

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Champion Processing, Inc.	:	Coal Refuse Disposal Area
563 Route 18	:	Permit No. 63733701
Burgettstown, PA 15021	:	
	:	Alternative Financial Assurance Mechanism

**POSTMINING TREATMENT TRUST**  
**CONSENT ORDER AND AGREEMENT**

## TABLE OF CONTENTS

	<u>Page</u>
<b>FINDINGS</b>	
The Parties (A through B) .....	1, 2
<b>BACKGROUND (C through V)</b>	
The Champion Coal Refuse Disposal Area (C through K) .....	2, 3, 4
Champion's Proposal To Abate The Discharges And Reclaim The CRDA (L through R) .....	4, 5, 6
Champion's Proposal To Establish An Irrevocable Trust (S through U) .....	6, 7
<b>ORDER</b>	
1. Authority For Order .....	7
2. Findings .....	8
3. Definitions .....	8, 9
4. Champion's Obligations To Treat Or Abate The Discharges .....	9
5. Treatment Trust Establishment .....	9, 10
6. Funding of the Primary Trust Account .....	10, 11
7. Annual Treatment Costs; Records; Factors; Accounting .....	11, 12
8. Readjustment Of Trust And Bond Amounts .....	12, 13
9. Annual Distribution or Contribution Payments – Primary Trust Account .....	13, 14
10. Adjustments to the Primary Target Valuation for Deviations Between Actual Treatment Cost and Calculated Treatment Cost .....	14
11. Distribution Payments for Adjustments to the Primary Target Valuation .....	15, 16
12. Capital Improvement Account .....	16, 17
13. Transfer of Funds to the Capital Improvement Account .....	17, 18
14. Distribution Payments from the Capital Improvement Account .....	18

15. Miscellaneous Distribution Payments from the Primary Trust Account and the Capital Improvement Account .....	18, 19
16. Real and Personal Property .....	19, 20
17. Bond Release .....	20
18. Public Liability Insurance .....	20, 21
19. Annual Meeting .....	21
20. Champion's Continuing Obligation .....	21
21. Stipulated Civil Penalties .....	22
22. Additional Remedies .....	22, 23
23. Reservation of Rights .....	23
24. Liability of Champion .....	23
25. Transfer of CRDA Site .....	23, 34
26. Correspondence with Department .....	24
27. Correspondence with Champion .....	24
28. Force Majeure .....	24, 25
29. Severability .....	25
30. Entire Agreement .....	25, 26
31. Attorney Fees .....	26
32. Modifications .....	26
33. Titles .....	26
34. Decisions under Consent Order .....	26
35. Successors .....	26
36. Counterpart Signatures .....	27

## EXHIBITS

Exhibit A – KOZ Certification ( <i>See Paragraph I</i> ) .....	
Exhibit B – ( <i>See Paragraph 5</i> ) .....	
Exhibit C – Graphical Depiction of Distribution or Contribution Amounts ( <i>See Paragraph 9</i> ) .....	
Exhibit D – Graphical Depiction of Adjustments to the Target Valuation for Deviation Between Actual Treatment Costs and Calculated Primary Treatment Costs ( <i>See Paragraph 10</i> ) .....	

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**POSTMINING TREATMENT TRUST  
CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 27<sup>th</sup> day of April, 2005, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Champion Processing, Inc. ("Champion").

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, 35 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. Champion is a Pennsylvania corporation with a business address of 563 Route 18, Burgettstown, Pennsylvania 15021, and a mailing address of Box 1073, Coraopolis, Pennsylvania 15108-6073.

## **BACKGROUND**

### **The Champion Coal Refuse Disposal Area**

C. Champion is the owner of a coal refuse disposal area ("CRDA") located in Robinson Township, Washington County.

D. The CRDA site was extensively surface mined by Pittsburgh Coal Company in the 1950s, and was never reclaimed. The property was subsequently permitted by Consolidation Coal Company on May 3, 1984 as a CRDA. On November 3, 1986, Consolidation Coal Company transferred the CRDA site to Champion.

E. The CRDA is permitted for 479 acres of refuse disposal and 78 acres of support area and is totally contained within a 1001 acre parcel owned in fee by Champion.

