07-112-CD
Waroquier Coal vs Albert Nelson al

In the Superior Court of Pennsylvania

No. 655 **WESTERN DOCKET APPEAL 2008**

WAROQUIER COAL CO., INC.,
Appellant
-v-
ALBERT L. NELSON, etc.

: Appeal from the **Order Entered on 3-6-2008,**
: **In the Court of Common Pleas, by the Honorable Fredric J. Ammerman, Civil Division,**
: Of the County of **Clearfield**
: **No. 2007-112-CD**

Certified from the Record

July 25, 2008 Praecipe to Discontinue, filed by appellant.
APPEAL DISCONTINUED.

Testimony Whereof, I have hereunto set my hand and the seal of said Court at Pittsburgh,

9th **October** **2008**

Eleanor R. Valecko
Deputy Prothonotary

FILED
11:01 BCC
OCT 13 2008
William A. Shaw
Prothonotary/Clerk of Courts

Karen Reid Bramblett, Esq.
Prothonotary

Eleanor R. Valecko
Deputy Prothonotary

Superior Court of Pennsylvania

Western District

October 9, 2008

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
412-565-7592
www.superior.court.state.pa.us

Notice of Discontinuance of Action

RE: Warquier Coal Co. v. Nelson, A.
Appeal of: Waroquier Coal Company, Inc.
Type of Action: Notice of Appeal
No. 655 WDA 2008
Clearfield County Court of Common Pleas
Agency Docket Number: No. 2007-112-CD

The above-captioned matter has been marked "Discontinued" with this court. Certification is being sent to the lower court.

Attorney Name	Party Name	Party Type
James A. Naddeo, Esq.	Albert Nelson	Appellee
Peter Fortune Smith, Esq.	Waroquier Coal Company, Inc.	Appellant

COMMONWEALTH OF PENNSYLVANIA

Superior Court of Pennsylvania

Western District

Karen Reid Bramblett, Esq.
Prothonotary

Eleanor R. Valecko
Deputy Prothonotary

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
412-565-7592
www.superior.court.state.pa.us

October 9, 2008

Mr. William A. Shaw
Prothonotary
Clearfield County
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Warquier Coal Co. v. Nelson, A.
No. 655 WDA 2008

October 13, 2008, received from the Superior Court of Pennsylvania, Western District Office, the certificate of discontinuance of the court, in the above entitled case.

Contents of Original Record:

Original Record Item	**Description**
☑ RECORD	FIVE PARTS
☑ EXHIBITS	YELLOW FOLDER /(5) FOLDED E

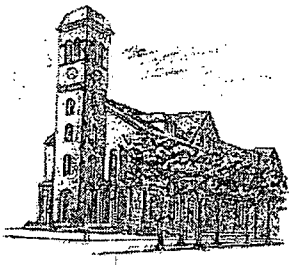
William A. Shaw

Return to:

Superior Court of Pennsylvania
Office of the Prothonotary
310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
412-565-7592

Trial Court Docket Number(s)
No. 2007-112-CD

FILED
m/1:04/61
OCT 13 2008
William A. Shaw
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts | **Jacki Kendrick** Deputy Prothonotary/Clerk of Courts | **Bonnie Hudson** Administrative Assistant | **David S. Ammerman** Solicitor

PO Box 549, Clearfield, PA 16830 ▪ Phone: (814) 765-2641 Ext. 1330 ▪ Fax: (814) 765-7659 ▪ www.clearfieldco.org

COPY

Fredric J. Ammerman, P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Peter F. Smith, Esq.
PO Box 130
Clearfield, PA 16830

James A. Naddeo, Esq.
PO Box 552
Clearfield, PA 16830

Waroquier Coal Co., Inc.
Vs.
Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust

Court No. 07-112-Cd; Superior Court No. 655 WDA 2008

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on May 8, 2008. Any pending transcript will be forwarded to Superior Court upon its filing in my office, as per Superior Court's instructions.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-112-CD
Waroquier Coal Co., Inc.
Vs.
Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust

ITEM NO.	*DATE OF FILING*	*NAME OF DOCUMENT*	*NO. OF PAGES*
01	01/23/07	Praecipe for Writ of Summons	04
02	01/25/07	Praecipe for Entry of Appearance and acceptance of Writ of Summons	03
03	02/28/07	Complaint	26
04	02/28/07	Certificate of Service, Complaint upon James A. Naddeo, Esq.	01
05	03/20/07	Answer, New Matter, and Counterclaim	18
06	03/28/07	Plaintiff's Answer to New Matter and Counterclaim	08
07	11/02/07	Motion for Summary Judgment with Order filed November 6, 2007, issuing rule upon respondent and scheduling argument December 18, 2007	05
08	11/02/07	Evidence Exhibits in Support of Defendant's Motion for Summary Judgment (A-G)	Separate Cover
09	11/02/07	Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd. (H)	Separate Cover
10	11/02/07	Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd. (I)	Separate Cover
11	11/05/07	Certificate of Service, Re: Motion for Summary Judgment and Brief in Support of Defendant's Motion for Summary Judgment and certified copies of Evidence Exhibits in Support of Defendant's Motion for Summary Judgment (A-G), (H), and (I)	02
12	11/07/07	Certificate of Service, Motion for Summary Judgment with Order scheduling argument	02
13	12/03/07	Plaintiff's Answer to Defendant's Motion for Summary Judgment and Plaintiff's Motion for Summary Judgment	04
14	12/03/07	Certificate of Service, Re: Waroquier's Answer to Defendant's Motion for Summary Judgment and Waroquier's Motion for Summary Judgment	01
15	12/05/07	Response to Plaintiff's Motion for Summary Judgment	04
16	12/05/07	Order, Re: Plaintiff's Motion for Summary Judgment; answer to be filed; rule issued; argument scheduled	01
17	12/11/07	Certificate of Service, Re: Court's Scheduling Order	01
18	12/11/07	Certificate of Service, Re: Waroquier's Brief and Opposition to Defendant's Motion for Summary Judgment and in Support of its own Motion and Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment (6, 7 & 8)	01
19	12/11/07	Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment (6, 7 & 8)	Separate Cover
20	01/04/08	Additional Evidence Exhibits to Brief in Support of Motion for Summary Judgment (five maps attached)	Separate Cover
21	01/28/08	Certificate of Service, Re: Evidence Exhibit in Support of Plaintiff's Motion for Summary Judgment (9)	01
22	01/28/08	Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment	03
23	02/26/08	Order, Re: Plaintiff's Motion for Summary Judgment is Denied	01
24	03/07/08	Opinion and Order, Re: Defendant's Motion for Summary Judgment is Granted. Plaintiff's Complaint is Dismissed with Prejudice	05
25	04/04/08	Notice of Appeal to Superior Court with Request for Transcript filed April 7, 2008	05
26	04/04/08	Certificate of Service, Re: Notice of Appeal and Request for Transcript	01
27	04/11/08	Certificate of Service, Re: Notice of Appeal and Request for Transcript	01
28	04/21/08	Appeal Docket Sheet, 655 WDA 2008	03

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-00112-CD

Current Judge: Fredric Joseph Ammerman

Waroquier Coal Co., Inc.vs.Albert L. Nelson

Civil Other-COUNT

Date		Judge
1/23/2007	New Case Filed.	No Judge
	Filing: Praecipe for Writ of Summons Paid by: Smith, Peter F. (attorney for Waroquier Coal Co., Inc.) Receipt number: 1917331 Dated: 01/23/2007 Amount: $85.00 (Check) 2 Writs to Atty.	No Judge
1/25/2007	Praecipe For Entry of Appearance on behalf of Defendant, and acceptance of Writ of Summons Jan. 25, 2007. Filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
2/28/2007	Complaint, filed by s/Peter F. Smith, Esquire. 5CC to Atty.	No Judge
	Certificate of Service, filed. That a true and correct copy of a Complaint was hand delivered to James A. Naddeo Esq., on February 28, 2007, filed by s/Peter F. Smith Esq. No CC.	No Judge
3/20/2007	Answer, New Matter And Counterclaim, filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge
3/28/2007	Plaintiff's Answer to New Matter & Counterclaim, filed by s/ Peter F. Smith, Esquire. 3CC to Atty.	No Judge
11/2/2007	Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge
	Evidence Exhibits In Support of Defendant's Motion For Summary Judgment (A-G), filed by s/ James A. Naddeo, Esquire. 1CC Atty.	No Judge
	Evidence Exhibits In Support of Defendant's Motion For Summary Judgment contd. (H), filed by s/ James A. Naddeo, Esquire. 1CC Atty.	No Judge
	Evidence Exhibits In Support of Defendant's Motion For Summary Judgment contd. (I), filed by s/ James A. Naddeo, Esquire. 1CC Atty.	No Judge
11/5/2007	Certificate of Service, filed. That a true and correct copies of Motion for Summary Judgment and Brief in Support of Defendant's Motion for Summary Judgment and certified copies of Evidence Exhibits in Support of Defendant's Motion for Summary Judgment (A-G), Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd (H) and Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd. (I) were served on the 2nd day of November 2007 to Peter F. Smith Esq., filed by s/ James A. Naddeo Esq. NO CC.	Fredric Joseph Ammerman
11/6/2007	Order, this 5th day of Nov., 2007, upon consideration of the Motion for Summary Judgment, it is Ordered that the respondent shall file an answer to the motion with 30 days of service; a rule is issued upon the respondent. Rule Returnable and argument thereon to be held the 18th of Dec., 2007, at 9:00 a.m. in courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Naddeo	Fredric Joseph Ammerman
11/7/2007	Certificate of Service, filed. That a certified copy of Motion for Summary Judgment with Order scheduling argument thereon was served on the 7th day of November 2007 to Peter F. Smith Esq by first class mail, filed by s/ James A. Naddeo Esq. No CC.	Fredric Joseph Ammerman
12/3/2007	Plaintiff's Answer to Defendant's Motion For Summary Judgment and Plaintiff's Motion For Summary Judgment, filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
	Certificate of Service, filed. That a true and correct copy of Warquier's Answer to Defendant's Motion for Summary Judgment & Warquier's Motion for Summary Judgment was hand delivered to James A. Naddeo Esq., on December 3, 2007, filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-00112-CD

Current Judge: Fredric Joseph Ammerman

Waroquier Coal Co., Inc.vs.Albert L. Nelson

Civil Other-COUNT

Date		Judge
12/5/2007	Response to Plaintiff's Motion for Summary Judgment, filed by Atty. Naddeo 1 Cert. to Atty.	Fredric Joseph Ammerman
	Order, this 4th day of Dec., 2007, upon consideration of the Motion for Summary Judgment filed by Plaintiff, it is Ordered: 1. The Respondent shall file an answer to the motion within 30 days of service thereof, said service to be made by Plaintiff; and, 2. A Rule is issued upon the Respondent. Rule Returnable and Argument thereon to be held the 28th day of Jan, 2008, at 11:00 a.m. in Courtroom 1. by the Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Atty.	Fredric Joseph Ammerman
12/11/2007	Certificate of Service, copy of Court's Scheduling Order, Dated Dec. 5, 2007, was hand delivered to James A. Naddeo, Esquire, on Dec. 10, 2007. Filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
	Certificate of Service, filed. That a true and correct certified copy of Waroquier's Brief and Opposition to Defendant's Motion for Summary Judgment and In Support of its own Motion and Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment (6, 7 & 8) was hand delivered on December 11, 2007 to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
	Evidence Exhibits in Support of Plaintiff's Motion For Summary Judgment (6,7 & 8), filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
1/4/2008	Additional Evidence Exhibits to Brief in Support of Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. No CC	Fredric Joseph Ammerman
1/28/2008	Certificate of Service, filed. That a true and correct certified copy of Evidence Exhibit in Support of Plaintiffs Motion for Summary Judgment (9) was hand delivered on January 28, 2008 to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
	Evidence Exhibits in Support of Plaintiff's Motion For Summary Judgement. Filed by s/ Peter F. Smith, Esquire. 1CC Atty. Smith	Fredric Joseph Ammerman
2/26/2008	Order, this 26th day of Feb., 2007, the Plaintiff's Motion for Summary Judgment is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: P. Smith, Naddeo	Fredric Joseph Ammerman
3/7/2008	Opinion and Order, NOW, this 6th day of March, 2008, it is Ordered that the Defendant's Motion for Summary Judgment is Granted. The Plaintiff's Complaint is hereby Dismissed, With Prejudice. by the Court, /s/ Fredric J. Ammerman, pres. Judge. 2CC Attys; P. Smith, Naddeo; 1CC D. Mikesell , Law Library	Fredric Joseph Ammerman
4/4/2008	Filing: Notice of Appeal to Superior Court Paid by: Smith, Peter F. (attorney for Waroquier Coal Co., Inc.) Receipt number: 1923452 Dated: 4/4/2008 Amount: $50.00 (Check) Five CC Attorney Smith One CC to Superior Court with check for $60.00.	Fredric Joseph Ammerman
	Certificate of Service, filed. That three true and correct copies of the Notice of Appeal and Request for Transcript was hand delivered to Honorable Judge Ammerman, by first class mail to ASAP Court Reporting and by hand delivered to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
4/7/2008	Request for Transcript, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorney P. Smith One CC Superior Court	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-00112-CD

Current Judge: Fredric Joseph Ammerman

Waroquier Coal Co., Inc.vs.Albert L. Nelson

Civil Other-COUNT

Date		Judge
4/11/2008	Certificate of Service, three copies ot the Notice of Appeal and Request for Transcript were had delivered to Judge Ammerman's Chambers, James A. Naddeo, and by U.S. First Class Postage to ASAP Court Reporting on April 1, 2008. Filed by s/ Peter F. Smith, Esquire. 1CC Atty. Smith; 1CC Superior Court with Notice of Appeal, Request for Transcript and $60.00 check	Fredric Joseph Ammerman
4/21/2008	Appeal Docket Sheet, filed. No CC 655 WDA 2008	Fredric Joseph Ammerman

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAY 08 2008

Attest.

William L. Prothonotary/ Clerk of Courts

Clearfield County Court of Common Pleas
ROA Report
Case: 2007-00112-CD
Current Judge: Fredric Joseph Ammerman
Waroquier Coal Co., Inc.vs.Albert L. Nelson

Civil Other-COUNT

Date		Judge
1/23/2007	New Case Filed.	No Judge
	(1) Filing: Praecipe for Writ of Summons Paid by: Smith, Peter F. (attorney for Waroquier Coal Co., Inc.) Receipt number: 1917331 Dated: 01/23/2007 Amount: $85.00 (Check) 2 Writs to Atty. 4	No Judge
1/25/2007	(2) Praecipe For Entry of Appearance on behalf of Defendant, and acceptance of Writ of Summons Jan. 25, 2007. Filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo 3	No Judge
2/28/2007	(3) Complaint, filed by s/Peter F. Smith, Esquire. 5CC to Atty. 26	No Judge
	(4) Certificate of Service, filed. That a true and correct copy of a Complaint was hand delivered to James A. Naddeo Esq., on February 28, 2007, filed by s/Peter F. Smith Esq. No CC. 1	No Judge
3/20/2007	(5) Answer, New Matter And Counterclaim, filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo 18	No Judge
3/28/2007	(6) Plaintiff's Answer to New Matter & Counterclaim, filed by s/ Peter F. Smith, Esquire. 3CC to Atty. 8	No Judge
11/2/2007	(7) Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo 5	No Judge
	(8) Evidence Exhibits In Support of Defendant's Motion For Summary Judgment (A-G), filed by s/ James A. Naddeo, Esquire. 1CC Atty. Separate Cover	No Judge
	(9) Evidence Exhibits In Support of Defendant's Motion For Summary Judgment contd. (H), filed by s/ James A. Naddeo, Esquire. 1CC Atty. Separate Cover	No Judge
	(10) Evidence Exhibits In Support of Defendant's Motion For Summary Judgment contd. (I), filed by s/ James A. Naddeo, Esquire. 1CC Atty. Separate Cover	No Judge
11/5/2007	(11) Certificate of Service, filed. That a true and correct copies of Motion for Summary Judgment and Brief in Support of Defendant's Motion for Summary Judgment and certified copies of Evidence Exhibits in Support of Defendant's Motion for Summary Judgment (A-G), Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd (H) and Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd. (I) were served on the 2nd day of November 2007 to Peter F. Smith Esq., filed by s/ James A. Naddeo Esq. NO CC. 2	Fredric Joseph Ammerman
11/6/2007	(7) Order, this 5th day of Nov., 2007, upon consideration of the Motion for Summary Judgment, it is Ordered that the respondent shall file an answer to the motion with 30 days of service; a rule is issued upon the respondent. Rule Returnable and argument thereon to be held the 18th of Dec., 2007, at 9:00 a.m. in courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Naddeo	Fredric Joseph Ammerman
11/7/2007	(12) Certificate of Service, filed. That a certified copy of Motion for Summary Judgment with Order scheduling argument thereon was served on the 7th day of November 2007 to Peter F. Smith Esq by first class mail, filed by s/ James A. Naddeo Esq. No CC. 2	Fredric Joseph Ammerman
12/3/2007	(13) Plaintiff's Answer to Defendant's Motion For Summary Judgment and Plaintiff's Motion For Summary Judgment, filed by s/ Peter F. Smith, Esquire. No CC 4	Fredric Joseph Ammerman
	(14) Certificate of Service, filed. That a true and correct copy of Warquier's Answer to Defendant's Motion for Summary Judgment & Warquier's Motion for Summay Judgment was hand delivered to James A. Naddeo Esq., on December 3, 2007, filed by s/ Peter F. Smith Esq. No CC. 1	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-00112-CD

Current Judge: Fredric Joseph Ammerman

Waroquier Coal Co., Inc.vs.Albert L. Nelson

Civil Other-COUNT

Date			Judge
12/5/2007	(15)	Response to Plaintiff's Motion for Summary Judgment, filed by Atty. Naddeo 1 Cert. to Atty. 4	Fredric Joseph Ammerman
	(16)	Order, this 4th day of Dec., 2007, upon consideration of the Motion for Summary Judgment filed by Plaintiff, it is Ordered: 1. The Respondent shall file an answer to the motion within 30 days of service thereof, said service to be made by Plaintiff; and, 2. A Rule is issued upon the Respondent. Rule Returnable and Argument thereon to be held the 28th day of Jan, 2008, at 11:00 a.m. in Courtroom 1. by the Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Atty. 1	Fredric Joseph Ammerman
12/11/2007	(17)	Certificate of Service, copy of Court's Scheduling Order, Dated Dec. 5, 2007, was hand delivered to James A. Naddeo, Esquire, on Dec. 10, 2007. Filed by s/ Peter F. Smith, Esquire. No CC 1	Fredric Joseph Ammerman
	(18)	Certificate of Service, filed. That a true and correct certified copy of Waroquier's Brief and Opposition to Defendant's Motion for Summary Judgment and In Support of its own Motion and Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment (6, 7 & 8) was hand delivered on December 11, 2007 to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC. 1	Fredric Joseph Ammerman
	(19)	Evidence Exhibits in Support of Plaintiff's Motion For Summary Judgment (6,7 & 8), filed by s/ Peter F. Smith, Esquire. No CC Separate Cover	Fredric Joseph Ammerman
1/4/2008	(20)	Additional Evidence Exhibits to Brief in support of Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. No CC Separate Cover	Fredric Joseph Ammerman
1/28/2008	(21)	Certificate of Service, filed. That a true and correct certified copy of Evidence Exhibit in Support of Plaintiffs Motion for Summary Judgment (9) was hand delivered on January 28, 2008 to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC. 1	Fredric Joseph Ammerman
	(22)	Evidence Exhibits in Support of Plaintiff's Motion For Summary Judgemend. Filed by s/ Peter F. Smith, Esquire. 1CC Atty. Smith 3	Fredric Joseph Ammerman
2/26/2008	(23)	Order, this 26th day of Feb., 2007, the Plaintiff's Motion for summary Judgment is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge 1CC Attys: P. Smith, Naddeo	Fredric Joseph Ammerman
3/7/2008	(24)	Opinion and Order, NOW, this 6th day of March, 2008, it is Ordered that the Defendant's Motion for Summary Judgment is Granted. The Plaintiff's Complaint is hereby Dismissed, With Prejudice. by the Court, /s/ Fredric J. Ammerman, pres. Judge. 2CC Attys; P. Smith, Naddeo; 1CC D. Mikesell , Law Library 5	Fredric Joseph Ammerman

Date: 4/7/2008
Time: 09:08 AM
Page 1 of 1

Clearfield County Court of Common Pleas
ROA Report
Case: 2007-00112-CD
Current Judge: Fredric Joseph Ammerman
Waroquier Coal Co., Inc.vs.Albert L. Nelson

User: BHUDSON

Civil Other-COUNT

Date	Selected Items	Judge
4/4/2008	Filing: Notice of Appeal to Superior Court Paid by: Smith, Peter F. (attorney for Waroquier Coal Co., Inc.) Receipt number: 1923452 Dated: 4/4/2008 Amount: $50.00 (Check) Five CC Attorney Smith One CC to Superior Court with check for $60.00. (25) 5	Fredric Joseph Ammerman
	Certificate of Service, filed. That three true and correct copies of the Notice of Appeal and Request for Transcript was hand delivered to Honorable Judge Ammerman, by first class mail to ASAP Court Reporting and by hand delivered to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC. (26) 1	Fredric Joseph Ammerman
4/7/2008	Request for Transcript, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorney P. Smith One CC Superior Court	Fredric Joseph Ammerman
4/11/2008	Certificate of Service, three copies ot the Notice of Appeal and Request for Transcript were had delivered to Judge Ammerman's Chambers, James A. Naddeo, and by U.S. First Class Postage to ASAP Court Reporting on April 1, 2008. Filed by s/ Peter F. Smith, Esquire. 1CC Atty. Smith; 1CC Superior Court with Notice of Appeal, Request for Transcript and $60.00 check (27) 1	Fredric Joseph Ammerman
4/21/2008	Appeal Docket Sheet, filed. No CC (28) 655 WDA 2008 3	Fredric Joseph Ammerman

COPY

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

Waroquier Coal Co., Inc.

Vs. Case No. 2007-00112-CD

Albert L. Nelso, Trustee for the
Albert L. Nelson Living Trust

FILED NO CC
m/1:00 Gal
MAY 15 2008 (GV)
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF CONTENTS

NOW, this 8th day of May, 2008, the undersigned, Prothonotary or Deputy Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania, the said Court of record, does hereby certify that attached is the original record of the case currently on Appeal.

An additional copy of this Certificate is enclosed with the original hereof and the Clerk or Prothonotary of the Superior Court is hereby directed to acknowledge receipt of the Appeal Record by executing such copy at the place indicated by forthwith returning the same to this Court.

By: _____
William A. Shaw, Prothonotary

Record, Etc. Received:

Date: _____

RECEIVED
MAY 12 2008
PITTSBURGH OFFICE OF
SUPERIOR COURT

_____
(Signature & Title)

655108

RECORD
MAY 12
PITTSBURGH

5 folded
Exhib.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,
Plaintiff,

vs.

ALBERT L. NELSON, TRUSTEE
Of the Albert L. Nelson
Living Trust,
Defendant.

No. 2007-112-CD

Type of Pleading:

ADDITIONAL EVIDENCE EXHIBITS TO BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Filed on behalf of:
Defendant

Counsel of Record for this party:

James A. Naddeo, Esq.
Pa I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED NO CC
01:33 BOI
JAN 04 2008
GK
William A. Shaw
Prothonotary/Clerk of Courts

Dated: January 4, 2008

RECORD
655108
MAY 12
PITTSBURGH SUPERIOR COURT

#20

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.	*	
Plaintiff,	*	
	*	
v.	*	No. 2007-112-CD
	*	
ALBERT L. NELSON, Trustee	*	
Of the Albert L. Nelson	*	
Living Trust,	*	
Defendant.	*	

ADDITIONAL EVIDENCE EXHIBITS TO
BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Defendant, Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust, by his undersigned counsel, respectfully files the following additional documents (maps) being attached hereto as evidentiary exhibits and identified beginning with the letter "J" in succession with exhibits previously filed by Defendant and pursuant to agreement of the parties before the Court at oral argument before this Court on December 18, 2007:

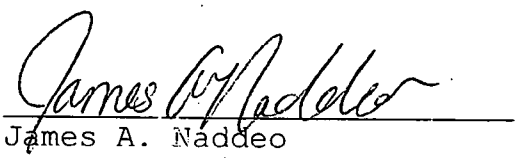
EXHIBIT LETTER	DESCRIPTION
J	Map Showing Strip Mine Encroachment by Curry & Associates Surveyors, Dated August 11, 2003. This map is Exhibit 12 to both Joseph L. Waroquier, Jr.'s Deposition and Gary V. Waroquier's Deposition.
K	Waroquier Coal Company, Kimble Operation, Exhibit 9-Operations Map, Dated January 2001 - accepted February 20, 2001 by Curry & Associates Surveyors. This map is Exhibit 11 to both Gary V. Waroquier's Deposition and Joseph L. Waroquier, Jr's Deposition.

L. Waroquier Coal Company, Kimble Operation, Exhibit 9-Operations Map, Dated January 2001 - accepted February 25, 2004, by Curry & Associates Surveyors. This map is Exhibit 10 to both Joseph L. Waroquier, Jr.'s Deposition and Gary V. Waroquier's Deposition.

M Waroquier Coal Company, Kimble Operation, Exhibit 6.2, Dated January 2001 - accepted February 28, 2005, by Curry & Associates Surveyors. This map is Exhibit 9 to both Joseph L. Waroquier, Jr.'s Deposition and Gary V. Waroquier's Deposition.

N Map Showing Kimble Mine for W. Ruskin Dressler, Plot and Approved Date of June 18, 1999, by Lee - Simpson Associates, Inc. This map is Exhibit 8 to both Joseph L. Waroquier, Jr.'s Deposition and Gary V. Waroquier's Deposition.

NADDEO & LEWIS, LLC

By 

James A. Naddeo
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.	*	
	*	
Plaintiff,	*	
	*	
v.	*	No. 2007-112-CD
	*	
ALBERT L. NELSON, Trustee	*	
Of the Albert L. Nelson	*	
Living Trust,	*	
Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and copy of Additional Evidence Exhibits to Brief in Support of Motion for Summary Judgment (without attached Exhibits pursuant to agreement of counsel) was served on the following and in the following manner on the 4th day of January, 2007:

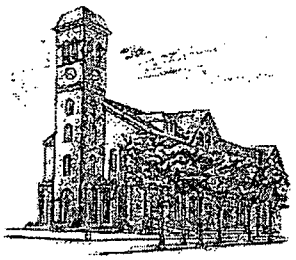
First-class Mail Postage Prepaid:

Peter F. Smith, Esquire
30 South Second Street
PO Box 130
Clearfield, PA 16830

NADDEO & LEWIS, LLC.

By 
James A. Naddeo
Attorney for Defendant

COPY



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts | **Jacki Kendrick** Deputy Prothonotary/Clerk of Courts | **Bonnie Hudson** Administrative Assistant | **David S. Ammerman** Solicitor

PO Box 549, Clearfield, PA 16830 ▪ Phone: (814) 765-2641 Ext. 1330 ▪ Fax: (814) 765-7659 ▪ www.clearfieldco.org

May 8, 2008

FILED

MAY 08 2008

William A. Shaw
Prothonotary/Clerk of Courts

Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

RE: Waroquier Coal Co., Inc.
vs
Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust
No. 07-112-CD
Superior Court No. 655 WDA 2008

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Please also find enclosed five separate cover items consisting of evidence exhibits. Please note one set of exhibits is bound by a clip and contains a cover filing and five maps. Any pending transcripts will be forwarded to your office upon filing in my office.

Sincerely,

William A. Shaw
Prothonotary

Appeal Docket Sheet

Docket Number: 655 WDA 2008

April 17, 2008

Superior Court of Pennsylvania

07-112-CD

Waroquier Coal Co., Inc., Appellant
V.
Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: April 15, 2008 Awaiting Original Record

Journal Number:

Case Category: Civil CaseType: Trespass

Consolidated Docket Nos.: **Related Docket Nos.:**

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement Next Event Due Date: May 1, 2008
Next Event Type: Original Record Received Next Event Due Date: June 6, 2008

FILED NO CC
APR 21 2008
William A. Shaw
Prothonotary/Clerk of Courts

Appeal Docket Sheet

Docket Number: 655 WDA 2008

April 17, 2008

Superior Court of Pennsylvania

COUNSEL INFORMATION

Appellant Waroquier Coal Company, Inc.
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:
Attorney: Smith, Peter Fortune
Bar No.: 34291 Law Firm:
Address: 30 South 2nd Street
P.O. Box 130
Clearfield, PA 16830
Phone No.: (814)765-5595 Fax No.: (814)765-6662
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Nelson, Albert
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:
Attorney: Naddeo, James A.
Bar No.: 6820 Law Firm: Law Office of Naddeo & Lewis, LLC
Address: 207 East Market Street
PO Box 552
Clearfield, PA 16830
Phone No.: (814)765-1601 Fax No.: (814)765-8142
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
4/7/08	Notice of Appeal	60.00	60.00	2008SPRWD000395

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas
County: Clearfield Division: Civil
Date of Order Appealed From: March 6, 2008 Judicial District: 46
Date Documents Received: April 15, 2008 Date Notice of Appeal Filed: April 4, 2008
Order Type: Order Entered OTN:
Judge: Ammerman, Fredric J.
President Judge
Lower Court Docket No.: No. 2007-112-CD

ORIGINAL RECORD CONTENTS

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 655 WDA 2008

April 17, 2008

Original Record Item	Filed Date	Content/Description

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
April 15, 2008	Notice of Appeal Filed	Appellant	Waroquier Coal Company, Inc.
April 17, 2008	Docketing Statement Exited (Civil)		Western District Filing Office

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1931(C)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

07-112-CD

Waroquier Coal Co., Inc.
VS.
Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust

In compliance with Pa. R.A.P. 1931 (c).

The documents compromising the record have been numbered from **No. 1 to No.** 29, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages compromising the document.

The date on which the record had been transmitted to the Appellate Court is May 8, 2008.

Prothonotary/Clerk of Courts

(seal)

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-00112-CD

Current Judge: Fredric Joseph Ammerman

User: BHUDSON

aroquier Coal Co., Inc.vs.Albert L. Nelson

Civil Other-COUNT

e		Judge
3/2007	New Case Filed.	No Judge
	Filing: Praecipe for Writ of Summons Paid by: Smith, Peter F. (attorney for Waroquier Coal Co., Inc.) Receipt number: 1917331 Dated: 01/23/2007 Amount: $85.00 (Check) 2 Writs to Atty.	No Judge
5/2007	Praecipe For Entry of Appearance on behalf of Defendant, and acceptance of Writ of Summons Jan. 25, 2007. Filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
8/2007	Complaint, filed by s/Peter F. Smith, Esquire. 5CC to Atty.	No Judge
	Certificate of Service, filed. That a true and correct copy of a Complaint was hand delivered to James A. Naddeo Esq., on February 28, 2007, filed by s/Peter F. Smith Esq. No CC.	No Judge
0/2007	Answer, New Matter And Counterclaim, filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge
8/2007	Plaintiff's Answer to New Matter & Counterclaim, filed by s/ Peter F. Smith, Esquire. 3CC to Atty.	No Judge
/2/2007	Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge
	Evidence Exhibits In Support of Defendant's Motion For Summary Judgment (A-G), filed by s/ James A. Naddeo, Esquire. 1CC Atty.	No Judge
	Evidence Exhibits In Support of Defendant's Motion For Summary Judgment contd. (H), filed by s/ James A. Naddeo, Esquire. 1CC Atty.	No Judge
	Evidence Exhibits In Support of Defendant's Motion For Summary Judgment contd. (I), filed by s/ James A. Naddeo, Esquire. 1CC Atty.	No Judge
1/5/2007	Certificate of Service, filed. That a true and correct copies of Motion for Summary Judgment and Brief in Support of Defendant's Motion for Summary Judgment and certified copies of Evidence Exhibits in Support of Defendant's Motion for Summary Judgment (A-G), Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd (H) and Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd. (I) were served on the 2nd day of November 2007 to Peter F. Smith Esq., filed by s/ James A. Naddeo Esq. NO CC.	Fredric Joseph Ammerman
1/6/2007	Order, this 5th day of Nov., 2007, upon consideration of the Motion for Summary Judgment, it is Ordered that the respondent shall file an answer to the motion with 30 days of service; a rule is issued upon the respondent. Rule Returnable and argument thereon to be held the 18th of Dec., 2007, at 9:00 a.m. in courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Naddeo	Fredric Joseph Ammerman
1/7/2007	Certificate of Service, filed. That a certified copy of Motion for Summary Judgment with Order scheduling argument thereon was served on the 7th day of November 2007 to Peter F. Smith Esq by first class mail, filed by s/ James A. Naddeo Esq. No CC.	Fredric Joseph Ammerman
2/3/2007	Plaintiff's Answer to Defendant's Motion For Summary Judgment and Plaintiff's Motion For Summary Judgment, filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
	Certificate of Service, filed. That a true and correct copy of Warquier's Answer to Defendant's Motion for Summary Judgment & Warquier's Motion for Summary Judgment was hand delivered to James A. Naddeo Esq., on December 3, 2007, filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman

Civil Other-COUNT

ate		Judge
/5/2007	Response to Plaintiff's Motion for Summary Judgment, filed by Atty. Naddeo 1 Cert. to Atty.	Fredric Joseph Ammerman
	Order, this 4th day of Dec., 2007, upon consideration of the Motion for Summary Judgment filed by Plaintiff, it is Ordered: 1. The Respondent shall file an answer to the motion within 30 days of service thereof, said service to be made by Plaintiff; and, 2. A Rule is issued upon the Respondent. Rule Returnable and Argument thereon to be held the 28th day of Jan, 2008, at 11:00 a.m. in Courtroom 1. by the Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Atty.	Fredric Joseph Ammerman
/11/2007	Certificate of Service, copy of Court's Scheduling Order, Dated Dec. 5, 2007, was hand delivered to James A. Naddeo, Esquire, on Dec. 10, 2007. Filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
	Certificate of Service, filed. That a true and correct certified copy of Waroquier's Brief and Opposition to Defendant's Motion for Summary Judgment and In Support of its own Motion and Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment (6, 7 & 8) was hand delivered on December 11, 2007 to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
	Evidence Exhibits in Support of Plaintiff's Motion For Summary Judgment (6,7 & 8), filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
4/2008	Additional Evidence Exhibits to Brief in Support of Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. No CC	Fredric Joseph Ammerman
28/2008	Certificate of Service, filed. That a true and correct certified copy of Evidence Exhibit in Support of Plaintiffs Motion for Summary Judgment (9) was hand delivered on January 28, 2008 to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
	Evidence Exhibits in Support of Plaintiff's Motion For Summary Judgement. Filed by s/ Peter F. Smith, Esquire. 1CC Atty. Smith	Fredric Joseph Ammerman
26/2008	Order, this 26th day of Feb., 2007, the Plaintiff's Motion for Summary Judgment is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: P. Smith, Naddeo	Fredric Joseph Ammerman
7/2008	Opinion and Order, NOW, this 6th day of March, 2008, it is Ordered that the Defendant's Motion for Summary Judgment is Granted. The Plaintiff's Complaint is hereby Dismissed, With Prejudice. by the Court, /s/ Fredric J. Ammerman, pres. Judge. 2CC Attys; P. Smith, Naddeo; 1CC D. Mikesell , Law Library	Fredric Joseph Ammerman
4/2008	Filing: Notice of Appeal to Superior Court Paid by: Smith, Peter F. (attorney for Waroquier Coal Co., Inc.) Receipt number: 1923452 Dated: 4/4/2008 Amount: $50.00 (Check) Five CC Attorney Smith One CC to Superior Court with check for $60.00.	Fredric Joseph Ammerman
	Certificate of Service, filed. That three true and correct copies of the Notice of Appeal and Request for Transcript was hand delivered to Honorable Judge Ammerman, by first class mail to ASAP Court Reporting and by hand delivered to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
7/2008	Request for Transcript, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorney P. Smith One CC Superior Court	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-00112-CD

Current Judge: Fredric Joseph Ammerman

User: BHUDSON

Varoquier Coal Co., Inc.vs.Albert L. Nelson

Civil Other-COUNT

ate		Judge
11/2008	Certificate of Service, three copies ot the Notice of Appeal and Request for Transcript were had delivered to Judge Ammerman's Chambers, James A. Naddeo, and by U.S. First Class Postage to ASAP Court Reporting on April 1, 2008. Filed by s/ Peter F. Smith, Esquire. 1CC Atty. Smith; 1CC Superior Court with Notice of Appeal, Request for Transcript and $60.00 check	Fredric Joseph Ammerman
21/2008	Appeal Docket Sheet, filed. No CC 655 WDA 2008	Fredric Joseph Ammerman
8/2008	May 8, 2008, Mailed Appeal to Superior Court. May 8, 2008, Letters, Re: Notification of mailing appeal mailed to Peter F. Smith, Esq. and James A. Naddeo, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	Fredric Joseph Ammerman

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAY 08 2008

Attest.

Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-112-CD
Waroquier Coal Co., Inc.
Vs.
Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust

ITEM NO.	*DATE OF FILING*	*NAME OF DOCUMENT*	*NO. OF PAGES*
01	01/23/07	Praecipe for Writ of Summons	04
02	01/25/07	Praecipe for Entry of Appearance and acceptance of Writ of Summons	03
03	02/28/07	Complaint	26
04	02/28/07	Certificate of Service, Complaint upon James A. Naddeo, Esq.	01
05	03/20/07	Answer, New Matter, and Counterclaim	18
06	03/28/07	Plaintiff's Answer to New Matter and Counterclaim	08
07	11/02/07	Motion for Summary Judgment with Order filed November 6, 2007, issuing rule upon respondent and scheduling argument December 18, 2007	05
08	11/02/07	Evidence Exhibits in Support of Defendant's Motion for Summary Judgment (A-G)	Separate Cover
09	11/02/07	Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd. (H)	Separate Cover
10	11/02/07	Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd. (I)	Separate Cover
11	11/05/07	Certificate of Service, Re: Motion for Summary Judgment and Brief in Support of Defendant's Motion for Summary Judgment and certified copies of Evidence Exhibits in Support of Defendant's Motion for Summary Judgment (A-G), (H), and (I)	02
12	11/07/07	Certificate of Service, Motion for Summary Judgment with Order scheduling argument	02
13	12/03/07	Plaintiff's Answer to Defendant's Motion for Summary Judgment and Plaintiff's Motion for Summary Judgment	04
14	12/03/07	Certificate of Service, Re: Waroquier's Answer to Defendant's Motion for Summary Judgment and Waroquier's Motion for Summary Judgment	01
15	12/05/07	Response to Plaintiff's Motion for Summary Judgment	04
16	12/05/07	Order, Re: Plaintiff's Motion for Summary Judgment; answer to be filed; rule issued; argument scheduled	01
17	12/11/07	Certificate of Service, Re: Court's Scheduling Order	01
18	12/11/07	Certificate of Service, Re: Waroquier's Brief and Opposition to Defendant's Motion for Summary Judgment and in Support of its own Motion and Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment (6, 7 & 8)	01
19	12/11/07	Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment (6, 7 & 8)	Separate Cover
20	01/04/08	Additional Evidence Exhibits to Brief in Support of Motion for Summary Judgment (five maps attached)	Separate Cover
21	01/28/08	Certificate of Service, Re: Evidence Exhibit in Support of Plaintiff's Motion for Summary Judgment (9)	01
22	01/28/08	Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment	03
23	02/26/08	Order, Re: Plaintiff's Motion for Summary Judgment is Denied	01
24	03/07/08	Opinion and Order, Re: Defendant's Motion for Summary Judgment is Granted. Plaintiff's Complaint is Dismissed with Prejudice	05
25	04/04/08	Notice of Appeal to Superior Court with Request for Transcript filed April 7, 2008	05
26	04/04/08	Certificate of Service, Re: Notice of Appeal and Request for Transcript	01
27	04/11/08	Certificate of Service, Re: Notice of Appeal and Request for Transcript	01
28	04/21/08	Appeal Docket Sheet, 655 WDA 2008	03
29	05/08/08	Letters, Re: Notification of mailing appeal mailed to Peter F. Smith, Esq. and James A. Naddeo, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	05

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	
	:	No. 2007-112-CD
vs.	:	
ALBERT L. NELSON, Trustee Of the Albert L. Nelson Living Trust Defendant	:	

DISCONTINUANCE

To: William A. Shaw, Sr. Clearfield County Prothonotary

Dear Sir:

As counsel for the Plaintiff in the above-captioned matter, I appear and request that this action be DISCONTINUED.

Respectfully submitted,

Date: July 22, 2008

Peter F. Smith, Esquire
Attorney for Plaintiff
P. O. Box 130, 30 South Second St.
Clearfield, PA 16830
(814) 765-5595

FILED
0 10:45 a.m GK No CC
JUL 24 2008 1 Cert. of Disc. to Atty
William A. Shaw
Prothonotary/Clerk of Courts GK

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	No. 2007-112-CD
vs.	:	
ALBERT L. NELSON, Trustee Of the Albert L. Nelson Living Trust, Defendant	:	

CERTIFICATE OF SERVICE

I, Peter F. Smith, Counsel for the Plaintiff in the above-captioned matter, being duly sworn according to law, depose and say that I sent by First Class Mail, Postage Prepaid, a true and correct copy of the **DISCONTINUANCE** on the following party at the following address on July 23, 2008:

James A. Naddeo
Attorney for Defendant
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

7/23/08

Peter F. Smith, Counsel for Plaintiff
Clearfield, PA 16830
(814) 765-5595

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Waroquier Coal Co., Inc.

Vs. **No. 2007-00112-CD**

Albert L. Nelson

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on July 24, 2008, marked:

Discontinued

Record costs in the sum of $135.00 have been paid in full by Peter F. Smith, Esquire .

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 24th day of July A.D. 2008.

William A. Shaw, Prothonotary

9:51 A.M.

Appeal Docket Sheet — **Superior Court of Pennsylvania**

Docket Number: 655 WDA 2008

April 17, 2008

07-112-CD

Waroquier Coal Co., Inc., Appellant
V.
Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust

RECEIVED
MAY 12 2008
PITTSBURGH OFFICE OF
SUPERIOR COURT

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: April 15, 2008 Awaiting Original Record

Journal Number:

Case Category: Civil CaseType: Trespass

Consolidated Docket Nos.: **Related Docket Nos.:**

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement	Next Event Due Date: May 1, 2008
Next Event Type: Original Record Received	Next Event Due Date: June 6, 2008

655 WDA 2008

Rec in 5pts
Yell Env. Exhib.
5 folders
Env.

FILED NO CC
APR 21 2008
William A. Shaw
Prothonotary/Clerk of Courts

#28

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 655 WDA 2008

April 17, 2008

COUNSEL INFORMATION

Appellant Waroquier Coal Company, Inc.
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:
Attorney: Smith, Peter Fortune
Bar No.: 34291 Law Firm:
Address: 30 South 2nd Street
P.O. Box 130
Clearfield, PA 16830
Phone No.: (814)765-5595 Fax No.: (814)765-6662
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Nelson, Albert
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:
Attorney: Naddeo, James A.
Bar No.: 6820 Law Firm: Law Office of Naddeo & Lewis, LLC
Address: 207 East Market Street
PO Box 552
Clearfield, PA 16830
Phone No.: (814)765-1601 Fax No.: (814)765-8142
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
4/7/08	Notice of Appeal	60.00	60.00	2008SPRWD000395

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas
County: Clearfield Division: Civil
Date of Order Appealed From: March 6, 2008 Judicial District: 46
Date Documents Received: April 15, 2008 Date Notice of Appeal Filed: April 4, 2008
Order Type: Order Entered OTN:
Judge: Ammerman, Fredric J.
President Judge
Lower Court Docket No.: No. 2007-112-CD

ORIGINAL RECORD CONTENTS

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 655 WDA 2008

April 17, 2008

Original Record Item	Filed Date	Content/Description

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
April 15, 2008	Notice of Appeal Filed	Appellant	Waroquier Coal Company, Inc.
April 17, 2008	Docketing Statement Exited (Civil)		Western District Filing Office

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1931(C)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

07-112-CD

Waroquier Coal Co., Inc.
VS.
Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust

In compliance with Pa. R.A.P. 1931 (c).

The documents compromising the record have been numbered from **No. 1 to No.** 29, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages compromising the document.

The date on which the record had been transmitted to the Appellate Court is May 8, 2008.

Prothonotary/Clerk of Courts

(seal)

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-00112-CD

Current Judge: Fredric Joseph Ammerman

Waroquier Coal Co., Inc.vs.Albert L. Nelson

Civil Other-COUNT

Date		Judge
1/23/2007	New Case Filed.	No Judge
	Filing: Praecipe for Writ of Summons Paid by: Smith, Peter F. (attorney for Waroquier Coal Co., Inc.) Receipt number: 1917331 Dated: 01/23/2007 Amount: $85.00 (Check) 2 Writs to Atty.	No Judge
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	Certificate of Service, filed. That a true and correct copy of a Complaint was hand delivered to James A. Naddeo Esq., on February 28, 2007, filed by s/Peter F. Smith Esq. No CC.	No Judge
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	Evidence Exhibits In Support of Defendant's Motion For Summary Judgment contd. (H), filed by s/ James A. Naddeo, Esquire. 1CC Atty.	No Judge
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12/3/2007	Plaintiff's Answer to Defendant's Motion For Summary Judgment and Plaintiff's Motion For Summary Judgment, filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
	Certificate of Service, filed. That a true and correct copy of Warquier's Answer to Defendant's Motion for Summary Judgment & Warquier's Motion for Summary Judgment was hand delivered to James A. Naddeo Esq., on December 3, 2007, filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas
ROA Report
Case: 2007-00112-CD
Current Judge: Fredric Joseph Ammerman
Waroquier Coal Co., Inc.vs.Albert L. Nelson

Civil Other-COUNT

Date		Judge
12/5/2007	Response to Plaintiff's Motion for Summary Judgment, filed by Atty. Naddeo 1 Cert. to Atty.	Fredric Joseph Ammerman
	Order, this 4th day of Dec., 2007, upon consideration of the Motion for Summary Judgment filed by Plaintiff, it is Ordered: 1. The Respondent shall file an answer to the motion within 30 days of service thereof, said service to be made by Plaintiff; and, 2. A Rule is issued upon the Respondent. Rule Returnable and Argument thereon to be held the 28th day of Jan, 2008, at 11:00 a.m. in Courtroom 1. by the Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Atty.	Fredric Joseph Ammerman
12/11/2007	Certificate of Service, copy of Court's Scheduling Order, Dated Dec. 5, 2007, was hand delivered to James A. Naddeo, Esquire, on Dec. 10, 2007. Filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
	Certificate of Service, filed. That a true and correct certified copy of Waroquier's Brief and Opposition to Defendant's Motion for Summary Judgment and In Support of its own Motion and Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment (6, 7 & 8) was hand delivered on December 11, 2007 to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
	Evidence Exhibits in Support of Plaintiff's Motion For Summary Judgment (6,7 & 8), filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
1/4/2008	Additional Evidence Exhibits to Brief in Support of Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. No CC	Fredric Joseph Ammerman
1/28/2008	Certificate of Service, filed. That a true and correct certified copy of Evidence Exhibit in Support of Plaintiffs Motion for Summary Judgment (9) was hand delivered on January 28, 2008 to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
	Evidence Exhibits in Support of Plaintiff's Motion For Summary Judgement. Filed by s/ Peter F. Smith, Esquire. 1CC Atty. Smith	Fredric Joseph Ammerman
2/26/2008	Order, this 26th day of Feb., 2007, the Plaintiff's Motion for Summary Judgment is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: P. Smith, Naddeo	Fredric Joseph Ammerman
3/7/2008	Opinion and Order, NOW, this 6th day of March, 2008, it is Ordered that the Defendant's Motion for Summary Judgment is Granted. The Plaintiff's Complaint is hereby Dismissed, With Prejudice. by the Court, /s/ Fredric J. Ammerman, pres. Judge. 2CC Attys; P. Smith, Naddeo; 1CC D. Mikesell , Law Library	Fredric Joseph Ammerman
4/4/2008	Filing: Notice of Appeal to Superior Court Paid by: Smith, Peter F. (attorney for Waroquier Coal Co., Inc.) Receipt number: 1923452 Dated: 4/4/2008 Amount: $50.00 (Check) Five CC Attorney Smith One CC to Superior Court with check for $60.00.	Fredric Joseph Ammerman
	Certificate of Service, filed. That three true and correct copies of the Notice of Appeal and Request for Transcript was hand delivered to Honorable Judge Ammerman, by first class mail to ASAP Court Reporting and by hand delivered to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
4/7/2008	Request for Transcript, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorney P. Smith One CC Superior Court	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas
ROA Report
Case: 2007-00112-CD
Current Judge: Fredric Joseph Ammerman

Waroquier Coal Co., Inc.vs.Albert L. Nelson

Civil Other-COUNT

Date		Judge
4/11/2008	Certificate of Service, three copies ot the Notice of Appeal and Request for Transcript were had delivered to Judge Ammerman's Chambers, James A. Naddeo, and by U.S. First Class Postage to ASAP Court Reporting on April 1, 2008. Filed by s/ Peter F. Smith, Esquire. 1CC Atty. Smith; 1CC Superior Court with Notice of Appeal, Request for Transcript and $60.00 check	Fredric Joseph Ammerman
4/21/2008	Appeal Docket Sheet, filed. No CC 655 WDA 2008	Fredric Joseph Ammerman
5/8/2008	May 8, 2008, Mailed Appeal to Superior Court. May 8, 2008, Letters, Re: Notification of mailing appeal mailed to Peter F. Smith, Esq. and James A. Naddeo, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	Fredric Joseph Ammerman

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAY 08 2008

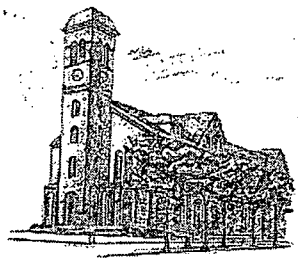
Attest.

William A. Shaw
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-112-CD
Waroquier Coal Co., Inc.
Vs.
Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust

ITEM NO.	*DATE OF FILING*	*NAME OF DOCUMENT*	*NO. OF PAGES*
01	01/23/07	Praecipe for Writ of Summons	04
02	01/25/07	Praecipe for Entry of Appearance and acceptance of Writ of Summons	03
03	02/28/07	Complaint	26
04	02/28/07	Certificate of Service, Complaint upon James A. Naddeo, Esq.	01
05	03/20/07	Answer, New Matter, and Counterclaim	18
06	03/28/07	Plaintiff's Answer to New Matter and Counterclaim	08
07	11/02/07	Motion for Summary Judgment with Order filed November 6, 2007, issuing rule upon respondent and scheduling argument December 18, 2007	05
08	11/02/07	Evidence Exhibits in Support of Defendant's Motion for Summary Judgment (A-G)	Separate Cover
09	11/02/07	Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd. (H)	Separate Cover
10	11/02/07	Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd. (I)	Separate Cover
11	11/05/07	Certificate of Service, Re: Motion for Summary Judgment and Brief in Support of Defendant's Motion for Summary Judgment and certified copies of Evidence Exhibits in Support of Defendant's Motion for Summary Judgment (A-G), (H), and (I)	02
12	11/07/07	Certificate of Service, Motion for Summary Judgment with Order scheduling argument	02
13	12/03/07	Plaintiff's Answer to Defendant's Motion for Summary Judgment and Plaintiff's Motion for Summary Judgment	04
14	12/03/07	Certificate of Service, Re: Waroquier's Answer to Defendant's Motion for Summary Judgment and Waroquier's Motion for Summary Judgment	01
15	12/05/07	Response to Plaintiff's Motion for Summary Judgment	04
16	12/05/07	Order, Re: Plaintiff's Motion for Summary Judgment; answer to be filed; rule issued; argument scheduled	01
17	12/11/07	Certificate of Service, Re: Court's Scheduling Order	01
18	12/11/07	Certificate of Service, Re: Waroquier's Brief and Opposition to Defendant's Motion for Summary Judgment and in Support of its own Motion and Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment (6, 7 & 8)	01
19	12/11/07	Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment (6, 7 & 8)	Separate Cover
20	01/04/08	Additional Evidence Exhibits to Brief in Support of Motion for Summary Judgment (five maps attached)	Separate Cover
21	01/28/08	Certificate of Service, Re: Evidence Exhibit in Support of Plaintiff's Motion for Summary Judgment (9)	01
22	01/28/08	Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment	03
23	02/26/08	Order, Re: Plaintiff's Motion for Summary Judgment is Denied	01
24	03/07/08	Opinion and Order, Re: Defendant's Motion for Summary Judgment is Granted. Plaintiff's Complaint is Dismissed with Prejudice	05
25	04/04/08	Notice of Appeal to Superior Court with Request for Transcript filed April 7, 2008	05
26	04/04/08	Certificate of Service, Re: Notice of Appeal and Request for Transcript	01
27	04/11/08	Certificate of Service, Re: Notice of Appeal and Request for Transcript	01
28	04/21/08	Appeal Docket Sheet, 655 WDA 2008	03
29	05/08/08	Letters, Re: Notification of mailing appeal mailed to Peter F. Smith, Esq. and James A. Naddeo, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	05



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts
Jacki Kendrick Deputy Prothonotary/Clerk of Courts
Bonnie Hudson Administrative Assistant
David S. Ammerman Solicitor

PO Box 549, Clearfield, PA 16830 ▪ Phone: (814) 765-2641 Ext. 1330 ▪ Fax: (814) 765-7659 ▪ www.clearfieldco.org

COPY

Fredric J. Ammerman, P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Peter F. Smith, Esq.
PO Box 130
Clearfield, PA 16830

James A. Naddeo, Esq.
PO Box 552
Clearfield, PA 16830

Waroquier Coal Co., Inc.
Vs.
Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust

Court No. 07-112-Cd; Superior Court No. 655 WDA 2008

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on May 8, 2008. Any pending transcript will be forwarded to Superior Court upon its filing in my office, as per Superior Court's instructions.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

FILED
d 8:53 01
MAY 08 2008
William A. Shaw
Prothonotary/Clerk of Courts

#29

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-112-CD
Waroquier Coal Co., Inc.
Vs.
Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust

ITEM NO.	*DATE OF FILING*	*NAME OF DOCUMENT*	*NO. OF PAGES*
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06	03/28/07	Plaintiff's Answer to New Matter and Counterclaim	08
07	11/02/07	Motion for Summary Judgment with Order filed November 6, 2007, issuing rule upon respondent and scheduling argument December 18, 2007	05
08	11/02/07	Evidence Exhibits in Support of Defendant's Motion for Summary Judgment (A-G)	Separate Cover
09	11/02/07	Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd. (H)	Separate Cover
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11	11/05/07	Certificate of Service, Re: Motion for Summary Judgment and Brief in Support of Defendant's Motion for Summary Judgment and certified copies of Evidence Exhibits in Support of Defendant's Motion for Summary Judgment (A-G), (H), and (I)	02
12	11/07/07	Certificate of Service, Motion for Summary Judgment with Order scheduling argument	02
13	12/03/07	Plaintiff's Answer to Defendant's Motion for Summary Judgment and Plaintiff's Motion for Summary Judgment	04
14	12/03/07	Certificate of Service, Re: Waroquier's Answer to Defendant's Motion for Summary Judgment and Waroquier's Motion for Summary Judgment	01
15	12/05/07	Response to Plaintiff's Motion for Summary Judgment	04
16	12/05/07	Order, Re: Plaintiff's Motion for Summary Judgment; answer to be filed; rule issued; argument scheduled	01
17	12/11/07	Certificate of Service, Re: Court's Scheduling Order	01
18	12/11/07	Certificate of Service, Re: Waroquier's Brief and Opposition to Defendant's Motion for Summary Judgment and in Support of its own Motion and Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment (6, 7 & 8)	01
19	12/11/07	Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment (6, 7 & 8)	Separate Cover
20	01/04/08	Additional Evidence Exhibits to Brief in Support of Motion for Summary Judgment (five maps attached)	Separate Cover
21	01/28/08	Certificate of Service, Re: Evidence Exhibit in Support of Plaintiff's Motion for Summary Judgment (9)	01
22	01/28/08	Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment	03
23	02/26/08	Order, Re: Plaintiff's Motion for Summary Judgment is Denied	01
24	03/07/08	Opinion and Order, Re: Defendant's Motion for Summary Judgment is Granted. Plaintiff's Complaint is Dismissed with Prejudice	05
25	04/04/08	Notice of Appeal to Superior Court with Request for Transcript filed April 7, 2008	05
26	04/04/08	Certificate of Service, Re: Notice of Appeal and Request for Transcript	01
27	04/11/08	Certificate of Service, Re: Notice of Appeal and Request for Transcript	01
28	04/21/08	Appeal Docket Sheet, 655 WDA 2008	03

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-00112-CD

Current Judge: Fredric Joseph Ammerman

Waroquier Coal Co., Inc.vs.Albert L. Nelson

Civil Other-COUNT

Date		Judge
1/23/2007	New Case Filed.	No Judge
	Filing: Praecipe for Writ of Summons Paid by: Smith, Peter F. (attorney for Waroquier Coal Co., Inc.) Receipt number: 1917331 Dated: 01/23/2007 Amount: $85.00 (Check) 2 Writs to Atty.	No Judge
1/25/2007	Praecipe For Entry of Appearance on behalf of Defendant, and acceptance of Writ of Summons Jan. 25, 2007. Filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
2/28/2007	Complaint, filed by s/Peter F. Smith, Esquire. 5CC to Atty.	No Judge
	Certificate of Service, filed. That a true and correct copy of a Complaint was hand delivered to James A. Naddeo Esq., on February 28, 2007, filed by s/Peter F. Smith Esq. No CC.	No Judge
3/20/2007	Answer, New Matter And Counterclaim, filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge
3/28/2007	Plaintiff's Answer to New Matter & Counterclaim, filed by s/ Peter F. Smith, Esquire. 3CC to Atty.	No Judge
11/2/2007	Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge
	Evidence Exhibits In Support of Defendant's Motion For Summary Judgment (A-G), filed by s/ James A. Naddeo, Esquire. 1CC Atty.	No Judge
	Evidence Exhibits In Support of Defendant's Motion For Summary Judgment contd. (H), filed by s/ James A. Naddeo, Esquire. 1CC Atty.	No Judge
	Evidence Exhibits In Support of Defendant's Motion For Summary Judgment contd. (I), filed by s/ James A. Naddeo, Esquire. 1CC Atty.	No Judge
11/5/2007	Certificate of Service, filed. That a true and correct copies of Motion for Summary Judgment and Brief in Support of Defendant's Motion for Summary Judgment and certified copies of Evidence Exhibits in Support of Defendant's Motion for Summary Judgment (A-G), Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd (H) and Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd. (I) were served on the 2nd day of November 2007 to Peter F. Smith Esq., filed by s/ James A. Naddeo Esq. NO CC.	Fredric Joseph Ammerman
11/6/2007	Order, this 5th day of Nov., 2007, upon consideration of the Motion for Summary Judgment, it is Ordered that the respondent shall file an answer to the motion with 30 days of service; a rule is issued upon the respondent. Rule Returnable and argument thereon to be held the 18th of Dec., 2007, at 9:00 a.m. in courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Naddeo	Fredric Joseph Ammerman
11/7/2007	Certificate of Service, filed. That a certified copy of Motion for Summary Judgment with Order scheduling argument thereon was served on the 7th day of November 2007 to Peter F. Smith Esq by first class mail, filed by s/ James A. Naddeo Esq. No CC.	Fredric Joseph Ammerman
12/3/2007	Plaintiff's Answer to Defendant's Motion For Summary Judgment and Plaintiff's Motion For Summary Judgment, filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
	Certificate of Service, filed. That a true and correct copy of Warquier's Answer to Defendant's Motion for Summary Judgment & Warquier's Motion for Summary Judgment was hand delivered to James A. Naddeo Esq., on December 3, 2007, filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas
ROA Report
Case: 2007-00112-CD
Current Judge: Fredric Joseph Ammerman
Waroquier Coal Co., Inc.vs.Albert L. Nelson

Civil Other-COUNT

Date		Judge
12/5/2007	Response to Plaintiff's Motion for Summary Judgment, filed by Atty. Naddeo 1 Cert. to Atty.	Fredric Joseph Ammerman
	Order, this 4th day of Dec., 2007, upon consideration of the Motion for Summary Judgment filed by Plaintiff, it is Ordered: 1. The Respondent shall file an answer to the motion within 30 days of service thereof, said service to be made by Plaintiff; and, 2. A Rule is issued upon the Respondent. Rule Returnable and Argument thereon to be held the 28th day of Jan, 2008, at 11:00 a.m. in Courtroom 1. by the Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Atty.	Fredric Joseph Ammerman
12/11/2007	Certificate of Service, copy of Court's Scheduling Order, Dated Dec. 5, 2007, was hand delivered to James A. Naddeo, Esquire, on Dec. 10, 2007. Filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
	Certificate of Service, filed. That a true and correct certified copy of Waroquier's Brief and Opposition to Defendant's Motion for Summary Judgment and In Support of its own Motion and Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment (6, 7 & 8) was hand delivered on December 11, 2007 to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
	Evidence Exhibits in Support of Plaintiff's Motion For Summary Judgment (6,7 & 8), filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
1/4/2008	Additional Evidence Exhibits to Brief in Support of Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. No CC	Fredric Joseph Ammerman
1/28/2008	Certificate of Service, filed. That a true and correct certified copy of Evidence Exhibit in Support of Plaintiffs Motion for Summary Judgment (9) was hand delivered on January 28, 2008 to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
	Evidence Exhibits in Support of Plaintiff's Motion For Summary Judgement. Filed by s/ Peter F. Smith, Esquire. 1CC Atty. Smith	Fredric Joseph Ammerman
2/26/2008	Order, this 26th day of Feb., 2007, the Plaintiff's Motion for Summary Judgment is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: P. Smith, Naddeo	Fredric Joseph Ammerman
3/7/2008	Opinion and Order, NOW, this 6th day of March, 2008, it is Ordered that the Defendant's Motion for Summary Judgment is Granted. The Plaintiff's Complaint is hereby Dismissed, With Prejudice. by the Court, /s/ Fredric J. Ammerman, pres. Judge. 2CC Attys; P. Smith, Naddeo; 1CC D. Mikesell , Law Library	Fredric Joseph Ammerman
4/4/2008	Filing: Notice of Appeal to Superior Court Paid by: Smith, Peter F. (attorney for Waroquier Coal Co., Inc.) Receipt number: 1923452 Dated: 4/4/2008 Amount: $50.00 (Check) Five CC Attorney Smith One CC to Superior Court with check for $60.00.	Fredric Joseph Ammerman
	Certificate of Service, filed. That three true and correct copies of the Notice of Appeal and Request for Transcript was hand delivered to Honorable Judge Ammerman, by first class mail to ASAP Court Reporting and by hand delivered to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
4/7/2008	Request for Transcript, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorney P. Smith One CC Superior Court	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas
ROA Report
Case: 2007-00112-CD
Current Judge: Fredric Joseph Ammerman
Waroquier Coal Co., Inc.vs.Albert L. Nelson

Civil Other-COUNT

Date		Judge
4/11/2008	Certificate of Service, three copies ot the Notice of Appeal and Request for Transcript were had delivered to Judge Ammerman's Chambers, James A. Naddeo, and by U.S. First Class Postage to ASAP Court Reporting on April 1, 2008. Filed by s/ Peter F. Smith, Esquire. 1CC Atty. Smith; 1CC Superior Court with Notice of Appeal, Request for Transcript and $60.00 check	Fredric Joseph Ammerman
4/21/2008	Appeal Docket Sheet, filed. No CC 655 WDA 2008	Fredric Joseph Ammerman

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAY 08 2008

Attest. William L. Prothonotary/ Clerk of Courts

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 655 WDA 2008

April 17, 2008

07-112-CD

Waroquier Coal Co., Inc., Appellant
V.
Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: April 15, 2008 Awaiting Original Record

Journal Number:

Case Category: Civil CaseType: Trespass

Consolidated Docket Nos.: **Related Docket Nos.:**

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement Next Event Due Date: May 1, 2008
Next Event Type: Original Record Received Next Event Due Date: June 6, 2008

FILED NO CC
APR 21 2008
William A. Shaw
Prothonotary/Clerk of Courts

Appeal Docket Sheet

Docket Number: 655 WDA 2008

Superior Court of Pennsylvania

COUNSEL INFORMATION

Appellant Waroquier Coal Company, Inc.
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:
Attorney: Smith, Peter Fortune
Bar No.: 34291 Law Firm:
Address: 30 South 2nd Street
P.O. Box 130
Clearfield, PA 16830
Phone No.: (814)765-5595 Fax No.: (814)765-6662
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Nelson, Albert
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:
Attorney: Naddeo, James A.
Bar No.: 6820 Law Firm: Law Office of Naddeo & Lewis, LLC
Address: 207 East Market Street
PO Box 552
Clearfield, PA 16830
Phone No.: (814)765-1601 Fax No.: (814)765-8142
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
4/7/08	Notice of Appeal	60.00	60.00	2008SPRWD000395

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas
County: Clearfield Division: Civil
Date of Order Appealed From: March 6, 2008 Judicial District: 46
Date Documents Received: April 15, 2008 Date Notice of Appeal Filed: April 4, 2008
Order Type: Order Entered OTN:
Judge: Ammerman, Fredric J.
President Judge
Lower Court Docket No.: No. 2007-112-CD

ORIGINAL RECORD CONTENTS

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 655 WDA 2008

April 17, 2008

Original Record Item	Filed Date	Content/Description

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
April 15, 2008	Notice of Appeal Filed	Appellant	Waroquier Coal Company, Inc.
April 17, 2008	Docketing Statement Exited (Civil)		Western District Filing Office

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	
	:	No. 2007-112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that three true and correct copies of the **NOTICE OF APPEAL and REQUEST FOR TRANSCRIPT** was hand delivered to the Judge Ammerman's Chambers, James A. Naddeo, Attorney for the Defendant and by U.S. First Class Postage Prepaid to ASAP Court Reporting on April 1, 2008 at the following addresses:

Hand Delivered
Honorable Judge Ammerman
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

U.S. First Class
ASAP Court Reporting
208 West Sample Street
P.O. Box 345
Ebensburg, PA 15931

Hand Delivered
James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Respectfully submitted,

Date: April 1, 2008

Peter F. Smith, Esquire
Attorney for Plaintiff
P. O. Box 130, 30 South Second St.
Clearfield, PA 16830
(814) 765-5595

FILED 1cc Atty Smith
01:06 BK
APR 11 2008 1cc Superior
William A. Shaw Court with Notice of
Prothonotary/Clerk of Courts Appeal, Request for
Transcript, and $60.00 check

(6K)

(27)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	
	:	No. 2007-112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

FILED No CC.
0/2:08 cm
APR 4 2008
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that three true and correct copies of the **NOTICE OF APPEAL and REQUEST FOR TRANSCRIPT** was hand delivered to the Judge Ammerman's Chambers, James A. Naddeo, Attorney for the Defendant and by U.S. First Class Postage Prepaid to ASAP Court Reporting on April 1, 2008 at the following addresses:

Hand Delivered	***U.S. First Class***	***Hand Delivered***
Honorable Judge Ammerman	ASAP Court Reporting	James A. Naddeo, Esquire
Clearfield County Courthouse	208 West Sample Street	207 East Market Street
230 East Market Street	P.O. Box 345	P.O. Box 552
Clearfield, PA 16830	Ebensburg, PA 15931	Clearfield, PA 16830

Respectfully submitted,

Date: April 4, 2008

Peter F. Smith, Esquire
Attorney for Plaintiff
P. O. Box 130, 30 South Second St.
Clearfield, PA 16830
(814) 765-5595

#29

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	
	:	No. 2007-112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

FILED 1cc $50.00 Atty
0/2:08cm
APR 4 2008 5cc Atty Smith
William A. Shaw
Prothonotary/Clerk of Courts

NOTICE OF APPEAL

Notice is hereby given that WAROQUIER COAL COMPANY, INC. Plaintiff, above named, hereby appeals to the Superior Court of Pennsylvania from the Order entered in this matter on the 6th day of March, 2008. This Order has been entered in the docket on March 7, 2008 as evidenced by the attached certified copy of the docket entry.

1cc to Sup. Ct. with check for $60.00

Respectfully submitted,

Date: 4/4/08

Peter F. Smith, Esquire
Attorney for Plaintiff
P.O. Box 130, 30 S. 2nd St.
Clearfield, PA 16830
(814) 765-5595

#25

Clearfield County Court of Common Pleas
Complete Case History
Case: 2007-00112-CD

Waroquier Coal Co., Inc.vs.Albert L. Nelson

Filed: 1/23/2007
Subtype: Civil Other-COUNT

Physical File: Y Appealed: N

Comment:

Register of Actions

1/23/2007	New Case Filed.	No Judge,
	Filing: Praecipe for Writ of Summons Paid by: Smith, Peter F. (attorney for Waroquier Coal Co., Inc.) Receipt number: 1917331 Dated: 01/23/2007 Amount: $85.00 (Check) 2 Writs to Atty.	No Judge,
1/25/2007	Praecipe For Entry of Appearance on behalf of Defendant, and acceptance of Writ of Summons Jan. 25, 2007. Filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	No Judge,
2/28/2007	Complaint, filed by s/Peter F. Smith, Esquire. 5CC to Atty.	No Judge,
	Certificate of Service, filed. That a true and correct copy of a Complaint was hand delivered to James A. Naddeo Esq., on February 28, 2007, filed by s/Peter F. Smith Esq. No CC.	No Judge,
3/20/2007	Answer, New Matter And Counterclaim, filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge,
3/28/2007	Plaintiff's Answer to New Matter & Counterclaim, filed by s/ Peter F. Smith, Esquire. 3CC to Atty.	No Judge,
11/2/2007	Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. 1CC Atty. Naddeo	No Judge,
	Evidence Exhibits In Support of Defendant's Motion For Summary Judgment (A-G), filed by s/ James A. Naddeo, Esquire. 1CC Atty.	No Judge,
	Evidence Exhibits In Support of Defendant's Motion For Summary Judgment contd. (H), filed by s/ James A. Naddeo, Esquire. 1CC Atty.	No Judge,
	Evidence Exhibits In Support of Defendant's Motion For Summary Judgment contd. (I), filed by s/ James A. Naddeo, Esquire. 1CC Atty.	No Judge,

I hereby certify this to be true and attested copy of the original statement filed in this case.

MAR 31 2008

Attest.

Prothonotary/
Clerk of Courts

Clearfield County Court of Common Pleas
Complete Case History
Case: 2007-00112-CD

Waroquier Coal Co., Inc.vs.Albert L. Nelson

Register of Actions

11/5/2007	Certificate of Service, filed. That a true and correct copies of Motion for Summary Judgment and Brief in Support of Defendant's Motion for Summary Judgment and certified copies of Evidence Exhibits in Support of Defendant's Motion for Summary Judgment (A-G), Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd (H) and Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd. (I) were served on the 2nd day of November 2007 to Peter F. Smith Esq., filed by s/ James A. Naddeo Esq. NO CC.	Ammerman, Fredric Joseph
11/6/2007	Order, this 5th day of Nov., 2007, upon consideration of the Motion for Summary Judgment, it is Ordered that the respondent shall file an answer to the motion with 30 days of service; a rule is issued upon the respondent. Rule Returnable and argument thereon to be held the 18th of Dec., 2007, at 9:00 a.m. in courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Naddeo	Ammerman, Fredric Joseph
11/7/2007	Certificate of Service, filed. That a certified copy of Motion for Summary Judgment with Order scheduling argument thereon was served on the 7th day of November 2007 to Peter F. Smith Esq by first class mail, filed by s/ James A. Naddeo Esq. No CC.	Ammerman, Fredric Joseph
12/3/2007	Plaintiff's Answer to Defendant's Motion For Summary Judgment and Plaintiff's Motion For Summary Judgment, filed by s/ Peter F. Smith, Esquire. No CC	Ammerman, Fredric Joseph
	Certificate of Service, filed. That a true and correct copy of Warquier's Answer to Defendant's Motion for Summary Judgment & Warquier's Motion for Summay Judgment was hand delivered to James A. Naddeo Esq., on December 3, 2007, filed by s/ Peter F. Smith Esq. No CC.	Ammerman, Fredric Joseph
12/5/2007	Response to Plaintiff's Motion for Summary Judgment, filed by Atty. Naddeo 1 Cert. to Atty.	Ammerman, Fredric Joseph
	Order, this 4th day of Dec., 2007, upon consideration of the Motion for Summary Judgment filed by Plaintiff, it is Ordered: 1. The Respondent shall file an answer to the motion within 30 days of service thereof, said service to be made by Plaintiff; and, 2. A Rule is issued upon the Respondent. Rule Returnable and Argument thereon to be held the 28th day of Jan, 2008, at 11:00 a.m. in Courtroom 1. by the Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Atty.	Ammerman, Fredric Joseph

Clearfield County Court of Common Pleas
Complete Case History
Case: 2007-00112-CD

Waroquier Coal Co., Inc.vs.Albert L. Nelson

Register of Actions

12/11/2007	Certificate of Service, copy of Court's Scheduling Order, Dated Dec. 5, 2007, was hand delivered to James A. Naddeo, Esquire, on Dec. 10, 2007. Filed by s/ Peter F. Smith, Esquire. No CC	Ammerman, Fredric Joseph
	Certificate of Service, filed. That a true and correct certified copy of Waroquier's Brief and Opposition to Defendant's Motion for Summary Judgment and In Support of its own Motion and Evidence Exhibits in Support of Plaintiff's Motion for Summary Judgment (6, 7 & 8) was hand delivered on December 11, 2007 to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	Ammerman, Fredric Joseph
	Evidence Exhibits in Support of Plaintiff's Motion For Summary Judgment (6,7 & 8), filed by s/ Peter F. Smith, Esquire. No CC	Ammerman, Fredric Joseph
1/4/2008	Additional Evidence Exhibits to Brief in support of Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. No CC	Ammerman, Fredric Joseph
1/28/2008	Certificate of Service, filed. That a true and correct certified copy of Evidence Exhibit in Support of Plaintiffs Motion for Summary Judgment (9) was hand delivered on January 28, 2008 to James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	Ammerman, Fredric Joseph
	Evidence Exhibits in Support of Plaintiff's Motion For Summary Judgemend. Filed by s/ Peter F. Smith, Esquire. 1CC Atty. Smith	Ammerman, Fredric Joseph
2/26/2008	Order, this 26th day of Feb., 2007, the Plaintiff's Motion for summary Judgment is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: P. Smith, Naddeo	Ammerman, Fredric Joseph
3/7/2008	Opinion and Order, NOW, this 6th day of March, 2008, it is Ordered that the Defendant's Motion for Summary Judgment is Granted. The Plaintiff's Complaint is hereby Dismissed, With Prejudice. by the Court, /s/ Fredric J. Ammerman, pres. Judge. 2CC Attys; P. Smith, Naddeo; 1CC D. Mikesell , Law Library	Ammerman, Fredric Joseph

I hereby certify this to be a true and attested copy of the original statement filed in this case.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	
	:	No. 2007-112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

REQUEST FOR TRANSCRIPT

A Notice of Appeal having been filed in this matter, the official court report is hereby ordered to produce, certify and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

By The Court,

Frederic J Ammerman

Honorable Frederic J. Ammerman, P.J.

FILED 1CC Atty Smith
03:04 BK
APR 07 2008 1CC
William A. Shaw Superior Court
Prothonotary/Clerk of Courts

#25

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff,	:	
v.	:	No. 2007-112-CD
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

OPINION

Waroquier (hereafter Plaintiff) commenced this action against Albert L. Nelson (hereafter Defendant) who is sued in his fiduciary capacity as Trustee of the Albert L. Nelson Living Trust. This Action deals with property owned by the Defendant containing 49 acres in Brady Township identified by Clearfield County Tax Map Number 105-D06-00-038.1. The Defendant and W. Ruskin Dressler (hereafter Dressler) entered into an agreement notarized on February 3, 1997 wherein the Defendant granted an Option and Lease Agreement (hereafter Dressler Lease) on the subject property to Dressler. This agreement was for three years and granted Dressler the exclusive right to prospect for and mine coal from the Defendant's property. On February 23, 1999 the Defendant signed and delivered to Dressler a Contractual Consent of Landowner for the purpose of strip mining coal. On January 22, 2001 Dressler transferred his surface mining permit to Plaintiff via an Agreement dated January 18, 2001 (hereafter Waroquier-Dressler Agreement) for the Defendant's property and the adjoining property owned by the Kimbles. On April 12, 2003, the Defendant entered Articles of Agreement (hereafter RAMM Lease) with Roger A. Thomas and Miriam R. Thomas t/d/b/a RAMM Coal Company (hereafter RAMM). This Agreement leases the property in Brady Township, which was originally leased to Dressler, to RAMM. Under the RAMM lease, RAMM entered the subject property and stripped mined coal from June of 2003 to November 0f 2005.

FILED
0/9:16 AM
MAR 07 2008
William A. Shaw
Prothonotary/Clerk of Courts
2cc Attys: P. Smith
Naddeo
1cc: D. Mikesell
Law Library

#24

The Plaintiff alleges that the Defendant breached the Dressler Lease by entering into the RAMM Lease. Further, the Plaintiff alleges that the transferring of the Waroquier-Dressler Agreement constituted a valid transfer of the right to mine as contained in the underlying Dressler Lease. Defendant has filed for summary judgment and asserts that judgment should be entered in his favor because Plaintiff has, among other issues, neither established that it has any interest in the Dressler Lease nor has it established that the Dressler Lease is still in effect.

Plaintiff claims that it is the successor in interest of the Dressler Lease and therefore has the right to mine the property. Plaintiff bases this assertion on the provisions of the Waroquier-Dressler Agreement, which covers the permit to mine both the Kimble property and Nelson property. In the Waroquier-Dressler Agreement, the Plaintiff agrees to "resume" the permit #17990105. The Waroquier-Dressler Agreement continues by listing the amount of royalties the Plaintiff will pay to Dressler and that the Plaintiff agrees to sell Dressler house coal out of the mine at pit price. Notably, the Waroquier-Dressler Agreement does not specifically transfer the right to mine coal under the Dressler Lease. In fact, the Waroquier-Dressler Agreement specifically provides that Dressler "is responsible for the up keep of this area and any MSHA fines that may accrue from the area." Plaintiff's Exhibit 3.

Preliminarily, "under Pennsylvania contract law, when language of a contract is clear and unambiguous, its meaning must be determined by examination of the contract itself." *Fleetway Leasing Co. v. Wright*, 697 A.2d 1000, 1002 (Pa.Super. 1997) citations omitted. Here, the Waroquier-Dressler Agreement is clear and unambiguous, it states that it is a transfer of the Permit from Dressler to Waroquier. Further, the Waroquier-Dressler Agreement provides the Dressler is responsible for the up keep of the area. If, as the Plaintiff argues, the Waroquier-

Dressler Agreement represented an assignation of the entire Dressler Lease, then Dressler would not be responsible for the up keep of land in which he no longer had any interest.

The Plaintiff argues that the parties drafted the Waroquier-Dressler Agreement and that they are neither "lawyers nor are they authors" and that "they would rather mine than write." Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment and in Support of its Own Motion pp. 9. The Pennsylvania Superior Court has stated "[t]he parties [have] the right to make their own contract, and it is not the function of this Court to rewrite it, or to give it a construction in conflict with the accepted and plain meaning of the language used." *Wickes Corp. v. Newtown Sav. Ass'n,* 469 A.2d 1078, 1083 (Pa.Super. 1983) citations omitted. The parties are given the right to write their own contract without the interference of this Court. This right is not just for attorneys, to the contrary, this Court will not rewrite any contract or give it a construction that is in conflict with the plain language used. Again, the plain language here transfers just the permit #17990105 from Dressler to the Plaintiff. Therefore, because Plaintiff is not is not a party to the Dressler Lease, the Motion for Summary Judgment would be properly granted on that basis alone. However, this Court will also examine whether the Dressler Lease is still in effect.

The Plaintiff argues that the Dressler Lease is still in effect. The parties agree the Dressler Lease was notarized on February 3, 1997.[1] Paragraph five of the Dressler Leases stipulates that the lease shall continue "for a period three years from the effective date hereof, or until all of the mineable and merchantable coal has been exhausted from the premises." Plaintiff's Exhibit 2 ¶ 5. In examining contracts, the Superior Court has held "in construing a contract, each and every part of it must be taken into consideration and given effect, if possible,

[1] The parties agree the October 1, 1993 date on the Dressler Lease is incorrect. They cannot agree on the correct date.

and the intention of the parties must be ascertained from the entire instrument." *Marcinak v. Southeastern Greene School Dist.*, 544 A.2d 1025, 1027 (Pa.Super. 1988). Plaintiff argues that the Dressler Lease did not terminate on February 3, 2000 and that paragraph five is ambiguous. The Plaintiff points to the language of paragraph five, which states "or until all the mineable and merchantable coal has been exhausted from the premises," as creating ambiguity such that the Dressler Lease will stay in effect in perpetuity as long as mining operations have commenced. However, if this Court were to adopt the interpretation set forth by the Plaintiff, it would render the language "for a period three years from the effective date hereof" completely meaningless. The Defendant sets forth the interpretation that the Dressler Lease was to be for a period of three years, but if all of the mineable merchantable coal was exhausted before the three years were expired the lease would terminate. This interpretation gives effect and meaning to both clauses in paragraph five. This Court does not find the language in paragraph five of the Dressler Lease to be ambiguous, it sets a termination date for the lease but allows for the lease to end earlier if all the mineable and merchantable coal is exhausted before the three years expire. The Court agrees with Defendant that the Dressler Lease expired on February 3, 2000.

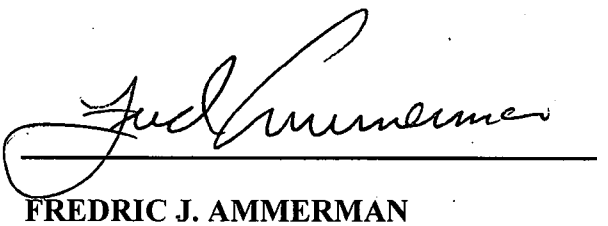
Further support for this reading of paragraph five is established in *Hutchison v. Sunbeam Coal Corp.*, wherein the Pennsylvania Supreme Court states "a lease will not be construed to create a perpetual term unless the intention is expressed in clear and unequivocal terms." *Hutchison v. Sunbeam Coal Corp.*, 519 A.2d 385, 390 (1986) citations omitted. The language in paragraph five establishes that the Dressler Lease will continue for a period of three years. There is no evidence in the four corners of the document that either party intended for the Dressler Lease to create a perpetual term.

Therefore, as Dressler did not have an effective lease with the Defendant to assign to Plaintiff after February 3, 2000 and because the Waroquier-Dressler Agreement would not have assigned the right to mine the coal under the Dressler Lease even if it had been in effect, this Court finds that the Defendant's Motion for Summary Judgment is properly granted.

ORDER

NOW, this 6th day of March, 2008, it is the Order of This Court that the Defendant's Motion for Summary Judgment be and is **HEREBY GRANTED.** The Plaintiff's Complaint is **HEREBY DISMISSED, WITH PREJUDICE.**

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED

MAR 07 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 3/7/08

____ You are responsible for serving all appropriate parties.

__X__ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) __X__ Plaintiff(s) Attorney ____ Other

____ Defendant(s) __X__ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff,	:	
v.	:	No. 2007-112-CD
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

ORDER

NOW, this 26th day of February, 2007, after review of the parties' briefs and the record, the Plaintiff's Motion for Summary Judgment is **HEREBY DENIED.**

The Court finds that the Plaintiff, who would bear the burden of proof at trial, has failed to produce evidence of facts essential to the cause of action that in a jury trial would require the issues to be submitted to a jury. Pa.R.C.P. No. 1035.2.

BY THE COURT:

FREDRIC J. AMMERMAN
President Judge

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01/4:00 BH
FEB 26 2008
William A. Shaw
Prothonotary/Clerk of Courts

ICC Attys: P. Smith Naddeo

#23

FILED

FEB 26 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/26/08

____You are responsible for serving all appropriate parties.

__X__The Prothonotary's office has provided service to the following parties:

____Plaintiff(s) __X__Plaintiff(s) Attorney ____Other

____Defendant(s) __X__Defendant(s) Attorney

____Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	No. 2007-112-CD
	:	Type of case:
vs.	:	**CIVIL**
	:	Type of Pleading:
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	**EVIDENCE EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (9)**
	:	Filed on behalf of:
	:	Plaintiff
	:	Counsel of Record for Plaintiff
	:	**Peter F. Smith, Esquire**
	:	Supreme Court ID #34291
	:	30 South Second Street
	:	P. O. Box 130
	:	Clearfield, PA 16830
	:	(814) 765-5595
	:	Counsel of Record for Defendant:
Dated: January 28, 2008	:	**James A. Naddeo, Esquire**
	:	Supreme Court ID #06820
	:	207 East Market Street
	:	P. O. Box 552
	:	Clearfield, PA 16830
	:	(814) 765-1601

FILED 1cc
10:40 Atty Smith
JAN 28 2008
(GK)

William A. Shaw
Prothonotary/Clerk of Courts

#22

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	No. 2007- 112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

EVIDENCE EXHIBITS IN SUPPORT OF PLAINTIFF' S MOTION FOR SUMMARY JUDGMENT

Plaintiff, Waroquier Coal Company, Inc., by its undersigned counsel, respectfully files the following documents being attached hereto as evidentiary exhibits in support of its Motion for Summary Judgment filed contemporaneously herewith:

EXHIBIT	DESCRIPITON
9	DEP Inspection Report dated March 3, 2005 for Permit No. 17990105 indicating active status of operations

Respectfully submitted,

Date: January 28, 2008

Peter F. Smith, Attorney for
Waroquier Coal Co., Inc.

1427969

5600-FM-MR0005.8 Rev. 12/2003

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

Page 1 of 1

Mine Name Kimble
Weather Sunny/Cool

PARTIAL, FOLLOW-UP, AND AERIAL Inspection Report Bituminous Coal

KEYED IN

Date 03-03-05

On Site Times

MAR 09 2005

PERMITTEE	TOWNSHIP	COUNTY	PERMIT NO.
Waroquier Coal Co	Bradley	Clearfield	17990105

ADDRESS			LICENSE NO. & EXP. DATE
PO Box 128 Clearfield, PA 16830	PARTIAL ☑ FOLLOW-UP ☐ AERIAL ☐	VIOLATIONS NOTED ☐ FOLLOW-UP INSP. REQUIRED ☐ PREVIOUS VIOLATIONS: COMPLIANCE ORDER ☐ CORRECTED ☐ FTC ORDER ☐ CEASE ORDER ☐ UNCORRECTED ☐ OUTSTANDING ENFORCEMENT ☐	OPERATIONAL STATUS Active

GENERAL MINING INFORMATION:
Areas-Seams-Pit Dimensions (L/W/H)-Method: 1 cut with, Shale, 300 x 100 x 65

Approved Acres		Approved Pit Volume		Progress of Reclamation		Liability
Mining Area:	38.5 acres	<500'	yd³	Regraded	20 acres	Current Bond
Disturbed not planted:	acres	>500'	yd³	Topsoiled	15 acres	$
Affected acres	25	**Current Pit Volume**		Planted, Grasses	acres	Current Liability
Mining Area:	acres	<500'	yd³	Planted, Trees	acres: Needed ☐ NA ☐	$
Disturbed not planted:	acres	>500'	yd³	Meeting Stage 2 criteria	acres	____ FG amt. $____

Equipment-Use & Condition: Dozer, Loader, Trucks

Contract Miner ☐ yes ☑ no Blasting at Site ☐ yes ☑ no Augering ☐ yes ☑ no Disposal of Refuse ☐ yes ☑ no (Explain yes answers)

PERFORMANCE STANDARDS BITUMINOUS COAL

Obs.	STANDARD		Viol.	Comp. Date	Obs.	STANDARD		Viol.	Comp. Date
✓	1. Signs and Markers	(87.92)				56. Backfilling-Final Slopes	(87.144)		
	4. Effluent Standards	(87.102)				34. Regrade Rills/Gullies	(87.146)		
	8. Treatment Facilities	(87.107)				35. General Revegetation	(87.147)		
✓	7. Sediment Control Measures	(87.106)				49. General Safety	(Chapter 209)		
	9. Sediment Ponds	(87.108)				53. Permit Condition			
	11. Toxic Forming Spoil	(87.110)				54. Violation History			
	33. Cover Toxic Material	(87.145)				00. Unauthorized Mining			
	19. Water Accumulations	(4.2 SMCRA)							
✓	31. General Backfilling	(87.141)							

Comments and Recommendations:

Loading out coal in pit to stockpile w/ rock truck Dozer, pump road.

Person Contacted	Title	Discharge/Seeps ☐ yes ☑ no Samples Collected ☐ yes ☑ no Range of Samples Collected ____ to ____
Signature		Investigator Signature Sampler I.D. No. Employee # 414

The Operator's signature acknowledges that he has read the report, including the reverse side, and that he was given the opportunity to discuss it with the investigator. The signature does not necessarily mean he agrees with the report.

☐ White - District File ☐ Yellow - Permittee ☐ Pink - Inspector

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	
	:	No. 2007-112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that a true and correct certified copy of **EVIDENCE EXHIBIT IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (9)** was hand delivered to the attorney for the Defendant on January 28, 2008 at the following address:

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Respectfully submitted,

Date: January 28, 2008

Peter F. Smith, Esquire
Attorney for Plaintiff
P. O. Box 130, 30 South Second St.
Clearfield, PA 16830
(814) 765-5595

FILED NO CC
01/10:49/BY
JAN 28 2008
William A. Shaw
Prothonotary/Clerk of Courts

#21

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	
	:	No. 2007-112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that a true and correct certified copy of **WAROQUIER'S BRIEF and OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF ITS OWN MOTION** and EVIDENCE EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (6, 7 & 8) was hand delivered to the attorney for the Defendant on December 11, 2007 at the following address:

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Respectfully submitted,

Date: December 11, 2007

Peter F. Smith, Esquire
Attorney for Plaintiff
P. O. Box 130, 30 South Second St.
Clearfield, PA 16830
(814) 765-5595

FILED NO CC
12:46 bill
DEC 11 2007
William A. Shaw
Prothonotary/Clerk of Courts
(#18)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	
	:	No. 2007-112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that a true and correct certified copy of **COURT'S SCHEDULING ORDER, Dated December 4, 2007** was hand delivered to the attorney for the Defendant on December 10, 2007 at the following address:

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Respectfully submitted,

Date: December 10, 2007

Peter F. Smith, Esquire
Attorney for Plaintiff
P. O. Box 130, 30 South Second St.
Clearfield, PA 16830
(814) 765-5595

FILED
0 10:30 a.m. 6K
DEC 11 2007
NO CC
William A. Shaw
Prothonotary/Clerk of Courts

#17

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,
Plaintiff

vs.

ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust,
Defendant

No. 2007-112-CD

FILED
DEC 05 2007
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William A. Shaw
Prothonotary/Clerk of Courts
3 CERT TO ATTY

ORDER

AND NOW, this 4 day of Dec, 2007, upon consideration of the Motion for Summary Judgment filed by Plaintiff, it is hereby ORDERED that;

1. The Respondent shall file an answer to the motion within 30 days of service thereof, said service to be made by Plaintiff; and,

2. A Rule is issued upon the Respondent to show cause why the moving party is not entitled to the relief requested.

Rule Returnable and Argument thereon to be held the 28th of January, 2008, at 11:00 A.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield Pennsylvania.

By the Court,

Judge

#16

FILED

DEC 05 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12-5-07

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,
Plaintiff,

vs.

ALBERT L. NELSON, TRUSTEE
Of the Albert L. Nelson
Living Trust,
Defendant.

No. 2007-112-CD

FILED
DEC 05 2007
0/3:30 (W)
William A. Shaw
Prothonotary/Clerk of Courts
1 cert to Atty

Type of Pleading:

RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: December 5, 2007

#15

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC. Plaintiff,	*	
v.	*	No. 2007-112-CD
ALBERT L. NELSON, Trustee Of the Albert L. Nelson Living Trust, Defendant.	*	

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Defendant, Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust, by his undersigned counsel, respectfully responds the Motion for Summary Judgment filed by Plaintiff as follows:

1. That Plaintiff in its response to defendant's motion for summary judgment averred that plaintiff instead is entitled to summary judgment in its favor.

2. That plaintiff is not entitled to summary judgment for all of the reasons stated in defendant's motion for summary judgment, its brief filed in support thereof and all evidence of record filed in support of said motion.

WHEREFORE, Defendant, Albert L. Nelson, respectfully requests this Court deny plaintiff's motion for summary judgment and enter summary judgment in favor of defendant.

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC. Plaintiff, v. ALBERT L. NELSON, Trustee Of the Albert L. Nelson Living Trust, Defendant.	*	No. 2007-112-CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Response to Plaintiff's Motion for Summary Judgment was served on the following and in the following manner on the 5th day of December, 2007:

First-class Mail Postage Prepaid:

Peter F. Smith, Esquire
30 South Second Street
PO Box 130
Clearfield, PA 16830

NADDEO & LEWIS, LLC.

By 
James A. Naddeo
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	
	:	No. 2007-112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that a true and correct copy of **WAROQUIER'S ANSWER TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT & WAROQUIER'S MOTION FOR SUMMARY JUDGMENT** was hand delivered to the attorney for the Defendant on December 3, 2007 at the following address:

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Respectfully submitted,

Date: December 3, 2007

Peter F. Smith, Esquire
Attorney for Plaintiff
P. O. Box 130, 30 South Second St.
Clearfield, PA 16830
(814) 765-5595

FILED 1cc
02:11 BY
DEC 03 2007
William A. Shaw
Prothonotary/Clerk of Courts

#14

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,
Plaintiff

vs.

ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust,
Defendant

No. 2007-112-CD

Type of case:
CIVIL

Type of Pleading:
PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
&
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Filed on behalf of:
Counsel of Record for Plaintiff
Peter F. Smith, Esquire
Supreme Court ID #34291
30 South Second Street
P. O. Box 130
Clearfield, PA 16830
(814) 765-5595

Counsel of Record for Defendant:
James A. Naddeo, Esquire
Supreme Court ID #06820
207 East Market Street
P. O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED NO CC
12:11 (GK)
DEC 03 2007
William A. Shaw
Prothonotary/Clerk of Courts

(#13)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	No. 2007- 112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

NOTICE TO DEFEND

TO THE DEFENDANT:

You are hereby notified to file a written response to the enclosed Motion for Summary Judgment within thirty (30) days from service hereof or a judgment may be entered against you.

