

IN THE COURT OF COMMON PLEAS OF  
ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,  
Department of Conservation and  
Natural Resources  
Plaintiff

v.

CONSOL ENERGY, INC.  
Defendants

CIVIL DIVISION

GD-07-000190

Complaint - Civil Action  
Jury Trial Demanded

Code 011 - Assumpsit/Trespass  
Filed on behalf of Commonwealth  
of Pennsylvania, Plaintiff

Counsel of Record for this  
Party:

Stewart L. Cohen, Esquire  
Pa. ID # 25448  
Cohen, Placitella & Roth, P.C.  
Two Commerce Square, Suite 2900  
2001 Market Street  
Philadelphia, PA 19103  
(215) 567-3500

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE

Lawyer Referral Service  
Allegheny County Bar Association  
11<sup>th</sup> Floor - Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219  
412-261-5555

ALLEGHENY COUNTY  
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COMPLAINT

AND NOW, this 28th day of January 2008, comes the Commonwealth of Pennsylvania, by its attorneys, in its capacity as Sovereign, Trustee, and as *Parents Patrie* on behalf of its citizens and residents to protect their health and well-being and to protect natural resources held in trust by the Commonwealth, and to recover damages which the Commonwealth and its citizens have sustained as a result of the unlawful and unjust actions of the Defendant, and states this cause of action whereof the following is a statement:

1. Defendant, Consol Energy Incorporated ("Consol") is a corporation organized under the laws of the State of Delaware, with its corporate headquarters and principal place of business located at 1800 Washington Road, Pittsburgh, PA.

2. Consol regularly conducts business in Allegheny County.

3. At all relevant times, in the matters described herein, Consol acted through its officers, agents and employees, engaging in its business and acting within the scope of their office, agency or employment.

4. Ryerson Station State Park ("Ryerson Park") is a 1,164-acre park located in Greene County, and is owned by the

Commonwealth of Pennsylvania, and is under the jurisdiction of the Department of Conservation and Natural Resources ("DCNR").

5. DCNR has the power and duty under the Conservation and Natural Resources Act (act of June 28, 1995 (P.L. 89, No. 18), 71 P.S. 101 *et seq.*) to supervise, maintain, improve, regulate, police and preserve Ryerson Park, as one of the State parks of the Commonwealth.

6. Article I, § 27 of the Pennsylvania Constitution provides:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all people.

7. Pennsylvania's public natural resources, including its State parks and forests, are to be conserved and maintained by DCNR for the use and benefit of all its citizens as guaranteed by section 27 of Article I of the Constitution of Pennsylvania. 71 P.S. § 1340.101.

8. State parks, forests, community recreation and heritage conservation areas are critical to the continued success of the tourism and recreation industry in the Commonwealth. 71 P.S. § 1340.101(a)(4).

9. Preserving, enhancing, maintaining and actively managing the Commonwealth's system of State parks, forests, community recreation and heritage conservation areas contributes greatly to the quality of life of Pennsylvania's citizens and the economic well-being of the State. 71 P.S. § 1340.101(a)(6).

10. The primary purpose of Pennsylvania State Parks is to provide opportunities for enjoying healthful outdoor recreation and serve as outdoor classrooms for environmental education. 71 P.S. § 303(a).

11. In meeting this purpose, the conservation of the natural, scenic, aesthetic, and historical values of parks should be given first consideration. Stewardship responsibilities must be carried out in a way that protects the natural outdoor experience for the enjoyment of current and future generations.