F. The CRDA is still not reclaimed. There are surface seeps of acidic mine drainage ("AMD") flowing from the permitted areas of the CRDA ("Discharges") which Champion is currently collecting on site and routing to a conventional AMD treatment facility located on the permitted area of the CRDA ("Treatment System"). The AMD Treatment System was the subject of major renovations in 1995. The treated effluent is discharged into the unnamed tributary of Little Raccoon Run from discharge monitoring point outfall 001. Champion performs this work under authorization of CRDA Permit No. 63733701 and NPDES Permit No. PA0023400 ("NPDES Permit").

G. The effluent limits set forth in the NPDES Permit applicable to the Discharges from the Champion CRDA in milligrams per liter (mg/l) are as follows:

	<u>Avg. Monthly</u>	<u>Maximum Daily</u>	<u>Instant Maximum</u>
Iron	1.6	3.2	4.0
Manganese	1.1	2.2	2.75
Aluminum	0.5	1.0	1.25
Suspended Solids	35	70	90
pH	6-9 standard units		
alkalinity > acidity			

H. Champion represents that its annual treatment and capital costs are as follows:  
annual operation treatment costs are \$61,871; capital costs are \$126,871.

I. Champion advises the Department that pursuant to the Pennsylvania Keystone Opportunity Zone Act, 73 P.S. §§ 820.101 *et. seq.*, the 237 acre Beech Hollow Environmental Redemption Zone was created and certified by the Pennsylvania Department of Community and Economic Development (“KOZ”) to promote land reclamation, water pollution abatement and economic development of real estate and waterways associated with and immediately adjacent to the Champion CRDA and also contained within the 1001 acre parcel owned by Champion. Champion further advises the Department that the Beech Hollow Power Project, utilizing the Champion CRDA as its primary fuel source, will be one of the beneficiaries of the KOZ determination. The KOZ certification is attached as Exhibit A.

J. Existing bonds posted by Champion for the CRDA are as follows:

<u>Bond Amount</u>	<u>Type</u>	<u>Purpose</u>
1. \$230,750	Surety Bond No. 2645351 The American Insurance Company	To guarantee reclamation of the CRDA including treatment of discharges from the CRDA
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4. \$230,750	Surety Bond No. 2645354 The American Insurance Company	To guarantee reclamation of the CRDA including treatment of discharges from the CRDA
5. \$112,376	Collateral Bond in the form of Letter of Credit No. LPF-150-012 Issued by WesBanco Bank Wheeling	Additional bond to guarantee reclamation of the CRDA including treatment of discharges from the CRDA.

K. Champion has the legal responsibility either to continue treating the Discharges until the untreated water quality meets the effluent criteria set forth in the NPDES Permit or to abate the Discharges and complete the reclamation of the CRDA.

#### **Champion's Proposal To Abate The Discharges And Reclaim The CRDA**

L. Champion has advised the Department that Robinson Power Company, LLC ("Robinson Power") has agreed to use the CRDA as the initial fuel source for a 278 net-megawatt waste coal fired circulating fluidized bed boiler power generation facility currently in the permitting and development phase. Robinson Power is currently seeking the necessary financing and permits for the power facility known as the Beech Hollow Power Project ("Beech Hollow Power Project"). Champion has further advised the Department that a closing between Robinson Power and various financial institutions will result in the release of funds necessary among other things, to construct the Beech Hollow Power Project. Champion agrees to provide the Department with advance written notification of the date that funds will be released for the construction of the Beech Hollow Power Project. Champion anticipates the Beech Hollow Power Project will be constructed and operational by the first quarter of 2009.



M. According to Champion's projections, the CRDA will provide approximately 36 million tons of bituminous waste coal fuel to the Beech Hollow Power Project. The CRDA waste coal will supply the equivalent of fifteen years of fuel to the facility.

N. Champion proposes to incorporate into the CRDA site reclamation plan the use of approved fluidized bed combustion by products as the CRDA waste coal is removed. Champion proposes to perform this activity in accordance with the Department's beneficial use regulations at 25 Pa. Code § 287.663. The Department agrees to consider any proposal submitted by Champion for utilizing other beneficial use approved materials, soil substitutes or alternative materials as alternative growth media in the event that natural soils are unavailable on the CRDA permit.

O. Champion anticipates that use of the CRDA as a fuel source for the Beech Hollow Power Project will incrementally decrease and ultimately abate the pollutional discharges originating at the CRDA which currently add approximately 517,000 pounds of acid per year.