By: _____
Peter F. Smith, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	No. 2007- 112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

WAROQUIER'S ANSWER TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT & WAROQUIER'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, the Plaintiff by its attorney Peter F. Smith, who pursuant to Pa.R.C.P. 1035.1 denies that Defendant is entitled to Summary Judgment because Waroquier is entitled to Summary Judgment, and in support thereof states:

1. Admitted that the pleadings are closed and that disposition of the parties' Motions will not delay trial.

2. Denied as stated. Defendant is not entitled to Summary Judgment because in the absence of issues of material fact, the Plaintiff is entitled to Summary Judgment for the following reason:

A. The lease originally with W. Russkin Dressler was in full force and effect at all times pertinent to this litigation; and

B. The letter agreement dated January 18, 2001 between Plaintiff and W. Russkin Dressler effectively assigned the Nelson lease to Plaintiff; and

C. Defendant breached the subject lease by entering a subsequent lease with Roger A. Thomas, et al., because this subsequent lease with Thomas contravened and violated the exclusive grant of mining rights to Dressler which were assigned to Plaintiff.

3. Denied that the Defendant is entitled to summary judgment as a matter of law for the facts set forth in the preceding paragraph, and

A. Waroquier respectfully submits that those facts entitle it to summary judgment.

B. In the event that the Court cannot conclude from the pleadings, depositions, answers to interrogatories and other matters of record that the facts set forth in the preceding paragraph of this response are not subject to genuine dispute, and then issues of material fact exist for resolution at trial, and in this event Defendant is not entitled to summary judgment.

4. Waroquier will shortly submit all additional evidence of record (other than the pleadings already filed with the Court) which Waroquier asks this Court to consider in deciding the response to Defendant's motion and Waroquier's own motion.

WHEREFORE Waroquier prays this Honorable Court to enter an Order denying Defendant's Motion for Summary Judgment and entering Summary Judgment in favor of Waroquier, the Plaintiff, in the above-captioned matter.

Respectfully submitted,

Date: 12/3/07

Peter F. Smith, Attorney for
Waroquier Coal Co., Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,

Plaintiff,

vs.

ALBERT L. NELSON, TRUSTEE
Of the Albert L. Nelson
Living Trust,

Defendant.

No. 2007-112-CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: November 7, 2007

FILED NO CC
10:38 BA
NOV 07 2007
William A. Shaw
Prothonotary/Clerk of Courts

#12

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.	*	
	*	
Plaintiff,	*	
	*	
v.	*	No. 2007-112-CD
	*	
ALBERT L. NELSON, Trustee Of the Albert L. Nelson Living Trust,	*	
Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Motion for Summary Judgment with Order scheduling argument thereon was served on the following and in the following manner on the 7th day of November, 2007:

First-class Mail Postage Prepaid:

Peter F. Smith, Esquire
30 South Second Street
PO Box 130
Clearfield, PA 16830

NADDEO & LEWIS, LLC.

By James A. Naddeo
James A. Naddeo
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,

Plaintiff,

vs.

ALBERT L. NELSON, TRUSTEE
Of the Albert L. Nelson
Living Trust,

Defendant.

No. 2007-112-CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: November 5, 2007

FILED NOCC
01/10:30/01
NOV 05 2007
William A. Shaw
Prothonotary/Clerk of Courts

#11

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.	*	
	*	
Plaintiff,	*	
	*	
v.	*	No. 2007-112-CD
	*	
ALBERT L. NELSON, Trustee Of the Albert L. Nelson Living Trust,	*	
Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copies of Motion for Summary Judgment and Brief in Support of Defendant's Motion for Summary Judgment and certified copies of Evidence Exhibits in Support of Defendant's Motion for Summary Judgment (A-G), Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd. (H) and Evidence Exhibits in Support of Defendant's Motion for Summary Judgment contd. (I) were served on the following and in the following manner on the 2nd day of November, 2007:

Peter F. Smith, Esquire
30 South Second Street
PO Box 130
Clearfield, PA 16830

NADDEO & LEWIS, LLC.

By James A. Naddeo
James A. Naddeo
Attorney for Defendant

FILED

NOV 05 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,

Plaintiff,

vs.

ALBERT L. NELSON, TRUSTEE
Of the Albert L. Nelson
Living Trust,

Defendant.

No. 2007-112-CD

Type of Pleading:

MOTION FOR SUMMARY JUDGMENT

Filed on behalf of:
Defendant

Counsel of Record for this party:

James A. Naddeo, Esq.
Pa I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: November 2, 2007

FILED 1CC Atty Naddeo
03:34 BD
NOV 02 2007
William A. Shaw
Prothonotary/Clerk of Courts

(#7)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.	*	
Plaintiff,	*	
	*	
v.	*	No. 2007-112-CD
	*	
ALBERT L. NELSON, Trustee	*	
Of the Albert L. Nelson	*	
Living Trust,	*	
Defendant.	*	

ORDER

AND NOW, this 5th day of November, 2007, upon consideration of the Motion for Summary Judgment filed by Defendant, it is hereby ORDERED that:

1) The respondent shall file an answer to the motion within 30 days of service thereof, said service to be made by Defendant and;

2) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested.

Rule Returnable and argument thereon to be held the 18th of December, 2007, at 9:00 A.m., in Courtroom 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

FILED 1cc Atty Naddeo
08:30 BA
NOV 06 2007
(GK)
William A. Shaw
Prothonotary/Clerk of Courts

BY THE COURT,

Judge

(#7)

FILED

NOV 06 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/6/07

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC. Plaintiff,	*	
v.	*	No. 2007-112-CD
ALBERT L. NELSON, Trustee Of the Albert L. Nelson Living Trust, Defendant.	*	

NOTICE TO PLEAD

TO THE DEFENDANT/COUNTERCLAIM PLAINTIFF:

You are hereby notified to file a written response to the enclosed Motion for Summary Judgment within twenty (30) days from service hereof or a judgment may be entered against you.

NADDEO & LEWIS, LLC

By _____
James A. Naddeo, Esquire
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.	*	
Plaintiff,	*	
	*	
v.	*	No. 2007-112-CD
	*	
ALBERT L. NELSON, Trustee	*	
Of the Albert L. Nelson	*	
Living Trust,	*	
Defendant.	*	

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant, Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust, by his undersigned counsel, respectfully moves this Court pursuant to Pa.R.C.P. No. 1035.1 et seq., for the entry of summary judgment in favor of defendant as to the whole case on the grounds that:

1. The pleadings are closed and time exists within which to dispose of this motion without delaying trial.

2. The pleadings, depositions, answers to interrogatories, admissions and affidavits filed of record and/or attached to this motion show that there is no genuine issue of material fact to be tried.

3. Defendant is entitled to judgment as a matter of law for the reasons set forth in the accompanying brief.

4. Filed simultaneously herewith is all evidence of record (other than the pleadings already filed with the Court in

this action) which defendant asks this Court to consider in deciding its motion.

WHEREFORE, Defendant, Albert L. Nelson, respectfully requests this Court enter summary judgment in favor of defendant and against plaintiff.as to the whole case brought by plaintiff against defendant.

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,
Plaintiff

vs.

ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust,
Defendant

No. 2007-112-CD

Type of case:
CIVIL

Type of Pleading:
PLAINTIFF'S ANSWER TO NEW MATTER & COUNTERCLAIM

Filed on behalf of:
Counsel of Record for Plaintiff
Peter F. Smith, Esquire
Supreme Court ID #34291
30 South Second Street
P. O. Box 130
Clearfield, PA 16830
(814) 765-5595

Counsel of Record for Defendant:
James A. Naddeo, Esquire
Supreme Court ID #06820
207 East Market Street
P. O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED
MAR 28 2007
01 2:15(w
William A. Shaw
Prothonotary/Clerk of Courts
3 cent to Atty

#6

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	No. 2007- 112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

PLAINTIFF'S ANSWER TO NEW MATTER & COUNTERCLAIM

COMES NOW, Waroquier Coal Co., Inc., by its attorney Peter F. Smith who answers the Defendant's New Matter and Counterclaim as follows:

I

29. Plaintiff incorporates by reference paragraphs 1 through 28 of the complaint.

30. Neither admitted nor denied because it states a conclusion of law to which no response is required.

31. Denied. Defendant entered a valid lease agreement with the Plaintiff's assignor W. Ruskin Dressler. Plaintiff then acquired Dressler's rights by assignment as recited in paragraphs 16 and 17 of the complaint.

32. Denied because no blank appears in the agreement attached to the complaint as Plaintiff's Exhibit 2.

33. Admitted.

34. Denied. As recited in paragraph 11 of the complaint the Plaintiff's assignor W. Ruskin Dressler obtained a Contractual Consent from the landowner, the Defendant, on February

23, 1999. That was part of the permitting process for mining operations, all of which constituted an exercise of Dressler's option and activation of the lease.

35. Denied as a statement of law to which no response is required, but if a response is required, then the lease was activated within the initial term of its option, and Defendant received lawful consideration in the form of the mutual promises which he and the Defendant's assignor exchanged it their written agreement.

WHEREFORE Plaintiff prays that judgment be entered in its favor in excess of $25,000.00 together with costs and interest from the date of breach.

II

36. Plaintiffs incorporate by reference paragraphs 1 through 28 of the complaint and paragraphs 29 through 35 of this answer.

37. Denied for the reasons set forth in paragraph 34 above.

38. Denied for the reasons set forth in paragraph 34 above.

39. Denied. Defendant misconstrues the nature of the complaint. The Defendant is sued because he wrongfully and in breach of the lease, which was assigned to the Plaintiff, usurped and converted Plaintiff's opportunity to mine the coal at issue. Defendant allegedly was paid for that coal by RAMM Coal Company. Plaintiff is suing Defendant for the value of that coal taken by RAMM Coal Company.

40. Denied for the reasons set forth in paragraph 39 above.

41. Denied for the reasons set forth in paragraph 39 above.

WHEREFORE Plaintiff prays that judgment be entered in its favor in excess of $25,000 together with costs and interest from the date of breach.

III

42. Paragraphs 1 through 28 of the Complaint and paragraphs 29 through 41 of the foregoing answer are incorporated herein and by reference.

43. Denied for the reasons set forth in paragraph 34 above, and further denied because Plaintiff did in fact conduct surface mining operations on another portion of Defendant's same tract of land although a dispute exists between the parties regarding royalties as reference to proceedings brought at Clearfield County Docket Number 2005-1842-CD will more fully illustrate.

44. Denied as a conclusion of law and further denied that the lease was not abandoned for the reasons set forth in paragraphs 34 and 43 above.

WHEREFORE Plaintiff prays that judgment be entered in its favor in excess of $25,000 together with costs and interest from the date of breach.

IV

45. Paragraphs 1 through 28 of the complaint and 29 through 44 of the foregoing answer are incorporated herein by reference.

46. Denied for the reasons set forth in the preceding paragraphs and specifically paragraph 34.

47. Denied for the reasons set forth in the preceding paragraphs and specifically paragraph 34.

48. Denied as a conclusion of law to which no response is required.

WHEREFORE Plaintiff prays that judgment be entered in its favor in excess of $25,000 together with costs and interest from the date of breach.

V

49. Paragraphs 1 through 28 of the complaint and paragraphs 29 through 48 of the preceding answer are incorporated herein as those set forth in full.

50. Denied. The lease was assigned as part of the letter agreement between Plaintiff and W. Ruskin Dressler dated January 19, 2001 which is attached to the complaint as Plaintiff's Exhibit 3. Mr. Dressler has testified in depositions for the action at Clearfield County Number 2005-1842-CD that his sale of the surface mining permit to Waroquier was for both the Defendant's and the Kimbles' properties and included assignment of the related leases.

Further denied because the lease between Defendant and Dressler is in writing as demonstrated by Plaintiff's Exhibit 2.

51. Denied for the reasons set forth in paragraph 50 above. Further denied as a conclusion of law which no response is required. Further denied because the statute of frauds is inapplicable to the facts presented in this case.

WHEREFORE Plaintiff prays that judgment be entered in its favor in excess of $25,000 together with costs and interest from the date of breach.

COUNTERCLAIM

52. Paragraphs 1 through 28 of the complaint and paragraphs 29 through 51 of the preceding answer are incorporated herein by reference.

53. Denied. The complaint sets forth a prima facie case against Defendant. It is supported by the documents attached as exhibits and by testimony obtained at depositions in Clearfield County Number 2005-1842-CD.

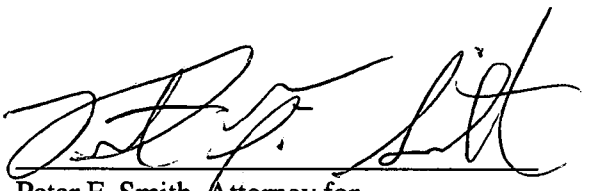
54. Denied. This action was brought in good faith after due evaluation.

55. Although liability for counsel fees is denied, Plaintiff will agree that $150.00 per hour for Mr. Naddeo's services is reasonable.

56. Denied as a conclusion of law and further denied because this action does not fall within the limited scope of sanctionable conduct to which 42 Pa.C.S. §2503 is addressed.

WHEREFORE Plaintiff prays that Defendant's counterclaim be dismissed.

Respectfully submitted,



Date: March 28, 2007

Peter F. Smith, Attorney for
Waroquier Coal Co., Inc.

VERIFICATION

I verify that the Plaintiff's Answer to New Matter and Counterclaim is true, correct and authentic. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

WAROQUIER COAL COMPANY

Date: 3/26/07

By: _____
Joseph L. Waroquier, Jr. President

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	
	:	No. 2007-112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

FILED
MAR 28 2007
01:15cw
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that a true and correct copy of **PLAINTIFF'S ANSWER TO NEW MATTER & COUNTERCLAIM** was hand delivered to the attorney for the Defendant on March 28, 2007 at the following address:

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Respectfully submitted,

Date: March 28, 2007

Peter F. Smith, Esquire
Attorney for Plaintiff
P. O. Box 130, 30 South Second St.
Clearfield, PA 16830
(814) 765-5595

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,

Plaintiff,

vs.

ALBERT L. NELSON, TRUSTEE
Of the Albert L. Nelson
Living Trust,

Defendant.

No. 2007-112-CD

Type of Pleading:

ANSWER, NEW MATTER AND COUNTERCLAIM

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

NADDEO & LEWIS, LLC.
207 East Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: March 20, 2007

FILED
9:12761
MAR 20 2007
cc Atty Naddeo

William A. Shaw
Prothonotary/Clerk of Courts

#5

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC. Plaintiff,	*	
v.	*	No. 2007-112-CD
ALBERT L. NELSON, Trustee Of the Albert L. Nelson Living Trust, Defendant.	*	

NOTICE TO PLEAD

TO THE PLAINTIFF:

You are hereby notified to file a written response to the enclosed New Matter and Counterclaim within twenty (20) days from service hereof or a judgment may be entered against you.

NADDEO & LEWIS, LLC.

By James A. Naddeo
James A. Naddeo, Esq.
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC. Plaintiff,	*	
v.	*	No. 2007-112-CD
ALBERT L. NELSON, Trustee Of the Albert L. Nelson Living Trust, Defendant.	*	

ANSWER, NEW MATTER AND COUNTERCLAIM

NOW COMES the Defendant, Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust, and by his attorney, James A. Naddeo, Esquire, files the within Answer, New Matter and Counterclaim, and set forth as follows:

1. Admitted.

2. Denied as stated, Defendant is Albert L. Nelson whose address is 1113 South Main Street, DuBois, Pennsylvania 15801.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. No answer is required; the agreement speaks for itself.

9. No answer is required; the agreement speaks for itself.

10. No answer is required; the agreement speaks for itself.

11. Admitted that Defendant signed and delivered a Contractual Consent of Landowner. Denied that the date was

February 23, 1999. To the contrary the date said document was delivered was February 3, 1997. Denied that the purposes are as averred by the Plaintiff; the document speaks for itself. A true and correct copy is attached hereto as Exhibit "A."

12. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

13. Denied. On the contrary, Dressler never mined any coal on this property after February 3, 1997.

14. States a conclusion of law to which no answer is required. In further answer thereto, the agreement speaks for itself.

15. No answer is required; the agreement speaks for itself.

16. States a conclusion of law to which no answer is required. In further answer thereto, the agreement speaks for itself.

17. States a conclusion of law to which no answer is required. To the extent an answer may be required, said averment is denied. In further answer thereto, Defendant incorporates New Matter as if set forth more fully herein.

18. Denied. On the contrary, it is alleged that mining was completed in January 2003 as verified by Completion of Mining Report filed April 23, 2003. A true and correct copy of said report is attached hereto as Exhibit "B."

19. Admitted that Defendant entered into Articles of Agreement with Roger A. Thomas and Miriam R. Thomas.

20. No answer is required; said document speaks for itself.

21. No answer is required; said document speaks for itself.

22. States a conclusion of law to which no answer is required regarding whether the lease was assigned and/or in full force and effect. Denied that Plaintiff was actively mining the premises during that period and in further answer thereto Defendant incorporates his answer to paragraph 18 as if set forth in full herein.

23. Denied as stated. On the contrary, it is alleged that Thomases entered upon the premises and strip mined the coal from May of 2003 to October of 2005.

24. Admitted.

25. Admitted for the reason that Waroquier did not own the lease between Defendant and Dressler dated February 3, 1997.

26. Admitted. In further answer thereto, Defendant incorporates his New Matter as if set forth in full herein.

27. States a conclusion of law to which no answer is required.

28. Denied. On the contrary, it is alleged that Waroquier never had the exclusive right to mine coal from Defendant's premises for reasons set forth in New Matter.

WHEREFORE, Defendant, Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust, respectfully requests that Plaintiff's Complaint be dismissed.

NEW MATTER

I. Lack of Consideration

29. Defendant hereby incorporates by reference paragraphs 1-28 above as if the same were fully set forth herein at length.

30. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

31. Defendant never entered into an agreement with Plaintiff.

32. The Agreement entered into between W. Ruskin Dressler and Defendant is entitled "Option and Lease Agreement" (pled as Exhibit 2 to Plaintiff's Complaint and incorporated herein by reference). It provides at paragraph 1 as follows:

> 1. In consideration of the sum of $1.00, in hand paid, receipt whereof is hereby acknowledged, Lessor hereby leases, lets, and demises unto Lessee, All of the surface "or _____" mineable seam or vein of coal in, under and upon...

33. At paragraph 3 the Agreement provides as follows:

> 3. Lessee covenants and agrees to commence mining operations upon said premises within three (3) years from the effective date of this lease and in event of failure so to commence mining operations agrees to pay Lessor as a minimum royalty the sum of price of xxx per year, payable quarterly in advance.

34. Dressler failed to commence mining operations within three years of the date of the Agreement.

35. Dressler's failure to commence mining operations in accordance with the Agreement and give consideration due Defendant under the contract failed such that any action derived from the same contract is barred and that Plaintiff's action is barred by the defense of failure of consideration.

WHEREFORE, Defendant, Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust, respectfully requests that Plaintiff's Complaint be dismissed.

II. Material Breach

36. Defendant hereby incorporates by reference paragraphs 1-35 above as if the same were fully set forth herein at length.

37. Dressler's failure to commence mining operations in accordance with the Agreement resulted in Defendant not receiving what he had bargained for under this contract.

38. Dressler's failure to commence mining operations constituted a material breach of the contract such that any action derived from the same contract is barred and that Plaintiff's action is barred by the defense of material breach which extinguished said contract.

39. In the alternative, no payments (for coal mined on the subject property) were made to Defendant by Dressler or any person acting on his behalf or any other person who allegedly purchased the right to mine the coal on the subject premises.

40. If Dressler or any other entitled party did so mine on the subject premises the failure to make payments to the

Defendant constitutes a material breach by default under paragraph 7 of the Agreement.

41. The failure to make payments as agreed in paragraph 7 of the Agreement constituted a material breach of the contract such that any action derived from the same contract is barred and that Plaintiff's action is barred by the defense of material breach and termination of the contract.

WHEREFORE, Defendant, Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust, respectfully requests that Plaintiff's Complaint be dismissed.

III. Abandonment of Lease

42. Defendant hereby incorporates by reference paragraphs 1-41 above as if the same were fully set forth herein at length.

43. The Agreement and in particular the lease entered into between Dressler and the Defendant was abandoned by Dressler by Dressler's failure to commence mining operations within the time period specified in the contract.

44. Dressler's abandonment of the lease bars any action brought under the lease or any action derived from an alleged assignment of the rights thereunder.

WHEREFORE, Defendant, Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust, respectfully requests that Plaintiff's Complaint be dismissed.

IV. No Valid Assignment

45. Defendant hereby incorporates by reference paragraphs 1-44 above as if the same were fully set forth herein at length.

46. As described in the preceding paragraphs, there was no valid lease in place between Defendant and Dressler due to lack of consideration and/or material breach on the part of Dressler.

47. Because there was no valid lease, Dressler had nothing to assign to Plaintiff on January 18, 2001 when it is alleged that Dressler assigned to Plaintiff his surface mining rights on Defendant's subject premises.

48. Plaintiff's Complaint therefore fails to state a claim upon which relief may be granted and is barred by the defense of an invalid assignment.

WHEREFORE, Defendant, Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust, respectfully requests that Plaintiff's Complaint be dismissed.

IV. Statute of Frauds

49. Defendant hereby incorporates by reference paragraphs 1-48 above as if the same were fully set forth herein at length.

50. In the alternative, even if Dressler had the right to mine the coal on January 18, 2001 (and following he allegedly had a right to assign the same) the assignment was oral in nature. Plaintiff has not attached to its complaint a written memorandum of such alleged contract, and there is no such memorandum. The document attached to Plaintiff's Complaint as Exhibit 3 merely

has Plaintiff resuming a permit, there is no assignment of a lease or coal mining rights contained therein.

51. Because there is no such written memorandum, the provisions of 33 P.S. § 1 which requires parol leases and assignments of estates in land to be in writing have not been complied with in respect to this alleged contract, such that Plaintiff's cause of action on the alleged contract is barred by the defense of the statute of frauds.

WHEREFORE, Defendant, Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust, respectfully requests that Plaintiff's Complaint be dismissed.

COUNTERCLAIM

52. Defendant hereby incorporates by reference paragraphs 1-51 above as if the same were fully set forth herein at length.

53. Plaintiff has brought this action which has no basis in law or fact against Defendant.

54. Plaintiff has brought this action against the Defendant arbitrarily, for the purpose of causing vexation to Defendant and in bad faith.

55. Defendant has been required to retain counsel at $150.00 per hour, which is a reasonable fee.

56. Pursuant to 42 Pa.C.S. § 2503 Defendant is entitled to reasonable counsel fees and expenses incurred to defend against this matter.

WHEREFORE, Defendant, Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust, prays for relief in an amount equal to his reasonable attorney's fees and costs to defend this suit.

NADDEO & LEWIS, LLC.

By _____
James A. Naddeo, Esq.
Attorney for Defendant

V E R I F I C A T I O N

I, James A. Naddeo, attorney for defendant, have read the foregoing Answer, New Matter and Counterclaim. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

I am authorized to make this verification on behalf of Defendant because of my position as counsel of record.

By: James A. Naddeo

James A. Naddeo, Esquire
Attorney for Defendant

Dated: 3-20-07

ER—MR—10: Rev. 2/84
"Supplemental C"

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

DEP Office Copy

17990105

APPL. NO. (Department Use Only)

Dept. of Env. Protection
Bureau of Mining & Reclamation
Moshannon District Office

MAR 25 1999

ACCEPTED

MAR 25 1999

RECEIVED

HAWK RUN D.E.P.
DISTRICT OFFICE

CONTRACTUAL CONSENT OF LANDOWNER

(I) (We), the undersigned, being the owner(s) of 49.0 acres of land located in Brady Township, Clearfield, _____ County, as
(Township, Borough, City)

described in the deed(s) recorded in the Recorder of Deeds Office Book(s) and page(s) Deed Book Vol 1572 Page 148 and shown by crosshatched lines on the map attached hereto which is signed in the original by the landowner upon which _____
W. Ruskin Dressler proposes to engage in surface
(Name of Mining Operator)

mining activities for which application for permit will be made to the Department of Environmental Resources and of which application this consent will be made a part, ***DO HEREBY ACKNOWLEDGE THAT THE MINING OPERATOR HAS THE RIGHT TO ENTER UPON AND USE THE LAND FOR THE PURPOSES OF CONDUCTING SURFACE MINING ACTIVITIES.*** Furthermore, (I) (We), the undersigned, do hereby irrevocably grant to the Mining Operator and the Commonwealth of Pennsylvania, the right to enter upon the aforesaid land before beginning the mining activity(ies), during the mining activity(ies) and for a period of five (5) years after the completion or abandonment of the mining activity(ies) for the purposes of inspecting, studying, backfilling, planting and reclaiming the land and abating pollution in accordance with the provisions of the Surface Mining Conservation and Reclamation Act, The Clean Streams Law, and The Coal Refuse Disposal Act, as amended, rules and regulations promulgated thereunder, and the provisions of permit(s) issued to the Mining Operator. (I) (We) do hereby grant in addition to the Commonwealth, for the aforesaid period of time, a right of entry across any adjoining or contiguous lands owned by (us) (me) in order to have access to the land described herein. It is specifically agreed and understood that this contractual consent gives the Commonwealth the right to enter, inspect, study, backfill, plant and reclaim the land and abate pollution therefrom as a matter within the police power but does not obligate the Commonwealth to do so, and does not constitute any ownership interest by the Commonwealth in the aforesaid land.

This Consent shall not be construed to impair any contractual agreement between the Mine Operator and the landowner.

(INSERT ADDITIONAL PROVISIONS OR CROSS OUT)

In witness whereof and intending to legally bind (myself) (ourselves), (my) (our) heirs, successors and assigns, (I) (we) have hereunto set (my) (our) hand(s) and seal this 30th day of FEB, 1999.

Albert L. Nelson
LANDOWNER Trustee (Print Name)

By: Albert L. Nelson, Trustee (Seal)
(Signature)

(Print Name)

By: _____
(Signature)

Exhibit "A"

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD
I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS RECORDED IN THE RECORDER'S OFFICE OF CLEARFIELD COUNTY, PENNSYLVANIA

INSTRUMENT NUMBER 199902726
RECORDED ON Mar 25, 1999
AT 1:54:31 PM

RECORDING FEES - $13.00
RECORDER
STATE IMPROVEMENT $1.00
FUND $1.00
RECORDER
IMPROVEMENT FUND $0.50
TOTAL PAY $15.50

KAREN L. STARCK
RECORDER OF DEEDS
CLEARFIELD COUNTY, PA

DEP Office Copy

ACKNOWLEDGEMENT OF INDIVIDUALS OR PARTNERS

LAND OWNER

1999105

ATE OF Pa. :
: SS
JNTY OF CLEARFIELD :

On FEB 3 1997, before me, the undersigned Notary, personally appeared
ALBERT L NELSON
[Name(s)]

wn to me (or satisfactorily proven) to be the person whose name is subscribed to this instru-
nt, and who acknowledged that HE
[he, she or they]
cuted the same and desires it to be recorded.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

AL) _____ My Commission Expires: _____
Notary Public [date]

Notarial Seal
Homer D. Edner, Notary Public
DuBois, Clearfield County
My Commission Expires Nov. 20, 2000
Member, Pennsylvania Association of Notaries

ACKNOWLEDGEMENT OF CORPORATIONS

LAND OWNER

Dept. of Env. Protection
Hawk Run District Office
MAR 25 1999 ACCEPTED
RECEIVED MAR 25 1999
HAWK RUN DISTRICT OFFICE

ATE OF :
: SS
JNTY OF :

On _____, before me, the undersigned Notary, personally appeared _____,

) acknowledged (herself) (himself) to be the _____ of
[Title of Person]

_____, a
[Name of Corporation]

oration, and the (s)he, as such officer, being authorized to do so, executed the foregoing in-
ment on behalf of the said corporation and desires that this instrument be recorded.

IN WITNESS WHEREOF, I have hereunder set my hand and official seal.

AL) _____ My Commission Expires: _____
Notary Public [date]

This instrument has been recorded in Clearfield
County, Pennsylvania, this 23rd day of February,
19 99, at Book Inst # 199902726, Page (s) _____.

RECORDER OF DEEDS

Karen L Starck
(Signed) (Print Name)

Karen L. STARCK My Commission Expires

U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement

OS200304073
109933

Part 1 – OSM-1
Coal Reclamation Fee Report

1. Reporting for X 1st, ___2nd, ___3rd or ___4th quarter, 2003

This certification covers the following permit number(s):

PA 17880116	PA 17880126
PA 17910101	PA 17940122
PA 17950106	PA 17950113
PA 17960107	PA 17960115
PA 17980118	PA 17980127
PA 17990105	PA 17990108
PA 33850123	PA 33970102
PA 33970105	

2. I hereby certify that the statements made herein are true, complete and correct to the best of my knowledge and belief and are made in good faith.

Joseph L. Waroquier, Jr.
Print in ink or type the name of reporting person, corporate officer, agent or director on behalf of the operator or the permittee.

Signature 05/23/2003 Date

3. Subscribed and sworn to before me in my presence the 23rd day of April, 2003.

Notary Public signature

NOTARIAL SEAL
JOSEPH M. WAROQUIER, Notary Public
Clearfield, Clearfield County, PA
My commission expires July 28, 2006

03050803

03 MAY -8 AM 9:51
DEPT OF INTERIOR
OFFICE OF SURFACE MINING
DENVER CO

WAROQUIER COAL CO
PO BOX 128
CLEARFIELD, PA
16830-0128

4. CR 200302607

Contact person: JOSEPH L WAROQUIER JR
Telephone number (814) 765-5681
Email Address (if available)
Reporting entity number 109933
Check one ___ electronic funds transfer
X check

5. Total payment
$ [redacted]

✓ # 5814
PM 5-5

Postmark by April 30, 2003

✓ Sean 4/02

Title 30 U.S.C. Section 1232 provides that any person, corporate officer, agent or director, on behalf of a coal mine operator who knowingly makes any false statements, representation or certification, or knowingly fails to make any statement, representation or certification required in this section shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than one year or both.

Approved by OMB, no. 1029-0063. Expires 06/03. Return to OSM or call Ludeen Leiter X296 at 1-800-799-4265 if you have any questions.

Exhibit "B"

Part 2 -- Coal Reclamation Fee Report, OSM-1

OS200304073
109933

You must fill out a Part 2 and Part 3 for each permit number you are reporting.

6. Reporting for X 1st, ___ 2nd, ___ 3rd or ___ 4th quarter, 2003

7. Permit Number 17990105 Mine Name KIMBLE State PA

a. MSHA number 3608778	e. Permittee name WAROQUIER COAL CO	h. Operator name WAROQUIER COAL CO
b. County CLEARFIELD Tribe	f. Address PO BOX 128	i. Address PO BOX 128
c. ☐ MINING COMPLETE Include inspection report, if available	CLEARFIELD, PA 16830-0128	CLEARFIELD, PA 16830-0128
d. ☐ All stockpile reported	g. Taxpayer I.D. 25-1732518	j. Taxpayer I.D. 25-1732518

8. Fee Computation

a. Gross tons 355.26	a. Gross tons	a. Gross tons
b. Moisture	b. Moisture	b. Moisture
(1) total %	(1) total %	(1) total %
(2) inherent %	(2) inherent %	(2) inherent %
(3) excess %	(3) excess %	(3) excess %
c. Reduced tons 00.00	c. Reduced tons	c. Reduced tons
d. Net tons 355.26	d. Net tons	d. Net tons
e. Rate $ .350	e. Rate $	e. Rate $
f. Calculated fee $ 124.34	f. Calculated fee $	f. Calculated fee $

Approved by OMB, no. 1029-0083
Expires 06/03

9. Total calculated fee for this permit number $ 124.34

OS200304073

109933

Part 3 -- Coal Reclamation Fee Report, OSM-1

Complete a Part 3 for each permit number you are reporting. This information is required under section 402(c) of the Abandoned Mine Reclamation Act of 1990.

10. Reporting for X 1st, ___2nd, ___3rd or ___4th quarter, 2003

Permit No. 17990105

11. Permit Number 17990105 Mine Name KIMBLE State PA

12.

Mineral Owners	Address	City	State	Zip
KIMBLR RICHARD & NANCY	BOX 234	LIBERTY	PA	16930

13.

Purchasers of Coal	Address	City	State	Zip

14.

Coal Delivered to: (prep plant, tipple, loading point)	Address	City	State	Zip

Approved by OMB, no. 1029-0063. Expires 08/03

If you need more space, please attach additional sheets.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.	*	
	*	
Plaintiff,	*	
	*	
v.	*	No. 2007-112-CD
	*	
ALBERT L. NELSON, Trustee Of the Albert L. Nelson Living Trust,	*	
Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a copy of the ANSWER, NEW MATTER AND COUNTERCLAIM was served on the following and in the following manner on the 20th day of March, 2007:

Hand Delivered To

Peter F. Smith, Esquire
30 South Second Street
PO Box 130
Clearfield, PA 16830

NADDEO & LEWIS, LLC.

By James A. Naddeo
James A. Naddeo
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	
	:	No. 2007-112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that a true and correct copy of a **COMPLAINT** was hand delivered to the attorney for the Defendant on February 28, 2007 at the following address:

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Respectfully submitted,

Date: February 26, 2007

Peter F. Smith, Esquire
Attorney for Plaintiff
P. O. Box 130, 30 South Second St.
Clearfield, PA 16830
(814) 765-5595

FILED
FEB 28 2007
01/10:30
William A. Shaw
Prothonotary/Clerk of Courts
no c/c

(#4)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,
Plaintiff

vs.

ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust,
Defendant

No. 2007-112-CD

Type of case:
CIVIL

Type of Pleading:
COMPLAINT

Filed on behalf of:
Counsel of Record for Plaintiff
Peter F. Smith, Esquire
Supreme Court ID #34291
30 South Second Street
P. O. Box 130
Clearfield, PA 16830
(814) 765-5595

Counsel of Record for Defendant:
James A. Naddeo, Esquire
Supreme Court ID #06820
207 East Market Street
P. O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

FEB 28 2007
0/10:00/cc
William A. Shaw
Prothonotary/Clerk of Courts

5 cert to Atty

#3

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	No. 2007- 112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

NOTICE TO DEFEND

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 other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR CANNOT AFFORD A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830
(814) 765-2641

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Clearfield County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

Clearfield County Court Administrator
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	No. 2007- 112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

COMPLAINT

COMES NOW, Waroquier Coal Co., Inc., by its attorney Peter F. Smith and in support of this Complaint avers:

1. Waroquier Coal Co., Inc., Plaintiff, is a Pennsylvania business corporation. Its registered office is at 3056 Washington Avenue, Clearfield, PA 16830 and mailing address of P. O. Box 128, Clearfield, PA 16830. Plaintiff will be referred to as "Waroquiers" throughout this pleading.

2. The Defendant is Albert L. Nelson. His last known address is 1149 South Main Street, DuBois, Pennsylvania 15801.

3. Mr. Nelson is sued in his fiduciary capacity as Trustee of the Albert L. Nelson Living Trust.

4. By deed dated November 1, 1993 and recorded November 30, 1993 in Clearfield County Record Volume 1572, Page 149 Albert L. Nelson in his individual capacity, transferred to himself as "Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust, under Trust Agreement dated October 1, 1993," several tracts of land, among which are the premises subject to this action.

5. The premises subject to this action appear as the "Second Thereof" in the foregoing deed. A true and correct copy of the relevant page of Defendant's deed to the premises in Book 1572, Page 150 is attached hereto incorporated herein by reference as Plaintiff's Exhibit 1.

6. The premises are also said to contain 49 acres and are identified by Clearfield County Tax Map Number 105-D06-00-038.1.

7. The premises are also described using the names of adjoining landowners in the agreement with Dressler and an agreement described below between the Defendant and Thomases and RAMM Coal Company as follows:

North - Kimble
East - Crescent Brick Division of RESCO Products, Inc.
South - Crescent Brick Division of RESCO Products, Inc. and Broad
West - Jacob D. Hayes

8. By agreement notarized February 3, 1997 the Defendant granted an Option and Lease Agreement on the subject property to W. Ruskin Dressler. A true and correct copy of said Agreement is attached hereto and incorporated herein by reference as Plaintiff's Exhibit 2.

9. This agreement between Defendant and Dressler was for an initial term of 3-years.

10. This agreement grants Dressler the exclusive right to prospect for and mine coal from Defendant's parcel in Brady Township.

11. Two years later on February 23, 1999, in conjunction with said agreement, Plaintiff signed and delivered to Mr. Dressler a Contractual Consent of Landowner for the purpose of strip mining coal. Said Consent was recorded at Clearfield County Instrument Number 199902726.

12. Said consent constituted written notice from Dressler to Defendant that Dressler had elected to exercise his option to strip mine the premises and Defendant's consent thereto.

13. Dressler commenced mining operations on the premises and an adjoining property owned by Richard L. Kimble and Nancy C. Kimble within the initial 3-year term of his agreement with Defendant.

14. Commencement of mining operations extended the term of the agreement between Defendant and Dressler pursuant to paragraph 5 of the agreement, "...until all of the minable and merchantable coal has been exhausted from the premises."

15. Paragraph 9 of the agreement between Defendant and Dressler states that "...rights, duties and obligations shall extend to and be binding upon the parties, their heirs, executors, administrators and assigns..."

16. Dressler transferred his surface mining permit for the Defendant's and the Kimbles' properties to Waroquier by agreement dated January 18, 2001. A true and correct copy of the said agreement is attached hereto and incorporated herein by reference Plaintiff's Exhibit 3.

17. Said transfer constituted an assignment by Dressler to Waroquier of his rights under his lease with Defendant.

18. Waroquier continued surface mining coal on the premises into 2004.

19. On April 12, 2003, the Defendant entered Articles of Agreement with Roger A. Thomas and Miriam R. Thomas t/d/b/a RAMM Coal Company. A true and correct copy of said Articles is attached hereto and incorporated herein by reference as Plaintiff's Exhibit 4.

20. Said Articles were for the purpose of strip-mining coal under the Defendant's property described by paragraphs 5, 6, and 7 above.

21. Said Articles purport to lease to the Thomases and RAMM the premises in Brady Township subject to this action and which were originally leased to Dressler and transferred to Plaintiff.

22. The lease between Defendant and Dressler, which was assigned by Dressler to Plaintiff, was still in full force and effect on April 12, 2003, and Plaintiff was in fact actively mining the premises during that period.

23. The Thomases and Ramm entered upon the premises and stripped mined coal from June of 2003 through November of 2005.

24. Ramm has produced documents in other litigation at Clearfield County Docket Number 2005-1842-CD showing that at least 17,198.59 tons of coal for total royalties sold by Ramm for $715,769.41, and Defendant received royalties of $72,349.63 from RAMM. Attached hereto and incorporated herein by reference as Plaintiff's Exhibit 5 is a schedule itemizing monthly coal totals, royalties and payments.

25. Waroquier did not assign or forfeit its rights under the lease it obtained of the premises from Mr. Dressler.

26. Neither Defendant nor the Thomases nor RAMM obtained Waroquier's consent to the Articles of Agreement between Defendant, Thomases and RAMM, nor did Waroquier in anyway agree that these other mining operations could be conducted on the premises.

27. Defendant's lease of the coal in place to Dressler constituted a sale of said coal to Dressler under Pennsylvania law. Dressler then sold this coal to Waroquiers when he sold them his right to mine it under the surface mining permit. Therefore, Defendant had no right or title in the coal to lease to Thomases and/or RAMM.

28. Defendant's execution of the Articles of Agreement with Thomases and RAMM and their mining thereunder constitute a breach of Waroquier's exclusive right to mine coal from the premises, and Waroquier has thereby been deprived of its opportunity to mine, remove and sell that coal.

WHEREFORE Waroquier prays this Honorable Court that judgment be entered in its favor and against the Defendant in excess of $25,000.00 together with costs and interest from the date of breach.

Respectfully submitted,



Date: February 26, 2007

Peter F. Smith, Attorney for
Waroquier Coal Co., Inc.

VERIFICATION

We verify that the statements made in this Complaint are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

WAROQUIER COAL CO., INC.

Dated: 2/26/07

Joseph L. Waroquier, Jr., President

THE SECOND THEREOF:

ALL those certain premises situate in Brady Township, Clearfield County, Pennsylvania, more commonly known as the Benjamin Carson Place, containing about 50 acres more or less, and bounded and described as follows:

> On the North by lands now or formerly of Recissa Dressler, formerly a part of the estate of Joseph Seyler, deceased; on the East by lands now or formerly of the estate of Lewis N. Kirk, deceased; on the South, in part by lands now or formerly of T. H. Seyler, formerly of Jos. Seyler, Jr., deceased, and in part by lands now or formerly of the DuBois Brewing Company, formerly of Andrew Pentz, Jr., deceased; and on the West in part by lands now or formerly of George B. Wachob, and in part by lands now or formerly of James Luther, formerly the Hugh Kelley Place.

TOGETHER with all of the right, title, and interest of the party of the first part in a gas oil lease entered into between Ord L. Oakes and Laura Oakes and T. W. Phillips Gas and Oil Company by lease dated November 9, 1950, and recorded at Clearfield, Pennsylvania, in Miscellaneous Book No. 78, Page 239.

BEING the same premises conveyed to the Grantor by Deed dated March 1, 1991, and recorded in the Office for Recording of Deeds in and for Clearfield County in Deed Book Volume 1388, Page 081 on March 8, 1991.

EXCEPTING AND RESERVING from the above conveyance the surface and all buildings situate on the following described premises:

> Beginning at a point in the center line of a township road, said point also being on the western boundary line of the larger premises of which this is a part; thence by the center line of said township road South 79 degrees, 55' East 334.8 feet more or less to a point in the center line of said township road; thence through land of which this is a part North 8 degrees, 10' East 121.7 feet more or less to a point; thence still through land of which this is a part North 80 degrees, 30' West 370.7 feet more or less to a point on the said western boundary line of the larger premises of which this is a part; thence by the said western boundary of the larger premises South 9 degrees, 00' East 124.5 feet to a point and place of beginning.

Option and Lease Agreement

THIS ARTICLE OF AGREEMENT made and concluded this ..... day of ....., 19 96,
between ALBERT L. NELSON, Trustee of The Albert L Nelson Living Trust party
1149 South Main Street, DuBois, PA 15801
L/T/A Dated 10/1/93

party of the first part, hereinafter designated as Lessor, and W. RUSKIN DRESSLER, of Box 39,
Rockton, Pennsylvania, 15856 party
of the second part, hereinafter designated as Lessee, witnesseth:

1. In consideration of the sum of $ 1.00 in hand paid, receipt whereof is hereby acknowledged, Lessor hereby leases, lets, and demises unto Lessee, ALL of the surface ~~[illegible]~~ mineable by auger
seam or vein of coal in, under and upon all that certain piece, parcel or tract of land situated in Brady
Township, Clearfield County, Pennsylvania, bounded and described as follows:

North - Kimble
East - Crescent Brick Division of RESCO Products, Inc.
South - Crescent Brick Division of RESCO Products, Inc. and Broad
West - Jacob D. Hayes Deed Book Vol 1572 Page 148

Recorded 11-30-93

containing 49.0 acres, more or less.

TOGETHER with all the mining rights and easements owned by Lessor and appurtenant to the coal and land herein described, including the right of ingress, egress, and regress, in, to and upon said land for the purpose of exploring for and of mining, manufacturing, testing and preparing said coal for market, to build roads, railroads and tram roads, to build buildings, tipples and chutes, to deposit waste material and refuse on the surface of the land, to build wire and pipe lines, to drain water upon the surface by any means, to transport coal from other properties through or over this premises and to do all things necessary, usual and proper in connection with said operations, and Lessor hereby waives all right to surface support, both laterally and subjacent, and releases all liability for damage to buildings and objects thereon and waters therein and thereon. Said coal may be removed either by drift mining or stripping process and all of the usual rights and privileges are hereby granted in connection therewith including the removal and redeposit of all trees and other objects and materials overlying said coal, to be exercised without further cost or liability for the damage caused thereby.

ALSO TOGETHER WITH: XXXX

EXCEPTING AND RESERVING XXXX

2. Lessee covenants and agrees to pay to Lessor the sum of Two Dollars ($2.00) ~~XXXX~~ per ton of 2,000 pounds for all mineable merchantable and marketable coal mined and removed from said premises. Settlements to be made on the twenty-fifth day of each month for all such coal mined and removed from the premises during the preceding calendar month and all settlements shall be based upon the weights by which the coal is marketed. It is further understood and agreed that Lessee will pay ten (10%) percent of pit price or $2.00 per ton, whichever is greater.

3. Lessee covenants and agrees to commence mining operations upon said premises within three (3) years from the effective date of this lease and in event of failure so to commence mining operations agrees to pay Lessor as a minimum royalty the sum or price of XXX per year, payable quarterly in advance.

4. Lessee agrees that all mining operations shall be conducted in accordance with the laws of Pennsylvania and modern mining methods prevailing in the industry. It is also understood that Lessor shall have access to the operations and scale records of Lessee at all reasonable times in person or by duly authorized agent.

5. This lease shall continue for a period three (3) years from the effective date hereof, or until all of the mineable and merchantable coal has been exhausted from the premises. Lessee may remove all equipment, buildings and machinery from the premises at the end of the term provided no royalty is then due.

6. This article of agreement shall constitute and be construed an option granted by Lessor to Lessee so that Lessee may elect to accept or reject it at any time during XXX days from the date hereof. Upon acceptance this instrument shall become immediately effective in all its terms as a lease of the coal in place. During the option period Lessee may go upon the premises for the purpose of surveying, drilling, digging, exploring, testing, taking samples, and otherwise examining said coal, without liability for the damage, caused thereby or for the coal taken in such explorations. Lessee may exercise this option by notifying Lessor in writing of its elections to do so within the option period aforesaid.

7. It is understood and agreed that in the event that Lessee should default in any payment provided for herein and remain in such default for a period of ninety days from the date when said payment becomes due, or should Lessee be in default in any other respect and continue in such default for a period of ninety days after being notified in writing of such default by Lessor, then, in either event, at the option of Lessor, this lease shall cease and terminate and Lessee hereby authorizes any attorney of any Court of Record to appear for it and in its name to confess a judgment against it in an amicable action of ejectment in the end that a writ of [illegible] issue forthwith for the delivery of possession to Lessor, together with clause of fieri faci

8. It is further understood and agreed that XXX

EXHIBIT 2

9. It is mutually understood and agreed that the rights, duties and obligations created hereby shall extend to and be binding upon the parties, their heirs, executors, administrators and assigns, and that the singular herein shall include the plural.

10. Lessor hereby warrants generally the title to said coal and mining rights and this lease shall be free and clear of all encumbrances except those for which waiver and consent hereto is obtained and Lessee may in all cases apply royalty payments to the satisfaction of such encumbrances as may be found to exist.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals and caused this article of agreement to be duly executed by their officers, the day and year aforesaid.

Witness:

D. W. Lam

RESIGNED

Albert L. Nelson, Trustee (Seal)
(ALBERT L. NELSON) Lessor

Trustee (Seal)

(Seal)

(Seal)

(Seal)

W. Ruskin Dressler (Seal)
(W. Ruskin Dressler) Lessee

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD } ss:

On this 3rd day of February 1997 before me, a Notary Public in and for the County of CLEARFIELD and State of Pennsylvania, came the above named ALBERT L. NELSON

who in due form of law acknowledged the foregoing Article of Agreement to be his act and deed, and desired the same to be recorded as such.

Witness my hand and OFFICIAL seal the day and year aforesaid.

Andrew L Booth

My Commission Expires

Notarial Seal
Andrew L. Booth, Notary Public
DuBois, Clearfield County
My Commission Expires Oct. 14, 1997
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Clearfield } ss:

On this 3rd day of February, 1997, before me, a Notary Public in and for the County of CLEARFIELD and State of Pennsylvania, came the above named W. Ruskin Dressler

who in due form of law acknowledged the foregoing Article of Agreement to be his act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

Andrew L Booth

My Commission Expires

Notarial Seal
Andrew L. Booth, Notary Public
DuBois, Clearfield County
My Commission Expires Oct. 14, 1997
Member, Pennsylvania Association of Notaries

OFFICE: 814 765-5681
FAX: 814 765-5185

TIPPLE: 814 765-3492

WAROQUIER COAL, INC.
Coal Producers
P.O. BOX 128
CLEARFIELD, PA. 16830

#3

COPY

January 18, 2001

AGREEMENT

This 22 of January 2001, WAROQUIER COAL CO., INC. agrees to resume the permit #17990105 of Ruskin Dressler. We will pay Ruskin Dressler $15,000 (Fifteen Thousand Dollars) for this permit. Also, a payment of an override fee of $1.00 (One Dollar) for each ton of coal mined off of this permit. Settlements in payments of royalty shall be made on the 25th day of each month for all coal mined and removed from the premises during the preceding calendar month and shall be accompanied by a copy of all weight slips showing the number of tons of coal mined and removed.

Waroquier Coal Co., Inc. Agrees to pay Ruskin Dressler $5,000 (Five Thousand Dollar) for the road bond if Brady Township will not refund Ruskin Dresslers moneys for the road bond.

Waroquier Coal Co., Inc. agrees to sell Ruskin Dressler house coal out of this mine at pit price.

Waroquier Coal Co., Inc. will be working under Ruskin Dressler Permit until the transfer for the permit is made. Waroquier Coal Co., Inc. will be responsible for all mining activity through MSHA and DEP Regulations excluding Ruskin Dressler.

Ruskin Dressler is responsible for the up keep of this area and any MSHA fines that may accrue from his area.

In case of death the Royalty of this agreement will go to Bernice V. Oman, RD# 2 Box 231A, Dubois, PA 15801.

January 26th, 2001 Waroquier Coal Co., Inc. is advancing Ruskin Dressler $15,000 (Fifteen Thousand Dollars) on Advance Royalty in which Waroquier Coal Co., Inc. will recoup from the override fee of $1.00 (One Dollar) a ton when mining begins

EXHIBIT 3

until sum is collected. After sum is collected all will be based on what is stated in the first paragraph of this agreement.

ATTEST:

RUSKIN DRESSLER

WAROQUIER COAL CO., INC

GARY V. WAROQUIER,
SECRETARY OF TREASURER

NOTARIAL SEAL
TAWNEY J. BOWER, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires September 27, 2004

Articles of Agreement

This agreement made the 12th day of April, 2003, by and between, Albert L. Nelson trustee of the Albert L. Nelson Living Trust, 1149 S. Main St. DuBois, PA 15801, the Lessor,

And

Roger A. Thomas and Miriam R. Thomas t/d/b/a RAMM COAL Co. of R.D. #1, Box 16, Rockton, PA, whether one or more, called the Lessee.

Witnesseth:

1. Lessor, for and in consideration of the sum of One ($1.00) Dollar, in hand paid, the receipt whereof is hereby acknowledged, does hereby let, lease and demise unto Lessee, ALL of that piece or parcel of land, to get underlying said piece or parcel of land, being in Brady Township, Clearfield County, Pennsylvania, containing 49 acres, more or less, and bounded as follows:

   One the north by Kimble;
   On the east by Crescent Brick Division of RESCO Products Inc.
   On the south by Crescent Brick Division of RESCO Products Inc.
   On the west by Jacob D. Hayes

   Parcel No. D06-00-038.1

   This agreement contemplates a memorandum of lease for recording.

   Lessor covenants with Lessee that Lessor is the owner of the surface and all coal in, under, and upon the said described premises and agree to save and hold harmless the Lessee from any and all actions at law or equity which may result in the event the Lessor is found not to be the owner of the same.

2. Lessor further grants to Lessee the right of ingress, egress, and regress into, through and upon the above described premises for the purpose of examining, searching for, prospecting, mining said coal by the surface, drift, deep or strip mining methods, and preparing said coal for market, and taking, storing, removing and transporting the same, and for these purposes the said Lessee shall have the right to mine and remove the coal by the surface, drift, deep or strip mining process, together with the right to use and occupy so much of the surface of the aforesaid land so far as may be necessary or convenient for the proper operation of mining for the removal of said coal or the shipping of the same, together with the right to deposit dirt or waste from such operation upon the surface there of except as otherwise provided here in.

3. Lessor further grants to Lessee a release of all damages to the surface and right to surface support, both lateral and subjacent strata of said land, the waters therein or thereon, and building and objects now or hereafter to be erected thereon, and trees which may be caused by prospecting, drilling, testing, mining and removal of the said coal.

4. It is further agreed that this lease does contemplate mining by surface mining methods including, but not limited to, strip mining. The Lessor, therefore, leases and lets unto Lessee all rights of title possessed by the said Lessor which may not be referred to above, to allow the surface exploration, drilling, testing, mining, removal, marketing and transporting of the coal in the premises.

5. This lease shall continue for a period of five (5) years from the date hereof and so long thereafter as continuous coal mining operations are taking place. This lease shall unconditionally terminate five years from the date hereof or when actual coal mining operations on the property cease to be continuous, whichever last occurs. Upon termination of the lease, Lessee may remove all equipment, buildings and machinery from the premises, provided no royalty is then due. Termination of this lease shall in no way waive or release Lessee's obligation of compliance with Federal or State law or regulations pertaining to operations conducted on the premises. This agreements, however, recognizes that Lessee may be required to maintain at one piece of equipment on the premises because of security required by the Commonwealth of Pennsylvania restrictions and regulations to comply with backfilling and restoration of the premises. In such cases the maintenance of said equipment, for security purposes, shall not be considered a breach of carryover by either party. This lease further recognizes that after removal of coal from the premises within the term of this lease, complete compliance with the required backfilling, contouring, retopsoiling and planting may not be possible. Lessee therefore shall have the right of carryover for purposes only of compliance with State or Federal law or regulation. Such carryover, however, shall not be construed or meant to be a carryover for the purpose of mining or removing coal.

6. Lessee agrees to pay as royalty to Lessor an amount equal to the sum of Two ($2.00) dollars or Ten (10%) percent of pit price per ton of 2,000 pounds of coal whichever is greatest. Settlement in payments of royalty shall be made on the last day of each month for all coal mined and removed from the premises during the preceding calendar month. Royalty computation shall be based on the weights by which the coal is marketed, and shall be evidenced by truck weight invoices or statements of coal transported by truck from the premises and accordingly weighed for tonnage, or railroad receipts or statements of coal loaded from the premises at railroad tipple sites. It is further understood and agreed that there shall be no advanced royalty payments.

7. Lessee agrees to keep at all times full and complete records and books of account showing the amount of coal mined and removed and shipped from the leased premises, which records and books of account shall be open at all reasonable times for the inspection and examination of the Lessor, their agents, or successors. Lessee shall and will also give Lessor, Lessor's duly authorized agent, at reasonable times, access to any and all portions of the leased premises and to the operations in connection therewith.

8. Lessee covenants and agrees to operate by approved methods and to comply with all Federal and State laws or regulations regarding mining, operating and transportation of said coal, including but not limited to, backfilling and drainage and anti-pollution laws of the State and Federal government. Lessor, or Lessor's agent, shall have access to the operations on or in the leased premises at any reasonable time.

9. This agreement recognized that after entry by Lessee the exclusive control of the premises actually being used by Lessee ad the exclusive control of all mining from the surface, shall be with the Lessee, and Lessee agrees that any charge, liability or cause of action arising from his use of the premises or from any tortious conduct on the part of his agents, officers and employees shall be the responsibility of Lessee. Furthermore, Lessee agrees to release, save, indemnify and hold harmless Lessor from any cause of action, claim or liability arising because of the conduct or omissions of Lessee, his agents, officers and servants or because of the said Lessee's use of the premises.

10. Lessor agrees to pay assessments on the value of the coal in place, as it is now being taxed. Should there be an assessment or a reassessment during the course of mining operations Lessee agrees to pay the increased assessment caused by the mining and severance of the coal.

11. On the failure of the Lessee to pay the minimum royalty on coal actually mined and keep all of the covenants in this lease or remove from the premises at the determination of the same and failure to remedy said breach within ninety (90) days after notice, then the Lessee hereby authorized and empowers any attorney of any court of record in Pennsylvania to appear in court and confess

judgment in favor of Lessor and against Lessee, in an amicable action of ejectment for the premises above described, and authorize the immediate issuance of a writ of habere facias possessionem, with a clause fieri facias, for royalty due within five (5) days from the confession of said judgement.

12. It is expressly understood and agreed between the parties hereto that this lease and the grants hereunder are made subject to all restrictions, reservations, conditions, exceptions, covenants and agreements under the deed, grants and conveyances by virtue of which Lessor is only granting such rights as Lessor has the right to grant under and by virtue of the said instrument of conveyance.

13. This agreement reserves the right unto Lessee to cancel and terminate the lease agreements at any time by giving a thirty (30) day notice to Lessor. Any cancellation hereunder shall not relieve the Lessee of any obligation of payment for any amounts owing under the lease. Furthermore, all amounts paid to Lessor shall remain that of Lessor as a consideration for this lease without any duty to refund or rebate.

14. It is mutually understood and agreed that the rights, duties and obligations created hereby shall extend to and be binding upon the parties, their heirs, executors, and administrators, and that the singular here- in shall include the plural.

15. This agreement contains the entire understanding of the parties. It may be changed only by agreement in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LESSOR
ALBERT L. NELSON, trustee Albert L. Nelson Living Trust

Albert L. Nelson, Trustee
Albert L. Nelson

LESSEE
ROGER A. THOMAS AND MIRIAM R. THOMAS

t/d/b/a
RAMM COAL CO.

Roger A. Thomas
Roger A. Thomas

Miriam R. Thomas
Miriam R. Thomas

County of Jefferson
State of PA
Roger A. Thomas & Miriam R. Thomas appeared before me and signed on this the 12th day of April 2003.

Notarial Seal
Kathy D. Wymer, Notary Public
Gaskill Twp., Jefferson County
My Commission Expires Oct. 16, 2003
Member, Pennsylvania Association of Notaries

(STATE OF PENNSYLVANIA

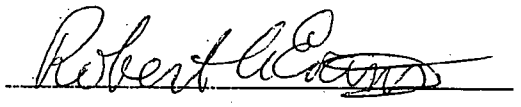
ss. (

(COUNTY OF ALLEGHENY

On April 16, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared ALBERT L. NELSON, TRUSTEE, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

NOTARY SEAL

Signature 

My Commission Expires _____

NOTARIAL SEAL
ROBERT A EVANS, NOTARY PUBLIC
CITY OF GREENSBURG, WESTMORELAND CO., PA
MY COMMISSION EXPIRES JULY 5, 2005

ADDENDUM TO ARTICLES OF AGREEMENT
Dated 12 day of April month, 2003

This agreement reserves the right unto the lessor. To cancel and terminate this lease agreement as to any piece or parcel of land under this agreement for which the lessee is unable to obtain a mining permit from the Commonwealth of Pennsylvania, at any time by giving a 30 day written notice to the lessee.

LESSOR
ALBERT L. NELSON, trustee Albert L. Nelson Living Trust

Albert L. Nelson, Trustee
Albert L. Nelson

Roger. A. Thomas and Miriam R. Thomas t/d/b/a
RAMM COAL COMPANY

Roger A. Thomas
Roger A. Thomas

Miriam R. Thomas
Miriam R. Thomas

County of Jefferson
State of PA
Roger A. Thomas & Miriam R. Thomas appeared before me and signed on this the 12th day of April 2003.

Notarial Seal
Kathy D. Wymer, Notary Public
Gaskill Twp., Jefferson County
My Commission Expires Oct. 16, 2003
Member, Pennsylvania Association of Notaries

(STATE OF PENNSYLVANIA

ss. (

(COUNTY OF ALLEGHENY

On April 16, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared ALBERT L. NELSON, TRUSTEE, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

NOTARY SEAL

Signature Robert A Evans

My Commission Expires

NOTARIAL SEAL
ROBERT A EVANS, NOTARY PUBLIC
CITY OF GREENSBURG, WESTMORELAND CO., PA
MY COMMISSION EXPIRES JULY 5, 2005

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CONTRACT NO. (Department Use ONI

CONTRACTUAL CONSENT OF LANDOWNER

(I) (we), the undersigned, being the owner(s) of 49 acres of land located in Brady Township (Township, Borough, City) Clearfield County, as described in the deed(s) recorded in the Recorder of Deeds Office Book(s) and pages(s) 1572/148 and shown by crosshatched lines on the maps attached hereto which is signed in the original by the landowner up which RAM Coal Company (Name of Contractor) proposes to engage in reclamation activities under a contract for which a proposal will made to the Department of Environmental Protection and to which contract this consent will be made a part, DO HEREBY ACKNOWLEDGE THAT THE CONTRACTOR HAS THE RIGHT TO ENTER UPON AND USE THE LAND FOR THI PURPOSES OF CONDUCTING INCIDENTAL AND NECESSARY COAL REMOVAL AND SURFACE RECLAMATION ACTIVITES. Furthermore, (I) (We), the undersigned, do hereby irrevocably grant to the Contractor and the Commonwealth of Pennsylvania the right to enter upon the aforesaid land during the contract term and for a period of three (3) years after the termination of the contract for the purposes of inspecting, studying, backfilling, planting and reclaiming the land and abating pollution in accordance with the provisions of the Surface Mining Conservation and Reclamation Act, the Clean Streams Law, the coal Refuse Disposal Control Act, and the Dam Safety and Encroachment Act as amended, rules and regulations promulgated thereunder, and in accordance with the provisions of the contract entered int with the Contractor. (I) (We) do hereby grant in addition to the Commonwealth for the aforesaid period of time, a right of entry across any adjoining of contiguous lands owned by (us) (me) in order to have access to the land described herein. It is specifically agreed and understood that his contractual consent give the Commonwealth right to enter, inspect, study, backfi plant and reclaim the land and abate pollution therefrom as a matter within the police power but does not obligate the Commonwealth to do so, and does not constitute any ownership interest by the Commonwealth in the aforesaid land.

This Consent shall not be construed to amend or impair any contractual agreement between the Contractor and the landowner. Unless expressly stated otherwise on this form, it is understood that the landowner consents to the transferability of this form to eligible successor contractors, their agents, or assigns.

(Insert Additional Provisions or Cross Out)

_____ I/We consent to the beneficial utilization of coal refuse ash on my/our property for the purpose of land reclamation.

_____ I/We consent to the beneficial utilization of sewage sludge on my/our property for the purpose of land reclamation.

In witness whereof and intending to legally bind (myself) (ourselves), (my) (our) heirs, successors and assigns, (I) (we) have hereunto set (my) (our) hand(s) and seal this 16th day of August, 2001.

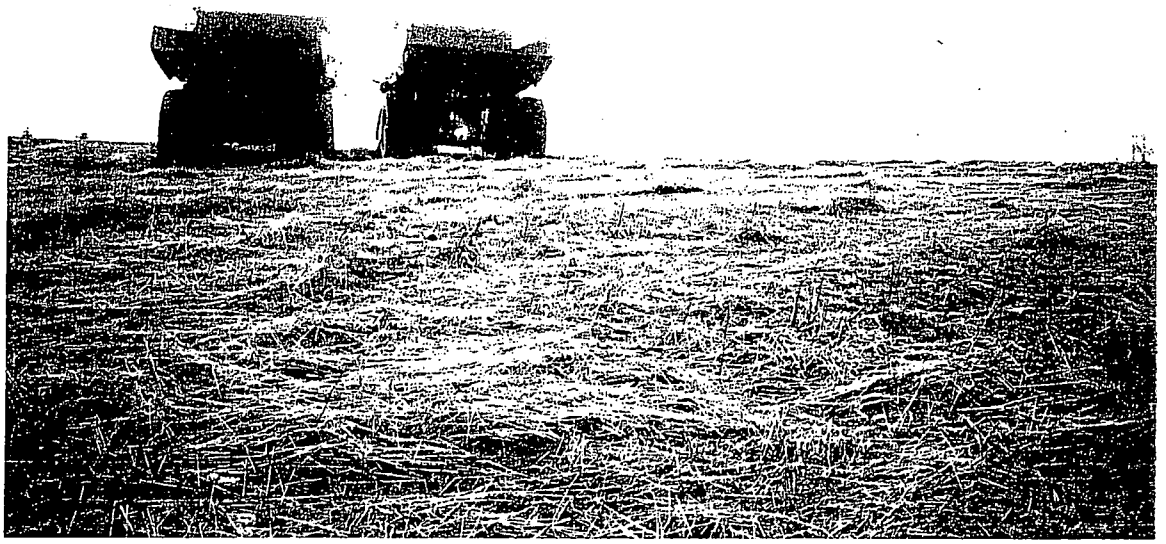
Albert L. Nelson, Trustee
Landowner (Print Name)

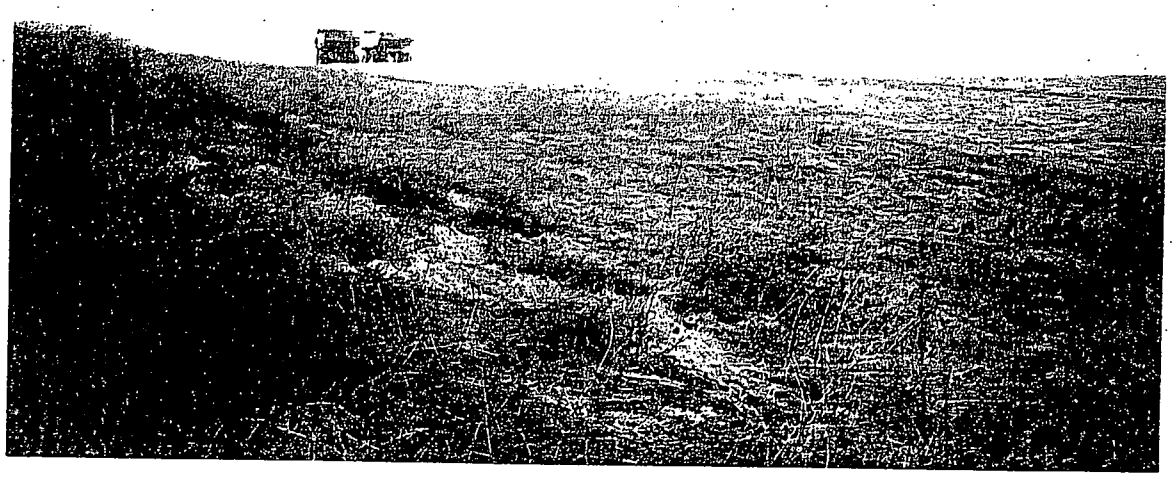
By: Albert L. Nelson, Trustee
(Signature) (Seal)

Albert L. Nelson
(Print Name)

By: Albert L. Nelson
(Signature) (Seal)

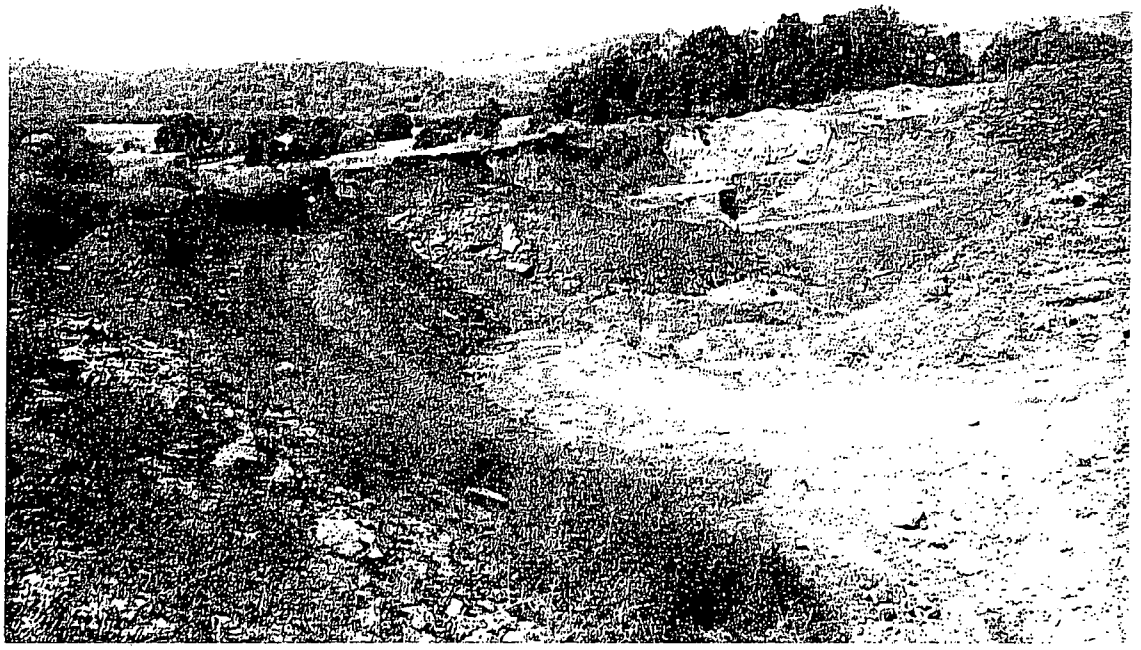
(Print Name)





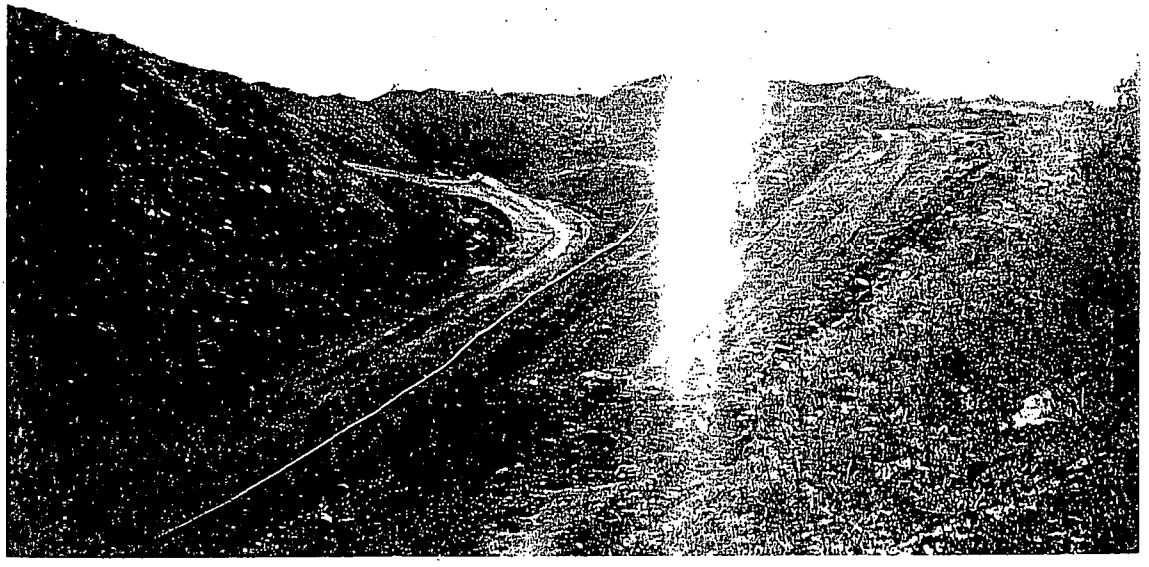


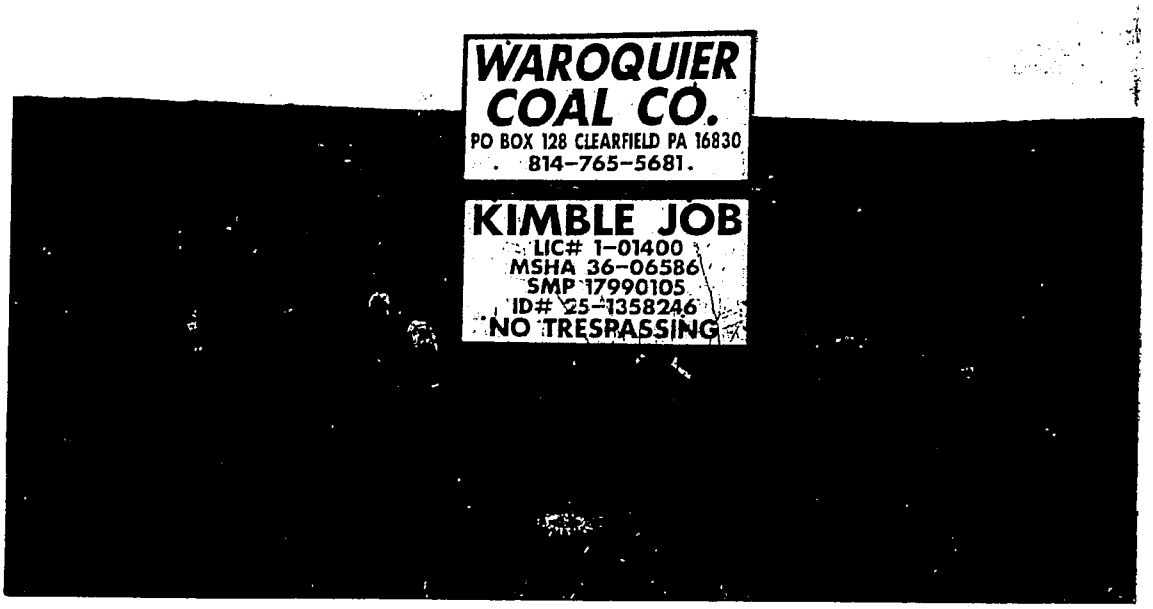











WAROQUIER
COAL CO.
PO BOX 128 CLEARFIELD PA 16830
814-765-5681.
KIMBLE JOB
LIC# 1-01400
MSHA 36-06586
SMP 17990105
ID# 25-1358246
NO TRESPASSING



RAMM COAL, INC.

Check date	Tonnage	Price per ton	Amt of Check to Nelson	Total Paid Ramm
6/30/2003	692.15	$24.50	$1,695.77	$9,252.97
7/24/2003	736.67	$24.50	$1,804.84	$18,048.42
8/30/2003	569.85	$27.28	$1,554.55	$15,545.51
8/30/2003	708.1	$27.13	$1,922.49	$19,210.75
11/13/2003	639.05	$26.58	$1,699.74	$16,985.95
7/3/2004	894.7	$46.51	$4,161.25	$41,612.50
8/6/2004	476.45	$45.27	$2,156.89	$21,568.89
9/28/2004	998.2	$45.85	$4,576.75	$45,767.47
10/25/2004	527.75	$44.30	$2,337.60	$23,379.33
11/15/2004	730.95	$46.14	$4,567.20	$33,726.03
11/15/2004	243.1	$47.97		$11,946.01
11/30/2004	539.3	$47.16	$2,543.33	$25,433.39
1/26/2005	569.5	$45.23	$2,575.85	$25,758.49
4/5/2005	1103.09	$46.99	$5,183.42	$51,834.20
5/2/2005	1409.05	$45.54	$6,416.81	$64,168.14
5/31/2005	1724.6	$46.65	$8,045.26	$80,452.59
6/29/2005	384.3	$47.17	$1,812.75	$18,127.43
7/27/2005	2253.28	$46.90	$10,567.88	$105,678.83
8/31/2005	766.35	$41.97	$3,216.37	$32,163.71
10/1/2005	653.2	$45.30	$2,957.88	$29,578.80
11/30/2005	578.95	$44.10	$2,553.00	$25,530.00
	17,198.59 tons		$72,349.63	$715,769.41

EXHIBIT 5

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,

Plaintiff,

vs.

ALBERT L. NELSON, TRUSTEE
Of the Albert L. Nelson
Living Trust,

Defendant.

No. 2007-112-CD

Type of Pleading:

PRAECIPE FOR ENTRY OF APPEARANCE and ACCEPTANCE OF SERVICE

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

NADDEO & LEWIS, LLC.
207 East Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED
01:39 BM
JAN 25 2007
William A. Shaw
Prothonotary/Clerk of Courts

2 CC Atty Naddeo
GK

#2

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.	*	
	*	
Plaintiff,	*	
	*	
v.	*	No. 2007-112-CD
	*	
ALBERT L. NELSON, Trustee Of the Albert L. Nelson Living Trust,	*	
	*	
Defendant.	*	

PRAECIPE FOR ENTRY OF APPEARANCE AND ACCEPTANCE OF SERVICE

Please enter my appearance on behalf of the Defendant in the above-captioned action.

Service of Writ of Summons issued in the above-captioned case is hereby accepted on behalf of Defendant this 25th day of January, 2007.

NADDEO & LEWIS, LLC.

James A. Naddeo, Esq.
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.	*	
	*	
Plaintiff,	*	
	*	
v.	*	No. 2007-112-CD
	*	
ALBERT L. NELSON, Trustee Of the Albert L. Nelson Living Trust,	*	
Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a copy of the PRAECIPE FOR ENTRY OF APPEARANCE and ACCEPTANCE OF SERVICE was served on the following and in the following manner on the day of January, 2007:

Hand Delivered To

Peter F. Smith, Esquire
30 South Second Street
PO Box 130
Clearfield, PA 16830

NADDEO & LEWIS, LLC.

James A. Naddeo
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,
Plaintiff

vs.

ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust,
Defendant

No. 2007- 112 -CD

Type of case:
CIVIL

Type of Pleading:
PRAECIPE FOR WRIT OF SUMMONS

Filed on behalf of:
Counsel of Record for Plaintiff
Peter F. Smith, Esquire
Supreme Court ID #34291
30 South Second Street
P. O. Box 130
Clearfield, PA 16830
(814) 765-5595

Counsel of Record for Defendant:
James A. Naddeo, Esquire
Supreme Court ID #06820
207 East Market Street
P. O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED Atty pd. 85.00
01/3:10/07 No CC
JAN 23 2007 2 writs to Atty
William A. Shaw
Prothonotary/Clerk of Courts

#1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	No. 2007- -CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

PRAECIPE FOR WRIT OF SUMMONS
(Pa.R.C.P. No. 1351)

To: William A. Shaw, Clearfield County Prothonotary

Kindly issue a Writ of Summons in the above-captioned action.

Respectfully submitted,

Date: 1/23/07

Peter F. Smith, Esquire
Attorney for Plaintiff
P. O. Box 130, 30 South Second Street
Clearfield, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,
Plaintiff

vs.

ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust,
Defendant

No. 2007- 112 -CD

Type of case:
CIVIL

Type of Pleading:
WRIT OF SUMMONS

Filed on behalf of:
Counsel of Record for Plaintiff
Peter F. Smith, Esquire
Supreme Court ID #34291
30 South Second Street
P. O. Box 130
Clearfield, PA 16830
(814) 765-5595

Counsel of Record for Defendant:
James A. Naddeo, Esquire
Supreme Court ID #06820
207 East Market Street
P. O. Box 552
Clearfield, PA 16830
(814) 765-1601

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	No. 2007-112 -CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

WRIT OF SUMMONS
(Pa.R.C.P. No. 1351)

To: ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust
C/O James A. Naddeo, Esquire

You are hereby notified that WAROQUIER COAL CO., INC. has commenced an action against you.

Date: 1/23/07

William A. Shaw
Clearfield County Prothonotary

65508

RECORD
MAY 12 2008
PITTSBURGH OFFICE OF
SUPERIOR COURT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,

Plaintiff,

vs.

ALBERT L. NELSON, TRUSTEE
Of the Albert L. Nelson
Living Trust,

Defendant.

No. 2007-112-CD

Type of Pleading:

EVIDENCE EXHIBITS IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (A-G)

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: November 2, 2007

FILED ICC
03:34 Bt Atty
NOV 02 2007
William A. Shaw
Prothonotary/Clerk of Courts
6K

(#8)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC. Plaintiff,	*	
v.	*	No. 2007-112-CD
ALBERT L. NELSON, Trustee Of the Albert L. Nelson Living Trust, Defendant.	*	

EVIDENCE EXHIBITS IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant, Albert L. Nelson, Trustee of the Albert L. Nelson Living Trust, by his undersigned counsel, respectfully files the following documents being attached hereto as evidentiary exhibits in support of his Motion for Summary Judgment filed contemporaneously herewith:

EXHIBIT LETTER	DESCRIPTION
A	Option and Lease Agreement (Nelson-Dressler)
B	Contractual Consent of Landowner
C	Reply to Motion to Join Additional Defendants, filed by W. Ruskin Dressler to No. 05-1842-CD
D	Deposition of W. Ruskin Dressler
E	Agreement (Waroquier Coal-Dressler)
F	Completion of Mining Report

G Reclamation Letter dated July 4, 2003

H Deposition of Joseph L. Waroquier, Jr.

I Deposition of Gary V. Waroquier

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Defendant

EXHIBIT A

Option and Lease Agreement

5

THIS ARTICLE OF AGREEMENT made and concluded this ..... day of 19 96,
between ALBERT L. NELSON, Trustee of The ALBERT L NELSON Living Trust ~~MYER~~
1149 South Main Street, DuBois, PA 15801
U/T/A DATED 10/1/93

party of the first part, hereinafter designated as Lessor, and W. RUSKIN DRESSLER, of Box 39, Rockton, Pennsylvania, 15856 party of the second part, hereinafter designated as Lessee, witnesseth:

1. In consideration of the sum of $ 1.00, in hand paid, receipt whereof is hereby acknowledged, Lessor hereby leases, lets, and demises unto Lessee, ALL of the surface ~~and~~ or mineable seam or vein of coal in, under and upon all that certain piece, parcel or tract of land situated in Brady Township, Clearfield County, Pennsylvania, bounded and described as follows:

North - Kimble
East - Crescent Brick Division of RESCO Products, Inc.
South - Crescent Brick Division of RESCO Products, Inc. and Broad
West - Jacob D.Hayes

DEED BOOK VOL 1572 PAGE 148
RECORDED 11-30-93

containing 49.0 acres, more or less.

TOGETHER with all the mining rights and easements owned by Lessor and appurtenant to the coal and land herein described, including the right of ingress, egress, and regress, in, to and upon said land for the purpose of exploring for and of mining, manufacturing, testing and preparing said coal for market, to build roads, railroads and tram roads, to build buildings, tipples and chutes, to deposit waste material and refuse on the surface of the land, to build wire and pipe lines, to drain water upon the surface by any means, to transport coal from other properties through or over this premises and to do all things necessary, usual and proper in connection with said operations, and Lessor hereby waives all right to surface support, both laterally and subjacent, and releases all liability for damage to buildings and objects thereon and waters therein and thereon. Said coal may be removed either by drift mining or stripping process and all of the usual rights and privileges are hereby granted in connection therewith including the removal and redeposit of all strata and other objects and materials overlying said coal, to be exercised without further cost or liability for the damage caused thereby.

ALSO TOGETHER WITH: XXXX

EXCEPTING AND RESERVING: XXXX

EXHIBIT A

2. Lessee covenants and agrees to pay to Lessor the sum of Two Dollars ($2.00) ~~XXXX~~ per ton of 2,000 pounds for all mineable merchantable and marketable coal mined and removed from said premises. Settlements to be made on the twenty-fifth day of each month for all such coal mined and removed from the premises during the preceding calendar month and all settlements shall be based upon the weights by which the coal is marketed. It is further understood and agreed that Lessee will pay ten (10%) percent of pit price or $2.00 per ton, whichever is greater.

3. Lessee covenants and agrees to commence mining operations upon said premises within three (3) years from the effective date of this lease and in event of failure so to commence mining operations agrees to pay Lessor as a minimum royalty the sum or price of XXX per year, payable quarterly in advance.

4. Lessee agrees that all mining operations shall be conducted in accordance with the laws of Pennsylvania and modern mining methods prevailing in the industry. It is also understood that Lessor shall have access to the operations and scale records of Lessee at all reasonable times in person or by duly authorized agent.

5. This lease shall continue for a period three (3) years from the effective date hereof, or until all of the mineable and merchantable coal has been exhausted from the premises. Lessee may remove all equipment, buildings and machinery from the premises at the end of the term provided no royalty is then due.

6. This article of agreement shall constitute and be construed an option granted by Lessor to Lessee so that Lessee may elect to accept or reject it at any time during XXX days from the date hereof. Upon acceptance this instrument shall become immediately effective in all its terms as a lease of the coal in place. During the option period Lessee may go upon the premises for the purpose of surveying, drilling, digging, exploring, testing, taking samples, and otherwise examining said coal, without liability for the damage, caused thereby or for the coal taken in such explorations. Lessee may exercise this option by notifying Lessor in writing of its elections to do so within the option period aforesaid.

7. It is understood and agreed that in the event that Lessee should default in any payment provided for herein and remain in such default for a period of ninety days from the date when said payment becomes due, or should Lessee be in default in any other respect and continue in such default for a period of ninety days after being notified in writing of such default by Lessor, then, in either event, at the option of Lessor, this lease shall cease and terminate and Lessee hereby authorizes any attorney of any Court of Record to appear for it and in its name to confess a judgment against it in an amicable action of ejection to the end that a writ of habere facias possessionem may issue forthwith for the delivery of possession to Lessor, together with clause of fieri facias for rent in arrears and costs.

8. It is further understood and agreed that XXX

"A"

9. It is mutually understood and agreed that the rights, duties and obligations created hereby shall extend to and be binding upon the parties, their heirs, executors, administrators and assigns, and that the singular herein shall include the plural.

10. Lessor hereby warrants generally the title to said coal and mining rights and this lease shall be free and clear of all encumbrances except those for which waiver and consent hereto is obtained and Lessee may in all cases apply royalty payments to the satisfaction of such encumbrances as may be found to exist.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals and caused this article of agreement to be duly executed by their officers, the day and year aforesaid.

Witness:

D. W. Egan

A. Albert L. Nelson, Trustee (Seal)
(Albert L. Nelson) Lessor

Trustee (Seal)

(Seal)

(Seal)

(Seal)

Witness:

W. Ruskin Dressler (Seal)
(W. Ruskin Dressler) Lessee

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Clearfield } ss:

On this 3rd day of February, 1997, before me, a Notary Public in and for the County of Clearfield and State of Pennsylvania, came the above named ALBERT L. NELSON who in due form of law acknowledged the foregoing Article of Agreement to be his act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

Andrew L. Booth

My Commission Expires

Notarial Seal
Andrew L. Booth, Notary Public
DuBois, Clearfield County
My Commission Expires Oct. 14, 1997
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Clearfield } ss:

On this 3rd day of February, 1997, before me, a Notary Public in and for the County of Clearfield and State of Pennsylvania, came the above named W. Ruskin Dressler who in due form of law acknowledged the foregoing Article of Agreement to be his act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

Andrew L. Booth

My Commission Expires

Notarial Seal
Andrew L. Booth, Notary Public
DuBois, Clearfield County
My Commission Expires Oct. 14, 1997
Member, Pennsylvania Association of Notaries

EXHIBIT B

6

NSP office Copy

-MR-10: Rev. 2/84
Supplemental C

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

17990108

MAR 25 1999

APPL. NO. (Department Use Only)

RECEIVED
MAR 2 [illegible]
PA DEP
DISTRICT OFFICE

CONTRACTUAL CONSENT OF LANDOWNER

(I) (We), the undersigned, being the owner(s) of 49.0 acres of land located in Brady Township, Clearfield County, as
(Township, Borough, City)

scribed in the deed(s) recorded in the Recorder of Deeds Office Book(s) and page(s) ssd Book Vol 1572 Page 148 and shown by crosshatched lines on the p attached hereto which is signed in the original by the landowner upon which _____ W. Ruskin Dressler proposes to engage in surface
(Name of Mining Operator)

ining activities for which application for permit will be made to the Department of Environmental sources and of which application this consent will be made a part, *DO HEREBY ACKNOWLEDGE AT THE MINING OPERATOR HAS THE RIGHT TO ENTER UPON AND USE THE LAND FOR THE RPOSES OF CONDUCTING SURFACE MINING ACTIVITIES.* Furthermore, (I) (We), the undersigned, hereby irrevocably grant to the Mining Operator and the Commonwealth of Pennsylvania, the right enter upon the aforesaid land before beginning the mining activity(ies), during the mining activi-es) and for a period of five (5) years after the completion or abandonment of the mining activi-es) for the purposes of inspecting, studying, backfilling, planting and reclaiming the land and abating ution in accordance with the provisions of the Surface Mining Conservation and Reclamation Act, Clean Streams Law, and The Coal Refuse Disposal Act, as amended, rules and regulations pro-gated thereunder, and the provisions of permit(s) issued to the Mining Operator. (I) (We) do hereby nt in addition to the Commonwealth, for the aforesaid period of time, a right of entry across any ining or contiguous lands owned by (us) (me) in order to have access to the land described herein. ; specifically agreed and understood that this contractual consent gives the Commonwealth the it to enter, inspect, study, backfill, plant and reclaim the land and abate pollution therefrom as latter within the police power but does not obligate the Commonwealth to do so, and does not stitute any ownership interest by the Commonwealth in the aforesaid land.

This Consent shall not be construed to impair any contractual agreement between the Mine erator and the landowner.

SERT ADDITIONAL PROVISIONS OR CROSS-OUT)

EXHIBIT
B

In witness whereof and intending to legally bind (myself) (ourselves), (my) (our) heirs, successors assigns, (I) (we) have hereunto set (my) (our) hand(s) and seal this 30th day Feb, 1999.

Albert L. Nelson
LANDOWNER Trustee (Print Name)

By: Albert L. Nelson, Trustee
(Signature) (Seal)

(Print Name)

By: _____
(Signature)

"B"

DEP office Copy

ACKNOWLEDGEMENT OF INDIVIDUALS OR PARTNERS

LAND OWNER

1793105

: OF PA.
: SS
TY OF CLEARFIELD :

1 FEB 3 1997, before me, the undersigned Notary, personally appeared
ALBERT L NELSON
(Name(s))

, to me (or satisfactorily proven) to be the person whose name is subscribed to this instru-
and who acknowledged that HE
(he, she or they)

ed the same and desires it to be recorded.

WITNESS WHEREOF, I have hereunto set my hand and official seal. Notarial Seal
Homer D. Edner, Notary Public
DuBois, Clearfield County
My Commission Expires Nov. 20, 2000
Member, Pennsylvania Association of Notaries

) Notary Public My Commission Expires: (date)

ACKNOWLEDGEMENT OF CORPORATIONS

LAND OWNER

Dept. of Env. Protection
Hawk Run District Office
MAR 25 1999 ACCEPTED
RECEIVED MAR 25 1999
HAWK RUN DIST. OFFICE

: OF
: SS
TY OF

1 _____, before me, the undersigned Notary, personally appeared _____,

cknowledged (herself) (himself) to be the _____ of
(Title of Person)

_____, a
(Name of Corporation)

ation, and the (s)he, as such officer, being authorized to do so, executed the foregoing in-
ent on behalf of the said corporation and desires that this instrument be recorded.

I WITNESS WHEREOF, I have hereunder set my hand and official seal.

) _____ My Commission Expires: _____
Notary Public (date)

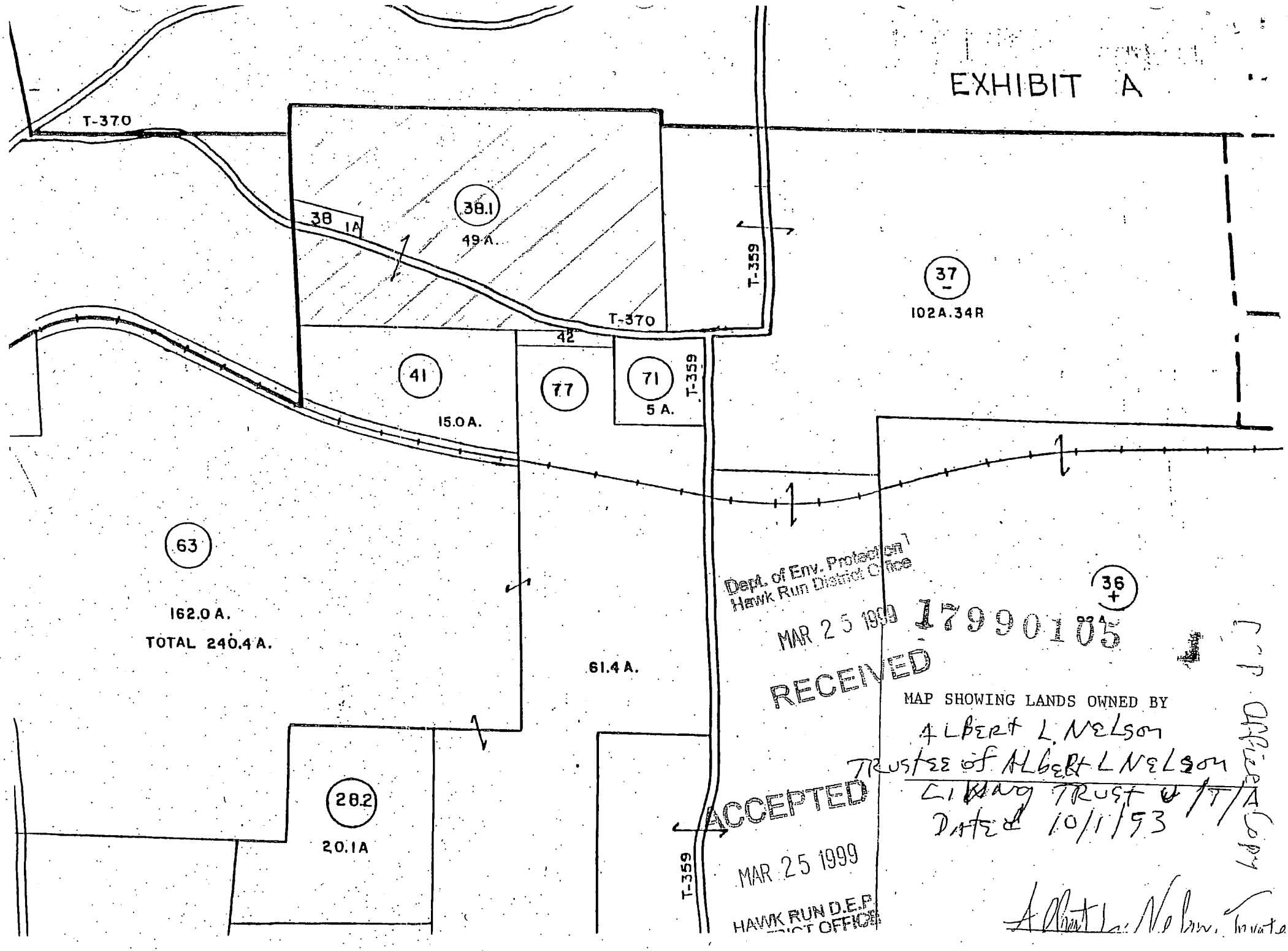
This instrument has been recorded in Clearfield
County, Pennsylvania, this 23rd day of February,
19 99, at Book Inst # 199902726, Page (s) _____.