12. DCNR is the trustee for the state parks and natural resources located therein, including, but not limited to, the waters, lands, fish and other aquatic life, and wildlife located in Ryerson Station State Park. DCNR is empowered under the Conservation and Natural Resources Act, Article I, § 27 of the Pennsylvania Constitution, and the Public Trust Doctrine of the common law to bring this suit to protect and defend the corpus of the trust for the beneficiaries of the trust. The corpus of the trust includes park lands, park waters, and park natural

resources, including but not limited to, the fish and other aquatic life and habitat in the waters of Ronald J. Duke Lake ("Duke Lake"), and the wildlife and terrestrial habitat associated with the park. The beneficiaries of the trust include the people of the Commonwealth, including future generations. The Defendant's unreasonable interference with the public's use and enjoyment of the public trust, described hereinafter, has and continues to significantly harm the lands, waters, wildlife, habitat and natural resources of the park held in trust by the Commonwealth for the benefit of the people of the Commonwealth.

13. Ryerson Park, which was opened to the public in 1967, is the only State Park in Greene County, and is a major recreational destination in southwest Pennsylvania.

14. Prior to Consol's mining activities described hereinafter, Ryerson Park featured Duke Lake, a sixty-two acre lake formed in 1960 with the completion of a dam ("Ryerson Dam") located across the North Fork of the Dunkard Branch of Wheeling Creek.

15. Prior to the events giving rise to this action, Ryerson Park attracted over 160,000 people a year, principally for recreation involving Duke Lake.

16. Duke Lake was used for fishing of trout, warm-water game fish and panfish. The Pennsylvania Fish and Boat

Commission stocked the lake with trout in spring and late fall. Individuals were permitted to use electric-powered motorboats on the lake as well.

17. In the winter, Duke Lake was used for ice skating and ice fishing.

18. At all times relevant, Consol owned the rights to certain minerals beneath Ryerson Park.

19. In December, 1996, Consol sought to begin mining operations beneath Ryerson Park.

20. In response to objections and concerns, Consol undertook the duty to protect Duke Lake, Ryerson Dam, and the natural resources of Ryerson Park, and perform its mining operations in such a manner and at such locations that would not harm and would preserve Duke Lake, Ryerson Dam, and the natural resources of Ryerson Park.

21. Consol entered into an agreement with DCNR on September 21, 2001 entitled "Operations Agreement Coal Mining, Ryerson Station State Park," that concerns Consol's mining activities beneath Ryerson Park. This Agreement was in effect at all relevant times, and a copy is marked as Exhibit "A", attached hereto, and incorporated herein.

22. In the Spring of 2004, more than 2,200 fishermen encircled Duke Lake on the opening day of trout season.

23. During the Summer of 2005, the relevant time period in this case, Consol was engaged in underground, longwall mining operations ("mining") beneath Ryerson Park.

24. On or around July 13, 2005, the amount of seepage through a drainage pipe located at the east abutment of Ryerson Dam was measured at 35 gallons per minute ("gpm") – a level significantly higher than previous observations.

25. On or around July 26, 2005, the amount of seepage through the drainage pipe increased from 35 gpm as measured on July 13, 2005 to approximately 60 gpm.

26. On or around July 28, 2005, the amount of seepage through the drainage pipe increased to 80 gpm and the Department of Environmental Protection ("DEP") Division of Dam Safety directed DCNR to open Ryerson Dam's spillway gates immediately.

27. The increased amount of seepage through Ryerson Dam, combined with concern of a storm event, posed a serious risk to the safety of the individuals located downstream from Ryerson Dam. Evacuation plans were made.

28. On or around July 29, 2005, the water level of Duke Lake's reservoir was lowered approximately 11 feet as a result of opening the spillway gates. Because of the damage to Ryerson Dam, the DEP Division of Dam Safety advised DCNR that a large portion of the dam spillway needed to be removed in order to

protect the safety of those who lived down stream of Ryerson Dam.

29. On or around August 1, 2005, the DEP Division of Dam Safety determined that a 100-foot section of the 200-foot Ryerson Dam spillway needed to be removed to a depth of at least 14 feet in order to protect the homes and businesses located downstream.

30. Since the condition at Ryerson Dam became so dangerous as to require immediate remedial action, the DEP had a statutory duty to take the necessary corrective action as required to carry out the provisions of the Dam Safety Act. 32 P.S. § 693.14. On or about August 11, 2005, demolition of Ryerson Dam's spillway began.

