

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:	:	
	:	
Fuel Recovery, Inc.	:	Sonman Refuse Site
254 Interpower Drive	:	Permit No. 11860701
Colver, PA 15927	:	Alternative Financial Assurance Mechanism
	:	
I.P. Harmar Holdings, LLC	:	
900 Guys Run Rd	:	
Pittsburgh, PA 15236	:	

POSTMINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 10th day of August, 2017, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), Fuel Recovery, Inc. (“Fuel Recovery”), and I.P. Harmar Holdings, LLC (“IPHH”).

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 Section 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 Participation Agreement and the April 2001 Declaration of Trust of the Clean Streams Foundation, Inc. (“Clean Streams Foundation”) constitutes an alternative financial assurance mechanism authorized by Section 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 SMCRA, 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. Fuel Recovery is a Pennsylvania corporation with a business address of 254 Interpower Drive, Colver, Pennsylvania 15927. Fuel Recovery excavates and provides waste coal fuel to the Colver Power Plant, a FERC Certified “Qualified Facility” in Cambria County.

D. At all times relevant to this Consent Order and Agreement, Fuel Recovery was authorized to conduct surface mining activities in Pennsylvania pursuant to Surface Mining Operators License Number 5316.

Harmar Trust

E. IPHH, with an address at 900 Guys Run Rd, Pittsburgh, PA 15236, and Fuel Recovery are affiliated companies under common ownership by Northern Star Generation Services, LLC.

F. IPHH also provides waste coal fuel to the Colver Power Plant in Cambria County from the Harmar Coal Refuse Disposal Area ("CRDA") located in Harmar Township, Allegheny County pursuant to Refuse Reprocessing Permit No. 02860201.

G. The Harmar CRDA has a long-term acid mine drainage ("AMD") discharge. IPHH entered a Post-Mining Treatment Trust Consent Order and Agreement on April 13, 2009, as amended on March 13, 2012, under which it established a Post-Mining Treatment Trust ("Harmar Trust") as an Alternative Financial Performance Mechanism to assure long-term AMD treatment. The Harmar Trust is fully funded in the amount of \$1,764,528. As of May 31, 2017, the Harmar Trust maintains a balance of \$2,555,029.89 and therefore holds surplus funds.

Sonman Refuse Site

H. Fuel Recovery is the permittee and operator of the Sonman Coal Refuse Disposal Site pursuant to Refuse Disposal Permit No. 11860701, located in Portage Township, Cambria County, which is associated with AMD discharge liability.

I. The original Refuse Disposal Permit for the Sonman Refuse Site was issued to Cooney Brothers Coal Company on April 3, 1987. Cooney Brothers Coal Company transferred the site to Fuel Recovery on June 25, 2003. The site is permitted for 69 acres of refuse disposal and 18 acres of support area and is now operated exclusively for excavation of waste coal fuel and reclamation.

J. Fuel Recovery excavates and minimally processes the coal refuse by removing rock, waste metal and timber through a screening procedure to provide useable waste coal fuel for the Colver Power Plant fluidized bed boiler. Waste coal is hauled directly to the Colver Power Plant. Unusable materials, including waste rock, remain on the site. Fuel Recovery is reprocessing and reconstructing a pile onsite that consists of waste rock and waste-coal ash from the Colver Power Plant certified for beneficial use for reclamation under 25 Pa. Code § 290. Fuel Recovery estimates that site operations, excavation of the entire refuse pile, and reclamation will continue until the mid-2020's. As each portion of the pile is developed and reaches final configuration and elevation, Fuel Recovery is required to place soil on the area and revegetate the area within sixty (60) days.

K. A summary of the reclamation bonds currently posted for the Sonman Refuse Site is as follows:

PERMIT NO.	BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT NO.	BOND STATUS	BOND AMOUNT
11860701	Collateral Bond	Somerset Trust Company	CD# 2000325389		\$148,013.32

Post-Mining Discharges

L. There is surface runoff and AMD seeps associated with the active operations intermittently flowing from the Sonman Refuse Site permitted area. Fuel Recovery is currently collecting the AMD and routing the flow to a treatment facility that is also located within the permit boundary. The treated effluent is discharged into an Unnamed Tributary to Spring Run from discharge monitoring point Outfalls 001 and 002.

