

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

M. B. Energy, Inc.	:	Ridge Road Mine
North Cambria Fuel Company	:	Permit No. 65860105
Arcadia Company, Inc.	:	Donegal Township
The Martin Bearer Marital Trust 2A	:	Westmoreland County
	:	
175 McKnight Road	:	Campbell-Skovira Mine
Blairsville, PA 15717	:	Permit No. 65810113
	:	Cook and Donegal Townships
	:	Westmoreland County
	:	
	:	Hall-Tallent Mine
	:	Permit No. 3473SM8
	:	Derry Township
	:	Westmoreland County
	:	
	:	Gabiak Strip
	:	Permit No. 11830102
	:	Lower Yoder Township
	:	Cambria County
	:	
	:	CBC Strip
	:	Permit No. 32820134
	:	Grant Township
	:	Indiana County
	:	
	:	Dietrich Mine
	:	Permit No. 32810135
	:	West Wheatfield Township
	:	Indiana County
	:	
	:	Saxman Run Mine
	:	Permit No. 65010101
	:	Derry Township
	:	Westmoreland County
	:	
	:	Alternative Financial Assurance Mechanism

POSTMINING TREATMENT TRUST
CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 2ND day of JANUARY, 2019, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), and M. B. Energy, Inc. (“M. B. Energy”).

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 as required by this Consent Order and Agreement through the accompanying Post-Mining Discharge Treatment Trust Agreement constitutes an alternative financial assurance mechanism authorized by § 4(d.2)

of the Surface Mining Act. Pursuant to Sections 5, 315 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.315 and 691.610, Section 4.3 of 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, and Section 9 of the Subsidence Act, 52 P.S. § 1406.9, the Department has authority to issue such orders as are necessary to aid in the enforcement of the provisions of these acts, including orders compelling an operator to establish a post-mining discharge treatment trust as an alternative financial assurance mechanism.

C. M. B. Energy is located at 175 McKnight Road, Blairsville, Pennsylvania 15717. M. B. Energy is a Pennsylvania corporation whose business includes the operation of bituminous surface mines in Pennsylvania. M.B. Energy's mining license number is 1450. M. B. Energy is owned and operated by the Martin Bearer Marital Trust 2A. Ronald M. Little, Virginia L. Shaw and James J. Bearer are the individual trustees of the Martin Bearer Marital Trust 2A who are authorized under the terms of said trust to operate the business of the Martin Bearer Marital Trust 2A. Mary K. Albright is the President, Secretary and Treasurer of M. B. Energy; she is the sole corporate officer. Ronald M. Little is the General Manager and person responsible for the day-to-day operations of M.B. Energy.

D. M. B. Energy is the permittee of the following bituminous coal surface mines which are associated with post-mining discharge liability:

<u>Site Name</u>	<u>Permit No.</u>	<u>Township</u>	<u>County</u>
Ridge Road Mine	65860105	Donegal	Westmoreland
Campbell-Skovira Mine	65810113	Cook and Donegal	Westmoreland
Gabiak Strip	11830102	Lower Yoder	Cambria
Saxman Run Mine	65010101	Derry	Westmoreland
Dietrich Mine	32810135	West Wheatfield	Indiana

E. North Cambria Fuel Company (“North Cambria Fuel”) is located at 175 McKnight Road, Blairsville, Pennsylvania 15717. North Cambria Fuel is a sole proprietorship whose business includes the operation of bituminous surface mines in Pennsylvania. North Cambria Fuel is owned and operated by The Martin Bearer Marital Trust 2A. Ronald M. Little, Virginia L. Shaw and James J. Bearer are the individual trustees of the Martin Bearer Marital Trust 2A who are authorized under the terms of said trust to operate the business of the Martin Bearer Marital Trust 2A. Ronald M. Little is the General Manager and person responsible for the day-to-day operations of North Cambria Fuel.

F. North Cambria Fuel is the permittee of the following bituminous coal surface mine which is associated with post-mining discharge liability:

<u>Site Name</u>	<u>Permit No.</u>	<u>Township</u>	<u>County</u>
Hall-Tallent Mine	3473SM8	Derry Township	Westmoreland

G. Arcadia Company, Inc. (“Arcadia”) is located at 175 McKnight Road, Blairsville, Pennsylvania 15717. Arcadia is a Pennsylvania corporation whose business includes the operation of bituminous surface mines in Pennsylvania. The principal and person responsible for the day-to-day operations of Arcadia is Ronald M. Little, President, Secretary, Treasurer and sole corporate officer.

H. Arcadia was the permittee of the CBC Strip bituminous coal surface mine identified in Paragraph D, above, which is associated with post-mining discharge liability. The permit for the CBC Strip mine was transferred to M. B. Energy.

I. Concurrently with the execution of this Consent Order and Agreement, North Cambria Fuel is transferring the permit referenced in Paragraph F, above, to M.B. Energy, Inc. M.B. Energy will henceforward be the permittee for all of the sites subject to this Consent Order and Agreement.

Ridge Road

J. Beginning in 1988 and continuing until 1996, M. B. Energy surface mined the Upper, Middle and Lower Kittanning coal seams on the Ridge Road site. The site has been backfilled and revegetated.

K. A summary of the reclamation bonds currently posted for the Ridge Road mine is as follows:

PERMIT NO.	BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT NO.	BOND STATUS	BOND AMOUNT
65860105	Surety	Utica Mutual	SU46485	Active	\$12,000.00
			SU46968		\$13,200.00
			SU48726		\$230,100.00
			SU1633456		\$135,500.00
65860105	Surety	Insurance Company of North America	K03450235	Active	\$7,500.00
			K03450533		\$3,000.00
			K03450958		\$235,100.00
			K03451021		\$27,200.00
65860105	Surety	Rockwood Casualty Insurance Co.	ISM 3313	Active	\$13,400.00

Post-Mining Discharges

L. One unauthorized post-mining discharge of mine drainage exists on the permit. The discharge is sampled prior to treatment at Monitoring Point D1 under the Ridge Road permit.

M. A topographic map depicting the location of the D1 discharge is attached in Exhibit A. The latitude and longitude coordinates of discharge D1 are as follows: 40° 10' 08" latitude, 079° 23' 32" longitude.

N. The raw water quality of the D1 discharge, as compiled by the Department from analytical sampling results for the period from November 17, 2015 through August 22, 2018, is set forth in Exhibit B.

O. The required effluent limits applicable for the D1 discharge post-treatment outfall, identified as TP-A2, are as follows:

Effluent Limits for TP-A2

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (total)	2.2 mg/l	4.4 mg/l	5.5 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids (total)	35 mg/l	70 mg/l	90 mg/l
Aluminum (total)	0.6 mg/l	1.2 mg/l	1.5 mg/l

pH (S.U.): Must be between 6.0 and 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

P. The NPDES permit applicable to discharge D1 is NPDES Permit No. PA0588601, with an expiration date of August 31, 2018. M. B. Energy will renew NPDES Permit No. PA0588601 every five (5) years for so long as discharge D1 continues to exist and require a permit.

Q. M. B. Energy agrees it has the legal responsibility, pursuant to, *inter alia*, the Surface Mining Act and the Clean Streams Law, to properly treat or abate the discharge identified in Paragraph L above.

Post-Mining Treatment Trust

R. To address the discharge on the Ridge Road site, M. B. Energy has installed a passive treatment system within the permit area of the Ridge Road site consisting of a large wetland basin, two passive treatment ponds, associated ditches and diversion ditches that redirect surface water runoff away from the treatment system and into a third settling pond to allow retention time and the settling of sediment from runoff (“Ridge Road Treatment System”). The locations of the access road, the Ridge Road Treatment System, and the area required for operation and maintenance of the Ridge Road Treatment system are shown on the map (“Ridge Road Map”) attached in Exhibit C.