31. On or about August 24, 2005, the demolition of Ryerson Dam's spillway was substantially completed.

#### COUNT I NEGLIGENCE

32. Plaintiff incorporates paragraphs 1 through 31 as though fully set forth at length.

33. Consol had by its agreement and conduct assumed the duty to conduct mining in Ryerson Park in a manner that would not cause material damage to Ryerson Dam, Duke Lake or Ryerson Park.

34. Before the Summer of 2005, Consol knew that mining beneath the high hill to which Ryerson Dam abutted would cause horizontal stresses to greatly increase at the base of the high hill being undermined.

35. Before the Summer of 2005, Consol knew that Ryerson Dam was located in the valley adjacent to the high hill it planned to undermine and abutted a steep hill.

36. Notwithstanding its knowledge, its promises, and the duty it had undertaken, Consol proceeded to undermine the high hill in close proximity to Ryerson Dam.

37. As a result of Consol's actionable conduct, the mining caused an increased amount of horizontal stresses in the steep hillside and increased pressure and forces on Ryerson Dam causing the dam to move and crack.

38. This movement and cracking of the dam caused it to become unstable and caused high volume water seepage through the dam.

39. The unstable nature of the dam posed a safety threat to those individuals living downstream of the dam.

40. In the Summer of 2005, the threat of flooding and the stability of the dam were assessed by the Commonwealth and it was determined for public safety that Duke Lake needed to be drained and the spillway removed, causing a loss of use, services and enjoyment of Duke Lake, substantial property damage

and injury to the land, water, wildlife and other naturally occurring elements and resources of Ryerson Park and Duke Lake.

41. At all relevant times, Consol knew that Duke Lake and Ryerson Park were frequented by numerous visitors and that the Park and Lake were an integral part of the community.

42. At all relevant times, Consol had complete control over the mining in the days, weeks and months leading up to and including July, 2005.

43. Consol had a duty to the public, and the Commonwealth, to safely perform its mining operations, taking every reasonable precaution, or not do it at all.

44. Consol had superior knowledge about the increased risk of damage caused by mining in a valley adjacent to the high hill in and around Ryerson Park.

45. Prior to the Summer of 2005, Consol knew that there was a high likelihood that the Ryerson Dam, Duke Lake and Ryerson Park would be harmed in the event that the mining increased the amount of horizontal stresses in the steep hillside and increased the pressure and forces on Ryerson Dam causing the dam to move and crack.

46. The failure of the Ryerson Dam is not the type of incident that normally would occur absent negligence or intentional conduct by Consol.

47. Consol's negligent mining operations at this location

increased the risk, caused and contributed to the failure of the Ryerson Dam, and the resulting injuries and damages would not have occurred but for Consol's conduct.

48. The carelessness, recklessness, and negligence of Consol include:

- a. Mining in a location and in such a manner so as to increase the risk of harm and cause damage to Duke Lake, Ryerson Dam and Ryerson Park;
- b. Failing to select a location that was safe and proper to perform its mining operations;
- c. Breaching the duties that it had undertaken by its conduct and promises to perform the mining in such a manner and at such a location so as to preserve and protect Duke Lake, Ryerson Dam and the natural resources of Ryerson Park;
- d. Undertaking mining in an area that Consol knew would create a risk of harm to surrounding areas and property;
- e. Failing to properly and safely inspect the mining related damage caused by its operations prior to causing damage to Duke Lake, Ryerson Dam and Ryerson Park;
- f. Failing to monitor the Ryerson Dam prior to causing damage;
- g. Failing to prevent, detect and stop the mining related damages prior to the Commonwealth suffering substantial damages;
- h. Failing to correct, remedy or eliminate mining operations which defendant knew involved an increased risk of harm to Duke Lake, Ryerson Dam the natural resources of Ryerson Park;