M. The AMD discharge did not exist prior to the reopening of the refuse disposal site and was anticipated and occurred as a result of Fuel Recovery's active operations in excavating to remove waste coal for the Colver Power Plant. Fuel Recovery has informed the Department that it anticipates that as it continues to excavate the source material and reclaim the site in accordance with its approved and permitted operation and reclamation plan, the discharge will be completely eliminated/abated.

N. A topographic map depicting the location of the Outfalls is attached as Exhibit A. The latitude and longitude coordinates for Outfall 001 are as follows: 40° 22' 58" N and 78° 38' 05" W; Outfall 002 are as follows: 40° 23' 00" N and 78° 37' 42" W.

O. The raw water quality of the AMD, as compiled by Fuel Recovery from analytical sampling results for the period from March 26, 2014 to February 27, 2017, is set forth in Exhibit B.

P. The Department issued NPDES Permit No. PA 0214981 to Cooney Brothers Coal Company on April 3, 1987. Fuel Recovery filed a renewal application on October 3, 2006 and has been advised that the existing compliance criteria shall remain applicable through the next sequential expiration date. A new renewal application is due March 6, 2018. The required

effluent limits under the current NPDES Permit applicable for Outfalls 001 and 002 discharges are as follows:

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	35 mg/l	70 mg/l	90 mg/l
Aluminum (Total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
pH ¹		greater than 6.0; less than 9.0	
Alkalinity greater than acidity ¹			

¹The parameter is applicable at all times.

Q. Fuel Recovery agrees that it has the legal responsibility, pursuant *inter alia*, to the Surface Mining Act and the Clean Streams Law, to properly treat or abate the discharge identified in Paragraph L above. Fuel Recovery has informed the Department that it anticipates that through Fuel Recovery's operations, the AMD discharge will be eliminated/abated.

Sonman Refuse Site Post-Mining Treatment Trust

R. Fuel Recovery is currently collecting the AMD discharges and routing the flow to a treatment facility that is located within the permit boundary ("Treatment System"). Caustic soda is added to the AMD discharge using a gravity fed system. The caustic soda is stored in two (2) onsite tanks and conveyed to the discharges using caustic resistant piping and valves. The precipitation of metals from the treated AMD water is accomplished through residence time in two retention ponds. The accumulated AMD sludge is removed periodically by vacuum trucks. The treated effluent is discharged into an Unnamed Tributary to Spring Run from discharge monitoring point Outfalls 001 and 002. The Treatment System is depicted on the Operations Map attached as Exhibit C.

S. The Treatment System is situated on land owned by Angels' Coal Trust. Fuel Recovery has obtained from Angels' Coal Trust a properly executed Consent to Right of Entry form which grants the parties and the trustee access to the Treatment System. A copy of the executed Consent to Right of Entry which is recorded in the Cambria County Recorder of Deeds Office is attached as Exhibit D.

T. The initial cost to construct the Treatment System was \$88,270.00.

U. In order to calculate the amount necessary to fully fund the trust, the Department and Fuel Recovery have agreed to use operation and maintenance costs based on AMDTreat calculations related to present site conditions and operation of the Treatment System. A summary of the calculated annual operation and maintenance costs for the Treatment System is as follows:

Table of Current Annual Operation and Maintenance Costs

CATEGORY	SAMPLING	LABOR	MAINTENANCE	PUMPING	CHEMICAL	SLUDGE REMOVAL
Rate	(\$/sample)	(\$/hr.)				
Annual Cost	\$1,345	\$7,280	\$478	0	\$8,254	\$4,150

Based on the AMDTreat calculated operation and maintenance costs, the current annual cost of operating and maintaining the Treatment System is calculated to be \$21,507. The AMDTreat cost estimates are attached as Exhibit E.