S. The Ridge Road Treatment System is situated on two parcels of land owned by Mary L. and Steven M. Karscig, and Jason and Jennifer E. Weinman, respectively. M. B. Energy has obtained and recorded from the Karscigs and the Weinmans access easements which grant the parties and the trustee access to the Ridge Road Treatment System. Copies of the executed easements (“Ridge Road Consents”) are attached in Exhibit D.

T. The estimated capital cost to initially construct the Ridge Road Treatment System was calculated to be \$57,946.00, based on the cost to construct the existing system as calculated by AMDTreat.

U. In order to calculate the amount necessary to fully fund the trust, the Department and M.B. Energy have agreed to use actual operation and maintenance costs from past operations of the Ridge Road Treatment System, or AMDTreat cost estimates where insufficient operation and maintenance cost data exist. A summary of current annual operation and maintenance costs for the Ridge Road Treatment System is as follows:

Table of Current Annual Operation and Maintenance Costs

CATEGORY	SAMPLING	LABOR	MAINTENANCE	PUMPING	CHEMICAL	SLUDGE REMOVAL
Rate	\$27.00/ Sample	\$35.00/ hour	*	NA	NA	\$75.00/ hour
Annual Cost	\$597.00	\$1,820.00	\$2,273.00	NA	NA	\$950.00

* Maintenance costs have been calculated under AMDTreat and incorporated as a percentage of capital costs rather than as an hourly rate.

Based on AMDTreat cost estimates for the existing system, the current annual cost of operating and maintaining the Ridge Road Treatment System is \$5,640.00. Attached in Exhibit E are the AMDTreat Cost Calculation Worksheets for the Ridge Road Treatment System.

V. In order to calculate the amount necessary to fully fund the trust, the Department and M. B. Energy have agreed to use recapitalization cost data generated by the Department's AMDTreat software tool. According to the AMDTreat software tool, the present value of recapitalization costs for the Ridge Road Treatment System is \$17,399.00. Attached in Exhibit F is the AMDTreat Recapitalization Cost schedule for the Ridge Road Treatment System.

Campbell-Skovira

W. Beginning in January 1985 and continuing until November 1989, M. B. Energy surface mined the Upper, Middle and Lower Kittanning coal seams on the Campbell-Skovira site. The site has been backfilled and revegetated.

X. A summary of the reclamation bonds currently posted for the Campbell-Skovira mine is as follows:

PERMIT NO.	BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT NO.	BOND STATUS	BOND AMOUNT
65810113	Surety	Travelers	170496G859A	Active	\$8,000.00
			170496G9597		\$49,100.00
			170498G3672		\$87,300.00
			170712G6434		\$81,500.00
			170713G4551		\$600.00
65810113	Surety	Insurance Company of North America	K03450934	Active	\$7,000.00
65810113	Surety	Utica Mutual	SU1633455	Active	\$3,200.00

Post-Mining Discharges

Y. One area of unauthorized post-mining discharges of mine drainage exists on the permit. The discharges cannot be sampled prior to treatment. The discharge area is identified as Monitoring Point B under the Campbell-Skovira permit.

Z. A topographic map depicting the location of the B discharge area is attached in Exhibit A. The latitude and longitude coordinates for the center of the B discharge area are as follows: N 40° 11' 13.7" latitude, W 079° 22' 05.0" longitude.

AA. Because raw water quality data for the B discharge area is not available, the outflow for the treatment system at Monitoring Point B at the Campbell-Skovira site, as compiled by the Department from analytical sampling results for the period from August 4, 2015 through May 11, 2018, is set forth in Exhibit B.

AB. The required effluent limits applicable for the post-treatment outfall from the B discharge area, which is identified as 001, are as follows:

Effluent Limits for 001

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids (total)	35 mg/l	70 mg/l	90 mg/l
Aluminum (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l

pH (S.U.): Must be between 6.0 and 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

AC. The NPDES permit applicable to the B discharge area is NPDES Permit No. PA0615668, with an expiration date of September 20, 2019. M. B. Energy will renew NPDES Permit No. PA0615668 every five (5) years for so long as discharge area B continues to exist and requires a permit.

AD. M. B. Energy agrees it has the legal responsibility, pursuant to, *inter alia*, the Surface Mining Act and the Clean Streams Law, to properly treat or abate the discharges identified in Paragraph Y above.

Post-Mining Treatment Trust

AE. To address the discharge area on the Campbell-Skovira site, M. B. Energy installed a series of passive treatment ponds within the permit area of the Campbell-Skovira site consisting of three wetlands (identified as “bogs” on the attached treatment system map), followed by three aeration ponds, followed by two wetlands and finally two polishing ponds (“Campbell-Skovira Treatment System”). The locations of the access road, the Campbell-Skovira Treatment System, and the area required for operation and maintenance of the Campbell-Skovira Treatment System are shown on the map (“Campbell-Skovira Map”) attached in Exhibit C.

AF. The Campbell-Skovira Treatment System is situated on land owned by M.B. Energy, Inc. Access to the Campbell-Skovira Treatment System is obtained via land owned by Scott Wayne Campbell. M. B. Energy has obtained and recorded from M.B. Energy, Inc. and Scott Wayne Campbell access easements which grant the parties and the trustee access to the Campbell-Skovira Treatment System. Copies of the executed easements (“Campbell-Skovira Consents”) are attached in Exhibit D.

AG. The estimated capital cost to initially construct the Campbell-Skovira Treatment System was calculated to be \$34,521.00, based on the cost to construct the existing system as calculated by AMDTreat.

AH. In order to calculate the amount necessary to fully fund the trust, the Department and M.B. Energy have agreed to use actual operation and maintenance costs from past operations of the Campbell-Skovira Treatment System, or AMDTreat cost estimates where insufficient operation and maintenance cost data exist. A summary of current annual operation and maintenance costs for the Campbell-Skovira Treatment System is as follows:

Table of Current Annual Operation and Maintenance Costs

CATEGORY	SAMPLING	LABOR	MAINTENANCE	PUMPING	CHEMICAL	SLUDGE REMOVAL
Rate	\$27.00 / sample	\$35.00 / hour	*	NA	NA	\$75.00/hour
Annual Cost	\$597.00	\$2,275.00	\$1,280.00	NA	NA	\$950.00

*Maintenance costs have been calculated under AMDTreat and incorporated as a percentage of capital costs rather than as an hourly rate.

Based on AMDTreat cost estimates for the existing system, the current annual cost of operating and maintaining the Campbell-Skovira Treatment System is \$5,102.00. Attached in Exhibit E are the AMDTreat Cost Calculation Worksheets for the Campbell-Skovira Treatment System.

AI. In order to calculate the amount necessary to fully fund the trust, the Department and M. B. Energy have agreed to use recapitalization cost data generated by the Department's AMDTreat software tool. According to the AMDTreat software tool, the present value of recapitalization costs for the Campbell-Skovira Treatment System is \$13,600.00. Attached in Exhibit F is the AMDTreat Recapitalization Cost schedule for the Campbell-Skovira Treatment System.

Hall-Tallent

AM. Beginning in 1974 and continuing until 1984, North Cambria Fuel surface mined the Harlem, Bakerstown, and Upper Freeport coal seams on the Hall-Tallent site. The site has been backfilled and revegetated.