P. Champion further anticipates that removal of the waste coal together with application and incorporation of approved fluidized bed combustion by-products or other beneficial use approved materials to the site as proposed in a revised reclamation plan will abate the acid sources, and restore and reclaim the CRDA site for approved post mining land uses and economic development purposes.

Q. The CRDA Permit, renewed by the Department on September 10, 2004, contains Special Conditions 11 and 12 which relate to Champion's proposal to abate the Discharges at the CRDA. Special Condition 11 requires Champion to submit for Department review a revised mining and reclamation plan for the CRDA by December 1, 2006. Under Special Condition 11, Champion will propose either a revised mining and reclamation plan for supplying fuel for the proposed Beech Hollow Power Project or, a revised reclamation plan and full cost bonding

calculations which reflect elimination of the proposed Beech Hollow Power Project. Special Condition 11 also requires Champion to submit to the Department quarterly reports on the status of the project beginning January 1, 2005, and continuing until the commencement of construction of the Beech Hollow Power Project. Special Condition 12 requires Champion to submit a proposed draft of this Consent Order and Agreement to the Department within 60 days of issuance of the CRDA permit renewal.

R. In accordance with Special Condition 12, by letter dated November 30, 2004, Champion submitted a draft of this Post-Mining Treatment Trust Consent Order and Agreement ("PMTT COA") to the Department. By letter dated January 24, 2005, Champion submitted its first status report in accordance with Special Condition 11.

**Champion's Proposal To Establish An Irrevocable Trust**

S. Champion proposes to contribute \$1,500,000 to an irrevocable trust ("Trust"). The purpose of the Trust is to provide financial resources to the Department and the citizens of the Commonwealth to maintain and operate the CRDA Treatment Facility in the event Champion becomes unwilling or unable to meet these obligations.

T. Champion proposes to establish and fund the Trust as follows.

(i) Upon execution of this PMTT COA, Champion will make an initial contribution of \$125,000 to the Trust. Of this amount, \$112,376 will be derived from the replacement of the Letter of Credit No. LPF-150-012 referenced in Paragraph J hereof ("Letter of Credit") with cash collateral in the same amount. In accordance with 52 P.S. § 1396.4(d), the cash collateral will constitute replacement bond which Champion will assign to the Trust.

(ii) Until funds have been released for the construction of the Beech Hollow Power Plant or if funds are never released for the construction of the Beech Hollow Power Project, Champion will make payments to the Trust in accordance with the schedule set forth in Paragraph 6.e hereof.

(iii) Within ten (10) days following the release of funds for construction of the Beech Hollow Power Project, Champion's remaining payments to the Trust as set forth in Paragraph 6.e hereof will become due and payable to the Trust.

U. The parties have agreed that upon a determination by the Department either that the untreated water forming the Discharges meets the effluent criteria set forth in the NPDES Permit or that the Discharges are abated and reclamation of the CRDA has been completed, all funds remaining in the Trust will be returned to Champion or its successor or assignee. The parties have also agreed that the surety bonds identified in Paragraph J hereof will be eligible for release under 25 Pa. Code § 86.174 when: (i) Champion's contributions to the Trust in the amount of \$1,500,000 are complete, and (ii) the Department determines existing surety bonds identified in Paragraph J hereof exceed remaining reclamation cost estimates.

### **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 Champion as follows:

1. This PMTT COA is an Order of the Department authorized and issued pursuant to Sections 5, 316, 402 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.316, 691.402 and 691.610; Sections 4.2 and 4.3 of the Surface Mining Act, 52 P.S. §§ 1396.4b and 1396.4c; Section 9 of the Coal Refuse Disposal Act, 52 P.S. § 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 Champion to comply with any term or condition of this PMTT COA shall subject Champion to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings.

a. Champion agrees that the findings in Paragraphs A through U are true and correct and, in any matter or proceeding involving Champion and the Department, Champion 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 PMTT COA in any matter or proceeding.

3. Definitions.

a. Accounting. The accounting required by Paragraph 7 of this Agreement.