V. In order to calculate the amount necessary to fully fund the trust, the Department and Fuel Recovery have agreed to use recapitalization and demolition cost data generated by the

Department's AMDTreat software tool. According to the AMDTreat software tool, the present value of recapitalization costs for the Treatment System is \$3,916. Attached as Exhibit F is the AMDTreat Recapitalization Cost schedule from the AMDTreat analysis for the Treatment System.

W. Fuel Recovery is willing to establish a post-mining treatment trust with the Clean Streams Foundation 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 if necessary and secure the release of reclamation bonds upon completion of all other reclamation and bond release requirements. Fuel Recovery agrees to establish the Fuel Recovery Treatment Trust by executing a Participation Agreement with the Clean Streams Foundation, which conforms with the Department's model trust participation agreement.

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

Y. The parties have agreed to use the formulas set forth below to calculate the present value of the Fuel Recovery Treatment Trust. The parties agree that the present value of the fully-funded Fuel Recovery Treatment Trust for the discharge covered by this Consent Order and Agreement is \$508,325.43. This sum constitutes the current present value of the estimated future operation and maintenance costs for the Treatment System, and the current present value of the estimated future recapitalization costs for the Treatment System. The parties have also agreed to use the information and figures which will be provided by the Accounting required by

Paragraph 4 below to recalculate and adjust the amount of the Fuel Recovery Treatment Trust as described in Paragraphs 8 and 10 below. The parties have agreed to fully fund the Fuel Recovery Treatment Trust as set forth in Paragraph 6 below.

IPHH Assignment of Harmar Trust Surplus

Z. IPHH has agreed to fully fund the Fuel Recovery Treatment Trust on behalf of affiliate Fuel Recovery by assigning surplus funds in the Harmar Trust held in its account by the Clean Streams Foundation to the Fuel Recovery Treatment Trust.

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 Fuel Recovery 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 Fuel Recovery to comply with any term or condition of this Consent Order and Agreement shall subject Fuel Recovery to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. Fuel Recovery agrees that the findings in Paragraphs A through Z are true and correct and, in any matter or proceeding involving Fuel Recovery and the Department, Fuel Recovery 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 Consent Order and 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 Fuel Recovery's fiscal year or thirty (30) days after the last day of any fiscal year which Fuel Recovery 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 System.

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 System. The equation is:

$$\begin{array}{lll} \text{PV} & = & (A/[E-I]) + A \\ \text{where: PV} & = & \text{Present Value of the O\&M Costs} \\ A & = & \text{Current Actual Treatment Cost} \\ E & = & \text{Expected annual earnings/Interest Rate (assumed to be} \\ & & \text{8.43\% .)} \\ I & = & \text{Inflation Rate (assumed to be 3.1\% or .031)} \end{array}$$

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 System.

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. Fuel Recovery shall keep accurate financial records of all the costs and expenses of annual treatment for each year. The various cost factors fall into several general categories, including, but not limited to: Reagent; Polymer; Electrical; Sludge Removal; Labor, including benefits; Maintenance; Sampling; Overhead; and Miscellaneous. The individual item shall be tracked and reported for each general category.

b. Fuel Recovery shall keep complete records for the Treatment System.

c. Fuel Recovery 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 on January 1 and continuing through December 31 of each year, or other fiscal year as Fuel Recovery 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 Fuel Recovery and by the President of Fuel Recovery attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

d. Fuel Recovery's obligation to keep records and provide the Accounting shall continue for the period during which Fuel Recovery is operating the Treatment System.

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

5. Treatment Trust

a. Fuel Recovery shall establish an irrevocable trust to be known as the Fuel Recovery Treatment Trust by executing a Participation Agreement with the Clean Streams Foundation. The Fuel Recovery Treatment Trust shall secure Fuel Recovery's obligation to treat