AN. A summary of the reclamation bonds currently posted for the Hall-Tallent mine is as follows:

PERMIT NO.	BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT NO.	BOND STATUS	BOND AMOUNT
3473SM8	Surety	Travelers	558E8758	Active	\$6,720.00
3473SM8	Surety	Travelers	558E8746	Active	\$57,130.00
3473SM8	Surety	Travelers	799E4326	Active	\$10,200.00
3473SM8	Surety	Travelers	170498G328A	Active	\$42,650.00
3473SM8	Surety	Travelers	170498G3309	Active	\$7,560.00
3473SM8	Surety	Travelers	170498G3358	Active	\$4,950.00
3473SM8	Surety	Travelers	170899G893A	Active	\$300.00
3473SM8	Surety	Travelers	170899G8941	Active	\$2,560.00
3473SM8	Surety	Travelers	170899G8928	Active	\$6,500.00

Post-Mining Discharges

AO. Unauthorized post-mining discharges of mine drainage exist on the permit. The discharges are sampled at Monitoring Points K, M, and the O-series of discharges (O-1 through O-5) under the Hall-Tallent permit.

AP. A topographic map depicting the locations of the K, M and O-series discharges is attached as Exhibit A. The latitude and longitude coordinates of discharge K are as follows: 40° 21' 49" latitude, 79° 24' 15" longitude. The latitude and longitude coordinates of discharge M are as follows: 40° 21' 45" latitude, 79° 24' 15" longitude. The latitude and longitude coordinates of the O-series discharges are as follows:

- Discharge O-1 40° 21' 32.3" latitude 79° 23' 22.5" longitude
- Discharge O-2 40° 21' 31.2" latitude 79° 23' 22.6" longitude
- Discharge O-3 40° 21' 28.2" latitude 79° 23' 21.6" longitude
- Discharge O-4 40° 21' 27.7" latitude 79° 23' 21.7" longitude

Discharge O-5 40° 21' 26.8" latitude 79° 23' 21.9" longitude.

AQ. The raw water quality of the K discharge, as compiled by the Department from analytical sampling results for the period from May 1, 2015 through February 2, 2018, is set forth in Exhibit B. The raw water quality of the M discharge, as compiled by the Department from analytical sampling results for the period from October 27, 2014 through February 2, 2018, is set forth in Exhibit B. The available raw water quality of the O-series discharges, as compiled by the Department from analytical sampling results for the period from July 30, 2014 through May 15, 2018, is set forth in Exhibit B.

AR. The post-treatment outfall for the K and M discharges is identified as 001. The post-treatment outfall for the O-series discharges is identified as 003. The required effluent limits applicable to outfalls 001 and 003 are as follows:

Effluent Limits for 001 and 003

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Aluminum (total)	0.75 mg/l	0.75 mg/l	0.75 mg/l
Suspended solids (total)	35 mg/l	70 mg/l	90 mg/l

pH (S.U.): Must be between 6.0 and 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

AS. The NPDES permit applicable to the K, M and O-series discharges is NPDES Permit No. PA0200590, which expires on September 7, 2021. M. B. Energy will renew NPDES

Permit No. PA0200590 every five (5) years for so long as any of the K, M and O-series discharges continue to exist and require a permit.

AT. M. B. Energy agrees it has the legal responsibility, pursuant to, *inter alia*, the Surface Mining Act and the Clean Streams Law, to properly treat or abate the discharges identified in Paragraph AO above.

Post-Mining Treatment Trust

AU. To address the discharges on the Hall-Tallent site, M. B. Energy has constructed treatment systems within the permit area of the Hall-Tallent site (“Hall-Tallent Treatment Systems”). Treatment at the Hall-Tallent site consists of two separate passive treatment systems that treat discharges from two separate areas. One of the systems is the “Hall-Tallent North System” located on the northwestern permit area. It is the largest of the two systems. The second treatment system is the “Hall-Tallent South System” located on the southeastern permit area.

The Hall-Tallent North System collects discharges “K” and “M.” Discharge K is the larger of the two discharges. Initially K and M are collected and treated separately and then combined in the latter part of the system.

Discharge K is collected in a shallow sump and directed to a series of two alkaline oxyic manganese and iron removal beds followed by three manmade aerobic wetlands. The discharge from the three wetland cells flows to a series of three limestone manganese removal beds with a valved underdrain flush system designed to be manually drained to a sludge storage basin. The water then flows through two alkaline oxyic cells followed by two wetland cells, a collection basin and a series of three open water polishing basins before discharging at discharge point 001 (TP-3) to unnamed tributary no. 1 to Loyalhanna Creek. The discharge is monitored for compliance at TP-3.

The Hall-Tallent South System collects the O-series of discharges, made up of several seeps and diffuse flows located on the southeastern permit area. The Hall-Tallent South passive treatment system consists of a series of three wetlands followed by four alkaline oxyic cells, a manganese removal system consisting of two MRU filter boxes, another wetland cell and a polishing basin prior to discharging to unnamed tributary no. 2 to Loyalhanna Creek at discharge point 003. The discharge is monitored for compliance at MP-8.

The locations of the access roads, the Hall-Tallent Treatment Systems, and the areas required for operation and maintenance of the Hall-Tallent Treatment Systems are shown on the maps (“Hall-Tallent North Map” and “Hall-Tallent South Map”) attached in Exhibit C.

AV. The Hall-Tallent Treatment Systems are situated on land owned by M.B. Energy and the Estate of Martin L. Bearer. M. B. Energy has obtained and recorded from M.B. Energy, Inc. and the Estate of Martin L. Bearer access easements which grant the parties and the trustee access to the Hall-Tallent Treatment Systems. A copy of the executed easements (“Hall-Tallent Consents”) is attached in Exhibit D.

AW. The estimated capital cost to initially construct the Hall-Tallent Treatment Systems was calculated to be \$211,548.00, based on the cost to construct the existing system as calculated by AMD Treat.

AX. In order to calculate the amount necessary to fully fund the trust, the Department and M. B. Energy have agreed to use actual operation and maintenance costs from past operations of the Hall-Tallent Treatment Systems, or AMD Treat cost estimates where insufficient operation and maintenance cost data exists. A summary of current annual operation and maintenance costs for the Hall-Tallent Treatment Systems is as follows:

Table of Current Annual Operation and Maintenance Costs Hall-Tallent North System

CATEGORY	SAMPLING	LABOR	MAINTENANCE	PUMPING	CHEMICAL	SLUDGE REMOVAL
Rate	\$27/ Sample	\$35/ hour	*	NA	NA	\$0.06/ Gallon
Annual Cost	\$750.00	\$2,275.00	\$4,825.00	NA	NA	\$1,100.00

*Maintenance costs have been calculated under AMDTreat and incorporated as a percentage of capital costs rather than as an hourly rate.

Based on AMDTreat cost estimates, the current annual cost of operating and maintaining the Hall-Tallent North Treatment System is \$10,691.00.

Table of Current Annual Operation and Maintenance Costs Hall-Tallent South System

CATEGORY	SAMPLING	LABOR	MAINTENANCE	PUMPING	CHEMICAL	SLUDGE REMOVAL
Rate	\$27/ sample	\$35/ hour	*	NA	NA	\$75.00/hou r
Annual Cost	\$292.00	\$1,820.00	\$2,054.00	NA	NA	\$950.00

*Maintenance costs have been calculated under AMDTreat and incorporated as a percentage of capital costs rather than as an hourly rate.

Based on AMDTreat cost estimates, the current annual cost of operating and maintaining the Hall-Tallent South Treatment System is \$5,166.00.

