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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:

St. Michael Treatment Plant	:	
Rosebud Mining Company	:	
301 Market Street	:	St. Michael Treatment Plant
Kittanning, PA 16201	:	Portage Township
	:	Cambria County
and	:	
	:	
St. Michael Land Company, Inc.	:	
301 Market Street	:	
Kittanning, PA 16201	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 5<sup>th</sup> day of December, 2012, by and among the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), Rosebud Mining Company ("Rosebud") and St. Michael Land Company, Inc. ("SMLC").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.1-691.1001 ("Clean Streams Law"); the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, as amended, 52 P.S. §§ 1406.1 – 1406.21 ("Mine Subsidence Act"); the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, as amended,

52 P.S. §§ 1396.1 – 1396.19a (“Surface Mining Act”); 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 (“rules and regulations”) promulgated thereunder.

B. Rosebud is a Pennsylvania corporation with a business address of 301 Market Street, Kittanning, Pennsylvania 16201. Rosebud is engaged in underground mining activities in Pennsylvania pursuant to License No. 1664.

C. SMLC is a Pennsylvania corporation with a business address of 301 Market Street, Kittanning, Pennsylvania 16201.

#### Mine 78

D. Rosebud operates an underground coal mine and associated coal preparation plant known as Mine 78 located in Paint Township, Somerset County pursuant to Bituminous Coal Mining Activity Permit No. 56841328 (the “CMAP”). Rosebud mines the Upper Kittanning coal seam at Mine 78.

E. The CMAP was originally issued to BethEnergy Mines, Inc. (“BethEnergy”) on March 6, 1978. BethEnergy mined the Upper Kittanning coal seam in Mine 78 until it ceased underground mining operations in 1987. The CMAP was renewed on August 26, 2005 and transferred from BethEnergy to Pristine Resources, Inc. BethEnergy is now insolvent and defunct.

F. The CMAP was transferred from Pristine Resources, Inc. to Rosebud on February 15, 2006 and was last renewed on September 26, 2007. Rosebud submitted an application to renew the CMAP and NPDES permit on May 22, 2012.

G. Condition F6 of the CMAP prohibits mining below an elevation of 1604 feet MSL because of flooding in the regional Berwind Mine Pool (described below) in the abandoned Lower Kittanning coal seam. There are significant unmined reserves in the Upper Kittanning coal seam below elevation 1604 MSL that could be mined by reducing the flooded elevations of the Berwind Mine Pool. The Upper Kittanning coal seam is located approximately 100 feet above the Lower Kittanning coal seam. Exhibit A shows the current Mine 78 permit boundary and the area of additional reserves that could be mined by expanding operations in Mine 78.

H. Rosebud estimates that the Upper Kittanning seam coal reserves are adequate to support continued mining for approximately 25 years.

#### **Berwind Mine Pool and St. Michael Discharges**

I. There is a regional, large underground mine pool known as the Berwind Mine Pool in a complex of abandoned deep mines in the southern portion of the syncline of the Wilmore Basin in northern Somerset and southern Cambria counties. Extensive deep mining and surface mining of the Lower Kittanning coal seam occurred in the southern end of the Wilmore Basin dating back to the late 19th century and continuing through much of the 20th century. This mining contributed acid mine water to the Berwind Mine Pool.

J. The largest former but now abandoned underground mines (known locally as the "Berwind Mines") that are contributing mine water to the Berwind Mine Pool are the Maryland Mine No. 1 and Eureka Mines Nos. 35, 36, 37, 40 and 42. Other smaller abandoned underground mines also contribute water to the Berwind Mine Pool.

K. The Berwind Mine Pool has a surface area of approximately 15,000 acres and contains approximately eleven billion gallons of mine water. It is confined by the limits of the

deep mine complex and the geologic structure of the Wilmore syncline. The St. Michael Shaft, a former elevator shaft which accessed the Maryland Mine No.1, is the main discharge point for the Berwind Mine Pool. The shaft is at elevation 1604 feet MSL and is approximately 660 feet deep. A map of the Berwind Mine Pool is attached as Exhibit B.

L. The discharge from the St. Michael Shaft ("St. Michael Shaft Discharge") flows into Topper Run, which is a tributary to the South Fork of the Little Conemaugh River. The St. Michael Shaft Discharge is the largest of seven significant regional abandoned mine discharges that are contributing to the degradation of the Little Conemaugh River. The discharge from the St. Michael Shaft alone contributes almost 30% of the total acid mine discharge load to the Little Conemaugh River.

M. There are three abandoned discharges or seeps within approximately 400 feet of the St. Michael Shaft: an airshaft and power borehole into the Maryland No. 1 Mine (the "St. Michael Borehole"); a group of streambank seeps downstream from the St. Michael Shaft (the "St. Michael Stream Bank Seeps"); and a group of surface seeps in the immediate vicinity of the St. Michael Shaft (the "St. Michael Refuse Seeps"). The three discharges are collectively referred to as the "Other St. Michael Discharges." A map showing the location of the Other St. Michael Discharges is attached as Exhibit C.

N. There are abandoned discharges of mine drainage emanating from an old mine known as the Stineman No. 1 Mine located near the Borough of South Fork. The Stineman No. 1 Mine may have been interconnected to the Berwind Mines. One set of discharges are small seeps on the south side of the South Fork of the Little Conemaugh River. The second discharge, which is known as the Burkett Slope Discharge, comes out of a pipe at or below elevation 1540' MSL.

on the north side of the South Fork of the Little Conemaugh River. Collectively, the seeps and the Burkett Slope Discharge are known as the "Stineman Discharges."