- i. Failing to give proper consideration to the increased risk of damage to Duke Lake, Ryerson Dam and the natural resources of Ryerson Park;
- j. Violating the various statutes of the Commonwealth of Pennsylvania pertaining to the protection of natural resources, including fish, water, wildlife, and the habitat that supports it, including ecosystems;
- k. Violating the various statutes of the Commonwealth of Pennsylvania governing or relating to dams, and the unlawful alteration or damage to dams;
- l. Failing to adhere to the applicable statutes, ordinances, contracts, rules, regulations and standards governing or relating to mining operations at or near Duke Lake, Ryerson Dam and Ryerson Park;
- m. Failing to fully and properly evaluate the risks and investigate the potential effects that the mining operations would have on Duke Lake, Ryerson Dam and the natural resources of Ryerson Park;
- n. Creating a nuisance;
- o. Failing to properly warn the DCNR of the increased risk of catastrophic harm to Duke Lake, Ryerson Dam and the natural resources of Ryerson Park, given the circumstances and location of its mining operations;
- p. Failing to cease mining or to take any steps to mitigate damage to Duke Lake, Ryerson Dam and the natural resources of Ryerson Park when damage was discovered;
- q. Failing to conduct its mining operations in a reasonably safe manner;
- r. Failing to implement and enforce policies and procedures with respect to the mining operations to ensure that Defendant would adequately protect Duke Lake, Ryerson Dam and Ryerson Park from mining related damage;
- s. Failing to hire competent employees, agents and/or contractors to conduct the mining operations;

t. Otherwise failing to use reasonable and due care under the circumstances.

49. The damage to Ryerson Dam, Duke Lake and Ryerson Park is of a continuing nature and has produced a permanent and long-lasting effect on the land, water, habitat and other naturally occurring elements, and the defendant knew that such mining related damage would have a significant effect upon public life.

50. Plaintiff, as trustee of the public natural resources at Ryerson Park, and the citizens of the Commonwealth of Pennsylvania, as beneficiaries of that trust, specifically, those citizens who would otherwise regularly use and enjoy Ryerson Park, have property rights and privileges with respect to the use, services and enjoyment of the natural resources of Ryerson Park and Duke Lake.

51. This action is brought to protect the public interests of the citizens of the Commonwealth of Pennsylvania and to seek relief, restitution, civil damages, and to restore, conserve and repair the natural, scenic and esthetic resources of the environment in Ryerson State Park, which are the common property of all the people, including generations yet to come.

52. By reason of Defendant Consol's conduct, the Commonwealth has and will sustain substantial damages for the reconstruction of the Ryerson Dam, including investigation, monitoring, studies, construction design, design and

construction services, permitting, construction and post-construction performance monitoring, as well as studies, legal fees, financing costs, state agency costs and construction costs.

53. By reason of Defendant Consol's conduct, the Commonwealth, on behalf of the citizens of Pennsylvania, must restore at great expense and cost and through public funds, the Ryerson Dam, Duke Lake and the land, wildlife and other naturally occurring elements in Ryerson State Park.

54. By reason of Defendant Consol's conduct, the citizens of the Commonwealth of Pennsylvania, and in particular those who used Ryerson State Park and Duke Lake for its recreational, natural, scenic and esthetic purposes, have lost use of Duke Lake and the major recreational attraction of Ryerson State Park, until it can be restored, at great cost and expense.

55. The cost to replace Ryerson Dam may exceed Thirty Million Dollars (\$30,000,000), the cost to fully restore Duke Lake may exceed Eight Million Dollars (\$8,000,000), and the cost for the damages to the Commonwealth's natural resources may exceed Twenty Million Dollars (\$20,000,000), provided that the Ryerson Dam is repaired on or before 2010, and provided Duke Lake is restored on or before 2011.

WHEREFORE, Plaintiff demands judgment against the Defendant in an amount in excess of \$50,000.00 for compensatory damages

for the replacement of Ryerson Dam, the restoration of Duke Lake, and the damages to the Commonwealth's natural resources, as well as all other just and proper relief as may be awarded by this Court, and brings this action to recover same.