Based on AMDTreat cost estimates, the current annual cost of operating and maintaining the Hall-Tallent North and Hall-Tallent South Treatment Systems combined is \$14,066.00. Attached in Exhibit E are the AMDTreat Cost Calculation Worksheets for the Hall-Tallent North and Hall-Tallent South Treatment Systems.

AY. In order to calculate the amount necessary to fully fund the trust, the Department and M. B. Energy have agreed to use recapitalization cost data generated by the Department's

AMD Treat software tool. According to the AMD Treat software tool, the present value of recapitalization costs for the Hall-Tallent Treatment Systems is \$101,534.00. Attached as Exhibit F is the AMD Treat Recapitalization Cost schedule for the Hall-Tallent Treatment Systems.

Gabiak Strip

AZ. Beginning in December 1984 and continuing until October 1989, M. B. Energy surface mined the Upper Kittanning, Lower Kittanning, and Lower Kittanning Rider coal seams on the Gabiak site. The site has been backfilled and revegetated.

BA. A summary of the reclamation bonds currently posted for the Gabiak mine is as follows:

PERMIT NO.	BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT NO.	BOND STATUS	BOND AMOUNT
11830102	Surety	Travelers	170498G3788	Active	\$74,820.00
			170498G3739		\$181,400.00

Post-Mining Discharges

BB. Two unauthorized post-mining discharges of mine drainage exist on the permit. The discharges are sampled prior to treatment at Monitoring Points GR1 and GR2 under the Gabiak permit.

BC. A topographic map depicting the location of the GR1 and GR2 discharges is attached in Exhibit A. The latitude and longitude coordinates of discharge GR1 are as follows: 40° 19' 47" latitude, 078° 59' 14" longitude. The latitude and longitude coordinates of discharge GR2 are as follows: 40° 19' 50" latitude, 078° 59' 14" longitude.

BD. The raw water quality of the GR1 discharge, as compiled by the Department from analytical sampling results for the period from April 2, 2014 through July 31, 2017, is set

forth in Exhibit B. The raw water quality of the GR2 discharge, as compiled by the Department from analytical sampling results for the period from April 2, 2014 through July 31, 2017, is set forth in Exhibit B.

BE. The required effluent limits applicable to the final outfall from the GR1 and GR2 discharges are as follows:

Effluent Limits for GR1 and GR2 (at final outfall 003, ES4)

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	1.7 mg/l	3.4 mg/l	4.2 mg/l
Suspended solids (total)	35 mg/l	70 mg/l	90 mg/l
Aluminum (total)	1.2 mg/l	2.4 mg/l	3.0 mg/l

pH must be between 6.0 and 9.0 at all times.

Alkalinity must be greater than acidity at all times.

BF. The NPDES permit applicable to discharges GR1 and GR2 is NPDES Permit No. PA0607550, with an expiration date of May 8, 2019. M. B. Energy will renew NPDES Permit No. PA0607550 every five (5) years for so long as discharges GR1 and GR2 continue to exist and require a permit.

BG. M. B. Energy agrees it has the legal responsibility, pursuant to, *inter alia*, the Surface Mining Act and the Clean Streams Law, to properly treat or abate the discharges identified in Paragraph BB above.

Post-Mining Treatment Trust

BH. To address the discharges on the Grabiak site, M.B. Energy installed two passive treatment systems (“Grabiak Treatment Systems”) within the permit area of the Grabiak site, the Upper Treatment System and the Lower Treatment System, which flow into a common polishing pond for final discharge. The Upper Treatment System treats Monitoring Point GR1. The Lower Treatment System treats Monitoring Point GR2. The upper GR1 system originates as discharges from the toe of the spoil that flow into a series of nine limestone beds followed by two polishing ponds then six stepped limestone sumps to the final common polishing pond. The lower GR2 system originates as discharges from the toe of the spoil that flow into and within a series of four aerobic wetlands then into a series of four limestone beds. An additional discharge originates above the GR1 system and is collected into two small ponds then piped underground to the head of the first limestone bed of the lower treatment system. These combined discharges then flow through the four limestone cells and into the common final polishing pond and discharge to an unnamed tributary to St. Clair Run. The locations of the access road, the Grabiak Treatment Systems, and the area required for operation and maintenance of the Grabiak Treatment Systems are shown on the map (“Grabiak Map”) attached in Exhibit C.

BI. The Grabiak Treatment Systems are situated on land owned by Courtney L. Droz, Melissa Pottinger, Lesley Suppes, and Hilary Jensen (collectively the Grabiak heirs); Douglas R. and Robert L. McIlwain; and Piney Run Coal Company. M. B. Energy has obtained and recorded access easements from the Grabiak heirs, the McIlwains, and Piney Run Coal Company, which grant the parties and the trustee access to the Grabiak Treatment Systems. Copies of the executed access agreements (“Grabiak Consents”) are attached in Exhibit D.

BJ. The estimated capital cost to initially construct the Grabiak Treatment Systems was calculated to be \$259,146.00, based on the cost to construct the existing system as calculated by AMDTreat.

BK. In order to calculate the amount necessary to fully fund the trust, the Department and M.B. Energy have agreed to use actual operation and maintenance costs from past operations of the Grabiak Treatment Systems, or AMDTreat cost estimates where insufficient operation and maintenance cost data exist.

A summary of current annual operation and maintenance costs for the Grabiak Treatment Systems is as follows:

Table of Current Annual Operation and Maintenance Costs

CATEGORY	SAMPLING	LABOR	MAINTENANCE	PUMPING	CHEMICAL	SLUDGE REMOVAL
Rate	\$27.00/ sample	\$35.00/ hour	*	NA	NA	\$75.00/hr
Annual Cost	\$750.00	\$2,402.00	\$9,333.00	NA	NA	\$950.00

*Maintenance costs have been calculated under AMDTreat and incorporated as a percentage of capital costs rather than as an hourly rate.

Based on actual operation and maintenance costs from past operations and AMDTreat cost estimates for the existing system, the current annual cost of operating and maintaining the Grabiak Treatment Systems is \$13,435.00. Attached in Exhibit E are the AMDTreat Cost Calculation Worksheets for the Grabiak Treatment Systems.

BL. In order to calculate the amount necessary to fully fund the trust, the Department and M. B. Energy have agreed to use recapitalization cost data generated by the Department's AMDTreat software tool. According to the AMDTreat software tool, the present value of

recapitalization costs for the Grabiak Treatment Systems is \$100,255.00. Attached in Exhibit F is the AMDTreat Recapitalization Cost schedule for the Grabiak Treatment Systems.

CBC Strip

BM. Beginning in February 1985 and continuing until September 1986, Arcadia surface mined the Lower Freeport coal seam on the CBC Strip. The site has been backfilled and revegetated.

BN. A summary of the reclamation bonds currently posted for the CBC Strip mine is as follows:

PERMIT NO.	BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT NO.	BOND STATUS	BOND AMOUNT
32820134	Surety	Travelers	170712G2392	Active	\$74,400.00
32820134	Surety	Rockwood Casualty Insurance Co.	ISM1326	Active	\$340,062.00

Post-Mining Discharges

BO. Three unauthorized post-mining discharges of mine drainage exist on the permit. The discharges have been sampled after treatment in buried anoxic limestone drains (ALDs) at Monitoring Points H, I and J under the CBC Strip permit.

BP. A topographic map depicting the location of the H, I and J discharges is attached in Exhibit A. The latitude and longitude coordinates of discharge H are as follows: 40° 48' 24.0" latitude, 078° 55' 07" longitude. The latitude and longitude coordinates of discharge I are as follows: 40° 48' 23" latitude, 078° 55' 09" longitude. The latitude and longitude coordinates of discharge J are as follows: 40° 48' 21.0" latitude, 078° 55' 13" longitude.