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

c. Annual Anniversary Date. The annual recurrence of the month and day that is 30 days after Champion's fiscal year or thirty (30) days after the last day of any fiscal year which Champion may adopt in the future.

d. Calculated Treatment Cost. The projected future annual cost of treatment, based on the Actual Treatment Cost, compounded at three and one tenth percent (3.1%) annually.

e. Capital Improvement Account. The sub-account within the Trust that is primarily used to finance anticipated and periodic capital expenditures for the Treatment Systems.

f. Distribution Payment. The Trustee's disbursement of money from the Trust made at the written direction of the Department to a person and in an amount specified by the Department and as provided by this PMTT COA.

g. Formula. The equation used to calculate the Present Value of the future operation and maintenance ("O&M") of the Treatment Systems. The equation is:

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

\* This assumption will remain the same unless the parties agree otherwise.

h. Primary Basis Valuation. 100% of the present value of the future cost of treatment as determined by the Formula.

i. Primary Target Valuation. 116% percent of the present value of the future cost of treatment as determined by the Formula.

j. Primary Trust Account. The sub-account within the Trust that is primarily used to finance annual operating and maintenance costs of the Treatment Systems.

k. Primary Trust Valuation. The cash, cash equivalents, investments at market value of investments and the face amount of surety bond currently held by the Trust in the Primary Trust Account.

4. Champion's Obligations To Treat Or Abate The Discharges. Champion shall either continue treating the Discharges until the raw water quality meets the effluent criteria set forth in the NPDES Permit or until Champion abates the Discharges and completes the reclamation of the CRDA.

5. Treatment Trust Establishment.

a. Champion shall establish an irrevocable trust to be known as the Champion Treatment Trust ("Trust"). The Trust shall secure Champion's obligation to treat the Discharges, including its obligation to operate and maintain the Treatment System, in perpetuity, or until the Department determines that water treatment is no longer necessary, and to provide financial resources to the Department and the citizens of the Commonwealth to maintain and operate the Treatment System, and to treat the mine drainage in perpetuity in the event

Champion becomes unable or unwilling to meet these obligations. The Trust shall also provide for the demolition of treatment facilities and reclamation of the treatment site should treatment no longer be needed. The Participation Agreement establishing the Trust with The Clean Streams Foundation, Inc. is attached hereto as Exhibit B.

b. Champion shall establish within the Trust two sub-accounts: a sub-account designated as the Primary Trust Account; and a sub-account designated as the Capital Improvement Account.

c. Champion may at any time petition the Department to replace the trustee.

6. Funding of the Primary Trust Account.

a. Initial payment to the Primary Trust Account. Upon execution of this PMTT COA, Champion shall make an initial contribution to the Trust of \$125,000. Of this amount, \$112,376 will be derived from the replacement of the Letter of Credit with cash collateral in the same amount. In accordance with 52 P.S. § 1396.4(d), the cash collateral will constitute replacement bond which Champion will assign to the Trust. The Department will subsequently release Champion from liability on the Letter of Credit.

b. Champion shall provide the Department with written notification at least thirty (30) days in advance of the date that funds will be released for the construction of the Beech Hollow Power Project.

c. Until funds have been released for the construction of the Beech Hollow Power Plant or if funds are never released for the construction of the Beech Hollow Power Project, Champion shall make payments to the Trust in accordance with the schedule set forth in Paragraph 6.e hereof.

d. Within ten (10) days following the release of funds for construction of the Beech Hollow Power Project, Champion's remaining payments to the Trust as set forth in

Paragraph 6.e hereof shall become due and payable to the Trust and Champion shall pay them to the Trust.

e. Ongoing Cash Payments To The Primary Trust Account. Except as provided in Paragraph 6.d hereof, Champion shall make the following fourteen cash payments into the Trust according to the following schedule of payments in years 2006 through 2019.

Payment 1	2006	\$20,000
Payment 2	2007	\$25,000
Payment 3	2008	\$75,000
Payment 4	2009	\$90,000
Payment 5	2010	\$95,000
Payment 6	2011	\$100,000
Payment 7	2012	\$110,000
Payment 8	2013	\$110,000
Payment 9	2014	\$120,000
Payment 10	2015	\$120,000
Payment 11	2016	\$120,000
Payment 12	2017	\$130,000
Payment 13	2018	\$130,000
Payment 14	2019	\$130,000

Champion shall make each payment to the Trust on or before April 15 of each year.