AMD associated with the Sonman Refuse Site, including its legal obligation to operate and maintain the Treatment System in perpetuity or until water treatment is no longer necessary. The Fuel Recovery Treatment Trust shall also secure Fuel Recovery's obligation to provide financial resources to the Department and the citizens of the Commonwealth sufficient to operate and maintain the Treatment System and to treat the mine drainage in perpetuity in the event Fuel Recovery becomes unable or unwilling to meet these obligations. The Fuel Recovery Treatment Trust shall provide for the demolition of treatment facilities and reclamation of the treatment site should treatment no longer be needed and distribution of the trust corpus to Fuel Recovery upon a demonstration with twenty four (24) months of acceptable water quality monitoring data that the AMD at the Sonman Refuse Site has been abated. The Participation Agreement establishing the Fuel Recovery Treatment Trust is attached as Exhibit G.

b. Fuel Recovery shall establish within the Fuel Recovery 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 30 days prior notice to the Department, Fuel Recovery 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 Fuel Recovery's obligation to treat or abate the AMD seeps, and Fuel Recovery may subsequently petition the Department to terminate the Fuel Recovery Treatment Trust. Upon termination of the Trust following the posting of sufficient bonds to guarantee Fuel Recovery's obligation, the Department shall direct the Trustee to distribute any residuum, less final trust administration

expenses of the Trustee, to the Settlor in accordance with Articles 5 and 13 of the April 2001 Declaration of Trust.

6. Funding of the Primary Trust Account

Within fifteen (15) days of execution of this Consent Order and Agreement, IPHH shall request the Clean Streams Foundation administrator to transfer \$508,325.43 held in the Harmar Trust account into the Fuel Recovery Primary Trust Account in a form similar in all material respects as the letter attached as Exhibit H. This sum constitutes the current present value of the amount necessary to fully fund the Fuel Recovery Treatment Trust, and includes the current present value of future operation and maintenance of the Treatment System and the current amount needed to finance anticipated and periodic capital expenditures for the Treatment System.

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 Fuel Recovery. The amount of such Distribution Payment will be equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, or equal to the Calculated Treatment Cost, whichever is less. This amount is depicted graphically at Points 1, 2 and 3 on Exhibit 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 Fuel Recovery 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 below. 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% or less than or equal to 90% 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% 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 Fuel Recovery. The amount of such Distribution Payment will be equal to the percent change in Actual Treatment Cost times the Primary Trust Valuation, or in an amount equal to the difference between the Primary Trust Valuation and the newly calculated Primary Target Valuation, whichever is less. The amount of such Distribution Payment shall be determined by the following formulas:

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

Or

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

Where:

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

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 F. The required balance in the Capital Improvement Account may be recalculated on an annual basis or each time a Distribution Payment is contemplated under Paragraph 12. Such recalculation shall be deemed an amendment to Exhibit F and this Consent Order and Agreement, and shall be used in making all future calculations involving the Capital Improvement Account.

11. Transfer of Funds to the Capital Improvement Account

If the Primary Trust Valuation after any Distribution Payment under Paragraph 7 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 F. The amount of such transfer will be equal to the difference between the required balance and the current balance, or in an amount equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, whichever is less.

12. Distribution Payments from the Capital Improvement Account

a. A distribution payment shall be made to Fuel Recovery any time a planned capital replacement is made as indicated on Exhibit F. The capital replacement and maintenance activities shall be made as needed, which may be sooner or later than the projected time. The

amount of the Distribution Payment shall be equal to the calculated cost of the Capital Improvement as indicated on Exhibit F, or in an amount equal to the difference between the 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 F, 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 Fuel Recovery'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 Fuel Recovery'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 Fuel Recovery to pay for unanticipated capital expenditures, or

anticipated capital expenditures that exceed the calculated cost of the capital improvement as indicated on Exhibit F.

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

e. Upon demonstration to the Department's satisfaction that the Sonman Refuse Site refuse removal and related reclamation has eliminated or abated the AMD discharges so that any remaining permit obligations are covered by other financial assurances, or upon final bond release, whichever is earlier, the Fuel Recovery Treatment Trust shall be dissolved and the Primary Trust Account and Capital Improvement Account composing the trust corpus shall be distributed to Fuel Recovery. Dissolution of the Fuel Recovery Treatment Trust does not relieve Fuel Recovery of its statutory obligation to treat the AMD discharges. After dissolution of the Fuel Recovery Treatment Trust, if water quality subsequently degrades to the point where it no longer meets effluent limits set forth in the NPDES Permit for the Sonman Refuse Site, the Department reserves the right to require Fuel Recovery to resume treatment and reestablish financial assurance to guarantee treatment of the AMD discharges.