BQ. The Department does not have analytical sampling results for the water quality of the H discharge as it exits the buried ALD. The water quality of the I discharge as it exits the buried ALD, as compiled by the Department from analytical sampling results for the period from September 9, 2013 through April 27, 2016, is set forth in Exhibit B. The water quality of the J discharge as it exits the buried ALD, as compiled by the Department from analytical sampling results for the period from September 9, 2013 through April 27, 2016, is set forth in Exhibit B.

BR. The required effluent limits applicable for each of the H, I and J discharges are as follows:

Effluent Limits for H, I and J (at final outfall 001)

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids (total)	35 mg/l	70 mg/l	90 mg/l
Aluminum (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Total Dissolved Solids	2,000 mg/l	4,000 mg/l	5,000 mg/l

pH must be between 6.0 and 9.0 at all times.

Alkalinity must be greater than acidity at all times.

BS. The NPDES permit applicable to discharges H, I and J is NPDES Permit No. PA0606154, with an expiration date of February 22, 2020. M. B. Energy will renew NPDES Permit No. PA0606154 every five (5) years for so long as discharges H, I and J continue to exist and require a permit.

BT. M. B. Energy agrees it has the legal responsibility, pursuant to, *inter alia*, the Surface Mining Act and the Clean Streams Law, to properly treat or abate the discharges identified in Paragraph BO above.

Post-Mining Treatment Trust

BU. To address the discharges on the CBC Strip site, the three discharges were collected in separate anoxic limestone drains and then diverted through a large passive treatment system that directs the water through three ponds and then six wetlands within the permit area of the CBC Strip ("CBC Strip Treatment System"). The locations of the access road, the CBC Strip Treatment System, and the area required for operation and maintenance of the CBC Strip Treatment System are shown on the map ("CBC Strip Map") attached in Exhibit C.

BV. The CBC Strip Treatment System is situated on land owned by the Pennsylvania Game Commission. M. B. Energy has obtained from the Pennsylvania Game Commission an access easement which grants the parties and the trustee access to the CBC Strip Treatment System. A copy of the executed easement ("CBC Strip Consent") is attached in Exhibit D.

BW. The estimated capital cost to initially construct the CBC Strip Treatment System was calculated to be \$111,490.00, based on the cost to construct the existing system as calculated by AMDTreat.

BX. In order to calculate the amount necessary to fully fund the trust, the Department and M.B. Energy have agreed to use actual operation and maintenance costs from past operations of the CBC Strip Treatment System, or AMDTreat cost estimates where insufficient operation and maintenance cost data exist. A summary of current annual operation and maintenance costs for the CBC Strip Treatment System is as follows:

Table of Current Annual Operation and Maintenance Costs

CATEGORY	SAMPLING	LABOR	MAINTENANCE	PUMPING	CHEMICAL	SLUDGE REMOVAL
Rate	\$27.00/ sample	\$35.00 / hour	*	NA	NA	\$75.00/hr
Annual Cost	\$444.00	\$2,102 .00	\$4,742.00	NA	NA	\$1,100.00

*Maintenance costs have been calculated under AMDTreat and incorporated as a percentage of capital costs rather than as an hourly rate.

Based on AMDTreat cost estimates, the current annual cost of operating and maintaining the CBC Strip Treatment System is \$8,388.00. Attached in Exhibit E are the AMDTreat Cost Calculation Worksheets for the CBC Strip Treatment System.

BY. In order to calculate the amount necessary to fully fund the trust, the Department and M. B. Energy have agreed to use recapitalization cost data generated by the Department's AMDTreat software tool. According to the AMDTreat software tool, the present value of recapitalization costs for the CBC Strip Treatment System is \$27,750.00. Attached in Exhibit F is the AMDTreat Recapitalization Cost schedule for the CBC Strip Treatment System.

Dietrich Mine

BZ. Beginning in May 1982 and continuing until June 1985, North Cambria Fuel surface mined the Upper Freeport coal seam on the Dietrich Mine site. The site has been backfilled and revegetated.

CA. A summary of the reclamation bonds currently posted for the Dietrich mine is as follows:

PERMIT NO.	BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT NO.	BOND STATUS	BOND AMOUNT
32810135	Surety	Travelers	170498G3395	Active	\$32,800.00

Post-Mining Discharges

CB. One unauthorized post-mining discharge of mine drainage exists on the permit. The discharge is sampled prior to treatment at Monitoring Point R under the Dietrich Mine permit.

CC. A topographic map depicting the location of the R discharge is attached in Exhibit A. The latitude and longitude coordinates of discharge R are as follows: 40° 27' 21" latitude, 079° 08' 47" longitude.

CD. The raw water quality of the R discharge, as compiled by the Department from analytical sampling results for the period from October 10, 2013 through July 19, 2018, is set forth in Exhibit B.

CE. The required effluent limits applicable for the R discharge are as follows:

Effluent Limits for R (at final outfall 002)

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (total)	2.5 mg/l	5.0 mg/l	5.8 mg/l
Manganese (total)	1.7 mg/l	3.4 mg/l	4.3 mg/l
Suspended solids (total)	35 mg/l	70 mg/l	90 mg/l
Aluminum (total)	1.2 mg/l	2.4 mg/l	3.0 mg/l
Osmotic Pressure			50.0 mOsm/kg

pH must be between 6.0 and 9.0 at all times.

Alkalinity must be greater than acidity at all times.

CF. The NPDES permit applicable to the R discharge area is NPDES Permit No. PA0607606, with an expiration date of September 6, 2021. M. B. Energy will renew NPDES Permit No. PA0607606 every five (5) years for so long as discharge R continues to exist and requires a permit.

CG. M. B. Energy agrees it has the legal responsibility, pursuant to, *inter alia*, the Surface Mining Act and the Clean Streams Law, to properly treat or abate the discharge identified in Paragraph CB above.

Post-Mining Treatment Trust

CH. To address the discharges at the Dietrich Mine Site, M.B. Energy installed a passive treatment system within the permit area of the Dietrich Mine site (“Dietrich Mine Treatment System”). The Dietrich Mine Treatment System consists of four aerobic wetlands, four limestone beds, three MRU filter boxes, and a limestone channel that discharge to an unnamed tributary to Blacklick Creek. The locations of the access road, the Dietrich Mine Treatment System, and the area required for operation and maintenance of the Dietrich Mine Treatment System are shown on the map (“Dietrich Mine Map”) attached in Exhibit C.

CI. The Dietrich Mine Treatment System is situated on land owned by the Kovalcik Family Trust. M. B. Energy has obtained from the Kovalcik Family Trust an access easement which grants the parties and the trustee access to the Dietrich Mine Treatment System. A copy of the executed easement (“Dietrich Mine Consent”) is attached in Exhibit D.

CJ. The estimated capital cost to initially construct the Dietrich Mine Treatment System was calculated to be \$117,692.00, based on the cost to construct the existing system as calculated by AMD Treat.

CK. In order to calculate the amount necessary to fully fund the trust, the Department and M.B. Energy have agreed to use actual operation and maintenance costs from past operations of the Dietrich Mine Treatment System, or AMDTreat cost estimates where insufficient operation and maintenance cost data exist. A summary of current annual operation and maintenance costs for the Dietrich Mine Treatment System is as follows:

Table of Current Annual Operation and Maintenance Costs

CATEGORY	SAMPLING	LABOR	MAINTENANCE	PUMPING	CHEMICAL	SLUDGE REMOVAL
Rate	\$27.00 /sample	\$35.00 /hour	*	NA	NA	\$75.00/hr
Annual Cost	\$597.00	\$1,820.00	\$3,594.00	NA	NA	\$950.00

*Maintenance costs have been calculated under AMDTreat and incorporated as a percentage of capital costs rather than as an hourly rate.