RECORDER OF DEEDS

Karen L Starck
(Signed) (Print Name)

Karen L. STARCK My Commission Expires

EXHIBIT A



Dept. of Env. Protection
Hawk Run District Office
MAR 25 1999
RECEIVED

1799105

MAP SHOWING LANDS OWNED BY
ALBERT L. NELSON
Trustee of ALBERT L NELSON
LIVING TRUST U/T/A
Dated 10/1/93

ACCEPTED
MAR 25 1999
HAWK RUN D.E.P.
DISTRICT OFFICE

Albert L. Nelson, Trustee

Original Copy

EXHIBIT C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ALBERT L. NELSON,
Plaintiff

v.

WAROQUIER COAL, and JOSEPH L. WAROQUIER, JR. and GARY V. WAROQUIER, individually co-partners t/d/b/a WAROQUIER COAL COMPANY, and, WAROQUIER COAL COMPANY, a partnership, and WAROQUIER COAL COMPANY, INC.,
Defendants

No. 2005- 1842 -CD

CIVIL ACTION

FILED
JUN 12 2006

Type of Pleading: Reply to Motion to join Additional Defendants

Filed on Behalf of: Proposed Additional Defendant, W. RUSKIN DRESSLER

Counsel for this party:
TIMOTHY E. DURANT. Esquire
Supreme Court I.D. No. 21352
201 North Second Street
Clearfield, PA 16830
814-765-1711

Opposing Counsel:
For Plaintiff
JAMES A. NADDEO, Esquire
Supreme Court I.D. No. 06820
207 East Market Street
PO Box 552
Clearfield PA 16830
814 765-1601

For Defendants
PETER F. SMITH, Esquire
Supreme Court I.D. No.34291
30 South Second Street
PO Box 130
Clearfield PA 16830
814 765-5595

I hereby certify this to be a true and attested copy of the original statement filed in this case.

JUN 12 2006

Attest.

Prothonotary/
Clerk of Courts

filed by Timothy E. Durant

Exhibit "C"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ALBERT L. NELSON, Plaintiff	*	
	*	No. 2005- 1842 -CD
v.	*	
WAROQUIER COAL, and JOSEPH L. WAROQUIER, JR. and GARY V. WAROQUIER, individually co-partners t/d/b/a WAROQUIER COAL COMPANY, and, WAROQUIER COAL COMPANY, a partnership, and WAROQUIER COAL COMPANY, INC., Defendants	*	

W. RUSKIN DRESSLER'S REPLY TO DEFENDANTS' MOTION TO JOIN ADDITIONAL DEFENDANTS

For a Reply to the Motion of Defendants' to Join Additional Defendants, W. Ruskin Dressler, one of the parties proposed to be joined, provides the following response, by his attorney Timothy E. Durant:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

a) Denied. On the contrary, the address of W. Ruskin Dressler's address is 352 Sabula Outing Club Road, DuBois, PA 15801;

b) Denied. On the contrary, Roger A. Thomas is believed to reside at 1092 Spruce Hill Road, Rockton, PA 15856; and,

c) Admitted.

5. Denied. On the contrary, this is a conclusion of law and therefore no answer is

required. If it is determined that an answer is required W. Ruskin Dressler (hereinafter, Dressler) denies that he is liable to Waroquiers in whole or in part, jointly or otherwise for indemnity or contribution and further states in the alternative that if he had any liability such has been extinguished by the passage of time and the running of the applicable statute of limitations and/or the actions of the Waroquiers, their agents, servants or employees. It is further averred that the Motion for Joinder in this matter is a "late joinder" and the additional defendant is prejudiced by the delay.

6. Admitted.

7. Admitted.

8. Denied. On the contrary, on and after January 22, 2001 Mr. Thomas and Ramm ceased to do any contract mining for Dressler. Prior to January 22, 2001 Mr. Thomas t/d/b/a Ramm Coal mined under contract for Dressler as a dragline owner/operator on the Kimble property.

9. Denied. On the contrary, after reasonable investigation Dressler is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant.

10. Denied. On the contrary, prior to January 22, 2001, based upon information and belief, neither Dressler nor Thomas nor Ramm conducted any surface mining operations on the Nelson property nor did anyone else under Dressler's contractual employment or supervision take any coal from the Nelson property.

11. Denied. On the contrary, no coal was removed by Dressler from Nelson property and therefore no liability exists to Plaintiff.

12. Denied as stated. On the contrary, Dressler stood in one spot on the Kimble property and pointed in the general direction of two boundary markers but the parties did not walk the boundary line nor did Dressler point out with any specificity where the line was. Dressler is not a surveyor nor an owner of the subject property and he never made any warranty or guarantee as to the boundary line. Waroquiers should reasonably have determined the lines of the properties prior to proceeding on January 22, 2001 and thereafter.

13. Denied. This averment is not directed to Dressler and therefore no answer is necessary.

14. Denied. This is a conclusion of law and so no response is necessary. If it is determined that an answer is required Dressler denies any basis for liability over. Waroquiers had duty as a knowledgeable established coal company to exercise its due diligence to determine the boundaries of the properties covered under the subject permit area. Dressler gave Waroquiers all information which he had (including maps) pertaining to this permit. To the extent that this

averment claims liability against Dressler for conduct or statements by Thomas or Ramm as to the location of the boundary between the Kimble and Nelson properties Dressler denies this as their relationship with Waroquiers both before and after January 22, 2001 was as an independent self employed contract stripper and not as an agent, servant or employee of Dressler.

15. Denied. This is a conclusion of law and so no response is necessary. If it is determined that an answer is required Dressler denies that there is any express or implied contractual obligation on his part towards Waroquiers to mark out, identify, or establish the actual location of the boundary between the said Kimble and Nelson properties. Waroquiers bought such rights as Dressler had in the permitted area upon terms set out in Exhibit A which document was drafted and typed by Waroquiers.

16. This is a conclusion of law and therefore no answer is necessary.

17. This is a conclusion of law and therefore no answer is necessary. Dressler avers in the alternative that if under any theory he had any liability such liability has since been extinguished by the passage of time and the running of the applicable statute of limitations.

18. This is a conclusion of law and therefore no answer is necessary. If an answer is deemed to be necessary, Dressler responds as follows, Denied. On the contrary, after reasonable investigation, proposed Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant.

19. This is a conclusion of law and therefore no answer is necessary. If an answer is deemed to be necessary, Dressler responds as follows, Denied. On the contrary, after reasonable investigation, proposed Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant. Obviously being added to this suit is burdensome and prejudicial since Waroquiers may not be found to be liable in the suit in chief.

WHEREFORE, Dressler prays this Honorable Court to reject this Motion to Join and refuse to enter any Order allowing Waroquiers to join W. Ruskin Dressler a/k/a Ruskin Dressler d/b/a W. Ruskin Dressler Coal, as additional Defendant to this action.

Respectfully Submitted

Date: June 12, 2006

Timothy E. Durant, Attorney for W. Ruskin Dressler

VERIFICATION

I, W. RUSKIN DRESSLER, verify that the statements made in this Pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities

DATED: June 10, 2006

W. Ruskin Dressler

W. RUSKIN DRESSLER

EXHIBIT D

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ALBERT L. NELSON,

Plaintiff,

vs. No.: 2005-1842-CD

WAROQUIER COAL AND JOSEPH L., WAROQUIER, JR., and GARY V. WAROQUIER, individually and co-partners t/d/b/a WAROQUIER COAL COMPANY, a partnership, and WAROQUIER COAL COMPANY, INC.,

Defendants.

vs.

W. RUSKIN DRESSLER, a/k/a RUSKIN DRESSLER d/b/a W. RUSKIN DRESSLER COAL, ROGER A. THOMAS, MIRIAM R. THOMAS and RAMM COAL, INC.,

Additional Defendants.

- - -

PROCEEDINGS: Deposition of W. RUSKIN DRESSLER

DATE: December 7, 2006

TIME: 10:41 a.m. - 1:54 p.m.

PLACE: Clearfield County Courthouse Annex
Clearfield County Commissioner's Hearing Room
230 East Market Street
Clearfield, Pennsylvania

REPORTER: Roberta Swank
CSR 6042 - RPR 6846
Notary Public

Certified Copy

APPEARANCES:

For the Plaintiff Albert L. Nelson:

JAMES A. NADDEO, ESQUIRE
Law Offices of James Naddeo
207 East Market Street
Clearfield, Pennsylvania 16830

For the Litigants Waroquier Coal, Joseph L. Waroquier, Jr., and Gary V. Waroquier:

PETER F. SMITH, ESQUIRE
Law Offices of Peter F. Smith
30 South Second Street
Clearfield, Pennsylvania 16830

For the Litigant W. Ruskin Dressler:

TIMOTHY E. DURANT, ESQUIRE
Law Offices of Timothy Durant
201 North Second Street
Clearfield, Pennsylvania 16830

APPEARANCES (CONTINUED):

For the Litigant Roger A. Thomas:

THOMAS T. FRAMPTON, ESQUIRE
- and -
MANDI L. SCOTT, ATTORNEY AT LAW
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, Pennsylvania 15219

Also Present:

Joseph L. Waroquier, Jr.
Gary V. Waroquier
Roger A. Thomas
Miriam R. Thomas

JAN 02 2007

- - -

STIPULATION

It is stipulated and agreed by and among counsel for the respective parties and the deponent that the inspection, reading and signing of the deposition may be and are waived.

- - -

INDEX

WITNESS	EXAMINATION	PAGE
W. RUSKIN DRESSLER		
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	By Mr. Naddeo	87
	By Mr. Frampton	117

- - -

EXHIBITS

NUMBER	DESCRIPTION	MARKED
No. 1	Option and Lease Agreement	11
No. 2	Option and Lease Agreement	12
No. 3	Coal Surface Mining Permit	13
No. 4	1-18-01 Agreement	29
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No. 6	June 8, 2006 Statement	77

Exhibit "D"

W. RUSKIN DRESSLER,
having been first duly sworn, deposed as follows:

- - -

EXAMINATION

BY MR. SMITH:

Q. A couple of preliminary matters. Mr. Dressler, my name is Peter Smith. I'm attorney for every entity involved in this litigation that has the word Waroquier in it. I'll be asking you some questions today.

Before we get started, shall we stipulate that we're going to make objections only as to the form of questions and reserve others?

MR. FRAMPTON: That's fine with me. Will this apply to all the depositions today?

MR. SMITH: Yes.

MR. NADDEO: Yes.

MR. FRAMPTON: Suits me fine.

BY MR. SMITH:

Q. There are a number of names that will keep popping up today. I'll try to be as precise as I can. I want you to stop me if there's any doubt in your mind. Typically when I refer to "the parcel" or "the land," I most likely will be referring to Mr. Nelson's property in Brady

Township, Clearfield County, that is the subject of this litigation. When I say "Mr. Thomas," it will be Mr. Roger Thomas, Waroquier Coal Company. Again, I will try to be clear, so there's no doubt. If you ever have any difficulty hearing me or understanding what I've said or asked of you, please stop me, ask me to explain or repeat. I'll be happy to.

Keep in mind that your testimony is being recorded, and Roberta, the court reporter, is very good, but she can't read minds and really can't interpret body language, so your answers have to be verbal.

Will you please state your full name.

A. W. Ruskin Dressler.

Q. Mr. Dressler, something that I've wondered since the beginning of this problem is what does the W stand for?

A. Wilmer.

MR. FRAMPTON: I'm sorry?

THE WITNESS: Wilmer.

BY MR. SMITH:

Q. Mr. Dressler, do you do business under any assumed or fictitious names?

A. No.

Q. How about W. Ruskin Dressler Coal or Coal Sales?

A. Yes. I use W. Ruskin Dressler Coal, yes.

Q. Is there anybody else involved in your business?

A. No.

Q. Let me ask you first to describe your business activity for me. What do you do for a living?

A. I surface mine coal.

Q. How long have you been in that business?

A. About since 1985, I believe, if I remember correctly.

Q. How old are you today?

A. I'm 67.

Q. What did you do prior to 1985?

A. Trucking and excavating.

Q. Were those endeavors in any way related to the coal industry? For example did you haul coal in your truck?

A. No.

Q. Have you had an interest in any other coal businesses either as a partner or as a shareholder, something like that?

A. Yes, Beverly Hill Coal Company.

Q. Do you still have that interest?

A. Yes.

Q. Is anyone else involved in Beverly Hill Coal Company?

A. The other party is now retired. There were two of us.

Q. Who was that?

A. That was Beverly Bryington.

MR. FRAMPTON: Can I ask you to keep your voice up a little bit? You are talking softly. It's fine. Just keep it up a little bit.

BY MR. SMITH:

Q. Is Beverly Coal Company actively engaged in any surface mining presently?

A. No. There is one old site that is being -- the ponds and so forth have to be put back, but there's been no mining activity for a number of years.

Q. When did it cease?

A. I can't tell you at this moment. I'd have to go back and look.

Q. Was Beverly Coal Company involved in your operations on either the Kimble or Nelson properties in Brady Township?

A. No.

Q. Changing gears here a little bit, Mr. Dressler. What is the address of your residence?
A. It's box -- I'm sorry. Yeah. It's P.O. Box 231 -- I'm sorry. It is 252 Sabula Outing Club Road, DuBois, PA.
Q. Are you married?
A. No.
Q. Were you married in, say, the year 2000?
A. No.
Q. Have you ever been married?
A. Yes.
Q. When did your marriage end?
A. 20 some years ago. I don't have the exact date with me.
Q. That's close enough, Mr. Dressler.
What caused you to first get into -- let me ask you this: How did you get into the coal business?
A. I was advised by others who worked for coal companies that that would be a good change to make from excavating.
Q. What type of excavation did you do?
A. For homes, commercial, residential.
Q. Mr. Dressler, I'm going to hand you a

document and ask you to take a look at it. I'm showing him the Kimble lease. Do you recognize that document?
A. Yes, I do.
Q. What is it, Mr. Dressler?
A. A lease between Richard Kimble and Nancy C. Kimble and W. Ruskin Dressler.
Q. Is that your signature on the second page?
A. Yes.
Q. What is the date of this agreement?
A. Well, I have -- I see the 3rd of March, 1998.
Q. You are looking at an acknowledgment at the end of the second page?
A. Uh-huh.
Q. How about at the top of the first page? What is the date?
A. 13th day of February, 1998.
Q. If you go down maybe a fourth of the way on page 1, there is a description of, I believe, the property subject to this lease, approximately 50 acres?
A. Yes.
Q. And the Kimbles were the owners?

A. Yes.
Q. And there's reference to adjoining landowners and on the south the Kimble property was bounded by that of an Albert L. Nelson --
A. Yes.
Q. -- am I correct? Is that the same property that is the subject of this litigation?
A. Yes.
MR. SMITH: Why don't we mark that Dressler Deposition Exhibit 1.
(Dressler Exhibit No. 1 marked for identification, attached hereto.)
BY MR. SMITH:
Q. Mr. Dressler, I'm going to show you another document here and ask you to take a careful look at it, please.
Do you recognize that document?
A. Yes, I do.
Q. What is that, please?
A. That's a lease agreement between W. Ruskin Dressler and Albert Nelson Living Trust.
Q. On page 2, is that your signature?
A. Yes.
Q. This lease on page 1, is the date line at the top completed?

A. This is a copy I would say and I don't -- I don't see the date other than the year, 1996.
Q. And then the notary's acknowledgements on page 2, what are the dates there?
A. I see 3rd of February, 1997.
Q. This property is 49 acres in Brady Township, Clearfield County; is that correct?
A. Yes.
Q. And does this lease correspond to the real estate that is the subject matter of this litigation?
A. I believe so.
Q. You mentioned that this lease is a copy and the Kimble lease is also a copy.
Do you have originals in your possession?
A. I turned everything that I had over to the Waroquier Coal Company.
MR. SMITH: Let's mark this Dressler Deposition Exhibit 2, please.
(Dressler Exhibit No. 2 marked for identification, attached hereto.)
BY MR. SMITH:
Q. Mr. Dressler, I'm handing you another bundle of papers that I've had marked Dressler Deposition Exhibit 3. Would you take a look at

that, and not just the first page, please, but all of them. And while you are doing that, it's the mining permit.

As we have produced documents for one another in this case, there's been different configurations of this document, so what I'm showing Mr. Dressler is here. If you want to take a look at it, so you know exactly what he's looking at; by inference, what he's not looking at.

MR. NADDEO: Is this the one you produced from discovery?

MR. SMITH: Yes.

(Dressler Exhibit No. 3 marked for identification, attached hereto.)

BY MR. SMITH:

Q. Do you recognize that document, Mr. Dressler?

A. Yes.

Q. What is that?

A. This is the coal surface mining permit issued from DEP.

Q. To whom?

A. To W. Ruskin Dressler, Box 39, Rockton, PA.

Q. Could you tell us which properties, if any, this permit applies to?

A. Yes. It applies to the Kimble property and the Nelson property.

Q. And would it also correspond to the leases that I showed you as Exhibits 1 and 2 this morning?

A. Yes.

Q. What was the issuance date of this permit, Mr. Dressler?

A. This was August 4th, 1999.

Q. Expiration date?

A. August 4th, 2004.

Q. Could you flip back six pages in this bundle of documents and you should hit a page, at the top it states Exhibit 5. Do you see it there, Mr. Dressler?

A. I don't see where it says Exhibit 5.

Q. Here's the one I'm looking for.

A. Okay.

Q. Do you have it there?

A. Uh-huh.

Q. The top half of this page lists a number of individuals, the Kimbles, the Hayes, the second Hayes, and then the Albert Nelson Trustee?

A. Uh-huh.

Q. Are those all the properties that were subject to this particular permit?

A. Yes.

Q. Would you take a look at the next page in this bundle of documents, Mr. Dressler? What is that?

A. This is a contractual consent of landowner.

Q. From whom? Who signed it?

A. Albert Nelson Trust.

Q. What is the date above that signature?

A. Third day of February, 1997.

Q. Does this document designate an operator?

A. Pardon?

Q. Does it designate an operator? Who is the mining company?

A. Yes.

Q. Who is it? I'll give you a little more help. Right up here. That's your name, W. Ruskin Dressler.

A. Yes.

Q. My next question is, did you secure this -- it's typically referred to as a supplemental C?

A. Yes, I did.

Q. You secured it from Mr. Nelson?

A. Yes.

Q. Was there a map attached to it, as there is in your packet, when you had Mr. Nelson sign it?

A. Yes.

Q. Did Mr. Nelson sign both these pages in your presence?

A. Yes.

Q. If you would flip to that map, do you have it there?

A. Yes.

Q. It's the next page. It looks like it's been copied from Clearfield County Tax Maps; am I correct?

A. Probably. Yes.

Q. Did you prepare this map?

A. Did I prepare it?

Q. Yes, sir.

A. What do you mean by --

Q. Did you make the copy?

A. No, I didn't actually make the copy.

Q. Did you have somebody prepare this supplemental C for you?

A. Yes.
Q. Who was that?
A. That would have been Fennell -- Attorney Fennell's office in DuBois.
Q. Let's go back to the leases, Mr. Dressler. I'd like to ask you a number of questions about the lease with Mr. Nelson, okay?
A. Okay.
Q. After signing that lease with Mr. Nelson, did you ever execute any written amendments of that lease with him?
A. To the best of my knowledge, this is -- this was the final.
Q. Just to make doubly certain that you understand me, what I'm asking you this morning is, after that document was signed, did you and Mr. Nelson sign another document that might have changed it in any way? I don't know the answer to this question. That's why I'm asking you.
A. I don't recall that we did. I don't think so.
Q. Did you ever receive any -- I'm going to ask you some specific questions -- any written notification from Mr. Nelson that he considered that lease terminated?

A. Nothing written.
Q. Did he ever say to you verbally, either in person or over the phone, that he considered that lease terminated?
A. He -- if I recall correctly, he did challenge it verbally.
Q. When did that occur?
A. I don't recall just exactly when that was. Probably a couple years ago.
Q. A couple would put it in 2004. Would that be accurate?
A. I don't know that it would be accurate, but I'm thinking I could look that up. At this point in time I can't give you the accurate date, but I would say that was in the time frame.
Q. In the ballpark?
A. I would say.
Q. Let me ask you this: Would Mr. Nelson have challenged the validity of that lease before or after you assigned the permit that I showed you as Exhibit 3 to the Waroquiers?
A. Will you please state that again?
Q. Okay. I'm going to try to ask the question with reference to another event. That event would have been the date you transferred the

surface mining permit for the Kimble and the Nelson properties to the Waroquiers. Let me suggest to you that that date occurred in the year 2001. Does that --
A. Yes.
Q. Is that accurate?
A. Yes.
Q. Did Mr. Nelson's challenge of the lease you are looking at occur before or after the transfer of the permit?
A. Definitely after and maybe -- I'm not sure on the date. I could go back and look at some information that might tell me a little closer, but I'm saying two years ago, maybe it was two and a half. I'm just not sure. Maybe three. It might even be three.
Q. Don't let me cut you off either, Mr. Dressler. I don't mean to be rude.
Do you remember where this conversation might have occurred?
A. Yes.
Q. Where?
A. At my shop there, DuBois shop.
Q. What is the address of the shop? Does it have a 911 address?

A. It does. It does have one.
Q. But you don't remember it?
A. I don't use it.
Q. That's okay.
A. Sorry.
Q. I've gone by it.
A. I use my post office, the Box 39.
Q. Is it the one with the antique tractor sitting in front of it?
A. That's the one. It does have a 911 number.
Q. Was anyone else present for this conversation?
A. No.
Q. What else was discussed during this conversation?
A. Well, it's a while back, but at that point in time he had been notified that possibly Waroquier Coal had mined on him without his knowledge.
Q. Was anything else said?
A. Pertaining to?
Q. This discussion in its entirety.
A. That was the basic thing. He was -- at that point in time he felt that there was a

criminal case and that he would be notified -- possibly notifying the state police.

Q. What was your response to the statements by Mr. Nelson?

A. Well, this was very sudden, shocking to me. I had no inkling that anything like that was occurring. I had left the -- shortly after the transfer of the lease and I was away from the job site. I no longer knew the daily activities.

Q. Do you recall the date when you left the job site? By that I mean the site where the mining operations permitted under Dressler Exhibit 3 were conducted.

A. I stayed on just -- just to sell the balance of the little bit of house coal that was designated to me.

Q. That tells me why you stayed on. I'm asking you a date. Do you recall that?

A. Yeah, that would have been -- no, I don't have this recorded, but I'm thinking it was probably March.

Q. Of which year?

A. The same year.

Q. 2001?

A. Yeah. It would be a couple months, would

probably -- I'm thinking would be the --

Q. Let me jump back to this discussion at your shop with Mr. Nelson. Did you and he look at any documents at that time?

A. I'm not sure whether we did at that time. We either did at that time or shortly after. Then I produced documents for him to copy.

Q. What did you show him?

A. I showed him tonnage reports --

Q. Let me stop you please. Tonnage reports from whom? Your company? Someone else's?

A. OSM reports from my company, from this job site only.

Q. Follow-up question to that. Tonnage reports you filed with OSM while you were actively mining this property?

A. That is correct.

Q. And I mean both properties. I don't mean to trick you into specifying it was either Nelson or Kimble.

A. This property, I wasn't on.

Q. I know that's your position. We'll talk about that later.

Did you show him anything else at that time?

A. That was -- that was the -- the tonnage was the big thing. Maps. I'm sorry. I showed him maps. In fact I gave him --

Q. Which maps were those?

A. These would be like Exhibit 9 -- 8 -- different -- I'm not just sure what all I did give him in maps.

Q. Would these maps have been part of your application for the surface mining permit?

A. Yes.

Q. Who prepared those maps?

A. That would be Lee Simpson in DuBois.

Q. Did you use that firm for the engineering work involved in this permit?

A. Yes.

Q. Did you use any other engineering firms in conjunction with this permit?

A. No, just Lee Simpson's.

Q. Was there a particular person you used?

A. Dwayne Berry.

Q. Do you know if anyone helped Mr. Berry?

A. That I -- I would think that there would be staff. The staff would help him.

Q. Did Mr. Nelson have any documents with him during this conversation that he showed to

you?

A. I'm not positive on that. It's been a while.

Q. Let me jump back to something else that you said that I'm interested about. When I was asking you about the date of this conversation, you said that perhaps you could pin it down with further accuracy by looking at some other information you have.

What types of other information do you have or have you given to your attorney that bears upon this litigation, records, notes?

A. I would see Mr. Nelson to get a more accurate date.

Q. There's nothing else you would have at your shop?

A. Not that I'm sure of, no.

Q. Do you keep a daily log book or journal?

A. Pertaining to?

Q. Your business operations in general.

A. No. I'm sorry, other than the MSHA, my log book on daily operations.

Q. You were keeping that in 1999, 2000 and 2001?

A. The MSHA book, yes, sir.

Q. How many employees did you have working for your company during that period?
A. None. No employees.
Q. At any point when you were working on the mining under this permit, did you have any employees?
A. No.
Q. Subsequent to this first meeting with Mr. Nelson -- and "first" is a bad term. You obviously met with him when you got the lease in 1996, 1997?
A. Yes.
Q. Around 2004, maybe you met with him again. Subsequent to the 2004 meeting, did you have any other meetings with him?
A. Pertaining to this?
Q. Yes, sir.
A. No, sir.
Q. Meetings pertaining to other matters?
A. Such as?
Q. I don't know. That's why I'm asking you.
A. Yes, there were meetings on other matters.
Q. What would those other matters be?
A. This would be previous mining done on

land his father owned.
Q. When did that mining take place?
A. That was back in the 1980's.
Q. After you first got started in business.
A. Uh-huh.
Q. Where was that property?
A. That property was this same property.
Q. So do I understand you that prior to getting a lease -- prior to getting the lease that we've identified as D-2, Dressler 2, you had mined that same property a number of years prior?
A. Yes. For his father.
Q. That would have been I guess when his dad owned it?
A. Yes.
Q. What were the issues relating to that prior mining that you had to discuss subsequently with Mr. Nelson?
A. Those issues were mainly I was making payments to his father and then made payments to Mr. Nelson.
Q. By that do you mean --
A. Royalty payments.
Q. By that do you mean that you hadn't completely paid --

A. Yeah, there was a balance which --
Q. What was the amount of that balance in 2004, do you know?
A. 2004, I can't tell you at this time exactly what it was.
Q. Could you tell me the balance when you left that -- the job that time?
A. When I left the job, approximately if I remember correctly, probably $50,000.
Q. Subsequently when you went to Mr. Nelson to obtain what I'll refer to as the 1996 lease that you've seen as Exhibit 3, did the subject of this earlier lease and the balance owed come up with him?
A. Yes. It was discussed.
Q. How was that handled?
A. We reached a mutual agreement.
Q. What was that?
A. That I would continue until the balance was paid.
Q. Was that agreement ever reduced to writing?
A. Yes.
Q. Is there a document, a number of documents? What do you have?

A. What do I have?
Q. Yes, sir.
A. I didn't bring anything.
Q. I mean in the general sense of the word -- here, your house, your shop, under the seat of your pickup, what do you have?
A. What do I have? I have an agreement with him.
Q. Is there just one -- is it a note, basically a glorified IOU?
A. Mortgage note.
Q. Back in the 1980's when you leased this property from his dad, did you get a surface mining permit then?
A. Yes.
Q. Who helped you with the engineering at that point?
A. Lee Simpson.
Q. Mr. Berry again?
A. Yes.
Q. Did you ever have a survey of the Nelson property prepared either the first time or the second time?
A. No. No.
Q. What did Lee Simpson then use for maps in

the permitting process?
A. The assessment maps, I'm assuming that's what they used.
Q. Let me show you the next document, Mr. Dressler. We're up to Dressler 4.
(Dressler Exhibit No. 4 marked for identification, attached hereto.)
BY MR. SMITH:
Q. Would you take a look at what I've handed you, Mr. Dressler, that's been marked D-4, Dressler Deposition 4. Do you recognize that document?
A. Yes.
Q. What is that?
A. This is the agreement between myself and Waroquier Coal.
Q. On page 2, is that your signature?
A. Yes.
Q. This agreement is dated January 22, 2001; is that correct?
A. Yes.
Q. The purposes of this agreement was to transfer the permit on these two properties to Waroquier?
A. Yes.

Q. Am I right on that?
It transferred your entire rights to both properties or just a portion of them? You tell me.
A. Entire rights.
Q. Once you had signed the agreement with Mr. Nelson and it's notarized February 3, 1997, did you ever assign any portion of your right to mine the Nelson property under that 1997 agreement, to anybody other than Waroquier?
A. No.
Q. This is a term I see more often in the gas industry, but I'll use it. Did you ever surrender the lease back to Mr. Nelson and say, here, you can have this back, Mr. Nelson, I'm not going to use it?
A. No.
Q. Did you ever surrender any portion of the acreage --
A. No.
Q. -- to Mr. Nelson?
A. No.
Q. Follow-up question, somewhat redundant. Did you ever assign a portion of your mining rights under the agreement with Mr. Nelson to

Mr. Roger A. Thomas?
A. No.
Q. How about his wife Miriam R. Thomas?
A. No.
Q. Ramm Coal Company, Inc.?
A. No.
Q. Any entity that either Mr. or Mrs. Thomas are or were involved in?
A. No.
Q. Did Mr. Thomas, being Roger Thomas, ever ask you to assign him a portion of the Nelson property for surface mining?
A. No.
Q. Have you ever mined on any of the properties adjoining either the Kimble or the Nelson properties in Brady Township?
A. Adjoining. You are saying past --
Q. I'm talking if, for example, these two documents are Nelson and Kimble, one being the Nelson lease and the other being the Kimble lease, did you ever mine on any of the properties that butt up against the boundaries of those?
A. No.
Q. Not in the late 1990's?
A. I'm sorry.

Q. Got you.
A. You got me.
Q. I was guessing, too.
A. No. Excuse me. I mined years ago on what is now the Albert Nelson property.
Q. Right. But what I'm talking about are properties next door, so to speak.
A. No.
Q. Never ever?
A. No.
Q. Speaking of the Nelson property in general, to your knowledge had any person or company mined that property prior to your arrival there in the mid to late 1980's? Had there been prior mining?
A. Yes.
Q. What can you tell us about that? Who did it? When? What seams they took?
A. I know that there was a Maple Hill Coal Company, I believe, removed the upper -- it would be the Upper Kittanning on probably Mr. Nelson, and I'm not sure about on Mr. Kimble, but definitely on Mr. Nelson's property.
Q. When would that have been, do you have any idea?

A. It was way back, before my --
Q. Was it stripped or deep mined?
A. Surface mined and also deep mined.
Q. What do you know about the deep mining?
A. I know that the deep mining was very extensive on the eastern portion of the Nelson property, heavily mined.
Q. Was -- go ahead --
A. I'm sorry.
Q. -- please complete your answer.
A. That came from the initial test drilling by Forsyth Drilling Company.
Q. When you say "test drilling," this was done -- was Forsyth the drilling company?
A. Yes.
Q. Did you retain them directly or did Lee Simpson?
A. I did.
Q. When was that?
A. That was prior to beginning the permitting process.
Q. Which time, Mr. Dressler?
A. My guess is that would have been in 1988. That's my guess. Possibly late 1997.
Q. Either the 1980's or in 1997, you can't

tell me with certainty?
A. I can't tell you exactly.
Q. Did you have the entire property drilled?
A. Yes.
Q. When you say drill --
A. Now you are saying entire property?
Q. Yes, sir.
A. Each property.
Q. We're talking about Nelson.
A. Nelson. Okay. Not the entire property at that time because it had previously been mined by me, so it was not necessary to drill the entire property.
Q. That makes sense. The first time you mined out there, can you tell me how many acres that you mined?
A. I can't tell you at this time.
Q. Would you have some records that I could check to answer that question? Do you have anything left from that era?
A. That I don't -- I could look, but I don't know that I do.
Q. When it was drilled by Forsyth, describe for me the drilling. Just one hole? A number of holes?

A. A number of holes.
Q. How many would that be?
A. I can't tell you.
Q. Did you get a written report?
A. I did.
Q. Do you still have that report?
A. I don't believe I do.
Q. Would you look for that as well, please?
A. Okay.
Q. In relation to the boundary between the Nelson property and the Kimble property, can you locate that Forsyth drilling for me?
A. Would you ask that again, please?
Q. Again using the leases with Mr. Nelson and with the Kimbles, what I'm asking you, in relation to the line where those two properties adjoin one another, where did Forsyth drill on the Nelson property, do you recall?
A. I can't tell you the exact locations, but I do remember that the eastern portion was heavily mined.
Q. Does the Kimble property -- which point of the compass does the Kimble property lie on with respect to the Nelson property?
A. North.

Q. North?
A. Basically north.
Q. Do you have any recollection, did Dave Benjamin or any of his companies do any mining out in this area?
A. Yes. Benjamin.
Q. Did he mine on the Nelson property do you know?
A. I think so, yes. A portion, just ...
Q. Let's divide the Nelson property into four equal, I'll call them quadrants. The eastern portion was deep mined extensively you said.
A. Yes.
Q. That whole half or just the one corner quadrant?
A. I don't know the extent of the deep mines. They go --
MR. NADDEO: Would you mind clarifying that question just for the record? I understand what you are attempting to do. Why don't you call it the northeast quadrant. I think that's where you are going. I don't care where you start, but just to --
MR. SMITH: Good suggestion.
Q. Do you follow Mr. Naddeo's comments?

A. **Yes.**
Q. So northeast, northwest, southwest, southeast quadrants in the Nelson property. Could you locate, please, the deep mining?
A. **Well, the most extensive would be in the northeast portion.**
Q. Did that continue into any of the other portions, do you know? If you don't know, Mr. Dressler, obviously you can't answer.
A. **I don't really. When I was previously mining there, I did encounter some.**
Q. You hit some old works?
A. **Yes.**
Q. When you were mining in the 1980's?
A. **Yes.**
Q. How about in the 1990's, did you hit any of those old works, deep mine works?
A. **Yes. Just evidence, more evidence. I knew previously by drilling that there was no point in --**
MR. NADDEO: Are we still talking the northeast quadrant?
THE WITNESS: Yes.
BY MR. SMITH:
Q. Now the Benjamin mining, can you locate

that in one of these quadrants for me?
A. **That would be the same.**
Q. To your knowledge, did that extend into any of the other quadrants, or was it confined to the --
A. **I think it was confined to that area.**
Q. Now, when you took this lease from Mr. Nelson in the late -- mid to late 1990's, where did you plan to mine? Again using these quadrants.
A. **More so the western, would be the western --**
Q. Northwestern or southwestern?
A. **On his property would be northwestern.**
Q. Mr. Dressler, if you look at the dates on the Kimble and the Nelson leases, you'll see that Kimble was executed almost a year to the day after the Nelson lease was signed -- was notarized.
A. **Yes.**
Q. Why was it that you approached Mr. Nelson first?
A. **I knew Mr. Nelson personally. I did not know Mr. Kimble.**
Q. Had you formulated a mining plan at that point, how you were going to tackle this

particular project?
A. **Not at that point.**
Q. Had you consulted your engineers yet?
A. **Not at that point.**
Q. Focusing on your second agreement for the Nelson tract, notarized February 3, 1997, you had a conversation you think in 2004 with Mr. Nelson.
Did you ever pay him any royalties under that lease?
A. **No.**
Q. Did he ever make inquiry of you what was happening under it prior to 2004?
A. **Yes.**
Q. What was the nature of that inquiry?
A. **He would inquire as to how, you know, how close I would be or how soon I would be on his property.**
Q. How would he make these inquiries?
A. **By telephone usually.**
Q. When did this start?
A. **When I was still actively engaged mining on the Kimble property.**
Q. There must have been some point -- did he ever call you after you assigned this permit to the Waroquiers?

A. **Yes.**
Q. What did you tell him then?
A. **That after -- yes, I'm still not on your property, Mr. Nelson.**
Q. You didn't mention anything to him about the assignment of the permit?
A. **Oh, yes. Yes. That was told immediately.**
Q. What was his -- how did you tell him?
A. **By telephone, if I remember correctly.**
Q. You say "immediately." That would have been done the same day that you signed the agreement with the Waroquiers, January 22, 2001?
A. **I don't recall that it would be the same day, but it would be within a very short time frame.**
Q. Do you recall what Mr. Nelson's response was, if any, to that information?
A. **I can't really think of anything outstanding.**
Q. Even a casual remark, like "who the heck are they?"
A. **Well, yes, he probably did ask who they were.**
Q. Did you ever, while you were actively

engaged under this permit -- let me ask you this first. When did you first start moving earth and rock under this permit?

A. This would have been in the month of August of 1999.

Q. At some point subsequently, did you enter into an agreement with Mr. Thomas to assist you in this mining operation?

A. We had discussed it in that time frame, yes.

Q. Did he in fact come on?

A. Well, if I recall, yes, he did come on, yes. Yes.

(Dressler Exhibit No. 5 marked for identification, attached hereto.)

BY MR. SMITH:

Q. Mr. Dressler, I'm showing you what has been marked Dressler Deposition Exhibit 5. Take a look at it, please.

Mr. Dressler, first of all, whose handwriting is this on page 1 of Dressler 5?

A. This would be Mr. Thomas's.

Q. And then on page 2, is that your signature again?

A. Yes.

Q. Still looking at page 2, left-hand margin, I see an insertion, Middle Kittanning. Whose handwriting is that?

A. That would be Mr. Thomas, I believe.

Q. It's not quite as thick as, say, the sentence that is right next to it, is it?

A. No.

Q. Was that put in afterwards? Is that the explanation? Do you know? If you don't know, Mr. Dressler --

A. I don't know.

Q. Down below at the end of that paragraph that starts "coal proceeds" ...

Again, the thickness of the lettering changes a little. Whose handwriting is that?

A. Would you please run that by me again?

Q. Here. I'll show you. Who wrote that in, commences "when Dressler has paid moneys" ...

A. I believe Mr. Thomas.

Q. And still looking at that portion of this document, it makes reference to previous months October 1999 and then I think it should be through February 2000? Am I correct?

A. Where are you?

Q. I'm right there (indicating).

A. Oh, okay.

Q. Above your signature, it is dated November 23, 1999, do you see that?

A. Uh-huh. Yes.

Q. Had Mr. Thomas actually been operating on the property prior to November 23, 1999?

A. I don't think so. Excuse me for interrupting, but the drag line was moved in about October and it took quite some time to assemble it, so this would be about the beginning -- the time he would begin.

Q. Here's why I ask. In that same line where I pointed the O-C-T period 1999, it makes reference to "remove Luthersburg overburden in previous months." It sounds to me like he had been removing overburden prior to November 23, 1999.

A. This apparently was done -- was done with the dozer while the drag was being assembled.

Q. If you could tell me, how did you and Mr. Thomas divide responsibilities between yourselves? Did he just take over completely once this document was signed?

A. No. We worked mutually together.

Q. What did he do, and what did you do?

A. My responsibility was dozer, the dozer work and his was the excavating drag line.

Q. Who broke up the coal?

A. Once it was uncovered?

Q. Correct. Was that you?

A. That would be me.

Q. How about loading it?

A. Yes, I did the bulk of the loading.

Q. Did he help you with that?

A. He may have a very small amount.

Q. Was he around while you were doing that?

A. Yes, we were both there on a daily basis.

Q. How did you get the coal from this permitted site to wherever you sold it? Who transported it for you?

A. Various coal companies.

Q. Trucking companies?

A. Trucking.

Q. Could you name them for me, please.

A. Yes. I have them. I think maybe off the top of my head, Energy Link.

Q. Who owns that company and where are they located?

A. At that point in time they were in DuBois. I'm not sure where they are now.

Q. Can you give me a person's name that you dealt with?
A. **Don Hudson.**
RKR Enterprises.
Q. Give me a contact person's name for that company, please.
A. **Rick Wills.**
Strischock Coal Company. That would be Mark Strischock.
Waroquier Coal Company and that would be Joseph Waroquier, Junior and Gary Waroquier.
Q. Anybody else?
A. **Let me look back. Falls Creek Energy.**
Q. Contact person's name?
A. **At that time it would have been William Bowser, I believe.**
Q. Is that it?
A. **Uh-huh. Yes.**
Q. How did you determine where the boundaries are on the Kimble property? I'm shifting from Nelson to Kimble here, Mr. Dressler. I don't mean to mislead or confuse you. How did you know?
A. **There's corner markers on both ends.**
Q. What are those markers?

A. **Stone.**
Q. When you say "both ends," orient me.
A. **That would be on the boundary between the northern part of the Nelson property and southern part of the Kimble property.**
Q. These stones --
A. **They would run basically somewhat east and west.**
Q. When did you first observe those stones?
A. **Before I started mining.**
Q. Way back in the 1980's or the second time?
A. **Second time. Both times really.**
Q. These stones, are they carved monuments or just a stone?
A. **They are carved.**
Q. Could you describe it further for me, please.
A. **They are made of sandstone.**
Q. Let me be a little more precise. Let's start with the stone on the western end of this line. Describe that for me, please.
A. **The stone itself?**
Q. Yes, sir.
A. **They are just a carved stone sticking up.**

Q. What is the shape of it?
A. **Kind of square, squarish.**
Q. Actually embedded in the earth?
A. **Yes, embedded in the earth.**
Q. Is there anything written on it or chiseled into it?
A. **Not that I know.**
Q. Let's go to the other end of this line, that would be the eastern more or less.
A. **Same.**
Q. When was the last time you checked to see that those stones were there, if ever?
A. **Well, certainly before I started mining, I checked. And during the mining process, I kept looking at them.**
Q. How did you conclude that those stones actually marked the boundary? Who told you that or how did you determine that?
A. **Well, originally Mr. Hayes lived next door to where everything was.**
Q. Did you ever have a surveyor tell you that, yeah, I've done a complete survey and those stones are on the corners?
A. **No, never had it surveyed.**
Q. In the 1990's, Mr. Dressler, could you

list for me the machinery you had on this job?
A. **Yes. 988 --**
Q. That's a dozer?
A. **-- Caterpillar loader. Loader.**
41 Fiat dozer.
Q. What was the size of the bucket on the 988?
A. **Six-yard bucket.**
Q. And on the dozer?
A. **Size of the blade?**
Q. Yes, sir.
A. **About close to -- about 19 feet.**
Q. Those are the only pieces of equipment you ever had on the job?
A. **A little backhoe, a little Case backhoe.**
Q. Anything else?
A. **That's all I recall. Water pump.**
Q. Who did you use for your blasting?
A. **Tyler Blasting.**
Q. Exclusively?
A. **Yes.**
Q. With whom at Tyler did you deal? Was there a single person?
A. **Roger usually took care of contacting them, Mr. Thomas.**

Q. The employees that -- who did Tyler send out? Did they send out the same crew or was it a different person?
A. **If I recall, it varied.**
Q. I want to call your attention, Mr. Dressler, to one of the averments you made way back when I first was trying to join you as a defendant to this case. I'm going to show you or maybe Mr. Durant has it there, paragraph 12 of your reply to Motion to Join Additional Defendants.
MR. DURANT: Why don't you show it to him, Mr. Smith. When I find it, I'll change off.
BY MR. SMITH:
Q. Here is the cover page. It is filed on your behalf. I flipped it to the page where paragraph 12 appears. I'm going to ask you some questions about that. If you can read it for a moment.
MR. DURANT: Here. He can have his back.
MR. SMITH: Thank you very much.
Q. Do you have it there, Mr. Dressler?
A. **Yes.**
Q. That states that you stood on one spot on the Kimble property and pointed in the general

direction of two boundary markers.
I think I know what that means, but you are the witness and you are the guy that was standing there. The two boundary markers referred to in paragraph 12, are those the two that we've just been discussing?
A. **Yes.**
Q. When you say that you stood in one spot on the Kimble property, can you tell me approximately where on the Kimble property you were?
A. **If I recall correctly, we were on the top of the hill, which would be -- the boundaries between the two properties would be on the hilltop.**
Q. Who were you standing there with?
A. **Gary Waroquier.**
Q. Anybody else?
A. **I don't recall anyone else.**
Q. Did you ever have any subsequent conversations with any of the Waroquiers about the location of the line or these monuments?
A. **From that point on?**
Q. Yes, sir.
A. **Not that I recall.**

Q. You go on to state in this paragraph that you did not walk the line.
A. **That is correct.**
Q. Did you ever walk this line with Mr. Nelson?
A. **No.**
Q. Did you ever discuss boundaries with Mr. Nelson, corner markers?
A. **No.**
Q. How about with his dad?
A. **Pretty sure that I did. It's been -- it was a long time ago, but I'm sure that we did.**
Q. Had Benjamin mined on any of the Kimble properties, do you know?
A. **Yes. A portion of it.**
Q. Was there deep mining under a portion of the Kimble property, do you know?
A. **There was a little on them, yes.**
Q. What seam would that deep mining have taken under the Kimble property, if you know?
A. **The bulk of that would have been the Lower Kittanning.**
Q. Any other seams?
A. **A portion of the Middle Kittanning.**
Q. Did you ever have the Kimble property

drilled?
A. **Yes.**
Q. "Yes"?
A. **Yes.**
Q. Would that have been done by -- help me here -- Forsyth?
A. **Yes.**
Q. Was that done contemporaneously with the Nelson?
A. **Yes, in the same time frame.**
Q. Did you show Forsyth where this boundary line was between Kimble and Nelson?
A. **No, it was immaterial to a test run.**
Q. How about material to your evaluation of the properties? That didn't factor? You didn't want to know --
Let me ask you this: Did they give you a map that showed where they drilled?
A. **They give a drill report, kind of a little bit of a chart. It's not -- it's not a map.**
Q. And that report contains data on it; does it not --
A. **Yes. Eventually that information would be transferred on to the -- the engineer would**

incorporate those holes usually on the map.
Q. Okay. Go ahead.
A. Not all of them necessarily, but --
Q. That's the point of my question. That report doesn't do you much good unless you know where that hole is; is that correct?
A. Yeah. You need to know about where it is. It's not difficult in that small of an area to remember.
Q. What was Forsyth working from? How did they know where the hole was located in order to report it back to you or your engineers?
A. Their operators would use -- the drill roads and so forth were references.
Q. And they just hand draw a map?
A. Yes.
Q. Did you give them any maps?
A. No. No, there were no maps produced at that time. This is the initial test drilling, and I would like to point out that I walked the property line with Mr. Kimble, which is the same line.
Q. When was that?
A. That was prior to mining and after mining.

Q. When you say "after mining," approximately when?
A. After mining was commenced. I'm sorry.
Q. Approximately when?
A. Very shortly before I transferred the permit to Waroquiers.
MR. NADDEO: I'm sorry. Your voice is low. Who did you walk the line with?
THE WITNESS: Mr. Kimble, the other property owner.
BY MR. SMITH:
Q. That would be Richard L. Kimble?
A. Yes.
Q. You said after mining commenced shortly before you transferred the permit to Waroquier.
A. That was the last time, yeah. We did this more than one time.
Q. What was the particular purpose of that walk?
A. To be sure that I was where I thought I was.
Q. There's some other reference point on the property maybe. When you discussed the boundary between Kimble and Nelson with Gary Waroquier, was any reference made to the horizon or horizon line?

A. I don't recall. I had measured previous to that. I used the township road as a measurement, an existing township road to the north which runs through the Kimble property. That was another point that I used, a compass point.
Q. You said that you measured? From where on that township road to where on the boundary line?
A. I would measure from the ditch line.
Q. That ditch runs along the road, correct?
A. Yes.
Q. Which point on the road did you take your measurement from?
A. Various points.
Q. How did you then calculate those distances in terms of the boundary line?
A. The -- using the mine maps.
Q. How would you use them?
A. Well, they are on a scale. That's how I determined, using their scale.
Q. Did you ever use -- there's a gas well, I want to say, to the southeast of the Nelson property. Is that ringing a bell with you?
A. There's one on the northeast.

Q. I stand corrected. Did you ever use that as a reference point in any fashion?
A. Yes.
Q. How did you use it?
A. With measuring.
Q. With measuring?
A. Used it the same as the township road.
Q. How about in terms of site lines, just standing on top of the Kimble hill and eyeballing things.
A. Along with the measuring.
Q. But you did do that?
A. Yes.
Q. Did you make any reference to that gas well when you were speaking with Gary Waroquier?
A. I don't recall.
Q. There's a tree line, too, I believe that came off the Hayes property, if I'm correct?
A. On the western portion?
Q. Maybe. You tell me.
A. There is a tree line on the western portion.
Q. Does that bear any relationship to this Nelson-Kimble boundary?
A. I don't believe so.

Q. Since you are looking at it, if you drop down to paragraph 14 in your reply, the very last line there's a parenthetical including maps, do you see that?

A. Yes.

Q. Could you tell me, please, which maps specifically did you give to the Waroquiers?

A. Various maps, all the maps required to conduct mining activities.

Q. Tell me, Mr. Dressler. Just saying all doesn't give me any additional information. If I look at a bundle of maps, how do I know if I'm looking at all of them unless you tell me.

A. First of all, Gary Waroquier has been in the coal business for many years. This is nothing new to him. He knew what he was required to have.

Q. Let's just say for the purpose of argument -- for the purpose of advancing this deposition I'll grant you all that.

Which maps? Maybe you don't know.

A. I can go back and look. Everything I had.

Q. But you have been in the coal business a day or two yourself. Yes?

A. Yes.

Q. Why can't you tell me, sitting here this morning, which maps you gave the man? You are telling me everything involved with the permit, right?

A. Right.

Q. Tell me what that is.

A. It would take a while. I'm sorry.

Q. I've got all day.

A. The topographic maps, Exhibit 9 was one of them.

MR. FRAMPTON: What? Keep your voice up on that.

THE WITNESS: I can't sit here and recall how many maps are in the package and what they are called.

BY MR. SMITH:

Q. You made reference to an Exhibit 9 though.

A. Yes.

Q. Would that be an exhibit to the permit application?

A. Yes.

Q. Anything else specifically you can think of? I'm not out to torture you. I'm trying to get to the bottom of this. Anything else

specifically you can think of?

A. Not at this point in time.

Q. Mr. Dressler, as a rule of thumb I've heard kicked around in the coal industry -- you tell me whether you are familiar with it and whether you think it is accurate, inaccurate -- that there's approximately 131 tons of coal to a one inch, one acre square. Are you familiar with that?

A. I'm familiar with that and also another one.

Q. Well, let's stick with this one.

A. Yes.

Q. You've peaked my curiosity. Do you use that? In other words, do you think it is generally accurate?

A. I think it's generally accurate.

Q. Give me the other one.

A. The old timers computed by -- they come out to a hundred tons, the same formula created 100 tons.

Q. So it was coming out lower?

A. Yes.

Q. The old-time miners or the old-time property owners?

A. The first I ever heard was the 100 ton per inch, per acre.

Q. How long ago was that?

A. I don't recall how long ago it was. The second one you mentioned, yes, I've heard that used.

Q. Could the difference in mining techniques, deep mining versus surface mining, impact that rule or that rule of thumb, do you know?

A. Yes. Oh, yes. There's many variables.

Q. Completely different line of questioning. Who did your accounting in the period 1999 through 2001?

A. Myself.

Q. You didn't use anybody to assist you with bookkeeping?

A. Very little. Very, very little.

Q. That very little, who would have helped you?

A. That would have been Beverly Bryington.

Q. And this is the Bryington from the coal company?

A. From Beverly Hill Coal, yes.

Q. How about preparing your tax returns?

A. Mickey Catalano here in Clearfield.
Q. How about your OSM reports, who did those?
A. She worked on them for me at that point in time. Since then, I've been doing my own.
Q. I'm just -- we're focusing on 1999 through 2001.
A. Part of that I did myself, the last few.
Q. How about reports to the DEP during 1999 through 2001?
A. Yeah. I did them.
Q. Was there anyone else at all who helped you with any of your paperwork, so to speak, associated with your activities under this permit?
A. No.
MR. SMITH: Does anybody need to take a break?
Let's go back to the Nelson/Kimble boundary. Was there a fence there in the late 1990's?
A. No.
Q. How about in the 1980's when you were there?
A. No.
Q. Was it posted "No Trespassing"?

A. Yes. Back then there was --
Q. "Back then" being 1990's or 1980's?
A. In the 1980's.
Q. How about in the 1990's?
A. I do recall seeing some that the neighbors had put up.
Q. On their lines?
A. I think some of the neighbors, unauthorized neighbors, put up on other people's property. I did see them.
Q. Were there other visible differences between Mr. Nelson or his trust property and the Kimble property, anything at all?
A. Not that I recall.
Q. Did you ever use a GPS, global positioning system, one of those handheld gizmos?
A. No.
Q. As the mining progressed in the 1990's, Mr. Dressler, how did you know where you were on the properties?
A. By the measurements that I mentioned.
Q. Did you do anything else in that regard to verify where you were?
A. Such as?
Q. I don't know. That's why I'm asking.

A. No. The measuring and the -- the sighting.
Q. And sighting being --
A. And walking, walking the line.
Q. Let's take a couple steps back. The measuring would have been from the township road?
A. Yes.
Q. And from that gas well?
A. Yes.
Q. When you say "measured," how did you do that? A tape?
A. A tape, yes, hundred-foot tape.
Q. Did you take measurements from any other natural or man-made monuments or things?
A. The distance from the stone to stone, I didn't take that measurement.
Q. What I'm asking --
A. Corner to corner, I didn't take measurements that way.
Q. You said something about then that you would also use sightings. When you did that, exactly what were you doing?
A. I would measure from the township road and establish a marker and then sight from the existing markers to that.

Q. Were you using any other equipment when you were doing these measurements or calculations?
A. No.
Q. Nothing else?
A. No.
Q. How did you know which direction you were going in? You didn't.
A. Yes, I did. North and south. I know north and south, east and west.
Q. Sure you do, as a general matter.
A. The maps are showing me that, too.
Q. Wouldn't you agree, Mr. Dressler -- let's just put it in real terms -- taking measurements from where I'm seated this morning, if I measure directly over your head to that wall, it's one distance, correct? If I shoot from this chair over Mr. Naddeo's head, it is going to be a different distance; is that correct?
A. It's obviously a different angle.
Q. How did you verify those angles?
A. Ninety degrees.
Q. How did you know it was 90 if all you had out there was a tape? Tell me.
A. I believe I was reasonably accurate.
Q. Your arrangement with the Waroquiers, you

got paid what I think is typically referred to as an override. Am I correct?

A. Yes.

Q. How much was that?

A. I don't have that with me.

Q. $1.00 a ton?

A. Oh, a dollar a ton, yes, was the amount.

Q. I wasn't asking the total.

A. Yes, a dollar a ton.

Q. And that was paid on a monthly basis?

A. Yes.

Q. I don't know if Mr. Durant had a chance to show you, but I produced, as part of this litigation, a whole thick stack of royalty statements.

A. Yes.

Q. Have you seen those?

A. Yes.

Q. Did you get basically a cover letter from the Waroquiers with these checks paying you your overrun?

A. Yes.

Q. You got those on a monthly basis?

A. Yes.

Q. You had an opportunity to review them at

the time; is that correct?

A. Yes.

Q. At any point since then, Mr. Dressler, have you disputed the accuracy of those checks that were sent to you? In other words, was it enough?

A. I didn't dispute the amount of the checks.

Q. Did you ever dispute the tonnage statements that accompanied those checks?

A. No.

Q. And isn't it correct that since you are being paid on a per ton basis that you have a clear financial incentive to make sure that those reports were accurate? Is that correct?

A. Yes.

Q. Did you ever get one of those checks in the mail and maybe call Lee Waroquier, Joe, Junior, for example, and say, "you know, I don't think this is right, but I'm going to cash it anyhow under protest"? Did you ever do anything like that?

A. No, I didn't.

Q. Let's talk a little bit about the house coal that came from this project. Looking at

Dressler 5, this is D-5, okay, first page, and right there where my index finger is, "all house coal to be split 50/50."

So you were selling house coal from this property -- from this permit? Whatever you dug under this permit, you were selling some house coal?

A. From the Kimble property.

Q. Do you have any records that indicate how much house coal was sold?

A. No.

Q. Is that typically done on a cash basis, Mr. Dressler?

A. Yes.

Q. Was it you that was arranging these sales, or did Mr. Thomas participate in that?

A. I arranged individuals.

Q. He never did any of that?

A. No.

Q. How often did you make this 50/50 split?

A. On a regular basis. This was only a short time frame.

Q. What was the time frame?

A. The season. On this permit, there was no house coal available until October, November and

December.

Q. In other words, when people needed it?

A. Yes.

Q. What kind of accountings did you give Mr. Thomas of the house coal? Just hand him a wad of dollar bills or what?

A. Basically. The house coal was of such quality that the sales were kept down. They were down to that level because of the type of coal. The people didn't like it for house coal.

Q. The other coal that was sold, that was mined under this permit and sold through third parties, how did you go about selling that? Did you use a broker?

A. Part of the time, but usually we'd just get various coal companies, larger coal companies that call, to see if they were interested.

Q. What companies did you sell coal to from this permit?

A. The ones previously.

Q. Basically the trucking companies?

A. Coal companies, sold directly to these that I mentioned earlier.

Q. Let me ask you this: Was part of the deal, for example, you did sell some coal to one

of the Waroquiers companies?
A. Let me back up a little bit, please.
Q. Go ahead.
A. I did use -- if I remember correctly, RKR was involved in the sales of some of this coal.
Q. As a broker?
A. As a broker. Some I sold.
Q. The question I started to ask you, just using the Waroquier company as an example, was the deal, I'll sell you 100 tons of coal, you come and get it? Was that the way you worked it?
A. Whatever was available in the pile, in the pit.
Q. What did you do to determine the actual quantity of coal that was sold to any of these particular third parties?
A. Took their weights and measures.
Q. You didn't undertake any independent verification?
A. There were no scales on the site.
Q. Did you do anything else to at least keep track in a general way of what you were selling to these people?
A. Yes, truck loads. That's the best we could do.

Q. How would you record that?
A. That was recorded usually in a little loader book.
Q. If you recall, early on in this deposition, I asked you about journals and things like that. It was that sort of thing that I was getting at.
A. Oh, okay.
Q. So you've got a loader book that's got this stuff ticked off?
A. Yes. Did have.
Q. Do you still have that?
A. No. Once the weigh slips came, then that was the accurate tonnage.
Q. During this period Mr. Thompson is working this permit with you, correct?
A. Yes.
MR. DURANT: Thomas? I thought you said Thompson.
MR. SMITH: I meant Mr. Thomas, Roger A. Thomas.
THE WITNESS: Yes.
BY MR. SMITH:
Q. What attention was he paying to the amount of coal that was taken out of the project?

A. I'm sure he paid close attention. He had a concern.
Q. Of course he did --
A. Yes.
Q. -- but how do you know that?
A. I assume he did.
Q. Did you account to him?
A. For the coal?
Q. Yes, sir.
A. Yes.
Q. How did you work the payments between you and Mr. Thomas?
A. Weigh slips. I gave him a copy of each and every weigh slip.
Q. Along with his check?
A. Yes.
Q. Did he ever question the tonnage?
A. Not that I recall.
Q. Do you have any recollection of him making notes as trucks were loaded or anything like that, similar to your loader book?
A. Not that I recall. He had a view from the drag line of seeing the activity.
Q. Could you tell me what equipment Mr. Thomas or his company had on this permit at

the time you were working out there?
A. One drag line.
Q. Is that it?
A. One dozer and one loader.
Q. Did he have any employees working for him during this period?
A. No.
Q. Do you know the capacities of those pieces of equipment, size of the bucket on the drag for example?
A. Not for sure, but probably six or seven yard.
Q. If you don't know for sure, I'm going to ask Mr. Thomas. But you don't know for sure?
A. Not for sure. Can I back up just a little bit on something.
Q. If you want to clarify something, sure.
A. On the statements from the Waroquier Coal and marked tonnage and checks enclosed, after the point in time Mr. Nelson made this discovery, I continued to get letters saying check enclosed with the tonnage being shown, but no check. I believe that Mr. Waroquier made the statement that those checks from that point on would be put in escrow until this was settled.

Q. Did Mr. Kimble visit your operation periodically to check on the progress?
A. **Yes, he did.**
Q. How frequently?
A. **I don't recall how frequently, but it seemed maybe on a monthly basis, possibly.**
Q. He lives out in that area?
A. **No, he lives in Liberty, PA.**
Q. So he would travel up here for that purpose?
A. **Yes.**
Q. After transferring this permit to the Waroquiers, did you ever visit the permitted areas of the two properties?
A. **On several occasions.**
Q. When did you do that?
A. **I don't recall when I did it, but I know that I did. A couple times I just drove by, didn't enter the site, just drove by.**
MR. DURANT: Mr. Smith, let me ask you to clarify. He testified that he did house coal for about two months afterwards. Are you talking about after that, or -- when you talking about visiting, was it after the house coal was done or --

MR. SMITH: I'm completely off of house coal. When he was answering those questions, I heard October, November and December, basically the heating season.
THE WITNESS: Yes.
BY MR. SMITH:
Q. I think what Mr. Durant is getting at, did you ever sell house coal from this property after you transferred the permit to the Waroquiers?
A. **Yes. There was still coal there on the house coal site.**
Q. So you continued to do that, sort of sideline business?
A. **Yes.**
Q. And certainly you would have visited the property for that purpose?
A. **Yes.**
Q. Can you quantify those visits for us, how frequently and how many times in total?
A. **No, I can't.**
Q. How about in terms of dollars, any idea?
A. **In terms of dollars for the -- amount of dollars, proceeds from the house coal?**
Q. Right.

A. **Yes. Around $6,000 total.**
Q. This is after transferring of the permit to the Waroquiers?
A. **No. This was --**
Q. The whole deal?
A. **This was before and --**
Q. And after?
A. **Yeah.**
Q. How do you know that amount, Mr. Dressler?
A. **Well, based on how much I would sell on a Saturday.**
Q. Are you telling me --
A. **Saturday morning was --**
Q. -- that was the big day for house coal?
A. **Yes.**
Q. Are you telling me that at this point in time you are guesstimating?
A. **Yes.**
Q. So you don't know for certain?
A. **Not for certain. Very close.**
Q. Why did you decide to transfer this permit to the Waroquiers?
A. **Well, at the time, at that time, my health was not good.**

Q. That was it?
A. **That was one of the main reasons.**
Q. What were any of the other reasons?
A. **The other reasons -- that was probably at my age. My age. I was approaching 62.**
Q. Were you thinking about retiring?
A. **At that time I was, yes.**
Q. I really don't mean to pry or embarrass you, Mr. Dressler, but could you share with me the health problems?
A. **Diabetes. I ended up in the hospital at the time of this transfer.**
Q. Did you negotiate with any other potential buyers?
A. **Yes.**
Q. Who would they be?
A. **Strischock Coal Company.**
Q. Anyone else?
A. **Larry Bumgardner.**
Q. Is that it?
A. **That would be the ones I can -- the Waroquiers, Mark Strischock and Larry Bumgardner. I'm sorry. There was one other one. Junior Contracting.**
Q. Did you engage in extensive negotiations

with the Waroquiers on this deal?
A. I would not call it extensive.
Q. Were lawyers used?
A. No. Regretfully, no.
(Dressler Exhibit No. 6 marked for identification, attached hereto.)
BY MR. SMITH:
Q. Mr. Dressler I'm handing you what's been marked Dressler deposition Exhibit 6. This is the statement that I believe Mr. and Mrs. Thomas attached to the end of their reply to my Motion to Join.
A. Yes.
Q. Right? Recognize that statement?
A. Yes.
Q. Is that your signature?
A. Yes.
Q. It is dated June 8, 2006?
A. Yes.
Q. Who actually did the typing?
A. That is not known to me.
Q. Where did it come from?
A. Mr. Thomas brought it to me.
Q. What was the context of his presenting this document to you? There was certainly a

discussion.
A. Yes. I'm sure there was.
Q. Would you please tell me your recollection of what was discussed?
A. Well, he was -- the responsibility for this was placed on him as well as me.
Q. But what was actually said, Mr. Dressler?
A. I don't recall.
Q. The upshot was that you signed this document?
A. Yes.
Q. Did you show it to Mr. Durant before you signed it?
A. I don't think I did.
Q. The statement that "I, W. Ruskin Dressler, was responsible for paying the royalties for coal removed from the job known as the Kimble mine," is that a true statement?
A. Yes.
Q. During the period of 1999 through January 2001 you paid all the royalties that were paid for coal from that property?
A. Yes.
Q. To whom did you pay those royalties?
A. Kimbles.

Q. Did you ever pay anything to Mr. Nelson?
A. No.
Q. Mr. Dressler, when did it first come to your attention that the Waroquiers either were or may be over the line between the Kimble and Nelson properties?
A. When Mr. Nelson notified me.
Q. You had absolutely no clue of that before that?
A. No clue whatsoever.
Q. How about when you went out there to load out house coal, it never dawned on you?
A. I didn't go beyond that point. That was not part of the active mine site. I could not see from that point.
Q. Why not?
A. Because it was spoil ponds. Existing spoil ponds.
Q. So you went onto the property to a stockpile of coal, loaded up and left?
A. Yes.
MR. DURANT: Can you clarify what property?
MR. SMITH: Kimble. The Kimble property.
Q. So you entered this project from the

township road over the Kimble property?
A. Yes.
Q. At any point while you were mining on the property, did you ever construct a haulage road or other roads over the Nelson property?
A. No.
Q. Do you know if the Waroquiers did?
A. I would assume they did. I do not know.
Q. You do not know.
Was coal ever augured --
A. No.
Q. -- on this project?
Have you ever done any of your own blasting?
A. No.
Q. When you met with Mr. Thomas on the occasion of this June 8, 2006 statement that you signed, what did he tell you about the boundary line in regard to the mining operations?
A. Well, as I recall, he felt that the Waroquiers were mining on Mr. Nelson.
Q. Did he explain to you why he felt that way?
A. Running the drag line, his position, he had an idea of where everything was property-wise.

Q. So the cab of the drag line is elevated up --
A. **Yes.**
Q. -- above the operation?
A. **Yes.**
Q. And I believe they pivot on an axle when digging and dumping?
A. **Yes. And of course he would be mining for them, so he would go with the machine where he was directed to mine.**
Q. I may have asked you this, Mr. Dressler, but refresh my recollection. Did you have a set of mining maps there at the job?
A. **Yes.**
Q. Were they in a trailer?
A. **A little field office, yes.**
Q. Did Mr. Thomas have access to that?
A. **Yes.**
Q. Did he have access to those maps?
A. **Yes.**
Q. Do you know if he ever took a look at them?
A. **I'm sure he did.**
Q. Did you ever discuss those maps with him, say, walk out on the Kimble property with the map,

top of a spoil pile and just orient yourselves?
A. **At what time frame?**
Q. At any point.
A. **I don't recall that.**
Q. As you are removing overburden in a surface mining operation, Mr. Dressler, does the pit get smaller or greater as you get deeper?
A. **Smaller as you get deeper.**
Q. The walls slope inward?
A. **Yes.**
Q. Give me a second here. Do you want to take a break here, Mr. Dressler?
A. **No. We'll chug along.**
Q. When you would pick up house coal from this permitted area, whom did you speak to about it? In other words, did you speak with Gary Waroquier or some representative? How did they know what you were doing, is what I'm asking.
A. **Oh, they -- as soon as they moved in, they were in charge of everything other than -- I mean I was not permitted to be in the permit, and didn't expect to be in the pit. That was off limits for me.**
Q. When you were operating under this permit, were there regular inspections by the DEP?

A. **Yes.**
Q. Monthly basis?
A. **Quite often.**
Q. Was it always the same inspector or were there various individuals who showed up?
A. **DEP inspector was usually -- always the same one.**
Q. Who was that?
A. **Jim Parlevecchio.**
Q. Did you ever have any discussions with him in regard to the boundary between Nelson and Kimble?
A. **Not while I was still there, no.**
Q. Did you show him the corners?
A. **No.**
Q. Did you have any permit problems or violations while you were operating on --
A. **Not that I recall.**
Q. Did you ever see Mr. Parlevecchio out there taking pictures?
A. **No.**
Q. Mr. Dressler, I don't have anything further for you. I want to thank you for your patience.
Now, the rule is the other attorneys here

get to ask you questions if they would like.
A. **Yes.**
Q. So you might want to take that break.
A. **Thank you.**
Q. Do you need a break?
A. **Yes. I'll take a break now.**
(Recess taken.)
- - -
EXAMINATION
BY MR. DURANT:
Q. Mr. Dressler, I'm Timothy Durant. As you know, I'm your counsel.
A. **Yes.**
Q. I have two small areas that I want to deal with. There was some question about whether you were satisfied with regard to the coal tonnage reports that you received from the Waroquiers and whether you were satisfied that you had received the appropriate amount of money, I believe, was the question. Is that correct?
A. **Yes.**
Q. Are you satisfied that you have been fully paid by the Waroquiers as to your override which is referred to in this agreement of the 22nd of January, 2001.

A. **No.**
Q. In what regard are you not satisfied?
A. **Not satisfied with the fact that the checks were -- that were not enclosed, but it was marked as such on the tonnage report. I have no problem with the tonnage reports or the amount of checks actually sent to me. It's the missing checks that I have a problem with.**
Q. On occasion there were some letters that said "check enclosed" and in fact there was no check enclosed?
A. **That is correct.**
Q. Have you contacted the Waroquiers about that?
A. **Yes, I did and was informed that they were being placed in escrow until this matter was resolved.**
Q. Who did you speak to?
A. **Mr. Joseph Waroquier.**
Q. And then one other housekeeping detail. I want to try to avoid having to file any more papers here. You filed Answers to Interrogatories and just recently made reference to a January 22 agreement and that is, I believe, the same agreement that's been marked as Dressler

Deposition No. 4. Put your glasses on and keep them on, please, just like me.
A. **Okay.**
Q. This document Dressler Deposition Exhibit 4 says January 18 at the top left corner typed, and then it has this 22nd, handwritten in there, of January, 2001.
So is that the only agreement between you and the Waroquiers with regard to the transfer and the rights transferred that pertain to this lawsuit?
A. **Yes. Yes.**
Q. And in fact I'm going to have you look here at paragraph 12 of your Answers to Interrogatories. The last sentence where it says "as supporting documentation, see Kimble lease of February 13, 1998 and the agreement of January 21, 2001."
Is that in error?
A. **January 22nd.**
Q. This is referring to Dressler No. 4, Deposition No. 4 exhibit, right?
A. **I don't see 22nd on the --**
Q. It should have said the 22nd instead of 21st?

A. **Yes.**
Q. Paragraph 12?
A. **Yes.**
Q. And also the answer to paragraph 6 which is in the Request for Production of Documents, paragraph 6, states, "there are no documents except for the agreement of January 21, 2001.
In fact you meant the agreement of January 22, 2001; is that correct?
A. **Yes.**
Q. And that was erroneously placed as 21st, but there is only one agreement. It's this one hand dated 22nd; is that right?
A. **Yes.**
Q. That's all the questions I have. Would you like to have your answers modified to that extent, so that, to make it clear, this is the document to which you refer?
A. **Yes.**
Q. That's all I have.

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EXAMINATION

BY MR. NADDEO:
Q. Mr. Dressler, my name is Jim Naddeo, and I represent the plaintiff in this action,

Mr. Nelson.
A. **Yes.**
Q. As I commented to some of the attorneys, excluding Mr. Smith, when we were in the hall, until this morning I only thought I was losing hair and teeth, but now I think I'm losing some hearing, too, because I didn't catch all of your answers, all right? So I don't mean to be repetitive, but I want to cover a few areas that I'm not sure that I have correct. Then we'll try to get into new areas and get done. Okay?
A. **Yes.**
Q. First of all, you stated that you have been in the business of surface mining coal, I wrote down 1965. Is that correct?
A. **1979 would have been the year, the very first ...**
Q. So the first time you got into the business of surface mining was 1979.
A. **Yes.**
Q. And I think I understood that you are presently still engaged in that business?
A. **Yes.**
Q. Have you been exclusively a surface miner from 1979 to the present?

A. Yes, except in between waiting for permits.
Q. By that I mean you have engaged -- do you or have you engaged in any other business for profit other than surface mining?
A. No, sir.
Q. I understand there was a period of time when your health caused you to discontinue your business as a surface miner.
A. Yes.
Q. That occurred about the time that you got into the business relationship with Waroquier Coal.
A. Yes.
Q. How long were you out of the business?
A. Probably close to a year.
Q. And after a year, you went back into surface mining?
A. Yes.
Q. You stated that you had a relationship with Mr. Nelson for some years.
A. Yes.
Q. Was that through his father?
A. Yes, sir. That was to start.
Q. Started with his father?

A. Yes.
Q. And continued on with Mr. Nelson?
A. Yes.
Q. So you have some knowledge of the Nelson property, which is the subject of this lawsuit, which goes back a number of years.
A. Yes.
Q. Now, were you actively engaged in surface mining as your occupation in 1996?
A. Yes.
Q. There's been a document identified as Dressler Exhibit No. 2 (indicating), which purports to be an Option and Lease Agreement between you and Mr. Nelson.
A. Yes.
Q. You are familiar with that document?
A. Yes.
Q. You have a copy of that document?
A. Yes.
Q. The first line of that document, if you would direct your attention to that, states, this article of agreement made and concluded this blank day of blank, 1996. There's no day, there's no month, but there is a year, correct?
A. Correct.

Q. There's a handwritten notation in there, correct me if I am wrong, but it looks like U/T/A, dated 10-1-93. Do you see that?
A. Yes.
Q. Is that your handwriting?
A. I'm not sure.
Q. Can you explain that handwritten entry on this agreement?
A. No, I can't.
Q. Now, when I go to the second page, it appears that the Option and Lease Agreement was signed by Albert Nelson and by Ruskin Dressler --
A. Yes.
Q. -- correct?
A. Yes.
Q. Without explanation, looking at this agreement, one might reasonably infer that the signatures were affixed in 1996. Would that be true?
A. Well, I see --
MR. DURANT: Objection. Clarification, please. Would the assumption be true or the date be true? In other words --
MR. NADDEO: Well --
MR. DURANT: Would the assumption be

true? Is that the question?
BY MR. NADDEO:
Q. I guess what I'm asking, and maybe I didn't word it accurately, but since the agreement is dated 1996, do you recall whether the signatures were affixed in 1996?
A. No, I don't.
Q. It appears to be fairly clear that the signatures were notarized in February, February 3rd, to be exact, of 1997.
A. Yes.
Q. Could the signatures have been affixed to this agreement before the date that the signatures were acknowledged?
A. Any notary that I've ever been to had to have the person present the day that they did the paper -- their paperwork.
Q. Do you know whether that was the case here?
A. I'm sure anyplace I've ever been myself, yes.
Q. So based on experience, your answer is yes?
A. Yes.
Q. But you don't specifically recall that?

A. I do now that I look at the notary, yes.
Q. Good. All right. So it's your recollection that the signatures were affixed to this agreement the same day that they were notarized?
A. Yes.
Q. Thank you.
Let's talk about the terms of that agreement. That agreement does purport to be a lease for 49 acres of land?
A. Yes.
Q. And would that be the same 49 acres which is the subject of this lawsuit?
A. Yes.
Q. The agreement, in paragraph 2, provides for a royalty rate?
A. Yes.
Q. And correct me if I am wrong, but the royalty appears to be $2.00 per ton or 10 percent of the pit price, whichever is greater.
A. Yes.
Q. Is that how you understood the lease?
A. Yes.
Q. Now, in paragraph 3 there is a term, correct? There's a term specified?

A. Yes.
Q. And paragraph 3 reads that: Lessee covenants and agrees to commence mining operations upon said premises within three years. The effective date of this lease and in the event of failure so to commence mining operation agrees to pay lessor as a minimum royalty the sum or price of triple X per year, payable quarterly in advance.
Did I read that correctly?
A. Yes.
Q. What is triple X?
A. It would equate to zero.
Q. So that if you didn't commence stripping operations within three years, you didn't have to pay anything?
A. I don't see a figure, so ...
Q. Did you understand that you were to commence operations on this property within three years?
A. It was always my understanding that if I activated a permit, all involved with that permit were considered a part of the mine site.
Q. But the lease pretty specifically says commence mining operations which -- again I'm

asking your understanding -- but commencing mining operations, I guess if I were looking at this meant you had to be digging coal. You didn't understand that to be the case?
A. I've never run into this situation before.
Q. It was your understanding that as long as you applied for a permit within the three-year period, you had complied with the terms of the lease?
A. The permit -- my understanding is the permit has to be activated. Whether it be on Mr. Nelson or Mr. Kimble, someplace on that permit you have to be moving dirt.
Q. Now, "upon said premises," said premises would have been the Nelson property.
A. Yes.
Q. Not the Kimble property, true?
A. Yes.
Q. I want to make sure that ...
Now, in response to the discovery that was served upon you, which Mr. Durant partially went over with you, I believe you answered that you never conducted any mining operations on Mr. Nelson's property after January -- at any

time?
A. At any time.
Q. That's not exactly true, is it?
A. I'm not sure I heard everything correctly. Would you --
Q. Let me go back. You testified in response to some of Mr. Smith's questions that you had previously mined the Nelson property. By "previously," I mean prior to the date of your lease agreement with Albert Nelson.
A. Yes.
Q. So you have at some point in time conducted mining operations on the Nelson property.
A. Yes, under another permit.
Q. So when you answered your interrogatories, I think what you meant is that you did not conduct any mining after the effective date of your lease with Albert Nelson.
A. This is correct.
Q. Would that be a more accurate response --
A. Yes.
Q. -- to that? Is that your position?
A. Yes.
Q. Now, you also obtained a lease on

property owned by Richard L. Kimble and Nancy C. Kimble.

A. Yes.

Q. That lease has been marked for the purposes of your deposition as Dressler Exhibit No. 1.

A. Yes.

Q. After acquiring those leases you proceeded to apply for a permit, correct?

A. Yes.

Q. And that permit has been identified for the record as Dressler Exhibit No.3.

A. Yes.

Q. I believe you have already indicated that this is a true and correct copy of the coal mining permit that you submitted to the Pennsylvania Department of Environmental Protection?

A. That was submitted to me from them.

Q. This was in response to your application.

A. Yes.

Q. That permit purports to be a permit for 75 acres -- do you have a copy of that, please?

MR. SMITH: Right here (indicating).

THE WITNESS: Yes.

BY MR. NADDEO:

Q. First line, 75 acres of which 63 coal acres are planned to be affected.

A. Yes.

Q. I need some education on that terminology. Does that mean that you will be mining on 63 acres or does that mean that there was 63 acres of coal to be recovered?

A. 63 acres to be affected. Not 63 acres of coal.

Q. Under part C of the permit, if you would go to that, please --

A. Yes.

Q. -- second to the last page.

A. All right.

Q. Under heading A, the permit states that, "Permittee is hereby authorized to conduct coal mining activities on lands of Richard L. Kimble and Nancy C. Kimble, Mary A. Hayes and Albert L. Nelson." Did I read that correctly?

A. Yes.

Q. There the permit specifically states the property owners whose properties are involved with this permit?

A. Yes.

Q. Correct? How does Mary A. Hayes fit in

this picture?

A. A portion of the one vein of coal underlying the surface of Mr. Kimble.

Q. So Mary A. Hayes had an interest in the coal?

A. Yes, a small portion.

Q. Do you know whether Mary A. Hayes was paid any royalty?

A. No.

Q. Did you pay her any royalty?

A. No.

Q. Do you know whether her coal was mined?

A. There was some controversy on that as to whether, you know --

Q. There's a lot of controversy on this.

A. -- as to whether she actually had anything coming.

Q. So your answer is, you don't know whether her coal was mined or not?

A. I would assume -- I would assume it was, but --

Q. But you are certain that you did not pay this particular property owner any royalty?

A. That is correct.

Q. Was the coal owned by -- strike that.

The coal owned by Mary A. Hayes was under which property, the Kimble property or --

A. The Kimble property.

Q. Back to the first page of that permit. Again, the first sentence, and I'm going to start, "On the area of the permit outlined on the authorization to mine and accompanying maps contained in part C of this permit ..."

Do you see that language? Again, I would like some education. Were there maps which accompanied this permit?

A. Yes.

Q. Who prepared those maps?

A. Lee Simpson.

Q. Were those maps submitted to DEP along with your application for this permit?

A. Yes.

Q. Do you know at this point in time where the mining map is located for your original permit?

A. That was given to the Waroquier Coal Company, the original. I have made some copies and distributed them to Mr. Nelson and Mr. Thomas, but not the complete set of maps. There's so many maps goes with the permit application.

Q. Do you have any independent recollection of what was contained on those maps without referencing them?
A. **Well, they would show the initial bonded area and areas to be bonded. Of course, they show the property lines.**
Q. I guess that's my question. Did the mining maps submitted with your permit show the boundary lines on the various properties to be affected?
A. **Yes.**
Q. So that the Kimble property would appear on the map and the boundaries would be defined on the map?
A. **Yes.**
Q. The boundaries of the Nelson property would also be defined on that map?
A. **Yes.**
Q. Would the map also show where the various seams of coal stopped or started?
A. **Yes.**
Q. And the map would also have an area which was to be or would denote an area which was to be mined --
A. **Yes.**

Q. -- is that right?
A. **Yes.**
Q. So if I had that map, I would see all of those items on the map?
A. **Yes.**
Q. We have another document which has been marked as Dressler Exhibit No. 4, which purports to be an agreement between Waroquier Coal Company, Inc, and Ruskin Dressler.
A. **Yes.**
Q. Do you have a copy of that handy?
A. **Yes.**
Q. I'd like to talk about this a minute. First of all, if I'm -- "This 22nd of January 2001, Waroquier Coal Company, Inc., agrees to resume the permit No. 179 90105 of Ruskin Dressler." Did I read that correctly?
A. **Yes.**
Q. Is that permit number the appropriate permit number that appears in Dressler Exhibit No. 3?
A. **This is correct.**
Q. It goes on, "Also a payment of an override of $1.00 for each ton of coal mined off of this permit"?

A. **Yes.**
Q. "Settlements and payments of royalty shall be made on the 25th day of each month for all coal mined and removed from the premises during the preceding calendar month and shall be accompanied by a copy of all weight slips showing the number of tons of coal mined and removed."
A. **Yes.**
Q. I want some explanation of that. Does that phraseology mean the $1.00 override? Is that what was intended here?
A. **Yes.**
Q. Because it refers to royalty rather than override.
A. **Yes. The $1.00 override is correct.**
Q. Now, is there anything in this agreement that mentions an assignment of the Kimble lease?
A. **Not as such.**
Q. Is there anything in this agreement which mentions an assignment of the Nelson lease?
A. **No.**
Q. This agreement talks about the transfer of a license?
A. **Permit.**
Q. Permit?

A. **Yes.**
Q. Well, permit, license. Okay. I'll use "permit."
A. **Yes.**
Q. Feel better with "permit"?
A. **Yes.**
Q. This agreement pertains to the transfer of a permit.
A. **Yes.**
Q. Do you know when the application was made to transfer the permit which you had obtained on the Kimble and Nelson properties?
A. **I don't know the exact date.**
Q. Do you know if the transfer was ever approved?
A. **Yes.**
Q. Do you know when it was approved?
A. **There is a copy of the mining license in Waroquiers' name which would have that date.**
Q. I don't know that you have a copy of that.
I believe your counsel is exhibiting a document which is titled Commonwealth of Pennsylvania, Department of Environmental Protection, Bureau of Mining and Reclamation, Coal

Surface Mining Permit No. 179 90105, Permittee Waroquier Coal Company?

A. Yes.

Q. And it has an entry there says, "transfer date" and the transfer date states "October 16, 2001."

A. Yes.

Q. In part C of that permit, it again refers to 75 acres. No. No. No. I'm sorry. Front page.

A. Oh, okay.

Q. See that?

A. Yes.

Q. Of which 63 acres are planned to be affected.

A. Yes.

Q. That's exactly the same language or wording that appears in the permit that was transferred.

A. Yes.

Q. If we go back to part C, I believe part C also contains part C, heading A?

A. What page is that?

Q. I don't know. Part C, heading A, again, "Permittee is hereby authorized to conduct coal

mining activities on lands of Richard L. Kimble, Nancy C. Kimble, Mary A. Hayes and Albert L. Nelson."

A. Yes.

Q. So the permit as transferred continued to apply to the same properties.

A. Yes.

Q. Namely Kimble and Nelson.

A. Yes.

Q. If we go back to the front of the permit, again, there is a reference in line 1 to mine and accompanying maps contained in part of this permit. First sentence.

A. Yes.

Q. Which tells us, correct me if I am wrong, that along with this permit a map or maps were submitted to DEP.

A. Yes.

Q. Have you ever seen those maps?

A. Yes.

Q. You have?

A. Yes.

Q. Do you know who prepared those maps?

A. Yes. Lee Simpson.

Q. I'm talking about the permit to

Waroquiers. Have you ever seen the maps that went in for the Waroquiers?

A. I'm sorry.

Q. We're on the Waroquier permit.

A. I've not seen those.

Q. That would be my guess. So you haven't seen those maps?

A. No, I have not seen those maps.

Q. So whatever maps accompanied the application and are part of the permit, you are not privy to those, you haven't seen them?

A. That is correct.

Q. You have no idea what is on them, correct?

A. Correct.

MR. DURANT: Referring to the assigned permit.

MR. NADDEO: Yes.

MR. DURANT: Or the permit as assigned.

BY MR. NADDEO:

Q. You testified, in response to one of Mr. Smith's questions, that at some point you informed him that the Nelson permit had been assigned to Waroquier.

A. Run that by me again, please?

Q. You testified that you told Mr. Nelson that the permit that you had, the Dressler permit, had been assigned to Waroquiers.

A. Yes.

Q. Do you recall when you told Mr. Nelson that the permit had been transferred or assigned?

A. No, I don't recall.

Q. When you told him that the permit had been transferred or assigned to Waroquiers, did you tell him that the lease had been assigned?

A. Well, I considered the document to be an assignment.

Q. That's not my question. Did you tell Mr. Nelson had you had assigned the lease to the Waroquiers?

A. I am pretty sure that I did, yes. I thought I did. Yes, I would have told him.

Q. Are you sure that you told him, or are you trying to speculate to give me an answer?

A. I'm sure that I told him.

Q. Okay. Fine.

There's also been some testimony that when you discussed this job or the transfer of this job, if you will, to the Waroquiers, that you met with Gary Waroquier?

A. **Yes.**
Q. Did you also meet with Joe, Junior?
A. **I only remember meeting with Gary on the directions.**
Q. One of the things you did with Gary Waroquier was to kind of look at the property lines between these two properties?
A. **Yes.**
Q. And at that point in time you thought that the corners were demarcated by some stones of some sort?
A. **Yes.**
Q. Did you point out the stone corners to Mr. Waroquier?
A. **I did not show him the stones themselves, but pointed in the general directions where he could find them.**
Q. Do you know whether those stones were ever stripped out as part of this operation?
A. **No, they were never stripped out.**
Q. So if I went there today, those stones would still be there?
A. **They should be.**
Q. I believe that you also testified that you didn't actually walk the lines of these

properties with Gary Waroquier.
A. **That is correct.**
Q. So do I understand then that the only line that you talked about was the line separating the two properties?
A. **Yes.**
Q. So the line that you discussed with Gary Waroquier was the line which divided the two properties north and south?
A. **I'm thinking more east and west.**
Q. We've been talking north -- I thought the Kimble property was north of the Nelson property.
A. **This is true.**
Q. So was the line that you discussed with Gary Waroquier the north-south line, the one that demarcated these properties north Kimble, south Nelson?
A. **Yes.**
Q. That's the line you went over?
A. **Yes.**
Q. In addition to pointing to the stones, did you do anything else?
A. **No.**
Q. Now, under the terms of your agreement with the Waroquiers, you were to receive a $1.00

override per ton of coal mined from the property.
A. **Both properties.**
Q. I'm sorry, from the job.
A. **Yes.**
Q. Thank you. That's more accurate.
A. **Yes.**
MR. NADDEO: Show him this.
MR. DURANT: Is that it?
MR. SMITH: Which number is that?
MR. NADDEO: I'm on this. This would have been your exhibit, item 4 in your Response to Production of Documents.
MR. SMITH: Thank you.
BY MR. NADDEO:
Q. Mr. Dressler, your counsel has shown to you a document which is titled Defendant Waroquiers' Response to Item 4-A, at the bottom of the page. Do you see that?
A. **Yes.**
Q. That purports to be a reconciliation of coal and royalties paid to various persons.
A. **Yes.**
Q. Would you agree? That's what it appears to be.
A. **Yes.**

Q. And there are three headings, one for Thomas, one for Dressler and one for Kimble.
A. **Yes.**
Q. Let's start with Dressler. Let's start in the middle.
A. **Yes.**
Q. On the second page, there we have some totals. Do you see that?
A. **Yes.**
Q. Under the Dressler column, the total tons is listed as 34,489.99 tons --
A. **Yes.**
Q. -- correct?
A. **Yes.**
Q. Were you paid for 34,489.99 tons of coal?
A. **I don't believe so.**
Q. Now, let's shift to the Kimble column. Under that column it shows total tonnage of 27,285 tons.
A. **Yes.**
Q. Do you know whether Kimbles were paid for 27,285 tons?
A. **No.**
Q. If the Kimbles were paid, what was your understanding as to who was to pay them?

A. This would be Waroquiers'.
Q. Because you had transferred the job?
A. Yes.
Q. And part of your arrangement was for Waroquiers to pay the royalty to the property owner?
A. Yes.
Q. Was that your understanding?
A. Yes.
Q. To your knowledge, did Waroquiers ever affirm that that was their understanding?
A. Yes.
Q. Which person specifically affirmed that to you?
A. That would be Joseph Waroquier.
Q. Joe, Junior?
A. Joe, Junior.
Q. Let's go to the Thomas column. In the Thomas column it shows total tons of 15,660.09 tons. Do you see that?
A. Yes.
Q. To your knowledge, was anybody paid royalty for those tons?
A. I don't know.
Q. But if royalty was due, did you

understand it to be Waroquiers' obligation to pay for that coal?
A. Yes.
Q. The same as with Kimble?
A. Yes.
Q. Now, if you would quickly add Thomas tonnage to Kimble tonnage for me and you are going to come up with 42,945 tons without the decimals. I'm asking you to add Kimble to Thomas.
MR. DURANT: According to my calculator (indicating).
THE WITNESS: 54,570.
MR. NADDEO: Oh, I must have added wrong.
MR. DURANT: Let's do it again.
MR. NADDEO: Yes, indeed.
THE WITNESS: 42,945.
BY MR. NADDEO:
Q. According to this schedule, this would have been for coal removed from the period starting January of 2001 through, I guess, looks like sometime around September of 2005.
A. Correct.
Q. You didn't prepare this schedule?
A. No.
Q. But you were entitled to some kind of

compensation for the coal removed from these properties?
A. Yes.
Q. Are you in a position to explain the inconsistencies between the totals here?
A. No.
Q. I have two other documents. I guess this is getting in the area of education. You have been in the mining business since, I guess, now it's 1979 to the present.
A. Yes.
Q. Are you familiar with the quarterly reports which you are required to file with OSM?
A. Yes.
Q. I've asked your counsel to show you what is titled OSM Quarterly Reports pertaining, according to the records, to the Kimble property.
MR. DURANT: He's looking at a thing called part 3, paragraph 12. Is that what you are referring to, Mr. Naddeo?
MR. SMITH: It is item 5 in my production.
MR. NADDEO: Thank you.
Q. It is Defendant Waroquiers' response to item 5. OSM Quarterly Reports.

A. Yes.
Q. In your experience as a coal operator, are you required to report to OSM the number of tons of coal mined from a specific job or property?
A. Yes.
Q. And in this particular case, the OSM quarterly report identified as Waroquiers' Response to Item 5, indicates that there was a total of 34,963.08 tons of coal removed?
A. Yes.
Q. For the period starting in the first quarter of 2001 and apparently ending in the third quarter of 2005.
A. Yes.
Q. Now, are surface miners also required to report tonnage to DEP?
A. Yes, on a yearly basis.
Q. Now, I'm going to ask you to take a look at Defendant Waroquiers' response to item 6. That document is titled DEP End of Year Production Reports. Do you see that?
A. Yes.
Q. And purports to show total tonnage of 16,233.35 tons.

A. Yes.
Q. Can you explain to me, from your experience as a coal operator, why the OSM reports would not be the same as the DEP report?
A. I cannot explain that. No explanation how they could be different.
MR. NADDEO: No further questions. Thank you.
THE WITNESS: You are welcome.
- - -
EXAMINATION
BY MR. FRAMPTON:
Q. Mr. Dressler, can you hear me all right if I sit at this end of the table?
A. Yes.
Q. Mr. Dressler, my name is Tom Frampton. I'm an attorney representing Roger and Mariam Thomas and also Ramm Coal. Believe me, I only have a few questions to ask you. We will see how true I am to my word.
If you would first look and I believe it's Dressler Deposition Exhibit No. 1 which is the Kimble lease.
A. Yes.
Q. I notice that the lessors would be

Richard L. and Nancy Kimble.
A. Yes.
Q. Are they still located in this area?
A. Liberty, PA.
Q. Where is Liberty PA?
A. I'm not sure where it's -- I'm not sure where Liberty is.
Q. When was the last time you had contact with them?
A. When I signed the -- signed this agreement. It was shortly after this agreement between Waroquier and I.
Q. Back in 1998?
A. Yes. Not 1998. I'm sorry. 2001.
Q. Oh, 2001, that agreement. I'm sorry. Okay.
You also would have sent them some checks over the years?
A. Yes.
Q. Up until the time you transferred the permit over to Waroquiers; is that correct?
A. Yes.
Q. And did you send the checks to Liberty, Pennsylvania?
A. Yes.