COUNT II-MISREPRESENTATION AND DECEIT

56. Plaintiff incorporates paragraphs 1 through 55 as though fully set forth at length.

57. At all relevant times, Consol, by its employees, represented to DCNR that the mining operations in Ryerson Park would not damage Ryerson Dam, Duke Lake or Ryerson Park.

58. Consol began mining in the high hill to which Ryerson Dam abutted in the Summer of 2005. Based on prior incidents, its knowledge, experience and the science, Consol knew on and before that time that its representations to DCNR were false, and further Consol intentionally concealed the fact that its mining activity in the subject area substantially increased the risk of catastrophic damage to Duke Lake, Ryerson Dam and Ryerson Park, as well as the natural resources of the Commonwealth. Consol continued to deceive DCNR regarding the impact of its mining activity beneath Ryerson Park even after damage occurred and continued its mining activities unabated.

59. Consol knew that its misrepresentations, deceits and concealment concerned a material fact, and that DCNR had relied upon such with respect to the subject mining operations.

60. DCNR acted in justifiable reliance on the representations of Consol.

61. Given the increased risk of catastrophic damages, which did in fact occur, the conscious decision by Consol to not advise DCNR of the true facts was irresponsible, reckless and indifferent, particularly given Consol's representations about its mining operations, and the magnitude of the risks involved.

62. The actions by Consol employees with regard to the misrepresentations and concealment were incurred within the scope of their duties, and were carried out with the intent to further Consol's "for profit" interests at the expense of public safety and protected public natural resources.

63. The Plaintiff is seeking compensatory and punitive damages to make Consol an example and to deter Consol and any other corporation, or individual, from committing such deceitful conduct that results in damage to the lands, water and natural resources of parks of the Commonwealth.

WHEREFORE, Plaintiff demands judgment against the Defendant for compensatory damages for the replacement of Ryerson Dam, the restoration of Duke Lake, and the damages to the Commonwealth's natural resources and punitive damages, all in an amount in

excess of \$50,000.00, as well as all other just and proper relief as may be awarded by this Court, and brings this action to recover same.

COUNT III - BREACH OF CONTRACT

64. Plaintiff incorporates paragraphs 1 through 63 as though fully set forth at length.

65. By its agreement, representations and its course of conduct and dealings, Consol promised and had assumed and undertaken the duty to perform the mining activities in a manner that would not damage the Ryerson Dam, Duke Lake, or the public recreational use of Ryerson Park.

66. Consol was required to perform its work with a high degree of care, taking into consideration the preservation and maintenance of Ryerson Dam, Duke Lake and Ryerson Park.

67. Consol breached its promises, created a nuisance, and failed to take the necessary safeguards to protect Ryerson Dam, Duke Lake and Ryerson Park, as set forth above, which caused extensive damages for which this action is brought.

68. Plaintiff notified Consol of the damages caused by its breach and made a claim for damages, which Consol has disputed and refused to pay, in further breach of its agreement.

WHEREFORE, Plaintiff demands judgment against the Defendant for compensatory damages for the replacement of Ryerson Dam, the restoration of Duke Lake, and damages to the Commonwealth's natural resources and punitive damages, all in an amount in excess of \$50,000.00, as well as all other just and proper relief as may be awarded by this Court, and brings this action to recover same.

COUNT IV - STRICT LIABILITY

69. Plaintiff incorporates paragraphs 1 through 68 as though fully set forth at length.

70. Under the circumstances and at this location, Consol's conduct was an abnormally or inherently dangerous activity that outweighed any benefit, and presented an unusual and substantial risk of great harm.

71. Consol's acts or omissions increased the risk, and caused or contributed to the failure of the Ryerson Dam and it is strictly liable in tort for all of the damages to the Dam, land, water, wildlife and other naturally occurring elements of Ryerson Park.