O. There is a large abandoned discharge of mine drainage known as the Sulphur Creek Borehole Discharge emanating from a borehole drilled into the abandoned Yellow Run Mine. The discharge flows into Sulphur Creek, a tributary of Otto Run. Otto Run flows into the Little Conemaugh River. The Sulphur Creek Borehole Discharge which comprises 10.7% of the pollution load of the Little Conemaugh River is located at elevation 1860 feet MSL. As much as 44% of the flow and load of the Sulphur Creek Borehole Discharge may flow into the Berwind Mine Pool and be treated at the Treatment Facility described below.

P. The Other St. Michael Discharges, the Stineman Discharges and the Sulphur Creek Borehole Discharge are collectively referred to as the "AML Discharges."

Q. The St. Michael Shaft Discharge and the AML Discharges degrade and pollute the waters of the Commonwealth including Topper Run, the South Fork of the Little Conemaugh River, the Little Conemaugh River, and the Conemaugh River, adversely affect their use and their ability to support a healthy aquatic community, and threaten public health and safety.

R. The St. Michael Shaft Discharge and the AML Discharges constitute pollution and a public nuisance at common law and under Sections 307, 315 and 503 of The Clean Streams Law, 35 P.S. §§ 691.307, 691.315, and 691.503.

S. Rosebud's mining and water pumping activities within the Mine 78 are not connected with the Berwind Mine Pool, the St. Michael Shaft Discharge, and/or the AML Discharges. Mine water from the existing treatment plant at the Mine 78 main portal is discharged to a tributary of Paint Creek pursuant to the CMAP. Paint Creek is not a tributary of the South Fork of the Little Conemaugh River.

T. No known viable party is legally responsible for the Berwind Mine Pool, the St. Michael Shaft Discharge, the AML Discharges and/or any other discharge locations from the Berwind Mine Pool, and/or other adjacent mine pools or abandoned mines.

U. The Little Conemaugh River is listed on the Department's Section 303(d) list for acid mine drainage impairment. On January 29, 2010, EPA issued its *TMDLs for Streams Impaired by Acid Mine Drainage in the Kiskiminetas-Conemaugh River Watershed, Pennsylvania* (the "Kiski-Conemaugh TMDL"), which identifies the discharge from the St. Michael Shaft as the largest pollution source in the Little Conemaugh River watershed and which establishes wasteload allocations for discharges of iron, manganese, aluminum and pH in the watershed.

#### St. Michael Treatment Facility

V. A water treatment facility to pump and treat mine water from the Berwind Mine Pool (the "Treatment Facility") would provide treatment for the St. Michael Shaft Discharge and the Other St. Michael Discharges, may mitigate or abate the Stineman Discharges and may mitigate the Sulphur Creek Borehole Discharge, and allow coal reserves in the Upper Kittanning seam at Mine 78 to be mined by lowering the elevation of the Berwind Mine Pool.

W. SMLC owns real property at the location of the St. Michael Shaft on which a Treatment Facility could be built.

X. Rosebud is willing to finance, construct and operate the Treatment Facility pursuant to the terms and conditions of this COA. Rosebud will invest capital necessary to build the Treatment Facility, which Rosebud estimates will cost approximately \$15 million.

Y. Rosebud submitted an application to the Department on March 3, 2011, which was accepted by the Department as complete on March 17, 2011, for a revision to the existing CMAP

and existing NPDES Permit PA0033677 (the "NPDES Permit") to construct the Treatment Facility. The Department approved the application and issued a revision to the CMAP and the NPDES Permit to Rosebud on October 28, 2011. The permit revision authorized the construction of the treatment facility. No NPDES outfall was authorized with this permit revision.

Z. On September 1, 2011, Rosebud submitted an application to revise the CMAP and the NPDES Permit to add 3.8 surface acres primarily for the proposed AMD treatment sludge line and borehole. The application included new NPDES discharge point Outfall 005 to operate the Treatment Facility after it is built. The Department accepted the application as complete on December 29, 2011. Notice of the draft NPDES Permit was published in the *Pennsylvania Bulletin* on June 16, 2012 and September 1, 2012. The Department issued the revised CMAP and revised final NPDES Permit (copy attached as Exhibit D) on the same date as this Consent Order and Agreement. After the Treatment Facility is built, mine water will be pumped from the Berwind Mine Pool, treated at the Treatment Facility and discharged at Outfall 005 to Topper Run.

AA. On May 22, 2012, Rosebud submitted an application to renew the NPDES Permit.

BB. As is more fully set forth in the NPDES Permit Fact Sheet (copy attached as Exhibit E), operation of the Treatment Facility will generate offset credits. These offsets are sufficient to treat the effluent from the Treatment Facility to meet the wasteload allocation in the Kiski-Conemaugh TMDL.

CC. The Treatment Facility will have a maximum pumping capacity of 10,000 gallons per minute using pumps that will be placed in the St. Michael Shaft. The pumping rate is expected to vary over time.

DD. The Department has estimated that treating the discharge from the Treatment Facility to best achievable technology ("BAT") standards will reduce the current iron load from the St. Michael Shaft Discharge and the AML Discharges by 98.6% (a reduction of 2,807,209 lbs/yr), the current manganese load by 74.4% (a reduction of 76,611 lbs/yr) and the current aluminum load by 74.1% (a reduction of 75,385 lbs/yr).

EE. For purposes of this Consent Order and Agreement, the terms (i) "Initial Pumping Phase" shall mean pumping to lower the Berwind Mine Pool to a target elevation or elevations that will allow mining of coal in the Upper Kittanning coal seam below an elevation of 1604 feet MSL, and (ii) "Active Mining Operations" shall mean the active operation of Mine 78 for the extraction of coal from the Upper Kittanning coal seam below an elevation of 1604 feet MSL pursuant to the existing CMAP, as it may be renewed, modified or revised for mining in the future.

FF. Rosebud will operate and maintain the Treatment Facility after it is constructed and will pay the operating and maintenance costs during the Test Period (as defined in Paragraph 3 below), during the Initial Pumping Phase, during Active Mining Operations, and during the period following the conclusion of Active Mining Operations set forth in Paragraph 8 below.