Based on AMDTreat cost estimates for the existing system, the current annual cost of operating and maintaining the Dietrich Mine Treatment System is \$6,961.00. Attached in Exhibit E are the AMDTreat Cost Calculation Worksheets for the Dietrich Mine Treatment System.

CL. In order to calculate the amount necessary to fully fund the trust, the Department and M. B. Energy have agreed to use recapitalization cost data generated by the Department's AMDTreat software tool. According to the AMDTreat software tool, the present value of recapitalization costs for the Dietrich Mine Treatment System is \$58,335.00. Attached in Exhibit F is the AMDTreat Recapitalization Cost schedule for the Dietrich Mine Treatment System.

Saxman Run Mine

CM. Beginning in August 2001 and continuing until June 2003, M. B. Energy surface mined the Lower Freeport coal seam on the Saxman Run Mine. The site has been backfilled and revegetated.

CN. A summary of the reclamation bonds or other financial guarantee instruments currently posted for the Saxman Run Mine is as follows:

PERMIT NO.	BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT NO.	BOND STATUS	BOND AMOUNT
65010101	Surety	Rockwood Casualty Insurance Co.	ISM 1920 ISM 1947	Active	\$156,700.00 \$149,300.00
65010101	Financial Guarantee	DEP	7830-13-CFG	Active	\$156,900.00

Post-Mining Discharges

CO. Two unauthorized post-mining discharges of mine drainage exist on the permit. The discharges are sampled prior to treatment at Monitoring Points SP2 and RWT under the Saxman Run Mine permit.

CP. A topographic map depicting the location of the SP2 and RWT discharges is attached in Exhibit A. The latitude and longitude coordinates of discharge SP2 are as follows: 40° 18' 42" latitude, 79° 18' 25" longitude. The latitude and longitude coordinates of discharge RWT are as follows: 40° 18' 46" latitude, 79° 18' 19" longitude.

CQ. The raw water quality of the SP2 discharge, as compiled by the Department from analytical sampling results for the period from July 22, 2014 through May 1, 2018, is set forth in Exhibit B. The raw water quality of the RWT discharge, as compiled by the Department from

analytical sampling results for the period from July 22, 2014 through May 1, 2018, is set forth in Exhibit B.

CR. The required effluent limits applicable for each of the SP2 and RWT discharges are as follows:

Effluent Limits for SP2 and RWT (at outfall 001)

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids (total)	35 mg/l	70 mg/l	90 mg/l
Aluminum (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l

pH (S.U.): Must be between 6.0 and 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

CS. The NPDES permit applicable to discharges SP2 and RWT is NPDES Permit No. PA0202908, with an expiration date of August 1, 2021. M. B. Energy will renew NPDES Permit No. PA0202908 every five (5) years for so long as discharges SP2 and RWT continue to exist and require a permit.

CT. M. B. Energy agrees it has the legal responsibility, pursuant to, *inter alia*, the Surface Mining Act and the Clean Streams Law, to properly treat or abate the discharges identified in Paragraph CO above.

Post-Mining Treatment Trust

CU. To address the discharges on the Saxman Run Mine, M. B. Energy has built a passive treatment system within the permit area of the Saxman Run Mine (“Saxman Run Treatment System”). The discharge RWT is collected and directed to three pre-treatment settling ponds. There is one associated sludge basin. From the pre-treatment ponds, water is directed to a series of three vertical flow ponds comprising a successive alkalinity producing system (“SAPS”). The discharge then flows to an open limestone channel which flows several hundred feet and ends in an aerobic wetland. The SP2 discharge is collected and piped to a separate series of three vertical flow ponds or SAPS. Following the SAPS, SP2 is directed to the same open limestone channel as discharge RWT. At this point the discharges are combined and flow to the aerobic wetland noted above. The final discharge point is outflow from the wetland, which is designated Monitoring Point 001 (FD). The locations of the access road, the Saxman Run Treatment System, and the area required for operation and maintenance of the Saxman Run Treatment System are shown on the map (“Saxman Run Map”) attached in Exhibit C.

CV. The Saxman Run Treatment System is situated on land owned by Hanson Aggregates BMC, Inc. M. B. Energy has obtained from Hanson Aggregates BMC, Inc. an access easement which grants the parties and the trustee access to the Saxman Run Treatment System. A copy of the executed easement (“Saxman Run Consent”) is attached in Exhibit D.

CW. The estimated capital cost to initially construct the Saxman Run Treatment System was calculated to be \$233,133.00, based on the cost to construct the existing system as calculated by AMDTreat.

CX. In order to calculate the amount necessary to fully fund the trust, the Department and M.B. Energy have agreed to use actual operation and maintenance costs from past operations

of the Saxman Run Treatment System, or AMDTreat cost estimates where insufficient operation and maintenance cost data exist. A summary of current annual operation and maintenance costs for the Saxman Run Treatment System is as follows:

Table of Current Annual Operation and Maintenance Costs

CATEGORY	SAMPLING	LABOR	MAINTENANCE	PUMPING	CHEMICAL	SLUDGE REMOVAL
Rate	\$27.00/ sample	\$35.00 / hour	*	NA	NA	\$75.00/ho ur
Annual Cost	\$1,055.00	\$3,640 .00	\$8,160.00	NA	NA	\$950.00

*Maintenance costs have been calculated under AMDTreat and incorporated as a percentage of capital costs rather than as an hourly rate.

Based on AMDTreat cost estimates for the existing system, the current annual cost of operating and maintaining the Saxman Run Treatment System is \$13,805.00. Attached in Exhibit E are the AMDTreat Cost Calculation Worksheets for the Saxman Run Treatment System.

CY. In order to calculate the amount necessary to fully fund the trust, the Department and M. B. Energy have agreed to use recapitalization cost data generated by the Department's AMDTreat software tool. According to the AMDTreat software tool, the present value of recapitalization costs for the Saxman Run Treatment System is \$95,882.00. Attached in Exhibit F is the AMDTreat Recapitalization Cost schedule for the Saxman Run Treatment System.

M.B. Energy Multi-Site Treatment Trust

CZ. M. B. Energy is willing to establish a post-mining treatment trust with F.N.B. Wealth Management First National Trust Company as an alternative financial assurance mechanism, and a financially-backed enforceable contract, in order to provide for the long-term treatment of post-mining discharges and secure the release of reclamation bonds upon

completion of all other reclamation requirements. M. B. Energy agrees to establish the M. B. Energy Multi-Site Treatment Trust by executing a Post-Mining Treatment Trust Agreement with F.N.B. Wealth Management First National Trust Company which conforms with the Department's model trust agreement.

DA. The parties have discussed the need to obtain accurate and timely information on the costs of operating and maintaining the Treatment Systems in order to maintain the proper amount of financial assurance.