14. Real and Personal Property

a. Within 60 days of the effective date of this Consent Order and Agreement, Fuel Recovery will create an inventory of all the equipment, facilities, and other personal property used for the treatment of the mine discharges described in Paragraph R, above (“Personal Property”). Upon completion of the inventory, Fuel Recovery shall submit the inventory to the Department for review and approval in a similar form as the Personal Property attached here to as Exhibit K. Within 30 days of receipt of written approval of the inventory by the Department, Fuel Recovery 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 Fuel Recovery 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 here to as Exhibit L.

b. The provisions of Paragraph 14.a. notwithstanding, for so long as Fuel Recovery is continuing treatment, Fuel Recovery shall be responsible for maintaining and replacing/upgrading, as appropriate, the Personal Property used for the treatment of the mine discharges described above in Paragraph L. Fuel Recovery’s replacement/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 Clean Streams Foundation as Trustee of the Fuel Recovery Treatment Trust.

c. If any portion of a property subject to a Right of Entry is sold, Fuel Recovery shall obtain properly executed Consent to Right of Entry form from the new owner and submit it to the Department and the Trustee within 90 days of the sale. Each Right of Entry shall be substantially in the same form as the Right of Entry attached hereto as Exhibit D.

15. Public Liability Insurance

a. Fuel Recovery shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the Treatment System 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 policy.

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 (30) days prior to substantive changes being made to the policy or prior to termination or failure to renew. Proof of insurance shall consist of a certificate of insurance filed annually with the Department which certifies Fuel Recovery 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 System 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 Fuel Recovery 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 Fuel Recovery Treatment Trust; and, (v) to address any other issues that may concern this Consent Order and Agreement or its implementation.

b. Fuel Recovery 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. Fuel Recovery's Continuing Obligation

Neither Fuel Recovery's agreement to fund the Fuel Recovery Treatment Trust nor the full or partial funding of the Fuel Recovery Treatment Trust, nor the exhaustion of the Fuel Recovery Treatment Trust shall in any way limit Fuel Recovery's obligation to operate the Treatment System and to treat the discharge covered by this Consent Order and Agreement in a manner which meets the effluent limitations described in Paragraph P above. Furthermore, exhaustion of the Fuel Recovery Treatment Trust shall not excuse Fuel Recovery from its obligation to adequately treat or to abate the discharges.

18. Stipulated Civil Penalties

a. In the event Fuel Recovery fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, Fuel Recovery shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$100.00 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded to:

District Mining Manager
Department of Environmental Protection
California District Mining Office
25 Technology Drive
California Technology Park
Coal Center, PA 15423

c. Any payment under this paragraph shall neither waive Fuel Recovery's duty to meet its obligations under this Consent Order and Agreement, nor preclude the Department from commencing an action to compel Fuel Recovery's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Fuel Recovery'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 Fuel Recovery 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 Fuel Recovery defaults on the obligations of this Consent Order and Agreement, Fuel Recovery 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 Fuel Recovery 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. Fuel Recovery reserves the right to challenge any action which the Department may take to require those measures.

21. Liability of Fuel Recovery

Fuel Recovery 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. Fuel Recovery 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. Subject to paragraph 21(c) below, 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 Fuel Recovery Sites or any part thereof.

b. If Fuel Recovery intends to transfer any legal or equitable interest in the Sonman Refuse Site, Fuel Recovery shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Director, District Mining Operations, 25 Technology Drive, California Technology Park, Coal Center, Pennsylvania 15423, phone number 724-769-1100 and the District Mining Manager identified in Paragraph 23 of such intent.

c. Upon completion of its operations and fully funding the Fuel Recovery Treatment Trust, to the extent that the discharge is not abated and Fuel Recovery cannot perform treatment, Fuel Recovery agrees to convey any legal or equitable interests in the real and personal property associated with the discharge and treatment facility to the Department or its designee.