#### **Treatment Trust and Post-Mining Activities**

GG. As is more fully set forth in Paragraph 7 below, once Active Mining Operations begin, Rosebud will establish a trust fund in the amount of \$15 Million (the "Trust") by signing a Participation Agreement with the Clean Streams Foundation (attached as Exhibit F) to provide and pay for operation and/or maintenance costs of the Treatment Facility once Active Mining Operations at Mine 78 have concluded.



HH. As is more fully set forth in Paragraph 8 below, Rosebud will notify the Department at least 180 days before it intends to end Active Mining Operations and will assign and convey title to the Treatment Facility, other associated personal property, and all permits and authorizations used to operate the Treatment Facility to the Department or the Department's designee. The Department will promptly accept or cause its designee to accept such assignment and conveyance of the Treatment Facility and permits and authorizations, and ensure the continued operation of the Treatment Facility after Active Mining Operations end.

#### **Liability Limitation**

II. Neither Rosebud nor SMLC, through mining activities or otherwise, has created, caused or had any prior nexus to or connection with: (i) the quantity or quality of the Berwind Mine Pool or any other deep mine or surface mine contributing mine water to the Berwind Mine Pool and/or discharging at the St. Michael Shaft, or elsewhere, or (ii) the St. Michael Shaft Discharge or the AML Discharges, and/or (iii) any mines, refuse piles or mine pools contributing to those seeps or discharges.

JJ. As is more fully set forth below in Paragraph 11, and in consideration of Rosebud's undertaking to (i) finance and build the Treatment Facility, (ii) pay \$15 Million into the Trust and (iii) convey title to the Treatment Facility at the conclusion of Active Mining Operations and in consideration for SMLC's (x) lease of the real property on which the Treatment Facility will be built and (y) commitment to convey title to said real property to the Department or its designee at the conclusion of Active Mining Operations, the Department irrevocably and unconditionally covenants not to sue and waives any claims against Rosebud and SMLC for the treatment of the Berwind Mine Pool and/or any other adjacent mine pools or the St. Michael Shaft Discharge

and/or the AML Discharges. This waiver and release does not affect Rosebud's and SMLC's respective obligations to comply with this Consent Order and Agreement while it is in effect.

#### Authority

KK. The Department is authorized to issue orders when a condition is causing or creating a danger of pollution to the waters of the Commonwealth pursuant to Sections 5, 402, and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.402, 691.610; Section 4.3 of the Surface Mining Conservation and Reclamation Act, 52 P.S. § 1396.4c; Section 9 of the Mine Subsidence Act, 52 P.S. § 1406.9, and the Department is authorized to issue orders to abate nuisances pursuant to Section 1917-A of the Administrative Code of 1929; 71 P.S. § 510-17.

LL. The proposed pumping of water from the Berwind Mine Pool to the Treatment Facility will abate a public nuisance and is in the public interest because, *inter alia*, it will abate the untreated St. Michael Shaft Discharge and the Other St. Michael Discharges and may abate or mitigate the Stineman Discharges and the Sulphur Creek Borehole Discharge to waters of the Commonwealth.

MM. On or about March 5, 2012, Rosebud began construction of the Treatment Facility and expects to complete construction in March or April 2013.

NN. Once the Treatment Facility is constructed, Rosebud may start up and operate the facility for 30 days on a test basis to ensure that the facility was built as designed; to allow its contractors to meet any retainage or other obligations of their construction contracts; and to determine on a preliminary basis electrical cost, lime usage and water quality ("Test Period"). As is more fully set forth in Paragraph 3 below, the startup and operation of the Treatment Facility

during the Test Period does not trigger Rosebud's obligation to fund the Trust or to post Financial Assurance pursuant to Paragraph 7 below.

OO. As previously stated, Rosebud will need to lower the Berwind Mine Pool during the Initial Pumping Phase before it will be able to commence Active Mining Operations. As is more fully set forth in Paragraph 5 below, pumping the mine pool and operating the Treatment Facility during the Initial Pumping Phase does not trigger an obligation to fund the Trust or to post Financial Assurance pursuant to Paragraph 7 below. Rosebud has agreed to begin the Initial Pumping Phase within 30 days of the end of the Test Period, provided there are no actual or threatened appeals of or other challenges to this Consent Order and Agreement, the revised or renewed NPDES Permit, the revised or renewed CMAP, and/or any other approval or authorization necessary to commence the Initial Pumping Phase and/or conduct Active Mining Operations, as provided in Paragraph 5 below.

PP. Rosebud and the Department have agreed that Rosebud's obligation to fund the Trust and post Financial Assurance will be triggered only if, and when, Rosebud commences Active Mining Operations.

QQ. Rosebud and the Department have agreed that the decision whether and when to commence and when to terminate Active Mining Operations is at Rosebud's sole discretion.

RR. As is set forth in Paragraph 12 below, Rosebud has agreed that any excessive offsets generated by operation of the Treatment Facility are non-transferable.

SS. The parties have agreed that this agreement will be signed and dated on the same date that the revised NPDES Permit is issued. Further, the parties have agreed that notice of this Consent Order and Agreement will be published in the Pennsylvania Bulletin and the Johnstown Tribune Democrat newspaper.

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 desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Rosebud and SMLC as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 5, 402, and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.402, 691.610; Section 4.3 of the Surface Mining Conservation and Reclamation Act, 52 P.S. § 1396.4c; Section 9 of the Mine Subsidence Act, 52 P.S. § 1406.9; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. **Findings.**

a. The parties agree that the findings in Paragraphs A through SS, above, (the "Findings") are true and correct and Rosebud and SMLC shall not challenge the accuracy or validity of these Findings, in any matter or proceeding involving Rosebud and/or SMLC and the Department. The Findings are incorporated by reference into this Consent Order and Agreement.