DB. The parties have agreed to use the formulas set forth below to calculate the present value of the M. B. Energy Multi-Site Treatment Trust. The parties agree that the present value of the fully-funded M. B. Energy Multi-Site Treatment Trust for the discharges covered by this Consent Order and Agreement is \$2,004,661.25. This sum constitutes the current present value of the estimated future operation and maintenance costs for the Treatment Systems, the current present value of the estimated future recapitalization costs for the Treatment Systems, and the current present value of the liability insurance. Attached in Exhibit G are the Treatment Bond/Trust Calculator Summary Sheets for the entire trust as well as each individual site. The parties have also agreed to use the information and figures which will be provided by the Accounting required by Paragraph 4 to recalculate and adjust the amount of the M. B. Energy Multi-Site Treatment 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 M. B. Energy as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 5 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5 and 691.610; Section 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c; Sections 3.1 and 9 of the Coal Refuse Disposal Act, 52 P.S. §§ 30.53a and 30.59; Section 9 of the Subsidence Act, 52 P.S. § 1409.9; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of M. B. Energy to comply with any term or condition of this Consent Order and Agreement shall subject M. B. Energy to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings.

a. M. B. Energy agrees that the findings in Paragraphs A through DB are true and correct and, in any matter or proceeding involving M. B. Energy and the Department, M. B. Energy shall not challenge the accuracy or validity of these findings.

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

3. Definitions.

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

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

c. **Annual Anniversary Date.** Thirty (30) days after the last day of M. B. Energy's fiscal year or thirty (30) days after the last day of any fiscal year which M. B. Energy 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:

$$PV = (A/[E-I]) + A$$

Where: PV = Present Value of the O&M Costs
A = Current Actual Treatment Cost
E = Expected Annual Earnings/Interest Rate (assumed to be 8.43% OR .0843)*
I = Inflation Rate (assumed to be 3.1% or .031)

* 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.** 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. M. B. Energy 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 items shall be tracked and reported for each general category.

b. M. B. Energy shall keep separate records for each of the following Treatment Systems: Ridge Road Treatment System, Campbell-Skovira Treatment System, Hall-Tallent Treatment Systems, Grabiak Treatment Systems, CBC Strip Treatment System, Dietrich Mine Treatment System, and Saxman Run Treatment System.

c. M. B. Energy shall provide an annual accounting of the costs and expenses of annual treatment to the Department on or before the 90th day following the last day of the fiscal year for which the Accounting is being provided. The Accounting shall cover the period beginning January 1 and continuing through December 31 of each year, or other fiscal year as M. B. Energy 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 M. B. Energy and by the President of M. B. Energy attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

d. M. B. Energy's obligation to keep records and provide the Accounting shall continue for the period during which M. B. Energy is operating the Treatment Systems.

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

5. Treatment Trust.

a. M. B. Energy shall establish an irrevocable trust to be known as the M. B. Energy Multi-Site Treatment Trust (Trust) by executing a Post-Mining Treatment Trust Agreement with F.N.B. Wealth Management First National Trust Company. The M. B. Energy Multi-Site Treatment Trust shall secure M. B. Energy's obligation to treat the discharges described above, including its legal obligation to operate and maintain the Treatment Systems in perpetuity or until the Department, in its sole discretion, determines that water treatment is no longer necessary. The M. B. Energy Multi-Site Treatment Trust shall also secure M. B. Energy's obligation to provide financial resources to the Department and the citizens of the Commonwealth sufficient to operate and maintain the Treatment Systems and to treat the mine drainage in perpetuity in the event M. B. Energy becomes unable or unwilling to meet these obligations. The M. B. Energy Multi-Site Treatment Trust shall provide for the demolition of treatment facilities and reclamation of the treatment sites should treatment no longer be needed. The agreement establishing the M. B. Energy Multi-Site Treatment Trust is attached as Exhibit H.

b. M. B. Energy shall establish within the M. B. Energy Multi-Site Treatment Trust two sub-accounts: (i) a sub-account designated as the Primary Trust Account; and, (ii) a sub-account designated as the Capital Improvement Account.

c. Upon thirty (30) days prior notice to the Department, M. B. Energy may post an appropriate bond or bonds with the Department, in the amount determined by the Department in accordance with applicable bonding requirements, in order to guarantee M. B. Energy's obligation to treat or abate the discharges covered by this Consent Order and Agreement, and M. B. Energy may subsequently petition the Department to terminate the M. B. Energy Multi-Site Treatment Trust. Upon termination of the Trust following the posting of sufficient bonds to guarantee M. B. Energy's obligation, the Department shall direct the Trustee to distribute any residuum, less final trust administration expenses of the Trustee, to the Settlor or to the Settlor's designated successors and/or assigns in accordance with Articles 4 and 12 of the Post-Mining Discharge Treatment Trust Agreement attached as Exhibit H.

6. Funding of the Primary Trust Account.

a. **Initial Payment to the Primary Trust Account:** Upon its execution of this Consent Order and Agreement, M. B. Energy shall deposit an amount of \$2,004,661.25 into the Primary Trust Account. This sum constitutes the current present value of the amount necessary to fully fund the Treatment Trust, and includes the current present value of the future operation and maintenance of the Treatment Systems and the current amount needed to finance anticipated and periodic capital expenditures for the Treatment Systems.

b. **Release of Surety Bonds Upon Full Funding of the Primary Trust Account:** Upon the Treatment Trust being fully funded, the bonds posted and described above in this Consent Order and Agreement will be released by the Department.

7. Annual Distribution or Contribution Payments – Primary Trust Account.

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

b. If at the end of any year the Primary Trust Valuation is greater than the Primary Target Valuation, then a Distribution Payment shall be made to M. B. Energy. 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 I.

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

d. If the Primary Trust Valuation is less than the Primary Basis Valuation, then M. B. Energy 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 I.

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

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

b. If the Actual Treatment Cost for any year is greater than or equal to 110 percent or less than or equal to 90 percent of the Calculated Treatment Cost, the Department will calculate a new Primary Basis Valuation using the Formula and the newly determined Actual

Treatment Cost. A new Primary Target Valuation will then be determined by calculating 116 percent of the new Primary Basis Valuation. Exhibit J is a graphical depiction of the adjustment.

9. Distribution Payments for Adjustments to the Primary Target Valuation.

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

b. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 8. above is based on a reduced Actual Treatment Cost, and the Primary Trust Valuation is greater than the newly calculated Primary Target Valuation, then a Distribution Payment shall be made to M. B. Energy. 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:

$$\begin{aligned} DP &= TR (1 - (\text{new ATC} / \text{prior ATC})) \\ &\text{Or} \\ DP &= TR - \text{new TV} \end{aligned}$$

Where:

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

10. Capital Improvement Account.

a. Assets of the Capital Improvement Account may be commingled with assets of the Primary Trust Account for purposes of investment, but must be accounted for and reported separately as if they are assets of a separate and distinct fund.

b. The required balance in the Capital Improvement Account has been determined by use of the AMDTreat Recapitalization tool based on the following methodology: For each planned capital replacement activity, the current cost and the projected year of replacement, are determined. The future cost of each replacement activity is calculated by compounding the present cost at a rate of 3.1% annually. The year in which each replacement activity will be needed is projected based on typical component life cycles. Assuming a net rate of return on investment of 8.43%, 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 K. 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 K 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. 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 K. 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 M. B. Energy any time a planned capital replacement is made as indicated on Exhibit K. 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 K, 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 K, 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 M. B. Energy's obligation to make a contribution payment under Paragraph 7.d. This amount is depicted graphically at Point 5 on Exhibit I. However, the amount of surplus funds transferred to the Primary Trust Account may exceed M. B. Energy's obligation under Paragraph 7.d. 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 I.

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

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by M. B. Energy 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 M. B. Energy to implement remediation or abatement activities to reduce or eliminate the discharge, or to improve the quality of the discharge, provided the Department first approves such activities.