Q. Since those times, since 2001 approximately, you have had no contact with them?
A. That is correct.
Q. So you are not sure whether they live in Liberty, PA or not?
A. No.
Q. Now if you will turn to Exhibit No. 5 which is the agreement between Ramm Coal and W. Ruskin Dressler. Do you have it handy? It's two pages.
MR. DURANT: This one?
BY MR. FRAMPTON:
Q. That's it.
A. We found it.
Q. This is the agreement that's been identified, I believe, in Mr. Smith's questioning of you as the agreement whereby Ramm Coal, specifically Roger Thomas, was to remove the overburden on what is referred to as the Kimble job; is that correct?
A. Yes.
Q. So in other words, he was working for you to remove the overburden; is that correct?
A. As a contractor-operator.
Q. He was a contractor with you to remove

the overburden from that property?
A. Yes.
Q. And just as a follow-up to a question Mr. Smith -- I guess it was a response you gave to a question Mr. Smith asked. You said that, I believe, Mr. Thomas had his drag line and he goes with his machine where he's told to mine?
A. Yes.
Q. That's correct?
A. Correct.
Q. So he operated under your direction as to where he was to mine; is that correct?
A. Correct.
Q. I'm not sure I want to go back into this, but I'm going to ask a couple of questions. We've talked about a lot of maps today; is that correct?
A. Yes.
Q. Is it your testimony as I understand it that every single map that you had you turned over to Waroquiers when you assigned the permit?
A. Yes.
Q. Now, one of the maps is called an operations map; is that correct?
A. Yes.
Q. That's a terminology you are familiar

with?
A. Yes.
Q. What is an operations map?
A. It shows the work area, the present work area, the bonded area that you have to stay within. It's the guideline to where you are supposed to be as far as the royalty, decide where the royalty is going to go to.
Q. Do you file that operations map with DEP for example --
A. Yes.
Q. -- with your permit?
A. Yes.
Q. Do you keep a copy of the operations map out at the site with you, so you can refer to it periodically?
A. Yes.
Q. Does that have any other name, a copy of the one out at the site, like the working map or something like that?
A. Well Exhibit 9 is one of them.
Q. That would be the one that would kind of be subject to day-to-day operations out at the site?
A. Yes.

Q. Would have dirt all over it and mud and whatever --
A. There are other supportive maps showing the elevations and ...
Q. I guess my question is, the one copy that you have out at the site, do you put any other kind of markings on that as far as when you are doing certain things or when you are directing certain people what to do? Do you put additional marks on the one you have out at the site?
A. Yes, usually always, yes.
Q. Would you on this particular job, the Kimble job?
A. Yes.
Q. What are the kinds of markings you would put on that particular map?
A. Of course showing where you had previously removed dirt and where you are going to move dirt, something as that. Where the ponds will be located, E and S controls, things of that nature.
Q. Would you actually have a pen or pencil or something and would write right on the map what you are going to be doing?
A. Yes.

Q. On this particular job, would you be the one, during the time that you were operating under that permit, to make those markings on that map?
A. Yes, I would be the one. I was the one.
Q. And do you put certain dates on it at all as to when things would be done?
A. Sometimes, yeah.
Q. Do you recall whether there were dates done in this situation?
A. I don't recall.
Q. Now, that particular map that I'm referring to, the one that would have been at the site, the operations map that would have been used on a daily basis, was that map -- strike that.
The operations map that was out at the site, can I assume from your testimony that's one of the maps that was turned over to Waroquiers?
A. A cleaner copy, not that one -- not that particular one. It was pretty well marked up. One exactly identical.
Q. With all the pencil markings on it?
A. No.
Q. So there's a map that doesn't have pencil markings on it that was turned over to Waroquier?
A. Yes, clean maps.

Q. Let's talk about the dirty map for a minute. Where is the dirty map for the Kimble project?
A. I don't have a clue now. It's been a while back.
Q. Is there a possibility you turned that over to Waroquiers, or you would have kept that?
A. I can't remember now for sure. But the maps they got show, in color, where everything is.
Q. I appreciate that. I've seen some of those. I know what you are talking about.
A. They are very informal.
Q. They sure are. I agree with you. The one that would have these pencil markings all over it, perhaps some dates, might that still be in your office someplace or at your home?
A. It was in the field office. The field office was replaced by other field offices since then. So it's -- it's -- it's possible that I could find it. It's a probability that I could.
Q. There's a probability that you could find it?
A. At that time I had no reason to believe I needed to keep it.
Q. Let me back up on that for a second.

A. Yes.
Q. At the time, in January 2001, that the transfer of the permit to Waroquiers, correct?
A. Yes.
Q. As I take from your testimony, there's a whole bundle of stuff that you transferred over to them, a lot of maps and --
A. Very thick bundle.
Q. Other than maps, what did you transfer over to Waroquiers?
A. A wealth of information pertaining to the geographics and the geology and all the terms of the -- and conditions that they were to abide by.
Q. So where would all that information have come from?
A. My engineer, Lee Simpson, they determined that and then DEP would approve. Their engineers would go over everything that my engineer submitted and approve or disapprove.
Q. So we have a bundle of papers that Lee Simpson prepared, correct?
A. Yes.
Q. And we have these maps we've talked about, correct?
A. Yes.

Q. Were there other documents handed over to Waroquiers?
A. The agreement and leases, copies.
Q. The lease agreements?
A. Yes, lease agreements.
Q. Anything else, to the best of your recall?
A. The supplemental C's. Everything that was needed to transfer a permit was provided.
Q. Let's go to the other side of that question. Were there papers that you didn't transfer over to them in connection with the Kimble job?
A. None that I know of.
Q. How about this dirty map, the one that had been written on? Did you hold on to that yourself?
A. That was my daily work map.
Q. Right. So that's one paper you probably did hold on to.
A. That's one I held onto. That's the only one that I recall.
Q. Can you think of anything else that you held onto?
A. No.

Q. So you have this map that has your daily recordings on it, correct?
A. They would not be daily. It would be occasionally.
Q. Periodic recordings?
A. Yes. Yes. Yes.
Q. And what did you do with that document?
A. You mean at the time?
Q. Let's start at the time and we'll work our way up.
A. I kept it in the field office.
Q. Where was the field office?
A. On the site.
Q. Did you have a file folder or anything you put it in?
A. It laid on the work table, just a simple place to -- where we kept our -- whatever documents we had to keep in there on site were either on the wall or on that table.
Q. So then at some point you weren't going to be on site anymore.
A. This is true.
Q. And so you moved all your papers out of there --
A. Uh-huh.

Q. -- is that correct?
A. Yes.
Q. Where did you take them?
A. What papers were left, I would have taken them to my office, my shop office.
Q. That's the one that's still in existence?
A. Yes. That's the one --
MR. NADDEO: The one with the tractor in front of it.
MR. FRAMPTON: I've been by it. I know right where it is. Can't hide that tractor, right?
MR. SMITH: No, you can't.
BY MR. FRAMPTON:
Q. Did you get a file folder and say, look, these are all my papers from the Kimble job; I'm going to put them in a file folder and put them in a drawer someplace?
A. Things like OSM stuff, yes. Various things like that.
Q. And this map that had the periodic markings on it?
A. I don't recall that I even saved it. At that point in time, I was done with it. I didn't feel that it would help anybody else. It was for

my own use.

Q. Do you have a file cabinet where you keep documents?

A. Yes, I do. Limited space, but I do have one.

Q. Since this lawsuit started, have you gone back through your records in your office to determine if there is a file folder that says anything like "Kimble job" or where any of these documents might be?

A. Yes, I searched back through the archives, yes.

Q. And did you find any?

A. Yes.

Q. Did you give those to your lawyer?

A. Yes.

Q. Was that map with the periodic notations on it one of those things found?

A. No.

Q. So you think it no longer exists?

A. I doubt it very much if it does.

Q. Would there be other places it could be?

A. Not likely.

Q. You were asked a couple of times whether you received full payment from Waroquiers for your

--

A. No.

Q. Your answer is no?

A. Right.

Q. You said you received some payments for a while, correct?

A. Correct.

Q. And at some point they stopped?

A. Correct.

Q. But you continued to get letters and it would say "check enclosed" --

A. Correct.

Q. -- but there was no check enclosed?

A. No check.

Q. And you said you had contact with one of the Waroquiers about that --

A. Yes.

Q. -- and asked them about it. I'm not sure I really heard your response to that. What were you told?

A. I was told that, from that point on, they would be put in escrow until this matter was settled.

Q. Do we know what point that was?

A. It was after they were notified by

Mr. Nelson that they were -- had been mining on him without his permission.

Q. I have a whole stack of letters addressed to you from Waroquier Coal that have been supplied through the responses we got from Mr. Smith. I'm not going to introduce them as an exhibit because I think everybody has it. I don't think the court reporter wants to copy them all either. I'll ask you to take a look at them for a second.

MR. SMITH: Give me the item number. I don't have that.

MR. FRAMPTON: It would be item 8. Defendant Waroquiers' Response to item No. 8.

Q. Just take a look at those. They begin on February 23, 2001. I believe they are in order, and they go all the way through, I believe, July 25, 2004. Just take a look at them for a minute, and we'll just talk about them.

A. Okay.

Q. Is it okay if I look over your shoulder for a second?

A. Sure.

MR. DURANT: Do you want to give him these to use?

MR. FRAMPTON: That's fine. Thank you.

Q. Now, if you look through there, you said there were some checks, some letters that indicated "check enclosed" where there was no check enclosed?

A. Correct.

Q. Maybe the first way to ask this, were there times that it said "check enclosed" when there was in fact a check enclosed?

A. Yes, earlier on.

Q. By looking at these and from my review of them, they are in chronological order, can you find the time frame in which you began not receiving checks?

A. I don't have it with me today, but I can find it.

Q. Can you tell by looking at those documents?

A. I can't tell by these. There's no check marks or anything on them. I have a set of my own that I put little check marks on to know that --

Q. Just so we're clear, these items, this number of copies of letters that are under item No. 8, do those look like the letters you received from Waroquier Coal?

A. Yes, they are identical.

Q. And you can go back to wherever you keep this information and advise your attorney when you stopped receiving payments --
A. Yes.
Q. -- is that correct?
A. I can do that.
Q. Do you have your copies of these letters in your office or did you give them to your lawyer?
A. Of these (indicating)?
Q. Right.
A. I have them in my office. Well, he has a copy, too, don't you? Yeah. Yeah.
MR. DURANT: That's my copy.
THE WITNESS: Yeah, that's your copy.
MR. DURANT: The only copy I have is what we're looking at right now, here today, but that I received from Mr. Smith.
BY MR. FRAMPTON:
Q. But you, in your office, have a copy of basically these same letters, but you have an indication on them that you didn't get paid; is that correct?
A. Yes.
Q. You can provide that information to your

lawyer?
A. Yes.
Q. Are those in a file folder in your office?
A. Yes.
Q. Is it marked "Kimble job" on it?
A. Waroquier. It's marked "Waroquier."
Q. And have you looked in that file to determine whether this map that had your periodic notations on it?
A. It is not there.
Q. So you've made a complete search of everyplace you maintain records --
A. Yes.
Q. -- to determine whether or not this other map that had these periodic notations was available?
A. Yes.
Q. And it's not?
A. I have not found it.
MR. FRAMPTON: That's all I have. Thank you.
MR. SMITH: I have a couple of follow-ups. Just a point of order. Mr. Durant, would you and your client agree to make another

search for the dirty operations map? And I'd like to see the loader book, I mean the book, not copies.
MR. DURANT: I don't know if it exists, but ...
THE WITNESS: It doesn't exist.
- - -
FURTHER EXAMINATION
BY MR. SMITH:
Q. Would you do us a favor and look for it while you are doing it?
A. I would but -- once I get the weigh slips, then I'm no longer worried about the bill. Once the weigh slips come, then I'm done with it.
MR. DURANT: You want me to assist my client to search for the dirty map, loader book, and to respond to you with regard to whether it's been found or not, and that -- on what date we conducted the search. Is that right?
THE WITNESS: I never saved loader books for more than a year or so after.
BY MR. SMITH:
Q. You would start a separate book for each particular job?
A. Oh, yeah.

Q. Then the final thing, just for a point of clarity, I do have an operations map here marked as Exhibit 9, and I believe you've made reference to a map designated as such throughout your testimony today.
This one was prepared by Curry & Associates, not Lee Simpson. I produced it, I want to say as item 12, but don't hold me to that.
While everybody else is looking for it, Mr. Dressler, just take a look at what I have.
MR. DURANT: It says 12-A according to ...
BY MR. SMITH:
Q. Are you ready, Mr. Dressler?
A. Yes.
Q. In general, when you were referring to operations maps or Exhibit 9 in your testimony today, was it a map, maybe not this exact map, but a map like this to which you were referring?
A. It was produced by Lee Simpson. What variation would be between them, I don't know.
Q. Thank you. Let me ask you this: Was it the Lee Simpson version of Exhibit 9 that you marked up --
A. Yes.

Q. -- the so-called dirty map?
A. Yes.
Q. That's all I have on this. Unless other people would like another round with you, Mr. Dressler, I'm finished. I appreciate your patience.
MR. FRAMPTON: Can I have a second?
MR. SMITH: Absolutely.
MR. FRAMPTON: I have nothing else.
THE REPORTER: Signature?
MR. DURANT: You have a right to look at this document and approve it or to waive your right to do that and just rely on the professionalism of the court reporter. I would recommend that you waive your right and rely on her professionalism.
THE WITNESS: I waive my right.
MR. DURANT: He waives his right to read the deposition.
(At 1:54 p.m. the deposition was concluded. Signature waived.)

COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF ARMSTRONG)

I, Roberta Swank, Notary Public within and for the Commonwealth of Pennsylvania, do hereby certify that before the taking of the deposition, the said deponent, W. RUSKIN DRESSLER, was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, and that the above deposition was recorded in stenotype by me and reduced to typewriting under my direction.

I further certify that the reading and signing of the transcript of the deposition were waived by the deponent and by counsel for the respective parties and that the said deposition constitutes a true record of the testimony given by said deponent.

I further certify that I am not a relative or employee or attorney or counsel or financially interested directly or indirectly in this action.

I further certify that the said deposition was taken before me at the time and place specified in the notice.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Kittanning, Pennsylvania, on December 20, 2006.

ROBERTA SWANK
NOTARY PUBLIC

NOTARIAL SEAL
Roberta Swank, Notary Public
Kittanning Twp., Armstrong County
My commission expires December 26, 2009

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EXHIBIT 1
WIT: Dressler
DATE: 12-7-00
ASAP Court Reporting

Option and Lease Agreement

THIS ARTICLE OF AGREEMENT made and concluded this 13th day of February, 1998,
Richard L. Kimble & Nancy C. Kimble
Box 234
Liberty, Pa. 16930
..... of the first part, hereinafter designated as Lessor, and W. Ruskin Dressler Coal
of P.O. Box 39, Rockton, Pa. 15856 party
second part, hereinafter designated as Lessee, witnesseth:

In consideration of the sum of $1.00, in hand paid, receipt whereof is hereby acknowledged, Lessor lenses, lets, and demises unto Lessee, ALL of the Strip Mineable
or vein of coal in, under and upon all that certain piece, parcel or tract of land situated in Brady
ship, Clearfield County, Pennsylvania, bounded and described as follows:

North & West by Albert & Charles Hayes
North & East by O.J. Dressler
South by Albert L. Nelson

mining (50) Fifty acres, more or less.

TOGETHER with all the mining rights and easements owned by Lessor and appurtenant to the coal and land herein cribed, including the right of ingress, egress, and regress, in, to and upon said land for the purpose of exploring for of mining, manufacturing, testing and preparing said coal for market, to build roads, railroads and tram roads, to buildings, tipples and chutes, to deposit waste material and refuse on the surface of the land, to build wire and lines, to drain water upon the surface by any means, to transport coal from other properties through or over this ises and to do all things necessary, usual and proper in connection with said operations, and Lessor hereby waives ight to surface support, both laterally and subjacent, and releases all liability for damage to buildings and objects on and waters therein and thereon. Said coal may be removed either by drift mining or stripping process and all of usual rights and privileges are hereby granted in connection therewith including the removal and redeposit of all and other objects and materials overlying said coal, to be exercised without further cost or liability for the damage ed thereby.

ALSO TOGETHER WITH Surface & Coal

EXCEPTING AND RESERVING

2. Lessee covenants and agrees to pay to Lessor the sum of Two Dollars and No/ cents per ton of 2,000 nds for all mineable merchantable and marketable coal mined and removed from said premises. Settlements to be le on the twenty-fifth day of each month for all such coal mined and removed from the premises during the preceding ndar month and all settlements shall be based upon the weights by which the coal is marketed. It is further under- d and agreed that Mining must comence within (1) ~~Four Years~~ (2) Two YEARS, AT lof Two YEARS LESSOR will PAY (@500.00) Five Hundred Dollars PER MO, lonery to be Applied to Royalty pmt upon Coal REMOVAL

BPA-ON RD

3. Lessee covenants and agrees to commence mining operations upon said premises within
the effective date of this lease and in event of failure so to commence mining operations agrees to pay Lessor as a
inum royalty the sum or price of
year, payable quarterly in advance.

4. Lessee agrees that all mining operations shall be conducted in accordance with the laws of Pennsylvania and lern mining methods prevailing in the industry. It is also understood that Lessor shall have access to the operations scale records of Lessee at all reasonable times in person or by duly authorized agent.

5. This lease shall continue for a period Four years from the effective date hereof, or until all of the cable and merchantable coal has been exhausted from the premises. Lessee may remove all equipment, buildings and chinery from the premises at the end of the term provided no royalty is then due.

6. This article of agreement shall constitute and be construed an option granted by Lessor to Lessee so that Lessee elect to accept or reject it at any time during XXXXXXXXX days from the date hereof. Upon acceptance instrument shall become immediately effective in all its terms as a lease of the coal in place. During the option iod Lessee may go upon the premises for the purpose of surveying, drilling, digging, exploring, testing, taking samples, otherwise examining said coal, without liability for the damage, caused thereby or for the coal taken in such lorations. Lessee may exercise this option by notifying Lessor in writing of its elections to do so within the option iod aforesaid.

It is understood and agreed that in the event that Lessee should default in any payment provided for herein and in such default for a period of ninety days from the date when said payment becomes due, or should Lessee be default in any other respect and continue in such default for a period of ninety days after being notified in writing such default by Lessor, then, in either event, at the option of Lessor, this lease shall cease and terminate and Lessee eby authorizes any attorney of any Court of Record to appear for it and in its name to confess a judgment against n an amicable action of ejection to the end that a writ of habere facias possessionem may issue forthwith for the very of possession to Lessor, together with clause of fieri facias for rent in arrears and costs.

8. It is further understood and agreed that This agreement will be binding without further notice by W. Ruskin Dressler Coal

is mutually understood and agreed that the rights, duties and obligations created hereby shall extend to and nding upon the parties, their heirs, executors, administrators and assigns, and that the singular herein shall include lural.

10. Lessor hereby warrants generally the title to said coal and mining rights and this lease shall be free and clear l encumbrances except those for which waiver and consent hereto is obtained and Lessee may in all cases apply ty payments to the satisfaction of such encumbrances as may be found to exist.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals and caused this article of agreement duly executed by their officers, the day and year aforesaid.

est

Richard L. Kimble (Seal)

(Seal)

Nancy C. Kimble (Seal)

(Seal)

W. Ruskin Dressler (Seal)

(Seal)

IMONWEALTH OF PENNSYLVANIA
INTY OF Clearfield } ss:

On this 13th day of February, before me, a notary public
id for the County of Clearfield and State of Pennsylvania, came the above named
W. Ruskin Dressler

in due form of law acknowledged the foregoing Article of Agreement to be his act and
, and desired the same to be recorded as such.

ess my hand and official seal the day and year aforesaid.

Kathryn E. Swartzlander

My Commission Expires

Notarial Seal
Kathryn E. Swartzlander, Notary Public
DuBois, Clearfield County
My Commission Expires Aug. 29, 2000
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Tioga } ss:

On this 3rd day of March, 1998, before me, Clerk of Orphans Court
in and for the County of Tioga and State of Pennsylvania, came the above named
Richard L. Kimble & Nancy C. Kimble

who in due form of law acknowledged the foregoing Article of Agreement to be their act and
deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

Jane E. Wetherbee

My Commission Expires 1st Monday of January 2008

Option and Lease Agreement

EXHIBIT 2
WIT: Dressler
DATE: 12-7-06
ASAP Court Reporting

THIS ARTICLE OF AGREEMENT made and concluded this ..... day of ..... 19 96 ,
between ALBERT L. NELSON, Trustee of The ALBERT L NELSON LIVING TRUST ~~LESSOR~~
1149 South Main Street, DuBois, PA 15801
L/T/A Dated 10/1/93

party of the first part, hereinafter designated as Lessor, and W. RUSKIN DRESSLER, of Box 39,
Rockton, Pennsylvania, 15856 party
of the second part, hereinafter designated as Lessee, witnesseth:

1. In consideration of the sum of $ 1.00 in hand paid, receipt whereof is hereby acknowledged, Lessor hereby leases, lets, and demises unto Lessee, ALL of the surface ~~and~~ mineable or auger coal or vein of coal in, under and upon all that certain piece, parcel or tract of land situated in Brady township, Clearfield County, Pennsylvania, bounded and described as follows:

North - Kimble
East - Crescent Brick Division of RESCO Products, Inc.
South - Crescent Brick Division of RESCO Products, Inc. and Broad
West - Jacob D. Hayes

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containing 49.0 acres, more or less.

TOGETHER with all the mining rights and easements owned by Lessor and appurtenant to the coal and land herein described, including the right of ingress, egress, and regress, in, to and upon said land for the purpose of exploring for and of mining, manufacturing, testing and preparing said coal for market, to build roads, railroads and train roads, to build buildings, tipples and chutes, to deposit waste material and refuse on the surface of the land, to build wire and pipe lines, to drain water upon the surface by any means, to transport coal from other properties through or over this premises and to do all things necessary, usual and proper in connection with said operations, and Lessor hereby waives all right to surface support, both laterally and subjacent, and releases all liability for damage to buildings and objects hereon and waters therein and thereon. Said coal may be removed either by drift mining or stripping process and all of the usual rights and privileges are hereby granted in connection therewith including the removal and redeposit of all drift and other objects and materials overlying said coal, to be exercised without further cost or liability for the damage caused thereby.

ALSO TOGETHER WITH: XXXX

EXCEPTING AND RESERVING: XXXX

2. Lessee covenants and agrees to pay to Lessor the sum of Two Dollars ($2.00) ~~XXXX~~ per ton of 2,000 pounds for all mineable merchantable and marketable coal mined and removed from said premises. Settlements to be made on the twenty-fifth day of each month for all such coal mined and removed from the premises during the preceding calendar month and all settlements shall be based upon the weights by which the coal is marketed. It is further understood and agreed that Lessee will pay ten (10%) percent of pit price or $2.00 per ton, whichever is greater.

3. Lessee covenants and agrees to commence mining operations upon said premises within three (3) years from the effective date of this lease and in event of failure so to commence mining operations agrees to pay Lessor as a minimum royalty the sum or price of XXX per year, payable quarterly in advance.

4. Lessee agrees that all mining operations shall be conducted in accordance with the laws of Pennsylvania and modern mining methods prevailing in the industry. It is also understood that Lessor shall have access to the operations and scale records of Lessee at all reasonable times in person or by duly authorized agent.

5. This lease shall continue for a period three (3) years from the effective date hereof, or until all of the mineable and merchantable coal has been exhausted from the premises. Lessee may remove all equipment, buildings and machinery from the premises at the end of the term provided no royalty is then due.

6. This article of agreement shall constitute and be construed an option granted by Lessor to Lessee so that Lessee may elect to accept or reject it at any time during XXX days from the date hereof. Upon acceptance this instrument shall become immediately effective in all its terms as a lease of the coal in place. During the option period Lessee may go upon the premises for the purpose of surveying, drilling, digging, exploring, testing, taking samples, and otherwise examining said coal, without liability for the damage, caused thereby or for the coal taken in such explorations. Lessee may exercise this option by notifying Lessor in writing of its elections to do so within the option period aforesaid.

7. It is understood and agreed that in the event that Lessee should default in any payment provided for herein and remain in such default for a period of ninety days from the date when said payment becomes due, or should Lessee be in default in any other respect and continue in such default for a period of ninety days after being notified in writing of such default by Lessor, then, in either event, at the option of Lessor, this lease shall cease and terminate and Lessee hereby authorizes any attorney of any Court of Record to appear for it and in its name to confess a judgment against it in an amicable action of ejectment in the end that a writ of habere facias possessionem may issue forthwith for the delivery of possession to Lessor, together with clause of fieri facias for rent in arrears and costs.

8. It is further understood and agreed that XXX

9. It is mutually understood and agreed that the rights, duties and obligations created hereby shall extend to and be binding upon the parties, their heirs, executors, administrators and assigns, and that the singular herein shall include the plural.

10. Lessor hereby warrants generally the title to said coal and mining rights and this lease shall be free and clear of all encumbrances except those for which waiver and consent hereto is obtained and Lessee may in all cases apply royalty payments to the satisfactinn of such encumbrances as may be found to exist.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals and caused this article of agreement to be duly executed by their officers, the day and year aforesaid.

Witness:

D. W. Egan

Albert L. Nelson, Trustee (Seal)
(Albert L. Nelson) Lessor,
trustee

(Seal)

(Seal)

(Seal)

(Seal)

Merrill Lee

W. Ruskin Dressler (Seal)
(W. Ruskin Dressler) Lessee

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Clearfield } ss:

On this 3rd day of February 1997 before me, a Notary Public in and for the County of Clearfield and State of Pennsylvania, came the above named Albert L. Nelson

who in due form of law acknowledged the foregoing Article of Agreement to be his act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

Andrew L. Booth

My Commission Expires

Notarial Seal
Andrew L. Booth, Notary Public
DuBois, Clearfield County
My Commission Expires Oct. 14, 1997
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Clearfield } ss:

On this 3rd day of February, 1997, before me, a Notary Public in and for the County of Clearfield and State of Pennsylvania, came the above named W. Ruskin Dressler

who in due form of law acknowledged the foregoing Article of Agreement to be his act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

Andrew L. Booth

My Commission Expires

Notarial Seal
Andrew L. Booth, Notary Public
DuBois, Clearfield County
My Commission Expires Oct. 14, 1997
Member, Pennsylvania Association of Notaries

ER-MR-310: Rev. 3/93 SMP99

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

COAL SURFACE MINING PERMIT
NO. 17990105

Permittee: W. Ruskin Dressler
Box 39
Rockton, PA 15856

Name of Operation: Kimble
Issuance Date: August 4, 1999

Type of Operation: Surface/Auger
Expiration Date: August 4, 2004

Permitted Seams: Upper Kittanning, Middle Kittanning, Luthersburg & Shale
Township: Brady

County: Clearfield

This approval is subject to the attached LIMITS OF AUTHORIZATION, MANDATED COAL MINING ACTIVITY PERMIT CONDITIONS AND REQUIREMENTS and to:

PART A EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS AND MANDATED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) CONDITIONS AND REQUIREMENTS

PART B SPECIAL CONDITIONS OR REQUIREMENTS

PART C AUTHORIZATION TO MINE

This permit is for 75 acres of which 63 coal acres are planned to be affected. Permittee may conduct surface coal mining activities only on that area of the permit outlined on the Authorization to Mine and accompanying maps contained in Part C of this permit. Initial authority to conduct mining activities is granted for an area of 26.9 acres described in Part C of this permit. Additional authority to conduct mining activities may be granted by written approval of the Department and attached to Part C of this permit. Permittee is prohibited from conducting coal mining activities on that portion of the permit area which has not been authorized for mining by the Department, in writing, and shown on the bond approval and mining authorization map(s) contained in Part C of this permit.

This permit is hereby issued in accordance with the provisions of the Surface Mine Conservation and Reclamation Act, Act of May 31, 1945 (P. L. 1198, No. 418), as amended, 52 P. S. §§1396.1 et seq., and the Clean Streams Law, Act of June 22, 1937 (P. L. 1987, No. 394), as amended, 35 P. S. §§691.1 et seq., The Air Pollution Control Act, Act of January 8, 1960 (1959 P. L. 2119, No. 787), as amended, 35 P. S. §§4001 et seq., and the regulations promulgated pursuant to these Acts. This permit is also issued in accordance with the following statutes and regulations if marked:

EXHIBIT 3
WIT: Dressler
DATE: 12-7-06
ASAP Court Reporting

- ☐ Coal Refuse Disposal Control Act, Act of September 24, 1968, (P. L. 1040, No. 318), as amended, 52 P.S. §§30.51 et seq., and the regulations promulgated pursuant to this Act.
- ☐ Dam Safety and Encroachments Act, Act of November 26, 1978 (P. L. 1375, No. 325), as amended, 32 P. S. §§693.1 et seq., and the regulations promulgated pursuant to this Act.
- ■ Air Pollution Control Act, Act of January 8, 1960 (1959 P. L. 2119), No. 787), as amended, 35 P. S. §4001 et seq., and the regulations promulgated pursuant to this Act.
- ☐ Solid Waste Management Act, Act of July 7, 1980 (P. L. 380, No. 97), 35 P. S. §§6018.101 et seq., and the regulations promulgated pursuant to this Act.

Permittee is hereby authorized to conduct coal mining activities as described in the approved permit application and in accordance with, the laws and regulations and terms and conditions as referenced above. A violation of any provision of these laws and regulations and terms and conditions is a violation of this permit.

BY: John F. Vare
for Michael W. Smith

Title: District Mining Manager
For the Department of Environmental Protection

WS/hao

LIMITS OF AUTHORIZATION

1. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights.

2. Nothing herein contained shall be construed to be an intent on the part of the Department to approve any act made or to be made by the permittee which is inconsistent with the permittee's lawful powers or with existing laws of the Commonwealth regulating coal mining activities and the practice of professional engineering. This permit shall not be construed to sanction any act otherwise forbidden by federal or state law or regulation, or by local ordinance, not to pre-empt any duty to obtain state or local assent required by law for the coal mining activity.

3. The Permittee's failure to comply with the laws of the Commonwealth and the rules and regulations of the Department regarding coal mining activities, or failure to comply with the terms and conditions of this permit, may result in an enforcement action, in permit termination, suspension, revocation and reissuance, or modification, or in denial of a permit renewal application. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee of any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under the Acts pursuant to which this permit is issued or any other applicable provision of law.

4. The permittee is responsible for complying with local ordinances adopted pursuant to the Municipalities Planning Code, and all zoning ordinances in existence before January 1, 1972. Nothing in this permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee may be subject under Federal, State, or Local laws.

5. The Surface Mine Conservation Inspector (SMCI) shall be notified of all proposed changes to the permitted erosion and sedimentation control plan prior to implementation. With the concurrence of the SMCI, minor field adjustments or additions to the permitted erosion and sedimentation control plan can be made as necessary to insure that all runoff is properly controlled. If necessary, all changes to the erosion and sedimentation controls shall be included as changes in the as built engineer's certification submitted to the Department.

MANDATED COAL MINING ACTIVITY PERMIT CONDITIONS
AND REQUIREMENTS
(under 25 PA Code Chapter 86)

1. Except to the extent that the Department otherwise directs in this permit that specific actions be taken, the permittee shall conduct coal mining activities as described in the approved application. 86.41(1)

2. The permittee shall allow the authorized representatives of the Commonwealth without advance notice or a search warrant, upon presentation of appropriate credentials, without delay, to have access to areas in which coal mining activities will or are being conducted. 86.41(2)

3. The permittee shall affect by coal mining activities only those lands specifically approved in the permit for which a bond has been filed with the Department in accordance with Subchapter F (relating to bonding and insurance requirements). 86.41(3)

4. The permittee shall take all possible steps to prevent an adverse impact to the environment or public health and safety resulting from non-compliance with terms or conditions of this permit, including:

   a. Any accelerated or additional monitoring necessary to determine the nature and extent of non-compliance and the results of the non-compliance;

   b. Providing warning, as soon as possible after learning of the non-compliance, to a person whose health and safety is in imminent danger due to the non-compliance. 86.42(1)

5. The permittee shall conduct the activities in accordance with measures specified in this permit as necessary to prevent environmental harm or harm to the health or safety of the public. 86.42(2)

SMP99

PART A

COAL SURFACE MINING PERMIT NO. 17990105

NPDES PERMIT NO. PA 0238261

Permittee: W. Ruskin Dressler
Box 39
Rockton, PA 15856

Name of Operation: Kimble

Issuance Date: August 4, 1999

Type of Operation: Surface/Auger

Expiration Date: August 4, 2004

Permitted Seams: Upper Kittanning, Middle Kittanning, Luthersburg & Shale

Township: Brady

County: Clearfield

DISCHARGE TO (RECEIVING WATERS): Unnamed tributary to Luthersburg Branch, Luthersburg Branch, unnamed tributary to LaBorde Branch and LaBorde Branch to the West Branch of the Susquehanna River

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. MINE DRAINAGE TREATMENT FACILITIES DISCHARGING TO: Unnamed tributary "A" to LaBorde Branch.

Outfall Numbers	Latitude	Longitude
TB1	40° 04' 18"	78° 42' 05"

Based on the hydrologic data and anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or revisions, the following effluent limitations and monitoring requirements apply to the above listed outfall numbers.

Exhibit 5: Property Interest/Right of Entry

5.1 Permit Area

a	b	c
(1) Surface: Richard & Nancy Kimble RR #1, Box 234, Liberty, PA 16930 Coal: Same as Surface except for Middle Kittanning Coal - Mary A. Hayes, 6205 W. Rockrose Ln., Florence, MT 49053	Lease	Enclosed
(16) Surface: Albert C. and Charles Hayes Luthersburg, PA 15848 Coal: Same as Surface except for Middle Kittanning Coal - Mary A. Hayes, 6205 W. Rockrose Ln., Florence, MT 40953	Lease	Not Required
(14) Surface: Mary A. Hayes, 6205 W. Rockrose Ln., Florence, MT 59053 Coal: Middle Kittanning Coal Same as Surface	Lease	To be Submitted
(2) Surface: Albert Nelson Trustee Albert L. Nelson, Esq. CEBFA 2400 Koppers Building, Pittsburgh, PA 15219 Coal - Same as Surface	Lease	Enclosed

5.2 Contiguous Area

(4) Surface: Mary Janice Beutel, 5233 Rottstown Rd., Ravenna, OH 44266
Coal: Same as Surface

(19) Surface: Albert C. and Charles Hayes, Luthersburg, PA 15848
Coal: Same as Surface except for Middle Kittanning - Mary A. Hayes

(13) Surface: Robert L. and Ordean V. Welder, RD #1, Box 96, Luthersburg, PA 15848
Coal: Same as Surface

(10) Surface: Nerissa Broad, RR 1, Luthersburg, PA 15848
Coal: Same as Surface

(9) Surface: Emily Jean Broad, RR #1, Luthersburg, PA 15848
Coal: Same as Surface

(6) Surface: William F. and Janet C. Matko, 604 Green Glen Drive, DuBois, PA 15801
AND
DuBois Beaver Meadow Field Trial Association, Box 97, DuBois, PA 15801
Coal: Same as surface

ER—MR—10: Rev. 2/84
"Supplemental C"

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

APPL. NO. (Department Use Only)

CONTRACTUAL CONSENT OF LANDOWNER

(I) (We), the undersigned, being the owner(s) of 49.0 acres of land located in Brady Township, Clearfield, _____ County, as
(Township, Borough, City)
described in the deed(s) recorded in the Recorder of Deeds Office Book(s) and page(s) Deed Book Vol 1572 Page 148 and shown by crosshatched lines on the map attached hereto which is signed in the original by the landowner upon which _____
W. Ruskin Dressler proposes to engage in surface
(Name of Mining Operator)
mining activities for which application for permit will be made to the Department of Environmental Resources and of which application this consent will be made a part, *DO HEREBY ACKNOWLEDGE THAT THE MINING OPERATOR HAS THE RIGHT TO ENTER UPON AND USE THE LAND FOR THE PURPOSES OF CONDUCTING SURFACE MINING ACTIVITIES.* Furthermore, (I) (We), the undersigned, do hereby irrevocably grant to the Mining Operator and the Commonwealth of Pennsylvania, the right to enter upon the aforesaid land before beginning the mining activity(ies), during the mining activity(ies) and for a period of five (5) years after the completion or abandonment of the mining activity(ies) for the purposes of inspecting, studying, backfilling, planting and reclaiming the land and abating pollution in accordance with the provisions of the Surface Mining Conservation and Reclamation Act, The Clean Streams Law, and The Coal Refuse Disposal Act, as amended, rules and regulations promulgated thereunder, and the provisions of permit(s) issued to the Mining Operator. (I) (We) do hereby grant in addition to the Commonwealth, for the aforesaid period of time, a right of entry across any adjoining or contiguous lands owned by (us) (me) in order to have access to the land described herein.

It is specifically agreed and understood that this contractual consent gives the Commonwealth the right to enter, inspect, study, backfill, plant and reclaim the land and abate pollution therefrom as a matter within the police power but does not obligate the Commonwealth to do so, and does not constitute any ownership interest by the Commonwealth in the aforesaid land.

This Consent shall not be construed to impair any contractual agreement between the Mine Operator and the landowner.

(INSERT ADDITIONAL PROVISIONS OR CROSS OUT)

In witness whereof and intending to legally bind (myself) (ourselves), (my) (our) heirs, successors and assigns, (I) (we) have hereunto set (my) (our) hand(s) and seal this 30th day of FEB, 1997.

Albert L. Nelson
LANDOWNER Trustee (Print Name)

By: Albert L. Nelson, Trustee
(Signature) (Seal)

(Print Name)

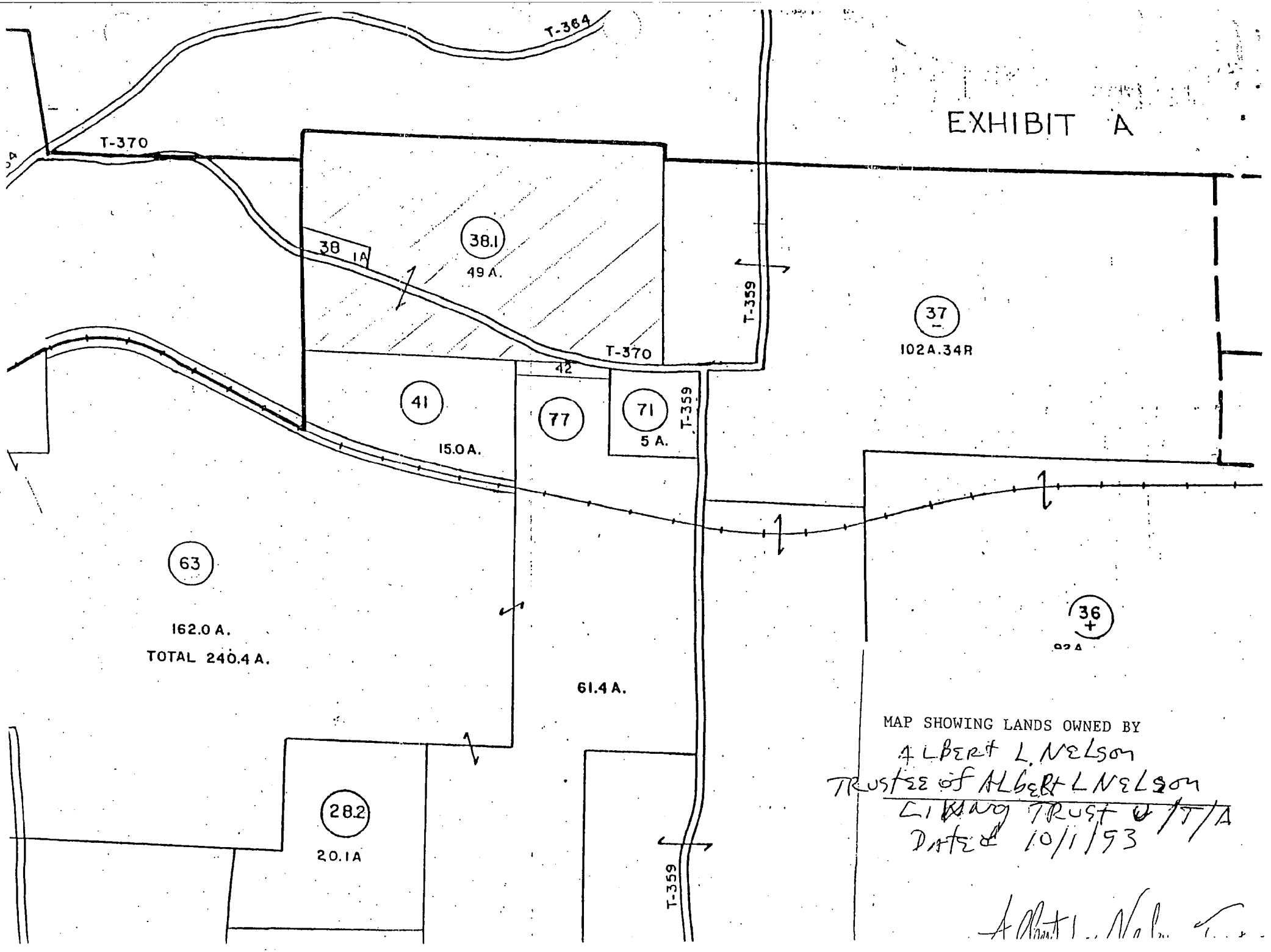
By: _____
(Signature)

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY, PA
Pennsylvania

INSTRUMENT NUMBER
199902726

RECORDED ON
Feb 23, 1999
11:51:31 AM

RECORDING FEES - $13.00
RECORDER
COUNTY IMPROVEMENT $1.00
FUND
RECORDER
IMPROVEMENT FUND $1.00
STATE WRIT TAX $0.50
TOTAL $15.50


EXHIBIT A
T-364
T-370
38.1
49 A.
38 1A
T-370
T-359
37
102A.34R
42
41
15.0A.
77
71
5 A.
T-359
63
162.0 A.
TOTAL 240.4 A.
61.4 A.
36
28.2
20.1A
T-359
MAP SHOWING LANDS OWNED BY
ALBERT L NELSON
TRUSTEE of ALBERT L NELSON
LIVING TRUST U/T/A
Dated 10/1/93

PART C

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

AUTHORIZATION TO MINE
PERMIT NO. 1325-17990105T-01

Permittee: Waroquier Coal Company
P. O. Box 128
Clearfield, PA 16830

Name of Operation: Kimble

Issuance Date: October 16, 2001

Type of Operation: Surface/Auger

Expiration Date: August 4, 2004

Township: Brady

AUTH. ID: 348720

County: Clearfield

A. Permittee is hereby authorized to conduct coal mining activities on lands of Richard L. Kimble and Nancy C. Kimble, Mary A. Hayes, and Albert L. Nelson situated in Brady Township, Clearfield County. Surface owners consent is attested to by inclusion of a properly executed Consent of Landowner form submitted in support of this approval.

B. Surface coal mining activities are limited to the area designated as Two Tones of Green (support); Brown and Purple (0 to 85 feet, mining);and Blue and Yellow (86 to 115 feet, mining) in the map submitted in support of the request for this Mining Authorization, which covers 38.5 acres.

C. The maximum allowed depth of pit or height of highwall is 115 feet. The maximum pit dimensions are described by Part B Condition #1.

D. Bond Description

☐ Original Bond ■ Transfer ☐ Additional Bond ☐ Bond Replacement

■ Surety Bond No. L-072001-17990105-01 in Amount of $94,300.00 dated July 7, 2001 with Lyndon Property Insurance Company as surety.

■ Additional Remarks - Reclamation Fee in the Amount of $1,160.00 supported by Check No. 1772 dated July 26, 2001.

E. The approved erosion and sediment control facility related to the area to be mined in accordance with this authorization must be constructed in accordance with the approved plan, certified by a professional engineer or land surveyor, and the certification submitted to the Department prior to the commencement of any earth disturbance activities in this area.

24
#17990105

Waroquier Coal Company
Brady Township, Clearfield County

PERMIT99

BONDING INCREMENT SPECIAL CONDITIONS

There will be no blasting on this permit until Module 16 has been approved by this office.

The Supplemental "C", Consent of Landowner, for Richard L. Kimble & Nancy C. Kimble recorded February 23, 1999 at the Clearfield County Court House is filed herein.

The Supplemental "C", Consent of Landowner, for Albert L. Nelson recorded February 23, 1999 at the Clearfield County Court House is filed herein.

Variance to affect within 100 feet of T-384 is supported by the approval letter from Brady Township Supervisors dated June 7, 1999 is filed herein.

OFFICE: 814 765-5681
FAX: 814 765-5185

TIPPLE: 814 765-3492

WAROQUIER COAL, INC.

Coal Producers

P.O. BOX 128
CLEARFIELD, PA. 16830

EXHIBIT 4
WIT: Dressler
DATE: 12-7-06
ASAP Court Reporting

January 18, 2001

AGREEMENT

This 22 of January 2001, WAROQUIER COAL CO., INC. agrees to resume the permit #17990105 of Ruskin Dressler. We will pay Ruskin Dressler $15,000 (Fifteen Thousand Dollars) for this permit. Also, a payment of an override fee of $1.00 (One Dollar) for each ton of coal mined off of this permit. Settlements in payments of royalty shall be made on the 25th day of each month for all coal mined and removed from the premises during the preceding calendar month and shall be accompanied by a copy of all weight slips showing the number of tons of coal mined and removed.

Waroquier Coal Co., Inc. Agrees to pay Ruskin Dressler $5,000 (Five Thousand Dollar) for the road bond if Brady Township will not refund Ruskin Dresslers moneys for the road bond.

Waroquier Coal Co., Inc. agrees to sell Ruskin Dressler house coal out of this mine at pit price.

Waroquier Coal Co., Inc. will be working under Ruskin Dressler Permit until the transfer for the permit is made. Waroquier Coal Co., Inc. will be responsible for all mining activity through MSHA and DEP Regulations excluding Ruskin Dressler.

Ruskin Dressler is responsible for the up keep of this area and any MSHA fines that may accrue from his area.

In case of death the Royalty of this agreement will go to Bernice V. Oman, RD# 2 Box 231A, Dubois, PA 15801.

January 26th, 2001 Waroquier Coal Co., Inc. is advancing Ruskin Dressler $15,000 (Fifteen Thousand Dollars) on Advance Royalty in which Waroquier Coal Co., Inc. will recoup from the override fee of $1.00 (One Dollar) a ton when mining begins

until sum is collected. After sum is collected all will be based on what is stated in the first paragraph of this agreement.

ATTEST:

RUSKIN DRESSLER

WAROQUIER COAL CO., INC

GARY V. WAROQUIER,
SECRETARY OF TREASURER

NOTARIAL SEAL
TAWNEY J. BOWER, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires September 27, 2004

EXHIBIT 5
WIT: Dressler
DATE: 12-7-06
ASAP Court Reporting

W. RUSKIN DRESSLER COAL
BOX 39
W ROCKTON, PA 15856

Kimble Job — W

SMP 17990105

Ramm Coal Co.
RD #1, Box 16
Rockton, PA 15856

Dressler obligations

Permit for job,
Bonding on job & Roads
Remove top soil & store in proper place. Build & maintain E & S pond, ditches & Treatment Basin.
Market coal, Payment to Ramm Coal 5 days after recieving payment from coal buyer.
Backfill & seeding AS Required by DEP.
MSHA Fine to be responsibility of person at fault.
Upper KT Dressler only.
All house coal to be split 50-50
Overburden on Lutheersburg seam to be removed by Dressler.
Any shooting required shall be divided equally between Ramm & Dressler.

Ramm obligations

Own & operate 2400 dragline & maintain; fuel & cables, bucket parts.
Responsible for drilling & blasting for dragline. Middle Kittanning
Spoil overburden in a manner that would minimize doze shaping contour of hill for stage I Release.

In the event that Dressler would not be able to continue operation of Kimble Job. Ramm coal would have option to continue operations until Job is finished. Bernice V. Oman will recieve ___ per ton AS AN override fee of all coal production on Kimble

In the event of Ramm ~~death~~ being unable to finish operations Dressler shall have option to purchase Ramm's equipment at market price.

Any Auger coal will be Dressler's only.

Middle Kittanning Coal proceeds to be split 50-50 until Dressler puts his own bulldozer to work on Kimble Job. ~~After that~~ proceeds will be Dressler 55%; Ramm 45% when Dressler has paid monies owed RAMM for work done to remove Luthersburg overburden in previous months Oct. 99 thru Feb. 2000

RAMM Coal Co
Roger A. Thomas
Nov. 23- 1999
owner
Roger A. Thomas

W. Ruskin Dressler Co.
W. Ruskin Dressler
Nov 23-1999
~~owner~~ owner
W. Ruskin Dressler

June 8, 2006

I, W. Ruskin Dressler, was responsible for paying the royalties for coal removed from the job known as the "Kimble Mine" where Roger Thomas and I mined coal from October 1999 till January 2001.

W Ruskin Dressler

EXHIBIT 6
WIT: D. Dressler
DATE:
ASAP Court Reporting

EXHIBIT E

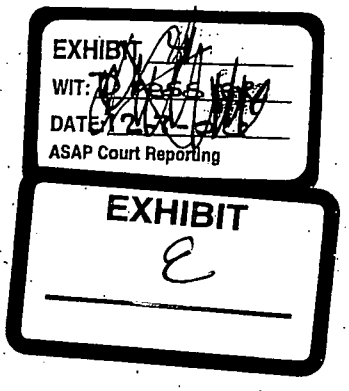
OFFICE: 814 765-5681
FAX: 814 765-5185

TIPPLE: 814 765-3492

WAROQUIER COAL, INC.

Coal Producers

P.O. BOX 128
CLEARFIELD, PA. 16830



January 18, 2001

AGREEMENT

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Waroquier Coal Co., Inc. agrees to sell Ruskin Dressler house coal out of this mine at pit price.

Waroquier Coal Co., Inc. will be working under Ruskin Dressler Permit until the transfer for the permit is made. Waroquier Coal Co., Inc. will be responsible for all mining activity through MSHA and DEP Regulations excluding Ruskin Dressler.

Ruskin Dressler is responsible for the up keep of this area and any MSHA fines that may accrue from his area.

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"E"

until sum is collected. After sum is collected all will be based on what is stated in the first paragraph of this agreement.

ATTEST:

Tawney J Bower

R Ruskin Dressler
RUSKIN DRESSLER

WAROQUIER COAL CO., INC

Tawney J Bower

Gary V Waroquier
GARY V. WAROQUIER,
SECRETARY OF TREASURER

NOTARIAL SEAL
TAWNEY J. BOWER, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires September 27, 2004

EXHIBIT F

U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement

OS200304073
109933

Part 1 -- OSM-1

Coal Reclamation Fee Report

1. Reporting for X 1st, ___2nd, ___3rd or ___4th quarter, 2003

This certification covers the following permit number(s):

PA 17880116	PA 17880126
PA 17910101	PA 17940122
PA 17950106	PA 17950113
PA 17960107	PA 17960115
PA 17980118	PA 17980127
PA 17990105	PA 17990108
PA 33850123	PA 33970102
PA 33970105	

2. I hereby certify that the statements made herein are true, complete and correct to the best of my knowledge and belief and are made in good faith.

Joseph L. Waroquier, Jr.
Print in ink or type the name of reporting person, corporate officer, agent or director on behalf of the operator or the permittee.

Signature — Date 04/23/2003

3. Subscribed and sworn to before me in my presence the 23rd day of April, 2003.

Notary Public signature

NOTARIAL SEAL
JOSEPH M. WAROQUIER, Notary Public
Clearfield, Clearfield County, PA
My Commission Expires July 28, 2006

My commission expires

03050803

CR 200302607

WAROQUIER COAL CO
PO BOX 128
CLEARFIELD, PA
16830-0128

OSM DENVER
03 MAY -8 AM 9:51
ENV GR PA MGMT
OFFICE OF SURFACE MINING

4. Contact person: JOSEPH L WAROQUIER JR
Telephone number (814) 765-5681
Email Address (if available)
Reporting entity number 109933
Check one ___ electronic funds transfer
X check

5. Total payment
$ [redacted]

✓ #5814
PA 5-5

Postmark by April 30, 2003

✓ Seam 402C

Title 30 U.S.C. Section 1232 provides that any person, corporate officer, agent or director, on behalf of a coal mine operator who knowingly makes any false statements, representation or certification, or knowingly fails to make any statement, representation or certification required in this section shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than one year or both.

Approved by OMB, no. 1029-0063. Expires 08/03 Return to OSM or call Ludeen Leiter X296 at 1-800-799-4265 if you have any questions.

Exhibit "F"

Part 2 -- Coal Reclamation Fee Report, OSM-1

OS200304073
109933

You must fill out a Part 2 and Part 3 for each permit number you are reporting.

6. Reporting for X 1st, ___2nd, ___3rd or ___4th quarter, 2003

7. Permit Number 17990105 Mine Name KIMBLE State PA

a. MSHA number	e. Permittee name	h. Operator name
3608778	WAROQUIER COAL CO	WAROQUIER COAL CO
b. County Tribe CLEARFIELD	f. Address PO BOX 128	i. Address PO BOX 128
c. ☐ MINING COMPLETE Include inspection report, if available	CLEARFIELD, PA 16830-0128	CLEARFIELD, PA 16830-0128
d. ☐ All stockpile reported	g. Taxpayer I.D. 25-1732518	j. Taxpayer I.D. 25-1732518

8. Fee Computation

a. Gross tons 355.26	a. Gross tons	a. Gross tons
b. Moisture	b. Moisture	b. Moisture
(1) total %	(1) total %	(1) total %
(2) inherent %	(2) inherent %	(2) inherent %
(3) excess %	(3) excess %	(3) excess %
c. Reduced tons 00.00	c. Reduced tons	c. Reduced tons
d. Net tons 355.26	d. Net tons	d. Net tons
e. Rate $ .350	e. Rate $	e. Rate $
f. Calculated fee $ 124.34	f. Calculated fee $	f. Calculated fee $

Approved by OMB, no. 1029-0063
Expires 06/03

9. Total calculated fee for this permit number $ 124.34

OS200304073
109933

Part 3 -- Coal Reclamation Fee Report, OSM-1

Complete a Part 3 for each permit number you are reporting. This information is required under section 402(c) of the Abandoned Mine Reclamation Act of 1990.

10. Reporting for X 1st, ___2nd, ___3rd or ___4th quarter, 2003

Permit No. 17990105

11. Permit Number 17990105 Mine Name KIMBLE State PA

12.

Mineral Owners	Address	City	State	Zip
KIMBLR RICHARD & NANCY	BOX 234	LIBERTY	PA	16930

13.

Purchasers of Coal	Address	City	State	Zip

14.

Coal Delivered to: (prep plant, tipple, loading point)	Address	City	State	Zip

Approved by OMB, no. 1029-0063. Expires 06/03

If you need more space, please attach additional sheets.

EXHIBIT G

Waroquier Coal Company
P.O. Box 128
Clearfield, PA 16830

July 14, 2003

Albert L. Nelson, Esq.
1149 South Main Street
DuBois, PA 15801

Dear Mr. Nelson:

As a requirement of our mining permit, this letter is to notify you about reclamation completed on your property during the last twelve months. Reclamation during the past year includes the following:

16.0 acres backfilled and graded to approximate original contour;
Establishment of drainage controls;
10.0 acres of topsoil replacement and establishment of permanent vegetation;

You must contact the Hawk Run District Mining Office within fifteen (15) days of receipt of this letter if you wish to have the Department make a formal determination on the adequacy of the reclamation. You may have the right to appeal the Department's formal determination. The address for the Hawk Run District Office is P.O. Box 209, Empire Road, Hawk Run, PA 16840. The phone number is (814) 342-8200.

Signed,

Joseph L. Waroquier, Jr.
Waroquier Coal Company

Exhibit "G"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,

Plaintiff,

vs.

ALBERT L. NELSON, TRUSTEE
Of the Albert L. Nelson
Living Trust,

Defendant.

No. 2007-112-CD

Type of Pleading:

EVIDENCE EXHIBITS IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT contd. (H)

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: November 2, 2007

2055108
RECORD
MAY 02 2008
PITTSBURGH OFFICE OF
SUPERIOR COURT

FILED 1cc
0/3:34 Atty
NOV 02 2007
William A. Shaw
Prothonotary/Clerk of Courts
6K
#9

EXHIBIT H

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ALBERT L. NELSON,

Plaintiff,

vs. No.: 2005-1842-CD

WAROQUIER COAL AND JOSEPH L., WAROQUIER, JR., and GARY V. WAROQUIER, individually and co-partners t/d/b/a WAROQUIER COAL COMPANY, a partnership, and WAROQUIER COAL COMPANY, INC.,

Defendants.

vs.

W. RUSKIN DRESSLER, a/k/a RUSKIN DRESSLER d/b/a W. RUSKIN DRESSLER COAL, ROGER A. THOMAS, MIRIAM R. THOMAS and RAMM COAL, INC.,

Additional Defendants.

- - -

PROCEEDINGS: Deposition of JOSEPH L. WAROQUIER, JR.

DATE: May 29, 2007

TIME: 10:03 a.m. - 3:05 p.m.

PLACE: Law Office of Peter F. Smith
30 South Second Street
Clearfield, Pennsylvania

REPORTER: Roberta Swank
CSR 6042 - RPR 6846
Notary Public

APPEARANCES:

For the Plaintiff Albert L. Nelson:

JAMES A. NADDEO, ESQUIRE
Law Offices of James Naddeo
207 East Market Street
Clearfield, Pennsylvania 16830

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APPEARANCES (CONTINUED):

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Also Present:

Gary V. Waroquier
Albert L. Nelson
Roger A. Thomas
Miriam R. Thomas

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STIPULATION

It is stipulated and agreed by and among counsel for the respective parties and the deponent that the inspection, reading and signing of the deposition may be and are waived.

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EXHIBIT "H"

JOSEPH L. WAROQUIER,JR.,
having been first duly sworn, deposed as follows:

- - -

EXAMINATION

BY MR. NADDEO:

Q. Your name, please?

A. **Joseph L. Waroquier, Junior.**

Q. Where do you live, Mr. Waroquier?

A. **15747 Old Erie Pike, Clearfield, PA.**

Q. What is your occupation?

A. **President of Waroquier Coal.**

Q. I guess I need to ask some questions. I believe there is an entity known as Waroquier Coal Company which, according to the pleadings, has been described as a partnership.

A. **It would be Waroquier Coal Company.**

Q. Who are the partners of Waroquier Coal Company?

A. **Gary Waroquier and Joe Waroquier.**

Q. That would be you, Joe Junior?

A. **Yes, sir.**

Q. And your brother Gary?

A. **Yes, sir.**

Q. And I believe there is another entity known as Waroquier Coal Company, Inc.?

A. **Yes.**

Q. That is a corporation?

A. **Yes.**

Q. When was that corporation formed?

A. **Don't know the answer.**

Q. Are you an owner of that corporation?

A. **Yes.**

Q. Is your brother also an owner of that corporation?

A. **Yes.**

Q. Are there any other owners of Waroquier Coal Company, Inc.?

A. **No, sir.**

Q. With respect to the operation which has been described in your DEP applications as the Kimble operation, which of the entities, was it the partnership or the corporation that held the permits?

A. **The company holds the permits. In this incidence, I'm not exactly sure. Inc. made the agreement. But the company, according to DEP -- we'd have to look at the -- company.**

Q. Again, out of order, I'm going to show you a copy of a coal surface mining permit which purports to be signed -- here it is -- by Gary

Waroquier as a partner.

A. **The company is a partnership.**

Q. Do I understand then that the mining permits for the Kimble operation were obtained by the partnership as opposed to the corporation?

A. **Yes, sir.**

Q. Which company did the actual stripping in the Kimble operation?

A. **Inc.**

Q. The corporation?

A. **Yes.**

Q. So the permits were obtained by the partnership, but the corporation did the stripping?

A. **Yes.**

Q. Was there some kind of an agreement between the partnership and the corporation whereby the partnership was to hold the permits and the corporation was to actually operate or strip the job?

A. **We had a standing agreement.**

Q. What is that standing agreement?

A. **The standing agreement is Waroquier Inc. is basically a subcontractor, works for Waroquier Coal Company. The company holds our permits.**

Q. The company being the partnership?

A. **The company is the partnership.**

Q. Right. Okay. Is this standing agreement in writing?

A. **Pretty sure.**

Q. I'm assuming there is a copy of that standing agreement someplace?

A. **Somewhere in our filing.**

Q. To bring this together, the Kimble job, if I may refer to it as the Kimble job, was permitted by you and your brother as Waroquier Coal Company, a partnership. It was then subcontracted to Waroquier Coal Company Inc. to do the actual strip mining of the property. Is that how that worked?

A. **It's how it transpired. There's no -- there was no specific document to -- for that case.**

Q. Other than your standing arrangement?

A. **That's the way we've operated.**

Q. Was it you or your brother who originally spoke to Mr. Dressler about purchasing the Kimble job?

A. **Mr. Dressler spoke to me.**

Q. So Mr. Dressler contacted you as opposed

to Gary?
A. **I can't answer that question.**
Q. You know he contacted you for sure?
A. **I did talk to Mr. Dressler about the purchase.**
Q. And he came to you?
A. **Yes.**
Q. And he offered to sell you the Kimble job?
A. **Told me he had enough.**
Q. I'm not sure I understand. He told you he had enough. He didn't want to strip it?
A. **He told me he had enough. He wanted to move on and do something different.**
Q. So he wanted your company to buy it?
A. **Offering.**
Q. Do you remember the details of your discussion with Mr. Dressler pertinent to buying the job?
A. **Basically like I explained to you, he had enough. He wanted to move on and make offer.**
Q. Joe, what I mean is, did you at some point agree to buy the job?
A. **Needless to say.**
Q. And he agreed to sell it?

A. **Needless to say.**
Q. Did you reach an agreement as to how much you were to pay Mr. Dressler for this particular job?
A. **Yes, sir.**
Q. And do you recall the terms of the sale?
A. **Off my head, but I think it's $30,000 up front, recoupable royalty off of a dollar a ton.**
Q. You agreed to pay him so much up front and then pay him as the coal was removed?
A. **Yes, after our recoupable royalty.**
Q. Did you discuss with Mr. Dressler the various properties that were going to be involved in this job?
A. **No, sir.**
Q. Never defined or discussed what properties he held leases on?
A. **I was aware of the job being as the Kimble job. After the transaction took place, the leases were given to me and he had looked -- the Kimble lease was given and then he had to search for the Nelson lease. At that particular time, I was told there was no coal left on the Nelson lease, but he wanted us to have the Nelson lease.**
Q. So prior to agreeing to buy the job, you

didn't discuss any specific property, just agreed I'll buy your operations?
A. **Buying the permit, buying the job.**
Q. Did you look at the permit before you bought it?
A. **No, sir.**
Q. Did you look at anything?
A. **No, sir.**
Q. You agreed to buy something that you never saw?
A. **I saw the job visually. I knew the job from past or whatever. I just -- I knew the area. Mr. Dressler had been there for a while. I had been on the job periodically from time to time.**
Q. So you were familiar with the general area where the stripping was taking place?
A. **Yes, sir.**
Q. But you had no idea whose property was being stripped?
A. **I knew it was the Kimble property.**
Q. And you didn't ask Mr. Dressler what property was being stripped?
A. **I knew it was the Kimble property.**
Q. You understood it to be the Kimble property?

A. **I knew it to be the Kimble property.**
Q. And was that because you were familiar with the property or because Mr. Dressler told you it was the Kimble property?
A. **I knew it as the Kimble property.**
Q. Let me go back. You knew it because you were familiar with the boundaries of the Kimble property?
A. **No, sir. No boundaries.**
Q. How did you know it was the Kimble property?
A. **That was what I was told it was.**
Q. By whom?
A. **Mr. Dressler.**
Q. So Mr. Dressler told you that I'm stripping on the Kimble property?
A. **No, sir.**
Q. What did he tell you?
A. **He told me it was the Kimble job on the Kimble site. We also knew that there was a Nelson lease, but Nelson's property had been exhausted.**
Q. When did you know that, before or after you agreed to buy the job?
A. **I would say after.**
MR. FRAMPTON: After.

THE WITNESS: Yes, sir.
BY MR. NADDEO:
Q. Before you purchased the job, all you knew is that you were familiar with the general area where the stripping was taking place? You said you had been to the job several times?
A. Yeah, I knew the location.
Q. And you had been to the job when Mr. Dressler was there?
A. Yes.
Q. And he referred to it as the Kimble job?
A. Yes, sir.
Q. And that's what you understood it to be?
A. Yes, sir.
Q. You didn't find out until after you agreed to buy the job that the Nelson property might also be involved?
A. He told me that the Nelson was in it.
Q. Well, I think you've answered this and I apologize. Did he tell you that before or after you agreed to buy the job?
A. He told me the Nelson was part of it. It was exhausted.
Q. Before you agreed to buy it?
A. Yeah. It was -- we knew that Nelson

owned the other end.
Q. Okay. My problem is you've answered the question two different ways. I want to be sure which occurred first.
Were you aware that the Nelson property was part of the Kimble job before you agreed to buy it?
A. I don't know if I can answer that correctly, to be honest with you.
Q. So the answer would be you don't know whether you were aware of the Nelson property before or after you agreed to buy the job from Mr. Dressler.
A. Restate the question.
Q. Okay. At some point Mr. Dressler contacted you, said I'm done, I don't want to be in the coal business anymore, will you buy my job, right?
A. Yes.
Q. You were familiar with the job. You had been on the job prior to that conversation.
A. Periodically, just to look at coal.
Q. Right. You understood that job to involve the Kimble property?
A. Because that's the name on the sign.

Q. Now, at some point you and Mr. Dressler reached a verbal agreement for Waroquier Coal Company to buy the Kimble operation or Kimble job?
A. Yes, sir.
Q. And the original verbal terms are so much down and a dollar a ton as you took the coal out.
A. Yes, sir.
Q. Now, my question is, what investigation, if any, did you make of this job prior to agreeing to purchase it?
A. Zero.
Q. None. All right.
A. Excuse me. DEP, that's all I did. I asked DEP.
Q. What did you ask DEP?
A. Regulations, if any, quality problems, in that nature, history.
Q. Violation?
A. History, environmental history.
Q. You went to DEP to make sure the job was clean as far as they were concerned?
A. Yes, sir.
Q. You didn't bother to determine what specific properties were involved with the Kimble job prior to agreeing to purchase it?

A. No, sir.
Q. When did you first learn that the Kimble job that you purchased included the Nelson property?
A. When Mr. Dressler was going through his files to gather up paperwork to hand things over to Waroquier.
Q. Had you already signed an agreement to buy the job at that time?
A. Can't answer that. Don't know that. I would say yes.
Q. So that if the agreement was signed before that meeting with Mr. Dressler, you didn't learn until after you signed the agreement to buy the job that the Nelson property was part of the permit?
MR. SMITH: If you don't know, you don't know.
THE WITNESS: I don't know.
BY MR. NADDEO:
Q. Did you ever look at Mr. Dressler's operations map?
A. No.
Q. Did you ever look at his mining permit?
A. No.

Q. So you didn't know what he had permitted?
A. **No.**
Q. After you bought the property, did your company, and by your company, either the partnership or the corporation, strip the coal on that land or did you hire somebody to contract mine it for you?
A. **There was an agreement with an operator on site. That operator, Ramm Coal, offered my brother to -- like to stay, or Mr. Dressler had asked if Mr. Thomas could stay and continue his operations that he was already working on, or the way the situation was existing to leave it in existence. There was an agreement reached between Waroquier and Ramm, and Ramm stayed on as a contract operator for the bottom Middle Kittanning seam.**
Q. So Ramm was mining the coal for Mr. Dressler when you agreed to buy the job?
A. **So-so. I don't want to -- I don't know what Ramm and Dressler do together.**
MR. SMITH: I'll put an objection as to form and, not to slow you down, but Mr. Waroquier said something really important. That's Ramm as to the Middle Kittanning seam distinguishable from

other seams taken on that property.
THE WITNESS: Yes.
MR. NADDEO: Thank you.
Q. Mr. Waroquier, when you first looked at this job after Mr. Dressler contacted you to buy it, was someone mining -- was that job active -- was someone actually mining coal on that property?
A. **When I met Mr. Dressler on the job, I was on the spoil. I don't know if the job was actively being mined.**
Q. Did you ever see it actively being mined before you bought it?
A. **I don't know.**
Q. Don't remember?
A. **No. Every time I go there, they don't work.**
Q. Now, somewhere along the line, you became acquainted or somebody from Ramm Coal Company contacted you? Is that what happened?
A. **Yes. I said he met with my brother.**
Q. You weren't involved in that meeting?
A. **No, sir.**
Q. Do you have any information as to what transpired when the owner of Ramm Coal Company contacted your brother?

A. **He had asked to continue doing what he was presently doing which was mining the Middle Kittanning seam with a -- I don't know, an older piece of equipment, drag line. The agreement was reached that Ramm would be responsible for removing, drilling and blasting the overburden on the Middle Kittanning, and Waroquier would be responsible for removing of the coal.**
Q. Removing, you mean like --
A. **Of the Middle Kittanning coal.**
Q. Removing it from the pit once it was mined, once it was --
A. **Removing it from the seam.**
Q. Were there other seams to be mined?
A. **Yes, sir.**
Q. Was this drag line on the job when you met with Dressler to discuss the purchase of the Kimble operation?
A. **Yes, sir.**
Q. Was the drag line moving at any time while you were on the job?
A. **Can't answer that.**
Q. Don't remember?
A. **I don't remember that.**
Q. May have been, may not have been?

A. **I don't remember.**
Q. But it was there?
A. **Best of my knowledge.**
Q. Was an agreement eventually reached between Ramm Coal Company and Waroquier Coal?
A. **Yes, sir.**
Q. I'm going to show you what has been marked as Exhibit 1 and ask you if that is a reasonably, aside from the interlineated, the markings, reasonably accurate copy of the written agreement that Waroquier Coal Company entered into with Ramm Coal Company.
A. **Yes.**
(Waroquier Exhibit No. 1 marked for identification, attached hereto.)
MR. SMITH: Just one thing, Jim. It speaks in terms of Mr. Thomas. I don't really see Ramm in there.
MR. NADDEO: I would agree.
Q. This agreement purports to be between Waroquier Coal Company Inc., your corporate entity, correct --
A. **Yes. It's on the Inc. letterhead.**
Q. -- and Roger Thomas?
A. **Yes.**

Q. Not Ramm Coal Company.
MR. SMITH: Verbal answer.
MR. FRAMPTON: It says what it says, doesn't it?
BY MR. NADDEO:
Q. It says Roger Thomas, right? It's not a trick question.
A. Yes.
Q. And that particular agreement provides Mr. Thomas to receive $17 a ton?
A. Yes.
Q. In return, he's to drill, blast and mine the lower seam of coal?
A. Yes.
Q. Is the lower seam what you referred to as the Lower Kittanning?
A. No, sir.
Q. What is it?
A. Middle Kittanning.
Q. Middle Kittanning, I'm sorry. When the agreement refers to the lower seam, it's your understanding that was to be the Middle Kittanning seam?
A. Yes, sir.
Q. Did you eventually enter into a written

agreement with Mr. Dressler to actually purchase the job?
A. Yes.
Q. I'll show you what has been marked as Exhibit 2 and ask you if that is a true and correct copy of the written agreement that you have with Mr. Dressler.
A. Yes, sir.
(Waroquier Exhibit No. 2 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. And that agreement is dated January 18, 2001.
A. Yes.
Q. And your agreement with Mr. Thomas is dated January 19, 2001 or one day later.
A. Yes, sir.
Q. At the time you signed the written agreement with Mr. Dressler, did you know at that time that the Nelson property was part of his permit?
A. I don't recall.
Q. Don't remember. Okay.
MR. DURANT: If I may here, Jim, the date on the document, actually it was signed after the

signing of the Thomas one apparently, so your question may be somewhat confusing.
MR. NADDEO: It is.
MR. SMITH: Here's Thomas (indicating).
MR. NADDEO: Thomas was signed January 19th and the agreement with Dressler was signed January 22nd.
THE WITNESS: Yes.
BY MR. NADDEO:
Q. So that the agreement with Thomas was actually negotiated or signed a few days before you signed an actual contract to buy the property, buy the job.
A. Okay.
Q. So you had a verbal agreement up to January 22nd; is that right?
A. Yeah. There was a situation. I don't recall exactly.
Q. Well, you had a verbal agreement with Dressler to buy the job. No question about that.
A. Yes.
Q. You eventually reduced it to writing?
A. Yes.
Q. It wasn't reduced to writing apparently until January 22, 2001.

A. Okay.
Q. When you signed the written agreement with Mr. Dressler on January 22, 2001, did you ask to see his operations map or his mining permit?
A. I didn't sign the agreement.
Q. I'm sorry. That agreement was signed with your brother?
A. It's his name.
Q. To your knowledge, at the time the agreement was signed, did anyone ask to see the operations map or the mining permit?
A. I was not there.
Q. So you don't know what happened?
A. Wasn't present.
Q. At any time, have you seen or did you see Mr. Dressler's operations map or his mining permit?
A. No, sir.
Q. You never saw it?
A. I'm administrative.
Q. Whose job would it be to look at those types of documents? Sounds administrative to me.
A. People on the job and my brother.
Q. That would be Gary?
A. Yes, sir.

Q. I'm going to show you what I'm going to mark as Exhibit 3 and ask you if you recognize that document today, whether you've seen it at any time.

A. I'd say it's the transfer for the permit, without going too far into it.

(Waroquier Exhibit No. 3 marked for identification, attached hereto.)

BY MR. NADDEO:

Q. I think that purports to be the permit of Mr. Dressler.

A. I have looked at it once this case developed.

Q. So you never looked at that until the lawsuit started?

A. No, sir.

Q. But you are now familiar with it --

A. To a point.

Q. -- correct?

A. To a point.

Q. Well, once you were sued, did you bother to look at it?

A. No.

Q. So you are telling me you've never seen this document before today?

A. Yes, I have.

Q. But you didn't look at it --

A. Have I studied it, no, sir.

Q. Did you ever look at it to determine what properties were permitted?

A. No, sir.

Q. You didn't care about that?

A. No, sir.

Q. Even after you were sued, you didn't care whether Mr. Nelson's property was part of this permit?

MR. SMITH: May I have a word with my client?

MR. NADDEO: Yes.

MR. SMITH: You paid me to do that.

THE WITNESS: That is right.

BY MR. NADDEO:

Q. So the answer is no, you had your lawyer look at the permit?

A. Yes, sir.

Q. And did your lawyer report to you that Mr. Nelson's property was indeed part of the permit?

A. Yes. We had a lease on it.

Q. Is that how you learned that?

A. No, sir.

Q. When did you learn that Mr. Nelson's property was part of the permit?

A. Mr. Dressler told me.

Q. When? I know you don't --

A. I don't recall.

Q. No idea?

A. No, sir.

Q. Do you remember whether it was before or after this lawsuit was filed?

A. Way before.

Q. Way before the lawsuit was filed?

A. Yes, sir.

Q. So we can at least agree that sometime before you were sued, you knew that Mr. Nelson's property was part of Mr. Dressler's permitted areas?

A. Yes.

Q. Now, do you have anything to do with the Waroquier permits? If you are administrative, do you have anything to do with obtaining the Waroquier permits?

A. In what fashion?

Q. I mean once you agreed to buy this job, I'm assuming there were some arrangements made to

transfer the permit. By that I mean Mr. Dressler's permit.

A. Okay.

Q. True? Is that right?

A. Yes. The permit has to be transferred from Dressler to --

Q. Who in your company handles the permit transfers?

A. Curry & Associates.

Q. Do you have anything to do with that process?

A. Very little.

Q. Do you ever look at the permits once Curry processes them?

A. No.

Q. Whose responsibility is it in your company to make sure that Curry properly processed the transfer application? Who takes care of that?

A. You say proper. In what regard?

Q. Don't you check to make sure that Curry permitted the right properties and so forth?

A. There has to be descriptions entered into the permit.

Q. Yes. Who at your company checks to make sure you got the right properties?

A. Basically my brother.
Q. Gary.
A. Yes. My other brother is dead.
Q. Gary is the only one who dealt with this particular job other than you, right?
A. Yes.
Q. So if I were to ask you about Waroquier's permit application, the transfer, you would know nothing about that either?
A. No, sir.
Q. Would you agree, have you ever seen a permit before?
A. Yes, sir.
Q. All right. I'm going to show you what I believe is the permit that Waroquier Coal Company obtained on this particular operation which is for some reason crossed out -- I don't know who did that -- and ask you if you are at all familiar with that application.
A. Yes, sir.
Q. You are familiar?
A. Uh-huh.
Q. Have you gone through it?
A. I just skimmed through the highlights.
Q. Did you bother to check to see what

properties were permitted?
A. At one point in time, I did notice that.
Q. Do you recall when you noticed what properties were permitted?
A. No, I don't.
Q. Would you agree that under part C, the permit clearly identifies the Nelson property as one of the permitted areas?
A. Correct.
Q. Apparently your engineer also applied for an extension of the permit on the Nelson property?
A. I don't recall.
Q. Well, how about you look at that section?
A. All right. I understand.
Q. Does that help your recollection?
A. It's what it shows.
Q. What it says?
A. Yes, sir.
Q. In fact, that application purports to extend the permit to -- I'm reading upside down -- additional 18.9 acres of the Albert Nelson trust property. That's what it says.
A. That's what it says.
Q. You weren't aware of any of that?
A. I say no.

Q. Would anybody in your company be familiar with the permits?
A. Yes, my brother.
Q. So he could answer those questions as far as you know?
A. Yes.
MR. SMITH: That was No. 4?
MR. NADDEO: Yes.
(Waroquier Exhibit No. 4 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. Now we've talked about a lease on the Nelson property, correct?
A. Yes.
Q. At some point, Mr. Dressler told you he had a lease on the Nelson property?
A. Yes.
Q. You don't remember when he told you that?
A. No. I can tell you it was afterwards because it was warm out when he -- the day he found it, he called me to come and pick it up, and all I can tell you is it was warm. So it was a couple months after. It was at least three or four months after.
Q. After you signed the written agreement to

buy the job?
A. Yes.
Q. So you knew within four or five months after you actually inked the paper, so to speak, that Mr. Dressler had a lease on the Nelson property?
A. Correct.
Q. Did he ever show you the lease?
A. We have the lease.
Q. When did you get the lease?
A. The day that I told you. It was warm out that day. At that trailer of his.
Q. Here is the exhibit which I've marked No. 5 and ask you if that is a true and correct copy of the lease that was given to you by Mr. Dressler.
MR. SMITH: Can we take a minute here? I think there might be a couple of these things floating around.
(Waroquier Exhibit No. 5 marked for identification, attached hereto.)
MR. NADDEO: Pete, if you have another one, I'd like to see it.
MR. SMITH: Can we go off the record?
MR. NADDEO: Sure.

(Discussion held off the record.)
BY MR. NADDEO:
Q. When Mr. Dressler gave you the lease, did he tell you there was still coal on the Nelson property?
A. Can't recall.
Q. Well, would there be any point to your having the lease if there wasn't any coal?
A. The lease went with the job, and he told me that -- I don't recall because of time factor, but we knew that there was -- the end that we come up with or on the opposite side of the job, that Nelson owned coal on that side. We didn't know if there was any there or if it had all been extracted.
Q. At any rate, you got a copy of the lease?
A. Correct.
Q. Did you read the lease?
A. Probably just the highlight areas of the dollar amounts, things like that.
Q. Well, weren't you interested in whether the lease was still in force?
A. I probably looked at that, the highlights of the lease.
Q. I have, in fact, highlighted some parts

of this lease. What you folks signed wasn't highlighted, was it?
A. Oh, no. It was dirty and filthy.
Q. Mr. Waroquier, I'm going to show you what I'm going to refer to as a clean copy of Exhibit No. 5, one that hasn't been highlighted.
It's my understanding that you did look at the lease when Mr. Dressler gave it to you.
A. Uh-huh. Yes, sir.
Q. And you were primarily interested in price and things of that nature.
A. Yes.
Q. Does paragraph 2 set forth the royalty payment that Mr. Dressler had agreed to pay Nelson?
A. Uh-huh. Yes.
Q. And the report has $2.00 a ton, lessee will pay 10 percent of the pit price or $2.00 per ton whichever is greater.
You were certainly interested in knowing what the obligations were under the lease as far as payment, weren't you?
A. I got to say I don't know.
Q. You didn't care?
A. I had picked the lease up because it

belonged to the permit.
Q. I guess I'm not clear. Did you or didn't you look at the lease when you picked it up?
A. I looked over it.
Q. Well, assuming if there was any coal on the Nelson property, were you interested in knowing how much you were supposed to pay for it?
A. I'd say really no because the terms and conditions weren't out of line.
Q. So $2.00 or 10 percent of the pit price was pretty much standard at that time?
A. Correct.
Q. So you looked at it at least to determine that the royalty wasn't out of line?
A. I'd say so, yes, sir.
Q. Now, were you also interested in the term of the lease, how long the lease was to remain in effect?
A. I think I did look at that. That was one of the things that I did look at.
Q. And that's covered in paragraph 3:
Lessee covenants and agrees to commence mining operations upon said premises within three years from the effective date of this lease, and in

the event of failure so to commence mining operations, agrees to pay lessor as a minimum royalty the sum or price of XXX per year payable quarterly in advance.
That's what it says. Do you agree?
A. Yes.
Q. XXX, I guess we have no money that I know of in the United States that's XXX, so there's no provision here for a minimum monthly royalty after the first three years --
A. Correct.
Q. -- and you knew that? You were interested in knowing the term, right?
A. Yes.
Q. Now the next paragraph, paragraph 5, reads:
Lease shall continue for a period of three years from the effective date hereof or until all of the minable and merchantable coal has been exhausted from the premises.
Is that correct?
A. Yes.
Q. And that language specifically says "from

the effective date hereof or" as opposed to "and" "until all the minable and merchantable coal has been exhausted."

A. Yes.

Q. Now paragraph 6 goes on to say:

> This Article of Agreement shall constitute and be construed an option granted by lessor to lessee so that the lessee may elect to accept or reject it at any time during XX days from the date hereof.

A. That's what it says.

Q. Another XX. So you really can't tell from this lease how many days Mr. Dressler had to, in quotes, exercise his option.

A. You guys are the lawyers.

Q. I know that. Unfortunately, I wish I knew what this lease meant. I don't care what I am.

Did that cause you any concern?

A. No.

Q. Did not. Why not?

A. I was aware of the job, the permit that we were buying, the area that we were buying and knowing Mr. Dressler's background.

Q. So you assumed you were getting a lease that was in effect when he handed it to you?

A. Yes, sir.

Q. So you basically relied on the fact that Mr. Dressler and your knowledge of Mr. Dressler was such that you were getting a valid lease when he handed it to you?

A. Yes, sir.

Q. Is that --

A. Yes.

Q. You didn't actually bother to really try to figure out what the lease meant?

A. No, sir.

Q. Can we agree, I think we can, that this lease, the first page of the lease has a date of 1996 in the typewritten portion on the top line?

A. Yes.

Q. And without getting into the rest of the heading, this lease appears to be signed by Mr. Albert Nelson on the second page --

A. Uh-huh.

Q. -- and by Ruskin Dressler?

A. Yes, sir.

Q. And it was notarized, according to the document, on February 3, 1997. Would you agree

that I'm reading that correctly?

A. Yes, sir.

Q. So if we were to take the notarization as the date of the lease, we would infer that the lease was signed by everyone, based on the notarization on February 3, 1997.

A. Yes, sir.

Q. And that the primary term of this lease was for three years, according to paragraph 3?

A. Yes, sir.

Q. Which in the absence of somebody exercising an option as provided in paragraph 6, would cause the lease to expire in February of 2000?

MR. SMITH: Objection as to form. Calls for a legal conclusion.

MR. NADDEO: It does.

Q. Can you calculate three years from February 3, 1997?

A. February 3, 2000.

Q. You got this lease after February 3, 2000, true?

A. Yes.

Q. Do you know whether Mr. Dressler ever exercised his option?

A. Not aware.

(Waroquier Exhibit No. 6 marked for identification, attached hereto.)

BY MR. NADDEO:

Q. In order to strip this property, would it have been necessary for you to get or somebody to have obtained a contractual consent of the landowner?

A. No, sir.

Q. It would not have been necessary?

A. No, sir.

Q. So DEP does not require the contractual consent of landowner as part of the permitting process?

A. Best of my knowledge, no.

Q. Do you know why those consents are obtained?

A. Supplemental C's are already signed.

Q. Which means what?

A. The consent of the landowner.

MR. SMITH: I'm not certain he understood the question based on the answer you are getting.

MR. NADDEO: Yes.

Q. I think my first question is, in order to permit property, does DEP require the operator to

get, obtain, a contractual consent of the landowner?

A. Which is a supplemental C, right?

Q. It's part of the supplemental C, isn't it? So it is required?

A. Yes.

Q. Do you do that for your company?

A. No, sir.

Q. That's Gary also?

A. Yes, sir.

Q. So he would be a better person to ask about that?

A. Yes, sir.

Q. But you are familiar with the contractual consent of the landowner, and you know it is required?

A. Yes, sir.

Q. You know that much?

A. Yes, sir.

Q. Did you determine whether a contractual consent had been obtained from Mr. Nelson?

A. No, sir.

Q. I'll show you what has been marked as Exhibit 6 and ask you if you are familiar with that document.

A. Just reading it afterwards.

Q. Have you ever seen it prior to today?

A. Yes, sir.

Q. When did you first see this document?

A. On the suit.

Q. You never saw the contractual consent until the lawsuit was filed?

A. No, sir.

Q. Can you tell me the date that the contractual consent appears, according to the document, the day it was signed by Mr. Nelson?

A. February of 1997.

Q. Does the document indicate when it was recorded, if you can tell me?

A. March 25, 1999. Is that it?

Q. So it was signed, appears to be signed, the same date as the lease, February 3, 1997.

A. Yes.

Q. But it was never recorded until March of 1999.

A. Yes.

Q. And did the recorded document have a copy of the assessment map attached, if you know?

A. This copy, yes it does, right here.

Q. And that copy of the assessment map does

show Mr. Nelson's property?

A. Where is Nelson's at?

Q. 49 acres, a cross-thatch piece?

A. It is not described.

Q. The contractual consent does refer to 49 acres in Brady Township?

A. Yes.

Q. And the map that's attached shows the property consisting of 49 acres?

A. Yes.

Q. It does also have a deed book and page number for the property?

A. Yes.

Q. You never saw that document until the lawsuit was filed?

A. Correct.

Q. In 2001 when you were given a copy of the Nelson lease by Mr. Dressler, did you make any effort to contact Mr. Nelson to inform him that you had purchased the Dressler job?

A. No, sir.

Q. Did anyone else in your company contact Mr. Nelson to inform him that your company had purchased Mr. Dressler's operations?

A. Not aware.

Q. When you discovered in 2001 that Mr. Nelson's property had been leased by Mr. Dressler, did you make any effort to determine the boundary lines of the Nelson property?

A. No. I have no dealings with the mining processes.

Q. Whose job would it have been to establish property lines?

A. Probably my brother Gary.

Q. How long has your company been in business?

A. 1942.

Q. How long have you been associated with the company?

A. Probably since the day I've been able to walk.

Q. Well, yeah.

A. I was employed in 1977 full time.

Q. From 1977 to the present, did Waroquier have a number of various jobs that involved multiple properties?

A. Yes, sir.

Q. When you have a job involving multiple properties, what is Waroquier's normal process for establishing boundary lines at the various

properties?
A. General terms and conditions. Agree with landowners of corner markers or set markers. If there's a discrepancy or a question, then surveying will take place.
Q. You don't survey all the properties?
A. No, sir.
Q. So the usual procedure is to go and contact the landowner to establish corners and, absent disputes, rely on what the landowners tell you?
A. Basically, or someone's knowledge.
Q. Do you know what was done in this particular case?
A. No, sir.
Q. Why is it important for you to establish the various boundary lines where there are multiple properties involved?
A. For payment to be correct.
Q. So you know who to pay?
A. Correct.
Q. Whose coal you are taking, correct?
A. I answered it.
Q. Yeah.
Was the Nelson or Kimble property

surveyed in this particular instance?
A. Not to my knowledge.
Q. Do you know why it was not surveyed?
A. Basically, no.
Q. Were you aware of any boundary disputes between Kimble --
A. No, sir.
Q. -- between Kimble and Nelson?
A. No, sir.
Q. Do you know who in your company took it upon themselves to go look at the corners of the various properties?
A. I know my brother met with Mr. Dressler.
Q. That would be Gary?
A. Yes, sir.
Q. When you are answering the questions referring to your brother, in all instances it would be Gary?
A. Yes, sir.
Q. You had nothing to do with that?
A. No, sir.
Q. Were you aware that Mr. Nelson had contacted the state police concerning the removal of his coal from the property?
A. After a phone call I received.

Q. From whom did you receive that phone call?
A. Gary Waroquier.
Q. Did you ever talk with the state police concerning this particular job?
A. No.
Q. You were never interviewed?
A. No.
Q. Are you familiar with the police report?
A. Just what I read.
Q. So you have been through the police report?
A. Yes, sir.
Q. That was supplied to you by your attorney?
A. Yes.
Q. According to the police report, do you recall an interview with your brother Gary?
A. Yes.
Q. Did you read that interview?
A. Some time ago.
Q. Do you recall what the police report relates concerning that interview?
A. We were trespassing.
Q. Well, let me see. It's your position

that in January, you were given a copy of a lease from Mr. Dressler on the Nelson property?
A. When I was given the lease, I don't recall.
Q. Well, I thought you said it was four to five months after you signed it.
A. You said January.
Q. You are right. It would have been sometime in 2001 that you received the lease.
A. Correct.
Q. Let me go back to Exhibit 2. Is there anything in Exhibit 2 that refers to the lease on the property?
MR. FRAMPTON: Object to the form. What property?
MR. NADDEO: The lease on the Nelson property.
THE WITNESS: There's nothing on any leases.
BY MR. NADDEO:
Q. Would you agree that the agreement references the purchase of a permit?
A. Yes, sir.
Q. Have you ever seen a permit in the years you have been associated with Waroquier Coal

Company that contained a lease?
A. They all contain leases.
MR. SMITH: You mean stapled to it?
MR. NADDEO: Yes.
Q. Is the lease part of the permit?
A. No.
Q. You don't remember what Gary may have told the police when the investigation started, true?
A. Correct.
(Waroquier Exhibit No. 7 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. I'll show you what has been marked as Exhibit 7 and ask you if you've ever seen that document.
MR. FRAMPTON: Exhibit 7.
MR. NADDEO: 7 is a letter from Waroquier Coal Company that allegedly purported to be directed to Mr. Nelson.
MR. FRAMPTON: You didn't number the police report? Is that what you are saying?
MR. NADDEO: I did not.
THE WITNESS: Restate your question.
///

BY MR. NADDEO:
Q. I'm showing you what has been marked as Exhibit 7 and ask you if that a is true and correct copy of a letter allegedly sent to Mr. Nelson dated July 14, 2003.
A. Correct.
Q. To your knowledge, was that letter sent to him by Waroquier Coal Company?
A. Can't answer that.
Q. Is that your signature which appears on the letter?
A. Yes, sir.
Q. And the letter is intended to do what?
A. Notify Mr. Nelson.
Q. Of what?
A. Just what it says on the paper.
Q. What is your understanding of the letter?
A. Do you want me to read the letter?
Q. No. I want your understanding of the letter.
A. That the reclamation has been completed on your property in the last 12 months.
Q. So that's basically a letter dated July 14, 2003 telling him that his property has been reclaimed?

A. There could be a portion of the property that could be reclaimed due to backfilling or due to bonding.
Q. That refers to 16 acres backfilled and graded?
A. Like I said, we could read the article. It says 16 acres. That's a portion of his lease.
Q. But it does reference Mr. Nelson's property?
A. Yes, sir.
Q. And the purpose of this letter is to get bonds released?
A. I would think.
Q. Again, that's your brother's job more so than yours?
A. I'm on him because of the financial part of the bond.
Q. All right. So you are familiar with the bonding process?
A. Uh-huh.
Q. And you are familiar that landowners are to be notified when bonds are to be released?
A. Yes, sir.
Q. And this letter would imply that some type of work was done on his property?

A. It could be 1, 2 or 3, and that states it's been completed, so it would probably be 3.
Q. Is that phase 1, 2 or 3?
A. Yes, sir.
Q. And phase 3 is when the bonds are released?
A. Phase 3 is completion.
Q. Following which the bonds are released?
A. Yes, sir.
Q. So you were aware in July of 2003 that your company had done something on Mr. Nelson's property?
A. It was part of the permit. Probably it was, best of my knowledge, it was in taking care of our obligations of buying the permitted leases of prior commitment of past operators.
Q. I'm not sure I understand your answer.
A. I bought a permit. Waroquier's obligation is, we're responsible for the permit, reclamation of the permit.
Q. And apparently there was reclamation done on Mr. Nelson's property?
A. There needed to be reclamation done, according to that paper.
Q. I think you've already testified that you

never saw Mr. Dressler's operations map.
A. That is correct.
Q. I'm going to show you what has been marked as Exhibit 8 and ask you if you can identify that particular document.
A. I would say it's a bonding, highlight of the permitted area.
(Waroquier Exhibit No. 8 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. And that map was prepared by Lee Simpson, according to the legend; is that correct?
A. I agree.
Q. And prepared by Mr. Dressler?
A. It was prepared for Mr. Dressler.
Q. And it is titled an operations map?
A. Right.
Q. You have never seen this document prior to today?
A. Yes, upon being sued.
Q. Where did you obtain Mr. Dressler's operation -- from whom did you obtain it after you were sued?
A. Can't answer that.
Q. It just showed up?

A. No, it didn't just show up.
Q. Let me rephrase the question. I didn't mean that to be insulting in any way, and it may have sounded that way.
You have seen the map, but you never saw it until you were sued?
A. Correct.
Q. Somebody presented you with the map?
A. Correct.
Q. Do you remember who presented you with the map?
A. No, sir.
Q. Would you agree that the map shows -- has several properties as part of the permit? By that I mean Mr. Dressler's permit. It has property lines on it.
A. Yes.
Q. Okay. And there is a property line which separates the Kimble property from the Nelson property?
A. Yes.
Q. And according to the operations map, there are areas permitted on the Kimble property --
A. Yes.