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. **Construction and Testing of the Treatment Facility.**

a. Prior to commencing Active Mining Operations, Rosebud shall construct the Treatment Facility in accordance with the revisions to the CMAP issued on October 28, 2011 to meet the BAT limits set forth in the revised CMAP and NPDES Permit for Outfall 005.

b. When construction of the Treatment Facility is completed, Rosebud may start up and operate the Treatment Facility on a test basis for a reasonable period not to exceed 30 days (the "Test Period"). Rosebud may extend the Test Period an additional 30 days upon written notice to the Department if additional work is necessary to make the Treatment Facility operational as intended.

c. Rosebud shall notify the Department in writing at least 10 days before it starts up the Treatment Facility during the Test Period. Temporary start up and operation of the Treatment Facility during the Test Period shall not be deemed to constitute Active Mining Operations or to trigger Rosebud's obligation to fund the Trust and post Financial Assurance pursuant to Paragraph 7.

d. Rosebud shall notify the Department in writing, within ten days after the termination of the Test Period, that the Test Period has concluded.

4. **Operation and Maintenance of the Treatment Facility.**

a. Rosebud shall be solely responsible for operating and maintaining the Treatment Facility, and paying the operation and maintenance costs, during the Test Period, during the Initial Pumping Phase, during Active Mining Operations, and as required by Paragraph 8 below.

b. Upon the conclusion of Active Mining Operations, Rosebud shall have no liability or responsibility whatsoever to operate or maintain the Treatment Facility, except as otherwise set forth in Paragraph 8 below.

5. Initial Pumping Phase

a. Subject to paragraph 5(d), Rosebud shall commence the Initial Pumping Phase of operating the Treatment Facility and pumping the Berwind Mine Pool no later than 30 days after the end of the Test Period.

b. Rosebud may continue to operate the Treatment Facility during the Initial Pumping Phase as may be necessary to determine whether or when to begin Active Mining Operations. If, during the Initial Pumping Phase Period, Rosebud decides not to commence Active Mining Operations, it shall give the Department 180 days advance written notice of its intent not to commence Active Mining Operations and shall comply with the requirements of paragraph 8 below.

c. Commencement of the Initial Pumping Phase and operation of the Treatment Facility during the Initial Pumping Phase shall not be deemed to constitute Active Mining Operations or to trigger Rosebud's obligation to fund the Trust and post Financial Assurance pursuant to Paragraph 7.

d. Rosebud, in its sole discretion and at any time, may elect not to commence, to postpone, to discontinue, and/or to restart the Initial Pumping Phase if there is an appeal of or actual or threatened challenge to this Consent Order and Agreement, the revised or renewed NPDES Permit, the revised or renewed CMAP, and/or any other approval or authorization necessary to commence the Initial Pumping Phase and/or conduct Active Mining Operations.

6. Active Mining Operations

a. Rosebud, in its sole discretion, may decide for any reason or no reason whether and when to commence Active Mining Operations. If Rosebud does commence Active



per year for 15 years. The first payment shall be made within ten business days of the commencement of Active Mining Operations. Each of the remaining 14 annual one million dollar (\$1,000,000) payments shall be made on or before each of the immediately succeeding fourteen anniversary dates of the commencement date of Active Mining Operations. Rosebud's obligation to make payments in the principal amount of Fifteen Million dollars (\$15,000,000) shall continue until the entire sum is paid. Rosebud at its election may prepay some or all of the annual payments into the Trust.

c. If Rosebud permanently terminates Active Mining Operations before it has fully funded the Treatment Trust pursuant to Paragraph 7, it shall pay the outstanding balance due to the Treatment Trust on or before the Termination Date set forth in the Treatment Facility Termination Notice, as set forth in Paragraph 8(a)(i) below.

d. When Rosebud makes its first payment of One Million dollars (\$1,000,000) to the Trust at the commencement of Active Mining Operations as provided in Paragraph 7(b) above, Rosebud also shall establish Financial Assurance to secure payment of the remaining Fourteen Million dollars (\$14,000,000) to the Trust. For purposes of this Consent Order and Agreement, "Financial Assurance" means any one or more of a performance bond, a surety or collateral bond, a letter of credit, or other instrument reasonably acceptable to the Department. The Financial Assurance instrument shall include a feature that the Fourteen Million dollar (\$14,000,000) face amount automatically decreases on a dollar-for-dollar basis as Rosebud makes contributions to the Trust. It shall also include a feature to provide for payment of the outstanding balance of the Financial Assurance automatically to the Trust in the event a default, after notice from the Department and a reasonable opportunity to cure, by Rosebud on its obligation to fund the Trust.



8. Conclusion of Active Mining Operations.

a. Whenever Rosebud decides to terminate Active Mining Operations, it shall:

i. Give the Department at least 180 days advance written notice of its intended date to permanently discontinue Active Mining Operations (the "Treatment Facility Termination Notice"). The Treatment Facility Termination Notice shall identify the day when Active Mining Operations will be permanently discontinued (the "Termination date"). If such 180 days advance notice is not possible, then Rosebud shall continue to operate the Treatment Facility after ending Active Mining Operations for a period of time equal to the difference between 180 days and the amount of time before ending Active Mining Operations at which it gave such notice to the Department. By way of illustration, if Rosebud gives the Department 120 days notice of the end of Active Mining Operations, it shall continue to operate the treatment Facility for 60 additional days, following which additional period the Rosebud and SMLC Parties shall have the same immunities, benefits and limitations on liability as if Rosebud had given the Department 180 days advance notice of the end of Active Mining Operations. Rosebud shall have the right to rescind its Treatment Facility Termination Notice at any time before the Termination Date occurs;

ii. If requested, use commercially reasonable efforts to assist the Department in its efforts to locate a successor party to take over operation and maintenance of the Treatment Facility, but nothing in this subparagraph or anything else in this Consent Order and Agreement shall be construed to require