WHEREFORE, Plaintiff demands judgment against the Defendant in an amount in excess of \$50,000.00 for compensatory damages for the replacement of Ryerson Dam, the restoration of Duke

Lake, and the damages to the Commonwealth's natural resources, as well as all other just and proper relief as may be awarded by this Court, and brings this action to recover same.

COUNT V - NUISANCE

72. Plaintiff incorporates paragraphs 1 through 71 as though fully set forth at length.

73. The Commonwealth of Pennsylvania has a direct and independent interest in all the earth and air within its domain, including, but not limited to, all its natural resources. In this capacity, the Commonwealth of Pennsylvania has an interest independent of and behind the titles of its citizens and is empowered under the common law doctrine of *parens patrie* to recover damages for public nuisance.

74. Damages to Ryerson Park, Duke Lake and Ryerson Dam are an unreasonable interference with a right common to the general public.

75. The damage to Ryerson Park and Ryerson Dam involves a significant interference with public safety, public peace, public comfort and public convenience.

76. The damage to Duke Lake, Ryerson Dam and the natural resources of Ryerson Park is prohibited by laws, rules and regulations of the Commonwealth of Pennsylvania.

77. Consol's acts or omissions increased the risk, caused or contributed to the failure of the Ryerson Dam and the damages to the Dam, as well as the land, water, wildlife and other naturally occurring elements of Ryerson Park and Duke Lake.

WHEREFORE, Plaintiff demands judgment against the Defendant for compensatory damages for the replacement of Ryerson Dam, the restoration of Duke Lake, and the damages to the Commonwealth's natural resources and punitive damages, all in an amount in excess of \$50,000.00, as well as all other just and proper relief as may be awarded by this Court, and brings this action to recover same.

**COUNT VI - BITUMINOUS MINE SUBSIDENCE ACT**

78. Plaintiff incorporates paragraphs 1 through 77 as though fully set forth at length.

79. Pursuant to the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. § 1406.1 et seq., Consol is strictly liable for certain damages provided in that Act resulting from its mining operations.

WHEREFORE, Plaintiff demands (1) judgment against the Defendant in an amount in excess of \$50,000.00, exclusive of interest, (2) an award of the costs of litigation, including attorney and expert witness fees, and (3) all other just and

proper relief as may be awarded by this Court, and brings this action to recover same.

Respectfully submitted,

Cohen, Placitella & Roth, P.C.

DATE:

1/28/06

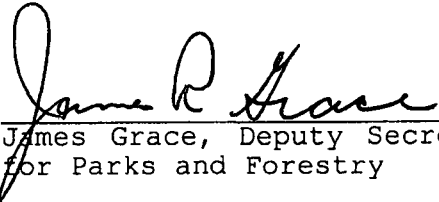
BY:



Stewart L. Cohen, Esquire  
Noël K. Wolfe, Esquire  
Special Counsel for the  
Commonwealth of Pennsylvania

VERIFICATION

James Grace, Deputy Secretary for Parks and Forestry, on behalf of Plaintiff, The Commonwealth of Pennsylvania, hereby verifies that the statements made in the foregoing CIVIL ACTION are true and correct to the best of his knowledge, information and belief, and that he understands that the statements therein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

  
James Grace, Deputy Secretary  
for Parks and Forestry

1/28/08  
Date

CERTIFICATE OF SERVICE

I, Stewart L. Cohen, attorney for the Plaintiff,  
hereby certify that on January 30, 2008 a true and correct  
copy of Plaintiff's Complaint was served on the following  
via First Class, U.S. Mail, postage prepaid to the  
following:

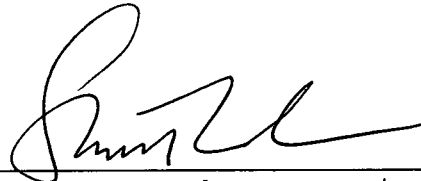
Consol Energy Inc.  
Attn: Mr. Robert M. Vukas  
Senior Counsel  
Consol Plaza  
1800 Washington Road  
Pittsburgh, PA 15241

COHEN, PLACITELLA & ROTH, P.C.