7. Annual Treatment Costs; Records; Factors; Accounting.

a. Champion 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 for each general category.

b. Champion shall keep records for the Treatment System.

c. Champion shall provide an annual accounting of the costs and expenses of annual treatment (“the Accounting”) to the Department on or before the 90<sup>th</sup> day following the last day of the fiscal year for which the Accounting is being provided. The Accounting shall cover the period beginning July 1 and continuing through June 30 of each year, or other fiscal year as Champion 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 Champion and by the President of Champion attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

d. Champion’s obligation to keep records shall continue for the period during which Champion is operating the Treatment System.

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

8. Readjustment of Trust and Bond Amounts.

a. So long as Champion is implementing a Department approved mining, reclamation and abatement plan for supplying fuel to the proposed Beech Hollow Power Project, there will be no recalculations of Champion’s reclamation bonds either upward or downward or calculations performed under Paragraphs 9 through 15 of this PMTT COA, resulting in the upward or downward adjustment of the amount of the Trust.



b. The provisions of Paragraphs 9 through 15 of this PMTT COA shall apply and Champion's bonds shall be subject to recalculation as follows:

(i) if Champion reclaims the CRDA pursuant to an approved revised reclamation plan which reflects elimination of the cogeneration proposal; or

(ii) if Champion has exhausted the CRDA as a fuel source but there are still discharges emanating from the CRDA which require further treatment.

9. 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 the Primary Trust Valuation does not include the value of surety bonds, then Distribution Payments shall be made according to Paragraph 9.c. Otherwise, Distribution Payments shall be made according to Paragraph 9.d. and e.

c. 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 Champion. The amount of such Distribution Payment will be equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, or equal to the Calculated Treatment Cost, whichever is less. This amount is depicted graphically at Point 1, 2 & 3 on Exhibit C.

d. 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 Champion in the form of a surety bond reduction of the surety bond identified in Paragraph 8.a. This amount is depicted graphically at Point 1 on Exhibit C. Such surety bond reduction shall be in an amount determined by the following formula:

$$BR = ((1+RoR) (TR - B) + B) - (1.03(TV))$$

Where: BR = surety bond reduction

B = surety bond amount

RoR = assumed net rate of return or effective rate of return

TV = Primary Target Valuation

TR = Primary Trust Valuation

e. In the year the final bond is released, if the Primary Trust Valuation after the final surety bond release remains greater than the newly calculated Primary Target Valuation, then an additional Distribution Payment shall be made under paragraph 9.c.

f. 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 C.

g. If the Primary Trust Valuation is less than the Primary Basis Valuation, then Champion 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 15.a. This amount is depicted graphically as points 5 & 6 on Exhibit C. This provision does not apply until Champion has fulfilled its obligations to make ongoing payments under paragraph 6.a.

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

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

b. If the Actual Treatment Cost for any year is greater than or equal to 110% percent or less than or equal to 90% percent of the Calculated Treatment Cost, the Department will calculate a new Primary Basis Valuation using the Formula and the newly determined Actual Treatment Cost. A new Primary Target Valuation will then be determined by calculating 116% percent of the new Primary Basis Valuation. Exhibit D is a graphical depiction of the adjustment.

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

a. If the Primary Trust Valuation does not include the value of pledged surety bonds, then Distribution Payments shall be made according to paragraph 11.c. Otherwise, Distribution Payments shall be made according to paragraph 11.d.

b. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 10. above is less than the Primary Trust Valuation, no distribution payment shall be made under this paragraph.

c. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 10. 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 Champion. 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

d. If the newly calculated Primary Target Valuation which has been adjusted under paragraph 10. above is based on 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 Champion in the form of a surety bond reduction. Such bond reduction shall be in an amount determined by the following formula:

$$BR = ((1 + RoR) (TR - B) + B) - (1.03(TV))$$

Where: BR = surety bond reduction

RoR = assumed net rate of return or effective rate of return

TV = Primary Target Valuation

TR = Primary Trust Valuation

B = surety bond amount

e. In the year the final surety bond is released, if the Primary Trust Valuation after the final surety bond release remains greater than the newly calculated Primary Target Valuation, then an additional Distribution Payment shall be made under Paragraph 11.c.