Rosebud or the other Rosebud and SMLC Parties to continue to pump the Berwind Mine Pool or operate the Treatment Facility after it has given the Department the Treatment Facility Termination Notice and operated at its cost and expense the Treatment Facility for a period of 180 days following such notice;

iii. Maintain the Treatment Facility in good operating condition, reasonable wear and tear excepted, during the period covered by the Treatment Facility Termination Notice;

iv. Transfer title and all rights and interest in and to the Treatment Facility and associated personal property, and any real property interests, easements and rights-of-way, relating to the Treatment Facility to the Commonwealth of Pennsylvania or an entity designated by the Department to assume operation and maintenance of the Treatment Facility for one dollar (\$1.00), and the Department will promptly accept or cause a party designated by the Department to accept the transfer of such title, rights and interests; and the Treatment Facility so transferred shall be in good working condition, reasonable wear and tear excepted, but otherwise on an "AS IS, WHERE IS" basis and without any warranty, express or implied as to the condition or fitness of such real property, and without any warranty except that Rosebud will warrant that the Treatment Facility and associated personal property, and any real property interests, easements and rights-of-way will be free and clear of liens and encumbrances of third parties claiming under or through Rosebud; and Rosebud shall and the Department shall, or the Department shall cause its designee to,

diligently cooperate in the preparation, finalization, execution and submission to the Department and any other applicable regulator agency, all applications, modules, letters and other forms necessary to consummate the transfer and assignment of such permits and authorizations or portions of such permits and authorizations that are applicable to the Treatment Facility and the real property on which it is located and/or to submit and diligently prosecute new applications, modules, letters and other forms necessary to operate the Treatment Facility at the end of Active Mining Operations. Rosebud and the Department or the Department's designee shall make, execute and deliver such other bills of sale, agreements and/or other documents in form and substance reasonably satisfactory to the parties to consummate the transfer of the Treatment Facility and the other personal property associated therewith (if any); and

v. At the Department's request, serve a copy of this Consent Order and Agreement upon any prospective transferee identified by the Department at least sixty days prior to the contemplated transfer.

b. When Rosebud concludes operating the Treatment Facility for 180 days after the Treatment Facility Termination Notice, as set forth above, SMLC will, to the extent it holds the following rights, title and interests, transfer title and all rights and interest in and to all real property interests, easements and rights-of-way relating to the Treatment Facility to the Commonwealth of Pennsylvania or an entity designated by the Department for one dollar (\$1.00) and the Department shall accept a transfer of such title, rights and interests. The transfer of such title, rights and interests and the condition of the real property interests so transferred shall be on an "AS IS, WHERE IS" basis and without any warranty, express or implied as to the condition

or fitness of such real property, and without any warranty of title except that SMLC will warrant that such real property interests will be free and clear of liens and encumbrances of third parties claiming under or through SMLC (other than any "supplemental C" Contractual Consent of Landowner that SMLC granted to Rosebud for the operation of the Treatment Facility).

Additionally, the deed or other instrument of conveyance that transfers real property interests to the grantee designated by the Department shall include an unconditional and irrevocable waiver by the grantee and its successors and assigns forever of, and a covenant by the grantee and its successors and assigns forever not to assert, any claims against SMLC and Rosebud or bring any suit or action against SMLC and Rosebud based on claims, arising from or related to acid mine drainage or other discharges in, originating from or discharging from the Berwind Mine Pool or any other deep mine or surface mine contributing mine water to the Berwind Mine Pool, including, but not limited to, liability or responsibility for preventing, mitigating or treating the St. Michael Shaft Discharge or the AML Discharges or any other breakout or discharge, based on any of the activities contemplated or permitted by this Consent Order and Agreement, including, from Environmental Matters (as hereinafter defined) or otherwise, and such deed or instrument of conveyance also shall provide that such waiver and covenant not to sue shall run with the land.

c. When Rosebud ceases operating the Treatment Facility for 180 days after the Treatment Facility Termination Notice, all permits and authorizations used to operate the Treatment Facility, or portions of such permits and authorizations that are applicable to the Treatment Facility and the real property on which it is located, shall be transferred from Rosebud to the Commonwealth of Pennsylvania or to an entity designated by the Department to hold the permits and authorizations, and the Department will accept or require its designee to accept the

transfer of such permits and authorizations. If the Department has no designee to accept such permits and authorizations, the permits and authorizations shall be terminated as to Rosebud (and the Department agrees to terminate such permits and authorizations) so that Rosebud has no further status or obligation as a permittee or otherwise on any permit or authorization relating to the Treatment Facility. It shall not be a condition of terminating all of Rosebud's permits and authorizations relating to the Treatment Facility, and Rosebud's corresponding obligations under such permits, that the Department or a designee must first accept the transfer of Rosebud's permits or authorizations or that new permits or authorizations must be issued to the Department or its designee before Rosebud's permits and authorizations are terminated. This paragraph and the possible termination or transfer of all of Rosebud's permits and authorizations relating to the Treatment Facility shall not affect any permits or authorizations now or hereinafter in effect relating to the Mine 78 preparation plant or coal refuse area.

d. When Rosebud ceases operating the Treatment Facility for 180 days after the Treatment Facility Termination Notice, such cessation automatically shall terminate (i) all of Rosebud's duties and obligations under this Consent Order and Agreement, including but not limited to terminating the obligation to pump the Berwind Mine Pool or provide and pay the costs of maintenance and operation of the Treatment Facility, (ii) Rosebud's status as a permittee under any and all permits relating to the Treatment Facility, and (iii) Rosebud's obligation to comply with any and all permits or portions of permits relating to the Treatment Facility, except for (x) Rosebud's obligation to fund the Trust, which shall continue until payments equaling the principal amount of \$15 million have been made to the Trust and (y) Rosebud's obligation to transfer title to the Treatment Facility and associated personal property and real property interests, easements and rights of way.