Q. -- according to the map.
A. Yep.
Q. There is also a permit area on the Nelson property?
A. Yes.
Q. All of which you were unaware of until you saw this map?
A. I'd say no.
Q. You were not aware of it?
A. No, I bought a permit.
Q. From your perspective, I want to ensure -- you bought a permit, but you didn't make any effort to determine what you bought?
A. I bought a job situated in Brady Township.
(Waroquier Exhibit No. 9 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. Mr. Waroquier, I'm going to show you a map which I have marked Exhibit No. 9 and ask you if you have ever seen that map prior to today.
A. I'd say no.
Q. This map, according to legend, was prepared by Curry & Associates?
A. Yes.

Q. That is the engineering firm that works for Waroquier Coal Company.
A. That's the engineering firm that Waroquier hires.
Q. Right. The map is titled Waroquier Coal Company Kimble operation?
A. Yes, sir.
Q. Should I understand that this map was prepared by Curry & Associates for Waroquier Coal Company?
A. Yes.
Q. And the map is dated January of 2001.
A. Yes.
Q. And it purports to show various drilling locations?
A. Yes, sir.
Q. And according to the property line on the map, there were various drill holes placed on the Nelson property?
A. Yes, sir.
Q. And those drill holes are logged on what would be, from your view, the right side of the map? There's a log of various drill holes on the Nelson property?
A. Yes, sir.

Q. Now, you have never seen this map prior to today?
A. **No, sir.**
Q. Who in your company would be responsible for seeing that maps such as identified in Exhibit 9 are prepared? Who does that?
A. **My brother Gary.**
Q. So he may be familiar with this map?
A. **I'd say he requested it.**
MR. SMITH: What's the date of it?
January 2001. Thank you.
BY MR. NADDEO:
Q. I'm going to show you a map which has been identified as Exhibit 10 and ask you if you've seen that map prior to today.
A. **I'd say I saw it upon the suit.**
(Waroquier Exhibit No. 10 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. So you never saw the map identified as Exhibit 8, but you did see the map identified as Exhibit 10 since the suit was filed.
A. **Yes.**
MR. SMITH: Take a look at it.
MR. NADDEO: Sure.

Q. Again, this map bears the seal of Curry & Associates.
A. **Yes, sir.**
Q. And it states that it was prepared by Waroquier Coal Company and it refers to the Kimble operation?
A. **Yes, sir.**
Q. The map is dated January 2001, but has a legend marked "accepted February 25th," and I'm not sure I can read the year, but it looks like 2004.
A. **Correct.**
Q. And this is a document that you've seen since the lawsuit was started?
A. **I believe so.**
Q. And this is the type of map that your brother Gary would normally request Curry to prepare?
A. **Correct.**
Q. Now, does this map show the areas -- has color coded, does it show the areas where strip mining occurred?
A. **It shows active pay area.**
Q. And if the map is accurate in terms of the property line, and this is the property line

between Kimble and Nelson, this shows an active mining area on Mr. Nelson's property.
A. **That's what that describes.**
Q. Would you agree that there was an active mining area on Nelson property when the map was prepared?
A. **I can't answer that.**
Q. Don't know.
Now, what does the area in green signify according to the map?
A. **Vegetated.**
Q. That shows somebody backfilled that?
A. **Reclamation.**
Q. How about the area in blue?
A. **That's rough backfilling.**
Q. So the Nelson property, according to this map, was roughly backfilled and revegetated when the map was prepared?
A. **That's what the map is showing.**
Q. And there was also an active mining area on the map? That's what it says.
A. **That's what the map says.**
Q. Now, for what purpose would a map like this be used in your industry? Why do you have these prepared?

A. **For the field guys, the mining process.**
Q. What does this do for the field people?
A. **Gives them a general direction, I would assume.**
Q. General direction for what?
A. **Their mining, what they are doing or where they are going.**
Q. So this would be given to whoever was out on the job actually mining or backfilling as the case would be?
A. **Correct.**
Q. Would it be fair to say that someone at Waroquier Coal Company, at least in January of 2001, was aware that something was going on on Nelson's property? The map shows.
A. **I'd say no.**
Q. "No"?
A. **I'd say no.**
Q. There's a pink area called active mining?
A. **Could be spoil.**
Q. Spoil left from some time ago?
A. **Previous mining.**
Q. But not previous mining by Waroquier?
A. **Waroquier wasn't there before 2001.**
Q. I'll show you a map that's been marked as

Exhibit 11.

(Waroquier Exhibit No. 11 marked for identification, attached hereto.)

BY MR. NADDEO:

Q. Again, would you agree that that map contains the legend of Curry & Associates?

A. Correct.

Q. A company that does engineering work for Waroquier Coal?

A. Correct.

Q. The map was purportedly prepared for Waroquier Coal Company --

A. Correct.

Q. -- for the Kimble operation?

A. Correct.

Q. It is dated January of 2001.

A. Correct.

Q. And there's a legend which is stamped "accepted February 20, 2001."

A. Yes, sir.

Q. What does the "accepted February 20, 2001" mean?

A. I don't know.

Q. Don't know. Would that be accepted by DEP?

A. It doesn't state.

Q. You don't know. That's fine. Again, this would be a map that your brother would normally request from Curry?

A. Possibility.

Q. Now, this particular map is also color coded; is it not?

A. Yes, sir.

Q. It does show a delineation or property line between Kimble and Nelson?

A. Yes, sir.

Q. And I guess I interpret this map to show proposed mining areas on the Nelson property. Would that interpretation be incorrect?

A. That's what the orange is.

Q. Is a proposed mining area?

A. I don't know what the map was laid out for or describe it or showing what's there.

Q. But you think, you believe, you would agree that the orange area was an area to be mined by Waroquier?

A. I can't answer that. Honestly can't answer that.

Q. So you can't tell from the legend what this map is supposed to accomplish?

A. Not -- I would think it was put into place in order for the prospecting is why the other log map was prepared.

Q. By "prospecting," you mean to drill holes?

A. Yes.

Q. The drill holes that were put on the Nelson property, I think those are the drill holes shown on 9.

Do those drill holes indicate whether there is any hole on the Nelson property?

A. I'd have to look at the index.

Q. Will you please?

A. Where is Nelson at?

Q. To help you out, I highlighted the holes according to the legend.

A. The highlighted holes are all on Nelson?

Q. Yes, if this is the property line. Not all the holes are on Nelson. I'm not saying that. I'm saying the highlighted holes. There are other holes on here.

Assuming this is the property line, all the holes that were placed on the Nelson property are highlighted; however, there were more holes put down than just the highlighted ones.

Do you understand what is going on on this map?

A. They were prospecting.

Q. Right. Can you tell from the legend of the holes whether there was coal indicated on the Nelson property?

A. Read your index.

Q. You are in the coal business. I want you to help me out. Was there coal --

A. You indicated it.

Q. Well, do the drill logs indicate that there was coal on the Nelson property?

A. In some cases. Mine voids in other cases.

Q. Drill hole No. 3, and correct me if I am wrong because I need, I guess, your interpretation, drill hole No. 3 turned up 45 inches of coal? If I'm reading the legend correctly, two seams, total 45 inches?

A. That's what the drill thickness shows here.

Q. And drill hole No. 3 shows 48 inches, solid coal?

A. Yes, sir.

Q. Drill hole No. 4 shows 45 inches?

A. **Yes.**
Q. Drill hole No. 5, 42 inches?
A. **Yes.**
Q. Drill hole No. 6, 14 inches?
A. **Yes.**
Q. Some coal missing in that hole?
A. **Middle Kittanning.**
Q. Right. Next drill hole, 42 inches?
A. **15 inches.**
Q. I'm sorry. No. 7.
A. **15 inches.**
Q. Also some coal missing in that hole?
A. **Deep mined.**
Q. Middle Kittanning, is that the seam that's missing?
A. **Yes, sir.**
Q. Drill hole No. 9, 42 inches?
A. **Yes.**
Q. Drill hole No. 10, 46 inches?
A. **Yes.**
Q. Drill hole No. 13, 48 inches?
A. **Where is 13 located?**
Q. 14.
A. **38 inches.**
Q. Drill hole No. 15, 49 inches?

A. **Yes.**
Q. Drill hole No. 16, 32 inches?
A. **Yes.**
Q. Drill hole No. 19, 12 inches?
A. **Yes.**
Q. Coal missing there also.
A. **Correct.**
Q. Again, the Middle Kittanning?
A. **That's what it is saying, deep mined.**
Q. Drill hole No. 20, looks like zero. Nothing? Dry? No coal?
A. **It's a spoil.**
Q. Mined out. Drill hole 21, also zero? Excuse me. That is 35 inches. Pardon me. Correct?
A. **Yes.**
Q. Drill hole 22, 36 inches?
A. **Correct.**
Q. And drill hole No. 1 was spoil?
A. **Those are over-burden analysis.**
Q. So that had nothing to do with the coal; is that correct?
A. **Correct.**
Q. Was it Waroquier that caused this property to be drilled?

A. **I'd say my brother asked for it.**
Q. Well, if he asked for it, that would be Waroquier. He has authority to get that done, does he not?
A. **Yes, sir.**
Q. After the police became involved, did you contact Curry & Associates and ask them to determine whether your company had removed any coal from Mr. Nelson's property?
A. **Best of my recollection, we had the property surveyed first.**
Q. Do you remember who did the survey?
A. **Curry & Associates.**
Q. Did you then ask Curry & Associates to try to determine what coal, if any, had been removed from Mr. Nelson's property?
A. **That is correct.**
Q. And did Curry & Associates provide a map of the area that Curry & Associates felt had been mined?
A. **Yes.**
Q. I'm going to show you what has been marked as Exhibit 12 and ask you if that is the map that was prepared by Curry & Associates for Waroquier Coal Company.

A. **I would say yes.**
(Waroquier Exhibit No. 12 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. It's upside down.
A. **It was highlighted.**
Q. The map contains a legend of Curry & Associates, correct?
A. **Correct.**
Q. The map is dated August 11, 2003?
A. **Yes.**
Q. And it is titled Albert L. Nelson Living Trust, map showing strip mined encroachment?
A. **Correct.**
Q. That's Curry & Associates' designation, not yours?
A. **Correct.**
Q. So according to this map, Curry & Associates determined that coal had been removed from Mr. Nelson's property?
A. **On the survey.**
Q. Right. In this map, Curry & Associates attempted to estimate the amount of coal that was removed from the property?
A. **Yes.**

Q. How many tons did Curry & Associates estimate --

A. I don't recall without looking at the map.

Q. Tell me. Look at the map and tell me what you think it says. Make sure I'm reading it correctly.

A. 15,053 tons.

Q. I'm getting 19,555 tons. Why we are we different here?

A. It's claiming that "therefore of 19,550 tons removed from the site since January 2001 by Waroquier Coal Company, 15,053 was taken off of the Nelson tract," which tells me that the other portion of it belongs to the Kimble estate.

Q. According to the map, it is mapped above the line that Curry & Associates surveyed?

A. Yes.

Q. Curry & Associates concluded there was a total of 19,555 tons, but some of it was taken from Kimble?

A. Correct.

Q. In your answer to this lawsuit, you have pled that Waroquier Coal Company had a lease on this property from Nelson --

A. Yes.

Q. -- correct?

A. Yes.

Q. And according to Curry & Associates, your company has removed as much as 15,000-plus tons from Mr. Nelson's property, correct?

A. Correct.

Q. Have you ever paid Mr. Nelson for that coal?

A. Tried to.

Q. How did you try to pay him?

A. Upon that surveying and estimation, I believe it was Mr. Thorpe from Curry & Associates tried to or did touch base with Mr. Nelson, that or Gary Waroquier did, I don't recall, to make restitution for the payment of the coal removed from his property.

Q. Well, I mean did you ever cut him a check?

A. He denied it.

Q. He refused to accept the check?

A. Yes, sir.

Q. Do you know who cut the check?

A. There was no check cut.

Q. He refused to accept a check?

A. He refused the agreement.

Q. Well, time out. You mean he refused to acknowledge that your calculations were correct; is that right?

A. Don't know that answer.

Q. But you've never tendered him a check for what your engineer, for the coal that your engineer indicates was removed?

A. No. My knowledge of it is.

Q. Who would have knowledge of what went on there?

A. Gary.

Q. Now, one of the exhibits or one of the things that I think your counsel provided me was a breakdown of the average coal prices that Waroquier received for coal during the period from January 2001 through December 1, 2005.

I'm going to show you what I've now marked as Exhibit 13 and ask you if you have ever seen that document before.

A. Yes.

(Waroquier Exhibit No. 13 marked for identification, attached hereto.)

BY MR. NADDEO:

Q. That does purport to be an average price

on monthly basis for coal marketed by Waroquier Coal Company from January of 2001 through December of 2005?

A. Yes, sir.

Q. Is January of 2001 through December of 2005 the period during which Waroquier Coal Company mined coal from the Nelson property?

A. We started in 2001. I don't know when it was completed.

Q. I guess that was my next question. Do you know when you finished the Nelson --

A. Not -- the Kimble job?

Q. When did you finish on the Nelson property?

A. Never knew I was on it to start with.

Q. So you don't have any idea when you stopped stripping?

A. No.

Q. Let's just talk about the Kimble job. Do you know when you quit operating the Kimble job?

A. Not without looking.

Q. Do you have something that you can refer to to answer that question? When you say "not without looking," what could you look at to tell me that?

A. My reports, my reclamation reports.
Q. Mr. Waroquier, do you know how this price list was calculated?
A. Yes.
Q. How was it done?
A. Do I need to go into that, Pete?
MR. SMITH: The man asked the question. Yeah.
THE WITNESS: It's an average price of my sales of coal.
BY MR. NADDEO:
Q. So you have a record of the sales that took place between January of 2001 and December of 2005?
A. Yes, sir.
Q. Do you still have those records?
A. I think so.
Q. And those are the records upon which you relied for making the calculations which appear on Exhibit 13?
A. Yes, sir.
Q. Is that how you came up with those numbers?
A. Yes.
Q. So you would have sales records, say, for

instance, for January of 2001?
A. If we still have them.
Q. Well, you must have had them when you prepared this.
A. Correct.
Q. Is there any reason why you would have discarded them since the lawsuit started?
A. No, sir.
Q. So this was prepared while the lawsuit is pending, right?
A. Yes.
Q. So the likelihood is you would have records to support the figure of 2833 for January of 2001?
A. As long as I still have the homework to back the number up. I don't want to say I have the homework. We might have the number.
Q. But you would have the sales receipts?
A. I don't want to say that.
Q. Is it possible that when you calculated for January 2001 an average selling price of 2833 that you then threw away your sales records?
A. No, sir.
Q. So you would still have your sales records which you used to calculate that number?

A. The number was calculated in January of 2001. How long I kept the sales receipts, I don't want to tell you.
Q. So as part of the company's normal practice, you keep a record of your average selling price per month?
A. I'd say so.
Q. So for each month, there would be some record, some company record, which reflects the figures that you have placed on Exhibit 13?
A. Except for the ones we can't find.
Q. Okay.
A. I don't have any --
Q. I don't want to fence with you too much on this. Somebody prepared this document.
A. My company.
Q. If your company prepared that document, you had to have some kind of supporting data to justify the preparation.
A. No doubt, yes, sir.
Q. And this document was prepared after this lawsuit started, correct?
A. The numbers were prepared before the lawsuit started.
Q. Oh, okay.

A. They are done on a monthly basis.
Q. And so whether you have supporting documentation at this point in time is questionable?
A. I don't want to answer that yes.
Q. But where did you get the numbers?
A. I explained to you.
Q. Explain it again, would you?
A. Average selling price.
Q. I know, but what document did you refer to in your company to justify that number?
A. Sales.
Q. So this document, Exhibit 13, was prepared from some records that you referred to at Waroquier Coal Company.
A. Yes, sir.
Q. Have you discarded those records since preparing this document?
A. We haven't discarded nothing since -- we have discarded nothing since the suit. Put it that way.
Q. Mr. Waroquier, we had asked you about the stripping on the Kimble operation. By that I mean globally, not any particular property. I had asked you when Waroquier Coal Company had

completed the stripping of the Kimble job. Do you recall those questions?

A. Yes, sir.

Q. And you told me that if you could refer to your reclamation report that you would be able to tell me when Waroquier Coal Company finished the Kimble job. Is that true?

A. Yes.

Q. Now, I'm showing you what purports to be coal reclamation fee reports to OSM and ask you if that document, or those documents, help you answer my question as to when your company finished the Kimble job.

A. It does not show when the job was completed. The mine -- coal extraction was completed, by these records, in the third quarter of 2005.

Q. So someone for Waroquier Coal Company Inc., if I understand the mechanism correctly, was stripping on the Kimble job up through the second or third quarter?

A. Third quarter of 2005.

Q. Okay. Now, were you aware of a lease or did you know that at some point Mr. Nelson leased his property to a company other than Waroquier

Coal Company?

A. No.

Q. Yeah, you did. Didn't you file suit against Mr. Nelson?

A. Upon the suit.

Q. So at some point, you knew that Mr. Nelson had leased his property to somebody else.

A. Yes.

Q. I will show you what has been marked Exhibit 14 and ask you if you have ever seen that document prior to today.

A. Just in the suit.

(Waroquier Exhibit No. 14 marked for identification, attached hereto.)

BY MR. NADDEO:

Q. In the suit that you filed?

A. Correct.

Q. This is titled an Article of Agreement and it is dated, according to the document, April 12, 2003, correct?

A. Correct.

Q. And it is signed by Albert Nelson?

A. Yes.

Q. And by Roger Thomas and Miriam R. Thomas

as Ramm Coal Company?

A. Yes.

Q. From your review of that document, are you satisfied that it describes the same property that had been leased by Mr. Nelson to Dressler?

A. No.

Q. Can you tell from the lease?

A. No.

Q. Now, in the second lawsuit, you contend that it is the same property.

A. Correct.

Q. So do I understand then that Waroquier Coal Company was planning to strip additional coal on Mr. Nelson's property?

A. I can't answer that. Don't know.

Q. Who would know?

A. Gary.

Q. Just to be clear on your position, is it your position that Waroquier Coal did mine coal from Mr. Nelson's property, ostensibly under the lease given to you by Dressler?

A. Yes, upon the survey.

Q. Are you satisfied that your engineers properly calculated the amount of coal that Waroquier Coal Company removed from Mr. Nelson's

property?

A. Yes, sir.

Q. Now, under the lease, under Mr. Dressler's lease, Mr. Nelson was to receive $2.00 or 10 percent of the selling price?

A. Correct.

Q. How are we to calculate the selling price of the coal that came off of the Nelson property, assuming it was 15,000 tons? How are we to calculate the selling price?

A. That's what your average sheet was prepared for.

Q. So you are proposing to pay Mr. Nelson the average price of the coal that you received during the time that this coal was mined?

A. Whatever is greater.

Q. But we're still not clear on when the coal was mined, according to your testimony; is that right?

A. Had to be before the police came to see us.

Q. Do I understand then that you didn't mine any coal from Mr. Nelson's property after the police came to see you?

A. No, sir.

Q. You haven't touched it since?
A. **No, sir. I left it there.**
Q. Now, I asked you if you had seen the police report.
A. **Just from what I read from the past times.**
Q. According to the report, the police investigation was initiated on October 20, 2003.
A. **That's what it says.**
Q. Do you recall that? Do you have any reason to dispute that date?
A. **No, sir.**
Q. Do I understand then that you have not mined an ounce of coal from Mr. Nelson's property since October 20, 2003?
A. **Trust me.**
Q. So in answer to my question as to whether you intend to mine any coal from Mr. Nelson's property, clearly you do not.
A. **I don't want to say that. If things would present itself, probably I would mine.**
Q. You are just not doing it for the time being?
A. **Right now, we'll take a little break.**
MR. SMITH: We have a little lawsuit

pending, Jim.
BY MR. NADDEO:
Q. Mr. Waroquier, could you just clarify, you've indicated generally that you do administrative work for Waroquier Coal Company and Waroquier Coal Company Inc.?
A. **Yes, sir.**
Q. Could you be more specific as to what you mean by "administrative duties"?
A. **Yeah. I'd be glad to. Basically my brother and I own the operation, and he takes care of the field work on day to day. I take care of the office work and sales work and the coal part of it.**
Q. That was a very good explanation, but see, it doesn't mean a lot to me for this reason: In terms of the preparation of mining maps and the actual supervision of mining, is that your job or your brother's job?
A. **I'd say my brother's.**
Q. As far as permitting and that process, is that your job or your brother's job?
A. **My brother's job.**
Q. As far as establishing property lines, is that your job or your brother's job?

A. **Brother's.**
Q. As far as leasing is concerned, is that your job or your brother's?
A. **Whoever gets the lease.**
Q. So you both do leasing?
A. **Whenever the opportunity presents itself.**
Q. Who's in charge of the reclamation?
A. **I don't follow the question.**
Q. Well, now we know that your brother handles obtaining the permits, checking property lines, things of that nature.
Who is responsible to see that the property is reclaimed and released and so forth, bonds, that type of thing?
A. **You are speaking of reclamation on the commitment to the permit?**
Q. Right. To any permit.
A. **My brother.**
Q. Your brother?
A. **Uh-huh.**
Q. So he handles basically the DEP. He deals with DEP?
A. **Correct.**
Q. And he deals with the actual extraction of the coal?

A. **Yes, sir.**
Q. And you handle the office work?
A. **Yes, sir.**
Q. Thank you.
MR. SMITH: Is that it?
MR. NADDEO: That's it.

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EXAMINATION

BY MR. FRAMPTON:
Q. Mr. Waroquier, my name is Tom Frampton. We met before at the other depositions. I represent Roger and Miriam Thomas and Ramm Coal. I have a few questions to ask you, if I can.
Maybe to pick up where we left off relative to what your responsibilities are with Waroquier, you are talking about doing the office work.
I take it that you work in the office during the day; is that correct?
A. **As least as possible, but unfortunately, yes.**
Q. When you say you do the office work, why don't you tell us what you do. I just don't know. You've gone through an awful lot of things that your brother does, and I'm trying to understand

what your responsibilities are for Waroquier Coal.
A. Take care of paying the bills, general direction or guidance of everything, sales of coal.
Q. Anything else?
A. No.
Q. And again, forgive me because I'm not from the area. Where are the offices of Waroquier Coal?
A. Washington Avenue.
Q. Here in Clearfield?
A. Clearfield.
Q. So there's an actual office?
A. Yes, sir.
Q. How many people presently are employed by Waroquier Coal?
A. 25, 29, somewhere in that area.
Q. Somewhere between 25 and 30?
A. I'd say so.
Q. I assume that's made up of field workers and office workers?
A. Correct.
Q. How many of the 25 to 30 would be office workers?
A. Three.

Q. And the balance would be field workers?
A. Yes, of some sort.
Q. What are the various "some sorts" of field workers for Waroquier Coal? What do the field workers do?
A. Operators.
Q. They operate --
A. Bulldozers, shovels, rock trucks, loaders, shovels, hand shovels, brooms, whatever it takes.
Q. And that's to get the coal ready to market it, take it off the site to get it marketed?
A. First you have to mine the coal.
Q. What equipment do you have to mine coal?
A. Depends on what job.
Q. Let's talk about the various jobs. Do you have a drag line?
A. No.
Q. What other kind of equipment mines coal?
A. Loaders, shovels, bulldozers.
Q. And you have operators who are employed by Waroquier Coal who do those things?
A. Yes, sir.
Q. Do you do any of those things? Do you do

any of the field work for Waroquier Coal?
A. When I get a chance. I enjoy it.
Q. What kind of field work do you do?
A. I like to go out and be an operator once in a while. I'm not good at it, but I like to go out.
Q. Was that true in 2001 and 2002, the same responsibilities you had? You were the office guy?
A. Basically, yes, sir.
Q. Have your job responsibilities changed at all from the 2001-2002 time frame up to today?
A. No.
Q. So you are generally responsible for making sure bills get paid, bills get sent out and coal gets to where it needs to be sold; is that correct?
A. Correct.
Q. I mean is that -- maybe --
A. General idea.
Q. Maybe that is too much of a generalization. I want some understanding of what your jobs are.
Do you and your brother Gary meet periodically to discuss what is going on, what

business you are going to be doing?
A. Yes, sir.
Q. Do you make joint decisions, or are the decisions primarily his out in the field to make the call what is going to happen?
A. Day-to-day operations, it's all on him; long term, we discuss things.
Q. So if there's going to be long-term development as far as areas you are going to go, those are the kinds of things that you and your brother Gary discuss?
A. Yes.
Q. But on a day-to-day operation out in the field, you are saying those are Gary's calls?
A. Yes. He doesn't need my authorization.
Q. You've told us about Waroquier Coal Company, Inc., which is the corporation for which you are the president; is that correct?
A. Yes, sir.
Q. And then there's Waroquier Coal Company which is a partnership?
A. Yes, sir.
Q. That's where you and Gary are partners?
A. Correct.
Q. Are there any other Waroquier Coal

entities other than those two business entities?
A. No, sir.
Q. Those are the only two?
A. Yes.
Q. Both of those entities existed in the time frame of 2001 through 2005?
A. Correct.
Q. Have you been the president throughout that time frame?
A. Yes, sir.
Q. Can I ask how old you are?
A. 47.
Q. And your education background? Graduate from high school?
A. Yes, sir.
Q. Education after high school?
A. None.
Q. You indicated that in 1977 is when you really went on the payroll with Waroquier Coal; is that correct?
A. That is correct.
Q. That must have been while you were still in high school.
A. Yeah. I don't know.
Q. If my math is really good here, you've

worked for --
A. I graduated in 1977.
Q. Sure. Then you obviously went immediately to work for Waroquier Coal.
A. Yes.
Q. At that time, was that your dad's company?
A. Correct.
Q. Did you have an uncle or anyone involved, or was that strictly your dad?
A. My dad.
Q. Has Waroquier Coal Company always been in the business of mining coal?
A. Waroquier Coal has been in the mining business since 1942.
Q. Has it been mining coal, or are there other minerals that are mined ever by Waroquier Coal?
A. Just mining coal.
Q. Just coal.
Does Waroquier Coal own trucks?
A. Waroquier Coal Company owns two trucks.
Q. Two trucks. What kind of trucks are those?
A. International tri-axles, dump trucks.

Q. When you are out on a site such as the Kimble job and coal has been mined, how do you get the coal from the site to where it is to be sold? What is the process?
A. Dump trucks brought to a preparation plant.
Q. At what stage are they weighed? They are put on the dump truck ...
A. The coal would be loaded from -- at the mine, put onto a truck. The truck is -- gone to a preparation facility, or to either place, go across scales, certified scales, and then proceeded to where the coal needs to be put.
Q. For the Kimble job, whose dump trucks were used to take the coal to the weigh site or the preparation site?
A. Waroquier's contract trucks.
Q. And with whom did Waroquier contract trucks?
A. Their own contracting trucks, their own leased trucks.
Q. I need that clarified. Were you leasing them from someone?
A. Yes, sir, from the individuals.
Q. So you would lease trucks from

individuals who own trucks?
A. We have trucks that work on a daily basis that work for Waroquier Coal.
Q. And do we know the names of the individuals who --
A. They are on the sheets. The description of the individual is on the weigh sheets that you are prepared for.
Q. So I'm clear, the weigh sheets, the names of the individuals?
A. I don't think the exact names of the driver is on the sheet. I think just their identity, their code numbers.
MR. SMITH: The number I believe has been produced.
BY MR. FRAMPTON:
Q. I just want to be clear. So if we know the number on the code sheet, you can back that off and find out who was the individual who owned that truck?
A. Yes, sir.
Q. And then the owner of the truck is paid pursuant to a written contract?
A. The trucks are paid on a percentage basis per mile.

Q. Is that based on the weight of the coal?
A. **Yes. There's a rate per ton, and the truck is paid according to the weight.**
Q. And there's some percentage that's arrived at?
A. **Yes.**
Q. How many individuals back in the time frame of 2001 and 2002 did you have contracts with?
A. **I don't know honestly. I think right today, I think there's 17.**
Q. Any different back in 2001, 2002?
A. **I truly can't answer that. It hovers around 20.**
Q. Is that part of your responsibility, to engage these individuals with trucks that you've leased for the purpose of hauling coal for Waroquier Coal?
A. **Yes, sir.**
Q. That's part of your office job?
A. **Yes, sir.**
Q. Were those generally tri-axle trucks that you leased?
A. **All tri-axles.**
Q. Toward the end of your testimony, we

talked about this investigation done by the state police, correct?
A. **Correct.**
Q. Do you recall that? And that you indicated there was no mining done out on the Nelson property after October 20, 2003.
A. **Correct.**
Q. Was there still mining done on the Kimble property after that time period?
A. **Yes, sir.**
Q. Had you had your survey done by that time to know for sure you were on the Kimble property rather than the Nelson property?
A. **Did we have the survey done when the state police contacted us?**
Q. Your testimony as I hear it, and correct me if I am wrong, as I hear it, after the investigation was started on October 20, 2003, my recollection of your testimony was that after that date, you did no more mining on the Nelson property; is that correct?
A. **Once I received the survey.**
Q. I thought you said once -- after the investigation was conducted, began.
A. **Once we found out from the surveyor that**

Waroquier was at wrong.
Q. Once you got that, then you got back over onto the Kimble property?
A. **I'm not saying we were ever at that particular time.**
Q. Once you got the survey --
A. **I don't know where we were mining that day.**
Q. Okay. The effort then was made at that point to only mine after October 20, 2003 on the Kimble property; is that what you are saying?
A. **Yes, sir. Yes, sir.**
Q. My understanding is that there were no criminal charges actually filed in this matter. Am I correct?
A. **Best of my knowledge.**
Q. Have either of the Waroquier Coal entities ever been charged criminally with mining coal on somebody's property or from somebody's property from whom they did not have a proper lease?
A. **No, sir.**
Q. You have no history of that, your company doesn't?
A. **No, sir.**

MR. FRAMPTON: Would you put Exhibit No. 1 in front of him?
Q. Mr. Waroquier, we've talked about Exhibit No. 1, which is the agreement between Roger Thomas and Waroquier Coal. Do you remember looking at that?
A. **Yes, sir.**
Q. As I read the document, it says that Waroquier Coal was going to pay Roger Thomas $17 per ton for the drilling, blasting and mining of the lower seam. That's what it says, correct?
A. **Correct.**
Q. And by definition you indicated the lower seam was the Middle Kittanning?
A. **Yes, sir.**
Q. Based on your knowledge, was there any other agreement between Waroquier Coal and Roger Thomas or Ramm Coal relative to the Kimble/Nelson job?
A. **Not that I'm aware of.**
Q. Nothing else in writing?
A. **No, sir.**
Q. Anything orally? Any other agreement or commitment to be made?
A. **There was an oral version to this, that**

at one time he had removed some Luthersburg seam for Waroquier. For what reason, I don't recall exactly right now.

Q. While he was out there, he removed some Luthersburg coal?

A. Yes, sir.

Q. Was there an agreement made as to how he would be paid for that?

A. It was a verbal agreement, to the best of my knowledge, which he was compensated for.

Q. You don't recall how much, off the top of your head, how much was moved?

A. No, sir.

Q. And that was really just a similar -- for the Luthersburg that was removed, he was paid on a per-ton basis; is that correct?

A. Correct.

Q. Any other oral agreements to your knowledge between Waroquier Coal Company and Roger Thomas or Ramm Coal?

A. Not to my knowledge.

Q. And you haven't talked over any other agreements with your brother?

A. No, sir.

Q. As I read this document, it's signed by

your brother Gary; is that correct?

A. Correct.

Q. But you witnessed his signature?

A. Yes, sir.

Q. Were you present when Roger Thomas signed this document?

A. I'd say no.

Q. You don't recall that you were?

A. No, sir.

Q. I'm just trying to look at and understand it. There's an attest. Do you see on the left side of the document toward the bottom, opposite Roger Thomas's signature there's an attest? Is that your signature?

A. Yes, sir.

Q. Down below that you sign it again?

A. Yes, sir.

Q. Do you recall the purpose why you did it that way?

A. No, I don't.

Q. Do you think generally you were just witnessing and attesting your brother's signature, if you remember?

A. I don't remember.

Q. I guess the better part of my question

is, do you remember whether Mr. Thomas was present when this was signed?

A. I don't remember.

Q. At some point during that time frame that you were working on the Kimble property Roger Thomas left the job.

A. I wasn't aware he left.

Q. Did you become aware at some point that he did leave?

A. Yes.

Q. How did you become aware that he left?

A. I asked my brother whose drag line that was sticking in the air down on the corner.

Q. And it wasn't on that property any longer, right?

A. It was on the property.

Q. Didn't he walk the drag line off your property?

A. He didn't leave the property.

Q. He just moved the drag line?

A. Yes, sir.

Q. But he wasn't working any longer under the terms of this agreement?

A. No, sir.

Q. My recollection is that the last work he

did was the end of September 2002. Does that sound right?

A. Either August or September, whatever it was.

Q. And you agree that that was about the time?

A. Correct.

Q. Between January of 2001 and September of 2002, did you have any personal like face-to-face meetings with Roger Thomas?

A. I would say. Like I say, I enjoy going out to the jobs and seeing the guys and probably stopped by and say hello and talk to them periodically with my brother.

Q. Before this job, did you know Roger Thomas?

A. Yes.

Q. And when you were out at the site and you had conversations with Roger Thomas, do you remember what was said?

A. No, sir.

Q. Anything ever said about what property the drag line was operating on?

A. No.

Q. No?

A. No.
Q. Do you have any recollection as to what was said when you talked with Mr. Thomas?
A. I basically -- I would recollect -- I would probably ask him how he was doing. Like I said, I don't get into the day-to-day operations on the job site, and I'd go out to maybe check on seeing the coal and I would proceed on.
Q. So would it be best described as just general conversation?
A. Correct, sir.
Q. No real business conversations?
A. Nope.
Q. Do you have any knowledge personally or through the records you keep for Waroquier Coal or from discussions with your brother that Roger Thomas or Ramm Coal ever actually removed coal from the Kimble site?
A. Prior to Waroquier existence?
Q. No. During the time that Waroquier was involved in this transaction from January of 2001 through 2005, do you have any knowledge that Roger Thomas or Ramm Coal removed any coal from the Kimble/Nelson site?
A. Ramm was compensated for the Middle

Kittanning that was extracted from the Kimble permit.
Q. Financially compensated?
A. Yes, sir.
Q. Let's back up on the question again. Do you have any knowledge that Ramm Coal or Roger Thomas actually physically removed any coal from that site from January of 2001 through 2005?
A. That did not go to Waroquier? Is that your question?
Q. Right. My understanding is that Roger Thomas's job was to drill, blast and mine the lower seam, correct?
A. Yes, sir.
Q. And that as far as trucking the coal off the property, that was Waroquier's responsibility.
A. Correct.
Q. So my question is, do you have any knowledge that from January of 2001 through 2005 that Mr. Thomas or Ramm Coal or anybody at his direction actually trucked coal off that property?
A. No.
Q. You have no knowledge?
A. No, sir.
Q. And you don't have anything in the

records of Waroquier Coal that would establish that. Am I correct?
A. Yes, sir.
Q. You've never talked to your brother that that was occurring?
A. That Ramm Coal extracted coal from the Kimble permit?
Q. And removed it from the property?
A. No, sir.
Q. You have no knowledge of that?
A. Of the Middle Kittanning?
Q. During the time frame between January of 2001 through 2005, do you have any knowledge that Ramm Coal or Roger Thomas actually trucked coal off that site?
A. He removed coal off of the lower end of the Nelson property.
Q. That's not what we're talking about. We're talking about the Kimble site, the Kimble permit.
A. That's part of the permit.
Q. That was the lower end?
A. That's part of the permit.
Q. Other than the lower end, is there any knowledge that he removed any coal?

A. On the upper end, no.
MR. FRAMPTON: I have no more questions.
MR. DURANT: I have no questions.
MR. SMITH: Give me a moment here.

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EXAMINATION

BY MR. SMITH:
Q. Mr. Waroquier, your Deposition Exhibit 7 is a letter dated July 14, 2003 signed by you on behalf of Waroquier Coal Company to Mr. Nelson.
My questions pertain to the acreage referred to in this letter. The first entry is 16 acres backfilled and graded.
Does that necessarily mean that your company actually extracted coal underneath those 16 acres?
A. No, sir.
Q. What could it mean?
A. That Waroquier backfilled 16 acres of the permit.
Q. When you went onto the property after acquiring the permit from Mr. Dressler, were there open pits?
A. Yes, sir.
Q. Whose responsibility was it to fill those

pits, backfill them?
A. Waroquier's upon signing the agreement.
Q. And then down below that there's a reference to 10 acres of top soil replaced.
Does that necessarily mean that you mined coal under 10 acres of the Nelson property?
A. No, sir.
Q. What does that regard?
A. Just what it said, we replaced the 10 acres of top soil.
Q. Could that be on an area affected by a prior operator?
A. That is correct, sir.
Q. Other than Mr. Dressler's operations on the Nelson property and the Kimble property, had there been other miners out there in the preceding years, do you know?
A. Yes, sir.
Q. Could you tell us the names of those companies or operators?
A. I don't recall. Benjamin Coal was one of them and I don't recall. I think there was another one prior to Benjamin.
Q. Had there also been deep mining out there?

A. Yes, sir. The Hayeses did the deep mining.
Q. That is under both Kimble and Nelson?
A. Yes, sir.
Q. When a property is permitted for surface mining operations, do you permit just the area where you are actually going to extract coal, or do you also have to permit additional areas for depositing spoil, other operations in conjunction with the mining?
A. We typically extend what we need for support areas or just to make sure that we have -- are covered.
Q. Where I'm headed with these questions, when you were reviewing the maps with Mr. Naddeo, No. 10 for example, there was a shaded area and the key indicated that the shading was the active mining area. And your response was that could be spoil.
A. Yes, sir.
Q. What did you mean by that?
A. Support area, an area that had been previously mined that there was overburden from other adjoining pits put onto that area.
Q. Do I understand your answer to mean then

that you weren't necessarily stating that your company mined coal under that shaded area?
A. That is correct.
Q. When you reviewed the drilling map with Mr. Naddeo, you stated that it was for prospecting purposes. That would be in advance of mining, correct?
A. Yes.
Q. And if I recall the key on that map, the legend correctly, it indicated borings through both the Middle and the Lower Kittanning seams of coal depending on where the hole actually was?
A. Correct.
Q. The Lower Kittanning, as one would look at the property, is it above or below as you are digging down the Middle Kittanning?
A. It is below.
Q. Did you mine any Lower Kittanning coal on either of those properties, Nelson or Kimble?
A. No, sir.
Q. So the inches that were ascribed to the Lower Kittanning really aren't pertinent to this litigation in your mind?
A. Correct.
Q. I want to jump a second to Deposition

Exhibit No. 13 which is the schedule of your company's average monthly prices. You and Mr. Naddeo discussed whether the supporting documents, I guess the raw data invoices, et cetera, from which these averages were calculated are still in your company's possession. If I recall correctly, you weren't certain.
A. No, I'm not certain.
Q. Are these monthly averages calculated shortly after the close of a month is out?
A. Preceding month.
Q. There are also some blanks on the schedule, for example July 2001, what is going on there?
A. That's why I won't testify that we have the back -- the homework to back these numbers up. We moved our office. It was December of 2001. We moved and things are disorder or disarray. Everything hasn't been found, I guess.
Q. So in other words, you couldn't locate --
A. I couldn't put an exact number there.
Q. Then January 2002 through May of 2002, those lines are also blank?
A. Correct.
Q. Is the explanation the same?

A. Same.

MR. SMITH: That's it for me.

MR. NADDEO: Just a couple of questions.

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FURTHER EXAMINATION

BY MR. NADDEO:

Q. You testified, I think in response to counsel's question, that you and Gary talk regularly about the operation of Waroquier Coal Company and Waroquier Coal Company, Inc.?

A. Yes, sir.

Q. The owners?

A. Yes, sir.

Q. And you are the office guy and apparently your brother Gary is the field guy?

A. Yes, that's how we describe it.

Q. But because of the fact you are the office and he's field, it requires you two to talk regularly about the business of the company in general; is that correct?

A. Yes, sir.

Q. When Mr. Dressler handed you the lease that he had with Mr. Nelson, did you tell Gary, that hey, I got a lease?

A. Can't answer that.

Q. Wouldn't Gary have to know that to apply for the transfer of the permit?

A. No.

Q. Isn't there a section in the permit where you have to relate your ownership or what properties are involved?

A. I'm out of my area, but they already had it to do the lease originally.

Q. That was already in Dressler's lease?

MR. SMITH: Lease or permit originally?

THE WITNESS: In the permit originally.

BY MR. NADDEO:

Q. It was already in Dressler's permit?

A. We were making a -- we were just transferring the permit. We weren't making a permit.

MR. NADDEO: Thank you. That's all. I'm going to move the admission of Exhibits 1 through 14.

MR. SMITH: No objection.

MR. FRAMPTON: I have nothing further.

MR. DURANT: Nothing further.

MR. SMITH: We'll waive.

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FURTHER EXAMINATION

BY MR. FRAMPTON:

Q. I'm going to ask you just a couple of quick questions. I appreciate this to try to clarify a point.

A. I'd be glad to.

Q. You have in front of you what's going to be labeled Deposition Exhibit 15. It's a document that was provided to us by your lawyer that has at the very top of the page, reading from left to right, Thomas Dressler Kimble. Do you see that?

A. Yes.

(Waroquier Exhibit No. 15 marked for identification, attached hereto.)

BY MR. FRAMPTON:

Q. What is this document?

A. This document was prepared by Waroquier. This document shows and describes what money went to what individual. Let's take --

Q. Let's stop for a second. But you say it was prepared by Waroquier?

A. Yes, sir.

Q. Does that mean it was prepared by you or somebody else?

A. An employee of Waroquier.

Q. This is, as I would read it, a capitulation of what was paid to Mr. Thomas, Mr. Dressler, Mr. Kimble; is that correct?

A. Yes, sir.

Q. Does it cover the time period January of 2001, looks like the last payment was August of 2005 --

A. Okay.

Q. -- is that correct?

A. Yes.

Q. For each of the individuals, it shows -- strike that.

In the case of Thomas, it shows tons and then royalty.

Then for Dressler, it shows tons and then like a recoup amount.

For Kimble, it's tons and royalty. Do you see that?

A. Yes.

Q. The real question that I had is, why during 2001 and 2002, for a number of the months, is the tonnage different for these individuals? Do you understand my question?

A. Very clear.

Q. Why is it different?
A. **All right. We've described Mr. Thomas receives money for mining the Middle Kittanning. Does not receive revenue for mining Luthersburg, correct?**
Q. I think we talked about that.
A. **Do you understand that? Mr. Thomas, Ramm Coal, receives revenue, $17 a ton, for mining Middle Kittanning.**
Q. He also has, as you told us --
A. **Do you understand that?**
Q. I do understand that.
A. **Well, we've got to get this clear. I'm not being smart. You've stopped me two or three times.**
The reason the difference is, you take February 2001. You will notice that the line straight across is the same.
A. **Correct.**
Q. 486.75 for Thomas, Dressler and Kimble. To me that shows that the only thing mined was Middle Kittanning.
Q. Got you.
A. **Mr. Thomas was paid his $17. Mr. Dressler was paid his dollar override, and the**

Kimbles were paid whatever, I would take that that was $2.00 a ton.
Let's go to an amount that is not the same. Let's go to June of 2001.
Q. Wait a second. Let's look at March of 2001.
A. **Okay. March of 2001. That just floored me. Why Dressler wasn't paid his dollar is totally beyond me.**
I do know why Kimble wasn't paid. The reason Kimble wasn't paid is because we did not know there was -- that's when Dressler was telling us that he wasn't sure, that there was something that wasn't right, and what wasn't right we didn't know. And that was when we started looking -- that's when Dressler started trying to find the Nelson lease.
Q. You really lost me on that. I'm sorry.
A. **There was a discrepancy. We weren't comfortable who received the royalty is why Kimble wasn't paid.**
Q. So it was either Kimble or Nelson?
A. **Or Hayes.**
Q. Or Hayes. Okay. Got you.
A. **But we didn't believe it was Nelson.**

That was why there was -- that was why we didn't -- there wasn't anything taken care of.
Q. Nobody got paid?
A. **Nobody got paid. Why Dressler wasn't -- I thought Dressler was paid for everything, but according to this, it wasn't.**
Q. Yeah. Then you drop down to --
A. **Go to the next one, please. You'll notice that Mr. Thomas, Ramm Coal, received payment for 12 -- 1270.30 tons.**
You'll see Dressler received more money than that.
That reasoning is because Waroquier mined some of the Luthersburg coal that month.
Q. Go ahead.
A. **You see the Kimbles received revenue for tons of 1288 tons.**
Q. That may well be correct. It seems strange to me that the Thomas amount for March of 2001 was 1288 and the Dressler amounts and the Kimble amount for April was 1288.
Is that just a dropdown when payment wasn't made?
A. **It very well could be. I was looking at that. Thomas could have been paid prior to the --**

royalties are on the following month. What was mined in one month, the royalties don't get paid until the following month. Mr. Thomas could have been paid prior because of the way it's calculated. And I would say your recollection is probably correct, that it was Mr. Thomas was paid prior, looking at check dates or whatever.
Q. It's not my recollection. It's what I see.
A. **What you are looking at. Correct.**
Q. Maybe so we can be clear because I don't think we have to go over every month. Let's look at the totals for 2001.
A. **Yes, sir.**
Q. We see that Thomas was paid -- and the tonnage is what is important. Thomas was paid on 10,420.7.
A. **Right.**
Q. Dressler was paid $12,419.55.
A. **The difference would be in the Luthersburg seam that Waroquier mined.**
Mr. Thomas is not -- Ramm Coal is not -- does not receive revenue for that Luthersburg seam.
Q. Let me slow you down for a second. I

thought when we were taking your deposition and also your brother's deposition that there was an oral agreement with Mr. Thomas relative to the Luthersburg seam.

A. There was one loading that Waroquier reimbursed Mr. Thomas for loading that seam, for that pit. I don't know when that pit was.

Going to 2002, maybe we can -- maybe it will be shown. Through the paperwork, I can come up with that date for you.

Q. Okay.

A. But to me, it is showing me it was not in 2001, sir.

Q. Now if we go over to Kimble, he's paid on 7,870.85 tons.

A. Okay.

Q. We've got a lot of blanks from September through the end of the year.

A. Okay.

Q. Do we have a reason for that?

A. I would say the reason -- from what I just described to you a little bit earlier, that is when we were -- we knew that there was a problem or we felt there was a problem.

Q. Did anybody get paid?

A. No, sir.

Q. But in 2001, did Kimble get paid $15,741.70?

A. Yes, sir.

Q. You have checks to back that up?

A. Yes, sir.

Q. But you are saying in 2001, there was something in your mind or in your company's mined that perhaps Hayes or perhaps Nelson was entitled to some of that money?

A. Yes. Knowing what I know today from the survey marker, knowing what I know today from the survey.

Q. How about in 2001?

A. Mr. Dressler had told Waroquier and told myself that he felt that something wasn't right. At that particular time, we really thought it belonged to Mr. Hayes.

Q. All right. So I suppose the answer in 2002 for Thomas versus Dressler is really the same response. It doesn't include the Luthersburg?

A. That is correct, except for one pit loading.

Q. That's going to have occurred in 2001 or 2002. We just don't know the answer to that?

A. That is correct.

Q. Well, I understand your answer there. Then part way through 2002 though, we began paying Kimble really on the same tonnage as you are paying Dressler.

A. Yes, sir.

Q. For all those months?

A. Yes, sir.

Q. So was the dispute resolved at that point?

A. It never was resolved. We knew -- whenever -- well, the survey wasn't done, I don't think, until 2003 or whatever. But we knew what Kimble had. We knew where the Hayes's property line was for sure.

You'll see that happened again, sir, down where you have the zeros in there where Dressler had a zero. It was forwarded on to -- Mr. Thomas was paid for the coal shown in August where Dressler and Kimble didn't get it until September.

Q. I see that. I guess where I was really asking the questions along the lines concerning Dressler and Kimble, if you began in May of 2002, really for the balance of the year, payments are made in some months and payments are not made in

other months.

Where payments are made and tonnage calculated, it is the exact same tonnage for Dressler and Kimble; is that correct --

A. Yes.

Q. -- in 2002?

A. Yes.

Q. The question then is, why were you paying Kimble instead of Nelson or Hayes?

A. We did not know for sure who the money needed to be directed to.

Q. I asked your brother a question when he was being deposed that you believe that money was incorrectly paid to Kimble that should have been paid to Nelson?

A. Yes. You'll see by looking at the total amount of money that was paid to Dressler of 34,489.99 tons. That is the total amount of tons that were mined for the whole job, from the day Waroquier took over to the last day of when Waroquier exhausted it's mining. Okay? Do you agree to that?

Q. No. I'm not going to agree.

MR. SMITH: Pretty good, isn't he?

///

BY MR. FRAMPTON:
Q. That's what you call a leading question.
A. Shoe is on the other foot.
Q. Your position is that the 34,000 --
A. Not my position. I'm telling you Waroquier mined a total amount of -- that was the total amount of coal mined.
Q. That's what your records reflect and that find their way onto this sheet?
A. Yes, and I can back that up.
Kimble, you will notice, was paid for 27,000 tons of coal, give or take.
Q. Right.
A. Waroquier is agreeing that it mined 15,000 tons of coal of Nelson estate.
If you take the 15,000 tons of coal away from the 34 and change, you will notice that the Kimbles have been overpaid.
Q. So if we take the 15,000 away from the 34- so that comes down to 19- something?
A. Yes.
Q. And so if Kimbles have been paid 27- --
A. They have been overpaid 8,000 and change.
Q. Again, that's what your records would reflect --

A. Yes.
Q. And what these documents would reflect?
A. Yes, sir.
Q. You continued to pay Kimble even after the survey was done; is that correct?
A. That is correct, because at that particular time, we were all on Mr. Kimble's property. We know that for a fact.
Q. You didn't try to make some adjustment relative to the money paid to Kimble?
A. It was Waroquier's mistake going into it. My brother and I have no problems sleeping at night. We've paid every bill we ever owed to anybody. I wasn't going go back to Mr. Kimble at that particular time. It was our fault and we -- we is myself -- I'm going to stop there.
Q. So it's not your position that Kimble owes you money back?
A. By right, he probably does, but is Waroquier going after it, no, sir.
Q. You are not?
A. No, sir.
Q. At the end of the Dressler column and the Kimble column in October of 2005 where it says "canceled lease," was that formally done on record

someplace where that lease was canceled?
A. It would be notified. It is registered mail. We'd have it in our file.
Q. But is there something filed at the courthouse here in Clearfield County showing the cancellation of a lease?
A. No. No. No.
Q. But you would have something in your file?
A. The only thing I have is that we sent out a 30-day notice and we would have -- we would have of them signing for it.
Q. And they signed for it? Do you get it back and put it in your file?
A. Yes, sir.
MR. FRAMPTON: That's all I have. Thank you.
MR. DURANT: Nothing.
MR. NADDEO: I'm sorry. I'm still lost.
THE WITNESS: I would prefer --
MR. NADDEO: You did a good job of questioning him. Now you can question me.
THE WITNESS: I would prefer because this is what upsets me. I would prefer you ask the question. I mean that.

- - -
FURTHER EXAMINATION
BY MR. NADDEO:
Q. Let's start at the top and work down. January 1, 2001, according to your records, your company mined no coal.
A. Correct.
Q. Well, that's not -- there was coal mined in February of 2001.
A. 486.75.
Q. That isn't coal mined in the preceding month. That is coal actually mined in February.
A. I take that, yes, sir.
Q. For which you would have normally paid the property owner the following month.
A. Correct.
Q. So for February of 2001 your records would indicate that 486.75 tons were mined. You recouped from Dressler $486.75 for what you had paid him in advance, right?
A. Yes, sir.
Q. And you paid Kimble $2.00 a ton for $486.75?
A. Yes.
Q. So Kimble actually got paid in the same

month that you mined the coal; is that right?
A. I would say no. Kimble was paid along with Dressler's recoup on the 25th of March.
Q. Of March.
A. Yes. That's what you said earlier. When Mr. Thomas was paid, you would have to look at the checks.
Q. Now we're going to go down to March 1st. According to your records, Mr. Thomas mined 12,88- -- 1288 tons.
A. Correct.
Q. Correct?
A. Yes.
Q. For which Mr. Dressler was given no credit, at least in March, he wasn't given any credit, and Kimble received no credit, or no money.
A. Well, we'd have to look at the checks to see if Mr. Thomas wasn't paid because you see that the Dressler and the Kimbles were paid for the same amount of tons.
Q. Joe, according to your schedule, Mr. Thomas got paid 21,896 bucks which he should have gotten paid for that amount of coal.
A. That's what he was rewarded of.

Q. It seems Mr. Dressler should have gotten a dollar a ton or 1,288 bucks, which he didn't get, according to your schedule, at least he didn't get it in March.
A. Correct.
Q. And Kimbles got no royalty payment in March. They got zero.
A. Okay.
Q. That's because Dressler had come to you and said we've got a problem here?
A. I'm not sure if that's when that happened. I don't think Dressler came to me until September. I really think, to be honest with you, that Waroquier probably paid Mr. Thomas. I'd have to look at the checks. I would think Waroquier paid Mr. Thomas early for the coal before payment date was actually due.
Q. So in April, let's go to April, Mr. Thomas mined 1270.30 tons for which he was paid -- that doesn't look like the right figure, but it looks like he was paid $11,115.13; is that correct?
A. Yes. Now, that could be where -- that could be the month that Mr. Thomas removed the Luthersburg seam, and payment would have went from

17 to 13. That might have been that month if you figure --
Q. That would be closer to the number you paid him?
A. Yes.
Q. Now, in April, Mr. Dressler was given credit for 1,288 tons.
A. Correct.
Q. You have recoup. That was the dollar a ton?
A. Yes.
Q. And a payment was made then in April to Kimbles in the amount of 1,288 tons times 2.
A. Correct.
Q. Right?
A. Yes, sir.
Q. Let's go to March. In March, Mr. Thomas, according to your records, mined 1,462.95 tons of coal. There was --
A. I'm sorry, Jim.
Q. 1,462.95 on March 1st?
MR. FRAMPTON: That is May.
MR. NADDEO: I'm sorry, May 1st.
THE WITNESS: 1462.95.
///

BY MR. NADDEO:
Q. And Dressler received credit for 1,716.85 tons, right?
A. That is correct.
Q. And the explanation would be that some of that coal was removed by your company.
A. Yes, but that 1,716.85, I would think you have to go back up a month. When Mr. Thomas received the 1,462.95, I would think that Dressler -- that would actually have been Dressler's reward of 1,713.35 and part of that would have been because of being the Luthersburg seam.
Why all of those zeros are there, I can't honestly answer that back to the February -- back to the March month whether Mr. Thomas was paid ahead of those other two identities, I'm not a hundred percent sure. But it -- that's what it appears to me, that it was a -- there wasn't a catchup. It was on a different pay. Mr. Thomas was receiving his money prior or before the 25th of the following month. That's when Dressler and Kimble's money was due.
Q. We go down then to September of 2001.
A. All right.

Q. Okay?
A. **Yep.**
Q. Mr. Thomas mined 143.55 tons of coal?
A. **Yes.**
Q. Dressler got credit for 884.90 tons which would be explained by coal removed -- the difference would be explained by coal removed by Waroquier itself, right?
A. **Yes.**
Q. There's Thomas mined about an eighth of the coal that came out that month, maybe a seventh, right?
A. **Yes.**
Q. And nothing was paid to Kimble in September, October, November, December and January. Apparently you didn't mine -- well, there was coal mined. They didn't get paid January of 2002, February of 2002, March of 2002 and April of 2002, right?
A. **Yes, sir.**
Q. Is that when the dispute came into focus concerning whose coal this was?
A. **Yes, sir.**
Q. Whether it was Nelson's or whether it was Kimble's?

A. **Yes, sir.**
Q. So you were simply saying wait a minute. We don't know. We're just going to not pay anybody until we get it sorted out?
A. **We didn't know who to pay. Can I ask to go back to July of 2001?**
Q. Sure.
A. **You will notice that Thomas received no tons and no payment. And then that's when you see that Dressler was rewarded the 967.20 and so was Kimble. And if you look at that number, that reconciles back to the number that Mr. Thomas received for June of 2001. So whatever took place from the beginning to July, all transpired to where everything was back on the same level key.**
Q. Starting in July, you got everybody brought up to speed.
A. **Yes. Everyone is on the same level.**
Q. To go back, starting in September, you stopped paying Kimbles because there was a question as to where this coal was coming from, whether it was coming from Nelson or whether it was coming from Kimble.
A. **Yes, sir, or Hayes.**
Q. Or Hayes.

A. **Or Hayes.**
Q. For September, no property owner received any payment for 884.90 tons of coal.
Nobody received, in October, any payment for 1,556.25 tons of coal, right?
A. **Correct.**
Q. Nobody received any payment in November for 1686.55 tons, right?
A. **Correct.**
Q. Nobody received any payment in December for 421 tons --
A. **Correct.**
Q. -- and so forth. So has anybody to this date been paid for the coal that was mined from September 1st through March 2nd -- excuse me, from September of 2001 to April of 2002?
MR. SMITH: Objection as to form. The schedule shows that Thomas did get paid.
MR. NADDEO: Yes. I agree. My question was, was any property owner paid.
THE WITNESS: Ramm Coal was paid for everything.
Dressler was paid for everything. And you will notice, if you take Dressler's total tons and subtract the tons that Kimble was paid for,

those are the differences in the tons that were not paid for.
BY MR. NADDEO:
Q. So to answer my question, I think my question -- my question is this: As we sit here today, no property owner has been paid for any coal which was removed between September of 2001 and April of 2002?
A. **No, sir. You are correct.**
Q. So you owe somebody royalty for that coal?
A. **Yes. Mr. Thorpe tried to make -- or did make contact with Mr. Nelson and that was when we agreed on the 15,000 tons that we felt that he was awarded.**
Q. So it's your recollection it was sometime around April of 2002 that Mr. Thorpe went to Mr. Nelson to pay for the coal that had been inadvertently removed?
A. **I don't know when that date was.**
Q. But we agree that the payment for that coal was in dispute as early as September of 2001.
A. **Yeah. We knew there was something wrong.**
Q. You were still withholding royalty payments in April of 2002?

A. I didn't want to pay the wrong person and not be able to ...

Q. That makes sense. Let's go to March of 2002. Kimble got paid in March of 2002, right?

A. No. No.

MR. FRAMPTON: May.

MR. NADDEO: May of 2002. Yes.

Q. And you paid Kimble in May of 2002 because you were certain that that coal that was mined in May of 2002 came off the Kimble property?

A. I don't want to say I was a hundred percent certain. Between my brother and I talking about it, we felt pretty good. Mr. Kimble might have been up at the mine site -- if my memory is coming back to me. I know he was at the mine site.

Q. Let's go to June of 2002. Kimble was paid again in June of 2002, correct?

A. Yep.

Q. And again, is that because you were convinced that Kimble was the correct property owner?

A. I'd want to lead to say yes, but I'm not 120 percent sure. That's been a while.

Q. How about June of 2002?

A. Same thing, Jim.

Q. So from April, May and June, you are paying Kimble, but you know that Nelson has a claim out there and you are not 100 percent sure you are on Kimble?

A. No. No. No. I did not know Mr. Nelson had no claim. Nope. Nope. Nope. My brother and I wanted the money to be directed to the right individual, bottom line. We wanted to make sure we weren't overpaying the wrong individual. We were trying to get to the bottom of it.

Q. Well, let's go back. Because you were trying to get to the bottom of it, from September 2001 through April of 2002, you paid nobody?

A. Okay.

Q. Which makes sense to me because you didn't know who to pay.

For some reason, starting in May of 2002, you started to pay Kimble again. What changed?

A. Like I said, I don't recollect exactly. I don't know if Mr. Kimble come out to the job or met at the job. Not with me. I never met the Kimbles. But I think somehow or whatever we were more reassurance (sic) that that was the Kimble property.

Q. How about August of 2002, Joe? What happened there? There was 1,652 tons of coal mined and nobody was paid and, I guess, you paid in the next month, September for that coal?

A. Yeah. Why, I don't know. The bottom line is the total amount of tons mined from the job is what Mr. Dressler has received. According to our OSM reports and everything else, according to truck drivers' reports, everything.

Q. So Dressler has been paid. Kimble under your scenario has been overpaid.

A. Correct.

Q. And Nelson has been underpaid by 15,000 tons.

A. That is correct.

Q. Now, I'm still lost at one other point and then I'm going to quit.

At some point, you found out that you had removed 15,000 tons, round figure. I know there's a few more tons, but let's use 15,000 for sake of discussion.

At some point, you found out that you had removed 15,000 tons of coal from Mr. Nelson's property.

A. Correct.

Q. Do you remember when you found out?

A. It wasn't until after Curry & Associates did the survey.

Q. Which would have been sometime prior to when they prepared their map, and by "their map," I mean the map that purports to calculate the tonnage that was removed.

A. Yes. The map is to back Ronnie's work up or the homework. I think Ronnie Thorpe called myself and told me the total tons that he felt that Waroquier had removed from the Nelson estate, and at that time, I had asked Ronnie -- business wasn't good, I had asked Ronnie to ask Mr. Nelson if he would take 5,000 a month payments until we got the payment paid in full.

Q. Now, the map was prepared sometime in August of 2003; is that right?

A. Yes, whatever.

Q. So the survey would have been done before the map, but there was speculation about who should have gotten paid as early as August of 2001.

A. Yes.

Q. 5,000 a month, but how many dollars were you offering him, Joe?

A. His lease, and I know you are going to come back and say the 10 percent, and I don't have the schedule in front of me, but at $2.00 a ton at 30 -- 15,000 tons, give or take, $30,000, six payments of $5,000.

Q. So you offered him six payments of --

A. Somewhere like that. Somewhere in that range.

Q. You authorized your engineer to make that proposal --

A. Mr. Nelson had spoke with Mr. Thorpe of Curry & Associates, and we just let that transaction stay the way it was instead of interjecting other people. Mr. Thorpe at Curry had already been in contact with Mr. Nelson. Mr. Nelson had contacted them of the situation. And that was why, when Mr. Thorpe came back to myself and told me about the 15,000 tons' discrepancy, I authorized that we would pay for it. If we would have had to, I would have paid it in full. I asked him to go back to Mr. Nelson and see if Mr. Nelson would be in turn to take payments in $5,000 increments in order to get it paid, so it didn't -- I didn't have to pull $30,000 away from something.

Q. The offer was $30,000 --

A. Don't hold me. Whatever the tons was times two.

MR. NADDEO: That's all the questions I have. Are we going to offer this as Exhibit 15?

MR. FRAMPTON: Yes. Give your copy to the court reporter, if you would.

(At 3:05 p.m., the deposition was concluded. Signature waived.)

COMMON OF PENNSYLVANIA)
) SS
COUNTY OF ARMSTRONG)

I, Roberta Swank, Notary Public within and for the Commonwealth of Pennsylvania, do hereby certify that before the taking of his deposition, the said deponent, JOSEPH L. WAROQUIER, JR., was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, and that the above deposition was recorded in stenotype by me and reduced to typewriting under my direction.

I further certify that the reading and signing of the transcript of his deposition were waived by the deponent and by counsel for the respective parties and that the said deposition constitutes a true record of the testimony given by the said deponent.

I further certify that I am not a relative or employee or attorney or counsel or financially interested directly or indirectly in this action.

I further certify that the said deposition was taken before me at the time and place specified in the notice.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Kittanning, Pennsylvania, June 14, 2007.

Roberta Swank

ROBERTA SWANK, NOTARY PUBLIC

NOTARIAL SEAL
Roberta Swank, Notary Public
Kittanning Twp., Armstrong County
My commission expires December 26, 2009

$

$11,115.13 [1] - 126:21
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TIPPLE: 814 765-3492

OFFICE: 814 765-5681
FAX: 814 765-5186

WAROQUIER COAL, INC.
Coal Producers

P.O. BOX 128
CLEARFIELD, PA. 16830

EXHIBIT
1

January 18, 2001

AGREEMENT

Roger Thomas agrees to contract mine off of the said permit for Ruskin Dressler. Starting this 19 of January 2001, Roger Thomas will be responsible for the drilling, blasting, and mining of the lower seam. Waroquier Coal Co., Inc. will take care of the loading of the coal.

Waroquier Coal Co., Inc. agrees to pay Roger Thomas $17.00 (Seventeen dollars) per ton for the drilling, blasting, and mining of the lower seam.

Roger Thomas will be responsible for any MSHA fines which may accrue in his mining operation.

Waroquier Coal Co., Inc. holds no obligation to Roger Thomas for before, during, and after except for what he has prepared for mining as in drilling and blasting.

ATTEST:

Roger Thomas

WAROQUIER COAL CO., INC

Gary V. Waroquier, Secretary of Treasurer

Def. Waroquiers'
Response to
Item 13d.

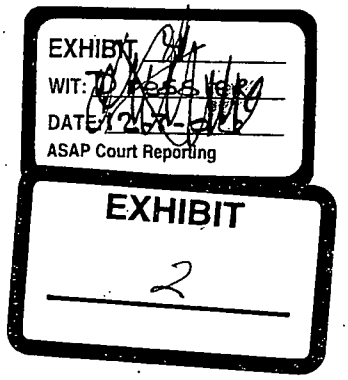
OFFICE: 814 765-5681
FAX: 814 765-5186

TIPPLE: 814 765-3492

WAROQUIER COAL, INC.

Coal Producers

P.O. BOX 128
CLEARFIELD, PA. 16830



January 18, 2001

AGREEMENT

This 22 of January 2001, WAROQUIER COAL CO., INC. agrees to resume the permit #17990105 of Ruskin Dressler. We will pay Ruskin Dressler $15,000 (Fifteen Thousand Dollars) for this permit. Also, a payment of an override fee of $1.00 (One Dollar) for each ton of coal mined off of this permit. Settlements in payments of royalty shall be made on the 25th day of each month for all coal mined and removed from the premises during the preceding calendar month and shall be accompanied by a copy of all weight slips showing the number of tons of coal mined and removed.

Waroquier Coal Co., Inc. Agrees to pay Ruskin Dressler $5,000 (Five Thousand Dollar) for the road bond if Brady Township will not refund Ruskin Dresslers moneys for the road bond.

Waroquier Coal Co., Inc. agrees to sell Ruskin Dressler house coal out of this mine at pit price.

Waroquier Coal Co., Inc. will be working under Ruskin Dressler Permit until the transfer for the permit is made. Waroquier Coal Co., Inc. will be responsible for all mining activity through MSHA and DEP Regulations excluding Ruskin Dressler.

Ruskin Dressler is responsible for the up keep of this area and any MSHA fines that may accrue from his area.

In case of death the Royalty of this agreement will go to Bernice V. Oman, RD# 2 Box 231A, Dubois, PA 15801.

January 26th, 2001 Waroquier Coal Co., Inc. is advancing Ruskin Dressler $15,000 (Fifteen Thousand Dollars) on Advance Royalty in which Waroquier Coal Co., Inc. will recoup from the override fee of $1.00 (One Dollar) a ton when mining begins

until sum is collected. After sum is collected all will be based on what is stated in the first paragraph of this agreement.

ATTEST:

RUSKIN DRESSLER

WAROQUIER COAL CO., INC

GARY V. WAROQUIER,
SECRETARY OF TREASURER

NOTARIAL SEAL
TAWNEY J. BOWER, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires September 27, 2004

SMP99

R-MR-310: Rev. 3/93

EXHIBIT 3

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

COAL SURFACE MINING PERMIT
NO. 17990105

Permittee: W. Ruskin Dressler
Box 39
Rockton, PA 15856

Name of Operation: Kimble

Type of Operation: Surface/Auger

Permitted Seams: Upper Kittanning, Middle Kittanning, Luthersburg & Shale

Issuance Date: August 4, 1999

Expiration Date: August 4, 2004

Township: Brady

County: Clearfield

This approval is subject to the attached LIMITS OF AUTHORIZATION, MANDATED COAL MINING ACTIVITY PERMIT CONDITIONS AND REQUIREMENTS and to:

PART A EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS AND MANDATED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) CONDITIONS AND REQUIREMENTS

PART B SPECIAL CONDITIONS OR REQUIREMENTS

PART C AUTHORIZATION TO MINE

This permit is for 75 acres of which 63 coal acres are planned to be affected. Permittee may conduct surface coal mining activities only on that area of the permit outlined on the Authorization to Mine and accompanying maps contained in Part C of this permit. Initial authority to conduct mining activities is granted for an area of 26.9 acres described in Part C of this permit. Additional authority to conduct mining activities may be granted by written approval of the Department and attached to Part C of this permit. Permittee is prohibited from conducting coal mining activities on that portion of the permit area which has not been authorized for mining by the Department, in writing, and shown on the bond approval and mining authorization map(s) contained in Part C of this permit.

This permit is hereby issued in accordance with the provisions of the Surface Mine Conservation and Reclamation Act, Act of May 31, 1945 (P. L. 1198, No. 418), as amended, 52 P. S. §§1396.1 et seq., and the Clean Streams Law, Act of June 22, 1937 (P. L. 1987, No. 394), as amended, 35 P. S. §§691.1 et seq., The Air Pollution Control Act, Act of January 8, 1960 (1959 P. L. 2119, No. 787), as amended, 35 P. S. §§4001 et seq., and the regulations promulgated pursuant to these Acts. This permit is also issued in accordance with the following statutes and regulations if marked:

EXHIBIT 31
WIT: Dressler
DATE: 12-7-06
ASAP Court Reporting

☐ Coal Refuse Disposal Control Act, Act of September 24, 1968, (P. L. 1040, No. 318), as amended, 52 P.S. §§30.51 et seq., and the regulations promulgated pursuant to this Act.

☐ Dam Safety and Encroachments Act, Act of November 26, 1978 (P. L. 1375, No. 325), as amended, 32 P. S. §§693.1 et seq., and the regulations promulgated pursuant to this Act.

☒ Air Pollution Control Act, Act of January 8, 1960 (1959 P. L. 2119), No. 787), as amended, 35 P. S. §4001 et seq., and the regulations promulgated pursuant to this Act.

☐ Solid Waste Management Act, Act of July 7, 1980 (P. L. 380, No. 97), 35 P. S. §§6018.101 et seq., and the regulations promulgated pursuant to this Act.

Permittee is hereby authorized to conduct coal mining activities as described in the approved permit application and in accordance with, the laws and regulations and terms and conditions as referenced above. A violation of any provision of these laws and regulations and terms and conditions is a violation of this permit.

BY: _____
Michael W. Smith

Title: District Mining Manager
For the Department of Environmental Protection

WS/hao

LIMITS OF AUTHORIZATION

1. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights.

2. Nothing herein contained shall be construed to be an intent on the part of the Department to approve any act made or to be made by the permittee which is inconsistent with the permittee's lawful powers or with existing laws of the Commonwealth regulating coal mining activities and the practice of professional engineering. This permit shall not be construed to sanction any act otherwise forbidden by federal or state law or regulation, or by local ordinance, not to pre-empt any duty to obtain state or local assent required by law for the coal mining activity.

3. The Permittee's failure to comply with the laws of the Commonwealth and the rules and regulations of the Department regarding coal mining activities, or failure to comply with the terms and conditions of this permit, may result in an enforcement action, in permit termination, suspension, revocation and reissuance, or modification, or in denial of a permit renewal application. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee of any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under the Acts pursuant to which this permit is issued or any other applicable provision of law.

The permittee is responsible for complying with local ordinances adopted pursuant to the Municipalities Planning Code, and all zoning ordinances in existence before January 1, 1972. Nothing in this permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee may be subject under Federal, State, or Local laws.

5. The Surface Mine Conservation Inspector (SMCI) shall be notified of all proposed changes to the permitted erosion and sedimentation control plan prior to implementation. With the concurrence of the SMCI, minor field adjustments or additions to the permitted erosion and sedimentation control plan can be made as necessary to insure that all runoff is properly controlled. If necessary, all changes to the erosion and sedimentation controls shall be included as changes in the as built engineer's certification submitted to the Department.

W. Ruskin Dressler
Brady Township, Clearfield County

MANDATED COAL MINING ACTIVITY PERMIT CONDITIONS AND REQUIREMENTS
(under 25 PA Code Chapter 86)

Except to the extent that the Department otherwise directs in this permit that specific actions be taken, the permittee shall conduct coal mining activities as described in the approved application. 86.41(1)

2. The permittee shall allow the authorized representatives of the Commonwealth without advance notice or a search warrant, upon presentation of appropriate credentials, without delay, to have access to areas in which coal mining activities will or are being conducted. 86.41(2)

3. The permittee shall affect by coal mining activities only those lands specifically approved in the permit for which a bond has been filed with the Department in accordance with Subchapter F (relating to bonding and insurance requirements). 86.41(3)

4. The permittee shall take all possible steps to prevent an adverse impact to the environment or public health and safety resulting from non-compliance with terms or conditions of this permit, including:

   a. Any accelerated or additional monitoring necessary to determine the nature and extent of non-compliance and the results of the non-compliance;

   b. Providing warning, as soon as possible after learning of the non-compliance, to a person whose health and safety is in imminent danger due to the non-compliance. 86.42(1)

5. The permittee shall conduct the activities in accordance with measures specified in this permit as necessary to prevent environmental harm or harm to the health or safety of the public. 86.42(2)

W. Ruskin Dressler
Brady Township, Clearfield County

SMP99

PART A

COAL SURFACE MINING PERMIT NO. 17990105

NPDES PERMIT NO. PA 0238261

Permittee: W. Ruskin Dressler
Box 39
Rockton, PA 15856

Name of Operation: Kimble

Issuance Date: August 4, 1999

Type of Operation: Surface/Auger

Expiration Date: August 4, 2004

Permitted Seams: Upper Kittanning, Middle Kittanning, Luthersburg & Shale

Township: Brady

County: Clearfield

DISCHARGE TO (RECEIVING WATERS): Unnamed tributary to Luthersburg Branch, Luthersburg Branch, unnamed tributary to LaBorde Branch and LaBorde Branch to the West Branch of the Susquehanna River

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. MINE DRAINAGE TREATMENT FACILITIES DISCHARGING TO: Unnamed tributary "A" to LaBorde Branch.

Outfall Numbers	Latitude	Longitude
TB1	40° 04' 18"	78° 42' 05"

Based on the hydrologic data and anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or revisions, the following effluent limitations and monitoring requirements apply to the above listed outfall numbers.

Exhibit 5: Property Interest/Right of Entry

5.1 Permit Area

a	b	c
(1) Surface: Richard & Nancy Kimble RR #1, Box 234, Liberty, PA 16930 Coal: Same as Surface except for Middle Kittanning Coal - Mary A. Hayes, 6205 W. Rockrose Ln., Florence, MT 49053	Lease	Enclosed
(16) Surface: Albert C. and Charles Hayes Luthersburg, PA 15848 Coal: Same as Surface except for Middle Kittanning Coal - Mary A. Hayes, 6205 W. Rockrose Ln., Florence, MT 40953	Lease	Not Required
(14) Surface: Mary A. Hayes, 6205 W. Rockrose Ln., Florence, MT 59053 Coal: Middle Kittanning Coal Same as Surface	Lease	To be Submitted
(2) Surface: Albert Nelson Trustee Albert L. Nelson, Esq. CEBFA 2400 Koppers Building, Pittsburgh, PA 15219 Coal - Same as Surface	Lease	Enclosed

5.2 Contiguous Area

(4) Surface: Mary Janice Beutel, 5233 Rottstown Rd., Ravenna, OH 44266 Coal: Same as Surface
(19) Surface: Albert C. and Charles Hayes, Luthersburg, PA 15848 Coal: Same as Surface except for Middle Kittanning - Mary A. Hayes
(13) Surface: Robert L. and Ordean V. Welder, RD #1, Box 96, Luthersburg, PA 15848 Coal: Same as Surface
(10) Surface: Nerissa Broad, RR 1, Luthersburg, PA 15848 Coal: Same as Surface
(9) Surface: Emily Jean Broad, RR #1, Luthersburg, PA 15848 Coal: Same as Surface
(6) Surface: William F. and Janet C. Matko, 604 Green Glen Drive, DuBois, PA 15801 AND DuBois Beaver Meadow Field Trial Association, Box 97, DuBois, PA 15801 Coal: Same as surface

R—MR—10: Rev. 2/84
Supplemental C"

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

APPL. NO. (Department Use Only)

CONTRACTUAL CONSENT OF LANDOWNER

(I) (We), the undersigned, being the owner(s) of 49.0 acres of land located in Brady Township, Clearfield County, as
(Township, Borough, City)
escribed in the deed(s) recorded in the Recorder of Deeds Office Book(s) and page(s) Dsd Book Vol 1572 Page 148 and shown by crosshatched lines on the
ap attached hereto which is signed in the original by the landowner upon which
W. Ruskin Dressler proposes to engage in surface
(Name of Mining Operator)
ining activities for which application for permit will be made to the Department of Environmental esources and of which application this consent will be made a part, *DO HEREBY ACKNOWLEDGE HAT THE MINING OPERATOR HAS THE RIGHT TO ENTER UPON AND USE THE LAND FOR THE URPOSES OF CONDUCTING SURFACE MINING ACTIVITIES.* Furthermore, (I) (We), the undersigned, o hereby irrevocably grant to the Mining Operator and the Commonwealth of Pennsylvania, the right o enter upon the aforesaid land before beginning the mining activity(ies), during the mining activi- y(ies) and for a period of five (5) years after the completion or abandonment of the mining activi- y(ies) for the purposes of inspecting, studying, backfilling, planting and reclaiming the land and abating ollution in accordance with the provisions of the Surface Mining Conservation and Reclamation Act, he Clean Streams Law, and The Coal Refuse Disposal Act, as amended, rules and regulations pro- ulgated thereunder, and the provisions of permit(s) issued to the Mining Operator. (I) (We) do hereby rant in addition to the Commonwealth, for the aforesaid period of time, a right of entry across any ining or contiguous lands owned by (us) (me) in order to have access to the land described herein. specifically agreed and understood that this contractual consent gives the Commonwealth the ght to enter, inspect, study, backfill, plant and reclaim the land and abate pollution therefrom as matter within the police power but does not obligate the Commonwealth to do so, and does not onstitute any ownership interest by the Commonwealth in the aforesaid land.

This Consent shall not be construed to impair any contractual agreement between the Mine Operator and the landowner.

(INSERT ADDITIONAL PROVISIONS OR CROSS OUT)

In witness whereof and intending to legally bind (myself) (ourselves), (my) (our) heirs, successors nd assigns, (I) (we) have hereunto set (my) (our) hand(s) and seal this 3rd day f FEB, 1997.

Albert L. Nelson
LANDOWNER Grantee (Print Name)

By: Albert L. Nelson, Grantee
(Signature) (Seal)

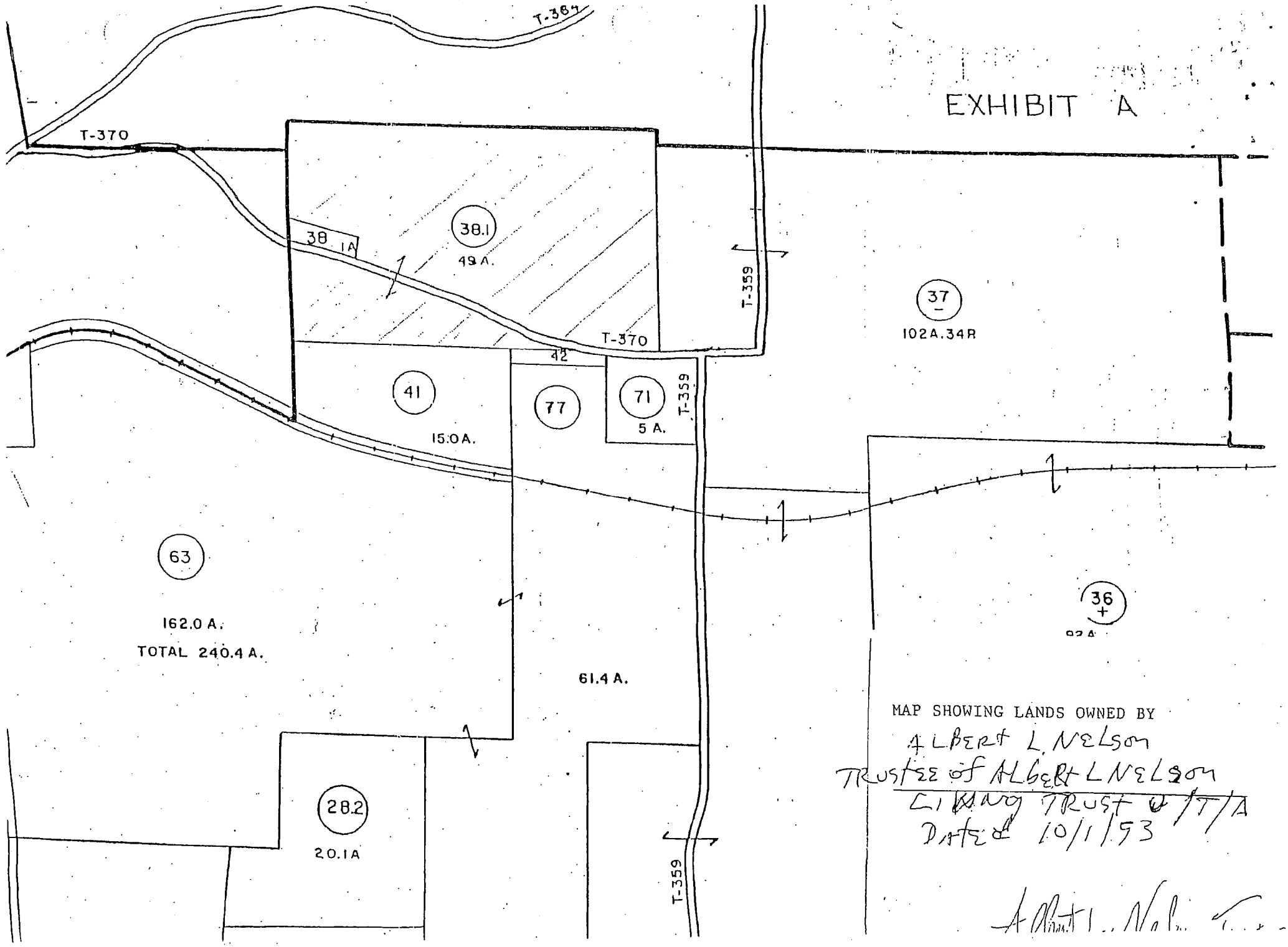
(Print Name)

By: _____
(Signature)

AREN L. STARCK
STER AND RECORDER
RFIELD COUNTY, PA
Pennsylvania

INSTRUMENT NUMBER
199702726
RECORDED ON
2 23, 1997
1:51:31 PM

DING FEES $12.00
DER
Y IMPROVEMENT $1.00
DER $1.00
VEMENT FUND $0.50
WRIT TAX $15.50


EXHIBIT A
T-369
T-370
38.1
49 A.
38 1A
T-370
T-359
37
102A.34R
42
41
15.0A.
77
71
5 A.
T-359
63
162.0 A.
TOTAL 240.4 A.
61.4 A.
36
28.2
20.1A
T-359
MAP SHOWING LANDS OWNED BY
ALBERT L NELSON
TRUSTEE of ALBERT L NELSON
LIVING TRUST U/T/A
DATED 10/1/93

22

PART C

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

AUTHORIZATION TO MINE
PERMIT NO. 1325-17990105T-01

ermittee: Waroquier Coal Company
P. O. Box 128
Clearfield, PA 16830

ame of Operation: Kimble

ype of Operation: Surface/Auger

UTH. ID: 348720

Issuance Date: October 16, 2001

Expiration Date: August 4, 2004

Township: Brady

County: Clearfield

Permittee is hereby authorized to conduct coal mining activities on lands of Richard L. Kimble and Nancy C. Kimble, Mary A. Hayes, and Albert L. Nelson situated in Brady Township, Clearfield County. Surface owners consent is attested to by inclusion of a properly executed Consent of Landowner form submitted in support of this approval.

Surface coal mining activities are limited to the area designated as Two Tones of Green (support); Brown and Purple (0 to 85 feet, mining);and Blue and Yellow (86 to 115 feet, mining) in the map submitted in support of the request for this Mining Authorization, which covers 38.5 acres.

The maximum allowed depth of pit or height of highwall is 115 feet. The maximum pit dimensions are described by Part B Condition #1.

Bond Description

☐ Original Bond ■ Transfer ☐ Additional Bond ☐ Bond Replacement

■ Surety Bond No. L-072001-17990105-01 in Amount of $94,300.00 dated July 7, 2001 with Lyndon Property Insurance Company as surety.

■ Additional Remarks - Reclamation Fee in the Amount of $1,160.00 supported by Check No. 1772 dated July 26, 2001.

The approved erosion and sediment control facility related to the area to be mined in accordance with this authorization must be constructed in accordance with the approved plan, certified by a professional engineer or land surveyor, and the certification submitted to the Department prior to the commencement of any earth disturbance activities in this area.

BONDING INCREMENT SPECIAL CONDITIONS

There will be no blasting on this permit until Module 16 has been approved by this office.

The Supplemental "C", Consent of Landowner, for Richard L. Kimble & Nancy C. Kimble recorded February 23, 1999 at the Clearfield County Court House is filed herein.

The Supplemental "C", Consent of Landowner, for Albert L. Nelson recorded February 23, 1999 at the Clearfield County Court House is filed herein.

Variance to affect within 100 feet of T-384 is supported by the approval letter from Brady Township Supervisors dated June 7, 1999 is filed herein.

PLAINTIFF'S

ER-MR-310: Rev. 3/93

PERMIT99

EXHIBIT 4

COPY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

COAL SURFACE MINING PERMIT
NO. 17990105

Permittee: Waroquier Coal Company
P. O. Box 128
Clearfield, PA 16830

Name of Operation: [redacted]

Type of Operation: Surface/Auger

Permitted Seams: Upper Kittanning, Middle Kittanning, Luthersburg & Shale

Transfer Date: October 16, 2001
Issuance Date: August 4, 1999

Expiration Date: August 4, 2004

Township: Brady

County: Clearfield

This approval is subject to the attached LIMITS OF AUTHORIZATION, MANDATED COAL MINING ACTIVITY PERMIT CONDITIONS AND REQUIREMENTS and to:

PART A EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS AND MANDATED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) CONDITIONS AND REQUIREMENTS

PART B SPECIAL CONDITIONS OR REQUIREMENTS

PART C AUTHORIZATION TO MINE

This permit is for 75 acres of which 63 coal acres are planned to be affected. Permittee may conduct surface coal mining activities only on that area of the permit outlined on the Authorization to Mine and accompanying maps contained in Part C of this permit. Initial authority to conduct mining activities is granted for an area of 38.5es described in Part C of this permit. Additional authority to conduct mining activities may be granted by written approval of the Department and attached to Part C of this permit. Permittee is prohibited from conducting coal mining activities on that portion of the permit area which has not been authorized for mining by the Department, in writing, and shown on the bond approval and mining authorization map(s) contained in Part C of this permit.

This permit is hereby issued in accordance with the provisions of the Surface Mine Conservation and Reclamation Act, Act of May 31, 1945 (P. L. 1198, No. 418), as amended, 52 P. S. §§1396.1 et seq., and the Clean Streams Law, Act of June 22, 1937 (P. L. 1987, No. 394), as amended, 35 P. S. §§691.1 et seq., The Air Pollution Control Act, Act of January 8, 1960 (1959 P. L. 2119, No. 787), as amended, 35 P. S. §§4001 et seq., and the regulations promulgated pursuant to these Acts. This permit is also issued in accordance with the following statutes and regulations if marked:

Def. Waroquiers'
Response to
Item 2

- ☐ Coal Refuse Disposal Control Act, Act of September 24, 1968, (P. L. 1040, No. 318), as amended, 52 P.S. §§30.51 et seq., and the regulations promulgated pursuant to this Act.
- ☐ Dam Safety and Encroachments Act, Act of November 26, 1978 (P. L. 1375, No. 325), as amended, 32 P. S. §§693.1 et seq., and the regulations promulgated pursuant to this Act.
- ■ Air Pollution Control Act, Act of January 8, 1960 (1959 P. L. 2119), No. 787), as amended, 35 P. S. §4001 et seq., and the regulations promulgated pursuant to this Act.
- ☐ Solid Waste Management Act, Act of July 7, 1980 (P. L. 380, No. 97), 35 P. S. §§6018.101 et seq., and the regulations promulgated pursuant to this Act.

Permittee is hereby authorized to conduct coal mining activities as described in the approved permit application and in accordance with, the laws and regulations and terms and conditions as referenced above. A violation of any provision of these laws and regulations and terms and conditions is a violation of this permit.

BY: John P. Varner
John P. Varner

Title: Chief, Permit and Technical Services
For the Department of Environmental Protection

JPV/JSB/cav

LIMITS OF AUTHORIZATION

1. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights.

2. Nothing herein contained shall be construed to be an intent on the part of the Department to approve any act made or to be made by the permittee which is inconsistent with the permittee's lawful powers or with existing laws of the Commonwealth regulating coal mining activities and the practice of professional engineering. This permit shall not be construed to sanction any act otherwise forbidden by federal or state law or regulation, or by local ordinance, not to pre-empt any duty to obtain state or local assent required by law for the coal mining activity.

3. The Permittee's failure to comply with the laws of the Commonwealth and the rules and regulations of the Department regarding coal mining activities, or failure to comply with the terms and conditions of this permit, may result in an enforcement action, in permit termination, suspension, revocation and reissuance, or modification, or in denial of a permit renewal application. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee of any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under the Acts pursuant to which this permit is issued or any other applicable provision of law.

4. The permittee is responsible for complying with local ordinances adopted pursuant to the Municipalities Planning Code, and all zoning ordinances in existence before January 1, 1972. Nothing in this permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee may be subject under Federal, State, or Local laws.

5. The Surface Mine Conservation Inspector (SMCI) shall be notified of all proposed changes to the permitted erosion and sedimentation control plan prior to implementation. With the concurrence of the SMCI, minor field adjustments or additions to the permitted erosion and sedimentation control plan can be made as necessary to insure that all runoff is properly controlled. If necessary, all changes to the erosion and sedimentation controls shall be included as changes in the as built engineer's certification submitted to the Department.

MANDATED COAL MINING ACTIVITY PERMIT CONDITIONS
AND REQUIREMENTS
(under 25 PA Code Chapter 86)

1. Except to the extent that the Department otherwise directs in this permit that specific actions be taken, the permittee shall conduct coal mining activities as described in the approved application. 86.41(1)

2. The permittee shall allow the authorized representatives of the Commonwealth without advance notice or a search warrant, upon presentation of appropriate credentials, without delay, to have access to areas in which coal mining activities will or are being conducted. 86.41(2)

3. The permittee shall affect by coal mining activities only those lands specifically approved in the permit for which a bond has been filed with the Department in accordance with Subchapter F (relating to bonding and insurance requirements). 86.41(3)

4. The permittee shall take all possible steps to prevent an adverse impact to the environment or public health and safety resulting from non-compliance with terms or conditions of this permit, including:

   a. Any accelerated or additional monitoring necessary to determine the nature and extent of non-compliance and the results of the non-compliance;

   b. Providing warning, as soon as possible after learning of the non-compliance, to a person whose health and safety is in imminent danger due to the non-compliance. 86.42(1)

5. The permittee shall conduct the activities in accordance with measures specified in this permit as necessary to prevent environmental harm or harm to the health or safety of the public. 86.42(2)

Waroquier Coal Company
Brady Township, Clearfield County

PERMIT99

PART A

COAL SURFACE MINING PERMIT NO. 17990105 .

NPDES PERMIT NO. PA 0238261 .

Permittee: Waroquier Coal Company
P. O. Box 128
Clearfield, PA 16830

Name of Operation: Kimble

Type of Operation: Surface/Auger

Permitted Seams: Upper Kittanning, Middle Kittanning, Luthersburg & Shale

Transfer Date: October 16, 2001
Issuance Date: August 4, 1999

Expiration Date: August 4, 2004

Township: Brady

County: Clearfield

DISCHARGE TO (RECEIVING WATERS): Unnamed tributary to Luthersburg Branch, Luthersburg Branch, unnamed tributary to LaBorde Branch and LaBorde Branch to the West Branch of the Susquehanna River

I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. MINE DRAINAGE TREATMENT FACILITIES DISCHARGING TO: Unnamed tributary "A" to LaBorde Branch.

Outfall Numbers	Latitude	Longitude
TB1	40° 04' 18"	78° 42' 05"

Based on the hydrologic data and anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or revisions, the following effluent limitations and monitoring requirements apply to the above listed outfall numbers.

DISCHARGE LIMITATIONS*				MONITORING REQUIREMENTS	
Discharge Parameter	Average Monthly	Maximum Daily	Instantaneous Maximum	Measurement Frequency	Sample Type
Iron	2.1	4.2	4.9	Two Times Per Month When Discharging	Grab
Manganese	1.0	2.0	2.5	"	"
Total Suspended Solids	35.0	70.0	90.0	"	"
Aluminum	0.6	1.2	1.5	"	"

pH not less than 6.0 standard units greater than 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

*Unless otherwise indicated, discharge limitations are concentrations and expressed in mg/l and the total lissolved plus suspended fraction) is applicable for each parameter.

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Samples taken in compliance with the monitoring requirements specified above shall be taken during a discharge at the final outlet from each set of treatment ponds.

B. MINE DRAINAGE TREATMENT FACILITIES DISCHARGING TO: Luthersburg Branch downstream

Outfall No.	Latitude	Longitude
TB2	41° 04' 11"	78° 42' 24"

Based on the hydrologic data and anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or revisions, the following effluent limitations and monitoring requirements apply to the above listed outfall numbers.

DISCHARGE LIMITATIONS*				MONITORING REQUIREMENTS	
Discharge Parameter	Average Monthly	Maximum Daily	Instantaneous Maximum	Measurement Frequency	Sample Type
Iron	3.0	6.0	7.0	Two Times Per Month When Discharging	Grab
Manganese	1.5	3.0	3.75	"	"
Total Suspended Solids	35.0	70.0	90.0	"	"
Aluminum	1.2	2.4	3.0	"	"

pH not less than 6.0 standard units greater than 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

*Unless otherwise indicated, discharge limitations are concentrations and expressed in mg/l and the total (dissolved plus suspended fraction) is applicable for each parameter.

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Samples taken in compliance with the monitoring requirements specified above shall be taken during a discharge at the final outlet from each set of treatment ponds.

