may agree to modify or terminate

identified in Paragraph 23 of such intent.

Telephone: (724) 925-5500; Facsimile: (724) 925-5557 and the District Mining Manager

Environmental Protection, District Mining Office, 8205 Route 819, Greensburg, PA 15601,

transfer and shall simultaneously inform the Director, District Mining Operations, Department of

transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated

Park Mines, KMP shall serve a copy of this Consent Order and Agreement upon the prospective

b. If KMP intends to transfer any legal or equitable interest in the Ehenger or

written submission may be supplemented within ten (10) working days of its submission. KMP to mitigate the effects of the event and to minimize the length of the delay. The initial the expected duration of the delay, and the efforts which have been made and are being made by well as a notarized affidavit from an authorized individual specifying the reasons for the delay, impeding performance. The written submission shall include all necessary documentation, as writing of the date it becomes aware or reasonably should have become aware of the event the Department within five (5) working days by telephone and within ten (10) working days in b. KMP shall only be entitled to the benefits of this paragraph if it notifies

shall not be grounds for any extension of time. economic inability to comply with any of the obligations of this Consent Order and Agreement Order and Agreement shall not constitute circumstances beyond KMP's control. KMP's extension of time. An increase in the cost of performing the obligations set forth in this Consent reasonable diligence, is unable to prevent, then KMP may petition the Department for an flood, act of God, or other circumstance beyond KMP's control and which, by the exercise of all with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, a. In the event that KMP is prevented from complying in a timely manner

25. Force Majeure

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

Cynthia S. Rupert, President
 KMP Associates, Inc.
 1094 Lantz Road
 Avonmore, PA 15618

amendments of this Consent Order and Agreement shall be effective unless they are set out in

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

29. Modifications

Consent Order and Agreement

the prosecution or defense of this matter or any related matters, arising prior to execution of this

The parties shall bear their respective attorney fees, expenses and other costs in

28. Attorney Fees

herein in any litigation or any other proceeding.

relevant or admissible for purposes of determining the meaning or extent of any provisions
agreement of the parties. No prior or contemporaneous communications or prior drafts shall be

This Consent Order and Agreement shall constitute the entire integrated

27. Entire Agreement

force and effect between the parties.

should any part hereof be declared invalid or unenforceable, the remainder shall continue in full

The paragraphs of this Consent Order and Agreement shall be severable and

26. Severability

information then available to it

Department's refusal to grant the requested extension was an abuse of discretion based upon the

to the Department. In any subsequent litigation, KMP shall have the burden of proving that the

requested on the basis of all documentation submitted by KMP and other information available

c. The Department will decide whether to grant all or part of the extension

fashion shall render this paragraph null and of no effect as to the particular incident involved.

KMP's failure to comply with the requirements of this paragraph specifically and in a timely

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 and Agreement

Except for Paragraphs 7, 12 and 13, any decision that 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 that KMP

may have to the decision will be preserved until the Department enforces this Consent Order and

Agreement.

32. Successors

a. This Consent Order and Agreement shall be fully and completely binding

upon any successor of KMP. For purposes of this Paragraph, successor shall mean any

corporation or entity: 1) KMP consolidates with or merges into or permits to merge with it and

KMP is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise,

all or substantially all of KMP's properties or assets which include, but is not limited to, voting

stock of KMP. Successor does not include any corporation or other entity to which KMP

transfers or assigns all or substantially all of its financial or non-financial liabilities.

b. KMP 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

This Consent Order and Agreement may be executed in identical counterparts,

with each counterpart signed by the respective party.

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 KMP 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 KMP; that KMP

consents to the entry of this Consent Order and Agreement as a final ORDER of the Department;

and that KMP 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 KMP's attorney certifies only that this Consent Order and

Agreement has been signed after consulting with counsel.

FOR KMP:

Cynthia S. Rupert
Cynthia S. Rupert
President

William J. Pawlinski
William J. Pawlinski
Vice-President

Gary A. Palatovich
Gary A. Palatovich
Attorney for KMP

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

John P. Varner
District Mining Manager

George J. Jurek, Jr.
George J. Jurek, Jr.
Assistant Counsel
Southwest Region OCC

EXHIBITS

Exhibit A: Topographic map showing the locations of the Ehenger Mine and Park Mine discharges as discussed in Paragraphs H and T.

Exhibit B: Raw water quality of Ehenger Mine and Park Mine discharges as discussed in Paragraphs G and S.

Exhibit C: Graphical depiction of distribution or contribution payment amounts discussed in Paragraph 7.

Exhibit D: Adjustment to the Primary Target Valuation for deviations between actual treatment cost and calculated treatment cost discussed in Paragraph 8.

Exhibit E: Consent to Right of Entry document discussed in Paragraph BB and 14.

Exhibit F: Required annual balance of Capital Improvement Account for a 75-year period discussed in Paragraphs GG and 10.

Exhibit G: Post-Mining Treatment Trust Agreement as discussed in Paragraph 5.