9. **Transfer of Site before Active Mining Operations End.**

a. Before Active Mining Operations end, Rosebud's 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 Treatment Facility, or any part thereof unless modified or terminated pursuant to paragraph c below.

b. If Rosebud intends to transfer any legal or equitable interest in the Treatment Facility before Active Mining Operations end, Rosebud shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty days before the contemplated transfer and shall simultaneously inform the District Mining Manager, Department of Environmental Protection, Cambria District Mining Office of such intent.

c. Before Active Mining Operations end, the Department may agree to modify or terminate Rosebud's duties and obligations under this Consent Order and Agreement upon transfer of the Treatment Facility. If the Department approves a transfer of the Treatment Facility to a third party and the third party assumes the obligations of this Consent Order and Agreement, Rosebud shall be relieved of all liability hereunder.

10. **SMLC.** SMLC may merge with, assign or otherwise transfer its title and all rights and interest in and to all real property interests, easements and rights-of-way relating to the Treatment Facility at any time to Rosebud or any parent, subsidiary, affiliate, or sister corporation of Rosebud upon fifteen days advance notice to the Department. Any successor-in-interest to SMLC shall be bound by all obligations of this Consent Order and Agreement that are applicable to SMLC. Prior approval of such merger, assignment or transfer from the Department is not required.

11. **Liability Limitation.**

a. Rosebud, SMLC and/or their respective former, existing and future parents, subsidiaries, affiliates, sister corporations, directors, officers, employees, agents, and



Hazardous Sites Cleanup Act, or any regulations promulgated pursuant thereto (in each case as now existing or as hereinafter amended), or otherwise, and waives any claims against the Rosebud and SMLC Parties, relating to any liability, responsibility, claims, damages, mitigation, treatment and/or remediation costs arising from or related to (i) the Environmental Matters and/or (ii) the discharge of mine drainage treatment sludge from the Treatment Facility into any boreholes or other mine entries associated with or connected to the Berwind Mine Pool pursuant to permits issue by the Department.

c. The liability limitation, waiver and covenant not to sue set forth in this Paragraph 11 shall take effect immediately upon execution of this Consent Order and Agreement and shall survive the termination of this Consent Order and Agreement as to the Rosebud and SMLC Parties and their successors and assigns.

d. The limitation of liability provisions set forth in this paragraph shall be and hereby are extended to the successors and assigns of Rosebud and/or SMLC who engage in substantially the same activities as Rosebud and/or SMLC upon the written approval of the Department, which approval shall not be unreasonably withheld, conditioned or delayed.

e. The foregoing provisions of this Paragraph 11 shall not affect Rosebud's and SMLC's obligation to comply with the provisions of this Consent Order and Agreement.

12. Non-Transferability of Offsets

Any offsets, as defined in Paragraph BB and/or the revised or renewed NPDES Permit, shall not be transferable or assignable in any way whatsoever and shall only be applied to loads associated with the discharge from the Treatment Facility.



13. Additional Remedies, Reservation of Rights.

a. In the event Rosebud 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. The remedies provided by this paragraph 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.

14. Liability of Operator. Rosebud shall be liable for violations of the Consent Order and Agreement caused by Rosebud, including those caused by or contributed to by its officers, agents, employees, or contractors, unless the Department approves the transfer of the Treatment Facility and termination of Rosebud's duties and obligations pursuant to Paragraph 9 above.

15. 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  
Cambria District Mining Office  
286 Industrial Park Road  
Ebensburg, PA 15931  
Phone: (814) 472-1900  
Facsimile: (814) 472-1898

and  
District Mining Manager  
Department of Environmental Protection  
California District Mining Office  
California Technology Park  
Coal Center, PA 15423  
Phone: (724) 769-1100  
Facsimile: (724) 769-1102

16. Correspondence with Rosebud and SMLC. All correspondence with Rosebud and/or SMLC concerning this Consent Order and Agreement shall be addressed to:

**Rosebud:**

President  
Rosebud Mining Company  
301 Market Street  
Kittanning, PA 16201  
Phone: (724) 545-6222  
Facsimile: (724) 543-6375

**SMLC:**

President  
St. Michael Land Company, Inc.  
301 Market Street  
Kittanning, PA 16201  
Phone: (724) 545-6222  
Facsimile: (724) 543-6375

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

17. Successors. This Consent Order and Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

18. 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.

19. 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.

20. **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 the execution of this Consent Order and Agreement.

21. **Modifications.** 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.

22. **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.

23. **Public Comment.** This Consent Order and Agreement, after it is executed by the parties, shall be subject to a public comment period of not less than thirty days by publishing notice of the Consent Order and Agreement in the *Pennsylvania Bulletin* and the *Johnstown Tribune Democrat* newspaper.

24. **Effect of Appeal.** In the event of any appeal of or actual or threatened challenge to this Consent Order and Agreement, the revised or renewed CMAP, the revised or renewed NPDES Permit, and/or any other approval or authorization necessary to commence the Initial Pumping Phase and/or conduct Active Mining Operations by a third party, Rosebud shall have the unilateral right, its sole discretion, during the pendency of the appeal and then afterward for such time until the deadline for further appeals has expired, or if there is a further appeal, until after any final unappealable order is issued as a result of such appeal, not to commence the Initial Pumping Phase and/or Active Mining Operations and/or to terminate this Consent Order and

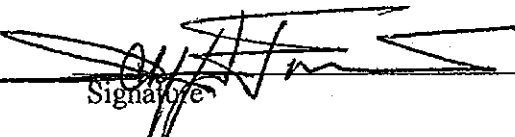
Agreement and abandon the operation of the Treatment Facility. If Rosebud elects to terminate the Consent Order and Agreement, it will comply with the procedures set forth in Paragraph 8 hereof, unless Rosebud terminates the Consent Order and Agreement before the Test Period begins, in which case Rosebud is not obligated to provide the 180-day Treatment Facility Termination Notice set forth in Paragraph 8(a)(i) but Rosebud and SMLC are obligated to transfer title and all rights and interest in and to the Treatment Facility and related real property rights to the Department or its designee as required by Paragraphs 8(a)(iv) and 8(b).