C. EROSION AND SEDIMENTATION CONTROL FACILITIES

Outfall Numbers	Latitude	Longitude
A	41° 04' 18"	78° 42' 04"
B	41° 04' 13"	78° 42' 26"

Based on the hydrologic data and anticipated characteristics and flows described in the permit application and its supporting documents and/or revisions, the following effluent limitations and monitoring requirements apply to the above listed outfall numbers.

DISCHARGE LIMITATION*		MONITORING REQUIREMENTS		
Discharge Parameter	Instantaneous Maximum	Measurement Frequency	Sample Type	Reporting Frequency
Iron	7.0	Once a Month When discharging	Grab	Quarterly
Manganese	4.0	"	"	"
Total Settleable Solids	0.5 ml/l	"	"	"

pH not less than 6.0 standard units nor greater than 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

*Unless otherwise indicated, discharge limitations are concentrations and expressed in mg/l and the total (dissolved plus suspended fraction) is applicable for each parameter.

Samples taken in compliance with the monitoring requirements specified above shall be taken during a discharge at the outlet from each sediment control structure.

NOTE: The above discharge limitation and monitoring requirements are based upon the presumption that the erosion and sedimentation control facilities will only discharge as a result of a "precipitation event". If the discharge occurs during "dry weather flow" conditions, then Group A limitations will apply (as defined in 25 PA Code, Chapters 86-90.)

C. OTHER DISCHARGES

At a minimum, any other discharge from areas disturbed by mining activities, including areas disturbed by mineral preparation, processing or handling facilities shall comply with the following discharge limitations and monitoring requirements.

DISCHARGE LIMITATIONS*		MONITORING REQUIREMENTS	
Discharge Parameter	Instantaneous Maximum	Measurement Frequency	Sample Type
Iron	7.0	Once per Month When Discharging	Grab
Manganese	5.0	"	"
Total Suspended Solids	90.0	"	"
Aluminum	5.0	"	"

pH not less than 6.0 standard units nor greater than 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

*Unless otherwise indicated, discharge limitations are concentrations and expressed in mg/l and the total (dissolved plus suspended fraction) is applicable for each parameter.

NOTE: The above discharge limitations and monitoring requirements pertain to discharge which may occur unexpectedly, (i.e. were not originally anticipated when this permit was issued). The Department reserves the right to modify these limitations based upon the need to protect water quality in the receiving stream.

II. MANDATED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT CONDITIONS AND REQUIREMENTS

1. CONDITIONS RELATING TO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM REGULATIONS

The following permit conditions implement mandatory Federal National Pollutant Discharge Elimination System (NPDES) requirements of 40 C.F.R. Part 122 and also the mandatory state requirements of 25 PA Code §§87.102(e), 88.92(e), 88.187(e) or 88.292(e) [as applicable to the type of operation], 92.31(g), and 95.1(a).

2. DEFINITIONS

a. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. 122.41(m)(1)(i)

b. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. 122.41(m)(1)(ii)

c. "Average monthly" discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month. 122.2

d. "Maximum daily" discharge limitation means the highest allowable "daily discharge". 122.2

e. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day. 122.2

f. "Average" refers to the use of an arithmetic mean, unless otherwise specified in this permit. 122.41(1)(4)(iii)

g. "Instantaneous Maximum" means the level not to be exceeded at anytime in any grab sample.

h. "Composite Sample" means a combination of individual samples obtained at regular intervals over a time period. Either the volume of each individual sample is proportional to discharge flow rates, or the sampling interval (for constant volume samples) is proportional to the flow rates, over the time period used to produce the composite.

The maximum time period between individual samples shall not exceed two hours, except that for wastes of a uniform nature the samples may be collected on a frequency of at least twice per working shift and shall be equally spaced over a 24-hour period (or over the operating day if flows are of a shorter duration).

i. "Grab Sample" means an individual sample collected at a randomly-selected time over a period not to exceed 15 minutes.

j. "Measured Flow" means any method of liquid volume measurement, the accuracy of which has been previously demonstrated in engineering practice, or for which a relationship to absolute volume has been obtained.

k. "At Outfall XXX" means a sampling location in outfall line XXX below the last point at which wastes are added to outfall line XXX, or where otherwise specified.

l. "Estimate" means to be based on a technical evaluation of the sources contributing to the discharge including, but not limited to, pump capabilities, water meters and batch discharge volumes.

m. "Toxic Pollutant" means any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act. 122.2

n. "Hazardous Substance" means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the Clean Water Act. 122.2

SELF-MONITORING, REPORTING, AND RECORDS KEEPING

a. Representative Sampling

(1) Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. 122.41(j)(1)

(2) Records Retention 122.41(j)(2)

All records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records), copies of all reports required by this permit, and records of all data used to complete the application for this permit shall be retained by the permittee for three (3) years. The three-year period shall be extended as requested by the Department or the Environmental Protection Agency Regional Administrator.

(3) Recording of Results 122.41(j)(3)

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

(i) The exact place, date, and time of sampling or measurements;

(ii) The person(s) who performed the sampling or measurements;

(iii) The date(s) the analyses were performed;

(iv) The person(s) who performed the analyses;

(v) The analytical techniques or methods used; and the associated detection level; and

(vi) The results of such analyses.

(4) Test Procedures 122.41(j)(4)

Unless otherwise specified in this permit, the test procedures for the analysis of pollutants shall be those contained in 40 CFR Part 136, or alternate test procedures approved pursuant to that part.

b. Reporting of Monitoring Results

(1) Monitoring results obtained each month shall be summarized for that month and reported on a Discharge Monitoring Report (DMR). 122.41(1)(4)(i)

(2) The completed DRM Form shall be signed and certified either by the following applicable person (as defined in 40 CFR 122.22(a) or by that person's duly authorized representative (as defined in 40 CFR 122.22(b)):

- for a Corporation - by a responsible corporate officer;
- for a Partnership or Sole Proprietorship - by a general partner or the proprietor, respectively;
- for a Municipality, State, Federal or other public agency - by a principle executive officer or ranking elected official.

Written notification of delegation of DMR signatory authority must be submitted to the Department. 122.41(k)

(3) If the permittee monitors any pollutant, using analytical methods described in B.3.a(4) above, more frequently than the permit requires, the results of this monitoring shall be incorporated, as appropriate, into the calculations used to report self-monitoring data on the DMR. 122.41(1)(4)(ii)

c. Non-Compliance Reporting

(1) 24-Hour Reporting - The permittee shall orally report to the Department within 24-hours of becoming aware of the following:

(a) Actual or anticipated non-compliance with any term or condition of this permit which may endanger health or the environment. 122.41(1)(6)(i)

(b) Actual or anticipated non-compliance with any "maximum daily" discharge limitation which is identified in Part A of this permit as being either: 122.41(1)(6)(ii)(A), 122.41(1)(6)(ii)(C)

(i) A toxic pollutant effluent standard established by EPA pursuant to Section 307(a) of the Clean Water Act.

(ii) A toxic or hazardous pollutant which, if not adequately treated, could constitute a threat to human health, welfare, or the environment, or

(iii) Any pollutant identified as the method to control a toxic pollutant or hazardous substance (i.e. indicator pollutant).

(c) Any unanticipated bypass which exceeds any effluent limitations in the permit. 122.41(1)(6)(ii)(A), 122.41(m)(3)(ii)

Where the permittee orally reports this information within the above mentioned 24-hour time period, a written submission outlining the above information must be submitted to the Department within 5-days of becoming aware of such a condition, unless this requirement is waived by the Department upon receipt of the oral report. 122.41(1)(6)(i) and (iii)

(2) Anticipated Non-Compliance Reporting

(a) The permittee shall give advance notice to the Department of any planned changes to the permitted activity or facility which may result in non-compliance with permit requirements. 122.41(1)(2)

(b) Where the permittee knows in advance of the need for a bypass which will exceed effluent limitations, it shall submit prior notice to the Department at least 10 days, if possible, before the date of the bypass. 122.41(m)(3)(i)

(3) The permittee shall report all other instance of non-compliance which are not reported above, at the time of DMR submission. 122.41(1)(7)

(4) All of the reports and notifications required above shall contain the following information: 122.41(1)(6)

(a) A description of the discharge and cause of non-compliance;

(b) The period of non-compliance, including exact dates and times and/or the anticipated time when the discharge will return to compliance; and

(c) Steps being taken to reduce, eliminate, and prevent recurrence of the non-complying discharge.

d. Specific Toxic Substance Notification Levels - The permittee shall notify the Department as soon as it knows or has reason to believe the following:

(1) That any activity has occurred, or will occur, which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge on a routine or frequent basis will exceed the highest of the following "notification levels": 122.42(a)(1)

(a) One hundred micrograms per liter;

(b) Two hundred micrograms per liter for acrolein and acrylonitrile;

(c) Five hundred micrograms per liter for 2, 4-dinitrophenol and 2-methyl -4, 6-dinitrophenol;

(d) One milligram per liter for antimony;

(e) Five (5) times the maximum concentration value reported for that pollutant in the permit application;

(f) Any other notification level established by the Department.

(2) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification level": 122.42(a)(2)

(a) Five hundred micrograms per liter;

(b) One milligram per liter for antimony;

(c) Ten (10) times the maximum concentration value reported for that pollutant in the permit application;

(d) Any other notification level established by the Department.

4. MANAGEMENT REQUIREMENTS

a. Compliance Schedules 122.47(a), 122.41(1)(5)

(1) Where applicable, the permittee will comply with the schedule identified in this permit relative to NPDES discharge requirements.

(2) The permittee shall submit reports of compliance or non-compliance with, or progress reports as applicable, any interim and final requirements contained in this permit. Such reports shall be submitted no later than 14 days following the applicable schedule date or compliance deadline. 122.47(a)(4)

b. Permit Modification, Termination, or Revocation and Reissuance

(1) This permit may be modified, terminated, or revoked and reissued during its term for any of the causes specified in 25 PA Code, Chapter 92. 122.41(f)

(2) The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated non-compliance, does not stay any permit condition. 122.41(f)

(3) The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time specified in the regulations that establish those standards or prohibitions. 122.41(a)

c. Duty to Provide Information

(1) The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. 122.41(h)

(2) The permittee shall furnish to the Department, upon request, copies of records required to be kept by this permit. 122.41(h)

(3) Other Information - Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information to the Department. 122.41(1)(8)

(4) The permittee shall give advance notice to the Department of any planed physical alterations or additions to the permitted facility.

Such notice is required when:

(i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source, or.

(ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit, or are not subject to the toxic substance notification requirements of Part B.3.d.(1) above. 122.41(l(1)

d. Facilities Operation

The permittee shall at all times maintain in good working order and properly operate and maintain all facilities and systems which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes, but is not limited to, adequate laboratory controls including appropriate quality assurance procedure. This provision also includes the operation of backup or auxiliary facilities or similar systems which are installed by the permittee, only when necessary to achieve compliance with the terms and conditions of this permit. 122.41(e)

e. Adverse Impact

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. 122.41(d)

f. Bypassing

(1) Bypassing Not Exceeding Permit Limitations - The permittee may allow a bypass to occur which does not cause effluent limitations to be violated, but only if the bypass is essential for maintenance to assure efficient operation. This type of bypassing is not subject to the reporting and notification requirements of Part B.3.c above. 122.41(m)(2)

(2) Other Bypassing - In all other situations bypassing is prohibited unless all of the following conditions are met: 122.41(m)(4)(i)

(a) A bypass is unavoidable to prevent loss of life, personal injury or "severe property damage"; 122.41(m)(4)(i)(A)

(b) There are no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed (in the exercise of reasonable engineering judgment) to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; 122.41(m)(4)(i)(C)

(c) The permittee submitted the necessary reports required under Part B.3.c above. 122.41(m)(4)(i)(C)

(3) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above. 122.41(m)(4)(ii)

5. PENALTIES AND LIABILITY

a. Duty to Comply 122.41(a), (a)(2), (a)(3)

Failure to comply with the terms or conditions of this NPDES permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(1) The Clean Water Act provide that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under Sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed $25,000.00 per day for each violation. The Clean Water Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402 (a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500.00 to $25,000.00 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000.00 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000.00 to $50,000.00 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000.00 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who know at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000.00 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to criminal penalties of not more than $100,000.00 per day of violation, or imprisonment of not more than 6 years, or both, Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000.00 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000.00 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Clean Water Act, shall, upon conviction of violating the imminent danger provision, b subject to a fine of not more than $1,000,000.00 and can be fined up to $2,000,000.00 for second or subsequent convictions.

(2) Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act. Administrative penalties for Class I violations are not to exceed $10,000.00 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000.00. Penalties for Class II violations are not to exceed $10,000.00 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.00.

b. Falsifying Information

(1) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring devise or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000.00., or by imprisonment for not more than 2 years, or both. If a conviction of such person under this paragraph, punishment is a fine of not more than $20,000.00 per day of violation, or by imprisonment of not more than 4 years, or both. 122.41(j)(5)

(2) The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000.00 per violation, or by imprisonment for not more than 6 months per violation, or by both. 122.41(k)

c. Enforcement Proceedings

It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. 122.41(c)

6. OTHER RESPONSIBILITIES

a. Right of Entry 122.41(i)

Pursuant to Sections 6(b) and 305 of Pennsylvania's Clean Streams Law and 25 PA Code, Chapter 92, and 40 C.F. R. 122, the permittee shall allow the head of the Department, the EPA Regional Administrator, and/or their authorized representatives, upon the presentation of credentials and other documents as may be required by law:

(1) To enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit. 122.41(i)(1)

(2) To have access to and copy at reasonable times any records that must be kept under the conditions of this permit. 122.41(i)(2)

(3) To inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit. 122.41(i)(3)

(4) To sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location. 122.41(i)(4)

b. Transfer of Ownership or Control

NPDES discharge permit requirements may not be transferred unless approved by the Department as a permit modification or revocation and reissuance. 122.61(a), 122.41(1)(3)

c. Property Rights

The issuance of this NPDES permit does not convey any property rights of any sort, or any exclusive privilege. 122.41(g)

d. Renewal of NPDES Permits

Application for renewal of this NPDES permit, or notification of intent to cease discharging by the expiration date, must be submitted to the Department at least 180 days prior to the above expiration date (unless permission has been granted by the Department for submission at a later date). 122.41(b)

Waroquier Coal Company
Brady Township, Clearfield County

PERMIT99

PART B

COAL SURFACE MINING PERMIT NO. 17990105, Revised October 16, 2001

SPECIAL CONDITIONS OR REQUIREMENTS

The following special conditions or requirements are hereby incorporated into the permit and represent permit conditions.

1. Unless otherwise specified and a variance is approved in writing by the Department, only one pit shall be open on this Surface Mining Permit at any time. For Phase I, the length of open pit shall not exceed 1700 feet; and rough backfilling and grading shall not be more than 500 feet from the face of the highwall. For Phase II, the length of open pit shall not exceed 1000 feet; and rough backfilling and grading shall not be more than 400 feet from the face of the highwall.

2. An updated agreement from GPU needs to be submitted and approved by the Department before Phase II can be activated.

3. All potentially toxic or acid forming material identified in Module 10.8 as well as any other carbonaceous material, pit cleanings, or coal refuse shall be handled in accordance with the plan specified in Module 10.9 [page 10-2-1 of application]. In addition, 50 tons per acre high grade limestone is to be added to the pit floor, and again on the rough grade backfill.

4. There shall be no tipple refuse disposed on this Surface Mining Permit area.

5. There shall be no auger mining on this Surface Mining Permit unless and until an Auger Safety Permit is requested by the permittee and approved in writing by the Department.

6. If the operator must use flocculants to meet effluent criteria, those flocculants must be approved for use by the Department prior to their use.

7. All sedimentation and treatment pond discharge points must be stabilized so that runoff leaving the affected area will not start or accelerate erosion or scour within the receiving natural drainageway.

8. All pond inlets must be protected with a durable and stable rock lining for the last 100 feet of the inlet ditch. This lining shall extend down to the elevation of the pond bottom.

9. Before construction of sedimentation ponds, the area downslope of the area to be disturbed must be protected with staked hay bales and filter fence.

10. All sedimentation ponds must have manual dewatering systems.

11. The total maximum disturbed area which has not yet achieved the revegetation standard of at least 70% cover shall not exceed 40 acres. Support areas, such as areas used for sediment ponds and collection ditches, will not be included as part of this 40 acre limitation if those areas have been adequately stabilized with vegetation.

12. All haul roads must be serviced by sediment traps with a spacing not to exceed 200 linear feet along the haul road.

13. The main haul roads must be surfaced with non-erodible, non-toxic materials.

14. Collection channels with channel slopes greater than 5 percent shall be riprapped.

15. All grass lined ditches and sedimentation ponds must be seeded upon completion of the structure. The seed mixture shall consist of both temporary and permanent vegetation types. In addition, no topsoil, subsoil, or spoil shall be placed on the downslope side of any collection ditch.

16. Immediately after backfilling and topsoil distribution, the affected area shall be mulched with hay or straw at a rate of three (3) tons per acre.

7. ~~On October 16, 2001 SMP #17990105 is transferred from W. Ruskin Dressler to Waroquier Coal Company.~~

PART C

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

AUTHORIZATION TO MINE
PERMIT NO. 1325-17990105T-01

Permittee: Waroquier Coal Company
P. O. Box 128
Clearfield, PA 16830

Name of Operation: [redacted] Issuance Date: October 16, 2001

Type of Operation: Surface/Auger Expiration Date: August 4, 2004

Township: Brady

AUTH. ID: 348720 County: Clearfield

A. Permittee is hereby authorized to conduct coal mining activities on lands of Richard L. Kimble and Nancy C. Kimble, Mary A. Hayes, and Albert L. Nelson situated in Brady Township, Clearfield County. Surface owners consent is attested to by inclusion of a properly executed Consent of Landowner form submitted in support of this approval.

B. Surface coal mining activities are limited to the area designated as Two Tones of Green (support); Brown and Purple (0 to 85 feet, mining);and Blue and Yellow (86 to 115 feet, mining) in the map submitted in support of the request for this Mining Authorization, which covers 38.5 acres.

C. The maximum allowed depth of pit or height of highwall is 115 feet. The maximum pit dimensions are described by Part B Condition #1.

D. Bond Description

☐ Original Bond ■ Transfer ☐ Additional Bond ☐ Bond Replacement

■ Surety Bond No. L-072001-17990105-01 in Amount of $94,300.00 dated July 7, 2001 with Lyndon Property Insurance Company as surety.

■ Additional Remarks - Reclamation Fee in the Amount of $1,160.00 supported by Check No. 1772 dated July 26, 2001.

E. The approved erosion and sediment control facility related to the area to be mined in accordance with this authorization must be constructed in accordance with the approved plan, certified by a professional engineer or land surveyor, and the certification submitted to the Department prior to the commencement of any earth disturbance activities in this area.

F. The attached sheet contains four (4) additional special conditions or requirements relating to this authorization.

BY: John P. Varner

John P. Varner

Title: Chief, Permit and Technical Services
For the Department of Environmental Protection

cc: Division of Licensing and Bonding
Lyndon Property Insurance Company
Inspector James Parlavecchio
Curry & Associates
Permit File

JPV/JSB/cav

Waroquier Coal Company
Brady Township, Clearfield County

PERMIT99

BONDING INCREMENT SPECIAL CONDITIONS

1. There will be no blasting on this permit until Module 16 has been approved by this office.

2. The Supplemental "C", Consent of Landowner, for Richard L. Kimble & Nancy C. Kimble recorded February 23, 1999 at the Clearfield County Court House is filed herein.

3. ~~The Supplemental "C", Consent of Landowner, for Albert E. Nelson recorded February 23, 1999 at the Clearfield County Court House is filed herein.~~

4. Variance to affect within 100 feet of T-384 is supported by the approval letter from Brady Township Supervisors dated June 7, 1999 is filed herein.

ER–MR–312:5/84
Dept. Use Only
Filing Fee Amount _____
Received _____

OPERATOR

(■ Bituminous Coal or Anthracite Coal □)

APPLICATION FOR BONDING INCREMENT APPROVAL AND AUTHORIZATION TO CONDUCT SURFACE COAL MINING ACTIVITIES

1325-17990105T-01

Dept. Use Only
No. _____
Bond No. _____

Instructions

o portion of the permit area shall be affected by surface coal mining activities unless the operator has provided a bond to the Department d the Department has approved the bond and issued a written authorization to affect such area.

ıbmit the original of this application and three copies. The affidavit must be properly signed and executed.

:lude proper bond endorsement documents for the type of bond being used.

rt A

pplicant Waroquier Coal Company
ldress P.O. Box 128
Clearfield, PA 16830
lephone (814) 765-5681

Surface Mining Permit No. 17990105-01
Operation Name Kimble Operation
Municipality Brady Township
County Clearfield

Name of Landowner	*Municipality*	*County*	*Acres to be Affected*
Richard & Nancy Kimble et al.	Brady Township	Clearfield	17.7
ɔert Nelson Trustee	Brady Township	Clearfield	18.9
-y A. Hayes	Brady Township	Clearfield	1.9

rt B *Consent of Landowner Form* (check applicable)

| The Consent of Landowner Form is attached and it has been recorded with the recorder of deeds.

| The Consent of Landowner Form was filed with Bonding Increment and Mining Authorization No. original -01 and it has been recorded with the recorder of deeds.

| Not filing Consent of Landowner Form because lease was in existence prior to January 1, 1964 for Bituminous Coal and January 1, 1972 for Anthracite Coal. Operator must provide 1) a true and correct copy of the lease; 2) execute a Consent of Landowner Form as Leasee; and 3) provide a Chain of Title for the Lease. The lease, consent of landowner form, and chain of title have been recorded with the recorder of deeds.

Dept. of Environmental Protection Hawk Run District Office

FEB 13 2001

RECEIVED

ACCEPTED

FEB 20 2001

HAWK RUN D.E.P. DISTRICT OFFICE

rt C *Map*

ach a copy of Exhibit 9. Operations Map indicating each area where mining authorization has been granted within the area where this bonding rement approval and mining authorization is being requested.

rt D *Additional Information*

Have you paid the reclamation fees as required by federal Surface Mining Control and Reclamation Act of 1977 (30 USC 1232)? ___ Yes ___ No

Are you revising your erosion and sediment control plan? ___ Yes ___ No
yes, briefly describe the revisions and complete the appropriate modules and submit with this application.

Briefly describe any proposed revisions to the surface mining permit. Include application modules and plans for the revision and professional certification where appropriate. If the revisions are subject to public notice or a stream or road variance is being requested, the proof of publication must be submitted to the Department prior to any mining authorization being granted.

Are you modifying your approved blasting plan for this bonding increment? ___ Yes ___ No

Part E

Type of Bond: X Surety ___ Collateral ___ Credit/Rollover* ___ Other (Specify) _____

*Attach rollover authorization from surety company

BOND AMOUNT

Highwall Height	*Acres*	*Cost/Acre*	*Total*
0'-85'	17.7	$3,000	$53,100
86'-115'	6.8	$4,000	$27,200
Support Area	14.0	$1,000	$14,000

Amount of Bond Issued To-Date: $ 0

Total Amount of Bond For B.I. -01 : $94,300

Amount of Additional Bond Required : $94,300

Reclamation Fee. Total acres to be bonded 11.6 @ $100 per acre = $1,160**
(attach a check payable to the Commonwealth of Pa. for the proper amount)

** The Reclamation Fee for the other 26.9 acres was previously paid by W. Ruskin Dressler.

To be completed by the Department

Total Bond Required: $ _____

Credit/Rollover Available: $ _____

Additional Bond Required: $ _____

Part F

Name of Applicant or Responsible Official

Gary V. Waroquier

Title and Seal

Partner

Address Waroquier Coal Company
P.O. Box 128
Clearfield, PA 16830

Affidavit

Commonwealth of Pennsylvania, County of Clearfield I, Gary V. Waroquier being duly sworn, according to law, depose and say that I [redacted] (am an officer or official of the applicant) [redacted] and that the plans, reports and documents submitted as part of the application are true and correct to the best of my knowledge and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Sworn and Subscribed to Before Me This

6th Day of February 20 01

Ronald D. Thorp
Notary Public

NOTARIAL SEAL
RONALD D. THORP, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, October 4, 2003

Gary V. Waroquier
Signature of Applicant or Responsible Official

ER-MR-58: 10/93

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF MINING AND RECLAMATION

APPLICATION FOR TRANSFER OF PERMIT

Instructions: Submit the original of this application and two copies to the appropriate District Mining Office. Please type or print the application.

A. Successor Operator (Transferee)

Name Waroquier Coal Company

Mailing Address P.O. Box 128, Clearfield, PA 16830

Telephone No. (814) 765-5781 License No. 1-01400

B. Current Permittee (Transferor)

Name W. Ruskin Dressler

Mailing Address Box 39, Rockton, PA 15856

Telephone No. (814) 583-7288 License No. 1-02513

C. Permit Information (for permit being transferred)

Mine Permit No. 17990105 NPDES No. PA 0238261

Operation Name Kimble Operation

Municipality Brady Township County Clearfield

Were Small Operator Assistance Program (SOAP) funds received for this permit (coal mine permits only)?

■ Yes ☐ No

D. Does this application incorporate the original application submittal (of the permittee) as approved by the Department? ■ Yes ☐ No

Dept. of Env. Protection
Hawk Run District Office
FEB 13 2001
RECEIVED

E. Have the following been submitted with this application?

	YES	NO
1. Original Permit Application (as approved by the Department) with appropriate changes to the Application Face Sheet, General Information, Ownership/Compliance Information, Property Interests, Rights of Entry, Maps.	■	☐
2. Proof of Intent to Publish (Note: Proof of publication must be received prior to approval of transfer).	■	☐
3. Transfer bond(s).	☐	■

ACCEPTED
FEB 20 2001
HAWK RUN D.E.P.
DISTRICT OFFICE

AFFIDAVITS

CURRENT PERMITTEE (TRANSFEROR)

I, W. Ruskin Dressler, being duly sworn according to law depose and say that I ~~(am the current permittee)~~ (am an officer or official of the current permittee), have the authority to make this Application for Transfer of Permit on behalf of the named current permittee, that current permittee relinquishes all right, title, and interest in said permit, and that the information included in the foregoing application is true to the best of my knowledge and belief. (Cross out inapplicable portions in parentheses only)

W. Ruskin Dressler — Owner
(Print Name & Title)

W. Ruskin Dressler
(Signature)

CORPORATE SEAL

COUNTY OF CLEARFIELD

SS:

COMMONWEALTH OF PENNSYLVANIA
SWORN TO AND SUBSCRIBED BEFORE ME
THIS 26th DAY OF January, 2001

Ronald D. Thorp
(Notary Public)

MY COMMISSION EXPIRES

NOTARIAL SEAL
RONALD D. THORP, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, October 4, 2003

SUCCESSOR OPERATOR (TRANSFEREE)

I, Gary V. Waroquier, being duly sworn according to law depose and say that I ~~(am the successor operator)~~ (am an officer or official of the successor operator), have the authority to make this Application for Transfer of Permit on behalf of successor operator, that Waroquier Coal Company assumes all
Name of Successor Operator
liability for reclamation, water pollution, planting, and all other responsibilities under the law, the rules and regulations, and the terms and conditions for the permit from the date of original issuance, and that the information included in the foregoing application is true to the best of my knowledge and belief. (Cross out inapplicable portions in parentheses only)

Gary V. Waroquier — Partner
(Print Name & Title)

Gary V. Waroquier
(Signature)

CORPORATE SEAL

COUNTY OF CLEARFIELD

SS:

COMMONWEALTH OF PENNSYLVANIA
SWORN TO AND SUBSCRIBED BEFORE ME
THIS 26th DAY OF January, 2001

Ronald D. Thorp
(Notary Public)

COMMISSION EXPIRES

NOTARIAL SEAL
RONALD D. THORP, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, October 4, 2003

ER-MR-311: Rev. 9/93

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF MINING AND RECLAMATION

(For Official Use Only)
17990105-Transfer

APPLICATION
BITUMINOUS SURFACE MINE

Application for Surface Mining Permit pursuant to "The Clean Streams Law", the "Surface Mining Conservation and Reclamation Act", and the "Coal Refuse Disposal Control Act".

Applicant Waroquier Coal Company
Address P.O. Box 128
Clearfield, PA 16830

Telephone No. (814) 765-5681
License No. 1-01400
Application Date February, 2001
Operation Name Kimble Operation
MSHA Mine I.D. No. 36-06586
MSHA Pit No.

Name and address of public office where a copy of this application is on file for public inspection
D.E.P.
Hawk Run District Office
P.O. Box 209
Hawk Run, PA 16840-0209

Name, address and telephone number of person who will accept service of process
Gary V. Waroquier
P.O. Box 128
Clearfield, PA 16830
(814) 765-5681

Dept. of Env. Protection
Hawk Run District Office
FEB 13 2001
RECEIVED

Type of Application
☐ New ☐ Revision ■ Transfer

Reclamation Fee - Have you paid all reclamation fees as required by the Federal Surface Mining Control and Reclamation Act of 1977 (30 USC 1232)? ■ yes ☐ no

This Application is for the following type of mining activity (check all appropriate types)
- ■ Surface Mining
- ☐ Coal Refuse Reprocessing Surface Mining
- ■ Auger Mining
- ☐ Coal Refuse Disposal
- ☐ Coal Preparation Plant/Processing Facility
- ☐ Other (specify)

Location of Operation:
Municipality Brady Township
County Clearfield
U.S.G.S. Map Name(s) Luthersburg 7½-Minute
Map Coordinates (center of proposed permit area)
Latitude 41 ° 04 ' 11 "
Longitude 78 ° 42 ' 08 "
Receiving Streams Unnamed Tributary to Luthersburg Branch, Luthersburg Branch, Unnamed Tributary to LaBorde Branch to LaBorde Branch

ACCEPTED
FEB 20 2001
HAWK RUN DISTRICT OFFICE

Affidavit
Commonwealth of Pennsylvania, County of CLEARFIELD

I, Gary V. Waroquier being duly sworn, according to law, deposes and says that I (am the applicant) (am an officer or official of the applicant) (have the authority to make this application) and that the plans, reports and documents submitted as part of the application are true and correct to the best of my knowledge and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Sworn and Subscribed to Before Me This
6th Day of February 2001

Ronald D. Thorp
Notary Public

NOTARIAL SEAL
RONALD D. THORP, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, October 4, 2003

Gary V Waroquier
Signature of Applicant or Responsible Official

Gary V. Waroquier
Name (Typed)

P.O. Box 128, Clearfield, PA 16830
Address

Partner
Title and Seal

Module 3: Ownership/Compliance Information

Instructions: Provide the following information on an 8½ x 11 sheet of paper. Attach the page(s) to this module and identify as *Exhibit 3: Ownership/Compliance Information*. Use number, letter, and heading to identify information.

3.1 *Applicant.* Applicant's name, address and telephone number.

3.2 *Ownership Interest.* Identify whether the applicant is a single proprietorship, corporation, partnership, association, or other business entity. For businesses other than single proprietorships provide the following:

a) names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;

b) name and address of any person who is a principal shareholder of the applicant; (Note: A principal shareholder is any person who is the legal owner of ten percent or more of any class of voting stock.) and,

c) names under which the applicant, partner, or principal shareholder previously operated a coal mining operation in Pennsylvania and the United States within the five years preceding the date of this application.

3.3 *Contractor.* If a contractor will be conducting the operation provide the name, address and telephone number of the contractor and if the contractor is a business entity other than a single proprietor, provide the names and addresses of the respective principals, officers, and resident agents.

3.4 *Permit Interests.* Identify by permit or application number and regulatory authority any current or previous coal mining permits in Pennsylvania and the United States held by the applicant for the five year period immediately preceding this application and of any pending permit application to conduct coal mining activities in the United States.

3.5 *Compliance.* Identify any State or Federal mining permit or bond in the last five year period prior to the date of submission of this application that the applicant or any related party had suspended, revoked or forfeited. (Note: Any related party is any partner, associate, officer, parent corporation, subsidiary corporation, affiliate or persons under common control with the applicant, contractor or subcontractor.) Identify the suspension, revocation, or forfeiture by:

a) identification number and date of the issuance of the permit or date and amount of bond or similar security;

b) identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reason for that action;

c) the current status of the permit, bond or similar security involved;

d) the date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

e) the current status of these proceedings.

3.6 *Violation History.* List each violation for which the applicant has been found responsible in any adjudicated proceeding, agreement, consent order or decree, or which resulted in a cease order or an assessment of a civil penalty notice received by the applicant in connection with any coal mining activities during the 3-year period prior to the date of application. Only list the violations of the Acts or the Federal Surface Mining Control and Reclamation Act of 1977 and any law, rule or regulation of any department or agency of the United States or of any state in the United States pertaining to environmental protection. For each violation notice, provide the following:

a) the date of issuance and identity of the appropriate regulatory authority, department, or agency;

b) permit number, compliance order number and a brief description of the particular violation;

c) the date, location, and type of any administrative or judicial proceedings initiated concerning the violation;

d) the current status of the violation; and

e) the actions, if any, taken by the applicant to abate the violation, and proof which is satisfactory to the regulatory authority, department, or agency which has jurisdiction over such violation that the violation has been corrected, or is in the process of being corrected.

MODULE 3: Ownership/Compliance Information

3.1 Applicant

Waroquier Coal Company
P.O. Box 128
Clearfield, PA 16830
(814) 765-5681

3.2 Ownership Interest

a.

Waroquier Coal Company is a Partnership registered in the state of Pennsylvania whose partners include:

Joseph L. Waroquier, Jr.
P.O. Box 128
Clearfield, PA 16830

Gary V. Waroquier
P.O. Box 128
Clearfield, PA 16830

b.

The principal shareholders of the partnership are listed above.

c.

The individuals listed above have also operated coal mining operations under Southwest Reclamation, Inc. and Tamburlin Coal Company

3.3 Contractor

The following contractor will initially be mining on this site:

RAM Coal
Owners: Roger A. & Miriam R. Thomas
R.D. #1, Box 16
Rockton, PA 15856
(814) 583-7625
License No. 8-00417

3.4 Permit Interests

Listed below are the SMP numbers of the sites Waroquier Coal Company has active:

17820110	17900105	17930122
17840138	17980118	17960115
17850125	17850140	17950106
17880106	17920108	33970105
17880116	17930114	33970102
17880126		

3.5 Compliance

Waroquier Coal Company has never had a permit suspended, revoked or forfeited.

3.6 **Violation History**

a. June 14, 1994 by Bureau of Mining and Reclamation, DER under Enforcement Order Docket #94-4-059;

b. SMP #1101400-17880106; Proud Operation; Pike Township, Clearfield County – Failure to maintain sediment control measures;

c. None.

d. Abated on June 20, 1994

e. Corrected within abatement area.

Public Notice

Pursuant to the "Surface Mining Conservation and Reclamation Act" and the "Clean Streams Law", notice is hereby given the Waroquier Coal Company, doing business at P.O. Box 128, Clearfield, PA 16830 has made application to the Pennsylvania Department of Environmental Protection for transferring the existing permit application from W. Ruskin Dressler.

The 79.0 acre operation, known as the Kimble Operation, SMP #17990105, is located in Brady Township, Clearfield County north of Township Road T-379 approximately 1 mile northeast of Luthersburg on the properties of Albert Nelson Trustee, Mary A. Hayes, Albert C. and Charles Hayes and Richard Kimble, et al. The area is located on the Luthersburg U.S. Geologic Survey 7½ Minute quadrangle map 12.5 inches north and 10.7 inches west from the bottom right hand corner of the printed area of the map. Treated waste waters will be discharged into unnamed tributaries to LaBorde Branch, LaBorde Branch, unnamed tributary to Luthersburg Branch and Luthersburg Branch.

The application includes a variance request to conduct surface and auger mining activities within 100 feet of the right-of-way lines of T-384, including the construction of a roadway protection berm being approximately 260 feet in length, the construction of collection ditch C-1 for approximately 960 feet and the construction of a haul road into the mining site. The area to be affected for the construction of haul road is located on the south side of T-384 approximately 1450 feet west of the intersection of T-384 and T-380. Collection ditch C-1 begins approximately 1790 feet west of the intersection and extends westward along T-384 for 960 feet. The protection berm begins approximately 2490 feet west of said intersection and extends westward along T-384 for 260 feet.

A copy of the application is available for public inspection at the D.E.P., Hawk Run District Office, P.O. Box 209, Hawk Run, PA 16840. Written comments, objections and requests for public hearing or informal conference may be submitted to the District Mining Manager, Hawk Run District Office at the above address no later than thirty (30) days following the final publication date of this notice and must include your name, address, telephone number and a brief statement as to the nature of the objection(s).

Option and Lease Agreement

5

THIS ARTICLE OF AGREEMENT made and concluded this ..... day of ....., 19 96,
between ALBERT L. NELSON, Trustee of The Albert L Nelson Living Trust ~~Lessor~~
1149 South Main Street, DuBois, PA 15801
U/T/A Dated 10/1/93

party of the first part, hereinafter designated as Lessor, and W. RUSKIN DRESSLER, of Box 39, Rockton, Pennsylvania, 15856 party of the second part, hereinafter designated as Lessee, witnesseth:

1. In consideration of the sum of $ 1.00, in hand paid, receipt whereof is hereby acknowledged, Lessor hereby leases, lets, and demises unto Lessee, ALL of the surface ~~and~~ or ginger mineable seam or vein of coal in, under and upon all that certain piece, parcel or tract of land situated in Brady Township, Clearfield County, Pennsylvania, bounded and described as follows:

North - Kimble
East - Crescent Brick Division of RESCO Products, Inc.
South - Crescent Brick Division of RESCO Products, Inc. and Broad
West - Jacob D.Hayes

Deed Book Vol 1572 Page 148
Recorded 11-30-93

containing 49.0 acres, more or less.

TOGETHER with all the mining rights and easements owned by Lessor and appurtenant to the coal and land herein described, including the right of ingress, egress, and regress, in, to and upon said land for the purpose of exploring for and of mining, manufacturing, testing and preparing said coal for market, to build roads, railroads and tram roads, to build buildings, tipples and chutes, to deposit waste material and refuse on the surface of the land, to build wire and pipe lines, to drain water upon the surface by any means, to transport coal from other properties through or over this premises and to do all things necessary, usual and proper in connection with said operations, and Lessor hereby waives all right to surface support, both laterally and subjacent, and releases all liability for damage to buildings and objects thereon and waters therein and thereon. Said coal may be removed either by drift mining or stripping process and all of the usual rights and privileges are hereby granted in connection therewith including the removal and redeposit of all strata and other objects and materials overlying said coal, to be exercised without further cost or liability for the damage caused thereby.

ALSO TOGETHER WITH xxxx

EXCEPTING AND RESERVING xxxx

EXHIBIT 5

2. Lessee covenants and agrees to pay to Lessor the sum of Two Dollars ($2.00) ~~xxxx~~ per ton of 2,000 pounds for all mineable merchantable and marketable coal mined and removed from said premises. Settlements to be made on the twenty-fifth day of each month for all such coal mined and removed from the premises during the preceding calendar month and all settlements shall be based upon the weights by which the coal is marketed. It is further understood and agreed that Lessee will pay ten (10%) percent of pit price or $2.00 per ton, whichever is greater.

3. Lessee covenants and agrees to commence mining operations upon said premises within three (3) years from the effective date of this lease and in event of failure so to commence mining operations agrees to pay Lessor as a minimum royalty the sum or price of xxx per year, payable quarterly in advance.

4. Lessee agrees that all mining operations shall be conducted in accordance with the laws of Pennsylvania and modern mining methods prevailing in the industry. It is also understood that Lessor shall have access to the operations and scale records of Lessee at all reasonable times in person or by duly authorized agent.

5. This lease shall continue for a period three (3) years from the effective date hereof, or until all of the mineable and merchantable coal has been exhausted from the premises. Lessee may remove all equipment, buildings and machinery from the premises at the end of the term provided no royalty is then due.

6. This article of agreement shall constitute and be construed an option granted by Lessor to Lessee so that Lessee may elect to accept or reject it at any time during xxx days from the date hereof. Upon acceptance this instrument shall become immediately effective in all its terms as a lease of the coal in place. During the option period Lessee may go upon the premises for the purpose of surveying, drilling, digging, exploring, testing, taking samples and otherwise examining said coal, without liability for the damage, caused thereby or for the coal taken in such explorations. Lessee may exercise this option by notifying Lessor in writing of its elections to do so within the option period aforesaid.

7. It is understood and agreed that in the event that Lessee should default in any payment provided for herein and remain in such default for a period of ninety days from the date when said payment becomes due, or should Lessee be in default in any other respect and continue in such default for a period of ninety days after being notified in writing of such default by Lessor, then, in either event, at the option of Lessor, this lease shall cease and terminate and Lessee hereby authorizes any attorney of any Court of Record to appear for it and in its name to confess a judgment against it in an amicable action of ejection to the end that a writ of habere facias possessionem may issue forthwith for the delivery of possession to Lessor, together with clause of fieri facias for rent in arrears and costs.

8. It is further understood and agreed that xxx

9. It is mutually understood and agreed that the rights, duties and obligations created hereby shall extend to and be binding upon the parties, their heirs, executors, administrators and assigns, and that the singular herein shall include the plural.

10. Lessor hereby warrants generally the title to said coal and mining rights and this lease shall be free and clear of all encumbrances except those for which waiver and consent hereto is obtained and Lessee may in all cases apply royalty payments to the satisfaction of such encumbrances as may be found to exist.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals and caused this article of agreement to be duly executed by their officers, the day and year aforesaid.

Witness:

D. W. Edmonds

Albert L. Nelson, Trustee (Seal)
(Albert L. Nelson) Lessor

Trustee (Seal)

(Seal)

(Seal)

(Seal)

Witness

W. Ruskin Dressler (Seal)
(W. Ruskin Dressler) Lessee

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Clearfield } ss:

On this 3rd day of February, 1997, before me, a Notary Public in and for the County of Clearfield and State of Pennsylvania, came the above named ALBERT L. NELSON who in due form of law acknowledged the foregoing Article of Agreement to be his act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

Andrew L. Booth

My Commission Expires

Notarial Seal
Andrew L. Booth, Notary Public
DuBois, Clearfield County
My Commission Expires Oct. 14, 1997
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Clearfield } ss:

On this 3rd day of February, 1997, before me, a Notary Public in and for the County of Clearfield and State of Pennsylvania, came the above named W. Ruskin Dressler who in due form of law acknowledged the foregoing Article of Agreement to be his act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

Andrew L. Booth

My Commission Expires

Notarial Seal
Andrew L. Booth, Notary Public
DuBois, Clearfield County
My Commission Expires Oct. 14, 1997
Member, Pennsylvania Association of Notaries

6

DEP Office Copy

-MR-10: Rev. 2/84
upplemental C

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

MAR 2 1999

MAR 25 1999

APPL. NO. (Department Use Only)

RECEIVED
BAMR/DEP
DISTRICT

CONTRACTUAL CONSENT OF LANDOWNER

(I) (We), the undersigned, being the owner(s) of 49.0 acres of land located in Brady Township, Clearfield County, as
(Township, Borough, City)
scribed in the deed(s) recorded in the Recorder of Deeds Office Book(s) and page(s)
)ssd Book Vol 1572 Page 148 and shown by crosshatched lines on the
ap attached hereto which is signed in the original by the landowner upon which
W. Ruskin Dressler proposes to engage in surface
(Name of Mining Operator)
ning activities for which application for permit will be made to the Department of Environmental
sources and of which application this consent will be made a part, *DO HEREBY ACKNOWLEDGE
IAT THE MINING OPERATOR HAS THE RIGHT TO ENTER UPON AND USE THE LAND FOR THE
'RPOSES OF CONDUCTING SURFACE MINING ACTIVITIES.* Furthermore, (I) (We), the undersigned,
hereby irrevocably grant to the Mining Operator and the Commonwealth of Pennsylvania, the right
enter upon the aforesaid land before beginning the mining activity(ies), during the mining activi-
ies) and for a period of five (5) years after the completion or abandonment of the mining activi-
ies) for the purposes of inspecting, studying, backfilling, planting and reclaiming the land and abating
llution in accordance with the provisions of the Surface Mining Conservation and Reclamation Act,
e Clean Streams Law, and The Coal Refuse Disposal Act, as amended, rules and regulations pro-
ılgated thereunder, and the provisions of permit(s) issued to the Mining Operator. (I) (We) do hereby
ant in addition to the Commonwealth, for the aforesaid period of time, a right of entry across any
ng or contiguous lands owned by (us) (me) in order to have access to the land described herein.
s specifically agreed and understood that this contractual consent gives the Commonwealth the
ht to enter, inspect, study, backfill, plant and reclaim the land and abate pollution therefrom as
natter within the police power but does not obligate the Commonwealth to do so, and does not
nstitute any ownership interest by the Commonwealth in the aforesaid land.

This Consent shall not be construed to impair any contractual agreement between the Mine
ierator and the landowner.

(INSERT ADDITIONAL PROVISIONS OR CROSS OUT)

EXHIBIT
6

In witness whereof and intending to legally bind (myself) (ourselves), (my) (our) heirs, successors
d assigns, (I) (we) have hereunto set (my) (our) hand(s) and seal this 3rd day
FEB , 1997 .

Albert L. Nelson
LANDOWNER Trustee (Print Name)

By: Albert L. Nelson, Trustee (Seal)
(Signature)

(Print Name)

By: _____
(Signature)

DEP office Copy

ACKNOWLEDGEMENT OF INDIVIDUALS OR PARTNERS

LAND OWNER

1793105

E OF PA.

TY OF CLEARFIELD

SS

n FEB 3 1997, before me, the undersigned Notary, personally appeared
ALBERT L NELSON
(Name(s))

n to me (or satisfactorily proven) to be the person whose name is subscribed to this instru-
and who acknowledged that HE
(he, she or they)

ted the same and desires it to be recorded.

N WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notarial Seal
Homer D. Edner, Notary Public
DuBois, Clearfield County
My Commission Expires Nov. 20, 2000
Member, Pennsylvania Association of Notaries

-) Notary Public My Commission Expires: (date)

ACKNOWLEDGEMENT OF CORPORATIONS

LAND OWNER

Dept. of Env. Protection
Hawk Run District Office

MAR 25 1999 ACCEPTED

MAR 25 1999 RECEIVED

HAWK RUN D.O. DISTRICT OFFICE

E OF

SS

ITY OF

n _____, before me, the undersigned Notary, personally appeared _____,

acknowledged (herself) (himself) to be the _____ of
(Title of Person)

_____, a
(Name of Corporation)

ration, and the (s)he, as such officer, being authorized to do so, executed the foregoing in-
ient on behalf of the said corporation and desires that this instrument be recorded.

N WITNESS WHEREOF, I have hereunder set my hand and official seal.

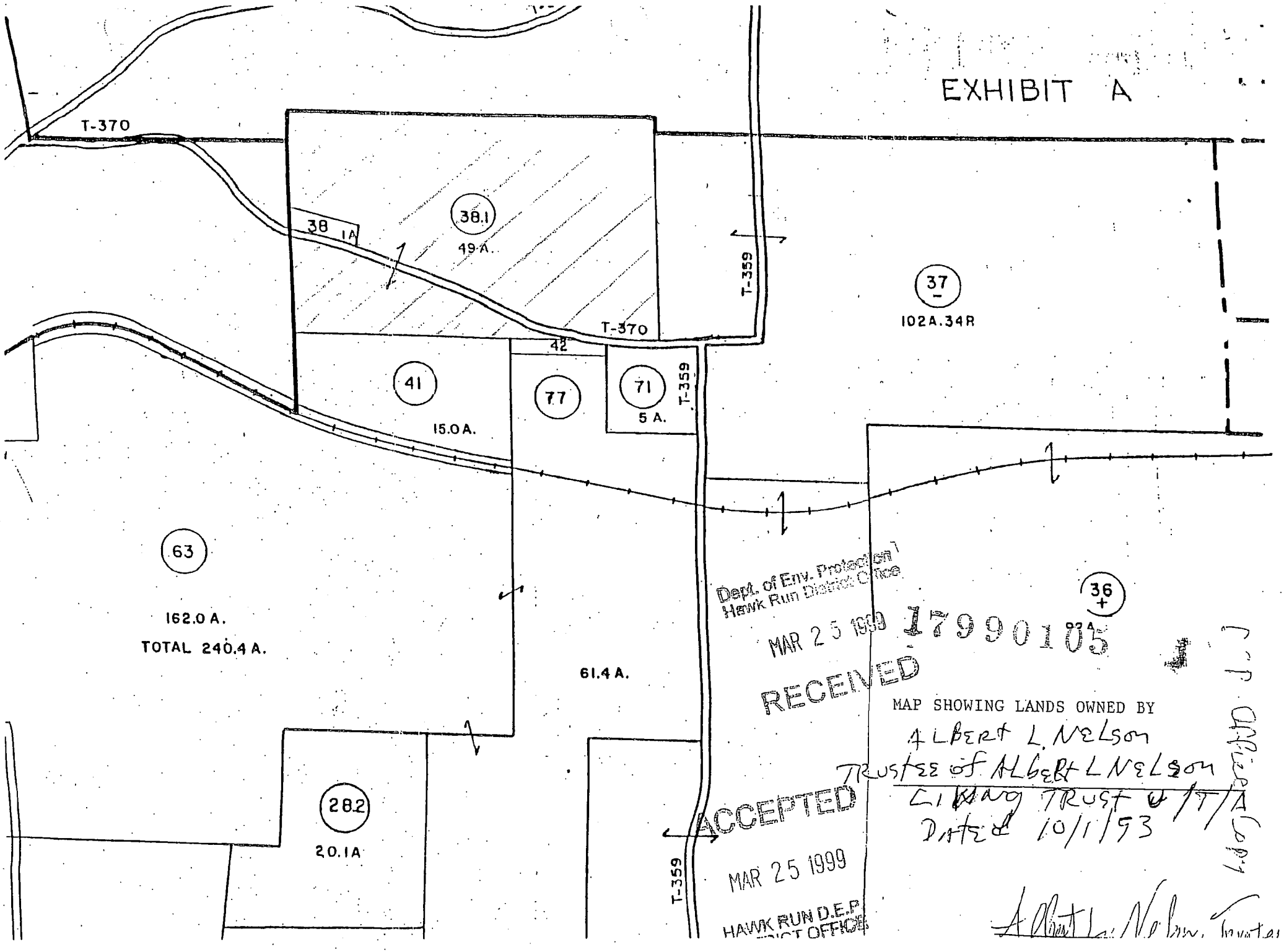
-) _____ My Commission Expires: _____
Notary Public (date)

This instrument has been recorded in Clearfield
County, Pennsylvania, this 23rd day of February,
19 99, at Book Inst 199902726, Page (s) _____.

RECORDER OF DEEDS

Karen L Starck
(Signed) (Print Name)

Karen L. STARCK My Commission Expires


EXHIBIT A
T-370
38.1
49 A.
38 1A
T-359
37
102A.34R
T-370
42
41
15.0A.
77
71
5 A.
T-359
63
162.0 A.
TOTAL 240.4 A.
61.4 A.
36
97A
28.2
20.1A
T-359
Dept. of Env. Protection
Hawk Run District Office
MAR 25 1999
RECEIVED
17990105
ACCEPTED
MAR 25 1999
HAWK RUN D.E.P.
DISTRICT OFFICE
MAP SHOWING LANDS OWNED BY
ALBERT L. NELSON
TRUSTEE of ALBERT L NELSON
LIVING TRUST U/T/A
Dated 10/1/93
Albert L. Nelson, Trustee
Clearfield Co.

EXHIBIT

7

Waroquier Coal Company
P.O. Box 128
Clearfield, PA 16830

July 14, 2003

Albert L. Nelson, Esq.
1149 South Main Street
DuBois, PA 15801

Dear Mr. Nelson:

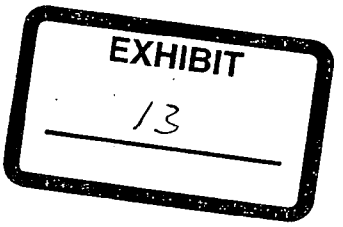
As a requirement of our mining permit, this letter is to notify you about reclamation completed on your property during the last twelve months. Reclamation during the past year includes the following:

16.0 acres backfilled and graded to approximate original contour;
Establishment of drainage controls;
10.0 acres of topsoil replacement and establishment of permanent vegetation;

You must contact the Hawk Run District Mining Office within fifteen (15) days of receipt of this letter if you wish to have the Department make a formal determination on the adequacy of the reclamation. You may ve the right to appeal the Department's formal determination. The address for the Hawk Run District Office is P.O. Box 209, Empire Road, Hawk Run, PA 16840. The phone number is (814) 342-8200.

Signed,

Joseph L. Waroquier, Jr.
Waroquier Coal Company



Average Price on Monthly Basis:

January 2001	$	28.33	January 2002	$	
February 2001	$	27.43	February 2002	$	
March 2001	$	27.77	March 2002	$	
April 2001	$	29.19	April 2002	$	
May 2001	$	31.37	May 2002	$	
June 2001	$	29.99	June 2002	$	29.88
July 2001	$		July 2002	$	26.32
August 2001	$	28.36	August 2002	$	27.15
September 2001	$	29.57	September 2002	$	26.58
October 2001	$	31.82	October 2002	$	25.76
November 2001	$	30.48	November 2002	$	29.49
December 2001	$	29.11	December 2002	$	26.77

January 2003	$	23.62	January 2004	$	25.79
February 2003	$	23.71	February 2004	$	29.02
March 2003	$	21.74	March 2004	$	30.71
April 2003	$	24.59	April 2004	$	29.05
May 2003	$	24.37	May 2004	$	45.92
June 2003	$	25.54	June 2004	$	54.68
July 2003	$	25.63	July 2004	$	41.83
August 2003	$	22.22	August 2004	$	43.63
September 2003	$	23.81	September 2004	$	47.79
October 2003	$	25.16	October 2004	$	43.63
November 2003	$	24.45	November 2004	$	41.18
December 2003	$	24.19	December 2004	$	34.36

January 2005	$	44.35
February 2005	$	52.84
March 2005	$	43.21
April 2005	$	42.85
May 2005	$	44.58
June 2005	$	33.85
July 2005	$	39.13
August 2005	$	27.68
September 2005	$	41.95
October 2005	$	34.05
November 2005	$	38.24
December 2005	$	44.38

Total:
$1,759.10

Average
$ 32.58

Def. Waroquiers'
Response to
Item 9

Average Price on Monthly Basis
Al Nelson v. Waroquier Coal

January 1, 2001	$28.33
February 1, 2001	$27.43
March 1, 2001	$27.77
April 1, 2001	$29.19
May 1, 2001	$31.37
June 1, 2001	$29.99
August 1, 2001	$28.36
September 1, 2001	$29.57
October 1, 2001	$31.82
November 1, 2001	$30.48
December 1, 2001	$29.11
June 1, 2002	$29.88
July 1, 2002	$26.32
August 1, 2002	$27.15
September 1, 2002	$26.58
October 1, 2002	$25.76
November 1, 2002	$29.49
December 1, 2002	$26.77
January 1, 2003	$23.62
February 1, 2003	$23.71
March 1, 2003	$21.74
April 1, 2003	$24.59
May 1, 2003	$24.37
June 1, 2003	$25.54
July 1, 2003	$25.63
August 1, 2003	$22.22
September 1, 2003	$23.81
October 1, 2003	$25.16
November 1, 2003	$24.45
December 1, 2003	$24.19
January 1, 2004	$25.79
February 1, 2004	$29.02
March 1, 2004	$30.71
April 1, 2004	$29.05
May 1, 2004	$45.92
June 1, 2004	$54.68
July 1, 2004	$41.83
August 1, 2004	$43.63
September 1, 2004	$47.79
October 1, 2004	$43.63
November 1, 2004	$41.18
December 1, 2004	$34.36
January 1, 2005	$44.35
February 1, 2005	$52.84
March 1, 2005	$43.21
April 1, 2005	$42.85
May 1, 2005	$44.58
June 1, 2005	$33.85

July 1, 2005	$39.13		
August 1, 2005	$27.68		
September 1, 2005	$41.95		
October 1, 2005	$34.05		
November 1, 2005	$38.24		
December 1, 2005	$44.38		
TOTAL	$1,759.10	AVERAGE	$32.58



Articles of Agreement

This agreement made the 17th day of April, 2003, by and between, Albert L. Nelson trustee of the Albert L. Nelson Living Trust, 1149 S. Main St. DuBois, PA 15801, the Lessor,

And

Roger A. Thomas and Miriam R. Thomas t/d/b/a RAMM COAL Co. of R.D. #1, Box 16, Rockton, PA, whether one or more, called the Lessee.

Witnesseth:

1. Lessor, for and in consideration of the sum of One ($1.00) Dollar, in hand paid, the receipt whereof is hereby acknowledged, does hereby let, lease and demise unto Lessee, ALL of that piece or parcel of land, to get underlying said piece or parcel of land, being in Brady Township, Clearfield County, Pennsylvania, containing 49 acres, more or less, and bounded as follows:

   One the north by Kimble;
   On the east by Crescent Brick Division of RESCO Products Inc.
   On the south by Crescent Brick Division of RESCO Products Inc.
   On the west by Jacob D. Hayes

   Parcel No. D06-00-038.1

   This agreement contemplates a memorandum of lease for recording.

   Lessor covenants with Lessee that Lessor is the owner of the surface and all coal in, under, and upon the said described premises and agree to save and hold harmless the Lessee from any and all actions at law or equity which may result in the event the Lessor is found not to be the owner of the same.

2. Lessor further grants to Lessee the right of ingress, egress, and regress into, through and upon the above described premises for the purpose of examining, searching for, prospecting, mining said coal by the surface, drift, deep or strip mining methods, and preparing said coal for market, and taking, storing, removing and transporting the same, and for these purposes the said Lessee shall have the right to mine and remove the coal by the surface, drift, deep or strip mining process, together with the right to use and occupy so much of the surface of the aforesaid land so far as may be necessary or convenient for the proper operation of mining for the removal of said coal or the shipping of the same, together with the right to deposit dirt or waste from such operation upon the surface there of except as otherwise provided here in.

3. Lessor further grants to Lessee a release of all damages to the surface and right to surface support, both lateral and subjacent strata of said land, the waters therein or thereon, and building and objects now or hereafter to be erected thereon, and trees which may be caused by prospecting, drilling, testing, mining and removal of the said coal.

4. It is further agreed that this lease does contemplate mining by surface mining methods including, but not limited to, strip mining. The Lessor, therefore, leases and lets unto Lessee all rights of title possessed by the said Lessor which may not be referred to above, to allow the surface exploration, drilling, testing, mining, removal, marketing and transporting of the coal in the premises.

5. This lease shall continue for a period of five (5) years from the date hereof and so long thereafter as continuous coal mining operations are taking place. This lease shall unconditionally terminate five years from the date hereof or when actual coal mining operations on the property cease to be continuous, whichever last occurs. Upon termination of the lease, Lessee may remove all equipment, buildings and machinery from the premises, provided no royalty is then due. Termination of this lease shall in no way waive or release Lessee's obligation of compliance with Federal or State law or regulations pertaining to operations conducted on the premises. This agreements, however, recognizes that Lessee may be required to maintain at one piece of equipment on the premises because of security required by the Commonwealth of Pennsylvania restrictions and regulations to comply with backfilling and restoration of the premises. In such cases the maintenance of said equipment, for security purposes, shall not be considered a breach of carryover by either party. This lease further recognizes that after removal of coal from the premises within the term of this lease, complete compliance with the required backfilling, contouring, retopsoiling and planting may not be possible. Lessee therefore shall have the right of carryover for purposes only of compliance with State or Federal law or regulation. Such carryover, however, shall not be construed or meant to be a carryover for the purpose of mining or removing coal.

6. Lessee agrees to pay as royalty to Lessor an amount equal to the sum of Two ($2.00) dollars or Ten (10%) percent of pit price per ton of 2,000 pounds of coal whichever is greatest. Settlement in payments of royalty shall be made on the last day of each month for all coal mined and removed from the premises during the preceding calendar month. Royalty computation shall be based on the weights by which the coal is marketed, and shall be evidenced by truck weight invoices or statements of coal transported by truck from the premises and accordingly weighed for tonnage, or railroad receipts or statements of coal loaded from the premises at railroad tipple sites. It is further understood and agreed that there shall be no advanced royalty payments.

7. Lessee agrees to keep at all times full and complete records and books of account showing the amount of coal mined and removed and shipped from the leased premises, which records and books of account shall be open at all reasonable times for the inspection and examination of the Lessor, their agents, or successors. Lessee shall and will also give Lessor, Lessor's duly authorized agent, at reasonable times, access to any and all portions of the leased premises and to the operations in connection therewith.

8. Lessee covenants and agrees to operate by approved methods and to comply with all Federal and State laws or regulations regarding mining, operating and transportation of said coal, including but not limited to, backfilling and drainage and anti-pollution laws of the State and Federal government. Lessor, or Lessor's agent, shall have access to the operations on or in the leased premises at any reasonable time.

9. This agreement recognized that after entry by Lessee the exclusive control of the premises actually being used by Lessee ad the exclusive control of all mining from the surface, shall be with the Lessee, and Lessee agrees that any charge, liability or cause of action arising from his use of the premises or from any tortious conduct on the part of his agents, officers and employees shall be the responsibility of Lessee. Furthermore, Lessee agrees to release, save, indemnify and hold harmless Lessor from any cause of action, claim or liability arising because of the conduct or omissions of Lessee, his agents, officers and servants or because of the said Lessee's use of the premises.

10. Lessor agrees to pay assessments on the value of the coal in place, as it is now being taxed. Should there be an assessment or a reassessment during the course of mining operations Lessee agrees to pay the increased assessment caused by the mining and severance of the coal.

11. On the failure of the Lessee to pay the minimum royalty on coal actually mined and keep all of the covenants in this lease or remove from the premises at the determination of the same and failure to remedy said breach within ninety (90) days after notice, then the Lessee hereby authorized and empowers any attorney of any court of record in Pennsylvania to appear in court and confess

judgment in favor of Lessor and against Lessee, in an amicable action of ejectment for the premises above described, and authorize the immediate issuance of a writ of habere facias possessionem, with a clause fieri facias, for royalty due within five (5) days from the confession of said judgement.

12. It is expressly understood and agreed between the parties hereto that this lease and the grants hereunder are made subject to all restrictions, reservations, conditions, exceptions, covenants and agreements under the deed, grants and conveyances by virtue of which Lessor is only granting such rights as Lessor has the right to grant under and by virtue of the said instrument of conveyance.

13. This agreement reserves the right unto Lessee to cancel and terminate the lease agreements at any time by giving a thirty (30) day notice to Lessor. Any cancellation hereunder shall not relieve the Lessee of any obligation of payment for any amounts owing under the lease. Furthermore, all amounts paid to Lessor shall remain that of Lessor as a consideration for this lease without any duty to refund or rebate.

14. It is mutually understood and agreed that the rights, duties and obligations created hereby shall extend to and be binding upon the parties, their heirs, executors, and administrators, and that the singular here-in shall include the plural.

15. This agreement contains the entire understanding of the parties. It may be changed only by agreement in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LESSOR
ALBERT L. NELSON, trustee Albert L. Nelson Living Trust

Albert L. Nelson, Trustee
Albert L. Nelson

LESSEE
ROGER A. THOMAS AND MIRIAM R. THOMAS

t/d/b/a
RAMM COAL CO.

Roger A. Thomas
Roger A. Thomas

Miriam R. Thomas
Miriam R. Thomas

County of Jefferson
State of PA
Roger A. Thomas & Miriam R. Thomas appeared before me and signed on this the 12th day of April 2003.

Notarial Seal
Kathy D. Wymer, Notary Public
Gaskill Twp., Jefferson County
My Commission Expires Oct. 16, 2003
Member, Pennsylvania Association of Notaries

(STATE OF PENNSYLVANIA

ss. (

(COUNTY OF ALLEGHENY

On April 16, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared ALBERT L. NELSON, TRUSTEE, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

NOTARY SEAL

Signature 

My Commission Expires _____

NOTARIAL SEAL
ROBERT A EVANS, NOTARY PUBLIC
CITY OF GREENSBURG, WESTMORELAND CO., PA
MY COMMISSION EXPIRES JULY 5, 2005

ADDENDUM TO ARTICLES OF AGREEMENT
Dated 12 day of April month, 2003

This agreement reserves the right unto the lessor. To cancel and terminate this lease agreement as to any piece or parcel of land under this agreement for which the lessee is unable to obtain a mining permit from the Commonwealth of Pennsylvania, at any time by giving a 30 day written notice to the lessee.

LESSOR
ALBERT L. NELSON, trustee Albert L. Nelson Living Trust

Albert L. Nelson, Trustee
Albert L. Nelson

Roger. A. Thomas and Miriam R. Thomas t/d/b/a
RAMM COAL COMPANY

Roger A. Thomas
Roger A. Thomas

Miriam R. Thomas
Miriam R. Thomas

County of Jefferson
State of PA
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WITNESS my hand and official seal.

NOTARY SEAL

Signature Robert A Evans

My Commission Expires

NOTARIAL SEAL
ROBERT A EVANS, NOTARY PUBLIC
CITY OF GREENSBURG, WESTMORELAND CO., PA
MY COMMISSION EXPIRES JULY 5, 2005

EXHIBIT
15

Thomas			Dressler			Kimble	
DATE	TONS	ROYALTY	TONS	ROYALTY	recoup $15,000.00	TONS	ROYALTY
Jan. 01	0	$0.00	0.00	$0.00		0.00	$0.00
Feb.01	486.75	$8,274.75	486.75	$0.00	recoup	486.75	$973.50
Mar. 01	1288.00	$21,896.00	0.00	$0.00		0.00	$0.00
Apr. 01	1270.30	$11,115.13	1288.00	$0.00	recoup	1288.00	$2,576.00
Ma. 01	1462.95	$24,870.15	1716.85	$0.00	recoup	1716.85	$3,433.70
Jun. 01	967.20	$16,442.40	1713.35	$0.00	recoup	1713.35	$3,426.70
Jul. 01	0.00	$0.00	967.20	$0.00	recoup	967.20	$1,934.40
Aug. 01	1698.70	$28,877.90	1698.70	$0.00	recoup	1698.70	$3,397.40
Sept. 01	143.55	$2,440.35	884.90	$0.00	recoup	0.00	$0.00
Oct. 01	1556.25	$26,456.25	1556.25	$0.00	recoup	0.00	$0.00
Nov. 01	1547.00	$26,299.00	1686.55	$0.00	recoup	0.00	$0.00
Dec. 01	0.00	$0.00	421.00	$0.00	recoup	0.00	$0.00
					bal remain		
TOTAL	**10420.70**	**$166,671.93**	**12419.55**	**$0.00**	**$2,580.45**	**7870.85**	**$15,741.70**
Jan. 02	0.00	$0.00	453.65	$0.00	recoup	0.00	$0.00
Feb. 02	638.00	$10,846.00	638.00	$0.00	recoup	0.00	$0.00
Mar. 02	817.22	$13,892.74	840.01	$0.00	recoup	0.00	$0.00
Apr. 02	724.58	$12,317.86	724.58	$75.79	done	0.00	$0.00
Ma. 02	277.99	$4,725.83	908.35	$908.35		908.35	$1,816.70
Jun. 02	1129.05	$19,193.85	1129.05	$1,129.05		1129.05	$2,258.10
Jul. 02	0.00	$0.00	420.25	$420.25		420.20	$840.50
Aug. 02	1652.55	$28,095.05	0.00	$0.00		0.00	$0.00
Sept. 02	0.00	$0.00	1652.65	$1,652.65		1652.65	$3,305.30
Oct. 02	0.00	$0.00	0.00	$0.00		0.00	$0.00
Nov. 02	0.00	$0.00	0.00	$0.00		0.00	$0.00
Dec. 02	0.00	$0.00	0.00	$0.00		0.00	$0.00
TOTAL	**5239.39**	**$89,071.33**	**6766.54**	**$4,186.09**		**4110.25**	**$8,220.60**
Jan. 03			0.00	$0.00		0.00	$0.00
Feb. 03			355.26	$355.26		355.26	$710.25
Mar. 03			0.00	$0.00		0.00	$0.00
Apr. 03			0.00	$0.00		0.00	$0.00
Ma. 03			0.00	$0.00		0.00	$0.00
Jun. 03			0.00	$0.00		0.00	$0.00
Jul. 03			0.00	$0.00		0.00	$0.00
Aug. 03			0.00	$0.00		0.00	$0.00
Sept. 03			0.00	$0.00		0.00	$0.00
Oct. 03			0.00	$0.00		0.00	$0.00
Nov. 03			0.00	$0.00		0.00	$0.00
Dec. 03			0.00	$0.00		0.00	$0.00
TOTAL			**355.26**	**$355.26**		**355.26**	**$710.25**

Def. Waroquiers'
Response to
Item 4a.

Thomas			Dressler		Kimble	
DATE	TONS	ROYALTY	TONS	ROYALTY	TONS	ROYALTY
Jan. 04			0.00	$0.00	0.00	$0.00
Feb. 04			0.00	$0.00	0.00	$0.00
Mary 04			0.00	$0.00	0.00	$0.00
Apr. 04			0.00	$0.00	0.00	$0.00
Ma. 04			0.00	$0.00	0.00	$0.00
Jun. 04			0.00	$0.00	0.00	$0.00
Jul. 04			113.88	$113.88	113.88	$227.76
Aug. 04			882.65	$882.65	882.65	$1,765.30
Sept. 04			1320.84	$1,320.84	1320.84	$2,641.68
Oct. 04			726.59	$726.59	726.59	$1,453.18
Nov. 04			854.95	$854.95	854.95	$1,709.90
Dec. 04			1161.61	$1,161.61	1161.61	$2,323.22
TOTAL			**5060.52**	**$5,060.52**	**5060.52**	**$10,121.04**
Jan. 05			630.27	$630.27	630.27	$1,260.54
Feb. 05			0.00	$0.00	0.00	$0.00
Mar. 05			1446.17	$1,446.17	1446.17	$2,892.34
Apr. 05			2168.98	$2,168.98	2168.98	$4,337.96
Ma. 05			1304.79	$1,304.79	1304.79	$2,609.58
Jun. 05			1731.97	$1,731.97	1731.97	$3,463.94
Jul. 05			1503.03	$1,503.03	1503.03	$3,006.06
Aug. 05			1102.91	$1,102.91	1102.91	$2,205.82
Sept. 05			0.00	$0.00	0.00	$0.00
Oct. 05			cancel lease		cancel lease	
Nov. 05						
Dec. 05						
TOTAL			**9888.12**	**$9,888.12**	**9888.12**	**$19,776.24**
Total	15660.09 TONS		34489.99 TONS		27285 TONS	
Royalty	$255,743.26		Royalty $19489.99		Royatly $54569.83	

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Total	15660.09 TONS		34489.99 TONS		27285 TONS	
Royalty	$255,743.26		Royalty $19489.99		Royatly $54569.83	

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WARDQUIER COAL CO., INC.,

Plaintiff,

vs.

ALBERT L. NELSON, TRUSTEE
Of the Albert L. Nelson
Living Trust,

Defendant.

No. 2007-112-CD

Type of Pleading:

EVIDENCE EXHIBITS IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT contd. (I)

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820
&
Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

655108
RECORD
MAY 12 2008
PITTSBURGH OFFICE OF

Dated: November 2, 2007

FILED
013:34/BK
NOV 02 2007
William A. Shaw
Prothonotary/Clerk of Courts
1CC Atty
GK

#10

EXHIBIT I

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ALBERT L. NELSON,

Plaintiff,

vs. No.: 2005-1842-CD

WAROQUIER COAL AND JOSEPH L. WAROQUIER, JR., and GARY V. WAROQUIER, individually and co-partners t/d/b/a WAROQUIER COAL COMPANY, a partnership, and WAROQUIER COAL COMPANY, INC.,

Defendants.

vs.

W. RUSKIN DRESSLER, a/k/a RUSKIN DRESSLER d/b/a W. RUSKIN DRESSLER COAL, ROGER A. THOMAS, MIRIAM R. THOMAS and RAMM COAL, INC.,

Additional Defendants.

- - -

PROCEEDINGS: Deposition of GARY V. WAROQUIER

DATE: May 29, 2007

TIME: 12:22 p.m. - 3:10 p.m.

PLACE: Law Office of Peter F. Smith
30 South Second Street
Clearfield, Pennsylvania

REPORTER: Roberta Swank
CSR 6042 - RPR 6846
Notary Public

APPEARANCES:

For the Plaintiff Albert L. Nelson:

JAMES A. NADDEO, ESQUIRE
Law Offices of James Naddeo
207 East Market Street
Clearfield, Pennsylvania 16830

For the Litigants Waroquier Coal, Joseph L. Waroquier, Jr., and Gary V. Waroquier:

PETER F. SMITH, ESQUIRE
Law Offices of Peter F. Smith
30 South Second Street
Clearfield, Pennsylvania 16830

For the Litigant W. Ruskin Dressler:

TIMOTHY E. DURANT, ESQUIRE
Law Offices of Timothy Durant
201 North Second Street
Clearfield, Pennsylvania 16830

APPEARANCES (CONTINUED):

For the Litigant Roger A. Thomas:

THOMAS T. FRAMPTON, ESQUIRE
- and -
MANDI L. SCOTT, ATTORNEY AT LAW
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, Pennsylvania 15219

Also Present:

Joseph L. Waroquier, Jr.
Albert L. Nelson
Roger A. Thomas
Miriam R. Thomas

- - -

STIPULATION

It is stipulated and agreed by and among counsel for the respective parties and the deponent that the inspection, reading and signing of the deposition may be and are waived.

- - -

Certified Copy

INDEX

GARY V. WAROQUIER

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Exhibit "I"

GARY V. WAROQUIER,
having been first duly sworn, deposed as follows:

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EXAMINATION

BY MR. NADDEO:

Q. Your name, please?
A. Gary Victor Waroquier.
Q. Where do you reside, Mr. Waroquier?
A. 490 Naulton Road Extension, Curwensville.
Q. Your occupation?
A. Field officer, vice president/treasurer.
Q. For?
A. Waroquier Coal.
Q. And we already had your brother's deposition. You have been here for it.
A. Correct.
Q. So you heard some of the questions and some of his answers.
A. Correct.
Q. Let's start with Waroquier Coal Company. I understand that to be a partnership.
A. That is correct.
Q. And that partnership is owned by you and your brother?
A. That is correct.

Q. And your brother is Joe Junior, Joseph Waroquier, Junior?
A. That is correct.
Q. There's also a corporation known as Waroquier Coal Company, Inc.?
A. That is correct.
Q. And that corporation is also owned by you and your brother?
A. That is correct.
Q. The business address for both entities, the partnership and the corporation, are the same?
A. That is correct.
Q. And that address is?
A. Washington Avenue.
Q. Was that the case back in January of 2001?
A. That is correct.
Q. How long have you and your brother been in partnership as Waroquier Coal Company?
A. 1996.
Q. 1996 to the present?
A. Yeah.
Q. How long has the corporation been in place?
A. Same.

Q. From 1996 to present?
A. Same, I would say.
Q. Close enough. I understand that there is a standard working agreement between Waroquier Coal Company and Waroquier Coal Company, Inc. whereby Waroquier Coal Company obtains permits and Waroquier Coal Company, Inc. actually mines the coal.

Are you aware of that agreement?

A. Once again, that is office work on how he handles the paperwork or letterhead, on which one he wants to run it through. I'm fairly familiar with it, yes.
Q. Your brother indicated that you are responsible for the coal company's permitting process; is that true?
A. That is correct.
Q. Who does apply for the permits? Is it Waroquier Coal Company or Waroquier Coal Company, Inc.?
A. I can't answer that. Well, I can't answer that. I don't know whether he does it through Inc. or corp.
Q. Your brother said you do the permitting, not him. You are the guy who is familiar with the

permits. Is that accurate?
A. Making the permit, in the field permit work, yes. Correct.
Q. You don't know who actually applies for the permit, whether it is the partnership or the corporation?
A. No.
Q. Have you seen the permits for the Kimble operation or job?
A. Once they were received, yes.
Q. Did you order those permits to be processed by anyone?
A. Those permits were already processed. Or that permit was already processed.
Q. How about the transfer of the permit? Who was responsible for seeing to the transfer of the permit?
A. Normally through our Curry -- or our consultant, giving the -- getting the paperwork and doing the transfer of it because it's public notice through DEP of the permit.
Q. So you employ Curry & Associates to do the actual paperwork with DEP?
A. That is correct.
Q. But do you orchestrate that or are you

the one who assigns the work to Curry?
A. **Normally, yes.**
Q. Are you the one who normally signs the permit applications?
A. **Either one can.**
Q. So it's not you who normally does it versus your brother. Either one of you may sign a permit?
A. **That is correct.**
Q. Do you know whether those permits are signed as a partnership or as a corporation?
A. **No, sir, I don't.**
Q. Now, were you aware that your brother had entered into negotiations with Mr. Dressler to buy a strip mining operation that he was conducting in Brady Township, Clearfield County, Pennsylvania?
A. **Yes, he did.**
Q. You were aware that your brother was talking to Mr. Dressler about the purchase of that job?
A. **That is correct.**
Q. Did you and your brother discuss whether Waroquier Coal Company wanted to buy Mr. Dressler's coal stripping operation?
A. **Once we had a final answer out of**

Mr. Dressler, yes.
Q. Did you and your brother jointly make the decision to buy Mr. Dressler's strip mine?
A. **Yes, we did.**
Q. And was that to include the permit under which he was operating?
A. **That is correct.**
Q. Did you and your brother discuss the terms of the sale, in other words, the price that you were going to offer to Mr. Dressler to buy that job?
A. **No.**
Q. Who decided what you were going to pay to Mr. Dressler?
A. **Ruskin and Joe had agreed upon a price. Once he agreed, it was brought to my attention, and we agreed upon it.**
Q. So Joe negotiated the deal, brought it to you, and you approved it?
A. **That is correct.**
Q. Who was responsible for seeing that the deal, the agreement, was put into writing?
A. **Requote that.**
Q. You entered into a verbal agreement with Mr. Dressler to buy his job in Brady Township

known as the Kimble job or operation --
A. **Okay.**
Q. -- right?
A. **Yes.**
Q. Now we're going to put this agreement into writing. Who was responsible for seeing that the agreement was placed into writing?
A. **Then it was my part to bring to the office to the girls to have it put into writing.**
Q. So that's your end of the job?
A. **That is correct.**
Q. Part of your duties?
A. **That is correct.**
Q. Now, did your brother indicate to you that Mr. Dressler had some type of arrangement with Roger Thomas to mine coal on the job that you were planning to buy?
A. **That is correct.**
Q. You were aware of that?
A. **Yes.**
Q. Were you aware of that prior to entering into a verbal agreement with Mr. Dressler to buy the Kimble job?
A. **Say that again, please.**
Q. Were you aware that Mr. Thomas had

equipment on the Kimble job when you and your brother agreed to purchase it from Mr. Dressler?
A. **That is correct.**
Q. You were aware of that?
A. **Yes.**
Q. Did you and your brother discuss whether you wanted Mr. Thomas to continue to mine coal from that particular permit or job?
A. **Mr. Dressler had asked if Mr. Thomas, Ramm Coal, could be offered to stay under the same contract to mine the coal on the job.**
Q. And you and your brother agreed to that?
A. **Yes.**
Q. Now, was it your job to see that the agreement between Waroquier Coal Company and Mr. Thomas was reduced to writing?
A. **Yes.**
Q. So you arranged to have some type of written agreement put together for Waroquier Coal Company to sign with Mr. Thomas?
A. **Yes.**
Q. I'll show you what was marked as Exhibit 1 and ask you if that is the agreement that you had prepared between Waroquier Coal Company and Roger Thomas -- I'm sorry, Waroquier

Coal Company Inc.?
A. Yes.
(Waroquier Exhibit No. 1 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. Does that agreement, that written agreement, properly reflect the understanding between Mr. Thomas and Waroquier Coal Company, Inc.?
A. That is correct.
Q. It does? You are satisfied that the writing reflects the arrangement that you made with Mr. Thomas?
A. That is correct.
Q. Now, at some point, it was your job to see that the agreement between Waroquier Coal Company and Mr. Dressler was put into writing.
A. That is correct.
Q. And you supervised or arranged or told somebody to prepare an agreement between Waroquier Coal Company, Inc. and Ruskin Dressler?
A. That is correct.
Q. I'll show you what has been marked Exhibit 2 and ask you if that is an accurate copy of the agreement that you prepared for signature

between Waroquier Coal Company, Inc. and Mr. Dressler.
A. That is correct.
(Waroquier Exhibit No. 2 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. And does Exhibit 2 properly reflect all understandings which Waroquier Coal Company, Inc. had with Mr. Dressler?
A. Yes.
Q. Now, this agreement provides for Waroquier Coal Company to pay Mr. Dressler a sum of money, a lump sum of money.
A. That is correct.
Q. As the coal was to be mined from the Kimble job, Waroquier Coal was to pay an override, or I guess what I would call an override, to Mr. Dressler.
A. That is correct.
Q. The agreement provides that Waroquier Coal Company, Inc. was to purchase Mr. Dressler's permit.
A. That is correct.
Q. Is there anything in the agreement that indicates that Waroquier Coal Company was also

purchasing the leases held by Mr. Dressler?
A. Not in writing, no.
Q. So there's no writing pertaining to the leases?
A. No.
Q. When your brother negotiated the agreement, the deal to buy Mr. Dressler's strip mine operation, were you aware of what properties would be affected by the stripping of the coal?
A. That is correct.
Q. That is correct, you were aware?
A. By the permit, what was on the permit-wise, yes.
Q. So you did review Mr. Dressler's permit at some point.
A. Yes.
Q. Did you review Mr. Dressler's permit prior to the time that you signed the agreement dated January 22, 2001, which has been identified as Exhibit 2?
A. No, I did not.
Q. Did you review his permit after you signed the agreement dated January 22, 2001 and identified as Exhibit 2?
A. Yes.

Q. How long after the date that the agreement, Exhibit 2, was signed did you review Mr. Dressler's permit?
A. The only thing I can recall and tell you is Exhibit 9 map and Ruskin Dressler and I went over the job site of the pin locations and some of the property lines that were out there. I can't give you an exact date.
Q. Now, do I understand that you and Mr. Dressler went over the pin lines, as you described it, of the properties after Waroquier Coal Company signed the agreement dated January 22, 2001?
A. Could have been one way or the other. I can't say if it was of that day or a day after.
Q. By "that day," you are referring to January 22, 2001?
A. It was shortly within that period, yes.
Q. Either the day the agreement was signed or the day following, you met with Mr. Dressler at the job site to establish property lines?
A. Correct.
Q. What property lines were you and Mr. Dressler seeking to establish?
A. The Kimble, the Hayes and the Nelson

corner was the only pin that was established that I could go by or to be showed.

Q. So you knew on January 22nd of 2001 or the day after that Mr. Dressler's permit encompassed three properties?

A. No, the permit only consists of two properties.

Q. Are you sure? It's not a trick -- go ahead. You may be right. I don't know. It looks like three to me.

A. I don't know if the Hayes was in part of it.

Q. But you knew for sure it involved Kimble and Dressler?

MR. FRAMPTON: Nelson.

BY MR. NADDEO:

Q. Excuse me. Kimble and Nelson?

A. Yes.

Q. The day that you checked the property lines, did you also examine Mr. Dressler's permit?

A. You will have to explain that to me.

Q. All right. Mr. Dressler had a permit to strip the Kimble and Nelson properties; is that correct?

A. Yes.

Q. And you met with Mr. Dressler to review the property lines between Kimble and Nelson.

A. Correct.

Q. That was done either on January 22nd of 2001 or the following day, January 23rd?

A. Correct.

Q. At what point, if ever, did you review Mr. Dressler's permit?

A. Not the permit. The paper permit, no. The field and the Exhibit 9 permit mapping is the only thing I reviewed.

Q. So you reviewed his operations map --

A. That is correct.

Q. -- is that right?

A. Yes.

Q. But you never looked at his permit?

A. No.

Q. I'm going to show you what has been marked as Exhibit 3 and ask you if you have ever seen that document.

A. Just as it -- when it come into the office telling me that we had the permit.

(Waroquier Exhibit No. 3 marked for identification, attached hereto.)

///

BY MR. NADDEO:

Q. Would you agree that Exhibit 3 at least is titled Permit Issued to W. Ruskin Dressler?

A. That is correct.

Q. And it describes the job operation as Kimble?

A. That is correct.

Q. It was issued, according to this lawsuit, on August 4, 1999?

A. That is correct.

Q. And it purports to expire on August 4, 2004.

A. Expiration date, yes.

Q. Now, within the contents of that permit is a section titled Exhibit 5 Property Interest Right of Entry marked with a clip.

A. Okay.

Q. Now, is the Property Interest Right of Entry portion of this permit a requirement of all permits? Is that section always attached to the mining permit?

A. Yes. That consists of the mining permit, surface field permit.

Q. The purpose of that is to be evidence of the properties that are being permitted --

A. That is correct.

Q. -- correct?

According to Exhibit 3, what properties were included in Mr. Dressler's permit, according to the exhibit?

A. All four of them.

Q. And the four would be Richard and Nancy Kimble?

A. Correct.

Q. Albert C. and Charles Hayes?

A. Correct.

Q. And Mary A. Hayes?

A. That is correct.

Q. And Albert Nelson, trustee?

A. Correct.

Q. But you never asked Mr. Dressler to see his permit, either before or after you bought it?

A. That is correct.

Q. Were you the one who was responsible to see that Mr. Dressler's permit was transferred?

A. Field-wise, yes. Paperwork-wise, no.

Q. Who was the paperwork person?

A. Curry & Associates.

Q. So you went out into the field to do whatever is required prior to applying for a

transfer of the permit?
A. Or to start the transfer.
Q. What do you do in the field to start the transfer?
A. Such as meet with who had already owned the permit, to encounter those approval of findings for the permit transfer of Dressler, to approve for a permit transfer to Curry & Associates to start the paperwork.
Q. So you went out to talk to Mr. Dressler --
A. Yes.
Q. -- to get his cooperation in transferring the permit?
A. That is correct.
Q. Now, when you go out, do you also go out to reestablish property lines and confirm what properties are involved with the permit?
A. That is correct.
Q. You did that also?
A. After the transfer, or of the day of the agreement signing, yeah.
Q. That would be January 22, 2001?
A. Yes.
Q. So after doing your field work, you then

assigned Curry & Associates to apply for a transfer of Mr. Dressler's permit?
A. That is correct.
Q. I'll show you what's marked as Exhibit 4 and ask you if you recognize what is depicted in Exhibit 4.
A. The permittee would be Waroquier Coal.
(Waroquier Exhibit No. 4 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. That is a permit issued to Waroquier Coal Company?
A. It's a transfer from Kimble to Waroquier Coal.
Q. Right. And that transfer was approved to Waroquier Coal Company?
A. Correct.
Q. And Waroquier Coal Company then became the permittee --
A. Correct.
Q. -- correct?
A. Correct.
Q. As a result of this document, Waroquier Coal Company now owned the permit that was purchased from Dressler?

A. That is correct.
Q. And the transfer date of that permit was October 16, 2001?
A. Yes.
Q. The issuance date of the original permit, consistent with Mr. Dressler's permit, was August 4, 1999 --
A. That is correct.
Q. -- and to expire August 4, 2004 --
A. That is correct.
Q. -- for property in Brady Township --
A. Yes.
Q. -- Clearfield County, Pennsylvania?
A. Yes.
Q. And the permit was to mine the Upper Kittanning --
A. That is correct.
Q. -- the Middle Kittanning --
A. That is correct.
Q. -- and the Luthersburg --
A. That is correct.
Q. -- and shale?
A. Yes.
Q. What's that mean?
A. Nothing.

Q. Sometimes you can sell shale?
A. Yes.
Q. Do you have to get that permitted, too?
A. Yes.
Q. So when this permit, when you applied or when you instructed Curry & Associates to apply for this permit --
A. Transfer.
Q. -- the transfer of the permit, Exhibit 4, you were contemplating that mining would occur on three seams of coal and that you might also sell some shale from this site.
A. Two seams of coal, all other coal seams or upper had been extracted from Mr. Dressler.
Q. Well, it says three seams of coal.
A. That was what was done in the permit of the first original permit of Nelson.
Q. So this is just a recapitulation of Mr. Dressler's permit?
A. Of the original permit, correct.
Q. And it's your understanding that some of the coal had already been removed by Dressler?
A. That is correct.
Q. What seam had been removed by Dressler?
A. The Upper Kittanning and some of the

Luthersburg and the Middle Kittanning of the prior mining of those.

Q. So do I understand then that when you did your field inspection, you were planning to mine whatever was left of the Middle Kittanning?

A. Yes.

Q. You were planning to mine whatever was left of the Luthersburg?

A. That is correct.

Q. And that all of the upper Kittanning had already been removed?

A. That is correct.

Q. Did you review the permit when you received it at the office from Curry & Associates?

A. We would receive it from DEP, but no, I did not.

Q. Well, who reviews your permits, nobody?

A. Field work, the field map is good enough for what I have or to go by.

Q. So you rely on the field map more so than the permit?

A. Yeah. That's the DEP part of it.

Q. As far as you are concerned, this is just a lot of paper. When I'm saying this, I'm referring to Exhibit 4.

A. If that's what you want to call it, yes.

Q. That's probably true. I understand that.

So your real working document is the operations or field map, not the permit itself?

A. That is correct.

Q. Would you agree that this particular permit does reference several properties to be encompassed within the permit?

A. That is correct because that was the original permit done.

Q. That would be the Kimble property, the Hayes property and the Nelson property?

A. That is correct.

Q. And that appears in part C of the permit?

A. That is correct.

Q. Those properties are identified?

A. Yes.

Q. As part of your application to transfer the permit, Waroquier apparently also applied for additional acreage or bonding, at least according to the permit.

A. Updating bonding from DEP makes you move into the new yardage rating of the bond, is the reason why additional acreage.

Q. According to the permit, the acres to be

affected on the Kimble property was 17.7?

A. That was what was of the original permit that was applied.

Q. And the Nelson property, 18.9?

A. Of the original permit applied.

Q. And the Hayes property, 1.9?

A. Of the original permit applied.

Q. You were aware of all that when you bought the permit --

A. That is correct.

Q. -- correct?

A. Correct.

Q. Now, I understand that sometime after Waroquier Coal Company signed its agreement with Mr. Dressler, and I'm referring to the agreement dated January 22, 2001, which has been identified for our purposes as Exhibit 2, that Mr. Dressler produced a written lease on the Nelson property.

A. That is what I've been told, yes, that is correct.

Q. When did you see, first see, the written lease between Mr. Dressler and Mr. Nelson?

A. Once this suit started.

Q. Prior to that, you had not seen the lease?

A. No.

Q. I thought I asked your brother about that, and I thought he told me that you two discussed it. I could be wrong. I want your recollection.

A. He picked it up is all I can tell you.

Q. But you have seen the lease since this litigation started?

A. Just -- yes.

Q. I'm going to show you what has been marked as Exhibit 5 and ask you if that is a correct copy of the lease between Mr. Dressler and Mr. Nelson.

A. That's the only lease that I've seen.

(Waroquier Exhibit No. 5 marked for identification, attached hereto.)

BY MR. NADDEO:

Q. In terms of the permitting process, is this lease necessary? Do you need to have a lease in order to permit property?

A. That is correct.

Q. You do?

A. Yes.

Q. Now, since you ordered the permit, wouldn't it be necessary for you to confirm that

there was a lease on the Nelson property?
A. Let me rephrase that. When you are an individual permittee, you do not need a lease to permit, which him and I are individual. That's the reason I say him and I were between being government funded or that. So in turn I would say this permit was transferred without lease approval because it was already a prior permit and it was just a permit transfer.
Q. When you say "without lease approval," lease approval from whom?
A. To DEP.
Q. So since you were transferring a permit, you weren't concerned -- he needs to answer these himself, Joe.
A. He gave me my name. The government funding we did was a SOAP (phonetic) program is what all that was.
Q. Mr. Waroquier, you were transferring a lease that was already issued to Mr. Dressler, correct?
A. Correct.
Q. In order for Mr. Dressler to get his permit, he would have had to have some authority to go on the properties that he was leasing,

correct?
A. Correct.
Q. But since you were transferring the lease --
A. Permit.
Q. Excuse me -- the permit, you weren't concerned -- Strike that.
Since you were transferring Mr. Dressler's lease, did you assume that he did have authority to strip the property that he had permitted?
A. Yes. For DEP to transfer a permit, they must have a lease.
Q. Right. Okay.
And you didn't have anything to do with applying for Mr. Dressler's permit?
A. No.
Q. The only thing you did was start the work necessary to transfer Dressler's permit to Waroquier?
A. That is correct.
Q. So that the lease that has been identified as Exhibit 5 was not of any concern to you until this lawsuit was filed?
A. That is correct.

Q. So once the lawsuit was filed, you then asked about the lease.
A. My brother did. I did not.
Q. Your brother asked about the lease?
A. Yes.
Q. Now, you heard his testimony today concerning the lease?
A. Yes.
Q. And correct me if I am wrong, but I believe he testified that the lease was given to him by Mr. Dressler four or five months after the agreement of January 22, 2001 was signed.
A. That's what he testified.
Q. You recall that --
A. Yes.
Q. -- accurately portraying his testimony?
A. Correct.
Q. Once you became aware of the lease, once the lawsuit was filed, did you review the lease at all?
A. No.
Q. You never looked at the lease to determine what terms were in the lease?
A. No.
Q. And you haven't up until today, you still

haven't done anything to familiarize yourself with the terms of the lease between Mr. Dressler and Mr. Nelson?
A. Just what we read over prior to -- just through what we've investigated or been read to me, no.
Q. Well, read to you when?
A. Through this investigation in the last week or two.
Q. So within a week or two prior to the deposition today?
A. Yes.
Q. So you did review the lease within the last couple of weeks?
A. Yes.
Q. Would you agree that the lease is for 10 percent of the pit price or $2.00, whichever is greater?
A. That is correct.
Q. Are you familiar with a form of a document known as Contractual Consent of a Landowner?
A. Supplemental C?
Q. Yes. Is that a document which is necessary in order to obtain a mining permit?