## 12. Capital Improvement Account.

a. Champion shall establish within the Trust a sub-account designated as the Capital Improvement Account. 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. If the provisions of Paragraphs 9 through 15 become applicable to the Trust in accordance with Paragraph 8.b. hereof, the required annual balance of the Capital Improvement Account for a 75 year period shall be determined and made a part of this agreement as Exhibit E.

c. To determine the required balance in the Capital Improvement Account the following methodology shall be used.

i. For each planned capital replacement component or activity, the current cost of that component or the cost to complete that activity will be determined.

ii. For each planned capital replacement component or activity, the estimated number of years in the life cycle of the component or the number of years between when the activity is needed will be determined.

iii. If the water treatment facility has been in operation for a significant period of time, then for each planned capital replacement component or activity, the estimated number of years until the next replacement or activity is needed will be determined.

iv. For each planned capital replacement component or activity, the future value of the first replacement or activity will be calculated using a Present Value equal to the current cost, a rate of 3.1 percent, the amount of payment equal to \$0.00, the number of payment periods equal to the number of years from the date of this agreement until the next replacement or activity, and a beginning of period payment.

v. For each planned capital replacement component or activity, the Present Value will be calculated using the Future Value calculated in paragraph 11.c.iv. above, a rate equal to the assumed net rate of return used elsewhere in this agreement, and all other variables the same as used in paragraph 12.c.iv. above.

vi. For each planned capital replacement component or activity, the Future Value of the second and each subsequent capital replacement or activity will be calculated using the same values as in paragraph 12.c.iv above except the value for the number of payment periods. The value for the number of payment periods for the second replacement or activity will be equal to the number of years until the next replacement or activity plus the number of years in the expected life cycle as determined in paragraph 12.c.ii. above. The number of payment periods for the third replacement will be equal to the number of years until the next replacement or activity plus two times the number of years in the expected life cycle. The number of periods for the fourth replacement will be equal to the number of years until the first replacement plus three times the years in the life cycle. The Future Value of each replacement will be calculated in like manner until the number of periods is equal to the number of years until the last replacement or activity is expected to occur that does not exceed 75 years from the year the calculations are being made.

vii. For each planned capital replacement component or activity, the Present Value of the second and each subsequent capital replacement or activity will be calculated using the same values as in Paragraph 12.c.v.above except the value for the number of payment periods which shall be determined in like manner to Paragraph 12.c.vi. above.

viii. The required balance in the Capital Improvement Account for the current year shall be equal to the sum of all Present Values calculated in Paragraph 12.b.v. and vii above.

ix. The required balance in the Capital Improvement Account shall be recalculated on an annual basis and each time a Distribution Payment is contemplated under Paragraph 14. Such recalculation shall be deemed an amendment to Exhibit E and this Consent Order and Agreement, and shall be used in making all future calculations involving the Capital Improvement Account.

13. Transfer of Funds to the Capital Improvement Account.

a. The provisions of this Paragraph do not apply if the Primary Trust

Valuation includes the value of surety bonds.

b. If the Primary Trust Valuation after any Distribution Payment under paragraph 9. 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 E. 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.

14. Distribution Payments from the Capital Improvement Account.

a. A distribution payment shall be made to Champion any time a planned capital replacement is made as indicated on Exhibit E. 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 E, 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 15 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.

15. 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 E, 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 Champion's obligation to make a contribution payment under Paragraph 9.g. This amount is depicted graphically at Point 5 on Exhibit C. However, the amount of surplus funds transferred to the Primary Trust Account may exceed Champion's obligation under paragraph 9.g. 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 C.

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

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

16. Real and Personal Property.

a. Within forty five (45) days of the date of this PMTT COA, Champion shall provide the Department documents, in recordable form, conveying to the Trust, its agents, contractors, successors and assigns, an easement to provide access to all real property necessary to operate, maintain and construct or reconstruct the Champion Treatment System.

Such easement will terminate upon completion of the reclamation plan approved under Special Condition 11 of the CRDA Permit and abatement of the CRDA's pollutional Discharges.

b. Champion shall advise the Department at least six (6) months in advance of discontinuing treatment operations at the Treatment System, and to the extent that Champion does not identify a successor operator and that continued treatment of the Discharges is necessary as determined by the Department, Champion shall convey all personal property related to the Treatment System to the Trust or other entity identified by the Department for one dollar (\$1.00).