25. Counterpart Signatures. This Consent Order and Agreement may be signed in counterpart signatures transmitted via facsimile, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Facsimile signatures shall be valid and enforceable.

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 Rosebud and SMLC 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 Rosebud and SMLC; that Rosebud and SMLC consent to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Rosebud and SMLC hereby knowingly waive their right 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, Act of July 13, 1988, P.L. 530 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by Rosebud's and SMLC's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR ROSEBUD MINING COMPANY:

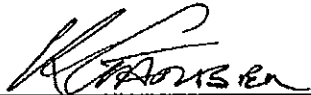
FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

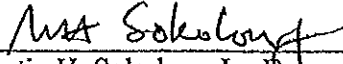
 12/4/12  
\_\_\_\_\_  
(Date)

  
\_\_\_\_\_  
William S. Plassio  
District Mining Manager

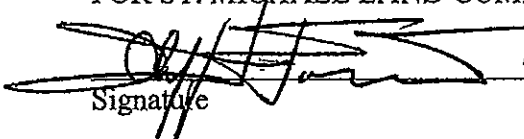
J. Clifford Forrest  
\_\_\_\_\_  
Name

\_\_\_\_\_  
President  
\_\_\_\_\_  
Title

 12/4/12  
\_\_\_\_\_  
Kevin J. Garber, Esq. (Date)  
Attorney for Rosebud Mining Company

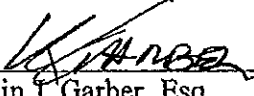
  
\_\_\_\_\_  
Martin H. Sokolow, Jr., Esq. (Date)  
Assistant Regional Counsel

FOR ST. MICHAEL LAND COMPANY, INC.:

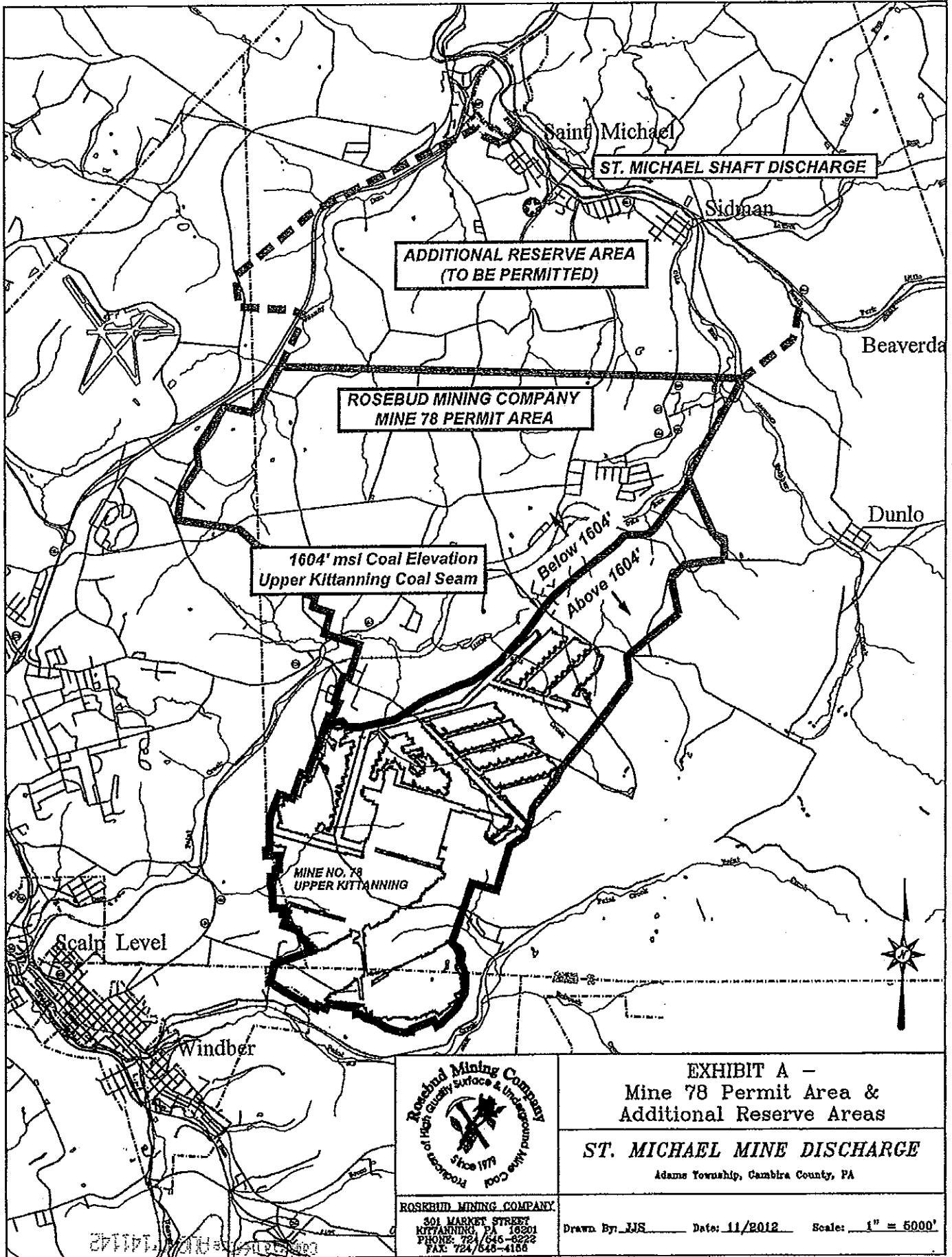
 12/4/12  
\_\_\_\_\_  
Signature (Date)