A. Yes, it is.
Q. Did Mr. Dressler have a supplemental C signed by Mr. Nelson as part of his permit?
A. He would have to.
Q. Right. Were you aware that a supplemental C had been signed by Mr. Nelson for Mr. Dressler?
A. By having a permit and Exhibit 9, they would have had to have it done. So no, I did not visually see it other than having a field map.
Q. But because there was a field map and a permit, you reasonably assumed that a supplemental C had been signed?
A. That is correct.
Q. I'll show you what has been marked as Exhibit 6 and ask you if that is a correct copy of the supplemental C signed by Mr. Dressler -- excuse me -- and Mr. Nelson or Mr. Nelson on behalf of Mr. Dressler.
A. That is correct.
(Waroquier Exhibit No. 6 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. That document purports to be for 49 acres of land located in Brady Township?

A. That is correct.
Q. It says it has a book and page number for the deed of the property to which the supplemental C applies?
A. That is correct.
Q. It appears to be dated the third day of February, 1997.
A. Correct.
Q. It is signed by Albert L. Nelson as trustee?
A. That is correct.
Q. Are you required to record the supplemental C?
A. I believe in the SOAP you were. I'd say yes.
Q. In fact, was the supplemental C signed by Mr. Nelson recorded?
A. I can't answer that. That was received in our purchase as Albert Nelson signed it.
Q. It was also recorded, was it not?
A. That is correct.
Q. What was the date it was recorded?
A. March 25, 1999.
Q. This is the recording information. According to this document, what date was it

recorded?
A. 1999.
Q. 23rd day of --
A. Yes.
Q. -- February --
A. Correct.
Q. -- 1999?
A. Correct.
Q. Have you ever seen this document prior to today? By "this document," I am referring to Exhibit 6.
A. Yes.
Q. When did you first see Exhibit 6?
A. Just in the last reviewing or last month or two of the review of the permit, of the suit.
Q. Of the suit, not the permit, the lawsuit.
A. Suit.
Q. But you had never seen the supplemental C prior to a few weeks or a month ago?
A. No.
(Waroquier Exhibit No. 7 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. Exhibit 7 purports to be a letter from Waroquier Coal Company dated July 14, 2003 to Mr.

Albert Nelson. The signature on that letter is Joseph Waroquier.
A. That is correct.
Q. Had you ever seen that document prior to today?
A. No. Well, to the suit, no.
Q. But you have seen that letter since the suit was filed?
A. That is correct.
Q. When did you first see Exhibit 7?
A. Month or two.
Q. So a month or two ago?
A. Yes.
Q. Exhibit 7 purports to be a letter from your coal company to Mr. Nelson informing him that certain backfilling had been completed on his property.
A. Yeah. Once Curry would send the proper paperwork to the office showing that he released that portion of acreage, they take it upon -- or send the letter out for that, is all I can tell you.
Q. But this letter, what it tells the property owner, that part of his property has been backfilled?

A. That is correct.
Q. It doesn't necessarily tell the owner that his property has been stripped?
A. No.
Q. Just backfilling?
A. That is correct.
Q. But somebody caused this letter to be sent to Mr. Nelson on July 14, 2003?
A. That is correct.
Q. Now, you mentioned the operations map --
A. Yes.
Q. -- pertaining to the Kimble job?
A. That is correct.
Q. My understanding is that you reviewed the operations map with Mr. Dressler.
A. That is correct.
Q. Now, was that done on either January 22nd of 2001 or January 23, 2001?
A. I'm not exact. It was within that time frame that we did that.
Q. Close around that date, true?
A. True.
Q. You also maybe reviewed the operations map in preparation for the transfer of the permit; is that right?

A. Once the transfer -- it had been after the first review, yeah.
Q. I'm going to show you what's been marked as Exhibit 8 and ask you if that is a correct copy of Mr. Dressler's operations map.
A. Yes, it is.
(Waroquier Exhibit No. 8 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. Now, that map was prepared, according to the legend, by Lee Simpson & Associates?
A. Yes, done by Lee Simpson.
Q. And that map is dated June 18, 1999 with certain revisions appearing in the --
A. See that's where you have to watch your revisions because each time there's a revision there's another map made.
Q. So that this map would be the map from the last revision date?
A. Yeah, last revision date would have been 1999.
Q. Right. 6-17-99? Am I reading that correctly? June 17th --
A. Yes, that is correct.
Q. -- 1999? This is the map you reviewed

with Mr. Dressler?
A. Yes.
Q. Now, this map does have certain property lines on it; does it not?
A. Yes, it does.
Q. It shows property lines. Can you show me the property lines on this map for the Kimble property?
A. Yes. It would be that location right there.
Q. You are showing what is a broken dotted line?
A. Yes.
Q. I mean on the map, it appears as a broken line?
A. Yes.
Q. And that line divides the Kimble property from the Nelson property?
A. That is correct.
Q. So when you reviewed this map, you were aware that the Nelson property was part of Mr. Dressler's permit?
A. That is correct.
Q. Did you talk with Mr. Dressler concerning what coal might be minable on the Nelson property?

A. His comment was that he felt he removed most of the Nelson coal because he had already mined this dotted sector area here (indicating).
Q. Now, on this map, there's some color coding, green, orange and yellow. I'll call that yellow. Do you know what that color coding means?
A. The green is for support area where no mining, it's low bonded, possibly where some of that 16 acres could have come from. The other one is a zero to 85-foot bonded high wall, that's through DEP.
Q. That's the orange one?
A. Orange, yes.
Q. Does that mean that there's mining in the orange area?
A. To do?
Q. Yes.
A. No. It could have been done or not been done or to be done.
Q. How about the yellow area?
A. Same results, too.
Q. The yellow means this is an area which may or may not be mined?
A. That is correct.
Q. But the orange area and the yellow area

had to be bonded?
A. That is correct.
Q. The green area --
A. Was already prior bonded, but prior mined to where it has a reduced bonding rate to it.
Q. In the green area, somebody posted a lower bond than they did in the orange or yellow area?
A. No, that is incorrect. The green would start as an orange and then change to a yellow is how the permit would have started.
Q. As far as this map is concerned, the green area means what?
A. Bonded area where it's already been mined.
Q. The orange means what?
A. Either in mining process or to be mined.
Q. And the yellow mines?
A. Same answer.
Q. Either in the mining process or to be mined?
A. Correct.
Q. Both the orange and the yellow?
A. Correct.
Q. But the green means it has already been

mined?
A. Correct. Or for additional top soil pond area.
Q. So according to Mr. Dressler's operations map, the orange and yellow areas remained to be mined when you took over this job?
A. No.
Q. Well, that's what it says. What's it mean?
A. This is in '99. Our takeover was in 2001.
Q. We will get to that.
I'm going to show you what has been marked as Exhibit 9.
A. Okay.
(Waroquier Exhibit No. 9 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. And ask you if you have ever seen that particular map prior to today.
A. This is what they call a module 16. No, I have not because it would have stayed in the permit. It would not have come out into the field with me.
Q. When you say "stayed in the permit,"

whose permit?
A. Wherever the holder of all the permits, whether it was in our office or in the DEP department.
Q. This map was prepared by Curry & Associates, correct?
A. This is a transfer map from Lee Simpson that was done by Curry, correct.
Q. And you requested Curry to do the transfer map?
A. No. This is part of the permitting. This map is part of the required area for the permit transfer.
Q. So this map, Exhibit 9, was prepared at your direction for the purpose of obtaining a transfer of Mr. Dressler's permit?
A. No. I'm not saying in the transfer. This was all done by Ruskin's permit. Ruskin did all this work.
Q. It was done prior to the time you bought the permit?
A. That is correct.
Q. So the drill holes were put in by Mr. Dressler, not by Waroquier?
A. That is correct.

Q. Did you review the drill holes prior to purchasing this property --
A. No.
Q. -- the logs?
A. No.
Q. I mean were you interested as to what coal, if any, might be recovered from the Nelson property?
A. With what was exposed of the Kimble, it already showed us interest to finish mining it, so what was exposed was what we continued to finish mining.
Q. So what you saw exposed, there's obviously some seams of coal that were exposed when you bought the property --
A. That is correct.
Q. -- when you bought the permit?
A. Bought the permit.
Q. When you bought the job?
A. Permit.
Q. So that the amount of coal was irrelevant. As long as you could mine the coal you could see when you decided to buy the job; is that correct?
A. That is correct.

Q. Have you ever reviewed the drill logs?
A. **No.**
Q. Did you hear the testimony of your brother when I reviewed the drill logs with him?
A. **That is correct.**
Q. Would you agree that the vast majority of these drill logs indicate coal seams varying from as much as 48 inches to as much as zero where it's been mined? Just based on your recollection of those questions.
A. **Say that again, please.**
Q. The drill logs prepared by Mr. Dressler indicate that there was coal underlying the Nelson property which in some places was as thick as 48 inches and in other places where there was absolutely nothing at all.
A. **Yes, that is correct.**
Q. But the drill logs do indicate that there was coal underlying the Nelson property?
A. **Back in 1999 when he had mined on that area, this is holes that were drilled prior to Dressler's mine.**
Q. I understand.
I will show you what I've marked as Exhibit 10 and ask you if you can explain that map

to me. We will note that it is a map with the legend of Curry & Associates. It has Waroquier Coal Company and it is dated January of 2001.
Are you familiar with that map?
A. **Yes. This is another Exhibit 9 map, just an updating from bond changing.**
(Waroquier Exhibit No. 10 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. So the purpose of this map was to upgrade the status of this mining operation at the time you applied to transfer the permit?
A. **No. Exhibit 9 would have been done when bonding would have been reduced or added, was what this map would consist of.**
Q. So this map was given to DEP for the purpose of adding or subtracting bonds?
A. **Yeah. We must do that every six months to show them where we are and what is going on.**
Q. At the time this map was prepared, Mr. Dressler was no longer on this job?
A. **That is correct.**
Q. This was prepared in January of 2001.
A. **February 25, 2004.**
Q. No. I think that's when it was accepted.

I think the date of this is January of 2001. You tell me. I don't know.
A. **This is when this map was done. This is when this original of the whole area being reduced down to this is what that map is showing.**
Q. But would this map be a true portrayal of what was going on in this property in January of 2001?
A. **No. 2000 -- the February 25, 2004 is what bonding is left.**
Q. Was still on this property?
A. **Just the bonding. That does not show the affected mining area of what is left.**
Q. This also has some color legends on it, right?
A. **Yes.**
Q. And there is what I'll call a red area, a blue area and a green area.
A. **Uh-huh.**
Q. And the red area describes location of active pit.
A. **Yeah. On February 25th, 2004, that is all the more active mining we had left of the site.**
Q. When you say "we," "we" would have been

Waroquier Coal Company?
A. **Yes, sir.**
Q. So this map would indicate that Waroquier Coal Company was actively mining the pink area in February of 2004.
A. **No, doesn't show actively mining. It shows what is to be actively mining, if mined.**
Q. So this pink area is land still to be mined?
A. **Yes --**
Q. So that would indicate --
A. **-- of the Nelson side.**
Q. That would indicate that there was coal in the pink area?
A. **Still is.**
Q. You never removed it?
A. **No, sir.**
Q. How about the blue area, what does that mean?
A. **Certain portion, that is areas that have already been mined or been taken off.**
Q. And the green area?
A. **Same thing, part of the permitted area. That one there says it's a restricted area, so I can't mine that sector there.**

Q. Where, the green area?
A. **Yeah. An area of 7.2.**
Q. It says revegetated?
A. **Because it's already been mined. That's what Ruskin had already mined.**
Q. I will show you what has been marked as Exhibit 11. Another, I guess, what I'd term an operations map.
A. **This is a full blow up from back in February 20, 2001.**
(Waroquier Exhibit No. 11 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. Now, can you explain this map to me.
A. **This here would probably -- this here would have been the full blow-up map of the four properties so -- of the Hayes and -- the Hayes and the Nelson and the Kimble.**
Q. That map would have been prepared when?
A. **It says here February 20th, 2001.**
Q. Would this map have been prepared by Mr. Dressler or by Curry & Associates?
A. **This would have been done by Curry & Associates for Waroquier Coal's operation map.**
Q. Was this map prepared in preparation for

the permit -- to transfer the permit of Mr. Dressler?
A. **Mr. Dressler did that work. Mr. Dressler did that work.**
Q. Did what work?
A. **Providing that permit.**
Q. Let me make sure I understand. Exhibit 11 is a map prepared by Curry & Associates?
A. **Correct.**
Q. That was prepared for Waroquier Coal Company?
A. **That is correct.**
Q. And it reflects the status of the Kimble operation as of January of 2001?
A. **It is showing the permit area of 2000 -- of 2001, yes.**
Q. It is also color coded?
A. **That's how they have it bonded.**
Q. There's a green area?
A. **That is correct.**
Q. Orange area?
A. **That is correct.**
Q. Blue area?
A. **That is correct.**

Q. Yellow area?
A. **That is correct.**
Q. Red area?
A. **That is correct.**
Q. What does green mean?
A. **Support on top soil area.**
Q. So that's an area that's not to be mined but just strictly a support area?
A. **Correct.**
Q. The orange area is what?
A. **One to 80 feet of cover --**
Q. Yeah, but --
A. **-- to be mined.**
Q. Area to be mined?
A. **Area that has coal, by doing the permit, shows can be mined.**
Q. In 2001, we had a fairly large orange area that could be mined?
A. **Could be or he had already mined. Like I say, this permit, he had already mined this side of the hill and up to this portion, so this was an original permit back in 1999 that they still are working from.**
Q. The blue area, is that an area that could be mined?

A. **If the coal is there.**
Q. Yellow area could be mined?
A. **If the coal is there.**
Q. Red area?
A. **If the coal is there.**
Q. And the remaining green area would be support only?
A. **No coal.**
Q. No coal.
Sometime in the course of events, Mr. Nelson called the cops.
A. **That is correct.**
Q. Do you remember that?
A. **Yes.**
Q. And the police came to investigate.
A. **Yes.**
Q. And the police filed an investigation report?
A. **Yes.**
Q. As part of the police investigation, I understand from the report that you were interviewed?
A. **That is correct.**
Q. I'm going to show you what I have marked as Exhibit 12-A and ask you if you can identify

what is in that particular exhibit.
A. Of the investigation of the Officer Miller towards the civil.
(Waroquier Exhibit No. 12-A marked for identification, attached hereto.)
BY MR. NADDEO:
Q. Would you agree that Exhibit 12-A purports to be a copy of the investigation performed by Trooper Jeffrey B. Miller in response to Mr. Nelson's complaint?
A. That is correct.
Q. Have you seen this report prior to today?
A. Within the last week or two, yes.
Q. Was the last week or two the period within which you first saw this report?
A. Saw of, yes.
Q. Did you have an opportunity to review that portion of the report where Trooper Miller relates the statement that he took from you?
A. It would have been read to me, yes.
Q. Did you read it yourself?
A. Not personally.
Q. I'll show you that portion of the report marked "Interview with Gary Waroquier." Did you personally read that section of the report?

MR. SMITH: For point of clarification, there's two interviews reported, and Mr. Naddeo is showing you the July 18, 2004 interview.
MR. NADDEO: Yes. Let me apologize.
Q. According to the report, Trooper Miller interviewed you on two occasions.
A. That is correct.
Q. According to -- Trooper Miller. Trooper Ray. Pardon me. Trooper Ray interviewed you on 6-24-04 (indicating).
A. If that's what it is, that is correct.
Q. And Trooper Ray also interviewed you on 7-18-2004.
A. Okay.
Q. So once in the month of June of 2004 and once in the month of July 2004.
A. Okay.
Q. Let's start with June 24, 2004. Have you had an opportunity to review that portion of Trooper Ray's report?
A. That is correct.
Q. It is correct that you've reviewed it?
A. Yes.
Q. And you've read it prior to today?
A. No. It was read to me prior to today.

Q. Now, you have had an opportunity today to read it for yourself?
A. That is correct.
Q. Is the information contained in Trooper Ray's report of the interview of 6-24-2004 accurate?
A. That is correct.
MR. SMITH: I'm going to put an objection as to form. I'd like specific questions. There's a lot of stuff in here, and I think you ought to take the important things piece by piece.
MR. NADDEO: Well, wait a minute. If he's reviewed the report and he agrees it's accurate, that's what I want to know. I think that's a legitimate question.
THE WITNESS: He has the money --
MR. NADDEO: He has a right to say what is inaccurate.
Q. I'll ask you a different question. Are any parts of the interview as reported in Trooper Ray's investigation inaccurate? Are there any parts of that that you dispute?
A. Let me read it one more time, please.
Q. Sure.
MR. SMITH: Every time you hit something

that's not right, just say it, please.
THE WITNESS: That is correct.
BY MR. NADDEO:
Q. My question is, now you have had an opportunity to read the interview as related by Trooper Ray of his conversation with you on June 24, 2004, right?
A. Yes.
Q. Now, let's go through it. Starting at the top of that report, what is the first part that you find to be inaccurate?
MR. FRAMPTON: He said nothing was inaccurate.
MR. NADDEO: I know, but they are implying that it is inaccurate. I'm just trying to find out whether it is or isn't. I know what he said but --
MR. FRAMPTON: I thought I heard it wrong.
MR. NADDEO: That's the way I heard it. I want to give him an opportunity to point out inaccuracies.
THE WITNESS: No.
MR. SMITH: I just want you to be sure, Gary.

THE WITNESS: With Ruskin -- being worded the way it is to being purchased of already purchased and --

BY MR. NADDEO:

Q. There is a section that I've highlighted, I'll note for the record has been highlighted by me, which states that:

> Waroquier said that after talking to his brother, he decided to contact Curry & Associates to have the property surveyed and discovered that the property line did not run where Dressler told him, and he did in fact mine some coal off the victim's property.

A. That is correct.

Q. That is true? Okay.

A. Yes.

Q. So you did contact Curry & Associates?

A. That is correct.

Q. You did ask them to survey the property?

A. That is correct.

Q. As a result of that survey, you determined or Curry & Associates determined that Waroquier Coal had mined coal from Mr. Nelson's

property?

A. That is correct.

Q. Now, I'd like you to carefully read that portion of the report which relates the interview between you and Trooper Ray which took place on 7-28-2004.

A. In the trooper's words of the mining of the Nelson prior to not having the survey, I did not know that I was on Nelson, so at that time I had not moved to the attention -- to mining on Nelson's property yet because of the cut layout.

Q. Before we go into the details of the statement, let me correct something for the record. I indicated that the statement was taken on 7-28-2004. That is not true. That apparently is the date that Trooper Ray prepared the report. The statement, according to the report, was taken on 7-18-04.

A. That is correct.

Q. Would you agree?

A. Yes.

Q. So to be accurate, you spoke to Trooper Ray on July 18, 2004.

A. Yes.

Q. And you do believe that part of his

rendition of your interview is inaccurate?

A. Yes.

Q. What portion is inaccurate? Would you read the inaccurate statement in that report?

A. From the first time that I met the trooper, we had -- did not have the survey done and that is the reason I was saying of -- and he stated that he had no intention of mining the victim's property.

Like I said, I did not know I was to the Nelson property yet, but once the survey was done, found to be on the Nelson property ...

Q. The statement as recorded, or let's say not as recorded, but as related by Trooper Ray is that:

> I asked Mr. Waroquier about what kind of lease he had with the victim to mine on the victim's property.

A. That is correct because I was not aware of the lease, of my brother purchasing --

Q. You've stated that, yeah, you didn't know about the lease until the lawsuit started, right?

A. Yes.

Q. Your brother knew about the lease, but you didn't.

A. That is correct.

Q. He stated, you, that would be the "he," that he does not have a lease. That would be inaccurate?

A. Yes.

Q. I mean if your brother is correct and he was given a lease and if the lease was assigned by Dressler to Waroquier, in fact Waroquier did have a lease.

A. That is correct.

Q. You just weren't aware of it?

A. That is correct.

Q. You were aware that Nelson's property was part of the permit?

A. Yes.

Q. But you didn't know at that point whether or not you had a lease?

A. That is correct.

Q. Would it be fair to say that, in your mind, you intended to get a lease from Nelson when you got to his part of the property?

A. Or look into seeing the permit if there was a lease for it, yes.

Q. Do one or the other, confirm there was a lease or get a lease?

A. Or stop mining.
Q. Now, the next sentence says:
He stated that he had no intention of mining the victim's property.
And you are saying that is not true.
A. That is not true because of not having the proper bonded -- or survey lines were proven to have different tensions to be mined.
Q. Do I understand, and maybe -- I'm not sure I understand your answer, Mr. Waroquier. Are you telling me that you would have mined Mr. Nelson's property at some point, assuming it was permitted at least?
A. That is correct.
Q. So you did intend to mine Mr. Nelson's property at some point?
A. Of what would have been there, yes.
Q. But at the time you were interviewed, it was your belief that you had not entered upon Mr. Nelson's property?
A. That is correct.
Q. So at that point, there was no need to confirm the existence or nonexistence of a lease?
A. That is correct.

Q. The operations map provided to you by Mr. Dressler clearly showed Mr. Nelson's property as being part of the permit?
A. That is correct.
Q. So there's no dispute that somebody contemplated mining Nelson's property?
A. Which he did back in 1999 and throughout some of the years, yes.
Q. And there is no dispute that Waroquier Coal contemplated mining Nelson's property to the extent that any coal was left on that property?
A. That is correct.
Q. So the mixup is on the lease and who knew what when?
A. That is correct.
Q. So now the police --
MR. SMITH: Forgive me. Who knew what when, including the location of that line?
MR. NADDEO: Including -- I'll take that.
Q. Including the location of the property line?
A. Yes.
Q. Now, up to the point when the police arrived on the scene, Waroquier Coal Company had done nothing to survey the lines between Kimble

and Nelson?
A. Between the two interviews, yes, it had been applied to.
Q. Up until the time the police first contacted you.
A. No.
Q. Waroquier had done nothing to survey the line between Kimble and Nelson --
A. No.
Q. -- right?
A. Correct.
Q. Once the police arrived, somebody's antennas went up and thought we had better go survey that line; is that correct?
A. Correct.
Q. That was your antennas that went up?
A. Correct.
Q. You are the one who decided we better get a survey?
A. That is correct.
Q. Up to that point, you were relying on information concerning that line which was supplied to you by Mr. Dressler.
A. That is correct.
Q. So do I understand that, again, at some

point, Mr. Dressler showed you what he believed to be the corners of the Kimble and the Nelson property?
A. One corner.
Q. Which corner did he show you?
A. The one to your left hand.
Q. To my left. That would be the corner to the --
A. Hayes.
Q. -- west of the Nelson property? Yeah. This one here (indicating)?
A. Yes.
Q. Let's just have you mark that. Just put an X or something there to indicate that -- just mark "corner shown by Dressler."
A. (Indicating).
Q. So the corner that we have marked on the map identified as Exhibit 12 is the corner that Mr. Dressler showed you when you first went out to look at the job and transfer the permit, talk about things?
A. That is correct.
Q. How were you going to strip without knowing the other corner?
A. He had told me as long as I did not break

the horizon -- because he had already mined the Nelson side up through, as long as I didn't break the horizon, that I would be all right, or spoil from his old mining site.

Q. As long as you didn't break the horizon or get into the spoil from the old mining site.

A. He had mined on this side of the Nelson (indicating).

Q. But he didn't show you the corner on the east side --

A. No.

Q. -- of the Nelson property?

A. No.

Q. Did you ask him to show you the corner?

A. He told me it wasn't there.

Q. So you did ask him?

A. Yes.

Q. And he said it wasn't there?

A. Yes.

Q. Now, when you go out and there's a corner missing on a property, what do you do? Nothing?

A. Normally I go by the prior person that had the mining engineering done.

Q. Okay. So you would go by the operations map that you had from Mr. Dressler.

A. Yes.

Q. Does the line on Mr. Dressler's operations map deviate or -- strike that.

Is the line on Mr. Dressler's operations map different from the line shown on Exhibit 12?

A. No.

Q. They are the same?

A. Yes.

Q. So if I look at his operations map, his being Mr. Dressler's, I would know where the line is between Nelson and Kimble?

A. That is correct.

(Waroquier Exhibit No. 12 marked for identification, attached hereto.)

BY MR. NADDEO:

Q. Now let's have you tell me what -- can you identify for me the map which has been marked as Exhibit 12.

A. I'm not following the question.

Q. Yeah. Can you tell me what this map is all about, Exhibit 12?

A. This map is of a coal area or of a Kimble and Nelson area mined or non-mined.

Q. Was this the map that you instructed Curry & Associates to --

A. Propose?

Q. Yes, to prepare as a result of the investigation by the Pennsylvania State Police?

A. I don't know how to properly answer that.

Q. I think you told me that after the police contacted you, you thought maybe somebody ought to do a survey.

A. It provided for both parties, Nelson and state police, too.

Q. So you arranged to have a survey done by Curry & Associates.

A. That is correct.

Q. And Exhibit 12 is the product of that survey.

A. That is correct.

Q. True?

A. Yes.

Q. And in addition to preparing a survey of the Kimble and Nelson properties, you asked Curry to also determine the amount of coal removed from Nelson's property by your company?

A. By mining, yes.

Q. And that's part of what you instructed Curry to do?

A. That is correct.

Q. And this map does show the calculations arrived at by Curry in terms of what coal had been removed by Waroquier Coal Company from the Nelson property?

A. That is correct.

Q. I went over those calculations with your brother. I don't think I want to belabor it, but can you tell me what was your understanding as to the amount of coal that Waroquier removed from Mr. Nelson's property? What was the amount you understood was removed?

A. 15-. I don't recall the number.

MR. SMITH: 15,000?

THE WITNESS: I didn't do the tonnages. Like I said, he provided the ...

BY MR. NADDEO:

Q. The 15,000 plus or minus?

A. I guess, yes.

Q. That's your recollection?

A. Yes.

Q. Now, your brother indicated that your company tendered payment for that coal to Mr. Nelson. Maybe -- strike that.

Did your company tender payment for that coal to Mr. Nelson?

A. Not to my knowledge.
Q. You didn't contact Mr. Nelson and say, hey, we did a survey and Curry & Associates has discovered that we took 15,000 tons of coal we didn't realize we took and we'd like to pay you?
A. That was done between Curry and my brother, yes.
Q. So your brother got involved in some effort to pay Mr. Nelson for the coal?
A. To my knowledge.
Q. So you didn't participate in that?
A. Just doing the paperwork.
Q. You just initiated the paperwork to find out how many tons?
A. Yes.
Q. The payment part was left to your brother?
A. Correct.
Q. And I think he testified that part of his job for Waroquier Coal Company is to see that the bills are paid; is that correct?
A. That is correct.
Q. And the bills would include any royalty due to a landowner?
A. That is correct.

Q. So that would be his job?
A. That is correct.
Q. We would expect him to be the one responsible to see that Mr. Nelson got paid as opposed to you?
A. Yes.
Q. Did you and your brother discuss what amount you were going to offer to Mr. Nelson?
A. Whatever the estimated tonnage was of what Curry & Associates estimated.
Q. Yeah, at how much per ton?
A. I don't know. I don't do that.
Q. Don't remember that part?
A. No.
Q. Do you remember when your company completed the Kimble job? When did you finish up in Brady Township?
A. Of mining or reclamation and everything?
Q. Mining, reclamation. Let's start with mining. When did you stop mining?
A. I can't -- once again, I can't tell you. It would be whatever the OSM reports of tonnage reports would have been.
Q. And you heard me ask your brother Joe when the mining stopped.

A. Yes.
Q. I believe he said the third quarter of 2005.
A. Whatever the last tonnage report would have been, yes.
Q. You wouldn't dispute whatever reports you are sending in to OSM?
A. No.
Q. If the OSM report indicates third quarter of 2005, you would agree with that?
A. Yes.
Q. I believe that was your brother's testimony.
A. That is correct.
Q. How about reclamation? When did you complete reclamation?
A. Probably within the following spring or summer.
Q. When you completed the reclamation, did you reclaim your bonds or apply for reclamation of your bond?
A. That is correct.
Q. Have you gotten the bonds back?
A. I can't answer that.
Q. But you've applied?

A. Yes.
Q. Would it be fair to say that Waroquier Coal Company is done with this job?
A. That is correct, or whatever results of the case, I guess.
Q. If you consider the lawsuit to be part of the job, it isn't done, right?
A. Right.
Q. Assuming that the lawsuit is not part of the job, are you done with the job? Forget the lawsuit.
A. I still have some finish reclaiming work, but after that, yes.
Q. You have almost completely reclaimed the property?
A. I don't know where it stands in what stage. It's in at least phase 2, all of 1 or 2, some 3.
Q. But the coal removing part of the job ended in the third quarter of 2005?
A. Correct.
Q. Your brother indicated that a decision was made to mine no additional coal from Mr. Nelson's property until this issue with Mr. Nelson was resolved.

A. **That is correct.**
Q. And did you discuss that decision with your brother?
A. **Yes.**
Q. And did you both agree that it would be best not to mine any additional coal from Mr. Nelson's property until the amount you owed him was resolved?
A. **More or less the way I was told, yes.**
Q. Were you told or is that a joint decision?
A. **It's a joint decision.**
Q. It isn't like your brother told you or you told him, you two sat down and discussed it?
A. **That is correct.**
Q. That seemed to be the prudent course to take when you made the decision?
A. **Yes.**
Q. And that decision was not made until sometime either during or after the police investigation?
A. **Once the survey line had been proven, then that was the end.**
Q. Would the survey line being proven coincide with the date of the map that has been

identified as Exhibit 12?
A. **I'm sorry. I don't see it. Here it says 2003.**
Q. August 11, 2003?
A. **Okay.**
Q. Is that when the line was finally established? Do you consider this map to be the defining moment in terms of the line?
A. **That is of the mapping. I don't know if that is the actual time though. I don't know.**
Q. So it's possible that that line may have been defined sometime prior to the date the map was prepared?
A. **Possible.**
Q. Well, did you rely on the map in terms of establishing the line?
A. **No. The survey was flagged to give us a personal field view of what it was to where it was.**
Q. So it was flagged before the map was prepared?
A. **I would say so.**
Q. Are you familiar with Exhibit 13?
A. **Yes, I am.**
Q. Exhibit 13 is, I guess, a recapitulation

of the average price on a monthly basis of coal mined by Waroquier Coal Company from January of 2001 through December of 2005.
A. **That is correct.**
(Waroquier Exhibit No. 13 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. I think we've had a good explanation of this document, so I don't want to belabor it.
Does your company maintain records of the average selling price of coal on a monthly basis?
A. **That is through the office. My brother.**
Q. That's your brother's part of the duties in terms of the office administrator?
A. **That is correct.**
Q. So whoever would have the sales receipts -- strike that.
If someone would have the sales receipts for January of 2001, it would be your brother Joe, not you?
A. **That is correct.**
Q. So you don't know whether these receipts are still available today or not?
A. **That is correct.**
Q. But you do know that the company

calculates on a monthly basis the average selling price of the coal that goes through your processing plant?
A. **To my knowledge, yes.**
Q. Is the average selling price determined by the value at the processing plant or the value in the pit?
A. **I don't know that.**
Q. I'd have to ask him that?
A. **That is correct.**
Q. I'll show you what has been marked as Exhibit 14 and ask you if you are familiar with that document.
A. **Just today.**
(Waroquier Exhibit No. 14 marked for identification, attached hereto.)
BY MR. NADDEO:
Q. It is titled an Article of Agreement.
A. **Okay. Yes.**
Q. It is dated the 12th day of April, 2003.
A. **That is correct.**
Q. It purports to be an agreement between Albert Nelson and his living trust and Ramm Coal Company?
A. **That is correct.**

Q. And you have never seen this particular document prior to today.
A. No. Well, it might have been in a review. I don't recall.
Q. Are you aware of the suit that's been filed by Waroquier Coal Company against Mr. Nelson?
A. Yes, I am.
Q. Is this particular agreement a part of that suit in the sense that you are suing Mr. Nelson because he leased property to Ramm Coal Company?
A. That is correct.
Q. So you are familiar with the complaint that you filed in the second lawsuit?
A. Yes. That is correct.
Q. You know you sued him?
A. Yes.
Q. You know you sued him because theoretically he leased property to someone else that you claim you already had leased?
A. That is correct.
Q. Do you know that this is the document, what I'll refer to as the second lease?
A. That is correct.

Q. Do I understand that had Mr. Nelson not leased his property to Ramm Coal Company that Waroquier would have continued to mine the Nelson property?
A. It had potention (sic) to do so, yes. It was minable.
Q. That isn't what I asked you. I asked you whether you intended to mine it, not whether it had the potential --
A. Yes, we would have mined it.
Q. You would have mined it?
A. Yes.
Q. In your statement, let me go back to Officer Ray. I think that was your second statement, the one on July 18th, you told Officer Ray that you intended to pay Mr. Nelson for the coal that you had inadvertently removed from his property.
Do you remember telling him that?
A. That is correct.
Q. As we speak today, has Mr. Nelson ever been paid for the coal that was mistakenly taken from his property?
A. Not to my knowledge.
Q. Do you know why he has not been paid?

A. Best of my knowledge, agreement of settlement or tonnage amount misjudgment.
Q. Waroquier Coal knows what your engineer says you took, right?
A. That is correct.
Q. Are you disputing what your engineers calculated?
A. You would have to -- with my brother, I offered the tonnage of what Curry & Associates said we took. As far as money-wise, that's not my involvement.
Q. When you say you had offered it, offered it to whom? I'm not sure what you mean here.
A. I offered the tonnages through Curry & Associates for my brother and Curry & Associates to offer to Nelson.
Q. So as far as you are concerned, you told somebody, either your brother, Curry & Associates or both, to pay Nelson for the 15,000 tons that Curry calculated had been mistakenly removed?
A. I proved to them that I had mined 15,000 tons of Nelson coal.
Q. Did you instruct somebody then to see that Mr. Nelson was paid for that 15,000?
A. For Curry to move it on to my brother or

into the office to be paid to, yes.
Q. But again, to your knowledge, it's never been paid?
A. Not to my knowledge.
Q. It remains unpaid?
A. Not to my knowledge.
Q. Is there any reason why you haven't paid Mr. Nelson the amount that you acknowledge is due?
A. That would have to be brought to my brother's attention.
Q. Just a clarification. The police investigation in this case apparently started in October of 2003.
A. I had been contacted two or three times. Me and the officer did not have -- could not meet.
Q. According to the report, you spoke to Officer Ray in June and July of 2004.
A. I think it was that long from the first contact to the final contact.
Q. Now, Curry & Associates was apparently contacted sometime prior to August 11, 2003.
A. That is correct. That's what it says.
Q. That would be after the police initiated their investigation in October of 2003, correct?
A. Correct.

Q. But --
A. **No.**
Q. This was done before they initiated it. Okay. I guess that's why I'm confusing everybody in the room.
Apparently you talked to Curry before the cops came and knocked at the door.
A. **That is correct.**
Q. Okay. What caused you to have Curry do this investigation before the cops showed up?
A. **There was this question of where we were, that him and I were doing a review and he felt I was close to a line, so we decided -- talked between Curry and I to survey that line.**
Q. So this was an in-house kind of investigation?
A. **I measured it kind of by myself and saw that we were questionable, and I wanted to make sure that we were right. Everything else fell down in the same period of time.**
Q. So you had actually initiated your survey request prior to the time you were contacted by the police?
A. **It was within that time, yeah.**
Q. Was that because of some contact from

Mr. Nelson?
A. **Mr. Nelson had contacted Curry concerned of the property and Curry being -- consulting to us and doing our reports felt we should have it done, and him and I discussed in the field to have it done.**
Q. You had the field survey and the map prepared because Mr. Nelson had complained to Curry & Associates?
A. **To my knowledge, yes.**
Q. Did you ever talk to him yourself?
A. **Mr. Nelson?**
Q. Yes.
A. **No.**
Q. Do you know whether your brother ever talked to Mr. Nelson?
A. **No. I don't know that.**
Q. When did you first meet or make Mr. Nelson's acquaintance?
A. **When we had this first -- the other time when we did this.**
Q. So you never talked to him prior to the last round of depositions?
A. **No.**
Q. I have no further questions.

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EXAMINATION
BY MR. FRAMPTON:
Q. Mr. Waroquier, my name is Tom Frampton. I represent Roger and Miriam Thomas and Ramm Coal. How old are you?
A. **46.**
Q. And you're a high school graduate?
A. **Yes.**
Q. Any education beyond high school?
A. **Two years' exchange.**
Q. What is that?
A. **Two years as of -- an individual school for mining, mechanicking (sic), stuff like that.**
Q. I didn't pick up on what that was. Was that right after high school?
A. **It's a trade school.**
Q. What was the name of that school?
A. **Penn Tech, Williamsport.**
Q. You went there right out of high school?
A. **That is correct.**
Q. And you probably graduated from high school in about 1978 I would guess?
A. **That is correct.**
Q. And you went to Penn Tech for two years?

A. **Yes.**
Q. And then did you come back to Waroquier Coal at that point, say 1980?
A. **That is correct.**
Q. I asked your brother this question. Are you aware of either of the Waroquier entities ever being investigated by the state police or any other police department regarding any alleged removal of coal from an incorrect property other than this particular situation we have here?
A. **No. This is the first one.**
MR. FRAMPTON: Exhibit No. 1.
MR. SMITH: Yes, he has it.
BY MR. FRAMPTON:
Q. I'm showing you what has been marked Deposition Exhibit No. 1 which is an agreement between Roger Thomas and Waroquier Coal Company dated January 18th, 2001.
A. **That is correct.**
Q. You've seen that document obviously?
A. **Yes.**
Q. And you signed it on behalf of Waroquier Coal Company as secretary -- says "secretary of treasurer," but I guess it is secretary/treasurer.
A. **That is correct.**

Q. The agreement between Waroquier Coal Company and Roger Thomas was to pay Mr. Thomas $17 per ton for the drilling, blasting and mining of the lower seam; is that correct?

A. That is correct.

Q. And when we refer to the lower seam, we are referring to the Middle Kittanning; is that right?

A. That is correct.

Q. Your brother indicated there was also an oral agreement made at some time for Mr. Thomas to also drill, blast and mine some of the Luthersburg seam.

A. Yes. Yes.

Q. Was that oral agreement made between you and Mr. Thomas?

A. More or less Mr. Thomas. I think we continued to pay Mr. Thomas the original contract of what he had mined of that upper seam, if I recall. I don't recall exactly.

Q. But that wouldn't be on the terms of the agreement dated January 18, 2001.

A. Explain that again?

Q. It wasn't -- it certainly wouldn't be categorized as the lower seam?

A. No.

Q. It was something other than the lower seam.

A. Yes.

Q. And that was done on an oral basis rather than another written contract?

A. Which was part of the mining, yes.

Q. Are there any other written contracts that exist between Roger Thomas and Waroquier Coal Company for the mining of coal from what we call the Kimble project?

A. Not that I'm aware of.

Q. Any other oral agreements?

A. Not that I'm aware of.

Q. As the field operator, was it your responsibility to tell Mr. Thomas where to take his drag line and what to do?

A. That is correct.

Q. So if he was going in a certain direction, would you say no, we need to go in this direction?

A. That is correct.

Q. And that would have occurred, what, between January of 2001 and the end of September of 2002?

A. Or to whatever point in time that he left. I don't know when that was.

Q. Does August or September of 2002 sound correct?

A. I can't recollect.

Q. Whatever the records would indicate when he was last paid would indicate when he left the job?

A. True.

Q. Did he leave the job because there was a disagreement between him and either you or your brother?

A. No.

Q. Was it just a mutual agreement that he was going to quit working for you?

A. Went there one day and it wasn't there no more is all I can tell you.

Q. He was gone?

A. Yes.

Q. You are not aware of any disagreement?

A. No.

Q. You also have no knowledge of any other oral or written contracts regarding the nature of the work that was to be performed by Mr. Thomas or Ramm Coal?

A. No.

Q. You indicated that sometime in January, I think it was around the 22nd of January, 2001, that there was a meeting out on the site with Mr. Dressler and you were present and that was when he pointed out the pin location.

A. That is correct.

Q. Am I right on my date, around January 22, 2001?

A. Around that, yes.

Q. Was the drag line in place at that point?

A. Yes.

Q. Where, relative to what you believed at the time was the Kimble property versus the Nelson property, was the drag line located?

A. More on the southern end.

Q. Whose property would that be on?

A. I can't honestly answer that because of not having the proper survey when it was mined.

Q. But it was Mr. Dressler who was pointing out where the pin line was?

A. As we stood there, yes.

Q. And he also talked to you something about as long as you stayed in line with the horizon you'd be okay; is that correct?

A. That is correct.
Q. I'm not sure what that means.
A. Because he had already mined to the one side of the permit to where it was already -- the coal had been extracted from it.
Q. I guess what I'm trying to say, I've been involved in different survey issues where you stood and looked at pins and looked at directions. So you are standing on one pin. Unless you know where two pins are, it makes it difficult to know where a straight line is located; is that correct?
A. That is correct.
Q. But as you stood there that day in January of 2001, where the one pin was located and he said if you stay off of the horizon, what did he mean by that as far as property lines?
A. That would be staying on the Kimble property.
Q. Did he point something out in the horizon that was indicative of where the line was, a tree line, a pole line, electric line?
A. As long as I didn't go past where the gas line break or the gas well that was located on the hill.
Q. So there was a gas line on the hill off

in the distance?
A. Gas well and line.
Q. It could be a gas well. And you could stand there and see the gas well?
A. That is correct.
Q. And so he said as long as you stayed to the north of that line, you would be on the Kimble property?
A. To the east of that.
Q. You'd be on the Kimble property?
A. Yes.
Q. Am I right?
A. Yes.
Q. Was Mr. Thomas part of that discussion on January 22, 2001?
A. No, I don't believe so.
Q. And he normally would not have been part of that discussion to point out where the property lines were?
A. No, but he would -- he would be involved or talk with Ruskin or I as we come in and out of the jobs.
Q. Correct. But as the person was drilling, it wasn't his responsibility to know where the line was; is that correct?

A. That is correct.
Q. You were the one directing where to drill?
A. That is correct.
Q. You are aware of the allegations in this complaint, Mr. Waroquier, that there's alleged that there was more coal removed from Mr. Nelson's property than Waroquier's admit to; is that correct?
A. The only thing I have is the tonnage area that Curry said for the coal removal.
Q. You are aware though, from the nature of the complaint, that there is an allegation that there was additional tonnage that was removed from Mr. Nelson's property?
A. I want to say yes.
Q. Relative to that area where it's in dispute as to where the alleged coal was removed, do you have any knowledge whatsoever that Mr. Thomas or Ramm Coal removed any of that coal from the property?
A. From Nelson's?
Q. From the property that's in dispute, the upper level that's in dispute in this lawsuit?
A. Once survey had been done, yes.

Q. Did he actually remove coal from the property and truck it off the property?
A. No. He did not truck coal personally.
Q. Right. Mr. Thomas didn't truck coal, did he?
A. Right.
Q. The only company that was trucking coal off of that property and selling it was Waroquiers; is that correct?
A. That is correct.
MR. SMITH: Objection to the form of that question. It doesn't specify a time frame. It doesn't address what happened before Waroquiers got on there.
MR. FRAMPTON: Good point.
Q. Let's say between January 22, 2001 and 2005. Same question.
A. Yes.
Q. You are aware there's no knowledge that Mr. Thomas ever trucked any coal off that property during that time frame?
A. Not through Waroquier Coal.
Q. Or any other way?
A. Not to my knowledge.
Q. You've testified, in the questions that

were asked previously to you, that there was an -- acknowledged that there was 15,000 tons of coal that was removed from Nelson's property; is that correct?

A. That is correct.

Q. And you also testified that that was never paid to -- no money was ever paid to Mr. Nelson for that coal?

A. To my knowledge, no.

Q. Was some of the money in fact paid to Mr. Kimble that should have been paid to Mr. Nelson?

A. Yes, it was. From what I've been told, yes, because that's who I ordered it to.

Q. Have you and your brother sat down and figured out how much money was, at least in your mind, inappropriately or incorrectly paid to Mr. Kimble?

A. Somewhat, yes.

Q. Do we have a record of that?

A. We only have that because of knowing what was paid in that period of time or for that amount of coal and to what I've been told.

MR. SMITH: Can I interject here? On one of the schedules that's been produced, we show all

the royalties that were paid to Mr. Kimble, override to Mr. Dressler and then the fees to Mr. Thomas's company for his contract mining.

MR. FRAMPTON: I have that.

MR. SMITH: It would be part of those numbers.

MR. FRAMPTON: I want to get to that in a minute.

Q. I guess my question, of the moneys paid to Mr. Kimble, the total I see on that exhibit, is around 54,569.83.

Has there been an independent calculation of what you and your brother believe was incorrectly paid to Mr. Kimble?

A. You'd have to ask him that.

Q. Your brother?

A. Yes.

Q. I think we have copies of this. This is my only copy.

Your attorney is going to look over your shoulder. It was indicated there was a document that was produced. It's a two-page document produced during discovery that lists tonnage which Mr. Thomas was paid on, tonnage which Mr. Dressler was paid on, and tonnage which Mr. Kimble was paid

on; is that correct?

A. Yes.

Q. That's the time frame January 2001 through -- looks like the last payments are August 2005?

A. That is correct.

Q. I guess what I'm trying to be clear on and what I don't understand, maybe it's because I don't know the business, we see the monthly tonnage beginning in, looks like February, February of 2001.

In some of the months, the tonnage is the same that Mr. Thomas would have been paid on and Mr. Dressler would have been paid on and Mr. Kimble was paid on. In other months, it's different. Do you see what I'm saying?

A. You will have to take that up with my brother.

Q. When you come down to the totals, they are different. It would seem to me -- and you are just not knowledgeable about these things?

A. I'm not knowledgeable about that sheet.

Q. I guess I'm asking the wrong person.

I have no further questions.

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FURTHER EXAMINATION

BY MR. NADDEO:

Q. I guess a clarification has been pointed out to me. I asked you if you had met Mr. Nelson prior to this litigation. I think you said no the first time you saw him was at our last deposition.

A. To my knowledge, yes.

Q. Let me ask you a different question. Did you ever talk to him prior to that?

A. Honestly I've been trying to think of that. I can't recall, but I honestly can't answer that. I said no but ...

Q. Yeah. In your statement to Officer Ray you -- in the middle of your page of your first statement:

> Waroquier said that Albert Nelson did call him about the coal being removed from his property and he advised Nelson that he did not mine any of his property.
>
> Do you remember telling Officer Ray that?

A. Like I said, Curry coming upon because Nelson contacting Curry, I can't remember which

direction that went.
Q. So you might have talked to Mr. Nelson?
A. **Whether I talked to him or whether Ron Thornton talked to him from Curry, I don't recollect whether I had a conversation with Mr. Nelson or Mr. Curry.**
Q. We can agree that you conducted, you being Waroquier Coal Company, conducted an investigation of Mr. Nelson's claim prior to the time that you were contacted by the police? You apparently had to have.
A. **By survey, yes.**
MR. NADDEO: That's all. Thank you.

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EXAMINATION

BY MR. DURANT:
Q. Mr. Waroquier, I'm Tim Durant. I represent Ruskin Dressler. I have a couple of questions for you about when you testified Mr. Dressler said he told you he had already mined the coal, you were referring to Exhibit 8. I think that is this map here.
You were looking at Exhibit 8 map at that particular time when you testified to that.
Did he say, did Mr. Dressler say, when he

mined the coal from the Nelson property?
A. **I --**
Q. He said he already mined the coal. Did he say when?
A. **It had to have been before '99.**
Q. So it was on a prior lease, not the lease that brings us to this assignment to you of the permit and so on?
A. **Yes, he did mine upon this permit.**
Q. It was on this permit, but before '99?
A. **No. It was on this permit after '99.**
Q. After '99?
A. **Of this permit.**
Q. So that's not deep mining?
A. **No. He had contract mining of Ramm Coal to mine coal and to do surface mining coal.**
Q. I believe when you spoke to the police officer, the report indicates that there was a discussion about deep mining; was there not?
A. **Yes, sir. In the upper part of the permitted area, there was deep mining from the other prior companies.**
Q. Was that done by Mr. Dressler?
A. **I can't answer that. I think my brother had a name for the coal company that was in there,**

but I can't recall it.
Q. So it's your testimony that Mr. Dressler told you that, before the assignment of the permit to Waroquier, he had mined coal on Nelson property?
A. **Nelson and Kimble. He did not tell me of the Nelson or didn't state it, but he had did prior mining to Nelson and Kimble.**
Q. I thought your testimony was he said he had done it. Now you are saying --
A. **He said he had done it.**
Q. Okay. When did he tell you that -- at what time did he mine on the Nelson property? Based upon what he told you, when did he do that mining on the Nelson property?
A. **Prior to our transfer.**
Q. Prior to January 22, 2001?
A. **Yes.**
Q. You don't know how much prior?
A. **I don't know how many years he had been there prior to us. I mean the permit -- this permit is a '99, and he had been in that area before the '99 is all I can tell you.**
Q. So is it your testimony that he didn't specify when?

A. **No.**
Q. That is your testimony, he didn't specify when; is that right?
A. **That is right.**
Q. And you do not know, independently from any other source, when the mining was done on the Nelson property before you began to mine the Nelson property, before Waroquier began to mine the Nelson property?
A. **No. I don't have any recollection other than whether Ramm Coal had did some prior mining on that area or not before my time. I don't know that.**
Q. When Mr. Dressler showed you the corner that was, I believe, on Exhibit 12, that map, you had marked the corner and made a notation on it.
A. **That is correct.**
Q. When that corner was shown to you by Dressler, that is the Hayes corner, the Hayes end of the Nelson property?
A. **And Kimble corner.**
Q. Hayes and Kimble as they border -- excuse me. Kimble and Nelson as they border Hayes?
A. **That is correct.**
Q. Who else was with you when Mr. Dressler

showed you that?
A. I'm aware that -- I know it was Ruskin, and I don't think Roger from Ramm Coal went with us. I know he was on the site, but whether he was working or with us I don't recall.
Q. So just you and Mr. Dressler?
A. To my knowledge, yes.
Q. And who is the adjoining property owner on the other side, on the east side, of the Kimble-Nelson property?
A. I can't answer that other than what was permitted was the Kimble and Nelson of the east side.
Q. Hayes was on the west side.
A. Yes. This is the Hayes. It was west. Nelson is south and township is north.
Q. So not only did you not know where the east boundary line was, you didn't know who the east adjoining property owner is? You didn't know and you still don't know?
A. No.
Q. On Exhibit 9, which is the one that shows the drill holes, I think that has been referred to as a map prepared in 2001, according to my notes, but I see that it has to have been prepared after

that because it has revisions noted as you -- I think you said in your testimony, you have to look at the revision dates, too.
A. This one was received of the 24th of '05. These revisions are when they come out and revise of making the area smaller for the bonding portions.
Q. So this map that's Exhibit 9 has revision dates of 2-01 --
A. First one is the permit transfer date.
Q. Has 6 which would be June of 2002?
A. For bond conversion.
Q. Has July of 2003?
A. That's the annual revision.
Q. Has September of 2003?
A. Yeah. Another revision or annual whatever. I can't read that other.
Q. Revisions to annual verifications?
A. Okay.
Q. Then there's one of February of 2004 revision for permit renewal, right?
A. Which we have to do every four years or five years.
Q. And there's an -- actually a year later, a February of '05 revision for permit boundary

revision, right?
A. That's what it says. I don't know what --
Q. This map couldn't have been prepared before February of 2005?
A. The knowledge of this map goes clean back to 1999 when the permit was presented by Lee Simpson of the prospector to drill holes that Ruskin Dressler did.
Q. We will get to that in a minute. This says office May 3, 2005. Who was that? Is that your office? Are these notations from Waroquier Coal?
A. I would say that is notations from Curry to Waroquier Coal presenting of that -- what that boundary revision the DEP would request that 6.2 model to be added with the field Exhibit 9 model.
Q. So when that says office 5-3-05, would that be the DEP office? The Curry office?
A. I would think that would go to Waroquier's office.
Q. This map also makes reference to a number of other mine operators on that.
A. Yeah.
Q. Starting with Benjamin and --

A. Yes.
Q. So do you know who drilled those holes that are highlighted by Mr. Naddeo with yellow?
A. I do not know personally, but I would say Ruskin. He would have those holes for his permit by what he did in 1999.
Q. You did not then cause any of those holes to be drilled that are shown on this map?
A. No.
Q. No test holes were drilled by Waroquier Coal or at the instruction of Waroquier Coal?
A. No.
Q. But you can't say for sure who did them; is that right?
A. That is correct.
Q. It could have been any of the mining operations in that area in prior years?
A. If he did the permit himself, he had to do it. If he took it from someone else, someone else did it for him.
Q. Was there ever a written offer, so far as you know, made to Mr. Nelson to resolve the claims for the dispute with regard to the coal?
A. Not to my knowledge.
Q. Was there ever a written demand from

Mr. Nelson to you prior to the lawsuit that you know of?

A. **Like I said, that's not my department. Not to my knowledge.**

MR. DURANT: That's all the questions I have. Thank you.

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EXAMINATION

BY MR. SMITH:

Q. Gary, I think when Attorney Frampton was asking you about the day Dressler showed you the one corner, you made reference to a gas well that was more or less at the other end of this line in question between the Kimble and the Nelson properties.

A. **Yes.**

Q. Do you recall that testimony?

A. **That is correct.**

Q. Is that well marked on any of the maps? For example, you are looking at the map identified by Exhibit No. 9.

A. **Yes. It is on all of them.**

Q. Could you show us, please?

A. **It is located right here.**

Q. How about if I put a red circle around

that one on Exhibit 9.

A. **That is correct.**

Q. So you thought that the line ran what would appear to be in a --

A. **Yeah. This is the point of the horizon here which is the highest point of it and this is the corner with a pin and locator.**

Q. So one of the things this map also shows are topographical contour lines?

A. **That is correct.**

Q. This would be the knob at the top of the hill there?

A. **That is correct.**

Q. So you thought the line ran from the corner that Dressler showed you down to this well, more or less?

A. **What I was verbally told, yes.**

Q. You tried to stay to the north to northeast of that?

A. **That is correct.**

Q. That's all I have for Gary.

(At 3:10 p.m., the deposition was concluded. Signature waived.)

COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF ARMSTRONG)

I, Roberta Swank, Notary Public within and for the Commonwealth of Pennsylvania, do hereby certify that before the taking of the deposition, the said deponent, GARY V. WAROQUIER, was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, and that the above deposition was recorded in stenotype by me and reduced to typewriting under my direction.

I further certify that the reading and signing of the transcript of the deposition were waived by the deponent and by counsel for the respective parties and that the said deposition constitutes a true record of the testimony given by said deponent.

I further certify that I am not a relative or employee or attorney or counsel or financially interested directly or indirectly in this action.

I further certify that the said deposition was taken before me at the time and place specified in the notice.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Kittanning, Pennsylvania, on June 20, 2007.

Roberta Swank

ROBERTA SWANK
NOTARY PUBLIC

NOTARIAL SEAL
Roberta Swank, Notary Public
Kittanning Twp., Armstrong County
My commission expires December 26, 2009

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Yellow [2] - 51:1, 52:2
yourself [4] - 32:1, 53:21, 55:2, 82:11

Z

zero [2] - 40:10, 45:8

OFFICE: 814 765-5681
FAX: 814 765-5185

TIPPLE: 814 765-3492

WAROQUIER COAL, INC.

Coal Producers

P.O. BOX 128
CLEARFIELD, PA. 16830

EXHIBIT
1

January 18, 2001

AGREEMENT

Roger Thomas agrees to contract mine off of the said permit for Ruskin Dressler. Starting this 19 of January 2001, Roger Thomas will be responsible for the drilling, blasting, and mining of the lower seam. Waroquier Coal Co., Inc. will take care of the loading of the coal.

Waroquier Coal Co., Inc. agrees to pay Roger Thomas $17.00 (Seventeen dollars) per ton for the drilling, blasting, and mining of the lower seam.

Roger Thomas will be responsible for any MSHA fines which may accrue in his mining operation.

Waroquier Coal Co., Inc. holds no obligation to Roger Thomas for before, during, and after except for what he has prepared for mining as in drilling and blasting.

ATTEST:

Roger Thomas

WAROQUIER COAL CO., INC

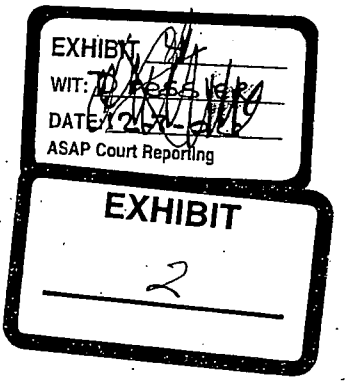
Gary V. Waroquier, Secretary of Treasurer

Def. Waroquiers'
Response to
Item 13d.

OFFICE: 814 765-5681
FAX: 814 765-5185

TIPPLE: 814 765-3492

WAROQUIER COAL, INC.
Coal Producers
P.O. BOX 128
CLEARFIELD, PA. 16830



January 18, 2001

AGREEMENT

This 22 of January 2001, WAROQUIER COAL CO., INC. agrees to resume the permit #17990105 of Ruskin Dressler. We will pay Ruskin Dressler $15,000 (Fifteen Thousand Dollars) for this permit. Also, a payment of an override fee of $1.00 (One Dollar) for each ton of coal mined off of this permit. Settlements in payments of royalty shall be made on the 25th day of each month for all coal mined and removed from the premises during the preceding calendar month and shall be accompanied by a copy of all weight slips showing the number of tons of coal mined and removed.

Waroquier Coal Co., Inc. Agrees to pay Ruskin Dressler $5,000 (Five Thousand Dollar) for the road bond if Brady Township will not refund Ruskin Dresslers moneys for the road bond.

Waroquier Coal Co., Inc. agrees to sell Ruskin Dressler house coal out of this mine at pit price.

Waroquier Coal Co., Inc. will be working under Ruskin Dressler Permit until the transfer for the permit is made. Waroquier Coal Co., Inc. will be responsible for all mining activity through MSHA and DEP Regulations excluding Ruskin Dressler.

Ruskin Dressler is responsible for the up keep of this area and any MSHA fines that may accrue from his area.

In case of death the Royalty of this agreement will go to Bernice V. Oman, RD# 2 Box 231A, Dubois, PA 15801.

January 26th, 2001 Waroquier Coal Co., Inc. is advancing Ruskin Dressler $15,000 (Fifteen Thousand Dollars) on Advance Royalty in which Waroquier Coal Co., Inc. will recoup from the override fee of $1.00 (One Dollar) a ton when mining begins

until sum is collected. After sum is collected all will be based on what is stated in the first paragraph of this agreement.

ATTEST:

RUSKIN DRESSLER

WAROQUIER COAL CO., INC

GARY V. WAROQUIER,
SECRETARY OF TREASURER

NOTARIAL SEAL
TAWNEY J. BOWER, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires September 27, 2004

ER-MR-310: Rev. 3/93

SMP99

EXHIBIT 3

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

COAL SURFACE MINING PERMIT
NO. 17990105

Permittee: W. Ruskin Dressler
Box 39
Rockton, PA 15856

Name of Operation: Kimble

Issuance Date: August 4, 1999

Type of Operation: Surface/Auger

Expiration Date: August 4, 2004

Permitted Seams: Upper Kittanning, Middle Kittanning, Luthersburg & Shale

Township: Brady

County: Clearfield

This approval is subject to the attached LIMITS OF AUTHORIZATION, MANDATED COAL MINING ACTIVITY PERMIT CONDITIONS AND REQUIREMENTS and to:

PART A EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS AND MANDATED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) CONDITIONS AND REQUIREMENTS

PART B SPECIAL CONDITIONS OR REQUIREMENTS

PART C AUTHORIZATION TO MINE

This permit is for 75 acres of which 63 coal acres are planned to be affected. Permittee may conduct surface coal mining activities only on that area of the permit outlined on the Authorization to Mine and accompanying maps contained in Part C of this permit. Initial authority to conduct mining activities is granted for an area of 26.9 acres described in Part C of this permit. Additional authority to conduct mining activities may be granted by written approval of the Department and attached to Part C of this permit. Permittee is prohibited from conducting coal mining activities on that portion of the permit area which has not been authorized for mining by the Department, in writing, and shown on the bond approval and mining authorization map(s) contained in Part C of this permit.

This permit is hereby issued in accordance with the provisions of the Surface Mine Conservation and Reclamation Act, Act of May 31, 1945 (P. L. 1198, No. 418), as amended, 52 P. S. §§1396.1 et seq., and the Clean Streams Law, Act of June 22, 1937 (P. L. 1987, No. 394), as amended, 35 P. S. §§691.1 et seq., The Air Pollution Control Act, Act of January 8, 1960 (1959 P. L. 2119, No. 787), as amended, 35 P. S. §§4001 et seq., and the regulations promulgated pursuant to these Acts. This permit is also issued in accordance with the following statutes and regulations if marked:

EXHIBIT 31
WIT: Dressler
DATE: 12-7-2010

☐ Coal Refuse Disposal Control Act, Act of September 24, 1968, (P. L. 1040, No. 318), as amended, 52 P.S. §§30.51 et seq., and the regulations promulgated pursuant to this Act.

☐ Dam Safety and Encroachments Act, Act of November 26, 1978 (P. L. 1375, No. 325), as amended, 32 P. S. §§693.1 et seq., and the regulations promulgated pursuant to this Act.

■ Air Pollution Control Act, Act of January 8, 1960 (1959 P. L. 2119), No. 787), as amended, 35 P. S. §4001 et seq., and the regulations promulgated pursuant to this Act.

☐ Solid Waste Management Act, Act of July 7, 1980 (P. L. 380, No. 97), 35 P. S. §§6018.101 et seq., and the regulations promulgated pursuant to this Act.

Permittee is hereby authorized to conduct coal mining activities as described in the approved permit application and in accordance with, the laws and regulations and terms and conditions as referenced above. A violation of any provision of these laws and regulations and terms and conditions is a violation of this permit.

BY: _____
Michael W. Smith

Title: District Mining Manager
For the Department of Environmental Protection

WS/hao

LIMITS OF AUTHORIZATION

1. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights.

2. Nothing herein contained shall be construed to be an intent on the part of the Department to approve any act made or to be made by the permittee which is inconsistent with the permittee's lawful powers or with existing laws of the Commonwealth regulating coal mining activities and the practice of professional engineering. This permit shall not be construed to sanction any act otherwise forbidden by federal or state law or regulation, or by local ordinance, not to pre-empt any duty to obtain state or local assent required by law for the coal mining activity.

3. The Permittee's failure to comply with the laws of the Commonwealth and the rules and regulations of the Department regarding coal mining activities, or failure to comply with the terms and conditions of this permit, may result in an enforcement action, in permit termination, suspension, revocation and reissuance, or modification, or in denial of a permit renewal application. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee of any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under the Acts pursuant to which this permit is issued or any other applicable provision of law.

   The permittee is responsible for complying with local ordinances adopted pursuant to the Municipalities Planning Code, and all zoning ordinances in existence before January 1, 1972. Nothing in this permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee may be subject under Federal, State, or Local laws.

5. The Surface Mine Conservation Inspector (SMCI) shall be notified of all proposed changes to the permitted erosion and sedimentation control plan prior to implementation. With the concurrence of the SMCI, minor field adjustments or additions to the permitted erosion and sedimentation control plan can be made as necessary to insure that all runoff is properly controlled. If necessary, all changes to the erosion and sedimentation controls shall be included as changes in the as built engineer's certification submitted to the Department.

MANDATED COAL MINING ACTIVITY PERMIT CONDITIONS
AND REQUIREMENTS
(under 25 PA Code Chapter 86)

1. Except to the extent that the Department otherwise directs in this permit that specific actions be taken, the permittee shall conduct coal mining activities as described in the approved application. 86.41(1)

2. The permittee shall allow the authorized representatives of the Commonwealth without advance notice or a search warrant, upon presentation of appropriate credentials, without delay, to have access to areas in which coal mining activities will or are being conducted. 86.41(2)

3. The permittee shall affect by coal mining activities only those lands specifically approved in the permit for which a bond has been filed with the Department in accordance with Subchapter F (relating to bonding and insurance requirements). 86.41(3)

4. The permittee shall take all possible steps to prevent an adverse impact to the environment or public health and safety resulting from non-compliance with terms or conditions of this permit, including:

   a. Any accelerated or additional monitoring necessary to determine the nature and extent of non-compliance and the results of the non-compliance;

   b. Provicing warning, as soon as possible after learning of the non-compliance, to a person whose health and safety is in imminent danger due to the non-compliance. 86.42(1)

5. The permittee shall conduct the activities in accordance with measures specified in this permit as necessary to prevent environmental harm or harm to the health or safety of the public. 86.42(2)

SMP99

PART A

COAL SURFACE MINING PERMIT NO. 17990105

NPDES PERMIT NO. PA 0238261

Permittee: W. Ruskin Dressler
Box 39
Rockton, PA 15856

Name of Operation: Kimble

Issuance Date: August 4, 1999

Type of Operation: Surface/Auger

Expiration Date: August 4, 2004

Permitted Seams: Upper Kittanning, Middle Kittanning, Luthersburg & Shale

Township: Brady

County: Clearfield

DISCHARGE TO (RECEIVING WATERS): Unnamed tributary to Luthersburg Branch, Luthersburg Branch, amed tributary to LaBorde Branch and LaBorde Branch to the West Branch of the Susquehanna River

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. MINE DRAINAGE TREATMENT FACILITIES DISCHARGING TO: Unnamed tributary "A" to LaBorde Branch.

Outfall Numbers	Latitude	Longitude
TB1	40° 04' 18"	78° 42' 05"

Based on the hydrologic data and anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or revisions, the following effluent limitations and monitoring requirements apply to the above listed outfall numbers.

Exhibit 5: Property Interest/Right of Entry

5.1 Permit Area

a	b	c
(1) Surface: Richard & Nancy Kimble RR #1, Box 234, Liberty, PA 16930 Coal: Same as Surface except for Middle Kittanning Coal - Mary A. Hayes, 6205 W. Rockrose Ln., Florence, MT 49053	Lease	Enclosed
(16) Surface: Albert C. and Charles Hayes Luthersburg, PA 15848 Coal: Same as Surface except for Middle Kittanning Coal - Mary A. Hayes, 6205 W. Rockrose Ln., Florence, MT 40953	Lease	Not Required
(14) Surface: Mary A. Hayes, 6205 W. Rockrose Ln., Florence, MT 59053 Coal: Middle Kittanning Coal Same as Surface	Lease	To be Submitted
(2) Surface: Albert Nelson Trustee Albert L. Nelson, Esq. CEBFA 2400 Koppers Building, Pittsburgh, PA 15219 Coal - Same as Surface	Lease	Enclosed

5.2 Contiguous Area

(4) Surface: Mary Janice Beutel, 5233 Rottstown Rd., Ravenna, OH 44266
Coal: Same as Surface

(19) Surface: Albert C. and Charles Hayes, Luthersburg, PA 15848
Coal: Same as Surface except for Middle Kittanning - Mary A. Hayes

(13) Surface: Robert L. and Ordean V. Welder, RD #1, Box 96, Luthersburg, PA 15848
Coal: Same as Surface.

(10) Surface: Nerissa Broad, RR 1, Luthersburg, PA 15848
Coal: Same as Surface

(9) Surface: Emily Jean Broad, RR #1, Luthersburg, PA. 15848
Coal: Same as Surface

(6) Surface: William F. and Janet C. Matko, 604 Green Glen Drive, DuBois, PA 15801
AND
DuBois Beaver Meadow Field Trial Association, Box 97, DuBois, PA 15801
Coal: Same as surface

ER—MR—10: Rev. 2/84
"Supplemental C"

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

APPL. NO. (Department Use Only)

CONTRACTUAL CONSENT OF LANDOWNER

(I) (We), the undersigned, being the owner(s) of 49.0 acres of land located in Brady Township, Clearfield (Township, Borough, City), _____ County, as described in the deed(s) recorded in the Recorder of Deeds Office Book(s) and page(s) Dsd. Book Vol 1572 Page 148 and shown by crosshatched lines on the map attached hereto which is signed in the original by the landowner upon which W. Ruskin Dressler (Name of Mining Operator) proposes to engage in surface mining activities for which application for permit will be made to the Department of Environmental Resources and of which application this consent will be made a part, *DO HEREBY ACKNOWLEDGE THAT THE MINING OPERATOR HAS THE RIGHT TO ENTER UPON AND USE THE LAND FOR THE PURPOSES OF CONDUCTING SURFACE MINING ACTIVITIES.* Furthermore, (I) (We), the undersigned, do hereby irrevocably grant to the Mining Operator and the Commonwealth of Pennsylvania, the right to enter upon the aforesaid land before beginning the mining activity(ies), during the mining activity(ies) and for a period of five (5) years after the completion or abandonment of the mining activity(ies) for the purposes of inspecting, studying, backfilling, planting and reclaiming the land and abating pollution in accordance with the provisions of the Surface Mining Conservation and Reclamation Act, The Clean Streams Law, and The Coal Refuse Disposal Act, as amended, rules and regulations promulgated thereunder, and the provisions of permit(s) issued to the Mining Operator. (I) (We) do hereby grant in addition to the Commonwealth, for the aforesaid period of time, a right of entry across any ining or contiguous lands owned by (us) (me) in order to have access to the land described herein. specifically agreed and understood that this contractual consent gives the Commonwealth the ght to enter, inspect, study, backfill, plant and reclaim the land and abate pollution therefrom as matter within the police power but does not obligate the Commonwealth to do so, and does not onstitute any ownership interest by the Commonwealth in the aforesaid land.

This Consent shall not be construed to impair any contractual agreement between the Mine perator and the landowner.

(INSERT ADDITIONAL PROVISIONS OR CROSS OUT)

In witness whereof and intending to legally bind (myself) (ourselves), (my) (our) heirs, successors d assigns, (I) (we) have hereunto set (my) (our) hand(s) and seal this 30 day of FEB, 1997.

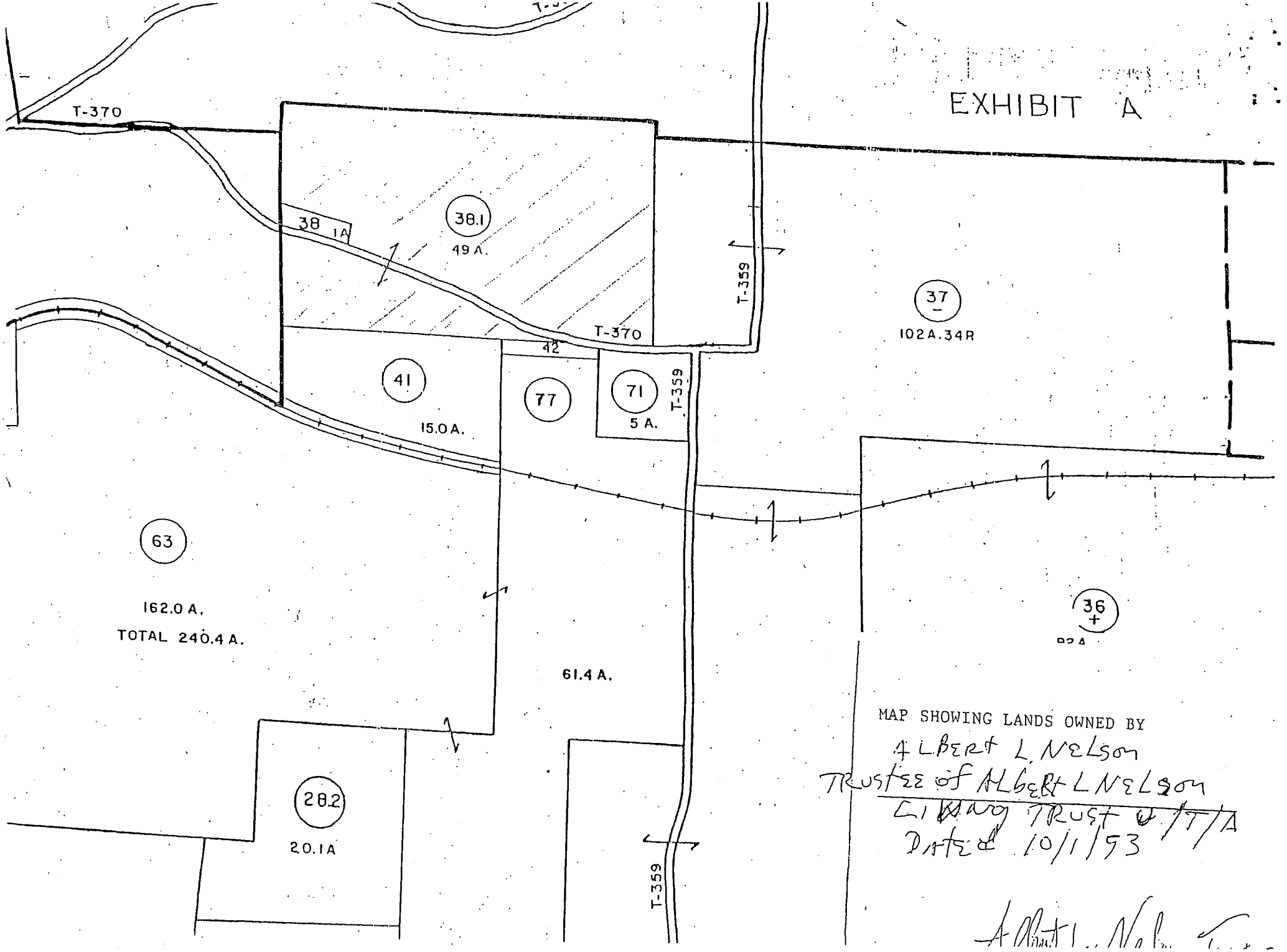
Albert L. Nelson
LANDOWNER Trustee (Print Name)

By: Albert L. Nelson, Trustee
(Signature) (Seal)

(Print Name)

By: _____

REN L. STARCK
TER AND RECORDER
FIELD COUNTY, PA
ennsylvania
STRUMENT NUMBER
9907726
RECORDED ON
23, 1999
:31:31 AM
NG FEES - $13.00
R
IMPROVEMENT $1.00
$1.00
R
MENT FUND $0.50
RIT TAX $15.50


EXHIBIT A
T-370
38.1
49 A.
38 1A
T-370
T-359
37
102A.34R
42
41
15.0A.
77
71
5 A.
T-359
63
162.0 A.
TOTAL 240.4 A.
61.4 A.
36
28.2
20.1A
T-359
MAP SHOWING LANDS OWNED BY
ALBERT L NELSON
TRUSTEE of ALBERT L NELSON
LIVING TRUST U/T/A
Dated 10/1/93

PART C

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

AUTHORIZATION TO MINE
PERMIT NO. 1325-17990105T-01

ermittee: Waroquier Coal Company
P. O. Box 128
Clearfield, PA 16830

ame of Operation: Kimble
Issuance Date: October 16, 2001

ype of Operation: Surface/Auger
Expiration Date: August 4, 2004

Township: Brady

UTH. ID: 348720
County: Clearfield

Permittee is hereby authorized to conduct coal mining activities on lands of Richard L. Kimble and Nancy C. Kimble, Mary A. Hayes, and Albert L. Nelson situated in Brady Township, Clearfield County. Surface owners consent is attested to by inclusion of a properly executed Consent of Landowner form submitted in support of this approval.

Surface coal mining activities are limited to the area designated as Two Tones of Green (support); Brown and Purple (0 to 85 feet, mining);and Blue and Yellow (86 to 115 feet, mining) in the map submitted in support of the request for this Mining Authorization, which covers 38.5 acres.

The maximum allowed depth of pit or height of highwall is 115 feet. The maximum pit dimensions are described by Part B Condition #1.

Bond Description

☐ Original Bond ■ Transfer ☐ Additional Bond ☐ Bond Replacement

■ Surety Bond No. L-072001-17990105-01 in Amount of $94,300.00 dated July 7, 2001 with Lyndon Property Insurance Company as surety.

■ Additional Remarks - Reclamation Fee in the Amount of $1,160.00 supported by Check No. 1772 dated July 26, 2001.

The approved erosion and sediment control facility related to the area to be mined in accordance with this authorization must be constructed in accordance with the approved plan, certified by a professional engineer or land surveyor, and the certification submitted to the Department prior to the commencement of any earth disturbance activities in this area.

24
#17990105

Waroquier Coal Company
Brady Township, Clearfield County

PERMIT99

BONDING INCREMENT SPECIAL CONDITIONS

There will be no blasting on this permit until Module 16 has been approved by this office.

The Supplemental "C", Consent of Landowner, for Richard L. Kimble & Nancy C. Kimble recorded February 23, 1999 at the Clearfield County Court House is filed herein.

The Supplemental "C", Consent of Landowner, for Albert L. Nelson recorded February 23, 1999 at the Clearfield County Court House is filed herein.

Variance to affect within 100 feet of T-384 is supported by the approval letter from Brady Township Supervisors dated June 7, 1999 is filed herein.

ER-MR-310: Rev. 3/93

PERMIT99

EXHIBIT 4

COPY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

COAL SURFACE MINING PERMIT
NO. 17990105

Permittee: Waroquier Coal Company
P. O. Box 128
Clearfield, PA 16830

Name of Operation: [redacted]

Type of Operation: Surface/Auger

Permitted Seams: Upper Kittanning, Middle Kittanning, Luthersburg & Shale

Transfer Date: October 16, 2001
Issuance Date: August 4, 1999

Expiration Date: August 4, 2004

Township: Brady

County: Clearfield

This approval is subject to the attached LIMITS OF AUTHORIZATION, MANDATED COAL MINING ACTIVITY PERMIT CONDITIONS AND REQUIREMENTS and to:

PART A EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS AND MANDATED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) CONDITIONS AND REQUIREMENTS

PART B SPECIAL CONDITIONS OR REQUIREMENTS

PART C AUTHORIZATION TO MINE

This permit is for 75 acres of which 63 coal acres are planned to be affected. Permittee may conduct surface coal mining activities only on that area of the permit outlined on the Authorization to Mine and accompanying maps contained in Part C of this permit. Initial authority to conduct mining activities is granted for an area of 38.5es described in Part C of this permit. Additional authority to conduct mining activities may be granted by written approval of the Department and attached to Part C of this permit. Permittee is prohibited from conducting coal mining activities on that portion of the permit area which has not been authorized for mining by the Department, in writing, and shown on the bond approval and mining authorization map(s) contained in Part C of this permit.

This permit is hereby issued in accordance with the provisions of the Surface Mine Conservation and Reclamation Act, Act of May 31, 1945 (P. L. 1198, No. 418), as amended, 52 P. S. §§1396.1 et seq., and the Clean Streams Law, Act of June 22, 1937 (P. L. 1987, No. 394), as amended, 35 P. S. §§691.1 et seq., The Air Pollution Control Act, Act of January 8, 1960 (1959 P. L. 2119, No. 787), as amended, 35 P. S. §§4001 et seq., and the regulations promulgated pursuant to these Acts. This permit is also issued in accordance with the following statutes and regulations if marked:

Def. Waroquiers'
Response to

- ☐ Coal Refuse Disposal Control Act, Act of September 24, 1968, (P. L. 1040, No. 318), as amended, 52 P.S. §§30.51 et seq., and the regulations promulgated pursuant to this Act.
- ☐ Dam Safety and Encroachments Act, Act of November 26, 1978 (P. L. 1375, No. 325), as amended, 32 P. S. §§693.1 et seq., and the regulations promulgated pursuant to this Act.
- ■ Air Pollution Control Act, Act of January 8, 1960 (1959 P. L. 2119), No. 787), as amended, 35 P. S. §4001 et seq., and the regulations promulgated pursuant to this Act.
- ☐ Solid Waste Management Act, Act of July 7, 1980 (P. L. 380, No. 97), 35 P. S. §§6018.101 et seq., and the regulations promulgated pursuant to this Act.

Permittee is hereby authorized to conduct coal mining activities as described in the approved permit application and in accordance with, the laws and regulations and terms and conditions as referenced above. A violation of any provision of these laws and regulations and terms and conditions is a violation of this permit.

BY: John P. Varner
John P. Varner

Title: Chief, Permit and Technical Services
For the Department of Environmental Protection

JPV/JSB/cav

LIMITS OF AUTHORIZATION

1. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights.

2. Nothing herein contained shall be construed to be an intent on the part of the Department to approve any act made or to be made by the permittee which is inconsistent with the permittee's lawful powers or with existing laws of the Commonwealth regulating coal mining activities and the practice of professional engineering. This permit shall not be construed to sanction any act otherwise forbidden by federal or state law or regulation, or by local ordinance, not to pre-empt any duty to obtain state or local assent required by law for the coal mining activity.

3. The Permittee's failure to comply with the laws of the Commonwealth and the rules and regulations of the Department regarding coal mining activities, or failure to comply with the terms and conditions of this permit, may result in an enforcement action, in permit termination, suspension, revocation and reissuance, or modification, or in denial of a permit renewal application. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee of any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under the Acts pursuant to which this permit is issued or any other applicable provision of law.

4. The permittee is responsible for complying with local ordinances adopted pursuant to the Municipalities Planning Code, and all zoning ordinances in existence before January 1, 1972. Nothing in this permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee may be subject under Federal, State, or Local laws.

5. The Surface Mine Conservation Inspector (SMCI) shall be notified of all proposed changes to the permitted erosion and sedimentation control plan prior to implementation. With the concurrence of the SMCI, minor field adjustments or additions to the permitted erosion and sedimentation control plan can be made as necessary to insure that all runoff is properly controlled. If necessary, all changes to the erosion and sedimentation controls shall be included as changes in the as built engineer's certification submitted to the Department.

MANDATED COAL MINING ACTIVITY PERMIT CONDITIONS
AND REQUIREMENTS
(under 25 PA Code Chapter 86)

1. Except to the extent that the Department otherwise directs in this permit that specific actions be taken, the permittee shall conduct coal mining activities as described in the approved application. 86.41(1)

2. The permittee shall allow the authorized representatives of the Commonwealth without advance notice or a search warrant, upon presentation of appropriate credentials, without delay, to have access to areas in which coal mining activities will or are being conducted. 86.41(2)

3. The permittee shall affect by coal mining activities only those lands specifically approved in the permit for which a bond has been filed with the Department in accordance with Subchapter F (relating to bonding and insurance requirements). 86.41(3)

4. The permittee shall take all possible steps to prevent an adverse impact to the environment or public health and safety resulting from non-compliance with terms or conditions of this permit, including:

   a. Any accelerated or additional monitoring necessary to determine the nature and extent of non-compliance and the results of the non-compliance;

   b. Providing warning, as soon as possible after learning of the non-compliance, to a person whose health and safety is in imminent danger due to the non-compliance. 86.42(1)

5. The permittee shall conduct the activities in accordance with measures specified in this permit as necessary to prevent environmental harm or harm to the health or safety of the public. 86.42(2)

Waroquier Coal Company
Brady Township, Clearfield County

PERMIT99

PART A

COAL SURFACE MINING PERMIT NO. 17990105

NPDES PERMIT NO. PA 0238261

Permittee: Waroquier Coal Company
P. O. Box 128
Clearfield, PA 16830

Name of Operation: Kimble

Type of Operation: Surface/Auger

Permitted Seams: Upper Kittanning, Middle Kittanning, Luthersburg & Shale

Transfer Date: October 16, 2001
Issuance Date: August 4, 1999

Expiration Date: August 4, 2004

Township: Brady

County: Clearfield

DISCHARGE TO (RECEIVING WATERS): Unnamed tributary to Luthersburg Branch, Luthersburg Branch, unnamed tributary to LaBorde Branch and LaBorde Branch to the West Branch of the Susquehanna River

I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. MINE DRAINAGE TREATMENT FACILITIES DISCHARGING TO: Unnamed tributary "A" to LaBorde Branch.

Outfall Numbers	Latitude	Longitude
TB1	40° 04' 18"	78° 42' 05"

Based on the hydrologic data and anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or revisions, the following effluent limitations and monitoring requirements apply to the above listed outfall numbers.

DISCHARGE LIMITATIONS*				MONITORING REQUIREMENTS	
Discharge Parameter	Average Monthly	Maximum Daily	Instantaneous Maximum	Measurement Frequency	Sample Type
Iron	2.1	4.2	4.9	Two Times Per Month When Discharging	Grab
Manganese	1.0	2.0	2.5	"	"
Total Suspended Solids	35.0	70.0	90.0	"	"
Aluminum	0.6	1.2	1.5	"	"

pH not less than 6.0 standard units greater than 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

Unless otherwise indicated, discharge limitations are concentrations and expressed in mg/l and the total (dissolved plus suspended fraction) is applicable for each parameter.

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Samples taken in compliance with the monitoring requirements specified above shall be taken during a discharge at the final outlet from each set of treatment ponds.

B. MINE DRAINAGE TREATMENT FACILITIES DISCHARGING TO: Luthersburg Branch downstream

Outfall No.	Latitude	Longitude
TB2	41° 04' 11"	78° 42' 24"

Based on the hydrologic data and anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or revisions, the following effluent limitations and monitoring requirements apply to the above listed outfall numbers.

DISCHARGE LIMITATIONS*				MONITORING REQUIREMENTS	
Discharge Parameter	Average Monthly	Maximum Daily	Instantaneous Maximum	Measurement Frequency	Sample Type
Iron	3.0	6.0	7.0	Two Times Per Month When Discharging	Grab
Manganese	1.5	3.0	3.75	"	"
Total Suspended Solids	35.0	70.0	90.0	"	"
Aluminum	1.2	2.4	3.0	"	"

pH not less than 6.0 standard units greater than 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

*Unless otherwise indicated, discharge limitations are concentrations and expressed in mg/l and the total (dissolved plus suspended fraction) is applicable for each parameter.

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Samples taken in compliance with the monitoring requirements specified above shall be taken during a discharge at the final outlet from each set of treatment ponds.

C. EROSION AND SEDIMENTATION CONTROL FACILITIES

Outfall Numbers	Latitude	Longitude
A	41° 04' 18"	78° 42' 04"
B	41° 04' 13"	78° 42' 26"

Based on the hydrologic data and anticipated characteristics and flows described in the permit application and its supporting documents and/or revisions, the following effluent limitations and monitoring requirements apply to the above listed outfall numbers.

DISCHARGE LIMITATION*		MONITORING REQUIREMENTS		
Discharge Parameter	Instantaneous Maximum	Measurement Frequency	Sample Type	Reporting Frequency
Iron	7.0	Once a Month When discharging	Grab	Quarterly
Manganese	4.0	"	"	"
Total Settleable Solids	0.5 ml/l	"	"	"

pH not less than 6.0 standard units nor greater than 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

*Unless otherwise indicated, discharge limitations are concentrations and expressed in mg/l and the total (dissolved plus suspended fraction) is applicable for each parameter.

Samples taken in compliance with the monitoring requirements specified above shall be taken during a discharge at the outlet from each sediment control structure.

NOTE: The above discharge limitation and monitoring requirements are based upon the presumption that the erosion and sedimentation control facilities will only discharge as a result of a "precipitation event". If the discharge occurs during "dry weather flow" conditions, then Group A limitations will apply (as defined in 25 PA Code, Chapters 86-90.)

C. OTHER DISCHARGES

At a minimum, any other discharge from areas disturbed by mining activities, including areas disturbed by mineral preparation, processing or handling facilities shall comply with the following discharge limitations and monitoring requirements.

DISCHARGE LIMITATIONS*		MONITORING REQUIREMENTS	
Discharge Parameter	Instantaneous Maximum	Measurement Frequency	Sample Type
Iron	7.0	Once per Month When Discharging	Grab
Manganese	5.0	"	"
tal Suspended olids	90.0	"	"
Aluminum	5.0	"	"

pH not less than 6.0 standard units nor greater than 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

*Unless otherwise indicated, discharge limitations are concentrations and expressed in mg/l and the total (dissolved plus suspended fraction) is applicable for each parameter.

NOTE: The above discharge limitations and monitoring requirements pertain to discharge which may occur unexpectedly, (i.e. were not originally anticipated when this permit was issued). The Department reserves the right to modify these limitations based upon the need to protect water quality in the receiving stream.

II. MANDATED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT CONDITIONS AND REQUIREMENTS

1. CONDITIONS RELATING TO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM REGULATIONS

The following permit conditions implement mandatory Federal National Pollutant Discharge Elimination System (NPDES) requirements of 40 C.F.R. Part 122 and also the mandatory state requirements of 25 PA Code §§87.102(e), 88.92(e), 88.187(e) or 88.292(e) [as applicable to the type of operation], 92.31(g), and 95.1(a).

2. DEFINITIONS

a. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. 122.41(m)(1)(i)

b. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. 122.41(m)(1)(ii)

c. "Average monthly" discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month. 122.2

d. "Maximum daily" discharge limitation means the highest allowable "daily discharge". 122.2

e. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day. 122.2

f. "Average" refers to the use of an arithmetic mean, unless otherwise specified in this permit. 122.41(1)(4)(iii)

g. "Instantaneous Maximum" means the level not to be exceeded at anytime in any grab sample.

h. "Composite Sample" means a combination of individual samples obtained at regular intervals over a time period. Either the volume of each individual sample is proportional to discharge flow rates, or the sampling interval (for constant volume samples) is proportional to the flow rates, over the time period used to produce the composite.

The maximum time period between individual samples shall not exceed two hours, except that for wastes of a uniform nature the samples may be collected on a frequency of at least twice per working shift and shall be equally spaced over a 24-hour period (or over the operating day if flows are of a shorter duration).

i. "Grab Sample" means an individual sample collected at a randomly-selected time over a period not to exceed 15 minutes.

j. "Measured Flow" means any method of liquid volume measurement, the accuracy of which has been previously demonstrated in engineering practice, or for which a relationship to absolute volume has been obtained.

k. "At Outfall XXX" means a sampling location in outfall line XXX below the last point at which wastes are added to outfall line XXX, or where otherwise specified.

l. "Estimate" means to be based on a technical evaluation of the sources contributing to the discharge including, but not limited to, pump capabilities, water meters and batch discharge volumes.

m. "Toxic Pollutant" means any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act. 122.2

n. "Hazardous Substance" means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the Clean Water Act. 122.2

SELF-MONITORING, REPORTING, AND RECORDS KEEPING

a. Representative Sampling

(1) Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. 122.41(j)(1)

(2) Records Retention 122.41(j)(2)

All records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records), copies of all reports required by this permit, and records of all data used to complete the application for this permit shall be retained by the permittee for three (3) years. The three-year period shall be extended as requested by the Department or the Environmental Protection Agency Regional Administrator.

(3) Recording of Results 122.41(j)(3)

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

(i) The exact place, date, and time of sampling or measurements;

(ii) The person(s) who performed the sampling or measurements;

(iii) The date(s) the analyses were performed;

(iv) The person(s) who performed the analyses;

(v) The analytical techniques or methods used; and the associated detection level; and

(vi) The results of such analyses.

(4) Test Procedures 122.41(j)(4)

Unless otherwise specified in this permit, the test procedures for the analysis of pollutants shall be those contained in 40 CFR Part 136, or alternate test procedures approved pursuant to that part.

b. Reporting of Monitoring Results

(1) Monitoring results obtained each month shall be summarized for that month and reported on a Discharge Monitoring Report (DMR). 122.41(1)(4)(i)

(2) The completed DRM Form shall be signed and certified either by the following applicable person (as defined in 40 CFR 122.22(a) or by that person's duly authorized representative (as defined in 40 CFR 122.22(b)):

- for a Corporation - by a responsible corporate officer;
- for a Partnership or Sole Proprietorship - by a general partner or the proprietor, respectively;
- for a Municipality, State, Federal or other public agency - by a principle executive officer or ranking elected official.

Written notification of delegation of DMR signatory authority must be submitted to the Department. 122.41(k)

(3) If the permittee monitors any pollutant, using analytical methods described in B.3.a(4) above, more frequently than the permit requires, the results of this monitoring shall be incorporated, as appropriate, into the calculations used to report self-monitoring data on the DMR. 122.41(1)(4)(ii)

c. Non-Compliance Reporting

(1) 24-Hour Reporting - The permittee shall orally report to the Department within 24-hours of becoming aware of the following:

(a) Actual or anticipated non-compliance with any term or condition of this permit which may endanger health or the environment. 122.41(1)(6)(i)

(b) Actual or anticipated non-compliance with any "maximum daily" discharge limitation which is identified in Part A of this permit as being either: 122.41(1)(6)(ii)(A), 122.41(1)(6)(ii)(C)

(i) A toxic pollutant effluent standard established by EPA pursuant to Section 307(a) of the Clean Water Act.

(ii) A toxic or hazardous pollutant which, if not adequately treated, could constitute a threat to human health, welfare, or the environment, or

(iii) Any pollutant identified as the method to control a toxic pollutant or hazardous substance (i.e. indicator pollutant).

(c) Any unanticipated bypass which exceeds any effluent limitations in the permit. 122.41(1)(6)(ii)(A), 122.41(m)(3)(ii)

Where the permittee orally reports this information within the above mentioned 24-hour time period, a written submission outlining the above information must be submitted to the Department within 5-days of becoming aware of such a condition, unless this requirement is waived by the Department upon receipt of the oral report. 122.41(1)(6)(i) and (iii)

(2) Anticipated Non-Compliance Reporting

(a) The permittee shall give advance notice to the Department of any planned changes to the permitted activity or facility which may result in non-compliance with permit requirements. 122.41(1)(2)

(b) Where the permittee knows in advance of the need for a bypass which will exceed effluent limitations, it shall submit prior notice to the Department at least 10 days, if possible, before the date of the bypass. 122.41(m)(3)(i)

(3) The permittee shall report all other instance of non-compliance which are not reported above, at the time of DMR submission. 122.41(1)(7)

(4) All of the reports and notifications required above shall contain the following information: 122.41(1)(6)

(a) A description of the discharge and cause of non-compliance;

(b) The period of non-compliance, including exact dates and times and/or the anticipated time when the discharge will return to compliance; and

(c) Steps being taken to reduce, eliminate, and prevent recurrence of the non-complying discharge.

d. Specific Toxic Substance Notification Levels - The permittee shall notify the Department as soon as it knows or has reason to believe the following:

(1) That any activity has occurred, or will occur, which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge on a routine or frequent basis will exceed the highest of the following "notification levels": 122.42(a)(1)

(a) One hundred micrograms per liter;

(b) Two hundred micrograms per liter for acrolein and acrylonitrile;

(c) Five hundred micrograms per liter for 2, 4-dinitrophenol and 2-methyl -4, 6-dinitrophenol;

(d) One milligram per liter for antimony;

(e) Five (5) times the maximum concentration value reported for that pollutant in the permit application;

(f) Any other notification level established by the Department.