14. Real and Personal Property.

a. Within sixty (60) days of the date of this Consent Order and Agreement, M. B. Energy shall create a complete inventory of all the equipment, facilities, and other personal property used for the treatment of the mine discharges described above in Paragraphs R through CU (Personal Property). Upon completion of the inventory, M. B. Energy shall submit the inventory to the Department for review and approval. Within thirty (30) days of receipt of written approval of the inventory by the Department, M. B. Energy shall transfer and convey to the Trustee, without reservation, all Personal Property including, but not limited to, the equipment and other property listed in the inventory in order to ensure continued treatment of the discharges in the event M. B. Energy enters bankruptcy, ceases to exist, or is unable or unwilling

to continue treatment. Said transfer and conveyance shall be substantially in the same form as the Bill of Sale and License Agreement attached hereto as Exhibit L.

b. The provisions of Paragraph 14.a. notwithstanding, for so long as M. B. Energy is continuing treatment, M. B. Energy shall be responsible for maintaining and replacing or upgrading, as appropriate, the Personal Property used for the treatment of the mine discharges described above in Paragraphs L through CT. M. B. Energy's replacement or upgrade of any of the Personal Property previously conveyed as set forth in Paragraph 14.a. to the Trustee shall only be done with the express written consent of the Trustee and the Department. All parts, additional equipment, replacements, and upgrades to the Personal Property shall immediately and automatically become the property of the First National Trust Company as Trustee of the M. B. Energy Multi-Site Treatment Trust.

c. M. B. Energy has submitted to the Department for all of the mine sites access easements needed by the Department and the Trustee to gain legal access to the real properties containing the equipment and facilities for the treatment of the mine discharges described above in Paragraphs L through CT. The landowner access easements or Consents are more fully described in Paragraphs S, AF, AV, BI, BV, CI and CV, above.

15. Public Liability Insurance.

a. M. B. Energy 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. The Trustee and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policies.

b. In addition to the requirements of Paragraph 15.a., the public liability insurance shall be written on an occurrence basis and shall provide bodily injury and property damage coverage in the minimum amounts of \$500,000 per person and \$1,000,000 per occurrence. The insurance shall include a rider requiring the insurer to notify the Department thirty days prior to substantive changes being made to the policy or prior to termination or failure to renew. Proof of insurance shall consist of a certificate of insurance filed annually with the Department which certifies M. B. Energy has a public liability insurance policy in force meeting the requirements of this Paragraph.

16. Annual Requirements.

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

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

17. M. B. Energy's Continuing Obligation.

Neither M. B. Energy 's agreement to fund the M. B. Energy Multi-Site Treatment Trust nor the full or partial funding of the M. B. Energy Multi-Site Treatment Trust, nor the exhaustion of the M. B. Energy Multi-Site Treatment Trust shall in any way limit M. B. Energy's obligation to operate the Treatment Systems and to treat the discharges covered by this Consent Order and Agreement in a manner which meets the effluent limitations described above.

Furthermore, exhaustion of the M. B. Energy Multi-Site Treatment Trust shall not excuse M. B. Energy from M. B. Energy's obligation to adequately treat or to abate the discharges.

18. Stipulated Civil Penalties.

a. Except as provided in Paragraph 25 (Force Majeure), in the event M. B. Energy fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, M. B. Energy 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 \$500.00 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, according to the location of the subject site, to:

District Mining Manager
Department of Environmental Protection
New Stanton District Mining Office
131 Broadview Road
New Stanton, PA 15672

or

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 M. B. Energy's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel M. B. Energy's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only M. B. Energy'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 M. B. Energy 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 M. B. Energy defaults on the obligations of this Consent Order and Agreement M. B. Energy 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 M. B. Energy 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. M. B. Energy reserves the right to challenge any action which the Department may take to require those measures.

21. Liability of M. B. Energy.

M. B. Energy 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. Except as provided in Paragraph 22.c., M. B. Energy 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 M. B. Energy Sites or any part thereof.

b. If M. B. Energy intends to transfer any legal or equitable interest in any Site which is affected by this Consent Order and Agreement, M. B. Energy 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 of District Mining Operations, PA DEP, Cambria District Office, 286 Industrial Park Road, Ebensburg PA 15931, 814-472-1900, and the District Mining Managers identified in Paragraph 23, of such intent.

c. The Department in its sole discretion may agree to modify or terminate M. B. Energy's duties and obligations under this Consent Order and Agreement upon transfer of

any of the Sites. M. B. Energy 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:

District Mining Manager
Department of Environmental Protection
New Stanton District Mining Office
131 Broadview Road
New Stanton, PA 15672

and

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

with a copy to:

Mineral Resources Program Specialist
Department of Environmental Protection
New Stanton District Mining Office
131 Broadview Road
New Stanton, PA 15672.

24. Correspondence with M. B. Energy.

a. All correspondence with M. B. Energy concerning this Consent Order and Agreement shall be addressed to:

Ronald M. Little
General Manager
M. B. Energy, Inc.
175 McKnight Road
Blairsville, PA 15717
Phone: 724-459-3714
Facsimile: 724-459-7110.

b. M. B. Energy shall notify the Department whenever there is a change in the contact person's name, title, phone/facsimile number, 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 M. B. Energy 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 M. B. Energy's control and which M. B. Energy, by the exercise of all reasonable diligence, is unable to prevent, then M. B. Energy 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 M. B. Energy's control. M. B. Energy'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. M. B. Energy 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 M. B. Energy 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. M. B. Energy'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 M. B. Energy and other information available to the Department. In any subsequent litigation, M. B. Energy 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, no changes, additions, modifications or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

30. Titles.

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

31. Decisions under Consent Order.

Any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, 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 M. B. Energy 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 M. B. Energy. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) M. B. Energy consolidates with or merges into or permits to merge with it and M. B. Energy is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of M. B. Energy's properties or assets which include, but are not limited to, voting stock of M. B. Energy. Successor does not include any corporation or other entity to which M. B. Energy transfers or assigns all or substantially all of its financial or non-financial liabilities.

M. B. Energy 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. The provisions of this Paragraph 32 shall not be construed so as to impose personal liability on the shareholders of M. B. Energy, Inc. stock not otherwise authorized by law.

33. Counterpart Signatures.

The parties agree that this Consent Order and Agreement may be executed by counterpart signatures transmitted via electronic means.

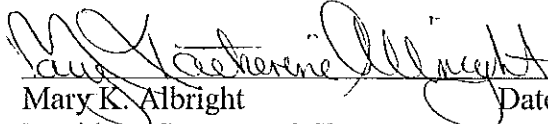
IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of M. B. Energy certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of M. B. Energy; that M. B. Energy consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that M. B. Energy 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

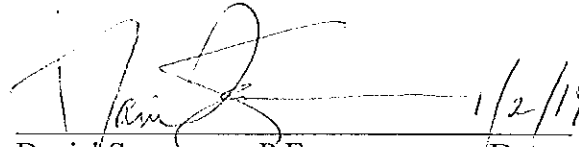
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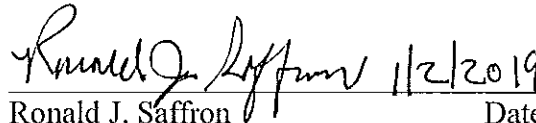
Chapters 5A and 7A; or any other provision of law. Signature by M. B. Energy's attorney certifies only that the agreement has been signed after consulting with counsel.


FOR M. B. ENERGY, INC.:

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:


Mary K. Albright
President, Secretary & Treasurer
Date 1/2/19


Daniel Sammarco, P.E.
Acting Director of District Mining Operations
Date 1/2/19


Ronald J. Saffron
Attorney for M. B. Energy, Inc.
Date 1/2/2019


Gail Guenther
Assistant Counsel
Southwest Region Office of Chief Counsel
Date 1/2/19