J. Clifford Forrest  
\_\_\_\_\_  
Name

\_\_\_\_\_  
President  
\_\_\_\_\_  
Title

 12/4/12  
\_\_\_\_\_  
Kevin J. Garber, Esq.  
Attorney for St. Michael Land Company





**EXHIBIT A -  
Mine 78 Permit Area &  
Additional Reserve Areas**

**ST. MICHAEL MINE DISCHARGE**  
Adams Township, Cambria County, PA

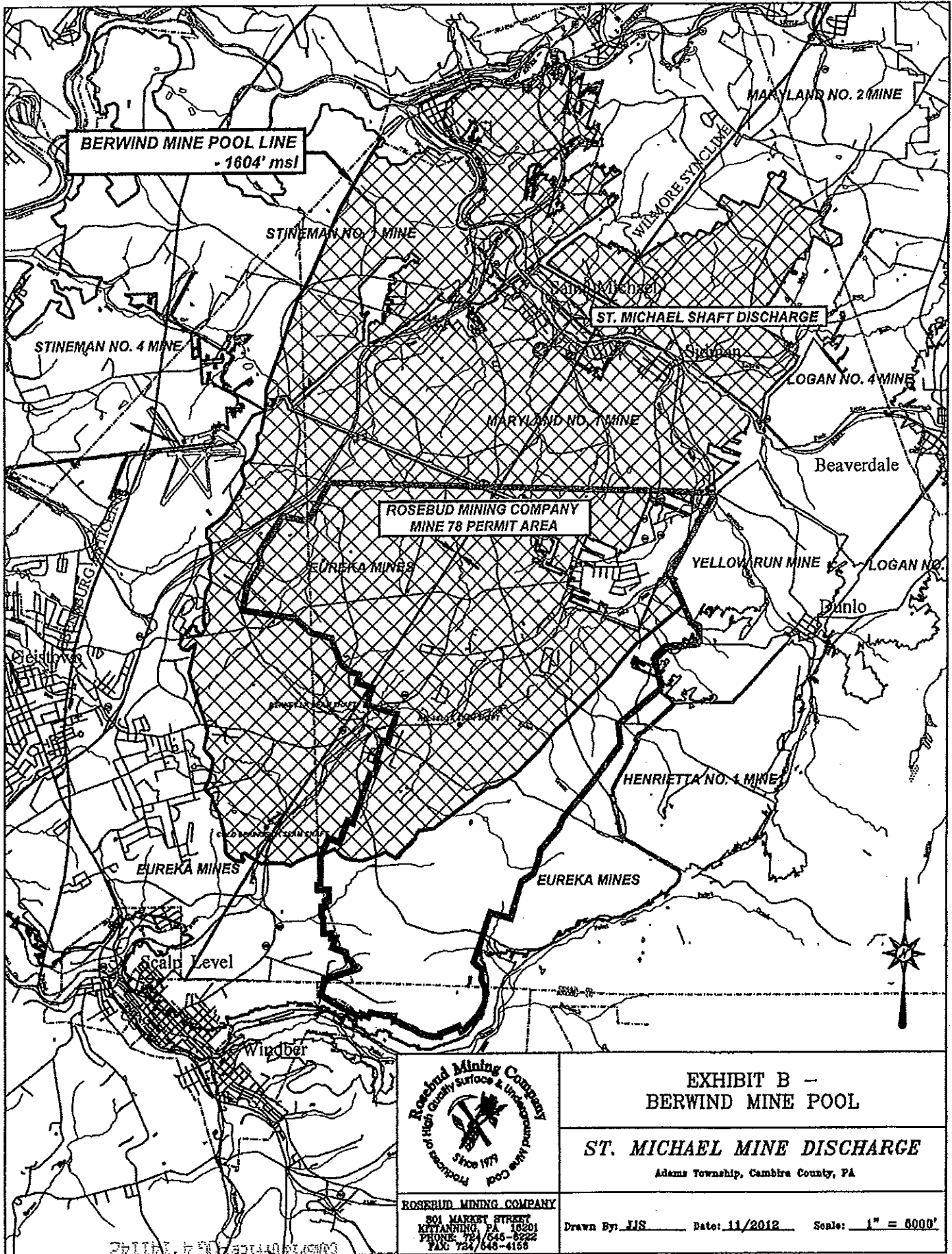
**ROSEBUD MINING COMPANY**  
303 MARKET STREET  
KITTANNING, PA 16201  
PHONE: 724-646-6222  
FAX: 724/646-4166

Drawn By: JJS Date: 11/2012 Scale: 1" = 5000'

**EXHIBIT B**

**Map of the Berwind Mine Pool**





**BERWIND MINE POOL LINE**  
- 1604' msl

**ROSEBUD MINING COMPANY**  
**MINE 78 PERMIT AREA**

**ST. MICHAEL SHAFT DISCHARGE**



**EXHIBIT B -**  
**BERWIND MINE POOL**

**ST. MICHAEL MINE DISCHARGE**  
Adams Township, Cambria County, PA

**ROSEBUD MINING COMPANY**  
801 MARKET STREET  
KITTANNING, PA 15201  
PHONE 724/646-6222  
FAX 724/646-4156

Drawn By: JJS Date: 11/2012 Scale: 1" = 6000'

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**EXHIBIT C**

**Map of the Other St. Michael Discharges**



**EXHIBIT D**  
**NPDES Permit**

**EXHIBIT E**

**NPDES Permit Fact Sheet**

**EXHIBIT F**

**Clean Streams Foundation Participation Agreement**