d. The Department in its sole discretion may agree to modify or terminate Fuel Recovery's duties and obligations under this Consent Order and Agreement upon transfer of the Sonman Refuse Site. Fuel Recovery 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
California District Mining Office
25 Technology Drive
California Technology Park
Coal Center, PA 15423

24. Correspondence with Fuel Recovery

- a. All correspondence with Fuel Recovery concerning this Consent Order

and Agreement shall be addressed to:

Jeffrey Zick, P.E.
Fuel Recovery, Inc.
254 Interpower Drive
Colver, PA 15927

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

25. Force Majeure

a. In the event that Fuel Recovery 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 Fuel Recovery's control and which Fuel Recovery, by the exercise of all reasonable diligence, is unable to prevent, then Fuel Recovery 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 Fuel Recovery's control. Fuel Recovery'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. Fuel Recovery 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 Fuel Recovery 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. Fuel Recovery'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 Fuel Recovery and other information available to the Department. In any subsequent litigation, Fuel Recovery 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 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 Fuel Recovery 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 Fuel Recovery. For purposes of this paragraph, the term “successor” shall mean any corporation or entity: 1) Fuel Recovery consolidates with or merges into or permits to merge with it and Fuel Recovery is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of Fuel Recovery’s properties or assets which include, but is not limited to, voting stock of Fuel Recovery. Successor does not include any corporation or other entity to which Fuel Recovery transfers or assigns all or substantially all of its financial or non-financial liabilities.

Fuel Recovery shall notify the Department, without delay, of any successor as defined herein and shall provide such successor with a copy of this Consent Order and Agreement.

33. Counterpart Signatures

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

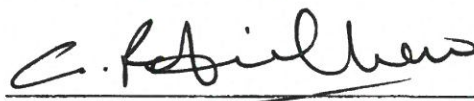
IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Fuel Recovery certify under penalty of law, as provided by 18 Pa.C.S. § 4904, that they are authorized to execute this Consent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

final ORDER of the Department; and that Fuel Recovery hereby knowingly waives its rights to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa.C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by Fuel Recovery's attorney certifies only that the agreement has been signed after consulting with counsel.

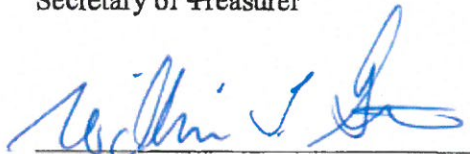
FOR Fuel Recovery, Inc.:



President or Vice President

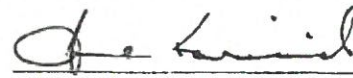


Secretary or Treasurer

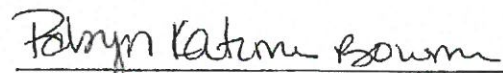


William T. Gorton III
Attorney for Fuel Recovery, Inc. and
I.P. Harmar Holdings LLC

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




Joel Koricich, P.E.
District Mining Manager



Robyn Katzman Bowman
Supervisory Counsel
Southcentral Region OCC

FOR I.P. HARMAR HOLDINGS LLC



Member

EXHIBIT LIST

EXHIBIT A	-	Topographic Map
EXHIBIT B	-	Sonman Refuse Site Raw Water Sample Results
EXHIBIT C	-	Operations Map
EXHIBIT D	-	Consent to Right of Entry from Angels' Coal Trust
EXHIBIT E	-	AMD Treatment Trust Calculator for Sonman Refuse Site
EXHIBIT F	-	AMDTreat Recapitalization Cost Schedule
EXHIBIT G	-	Participation Agreement
EXHIBIT H	-	Form of Letter to Clean Streams Foundation Administrator RE: I.P. Harmar Trust Surplus Funds Transfer
EXHIBIT I	-	Graphical Depiction of Primary Trust Valuation and Primary Target Valuation
EXHIBIT J	-	Graphical Depiction of Adjustment to Primary Target Valuation
EXHIBIT K	-	Sonman Refuse Site Personal Property
EXHIBIT L	-	Bill of Sale and License Agreement