17. Bond Release. The surety bonds identified in Paragraph J hereof will be eligible for release under 25 Pa. Code § 86.174, when (i) Champion's contributions to the Trust in the amount of \$1,500,000 are complete; and (ii) the Department determines the total amount of the surety bonds identified in Paragraph J hereof exceeds remaining reclamation cost estimates.

18. Public Liability Insurance.

a. Champion shall maintain in effect public liability insurance coverage for the activities associated with operation, maintenance, improvement and all other activities associated with the Treatment System and any real and personal property which is identified in the Participation Agreement as part of the Trust Principal. Champion shall also provide fire damage insurance in an appropriate amount with respect to the Treatment System. Champion shall ensure the Trustee and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policies.

b. In addition to the requirements of Paragraph 18.a., the public liability insurance shall also be on the terms and conditions required by 25 Pa. Code § 86.168(a)-(e), or, in the alternative, as provided by Paragraph 18.c.



c. In lieu of the insurance requirements of Paragraph 18.b. above and, in addition to the requirements of Paragraph 18.a. above, Champion shall ensure that the public liability insurance is written on an occurrence basis and shall provide bodily injury and property damage coverage in the minimum amounts of \$250,000 per person and \$1,000,000 per occurrence. Champion shall also ensure that the insurance policy includes a rider requiring the insurer to notify the Department 30 days prior to substantive changes being made to the policy or prior to termination or failure to renew. Champion shall provide proof of insurance consisting of a certificate of insurance filed annually with the Department which certifies Champion has a public liability insurance policy in force meeting the requirements of this paragraph.

19. Annual Meeting. The parties will meet on or before the 30<sup>th</sup> day following delivery to the Department of the Accounting of each year to review and discuss the Accounting for the then completed fiscal year; to review the effectiveness of the Treatment System and any change in the fiscal year; to resolve any issues which arise as a result of that change or the performance of the treatment facility; 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 Champion Treatment Trust in accordance with Paragraph 9 hereof; and to address any other issues that may concern this PMTT COA or its implementation.

20. Champion's Continuing Obligation. Neither Champion's agreement to fund the \$1,500,000 nor the full or partial funding of the Trust, nor the exhaustion of the Trust shall in any way limit Champion's obligation to operate the Treatment System. Furthermore, exhaustion of the Trust shall not excuse Champion from Champion's obligation to adequately treat or to abate the Discharges.

21. Stipulated Civil Penalties.

a. In the event Champion fails to comply in a timely manner with any term or provision of this PMTT COA, Champion shall be in violation of this PMTT COA 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:

William S. Plassio  
Manager, California District Mining Office  
Department of Environmental Protection  
25 Technology Drive  
California Technology Park  
Coal Center, Pennsylvania 15423

c. Any payment under this paragraph shall neither waive Champion's duty to meet its obligations under this PMTT COA nor preclude the Department from commencing an action to compel Champion's compliance with the terms and conditions of this PMTT COA. The payment resolves only Champion's liability for civil penalties arising from the violation of this PMTT COA for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

22. Additional Remedies.

a. In the event Champion fails to comply with any provision of this PMTT COA, 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 PMTT COA.

b. In the event Champion defaults on the obligations of this PMTT COA Champion 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 Champion as a violator on the Department's compliance tracking system and on the federal Applicant Violator System.

c. The remedies provided by this PMTT COA 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.

23. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. Champion reserves the right to challenge any action which the Department may take to require those measures.

24. Liability of Champion. Champion shall be liable for any violations of the PMTT COA, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Champion also shall be liable for any violation of this PMTT COA caused by, contributed to, or allowed by its successors and assigns.

25. Transfer of CRDA Site.

a. The duties and obligations under this PMTT COA shall not be modified, diminished, increased, terminated or otherwise altered by the transfer of any legal or equitable interest in the Champion CRDA Site or any part thereof.

b. If Champion intends to transfer any legal or equitable interest in the Champion CRDA Site which is affected by this PMTT COA, Champion shall serve a copy of this PMTT COA 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 of such intent.

c. The Department in its sole discretion may agree to modify or terminate Champion's duties and obligations under this PMTT COA upon transfer of the Champion CRDA Site. Champion waives any right that it may have to challenge the Department's decision in this regard.