DATE:

1/20/08

BY:



Stewart L. Cohen, Esquire  
Noël K. Wolfe, Esquire  
Special Counsel for the  
Commonwealth of Pennsylvania

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

OPERATIONS AGREEMENT  
COAL MINING  
RYERSON STATION STATE PARK

This Agreement made this 21 day of September, 2001, between the COMMONWEALTH OF PENNSYLVANIA, acting through the DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, BUREAU OF STATE PARKS, hereinafter referred to as "DCNR," and CONSOL PENNSYLVANIA COAL COMPANY, 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421, hereinafter referred to as "CPCC."

WITNESSETH

WHEREAS, CPCC is the rightful owner of minerals located under lands owned by DCNR in Ryerson Station State Park, RR1, Box 77, Wind Ridge, Richhill Township, Greene County, Pennsylvania; and,

WHEREAS, CPCC has requested permission to remove said minerals from beneath these lands by mining and is willing to compensate DCNR by making capital improvements to Ryerson Station State Park; and,

WHEREAS, DCNR, under the *Conservation and Natural Resources Act, Act of 1995, P. L. 89, No. 18, Section 303 (a)(1)* has the power and duty to supervise, maintain, improve, regulate, police and preserve all state parks belonging to the Commonwealth; and,

WHEREAS, DCNR is willing to cooperate and coordinate work with CPCC in a manner that will not affect the public recreational use of Ryerson Station State Park.

NOW, THEREFORE, in consideration of the mutual promises of the parties, the said parties intending to be legally bound hereby, agree as follows:

1. DCNR will permit CPCC and its sub-contractors to conduct mining-related activities in and under Ryerson Station State Park according to the terms and conditions written below.
2. CPCC will not mine under Ryerson Station State Park Lake.
3. CPCC may drill degasification boreholes in areas approved by DCNR.

A. Degasification boreholes will not be placed in areas so as to significantly impact recreational activities in Ryerson Station State Park.

B. Final decision on the placement of boreholes will remain with DCNR, with DCNR being mindful of the requirement of CPCC to provide a safe working environment in the underground mine.

DCNR OCC

LOG #: 01-2244

A. This new building will measure approximately 64' by 35' and will be located adjacent to the existing visitor's center. The exact location and alignment will be determined by DCNR.

B. The design will be compatible with the architectural standards established in the Ryerson Station State Park's Management Plan.

C. The design will incorporate some "green" technology to enhance the energy efficiency of the building consistent with the basic standards as set forth by the Commonwealth of Pennsylvania Guidelines for Creating High-Performance Green Buildings.

D. DCNR will review and have final approval of all architectural plans.

E. DCNR will maintain construction oversight on the facility.

F. The estimated cost to complete this facility is \$200,000.

G. CPCC will be responsible for obtaining all permits required for construction and use of the facility; however, DCNR will assist wherever possible.

H. CPCC acknowledges that it has an obligation under Act 54 to address any subsidence-related damages to any park facilities.

6. ~~CPCC acknowledges that the decision on any disputes that arise from this agreement rest with DCNR.~~

7. CPCC shall provide at its sole expense and maintain in full force and effect such comprehensive public liability insurance issued by companies acceptable to DCNR in an amount not less than combined Bodily Injury and Property Damage of \$1,000,000 per occurrence. Said insurance coverage shall protect CPCC from claims for personal injury, including accidental death, as well as claims for property damage which may arise or result from operations under this AGREEMENT. CPCC shall furnish the Park Manager, Ryerson Station State Park, with a Certificate of Insurance naming the Department of Conservation and Natural Resources as an additional insured prior to any work under this AGREEMENT.