26. Correspondence with Department. All correspondence with the Department concerning this PMTT COA shall be addressed to:

William S. Plassio  
Manager, California District Mining Office  
Department of Environmental Protection  
25 Technology Drive  
California Technology Park  
Coal Center, Pennsylvania 15423

27. Correspondence with Champion. All correspondence with Champion concerning this PMTT COA shall be addressed to:

Anthony Bologna, President  
Champion Processing, Inc.  
P.O. Box 1073  
Coraopolis, Pennsylvania 15108-6073

Champion 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 PMTT COA, including its enforcement, may be made by mailing a copy by first class mail to the above address.

28. Force Majeure.

a. In the event that Champion is prevented from complying in a timely manner with any time limit imposed in this PMTT COA solely because of a strike, fire, flood, act of God, or other circumstances beyond Champion's control and which Champion, by the exercise of all reasonable diligence, is unable to prevent, then Champion may petition the Department for an extension of time. An increase in the cost of performing the obligations set

forth in this PMTT COA shall not constitute circumstances beyond Champion's control.

Champion's economic inability to comply with any of the obligations of this PMTT COA shall not be grounds for any extension of time.

b. Champion 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 Champion 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. Champion'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 Champion and other information available to the Department. In any subsequent litigation, Champion 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.

29. Severability. The paragraphs of this PMTT COA 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.

30. Entire Agreement. This PMTT COA 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.

31. 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 PMTT COA.

32. Modifications. Except as provided in Paragraph 12.c.ix., no changes, additions, modifications, or amendments of this PMTT COA shall be effective unless they are set out in writing and signed by the parties hereto.

33. Titles. A title used at the beginning of any paragraph of this PMTT COA may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

34. Decisions under Consent Order. Except for Paragraph 8, any decision which the Department makes under the provisions of this PMTT COA 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 Champion may have to the decision will be preserved until the Department enforces this PMTT COA.

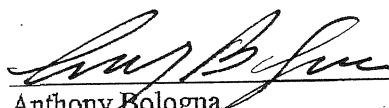
35. Successors. This PMTT COA shall be fully and completely binding upon any successor of Champion. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) Champion consolidates with or merges into or permits to merge with it and Champion is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of Champion's properties or assets which include, but is not limited to, voting stock of Champion. Successor does not include any corporation or other entity to which Champion transfers or assigns all or substantially all of its financial or non-financial liabilities.

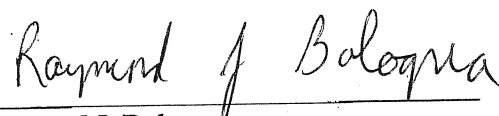
Champion shall notify the Department, without delay, of any successor as defined herein and shall provide such successor with a copy of this PMTT COA.

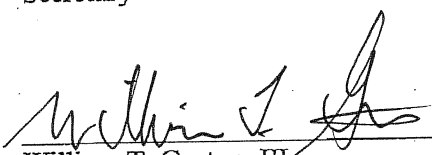
36. Counterpart Signatures. The parties agree to execute this PMTT COA by counterpart signatures transmitted via facsimile.

IN WITNESS WHEREOF, the parties hereto have caused this PMTT COA to be executed by their duly authorized representatives. The undersigned representatives of Champion certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this PMTT COA on behalf of Champion; that Champion consents to the entry of this PMTT COA as a final ORDER of the Department; and that Champion hereby knowingly waives its rights to appeal this PMTT COA 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 Champion's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR CHAMPION PROCESSING, INC.:

  
\_\_\_\_\_  
Anthony Bologna  
President

  
\_\_\_\_\_  
Raymond J. Bologna  
Secretary

  
\_\_\_\_\_  
William T. Gorton, III  
Attorney for Champion Processing, Inc.

FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION:

\_\_\_\_\_  
William S. Plassio  
Manager, California District Office

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Gail A. Myers  
Assistant Counsel

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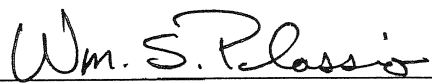
FOR CHAMPION PROCESSING, INC.:

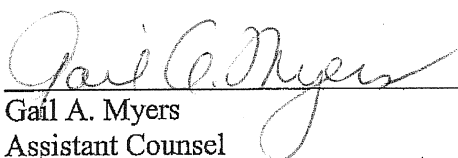
\_\_\_\_\_  
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Secretary

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Attorney for Champion Processing, Inc.

FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
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