8. CPCC shall furnish and keep in full force and effect, during the term of this Agreement, a performance guarantee made payable to the Commonwealth of Pennsylvania, in the amount of \$1,000,000, conditioned for the full performance of all the covenants and stipulations contained in this Agreement. The performance guarantee shall either be a cash deposit, performance bond, certificate of deposit, passbook savings account, automatically renewable irrevocable letter of credit, or another form acceptable to DCNR.

9. The operation of motor vehicles for or under this Agreement shall be covered by motor vehicle insurance rather than self-insurance.

C. CPCC will plug existing gas well within Ryerson Station State Park, including those presently in use as an energy source for the State Park.

(1) CPCC will compensate DCNR for taking the existing wells out of service.

//

(2) Said compensation will be based on the following formula:

(a) Replacement cost of 200 mcf of natural gas annually for 20 years.

4. CPCC will mine under two existing public water supply wells within the park. DCNR will permit such activities, but only under the following conditions:

A. CPCC will install a new well outside the planned mining area or over a solid coal area to replace the existing well in the Ryerson Station State Park Campground.

B. As required pursuant to Act 54, CPCC will insure that this replacement well is of acceptable quality and quantity to meet the demands of Ryerson Station State Park, including all consumptive uses. Determining whether the quality of this well and quantity of water is acceptable will be within the discretion of DCNR based on the existing uses within the park.

C. CPCC will connect this well into the park's water system. Such connection will be subject to the approval of DCNR.

D. Upon meeting the required quality of water, as defined in Paragraph 4B above, and the required quantity of water to meet existing use within the park, DCNR will agree that CPCC has met its water replacement obligation.

E. DCNR agrees that should CPCC meet all their obligations as detailed in Paragraphs 4A through 4D, the campground well and the park's second well will no longer be required and will be declassified.

F. In the event the first replacement well cannot meet the quality and quantity requirements of the park, CPCC agrees to conduct a hydrologic investigation to assist with determining a suitable location for a well to replace the park's second well. If the report is favorable as to the likely success of developing a post-mining water supply, DCNR will declassify the second well and permit it to be undermined. CPCC will comply with the water replacement requirements of Act 54.

G. Under the terms of Paragraph 4F, CPCC will take the appropriate action in a manner that minimizes disruptions to state park activities.

5. CPCC agrees to finance and construct a new park office/visitors center at Ryerson Station State Park.

10. CPCC, and any of its sub-contractors, shall provide at its sole expense and maintain in full force and effect during this Agreement, worker's compensation insurance for personnel employed in the business operated under this Agreement.

11. DCNR shall be immediately advised by CPCC should any of the aforementioned insurance policies be cancelled by CPCC or the insurance company prior to the expiration date indicated on said policy.

12. CPCC shall hold DCNR harmless from any and all damages and liability whatsoever, arising from the use or occupancy of the premises by CPCC, agents of CPCC, or its invitees, which is caused by the fault, or negligence of CPCC or the failure on the part of CPCC to comply with any of the covenants, terms and conditions contained herein. In no case will DCNR waive its right to assert a defense of sovereign immunity to any claim for damages, pursuant to the authority contained in the *Political Subdivision For Claims Act, Act of October 5, 1980, Public Law 693, No. 142*, as amended, or any other legal authority established in the Commonwealth which permits use by the Commonwealth of a sovereign immunity defense.

IN WITNESS WHEREOF, the parties hereto have signed and sealed these presents as of the day and year first above written.

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CONSERVATION AND  
NATURAL RESOURCES

WITNESS:

*Kerdy R. Meyer*

*John Plonski*  
John Plonski  
Executive Deputy Secretary  
for Parks and Forestry

ATTEST:

CONSOL PENNSYLVANIA COAL COMPANY

*Carl J. Stuppach*  
Secretary or Treasurer

*Larry Hull*  
Larry Hull, Vice-President - Group 1

Federal Identification Number: 51-0259505

APPROVED AS TO LEGALITY AND FORM:

*John AF Hall*  
Office of Attorney General

*William W. Shady*  
Chief/Assistant Counsel  
Department of Conservation and  
Natural Resources

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