(2) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification level": 122.42(a)(2)

(a) Five hundred micrograms per liter;

(b) One milligram per liter for antimony;

(c) Ten (10) times the maximum concentration value reported for that pollutant in the permit application;

(d) Any other notification level established by the Department.

4. MANAGEMENT REQUIREMENTS

a. Compliance Schedules 122.47(a), 122.41(1)(5)

(1) Where applicable, the permittee will comply with the schedule identified in this permit relative to NPDES discharge requirements.

(2) The permittee shall submit reports of compliance or non-compliance with, or progress reports as applicable, any interim and final requirements contained in this permit. Such reports shall be submitted no later than 14 days following the applicable schedule date or compliance deadline. 122.47(a)(4)

b. Permit Modification, Termination, or Revocation and Reissuance

(1) This permit may be modified, terminated, or revoked and reissued during its term for any of the causes specified in 25 PA Code, Chapter 92. 122.41(f)

(2) The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated non-compliance, does not stay any permit condition. 122.41(f)

(3) The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time specified in the regulations that establish those standards or prohibitions. 122.41(a)

c. Duty to Provide Information

(1) The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. 122.41(h)

(2) The permittee shall furnish to the Department, upon request, copies of records required to be kept by this permit. 122.41(h)

(3) Other Information - Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information to the Department. 122.41(1)(8)

(4) The permittee shall give advance notice to the Department of any planed physical alterations or additions to the permitted facility.

Such notice is required when:

(i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source, or

(ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit, or are not subject to the toxic substance notification requirements of Part B.3.d.(1) above. 122.41(l(1)

d. Facilities Operation

The permittee shall at all times maintain in good working order and properly operate and maintain all facilities and systems which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes, but is not limited to, adequate laboratory controls including appropriate quality assurance procedure. This provision also includes the operation of backup or auxiliary facilities or similar systems which are installed by the permittee, only when necessary to achieve compliance with the terms and conditions of this permit. 122.41(e)

e. Adverse Impact

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. 122.41(d)

f. Bypassing

(1) Bypassing Not Exceeding Permit Limitations - The permittee may allow a bypass to occur which does not cause effluent limitations to be violated, but only if the bypass is essential for maintenance to assure efficient operation. This type of bypassing is not subject to the reporting and notification requirements of Part B.3.c above. 122.41(m)(2)

(2) Other Bypassing - In all other situations bypassing is prohibited unless all of the following conditions are met: 122.41(m)(4)(i)

(a) A bypass is unavoidable to prevent loss of life, personal injury or "severe property damage"; 122.41(m)(4)(i)(A)

(b) There are no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed (in the exercise of reasonable engineering judgment) to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; 122.41(m)(4)(i)(C)

(c) The permittee submitted the necessary reports required under Part B.3.c above. 122.41(m)(4)(i)(C)

(3) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above: 122.41(m)(4)(ii)

5. PENALTIES AND LIABILITY

a. Duty to Comply 122.41(a), (a)(2), (a)(3)

Failure to comply with the terms or conditions of this NPDES permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(1) The Clean Water Act provide that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under Sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed $25,000.00 per day for each violation. The Clean Water Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402 (a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500.00 to $25,000.00 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000.00 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000.00 to $50,000.00 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000.00 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who know at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000.00 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to criminal penalties of not more than $100,000.00 per day of violation, or imprisonment of not more than 6 years, or both, Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000.00 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000.00 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Clean Water Act, shall, upon conviction of violating the imminent danger provision, b subject to a fine of not more than $1,000,000.00 and can be fined up to $2,000,000.00 for second or subsequent convictions.

(2) Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act. Administrative penalties for Class I violations are not to exceed $10,000.00 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000.00. Penalties for Class II violations are not to exceed $10,000.00 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.00.

b. Falsifying Information

(1) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring devise or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000.00., or by imprisonment for not more than 2 years, or both. If a conviction of such person under this paragraph, punishment is a fine of not more than $20,000.00 per day of violation, or by imprisonment of not more than 4 years, or both. 122.41(j)(5)

(2) The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000.00 per violation, or by imprisonment for not more than 6 months per violation, or by both. 122.41(k)

c. Enforcement Proceedings

It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. 122.41(c)

6. OTHER RESPONSIBILITIES

a. Right of Entry 122.41(i)

Pursuant to Sections 6(b) and 305 of Pennsylvania's Clean Streams Law and 25 PA Code, Chapter 92, and 40 C.F. R. 122, the permittee shall allow the head of the Department, the EPA Regional Administrator, and/or their authorized representatives, upon the presentation of credentials and other documents as may be required by law:

(1) To enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit. 122.41(i)(1)

(2) To have access to and copy at reasonable times any records that must be kept under the conditions of this permit. 122.41(i)(2)

(3) To inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit. 122.41(i)(3)

(4) To sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location. 122.41(i)(4)

b. Transfer of Ownership or Control

NPDES discharge permit requirements may not be transferred unless approved by the Department as a permit modification or revocation and reissuance. 122.61(a), 122.41(1)(3)

c. Property Rights

The issuance of this NPDES permit does not convey any property rights of any sort, or any exclusive privilege. 122.41(g)

d. Renewal of NPDES Permits

Application for renewal of this NPDES permit, or notification of intent to cease discharging by the expiration date, must be submitted to the Department at least 180 days prior to the above expiration date (unless permission has been granted by the Department for submission at a later date). 122.41(b)

Waroquier Coal Company
Brady Township, Clearfield County

PERMIT99

PART B

COAL SURFACE MINING PERMIT NO. 17990105, Revised October 16, 2001

SPECIAL CONDITIONS OR REQUIREMENTS

The following special conditions or requirements are hereby incorporated into the permit and represent permit conditions.

1. Unless otherwise specified and a variance is approved in writing by the Department, only one pit shall be open on this Surface Mining Permit at any time. For Phase I, the length of open pit shall not exceed 1700 feet; and rough backfilling and grading shall not be more than 500 feet from the face of the highwall. For Phase II, the length of open pit shall not exceed 1000 feet; and rough backfilling and grading shall not be more than 400 feet from the face of the highwall.

2. An updated agreement from GPU needs to be submitted and approved by the Department before Phase II can be activated.

3. All potentially toxic or acid forming material identified in Module 10.8 as well as any other carbonaceous material, pit cleanings, or coal refuse shall be handled in accordance with the plan specified in Module 10.9 [page 10-2-1 of application]. In addition, 50 tons per acre high grade limestone is to be added to the pit floor, and again on the rough grade backfill.

4. There shall be no tipple refuse disposed on this Surface Mining Permit area.

5. There shall be no auger mining on this Surface Mining Permit unless and until an Auger Safety Permit is requested by the permittee and approved in writing by the Department.

6. If the operator must use flocculants to meet effluent criteria, those flocculants must be approved for use by the Department prior to their use.

7. All sedimentation and treatment pond discharge points must be stabilized so that runoff leaving the affected area will not start or accelerate erosion or scour within the receiving natural drainageway.

8. All pond inlets must be protected with a durable and stable rock lining for the last 100 feet of the inlet ditch. This lining shall extend down to the elevation of the pond bottom.

9. Before construction of sedimentation ponds, the area downslope of the area to be disturbed must be protected with staked hay bales and filter fence.

10. All sedimentation ponds must have manual dewatering systems.

11. The total maximum disturbed area which has not yet achieved the revegetation standard of at least 70% cover shall not exceed 40 acres. Support areas, such as areas used for sediment ponds and collection ditches, will not be included as part of this 40 acre limitation if those areas have been adequately stabilized with vegetation.

12. All haul roads must be serviced by sediment traps with a spacing not to exceed 200 linear feet along the haul road.

13. The main haul roads must be surfaced with non-erodible, non-toxic materials.

14. Collection channels with channel slopes greater than 5 percent shall be riprapped.

15. All grass lined ditches and sedimentation ponds must be seeded upon completion of the structure. The seed mixture shall consist of both temporary and permanent vegetation types. In addition, no topsoil, subsoil, or spoil shall be placed on the downslope side of any collection ditch.

16. Immediately after backfilling and topsoil distribution, the affected area shall be mulched with hay or straw at a rate of three (3) tons per acre.

~~17. On October 16, 2001 SMP #17990105 is transferred from W. Ruskin Dressler to Waroquier Coal Company.~~

PART C

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

AUTHORIZATION TO MINE
PERMIT NO. 1325-17990105T-01

Permittee: Waroquier Coal Company
P. O. Box 128
Clearfield, PA 16830

Name of Operation: [redacted] Issuance Date: October 16, 2001

Type of Operation: Surface/Auger Expiration Date: August 4, 2004

Township: Brady

AUTH. ID: 348720 County: Clearfield

A. Permittee is hereby authorized to conduct coal mining activities on lands of Richard L. Kimble and Nancy C. Kimble, Mary A. Hayes, and Albert L. Nelson situated in Brady Township, Clearfield County. Surface owners consent is attested to by inclusion of a properly executed Consent of Landowner form submitted in support of this approval.

B. Surface coal mining activities are limited to the area designated as Two Tones of Green (support); Brown and Purple (0 to 85 feet, mining);and Blue and Yellow (86 to 115 feet, mining) in the map submitted in support of the request for this Mining Authorization, which covers 38.5 acres.

C. The maximum allowed depth of pit or height of highwall is 115 feet. The maximum pit dimensions are described by Part B Condition #1.

D. Bond Description

☐ Original Bond ■ Transfer ☐ Additional Bond ☐ Bond Replacement

■ Surety Bond No. L-072001-17990105-01 in Amount of $94,300.00 dated July 7, 2001 with Lyndon Property Insurance Company as surety.

■ Additional Remarks - Reclamation Fee in the Amount of $1,160.00 supported by Check No. 1772 dated July 26, 2001.

E. The approved erosion and sediment control facility related to the area to be mined in accordance with this authorization must be constructed in accordance with the approved plan, certified by a professional engineer or land surveyor, and the certification submitted to the Department prior to the commencement of any earth disturbance activities in this area.

F. The attached sheet contains four (4) additional special conditions or requirements relating to this authorization.

BY: John P. Varner

John P. Varner

Title: Chief, Permit and Technical Services
For the Department of Environmental Protection

cc: Division of Licensing and Bonding
Lyndon Property Insurance Company
Inspector James Parlavecchio
Curry & Associates
Permit File

JPV/JSB/cav

Waroquier Coal Company
Brady Township, Clearfield County

PERMIT99

BONDING INCREMENT SPECIAL CONDITIONS

1. There will be no blasting on this permit until Module 16 has been approved by this office.

2. The Supplemental "C", Consent of Landowner, for Richard L. Kimble & Nancy C. Kimble recorded February 23, 1999 at the Clearfield County Court House is filed herein.

3. ~~The Supplemental "C", Consent of Landowner, for Albert E. Nelson recorded February 23, 1999 at the Clearfield County Court House is filed herein.~~

4. Variance to affect within 100 feet of T-384 is supported by the approval letter from Brady Township Supervisors dated June 7, 1999 is filed herein.

R—MR—3'12:5/84
ept. Use Only
iling Fee
t _____
eceived_____

OPERATOR

(■ Bituminous Coal or Anthracite Coal ☐)

APPLICATION FOR BONDING INCREMENT APPROVAL AND AUTHORIZATION TO CONDUCT SURFACE COAL MINING ACTIVITIES

1325-17990105T-01

Dept. Use Only
No. _____
Bond No. _____

Instructions

portion of the permit area shall be affected by surface coal mining activities unless the operator has provided a bond to the Department l the Department has approved the bond and issued a written authorization to affect such area.

omit the original of this application and three copies. The affidavit must be properly signed and executed.

lude proper bond endorsement documents for the type of bond being used.

t A

plicant Waroquier Coal Company
dress P.O. Box 128
Clearfield, PA 16830
ephone (814) 765-5681

Surface Mining Permit No. 17990105-01
Operation Name Kimble Operation
Municipality Brady Township
County Clearfield

Name of Landowner	*Municipality*	*County*	*Acres to be Affected*
Richard & Nancy Kimble et al.	Brady Township	Clearfield	17.7
ert Nelson Trustee	Brady Township	Clearfield	18.9
y A. Hayes	Brady Township	Clearfield	1.9

t B *Consent of Landowner Form* (check applicable)

The Consent of Landowner Form is attached and it has been recorded with the recorder of deeds.

The Consent of Landowner Form was filed with Bonding Increment and Mining Authorization No. original -01 and it has been recorded with the recorder of deeds.

Not filing Consent of Landowner Form because lease was in existence prior to January 1, 1964 for Bituminous Coal and January 1, 1972 for Anthracite Coal. Operator must provide 1) a true and correct copy of the lease; 2) execute a Consent of Landowner Form as Leasee; and 3) provide a Chain of Title for the Lease. The lease, consent of landowner form, and chain of title have been recorded with the recorder of deeds.

DEPT. OF ENVIRONMENTAL PROTECTION
HAWK RUN DISTRICT OFFICE

ACCEPTED

FEB 13 2001

RECEIVED

FEB 20 2001

HAWK RUN D.E.P.
DISTRICT OFFICE

t C *Map*

ach a copy of Exhibit 9. Operations Map indicating each area where mining authorization has been granted and the area where this bonding ement approval and mining authorization is being requested.

t D *Additional Information*

Have you paid the reclamation fees as required by federal Surface Mining Control and Reclamation Act of 1977 (30 USC 1232)? ___ Yes ___ No

e you revising your erosion and sediment control plan? ___ Yes ___ No
yes, briefly describe the revisions and complete the appropriate modules and submit with this application.

Briefly describe any proposed revisions to the surface mining permit. Include application modules and plans for the revision and professional certification where appropriate. If the revisions are subject to public notice or a stream or road variance is being requested, the proof of publication must be submitted to the Department prior to any mining authorization being granted.

Yes No

Part E

Type of Bond: X Surety ___ Collateral ___ Credit/Rollover* ___ Other (Specify) _____

*Attach rollover authorization from surety company

'D AMOUNT

Highwall Height	Acres	Cost/Acre	Total
0'-85'	17.7	$3,000	$53,100
86'-115'	6.8	$4,000	$27,200
Support Area	14.0	$1,000	$14,000

Amount of Bond Issued To-Date: $ 0

Total Amount of Bond For B.I. -01 : $94,300

Amount of Additional Bond Required : $94,300

Reclamation Fee. Total acres to be bonded 11.6 @ $100 per acre = $1,160**
attach a check payable to the Commonwealth of Pa. for the proper amount)

The Reclamation Fee for the other 26.9 acres was previously paid by W. Ruskin Dressler.

To be completed by the Department

Total Bond Required: $ _____

Credit/Rollover Available: $ _____

Additional Bond Required: $ _____

art F

ame of Applicant or Responsible Official

Gary V. Waroquier

Title and Seal

Partner

ddress Waroquier Coal Company
P.O. Box 128
Clearfield, PA 16830

ffidavit

ommonwealth of Pennsylvania, County of Clearfield I, Gary V. Waroquier

eing duly sworn, according to law, depose and say that I ~~are the applicant~~ (am an officer or official of the applicant) ~~having authority to make~~ this application and that the plans, reports and documents submitted as part of the application are true and correct to the best of my knowledge and belief. I am aware at there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

orn and Subscribed to Before Me This

6th Day of February 2001

Ronald D. Thorp
Notary Public

NOTARIAL SEAL
RONALD D. THORP, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires October 4, 2002

ER-MR-58: 10/93

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF MINING AND RECLAMATION

APPLICATION FOR TRANSFER OF PERMIT

nstructions: Submit the original of this application and two copies to the appropriate District Mining Office. Please type or print the application.

A. Successor Operator (Transferee)

Name Waroquier Coal Company

Mailing Address P.O. Box 128, Clearfield, PA 16830

Telephone No. (814) 765-5781 License No. 1-01400

B. Current Permittee (Transferor)

Name W. Ruskin Dressler

Mailing Address Box 39, Rockton, PA 15856

Telephone No. (814) 583-7288 License No. 1-02513

C. Permit Information (for permit being transferred)

Mine Permit No. 17990105 NPDES No. PA 0238261

Operation Name Kimble Operation

Municipality Brady Township County Clearfield

Were Small Operator Assistance Program (SOAP) funds received for this permit (coal mine permits only)?

■ Yes ☐ No

D. Does this application incorporate the original application submittal (of the prior permittee) as approved by the Department? ■ Yes ☐ No

Dept. of Env. Protection
Hawk Run District Office
FEB 13 2001
RECEIVED

E. Have the following been submitted with this application?

	YES	NO
1. Original Permit Application (as approved by the Department) with appropriate changes to the Application Face Sheet, General Information, Ownership/Compliance Information, Property Interests, Rights of Entry, Maps.	■	☐
2. Proof of Intent to Publish (Note: Proof of publication must be received prior to approval of transfer).	■	☐
Transfer bond(s).	☐	■

ACCEPTED
FEB 20 2001
HAWK RUN D.E.P.
DISTRICT OFFICE

AFFIDAVITS

CURRENT PERMITTEE (TRANSFEROR)

W. Ruskin Dressler, being duly sworn according to law depose and say that I ~~(am the current permittee)~~ (am an officer or official of the current permittee), have the authority to make this Application for Transfer of Permit on behalf of the named current permittee, that current permittee relinquishes all right, title, and interest in said permit, and that the information included in the foregoing application is true to the best of my knowledge and belief. (Cross out inapplicable portions in parentheses only)

W. Ruskin Dressler Owner
(Print Name & Title)

W. Ruskin Dressler
(Signature)

CORPORATE SEAL

COMMONWEALTH OF PENNSYLVANIA
SWORN TO AND SUBSCRIBED BEFORE ME
THIS 26th DAY OF January, 2001

COUNTY OF CLEARFIELD

-SS:

Ronald D. Thorp
(Notary Public)

MY COMMISSION EXPIRES

NOTARIAL SEAL
RONALD D. THORP, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, October 4, 2003

SUCCESSOR OPERATOR (TRANSFEREE)

Gary V. Waroquier, being duly sworn according to law depose and say that I ~~(am the successor operator)~~ (am an officer or official of the successor operator), have the authority to make this Application for Transfer of Permit on behalf of successor operator, that Waroquier Coal Company assumes all
Name of Successor Operator

liability for reclamation, water pollution, planting, and all other responsibilities under the law, the rules and regulations, and the terms and conditions for the permit from the date of original issuance, and that the information included in the foregoing application is true to the best of my knowledge and belief. (Cross out inapplicable portions in parentheses only)

Gary V. Waroquier Partner
(Print Name & Title)

Gary V. Waroquier
(Signature)

CORPORATE SEAL

COMMONWEALTH OF PENNSYLVANIA
SWORN TO AND SUBSCRIBED BEFORE ME
THIS 26th DAY OF January, 2001

COUNTY OF CLEARFIELD

SS:

Ronald D. Thorp
(Notary Public)

COMMISSION EXPIRES

NOTARIAL SEAL
RONALD D. THORP, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, October 4, 2003

ER-MR-311: Rev. 9/93

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF MINING AND RECLAMATION

(For Official Use Only)
17990105-Transfer

APPLICATION
BITUMINOUS SURFACE MINE

Application for Surface Mining Permit pursuant to "The Clean Streams Law", the "Surface Mining Conservation and Reclamation Act", and the "Coal Refuse Disposal Control Act".

Applicant Waroquier Coal Company
Address P.O. Box 128
Clearfield, PA 16830

Telephone No. (814) 765-5681
License No. 1-01400
Application Date February, 2001
Operation Name Kimble Operation
MSHA Mine I.D. No. 36-06586
MSHA Pit No.

Name and address of public office where a copy of this application is on file for public inspection
D.E.P.
Hawk Run District Office
P.O. Box 209
Hawk Run, PA 16840-0209

Name, address and telephone number of person who will accept service of process
Gary V. Waroquier
P.O. Box 128
Clearfield, PA 16830
(814) 765-5681

Dept. of Env. Protection
Hawk Run District Office
FEB 13 2001
RECEIVED

Type of Application

☐ New ☐ Revision ■ Transfer

Reclamation Fee - Have you paid all reclamation fees as required by the Federal Surface Mining Control and Reclamation Act of 1977 (30 USC 1232)? ■ yes ☐ no

This Application is for the following type of mining activity (check all appropriate types)

- ■ Surface Mining
- ☐ Coal Refuse Reprocessing Surface Mining
- ■ Auger Mining
- ☐ Coal Refuse Disposal
- ☐ Coal Preparation Plant/Processing Facility
- ☐ Other (specify)

Location of Operation:

Municipality Brady Township

County Clearfield
U.S.G.S. Map Name(s) Luthersburg 7½-Minute
Map Coordinates (center of proposed permit area)
Latitude 41 ° 04 ' 11 "
Longitude 78 ° 42 ' 08 "
Receiving Streams Unnamed Tributary to Luthersburg Branch, Luthersburg Branch, Unnamed Tributary to LaBorde Branch to LaBorde Branch.

ACCEPTED
FEB 20 2001
HAWK RUN OFFICE
DISTRICT

Affidavit
Commonwealth of Pennsylvania, County of CLEARFIELD

I, Gary V. Waroquier being duly sworn, according to law, deposes and says that I (~~am the applicant~~) (am an officer or official of the applicant) (~~have the authority to make this application~~) and that the plans, reports and documents submitted as part of the application are true and correct to the best of my knowledge and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Sworn and Subscribed to Before Me This
6th Day of February 2001

Ronald D. Thorp
Notary Public

NOTARIAL SEAL
RONALD D. THORP, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, October 4, 2003

Gary V. Waroquier
Signature of Applicant or Responsible Official

Gary V. Waroquier
Name (Typed)

P.O. Box 128, Clearfield, PA 16830
Address

Partner
Title and Seal

Module 3: Ownership/Compliance Information

Instructions: Provide the following information on an 8½ x 11 sheet of paper. Attach the page(s) to this module and identify as *Exhibit 3: Ownership/Compliance Information.* Use number, letter, and heading to identify information.

3.1 *Applicant.* Applicant's name, address and telephone number.

3.2 *Ownership Interest.* Identify whether the applicant is a single proprietorship, corporation, partnership, association, or other business entity. For businesses other than single proprietorships provide the following:

a) names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;

b) name and address of any person who is a principal shareholder of the applicant; (Note: A principal shareholder is any person who is the legal owner of ten percent or more of any class of voting stock.) and,

c) names under which the applicant, partner, or principal shareholder previously operated a coal mining operation in Pennsylvania and the United States within the five years preceding the date of this application.

3.3 *Contractor.* If a contractor will be conducting the operation provide the name, address and telephone number of the contractor and if the contractor is a business entity other than a single proprietor, provide the names and addresses of the respective principals, officers, and resident agents.

3.4 *Permit Interests.* Identify by permit or application number and regulatory authority any current or previous coal mining permits in Pennsylvania and the United States held by the applicant for the five year period immediately preceding this application and of any pending permit application to conduct coal mining activities in the United States.

3.5 *Compliance.* Identify any State or Federal mining permit or bond in the last five year period prior to the date of submission of this application that the applicant or any related party had suspended, revoked or forfeited. (Note: Any related party is any partner, associate, officer, parent corporation, subsidiary corporation, affiliate or persons under common control with the applicant, contractor or subcontractor.) Identify the suspension, revocation, or forfeiture by:

a) identification number and date of the issuance of the permit or date and amount of bond or similar security;

b) identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reason for that action;

c) the current status of the permit, bond or similar security involved;

d) the date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

e) the current status of these proceedings.

3.6 *Violation History.* List each violation for which the applicant has been found responsible in any adjudicated proceeding, agreement, consent order or decree, or which resulted in a cease order or an assessment of a civil penalty notice received by the applicant in connection with any coal mining activities during the 3-year period prior to the date of application. Only list the violations of the Acts or the Federal Surface Mining Control and Reclamation Act of 1977 and any law, rule or regulation of any department or agency of the United States or of any state in the United States pertaining to environmental protection. For each violation notice, provide the following:

a) the date of issuance and identity of the appropriate regulatory authority, department, or agency;

b) permit number, compliance order number and a brief description of the particular violation;

c) the date, location, and type of any administrative or judicial proceedings initiated concerning the violation;

d) the current status of the violation; and

e) the actions, if any, taken by the applicant to abate the violation, and proof which is satisfactory to the regulatory authority, department, or agency which has jurisdiction over such violation that the violation has been corrected, or is in the process of being corrected.

MODULE 3: Ownership/Compliance Information

3.1 Applicant

Waroquier Coal Company
P.O. Box 128
Clearfield, PA 16830
(814) 765-5681

3.2 Ownership Interest

a.

Waroquier Coal Company is a Partnership registered in the state of Pennsylvania whose partners include:

Joseph L. Waroquier, Jr.
P.O. Box 128
Clearfield, PA 16830

Gary V. Waroquier
P.O. Box 128
Clearfield, PA 16830

b.

The principal shareholders of the partnership are listed above.

c.

The individuals listed above have also operated coal mining operations under Southwest Reclamation, Inc. and Tamburlin Coal Company

3.3 Contractor

The following contractor will initially be mining on this site:

RAM Coal
Owners: Roger A. & Miriam R. Thomas
R.D. #1, Box 16
Rockton, PA 15856
(814) 583-7625
License No. 8-00417

3.4 Permit Interests

Listed below are the SMP numbers of the sites Waroquier Coal Company has active:

17820110	17900105	17930122
17840138	17980118	17960115
17850125	17850140	17950106
17880106	17920108	33970105
17880116	17930114	33970102
17880126		

3.5 Compliance

Waroquier Coal Company has never had a permit suspended, revoked or forfeited.

3.6 Violation History

a. June 14, 1994 by Bureau of Mining and Reclamation, DER under Enforcement Order Docket #94-4-059;

b. SMP #1101400-17880106; Proud Operation; Pike Township, Clearfield County – Failure to maintain sediment control measures;

c. None.

d. Abated on June 20, 1994

e. Corrected within abatement area.

Public Notice

Pursuant to the "Surface Mining Conservation and Reclamation Act" and the "Clean Streams Law", notice is hereby given the Waroquier Coal Company, doing business at P.O. Box 128, Clearfield, PA 16830 has made application to the Pennsylvania Department of Environmental Protection for transferring the existing permit application from W. Ruskin Dressler.

The 79.0 acre operation, known as the Kimble Operation, SMP #17990105, is located in Brady Township, Clearfield County north of Township Road T-379 approximately 1 mile northeast of Luthersburg on the properties of Albert Nelson Trustee, Mary A. Hayes, Albert C. and Charles Hayes and Richard Kimble, et al. The area is located on the Luthersburg U.S. Geologic Survey 7½ Minute quadrangle map 12.5 inches north and 10.7 inches west from the bottom right hand corner of the printed area of the map. Treated waste waters will be discharged into unnamed tributaries to LaBorde Branch, LaBorde Branch, unnamed tributary to Luthersburg Branch and Luthersburg Branch.

The application includes a variance request to conduct surface and auger mining activities within 100 feet of the right-of-way lines of T-384, including the construction of a roadway protection berm being approximately 260 feet in length, the construction of collection ditch C-1 for approximately 960 feet and the construction of a haul road into the mining site. The area to be affected for the construction of haul road is located on the south side of T-384 approximately 1450 feet west of the intersection of T-384 and T-380. Collection ditch C-1 begins approximately 1790 feet west of the intersection and extends westward along T-384 for 960 feet. The protection berm begins approximately 2490 feet west of said intersection and extends westward along T-384 for 260 feet.

A copy of the application is available for public inspection at the D.E.P., Hawk Run District Office, P.O. Box 209, Hawk Run, PA 16840. Written comments, objections and requests for public hearing or informal conference may be submitted to the District Mining Manager, Hawk Run District Office at the above address no later than thirty (30) days following the final publication date of this notice and must include your name, address, telephone number and a brief statement as to the nature of the objection(s).

Option and Lease Agreement

5

THIS ARTICLE OF AGREEMENT made and concluded this ..... day of 19 96,
between ALBERT L. NELSON, Trustee of THE ALBERT L NELSON LIVING TRUST ~~LESSOR~~
1149 South Main Street, DuBois, PA 15801
U/T/A DATED 10/1/93

party of the first part, hereinafter designated as Lessor, and W. RUSKIN DRESSLER, of Box 39, Rockton, Pennsylvania, 15856 party of the second part, hereinafter designated as Lessee, witnesseth:

1. In consideration of the sum of $ 1.00 in hand paid, receipt whereof is hereby acknowledged, Lessor hereby leases, lets, and demises unto Lessee, ALL of the surface ~~of~~ mineable of ginger seam or vein of coal in, under and upon all that certain piece, parcel or tract of land situated in Brady Township, Clearfield County, Pennsylvania, bounded and described as follows:

North - Kimble
East - Crescent Brick Division of RESCO Products, Inc.
South - Crescent Brick Division of RESCO Products, Inc. and Broad
West - Jacob D.Hayes Deed Book Vol 1572 Page 148
Recorded 11-30-93

containing 49.0 acres, more or less.

TOGETHER with all the mining rights and easements owned by Lessor and appurtenant to the coal and land herein described, including the right of ingress, egress, and regress, in, to and upon said land for the purpose of exploring for and of mining, manufacturing, testing and preparing said coal for market, to build roads, railroads and tram roads, to build buildings, tipples and chutes, to deposit waste material and refuse on the surface of the land, to build wire and pipe lines, to drain water upon the surface by any means, to transport coal from other properties through or over this premises and to do all things necessary, usual and proper in connection with said operations, and Lessor hereby waives all right to surface support, both laterally and subjacent, and releases all liability for damage to buildings and objects thereon and waters therein and thereon. Said coal may be removed either by drift mining or stripping process and all of the usual rights and privileges are hereby granted in connection therewith including the removal and redeposit of all strata and other objects and materials overlying said coal, to be exercised without further cost or liability for the damage caused thereby.

ALSO TOGETHER WITH: XXXX

EXCEPTING AND RESERVING: XXXX

EXHIBIT 5

2. Lessee covenants and agrees to pay to Lessor the sum of Two Dollars ($2.00) ~~XXXX~~ per ton of 2,000 pounds for all mineable merchantable and marketable coal mined and removed from said premises. Settlements to be made on the twenty-fifth day of each month for all such coal mined and removed from the premises during the preceding calendar month and all settlements shall be based upon the weights by which the coal is marketed. It is further understood and agreed that Lessee will pay ten (10%) percent of pit price or $2.00 per ton, whichever is greater.

3. Lessee covenants and agrees to commence mining operations upon said premises within three (3) years from the effective date of this lease and in event of failure so to commence mining operations agrees to pay Lessor as a minimum royalty the sum or price of XXX per year, payable quarterly in advance.

4. Lessee agrees that all mining operations shall be conducted in accordance with the laws of Pennsylvania and modern mining methods prevailing in the industry. It is also understood that Lessor shall have access to the operations and scale records of Lessee at all reasonable times in person or by duly authorized agent.

5. This lease shall continue for a period three (3) years from the effective date hereof, or until all of the mineable and merchantable coal has been exhausted from the premises. Lessee may remove all equipment, buildings and machinery from the premises at the end of the term provided no royalty is then due.

6. This article of agreement shall constitute and be construed an option granted by Lessor to Lessee so that Lessee may elect to accept or reject it at any time during XXX days from the date hereof. Upon acceptance this instrument shall become immediately effective in all its terms as a lease of the coal in place. During the option period Lessee may go upon the premises for the purpose of surveying, drilling, digging, exploring, testing, taking samples, and otherwise examining said coal, without liability for the damage, caused thereby or for the coal taken in such explorations. Lessee may exercise this option by notifying Lessor in writing of its elections to do so within the option period aforesaid.

7. It is understood and agreed that in the event that Lessee should default in any payment provided for herein and remain in such default for a period of ninety days from the date when said payment becomes due, or should Lessee be in default in any other respect and continue in such default for a period of ninety days after being notified in writing of such default by Lessor, then, in either event, at the option of Lessor, this lease shall cease and terminate and Lessee hereby authorizes any attorney of any Court of Record to appear for it and in its name to confess a judgment against it in an amicable action of ejection to the end that a writ of habere facias possessionem may issue forthwith for the delivery of possession to Lessor, together with clause of fieri facias for rent in arrears and costs.

8. It is further understood and agreed that XXX

9. It is mutually understood and agreed that the rights, duties and obligations created hereby shall extend to and be binding upon the parties, their heirs, executors, administrators and assigns, and that the singular herein shall include the plural.

10. Lessor hereby warrants generally the title to said coal and mining rights and this lease shall be free and clear of all encumbrances except those for which waiver and consent hereto is obtained and Lessee may in all cases apply royalty payments to the satisfaction of such encumbrances as may be found to exist.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals and caused this article of agreement to be duly executed by their officers, the day and year aforesaid.

Witness:

Dawn Egan

MARILYN

(Albert L. Nelson) Lessor, Trustee (Seal)

DITTO (Seal)

(Seal)

(Seal)

(Seal)

W. Ruskin Dressler (Seal)

(W. Ruskin Dressler) Lessee

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD } ss:

On this 3rd day of FEBRUARY 1997, before me, a NOTARY Public in and for the County of CLEARFIELD and State of Pennsylvania, came the above named ALBERT L. NELSON

who in due form of law acknowledged the foregoing Article of Agreement to be HIS act and deed, and desired the same to be recorded as such.

Witness my hand and OFFICIAL seal the day and year aforesaid.

Andrew L Booth

My Commission Expires

Notarial Seal
Andrew L. Booth, Notary Public
DuBois, Clearfield County
My Commission Expires Oct. 14, 1997
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Clearfield } ss:

On this 3rd day of FEBRUARY, 1997, before me, a NOTARY Public in and for the County of CLEARFIELD and State of Pennsylvania, came the above named W. Ruskin Dressler

who in due form of law acknowledged the foregoing Article of Agreement to be his act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

Andrew L Booth

My Commission Expires

Notarial Seal
Andrew L. Booth, Notary Public
DuBois, Clearfield County
My Commission Expires Oct. 14, 1997
Member, Pennsylvania Association of Notaries

6

DEP Office Copy

-MH-10: Rev. 2/84
upplemental C

COMM. WEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

MAR 25 1999

APPL. NO. (Department Use Only)

RECEIVED
MAR 2 1999
PA DEP
DISTRICT OFFICE

CONTRACTUAL CONSENT OF LANDOWNER

(I) (We), the undersigned, being the owner(s) of 49.0 acres of land located in Brady Township, Clearfield, County, as
(Township, Borough, City)

scribed in the deed(s) recorded in the Recorder of Deeds Office Book(s) and page(s) 'ssd Book Vol 1572 Page 148 and shown by crosshatched lines on the p attached hereto which is signed in the original by the landowner upon which
W. Ruskin Dressler proposes to engage in surface
(Name of Mining Operator)

ıing activities for which application for permit will be made to the Department of Environmental sources and of which application this consent will be made a part, *DO HEREBY ACKNOWLEDGE 'AT THE MINING OPERATOR HAS THE RIGHT TO ENTER UPON AND USE THE LAND FOR THE RPOSES OF CONDUCTING SURFACE MINING ACTIVITIES.* Furthermore, (I) (We), the undersigned, hereby irrevocably grant to the Mining Operator and the Commonwealth of Pennsylvania, the right enter upon the aforesaid land before beginning the mining activity(ies), during the mining activi- es) and for a period of five (5) years after the completion or abandonment of the mining activi- es) for the purposes of inspecting, studying, backfilling, planting and reclaiming the land and abating lution in accordance with the provisions of the Surface Mining Conservation and Reclamation Act, e Clean Streams Law, and The Coal Refuse Disposal Act, as amended, rules and regulations pro- lgated thereunder, and the provisions of permit(s) issued to the Mining Operator. (I) (We) do hereby n addition to the Commonwealth, for the aforesaid period of time, a right of entry across any ng or contiguous lands owned by (us) (me) in order to have access to the land described herein. s specifically agreed and understood that this contractual consent gives the Commonwealth the ıt to enter, inspect, study, backfill, plant and reclaim the land and abate pollution therefrom as natter within the police power but does not obligate the Commonwealth to do so, and does not ıstitute any ownership interest by the Commonwealth in the aforesaid land.

This Consent shall not be construed to impair any contractual agreement between the Mine erator and the landowner.

SERT ADDITIONAL PROVISIONS OR CROSS OUT)

EXHIBIT
6

In witness whereof and intending to legally bind (myself) (ourselves), (my) (our) heirs, successors assigns, (I) (we) have hereunto set (my) (our) hand(s) and seal this 3rd day Feb, 1997.

Albert L. Nelson
LANDOWNER Trustee (Print Name)

By: Albert L. Nelson, Trustee
(Signature) (Seal)

(Print Name)

DEP office Copy

ACKNOWLEDGEMENT OF INDIVIDUALS OR PARTNERS

LAND OWNER

1793105

E OF PA. :
: SS
ITY OF CLEARFIELD :

n FEB 3 1997, before me, the undersigned Notary, personally appeared
ALBERT L NELSON
(Name(s))

n to me (or satisfactorily proven) to be the person whose name is subscribed to this instru-
and who acknowledged that HE
(he, she or they)

ited the same and desires it to be recorded.

N WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notarial Seal
Homer D. Edner, Notary Public
DuBois, Clearfield County
My Commission Expires Nov. 20, 2000
Member, Pennsylvania Association of Notaries

) Notary Public My Commission Expires: (date)

ACKNOWLEDGEMENT OF CORPORATIONS

LAND OWNER

Dept. of Env. Protection
Hawk Run District Office
MAR 25 1999 ACCEPTED
RECEIVED MAR 25 1999
HAWK RUN D...
DISTRICT OFFICE

E OF :
: SS
TY OF :

n _____, before me, the undersigned Notary, personally appeared _____,

cknowledged (herself) (himself) to be the _____ of
(Title of Person)

_____, a
(Name of Corporation)

ation, and the (s)he, as such officer, being authorized to do so, executed the foregoing in-
ent on behalf of the said corporation and desires that this instrument be recorded.

I WITNESS WHEREOF, I have hereunder set my hand and official seal.

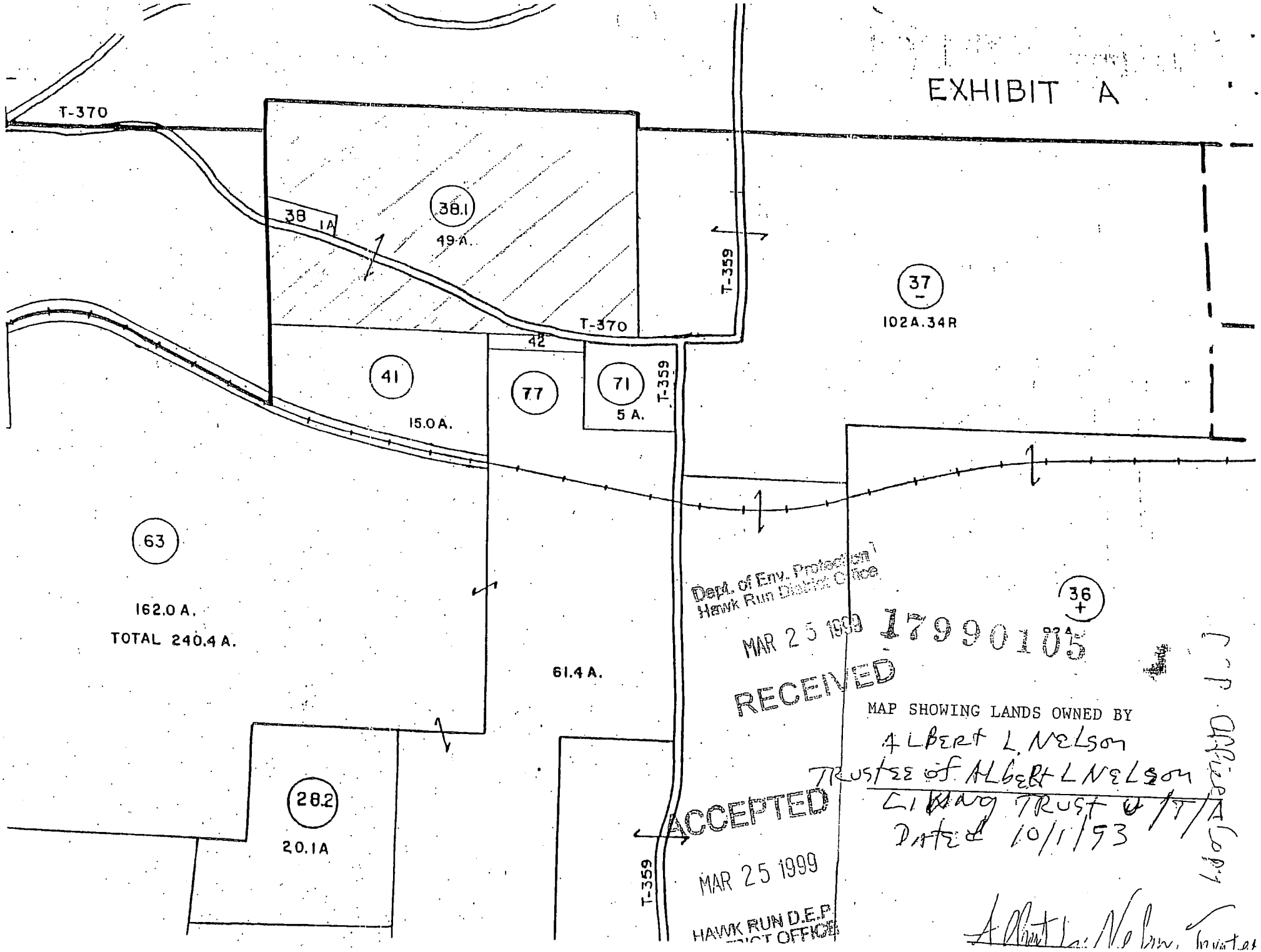
) _____ My Commission Expires: _____
Notary Public (date)

This instrument has been recorded in Clearfield
County, Pennsylvania, this 23rd day of February,
19 99, at Book Inst # 199902726, Page (s) 5.

RECORDER OF DEEDS

Karen L Starck
(Signed) (Print Name)

EXHIBIT A



Dept. of Env. Protection
Hawk Run District Office
MAR 25 1999
RECEIVED

17990105

ACCEPTED
MAR 25 1999
HAWK RUN D.E.P.
DISTRICT OFFICE

MAP SHOWING LANDS OWNED BY
ALBERT L. NELSON
Trustee of ALBERT L NELSON
LIVING TRUST U/T/A
Dated 10/1/93

Albert L. Nelson, Trustee

EXHIBIT

7

Waroquier Coal Company
P.O. Box 128
Clearfield, PA 16830

July 14, 2003

Albert L. Nelson, Esq.
1149 South Main Street
DuBois, PA 15801

Dear Mr. Nelson:

As a requirement of our mining permit, this letter is to notify you about reclamation completed on your property during the last twelve months. Reclamation during the past year includes the following:

16.0 acres backfilled and graded to approximate original contour;
Establishment of drainage controls;
10.0 acres of topsoil replacement and establishment of permanent vegetation;

You must contact the Hawk Run District Mining Office within fifteen (15) days of receipt of this letter if you wish to have the Department make a formal determination on the adequacy of the reclamation. You may have the right to appeal the Department's formal determination. The address for the Hawk Run District Office is P.O. Box 209, Empire Road, Hawk Run, PA 16840. The phone number is (814) 342-8200.

Signed,

Joseph L. Waroquier, Jr.
Waroquier Coal Company

EXHIBIT

12 A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ALBERT L. NELSON,
an individual,
Plaintiff,

vs.

WAROQUIER COAL,
and
JOSEPH L. WAROQUIER, JR. and
GARY V. WAROQUIER, individually
and co-partners t/d/b/a
WAROQUIER COAL COMPANY,
and
WAROQUIER COAL COMPANY,
a partnership,
and
WAROQUIER COAL COMPANY, INC.
A Pennsylvania corporation,
Defendants.

No. 05 - 1842 - CD

Jury Trial Demanded

MAR 28 2007

COPY

NOTICE

TO: Commissioner of State Police
1800 Elmerton Avenue
Harrisburg, PA 17112

You are required to complete the following Certificate of Compliance when producing documents or things pursuant to Subpoena.

CERTIFICATE OF COMPLIANCE WITH SUBPOENA TO PRODUCE DOCUMENTS OR THINGS PURSUANT TO RULE 4009.23

I, Jeffrey R. Miller, of the Pennsylvania State Police certify to the best of my knowledge, information and belief that all documents or things required to be produced pursuant to the subpoena issued on the 13th day of March, 2007 have been produced.

Pennsylvania State Police

Date: March 23, 2017 By Col. Tyree B. Miller

PENNSYLVANIA STATE POLICE
BUREAU OF RECORDS AND IDENTIFICATION
1800 ELMERTON AVENUE
HARRISBURG, PENNSYLVANIA 17110-9758

March 23, 2007

MAR 2 8 2007

James A. Naddeo, Esquire
PO Box 552
Clearfield, PA 16830

Re: Albert L. Nelson v. Waroquier Coal,
Incident No.: C04-0763551
Our Reference: 2485

Dear Mr. Naddeo:

This letter is in response to your subpoena duces tecum issued for the production of the investigative report for the above-captioned case.

In compliance with your request, we are forwarding a copy of our report for your use.

If you require further assistance in this matter, please direct correspondence to me at the above-listed address, or telephone Ms. Susan Fleming at 717-705-9318.

Sincerely,

Captain Cheryl A. Hicks
Director, Operational Records Division

CAH/sjf

SP 7-0050 (12-94)

PENNSYLVANIA STATE POLICE INCIDENT REPORT

REPORT TYPE: ☒ INITIAL ☐ CONTINUATION ☐ SUPPLEMENTAL

DATE(S)/DAY(S) OF INCIDENT: 2001/

INCIDENT NO.: C04-0763551

TIME(S) OF INCIDENT: Unknown hours

JUVENILE: ☐

DOMESTIC VIOLENCE: ☐

ATTACHMENTS: ☐ MISSING PERSON CHECKLIST ☐ FELONY CRIMES AGAINST THE PERSON ☐ STATEMENT FORM(S) ☐ VICTIM/WITNESS ASSISTANCE GUIDE RECEIPT ☐ RIGHTS WARNING AND WAIVER ☐ PROPERTY RECORD ☐ OTHER:

DISP.: ☐ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED-
A ☐ DEATH OF ACTOR D ☐ VICTIM REFUSED TO COOPERATE
B ☐ PROSECUTION DECLINED E ☐ JUVENILE/NO CUSTODY
C ☐ EXTRADITION DENIED N ☐ NOT APPLICABLE ☐ MULTIPLE CLEAR-UP

1. ORI/STATION: PAPSP1700/DUBOIS
2. LOCATION: Along T-370 and T-359, open field approx. 100 yds. N of T-370
ZONE: 31
3. CITY/TWP/BORO: Brady Twp.
CODE: 207
4. COUNTY: CLEARFIELD
CODE: 17

5. VICTIM NO. 1 NAME: Albert L. NELSON Living Trust
ADDRESS: 1149 S. Main St. DuBois Pa. 15801
HOME PHONE:
6. EMPLOYER NAME:
ADDRESS:
WORK PHONE:

7. RACE/ETHY.	8. SEX	9. DOB	10. AGE	11. RES. STAT.	12. REL. TO OFFENDER(S)	13. TYPE INJ.	14. CIRC.	15. CON. TO OFF.	16. TYPE VICT.	17. OFF. NO. REL.
/								01	O	01

5. VICTIM NO. 2 NAME:
ADDRESS:
HOME PHONE:
6. EMPLOYER NAME:
ADDRESS:
WORK PHONE:

7. RACE/ETHY.	8. SEX	9. DOB	10. AGE	11. RES. STAT.	12. REL. TO OFFENDER(S)	13. TYPE INJ.	14. CIRC.	15. CON. TO OFF.	16. TYPE VICT.	17. OFF. NO. REL.
/										

18. OFFENSE
___ SIMPLE ASSAULT ___ CRIMINAL MISCHIEF ___ TERRORISTIC THREATS 01 THEFT BY UNLAWFUL TAKING OR DISPOSITION
___ BURGLARY ___ MISSING PERSON ___ HARASSMENT ___ CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT
___ ESCAPE ___ AGGRAVATED ASSAULT ___ ARSON BY RELATED OFFENSES ___ HARASSMENT BY COMMUNICATION OR ADDRESS
___ OTHER

19. NO.	20. STATUTE	21. SECTION NO.	22. UCR	23. HATE/BIAS	24. OFF. USED	25. OFF. LOC	26. ETY. METH	NO	27. ACTY. TYPE	28. WPN/FC	A.
	CC	3921	060	88	N	10			P		

29. VEHICLE: ☐ STOLEN ☐ RECOVERED ☐ SUSPECT ☐ OTHER

30. LIC	31. LIS	32. LIY	33. LIT	34. VIN	35. VYR	36. VMA

37. VMO	38. VST	39. VCO	40. DOT	41. MIS	42. MILEAGE

43. NO.	44. PROPERTY DESCRIPTION	45. PRD. DESC.	46. TYPE LOSS	47. QTY.	48. VALUE	49. DATE REC.
01	Coal	88	07	1	100,000	

50.

	YES	NO		YES	NO
INCIDENT PROMPTLY REPORTED BY VICTIM	☒	☐	NEIGHBORHOOD/AREA CANVASS	☒	☐
CAN A SUSPECT BE NAMED	☒	☐	ANY WITNESSES LOCATED	☒	☐
EVIDENCE AT SCENE TO LINK OFFENDER	☐	☒	OFFENDER INFORMATION AVAILABLE	☒	☐
CAN A VEHICLE BE IDENTIFIED WITH CRIME	☐	☒	IDENTIFIABLE/TRACEABLE PROPERTY	☐	☒
SCENE PROCESSED FOR LATENT PRINTS	☐	☒	UNIQUE/UNUSUAL METHOD OF OPERATION	☐	☒
LATENT PRINTS DISCOVERED	☐	☒	THOUGHT TO BE CONNECTED WITH KNOWN CRIME PATTERN	☐	☒
SCENE CHECKED FOR WITNESSES	☒	☐	CLEAN/STATISTICAL NARCOTICS MESSAGE SENT	☐	☒

51. DATE/TIME OFFICER ARRIVED	52. DATE/TIME OFFICER DEPARTED	53. DATE OF REPORT	54. PART ONE ONLY	55. LCE NOTIFIED	56. SUPV. INIT./BADGE NO.
10/20/03 - 1530 hours	10/20/03 - 1700 hours	11/16/03	☐	☐ YES ☒ NO	

57. OFFICER'S NAME/SIGNATURE/BADGE NO.: Tpr. David A. RAY/6189

58. INVES. RECM. ☒ CONT. ☐ TERM.
59. ☒ CONCUR ☐ NONCONCUR
60. PAGE: 01

DEPARTMENT HEADQUARTERS

SP 7-0050 A (12-94)

PENNSYLVANIA STATE POLICE
INCIDENT REPORT – PART II

REPORT TYPE: ☐ INITIAL ☒ CONTINUATION ☐ SUPPLEMENTAL

DATE(S)/DAY(S) OF INCIDENT: /

INCIDENT NO.: C04-0763551

TIME(S) OF INCIDENT: hours

JUVENILE: ☐

DOMESTIC VIOLENCE: ☐

ATTACHMENTS: ☐ MISSING PERSON CHECKLIST ☐ FELONY CRIMES AGAINST THE PERSON ☐ STATEMENT FORM(S) ☐ VICTIM/WITNESS ASSISTANCE GUIDE RECEIPT ☐ RIGHTS WARNING AND WAIVER ☐ PROPERTY RECORD ☐ OTHER

DISP.: ☐ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED
A ☐ DEATH OF ACTOR D ☐ VICTIM REFUSED TO COOPERATE
B ☐ PROSECUTION DECLINED E ☐ JUVENILE/NO CUSTODY
C ☐ EXTRADITION DENIED N ☐ NOT APPLICABLE ☐ MULTIPLE CLEAR-UP

61. ORI/STATION	62. DATE OF REPORT	63. OFFENSE
PAPSP1700/DUBOIS	11/16/2003	THEFT BY UNLAWFUL TAKING OR DISPOSITION

64.	65. OFFENDER NO.	NAME	66. ADDRESS
☐ ACCUSED ☒ SUSPECT	1	WAROQUIER Coal Company	PO Box 128 Clearfield Pa. 16830

67. HOME PHONE	68. NICKNAMES/ALIAS	69. HEIGHT	70. WEIGHT	71. HAIR	72. EYES	73. MARITAL STATUS
(814)765-5681						

74. RACE/ETHY.	75. SEX	76. DOB	77. AGE	78. RES. STAT.	79. OFF. CODE	80. TYPE ARREST	81. DATE OF ARREST	82. ARMED WITH	A	83. OTN/NON-TRAFFIC CIT. NO.
/										

84. FINGERPRINTED	85. PHOTOGRAPHED	86. DISP. UNDER 18	87. VIC. NO. REL	88. SSN	89. OLN	STATE
☐ YES ☐ NO	☐ YES ☐ NO					

90. BIRTHPLACE	91. EMPLOYER/SCHOOL	92. MISC. NO.

64.	65. OFFENDER NO.	NAME	66. ADDRESS
☐ ACCUSED ☐ SUSPECT	2		

67. HOME PHONE	68. NICKNAMES/ALIAS	69. HEIGHT	70. WEIGHT	71. HAIR	72. EYES	73. MARITAL STATUS

74. RACE/ETHY.	75. SEX	76. DOB	77. AGE	78. RES. STAT.	79. OFF. CODE	80. TYPE ARREST	81. DATE OF ARREST	82. ARMED WITH	A	83. OTN/NON-TRAFFIC CIT. NO.
/										

84. FINGERPRINTED	85. PHOTOGRAPHED	86. DISP. UNDER 18	87. VIC. NO. REL	88. SSN	89. OLN	STATE
☐ YES ☐ NO	☐ YES ☐ NO					

90. BIRTHPLACE	91. EMPLOYER/SCHOOL	92. MISC. NO.

NARRATIVE

LAT: 41 04:51.0 LONG: -78 41:59.70

In the commission of this crime the suspect allegedly mined coal off of the victim's property without the victim's permission and failed to pay the victim for the coal.

Physical Evidence:
1. Visual evidence that the property was strip mined.

INTERVIEW: Albert L. NELSON Trust of Albert L. NELSON Living Trust, 304 Williams St. Pittsburgh Pa. 15203. PH(814)412-488-0640. Interviewed on 10/20/2003 at approx. 1530 Hrs. Mr. NELSON related that he was contacted by Roger THOMAS who advised him that he worked for WAROQUIER Coal Co. and they mined coal off of his property and he should check the property. Mr. NELSON did in fact check his property and discovered evidence that the property was mined and then back filled. Mr. NELSON related that he did have a signed lease with DRESSLER Coal Co. to mine the property and was told after the fact that owner Ruskin DRESSLER sold the lease to WAROQUIER Coal Co. Mr. NELSON stated that he never received any of the money for the coal removed from his property. Mr. NELSON hired a Geologist who estimated the price of the coal to be $100,000.00.

Mr. NELSON contacted WAROQUIER Coal Co. and they admitted to mining 2.3 acres a 15,300 tons of coal from the victim's property by mistake. Mr. NELSON advised them that the mined area was much larger than 2.3 acres. He was told that they only mined 2.3 acres. Mr. NELSON then took me to the property and showed me the area in question.

NOTE: I observed an area that was clearly mined and then back filled. The ground was settling and the ed area was noticeable.

-CONTINUED-

94. OFFICER'S NAME/SIGNATURE/BADGE NO.	95. INVES. RECM.	96. SUPV. INIT./BADGE NO.	97.	98. PAGE
Tpr. David A. RAY/6189	☒ CONT. ☐ TERM.		☒ CONCUR ☐ NONCONCUR	02

DEPARTMENT HEADQUARTERS

SF 7-0051 (3-96)

PENNSYLVANIA STATE POLICE

CONTINUATION SHEET ☐

SUPPLEMENTAL INVESTIGATION REPORT ☒

REPORT TYPE

☒ INCIDENT

☐ OTHER ____

DATE(S)/DAY(S) OF INCIDENT: /

INCIDENT NO.: C04-0763551

TIME(S) OF INCIDENT: hours

JUVENILE ☐

DOMESTIC VIOLENCE ☐

ATTACHMENTS:

☐ MISSING PERSON CHECKLIST

☐ FELONY CRIMES AGAINST THE PERSON

☐ STATEMENT FORM(S)

☐ VICTIM/WITNESS ASSISTANCE GUIDE RECEIPT

☐ RIGHTS WARNING AND WAIVER

☐ PROPERTY RECORD

☐ OTHER:

DISP.: ☐ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED-

A ☐ DEATH OF ACTOR

B ☐ PROSECUTION DECLINED

C ☐ EXTRADITION DENIED

D ☐ VICTIM REFUSED TO COOPERATE

E ☐ JUVENILE/NO CUSTODY

N ☐ NOT APPLICABLE

☐ MULTIPLE CLEAR-UP

1. ORI/STATION: PAPSP1700/DUBOIS

2. DATE OF REPORT: 11/16/2003

3. OFFENSE: THEFT BY UNLAWFUL TAKING OR DISPOSITION

4. VICTIM: Albert NELSON Living Trust

5. NARRATIVE

INTERVIEW: Roger A. THOMAS, DOB: 08/04/1952 RD1 Rockton Pa. 15856 PH(814)583-7625, Cell (814)592-9710, Owner of RAM Coal Company. Interviewed at the scene on 10/20/2003. THOMAS related that he was working for WAROQUIER Coal Co. mining coal off of the KIMBLE property. He related that he had a falling out with the owners of WAROQUIER Coal Co. and stopped working for them. He related that he began another job near there sight and could see there mining operation from his new job. THOMAS said that he knew that WAROQUIER was mining coal from the victim's property. THOMAS said that he called the victim and advised him to look into the mining job. THOMAS said he does not know how much coal was removed from the victim's property but knew that it was a large amount. THOMAS stated that the DEP Supervisor James PARLAVECCHIO may have further information.

NOTE: DRESSLER'S permit number was 17990105, and this was the permit transferred to WAROQUIER Coal Company in Feb. 2001.

This report will be supplemented after further interviews can be conducted.

6. OFFICER'S NAME/SIGNATURE/BADGE NO.: Tpr. David A. RAY/6189

7. INVEST. RECM. ☒ CONT. ☐ TERM.

8. SUPV. INIT./BADGE NO.

9. ☒ CONCUR ☐ NONCONCUR

10. PAGE: 03

DEPARTMENT HEADQUARTERS

SF 7-0031 (9-96)

PENNSYLVANIA STATE POLICE
CONTINUATION SHEET ☐
SUPPLEMENTAL INVESTIGATION REPORT ☒

REPORT TYPE
☒ INCIDENT
☐ OTHER ____

DATE(S)/DAY(S) OF INCIDENT: 2001
INCIDENT NO.: C04-0763551
TIME(S) OF INCIDENT: Unknown hours
JUVENILE: ☐
DOMESTIC VIOLENCE: ☐

ATTACHMENTS:
☐ MISSING PERSON CHECKLIST
☐ FELONY CRIMES AGAINST THE PERSON
☐ STATEMENT FORM(S)
☐ VICTIM/WITNESS ASSISTANCE GUIDE RECEIPT
☐ RIGHTS WARNING AND WAIVER
☐ PROPERTY RECORD
☐ OTHER:

DISP.: ☐ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED
A ☐ DEATH OF ACTOR
B ☐ PROSECUTION DECLINED
C ☐ EXTRADITION DENIED
D ☐ VICTIM REFUSED TO COOPERATE
E ☐ JUVENILE/NO CUSTODY
N ☐ NOT APPLICABLE
☐ MULTIPLE CLEAR-UP

1. ORI/STATION: PAPSP1700/DUBOIS
2. DATE OF REPORT: 11/17/2003
3. OFFENSE: THEFT BY UNLAWFUL TAKING OR DISPOSITION
4. VICTIM: Albert L. NELSON Living Trust
5. NARRATIVE

INTERVIEW: Wilmer Ruskin DRESSLER, DOB: 04/12/1939, Box 39 Rockton Pa. 15856, Home PH(814)371-7392, Work (814)583-7288, Cell (814)541-8539. Interviewed at PSP DuBois Station on 11/17/2003 at 1830 Hrs. Mr. DRESSLER related that he had an agreement with the victim's family and a lease to mine both the victim's property and the adjoining property owned by Richard KIMBLE for coal. Mr. DRESSLER related that he was mining the KIMBLE property with Roger THOMAS and had not started the victim's property. He said that due to financial reasons he sold the lease to Gary WAROQUIER of WAROQUIER Coal company for him to mine the balance of the coal. Mr. DRESSLER was not sure of the exact date of the sale but related that he turned over all of the related documents to Gary WAROQUIER including and detailed map of the property. He related that Gary WAROQUIER was to mine both the victim's property and the adjoining property owned by Richard KIMBLE. He stated that under the agreement WAROQUIER was to pay the property owners directly for the coal removed from the property. Mr. DRESSLER stated that he has spoken to Richard KIMBLE and he did in fact receive checks from WAROQUIER Coal Company for the coal mined from his property.

Mr. DRESSLER related that he knows were the property line is and did not mine any of the victim's property in question.

Mr. DRESSLER then provided a written statement, Refer to attachment.

6. OFFICER'S NAME/SIGNATURE/BADGE NO.: Tpr. David A. RAY/6189
7. INVEST. RECM. ☒ CONT. ☐ TERM.
8. SUPV. INIT./BADGE NO.
9. ☒ CONCUR ☐ NONCONCUR
10. PAGE: 4

DEPARTMENT HEADQUARTERS

SP 7-005 (3-96)

PENNSYLVANIA STATE POLICE

CONTINUATION SHEET ☐

SUPPLEMENTAL INVESTIGATION REPORT ☒

REPORT TYPE

☑ INCIDENT

☐ OTHER ____

DATE(S)/DAY(S) OF INCIDENT: 2001 /

INCIDENT NO.: C04-0763551

TIME(S) OF INCIDENT: Unknown hours

JUVENILE ☐

DOMESTIC VIOLENCE ☐

ATTACHMENTS:

☐ MISSING PERSON CHECKLIST

☐ FELONY CRIMES AGAINST THE PERSON ☐ STATEMENT FORM(S)

☐ VICTIM/WITNESS ASSISTANCE GUIDE RECEIPT ☐ RIGHTS WARNING AND WAIVER

☐ PROPERTY RECORD ☐ OTHER

DISP.: ☐ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED

A. ☐ DEATH OF ACTOR D. ☐ VICTIM REFUSED TO COOPERATE

B. ☐ PROSECUTION DECLINED E. ☐ JUVENILE/NO CUSTODY

C. ☐ EXTRADITION DENIED N. ☐ NOT APPLICABLE ☐ MULTIPLE CLEAR-UP

1. ORI/STATION: PAPSP1700/DUBOIS

2. DATE OF REPORT: 11/26/2003

3. OFFENSE: THEFT BY UNLAWFUL TAKING OR DISPOSITION

4. VICTIM: Albert L. NELSON Living Trust

5. NARRATIVE

INTERVIEW: James PARLAVECCHIO, Department of Environmental Protection, Moshannon District Office, Surface Mining Conservation Inspector, Cell (814)883-4876, Office (814)342-8200. Interviewed on 11/26/2003 at 1237 Hrs. He related that he is the state inspector for the area in question. I asked him what he knows about the mining in the area of the scene. He related that he knows that DRESSLER had a mining lease and sold the lease to WAROQUIER. He related that his office does not get involved in the leasing or the payment of coal. I asked him what his records would show as to whom was coal mining in the area. He said that his record would not be much help due to the fact that he had only started recently in documenting the GPS locations when checking a sight and he does not look for property lines he looks for DEP violations. He related that I could view his records if needed by calling Amanda at (814)342-8200 and give her Permit number 17990105.

Mr. PARLAVECCHIO related that when a mining company back fills an open main they will sometimes take fill from 300 or 400 feet away and drag it to the mine. I advised him that this scene appears to be dirt settling.

This report will be supplemented at a later date.

6. OFFICER'S NAME/SIGNATURE/BADGE NO.: Tpr. David A. RAY/6189

7. INVEST. RECM. ☒ CONT. ☐ TERM.

8. SUPV. INIT./BADGE NO.: 4/24/01

9. ☒ CONCUR ☐ NONCONCUR

10. PAGE: 05

DEPARTMENT HEADQUARTERS

SP 4-250 (8-2002)

PENNSYLVANIA STATE POLICE
FORENSIC SERVICES
INVESTIGATION REPORT

1. ORI/STATION: PAPSP 1700/DuBois

2. INCIDENT NO.: C04-0763551

3. OFFENSE: By Unlawful Taking

4. LOCATION: Lat. 41 04:51.0 Long. -78 41:59.70

5. CITY/TWP/BORO: Brady Twp. | CODE: 207

6. COUNTY: Clearfield | CODE: 17

7. DATE OCCURRED: 2003 | DAY: | TIME: UNK.

8. DATE REQUESTED: 12/10/03 | DAY: Wednesday | TIME: 1000

9. DATE ARRIVED: 12/10/03 | DAY: Wednesday | TIME: 1000

10. DATE COMPLETED: 12/10/03 | DAY: Wednesday | TIME: 1100

11. REQUESTED BY: Tpr. David RAY | AGENCY: PSP DuBois | TELEPHONE NO.: 814-371-4652

12. ADDRESS: | AGENCY INCIDENT NO.:

13. VICTIM'S NAME: Albert NELSON | ADDRESS: 304 Williams St. Pittsburgh, PA 15203 | TELEPHONE NO.: 412-488-0640

14. EXAMINATION REQUESTED
☐ VICTIM/SUBJECT ☐ BUILDING ☐ VEHICLE ☒ OTHER: Aerial Photography

15. FSU PERSONNEL (NAME): Tpr. John P. YOUNG | NAME:

16. PERSONNEL AT SCENE (DIC NAME): Tpr. David RAY | NAME: Cpl. Bob ZIVKOVICH (pilot) | TITLE: Cpl.

NAME: | TITLE: | NAME: | TITLE:

NAME: | TITLE: | NAME: | TITLE:

17. EVIDENCE CUSTODIAN | TITLE: | STATION/AGENCY:

18. PERSONS WHO ENTERED SCENE (NAME) | TITLE: | NAME: | TITLE:

NAME: | TITLE: | NAME: | TITLE:

19. EMS/RESCUE AGENCY:

20. MEDICAL EXAMINER/CORONER:

21. WEATHER CONDITIONS ☐ SUNNY ☐ PARTLY SUNNY ☒ CLOUDY ☐ RAIN ☐ SNOW ☐ WIND HUMIDITY ____ % ____ °F

22. NO. OF LATENT PRINTS: 0

23. NO. OF SHOE TRACKS: 0 ☐ CASTS ☐ PHOTOS

24. NO. OF TIRE TRACKS: 0 ☐ CASTS ☐ PHOTOS

25. NO. OF BLOOD LIFTS: 0

26. TRACE EVIDENCE COLLECTED ☐ YES ☒ NO

27. PHOTOGRAPHS ☒ YES ☐ NO

28. SKETCH ☐ YES ☒ NO

29. ALS ☐ YES ☒ NO

30. CRIMCON ☐ YES ☒ NO

31. VIDEO ☐ YES ☒ NO

32. NO. OF TOOL MARKS: 0 ☐ CASTS ☐ PHOTOS

33. BLOOD STAIN PATTERN ☐ YES ☒ NO

34. BALLISTICS EVIDENCE ☐ YES ☒ NO

35. DOCUMENT EVIDENCE ☐ YES ☒ NO

36. WORK SHEET ATTACHED

☐ BUILDING ☐ SKETCH
☐ SUBJECT ☐ TIRE/VEHICLE TRACK
☐ VEHICLE ☒ NOTES
☐ EVIDENCE LOG ☐ LATENT PRINT
☐ PHOTO LOG

37. SIGNATURE | 38. DATE: 12/11/03

39. PRINT NAME OF INVESTIGATOR: Tpr. JOhn P. YOUNG | BADGE NO.: 7088 | 40. SUPV. INITIALS & BADGE NO.: JAK/5385 | 41. PAGE NO.: 06

PAPSP7000/Punxsutawney

5 4-258 (6-2002) PENNSYLVANIA STATE POLICE FORENSIC SERVICES NOTES	1. ORI/STATION PAPSP 1700/DuBois	2. INCIDENT NO. C04-0763551
OFFENSE By Unlawful Taking	4. LOCATION Same	

NOTES

On the date of 12/10/03 at 1000 hours I was contacted in person by Tpr. David RAY, PSP DuBois. Tpr. RAY requested that aerial photographs be taken of a strip job, in which a theft had occurred. Following the arrival of the aviation unit photography was begun.

With the use of a Nikon N90S 35mm camera loaded with 400 speed Kodak Max color film photographs were taken of the strip job. The photographs shall be supplied to the investigating officer at a later date with the negatives being retained in the Forensic Services Unit, Punxsutawney Headquarters. One roll of 24 exposure film was utilized.

No further processing was requested. Reference incident # C01-0765843 Request Assist-All/Forensic Services.

6. SIGNATURE			7. DATE 12/11/03
8. PRINT NAME OF INVESTIGATOR Tpr. John P. YOUNG	BADGE NO. 7088	9. SUPV. INITIALS & BADGE NO. JAK/5385	10. PAGE NO. 07

SP 7-003 (3-96)

PENNSYLVANIA STATE POLICE
CONTINUATION SHEET ☐
SUPPLEMENTAL INVESTIGATION REPORT ☒

REPORT TYPE
☒ INCIDENT
☐ OTHER ____

DATE(S)/DAY(S) OF INCIDENT: 2001 /
INCIDENT NO: C04-0763551
TIME(S) OF INCIDENT: Unknown hours
JUVENILE: ☐
DOMESTIC VIOLENCE: ☐

ATTACHMENTS:
☐ FELONY CRIMES AGAINST THE PERSON
☐ VICTIM/WITNESS ASSISTANCE GUIDE RECEIPT
☐ PROPERTY RECORD
☐ MISSING PERSON CHECKLIST
☐ STATEMENT FORM(S)
☐ RIGHTS WARNING AND WAIVER
☐ OTHER:

DISP.: ☐ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED
A ☐ DEATH OF ACTOR
B ☐ PROSECUTION DECLINED
C ☐ EXTRADITION DENIED
D ☐ VICTIM REFUSED TO COOPERATE
E ☐ JUVENILE/NO CUSTODY
N ☐ NOT APPLICABLE
☐ MULTIPLE CLEAR-UP

1. ORI/STATION: PAPSP1700/DUBOIS
2. DATE OF REPORT: 01/15/2004
3. OFFENSE: THEFT BY UNLAWFUL TAKING OR DISPOSITION
4. VICTIM: Albert L. NELSON Living Trust
5. NARRATIVE

INTERVIEW: Richard Lee KIMBLE Interviewed on 01/15/2004 at 1940 Hrs. I advised him about the allegations made by the victim of this investigation and the fact that his property bordered the victim's. He related that he had a contract and lease with DRESSLER Coal company to mine his property and DRESSLER did in fact start mining the property but only paid him approximately $1500.00 and owes him an estimated $35,000.00. He related that DRESSLER called him and advised him that due to financial problems he would have to sell his lease to WAROQUIER Coal Co. Mr. KIMBLE stated that WAROQUIER did send him money but feels that amount should have been higher. Mr. KIMBLE stated that he had planned to come to the property and confront DRESSLER and WAROQUIER about the money but medical problems arose and he never made the trip. Mr. KIMBLE stated that he would check his records and find the tonnage reports and total amount of money sent to him but both DRESSLER and WAROQUIER and call me with this information.

Richard Lee KIMBLE, DOB: 06/21/34
1 Box 234
Liberty Pa. 16930
(570)324-3261

6. OFFICER'S NAME/SIGNATURE/BADGE NO.: Tpr. David A. RAY/6189
7. INVEST. RECM. ☒ CONT. ☐ TERM.
8. SUPV. INIT./BADGE NO.
9. ☑ CONCUR ☐ NONCONCUR
10. PAGE 08

DEPARTMENT HEADQUARTERS

SP 7-0051 (3-96)

PENNSYLVANIA STATE POLICE
CONTINUATION SHEET ☐
SUPPLEMENTAL INVESTIGATION REPORT ☒

REPORT TYPE
☒ INCIDENT
☐ OTHER ____

DATE(S)/DAY(S) OF INCIDENT: 2001 /
INCIDENT NO.: C04-0763551
TIME(S) OF INCIDENT: Unknown hours
JUVENILE: ☐
DOMESTIC VIOLENCE: ☐

CHMENTS:
☐ MISSING PERSON CHECKLIST
☐ FELONY CRIMES AGAINST THE PERSON
☐ STATEMENT FORM(S)
☐ VICTIM/WITNESS ASSISTANCE GUIDE RECEIPT
☐ RIGHTS WARNING AND WAIVER
☐ PROPERTY RECORD
☐ OTHER:

DISP.: ☐ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED
A ☐ DEATH OF ACTOR
B ☐ PROSECUTION DECLINED
C ☐ EXTRADITION DENIED
D ☐ VICTIM REFUSED TO COOPERATE
E ☐ JUVENILE/NO CUSTODY
N ☐ NOT APPLICABLE
☐ MULTIPLE CLEAR-UP

1. ORI/STATION: PAPSP1700/DUBOIS
2. DATE OF REPORT: 03/10/2004
3. OFFENSE: CSDDCA
4. VICTIM: Albert NELSON Living Trust
5. NARRATIVE

INTERVIEW: Richard KIMBLE, on 02/29/2004 at 1300 Hrs. Mr. KIMBLE related that he checked his records and found that DRESSLER owes him $23,555.00 for the coal removed from his property between the dates of 09/20/1999 to 10/20/2000 and WAROQUIER paid him $12,336 for coal removed from his property between the dates of 03/02/2001 to 02/25/2003. Mr. KIMBLE related that his brother in law advised him that he has photographs of the area while it was being worked. I advised Mr. KIMBLE that I would need copies of his records and any photographs of the property. He related that he would forward these records to this officer at a later date.

This report will be supplemented at a later date.

6. OFFICER'S NAME/SIGNATURE/BADGE NO.: Tpr. David A. RAY/6189
7. INVEST. RECM. ☒ CONT. ☐ TERM.
8. SUPV. INIT./BADGE NO.
9. ☒ CONCUR ☐ NONCONCUR
10. PAGE: 09

DEPARTMENT HEADQUARTERS

(P 7-0031.03-96)

PENNSYLVANIA STATE POLICE

CONTINUATION SHEET ☐
SUPPLEMENTAL INVESTIGATION REPORT ☒

REPORT TYPE
☒ INCIDENT
☐ OTHER ____

DATE(S)/DAY(S) OF INCIDENT: 2001 /

INCIDENT NO.: C04-0763551

TIME(S) OF INCIDENT: Unknown hours

JUVENILE ☐

DOMESTIC VIOLENCE ☐

ATTACHMENTS:
☐ MISSING PERSON CHECKLIST
☐ FELONY CRIMES AGAINST THE PERSON
☐ STATEMENT FORM(S)
☐ VICTIM/WITNESS ASSISTANCE GUIDE RECEIPT
☐ RIGHTS WARNING AND WAIVER
☐ PROPERTY RECORD
☐ OTHER

DISP.: ☐ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED
A ☐ DEATH OF ACTOR
D ☐ VICTIM REFUSED TO COOPERATE
B ☐ PROSECUTION DECLINED
E ☐ JUVENILE/NO CUSTODY
C ☐ EXTRADITION DENIED
N ☐ NOT APPLICABLE
☐ MULTIPLE CLEAR-UP

1. ORI/STATION: PAPSP1700/DUBOIS

2. DATE OF REPORT: 05/10/2004

3. OFFENSE: THEFT BY UNLAWFUL TAKING OR DISPOSITION

4. VICTIM: Albert L. NELSON Living Trust

5. NARRATIVE

On 04/20/2004 copies of the aerial photographs were made and forwarded to the victim of this investigation for possible identification of property lines and boundaries. (Refer to attached Certified mail receipt)

On 05/10/2004 I called the Gary WAROQUIER, in an attempt to schedule an interview reference this investigation. A message was left on the subject's voice mail to call me back if the scheduled date of 05/22/2004 was acceptable.

This report will be supplemented at a later date when further information is available.

6. OFFICER'S NAME/SIGNATURE/BADGE NO.: Tpr. David A. RAY/6189

7. INVEST. RECM. ☒ CONT. ☐ TERM.

8. SUPV. INIT./BADGE NO.

9. ☐ CONCUR ☐ NONCONCUR

10. PAGE: 10

DEPARTMENT HEADQUARTERS

SP 7-0051 (5-98)

PENNSYLVANIA STATE POLICE
CONTINUATION SHEET ☐
SUPPLEMENTAL INVESTIGATION REPORT ☒

REPORT TYPE
☑ INCIDENT
☐ OTHER ____

DATE(S)/DAY(S) OF INCIDENT: 2001 /
TIME(S) OF INCIDENT: Unknown hours
JUVENILE: ☐
DOMESTIC VIOLENCE: ☐

INCIDENT NO: C04-0763551

ATTACHMENTS:
☐ MISSING PERSON CHECKLIST
☐ FELONY CRIMES AGAINST THE PERSON
☐ STATEMENT FORM(S)
☐ VICTIM/WITNESS ASSISTANCE GUIDE RECEIPT
☐ RIGHTS WARNING AND WAIVER
☐ PROPERTY RECORD
☐ OTHER:

DISP.: ☐ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED
A. ☐ DEATH OF ACTOR
B. ☐ PROSECUTION DECLINED
C. ☐ EXTRADITION DENIED
D. ☐ VICTIM REFUSED TO COOPERATE
E. ☐ JUVENILE/NO CUSTODY
H. ☐ NOT APPLICABLE
☐ MULTIPLE CLEAR-UP

1. ORI/STATION: PAPSP1700/DUBOIS
2. DATE OF REPORT: 06/24/2004
3. OFFENSE: THEFT BY UNLAWFUL TAKING OR DISPOSITION
4. VICTIM: Albert NELSON Living Trust
5. NARRATIVE

INTERVIEW: Gary Victor WAROQUIER, DOB: 12/13/1960 490 Naulton Rd. Ext. Curwensville Pa. 16833 PH (814)592-5771, Work No. (814)765-3492. Interviewed at scene on 06/24/2004 at approx. 1430 Hrs. Mr. WAROQUIER related that he approached Ruskin DRESSLER (DRESSLER Coal Company) about purchasing the coal he was mining and DRESSLER advised him that he rather WAROQUER Coal Co. mine the coal under his permit. WAROQUIER stated that DRESSLER had been mining for some time before his company got involved. He said DRESSLER advised him that he knew were the property lines were located and showed him how the lines were positioned, so WAROUIER did not have the land surveyed at that time. Mr. WAROQUIER stated that his company began to mine the property that DRESSLER told him was owned by Richard KIMBLE. WAROQUIER said DRESSLER then approached him and asked if he wanted to purchase the permit because DRESSLER said he needed money for something. WAROQUIER Coal Company then purchased the KIMBLE/NELSON permit from DRESSLER Coal Co. for ,000.00 plus $1.00 per ton over ride. WAROQUIER said that Albert NELSON did call him about ..e coal being removed from his property and he advised NELSON that he did not mine any of his property. WAROQUIER said that after talking to his brother he decided to contact CURRY & ASSOCIATES to have the property surveyed and discovered that the property line did not run were DRESSLER told him and he did in fact mine some coal off of the victim's property. He said that he advised the victim of this and also advised him that most of the mining done on his property was done by DRESSLER prior to him getting involved. WAROQUIER stated that he advised the victim that he would pay him for the coal that his company removed but not for what DRESSLER removed. I then asked WAROQUIER who received payment for the coal removed from the victim's property and he said Richard KIMBLE the adjoining property owner. Mr. WAROQUIER related that he can produce all of his records to verify what coal his company removed from the sight.

I then advised Mr. WAROQUIER that I would be contacting the Clearfield County District Attorneys office reference this investigation and would contact him at a later date.

This report will be supplemented after the Clearfield County D.A. office is advised of the facts.

6. OFFICER'S NAME/SIGNATURE/BADGE NO.: Tpr. David A. RAY/6189
7. INVEST. RECM: ☒ CONT. ☐ TERM.
8. SUPV. INIT./BADGE NO.: DAR 5-07
9. ☑ CONCUR ☐ NONCONCUR
10. PAGE: 11

DEPARTMENT HEADQUARTERS

SP 7-0063 (3-96)

PENNSYLVANIA STATE POLICE
CONTINUATION SHEET ☐
SUPPLEMENTAL INVESTIGATION REPORT ☒

REPORT TYPE
☒ INCIDENT
☐ OTHER ____

DATE(S)/DAY(S) OF INCIDENT: 2001 /
INCIDENT NO.: C04-0763551
TIME(S) OF INCIDENT: Unknown hours
JUVENILE: ☐
DOMESTIC VIOLENCE: ☐

ATTACHMENTS:
☐ MISSING PERSON CHECKLIST
☐ FELONY CRIMES AGAINST THE PERSON
☐ STATEMENT FORM(S)
☐ VICTIM/WITNESS ASSISTANCE GUIDE RECEIPT
☐ RIGHTS WARNING AND WAIVER
☐ PROPERTY RECORD
☐ OTHER

DISP.: ☐ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED
A ☐ DEATH OF ACTOR
B ☐ PROSECUTION DECLINED
C ☐ EXTRADITION DENIED
D ☐ VICTIM REFUSED TO COOPERATE
E ☐ JUVENILE/NO CUSTODY
N ☐ NOT APPLICABLE
☐ MULTIPLE CLEAR-UP

1. ORI/STATION: PAPSP1700/DUBOIS
2. DATE OF REPORT: 06/30/2004
3. OFFENSE: THEFT BY UNLAWFUL TAKING OR DISPOSITION
4. VICTIM: Albert NELSON Living Trust
5. NARRATIVE

INTERVIEW: Wilmer Ruskin DRESSLER, at PSP DuBois Station on 06/30/2004 at 1830 Hrs. Mr. DRESSLER provided the attached copy of the agreement between him and WAROQUIER Coal Inc. along with a copy of the Contractual Consent of Landowner.

I then asked Mr. DRESSLER how long he had been mining the area prior to WAROQUIER Coal becoming involved. He related that he had been mining the area for approx. 1 year before WAROQUIER started.

I asked Mr. DRESSLER how he knew were the property lines were located. He said that he had the maps that he turned over to WAROQUIER and knew were two of the corner stones were located. I asked him if he had every had the land surveyed and he said no.

Mr. DRESSLER related that he does have a lease with the victim and that lease was given to Gary WAROQUIER during the same time period that the permit was being transferred.

I then asked Mr. DRESSLER if he feels WAROQUIER could have mined over the property line onto the victim's property by mistake. He said yes he feels that could have been an accident but does not know certain.

Mr. DRESSLER did not have a copy of his lease with him and stated that he would deliver a copy to this officer at a later date.

This report will be supplemented at a later date.

6. OFFICER'S NAME/SIGNATURE/BADGE NO.: Tpr. David A. RAY/6189
7. INVEST. RECM. ☒ CONT. ☐ TERM.
8. SUPV. INIT./BADGE NO.
9. ☑ CONCUR ☐ NONCONCUR
10. PAGE: 12

DEPARTMENT HEADQUARTERS

SP 7-0031 (3-96)

PENNSYLVANIA STATE POLICE
CONTINUATION SHEET ☐
SUPPLEMENTAL INVESTIGATION REPORT ☒

REPORT TYPE
☒ INCIDENT
☐ OTHER ____

DATE(S)/DAY(S) OF INCIDENT: 2001 /
INCIDENT NO.: C04-0763551
TIME(S) OF INCIDENT: Unknown hours
JUVENILE ☐
DOMESTIC VIOLENCE ☐

ACHMENTS:
☐ MISSING PERSON CHECKLIST
☐ FELONY CRIMES AGAINST THE PERSON
☐ STATEMENT FORM(S)
☐ VICTIM/WITNESS ASSISTANCE GUIDE RECEIPT
☐ RIGHTS WARNING AND WAIVER
☐ PROPERTY RECORD
☐ OTHER:

DISP.: ☐ CLEARED BY ARREST ☐ UNFOUNDED XX EXCEPTIONALLY CLEARED 07/28/04
A ☐ DEATH OF ACTOR
B ☐ PROSECUTION DECLINED
C ☐ EXTRADITION DENIED
D ☐ VICTIM REFUSED TO COOPERATE
E ☐ JUVENILE/NO CUSTODY
N ☐ NOT APPLICABLE
☐ MULTIPLE CLEAR-UP

1. ORI/STATION: PAPSP1700/DUBOIS
2. DATE OF REPORT: 07/28/2004
3. OFFENSE: THEFT BY UNLAWFUL TAKING OR DISPOSITION
4. VICTIM: Albert L. NELSON Living Trust
5. NARRATIVE

NOTE: Clearfield County District Attorney, William SHAW advised this officer to re-interview Gary WAROQUIER to clear up an issue about the lease for the victim's property.

INTERVIEW: Gary WAROQUIER, on 07/18/2004 at 1200 Hrs. I asked Mr. WAROQUIER about what kind of lease he had with the victim to mine on the victim's property. He stated that he does not have a lease. He stated that he had no intention of mining the victim's property. He said DRESSLER advised him that the victim's property had already been deep mined. Mr. WAROQUIER said that his only intention was to mine Richard KIMBLES property and it was only an accident that he mined a small part of the victim's property. He said that he told the victim that he would pay him for the coal that his company removed.

On 07/20/2004 I contacted the Clearfield County District Attorney, William SHAW I advised Mr. SHAW of the facts. He stated that he did not feel enough evidence existed to prove beyond a shadow of doubt that Gary WAROQUIER'S coal company intentionally mined the victim's property. He advised this officer to Exceptionally clear this case and the victim could file a civil case against WAROQUIER Coal Company.

This investigation will be Exceptionally Cleared and no further reports will be submitted.

THE FOLLOWING ORIGINAL DOCUMENTS HAVE BEEN APPENDED TO THIS COPY OF THE REPORT TO BE FORWARDED TO DEPARTMENT HEADQUARTERS:

1. Victim Witness Receipt
2. Victim/ Witness Statement Form
3. Certified Mail Receipt and Return Receipt
4. Photocopy of Agreement (5-pages)

6. OFFICER'S NAME/SIGNATURE/BADGE NO.: Tpr. David A. RAY/6189
7. INVEST. RECM. ☐ CONT. ☒ TERM.
8. SUPV. INIT./BADGE NO.
9. ☐ CONCUR ☐ NONCONCUR
10. PAGE: 13

DEPARTMENT HEADQUARTERS

P 7-0054 (10-96)

PENNSYLVANIA STATE POLICE

VICTIM/WITNESS STATEMENT FORM

WITNESS: W. Ruskin Dressler	2. INCIDENT NO.: PA 2763551
ADDRESS: Box 39 Hickton Pa	TELEPHONE:
PLACE: PSP Ligon Station	5. DATE/DAY: 11/17/03 Mon / 6. TIME: 1431
OFFICER'S NAME/SIGNATURE/BADGE NO.: T. O'Neil 6187	8. PAGE NO./INITIALS: 1 of 2 RD

STATEMENT:

I W. Ruskin Dressler did TRANSFER A LEASE with Albert Nelson Dated UNKNOWN to. Waroquier Coal Co. ON JAN 2001 with AGREEMENT THAT Waroquier Coal Co would Complete Bal of Coal Removel & be RESPONESIBLE for ALL backfilling & RECLAMATION ON Albert Nelson prop.

ALL RELATED DOCUMENTS INCLUDING MAPS WERE TURNED over Gary Waroquier

Gary Waroquier EXPRESSED A DISIRE to MINE ALL MINEABLE Coal ON ON PERMIT.

NOTICE

Under Section 4904 of the Pa. Crimes Code, Unsworn Falsification to Authorities, a person commits a misdemeanor of the third degree if he makes a written false statement which he does not believe to be true.

VICTIM/WITNESS SIGNATURE:

ACKNOWLEDGEMENT OF RECEIPT OF AND CONSENT TO RELEASE INFORMATION

I acknowledge that I have received a copy of the Victim/Witness Assistance Guide concerning information on the basic services available for victims of crime. My name and telephone number may be provided to the appropriate agency listed on page 5.

X _____
Signature

304 WILLIAMS ST PITTSBURG, CA 94565 (925) 439-3864
Address Telephone No.

10/23/03
Date

C04-0763.551
Incident No.

ACKNOWLEDGEMENT OF INDIVIDUALS OR PARTNERS

LAND OWNER

E OF PA

NTY OF CLEARFIELD : SS

)n FEB. 3, 1997, before me, the undersigned Notary, personally appeared ALBERT L. NELSON

[Name(s)]

n to me (or satisfactorily proven) to be the person whose name is subscribed to this instru-
, and who acknowledged that HE

[he, she or they]

ıted the same and desires it to be recorded.

N WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notarial Seal
Homer D. Ecker, Notary Public
DuBois, Clearfield County
My Commission Expires Nov. 20, 2000
Member, Pennsylvania Association of Notaries

-) Homer D. Ecker My Commission Expires: _____

Notary Public [date]

ACKNOWLEDGEMENT OF CORPORATIONS

LAND OWNER

F : SS

NTY OF :

)n _____, before me, the undersigned Notary, personally appeared _____,

acknowledged (herself) (himself) to be the _____ of

[Title of Person]

_____, a

[Name of Corporation]

ıration, and the (s)he, as such officer, being authorized to do so, executed the foregoing in-
ıent on behalf of the said corporation and desires that this instrument be recorded.

N WITNESS WHEREOF, I have hereunder set my hand and official seal.

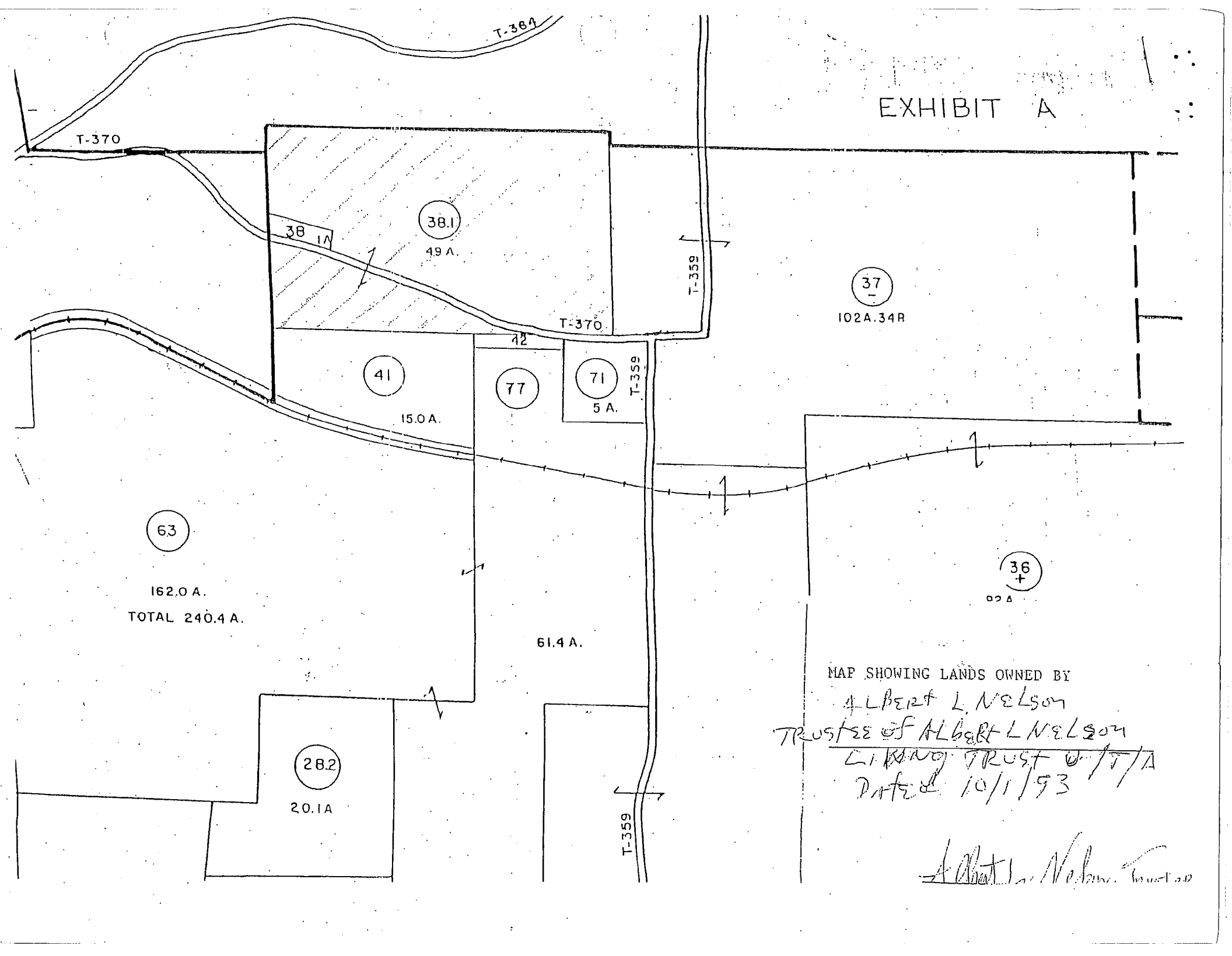
-) _____ My Commission Expires: _____

Notary Public [date]

This instrument has been recorded in _____
County, Pennsylvania, this _____ day of _____,
19 ___, at Book _____, Page (s) _____.

_____
(Signed) (Print Name)

_____
(Sealed)


EXHIBIT A
T-368
T-370
38.1
49 A.
38 1A
T-370
T-359
37
102A.34R
42
41
15.0 A.
77
71
5 A.
T-359
63
162.0 A.
TOTAL 240.4 A.
61.4 A.
36
28.2
20.1A
T-359
MAP SHOWING LANDS OWNED BY
ALBERT L NELSON
TRUSTEE OF ALBERT L NELSON
LIVING TRUST U/T/A
DATED 10/1/93
Albert L. Nelson, Trustee

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ALBERT L. NELSON,
an individual,
Plaintiff,

vs.

WAROQUIER COAL,
and
JOSEPH L. WAROQUIER, JR. and
GARY V. WAROQUIER, individually
and co-partners t/d/b/a
WAROQUIER COAL COMPANY,
and
WAROQUIER COAL COMPANY,
a partnership,
and
WAROQUIER COAL COMPANY, INC.
A Pennsylvania corporation,
Defendants.

No. 05 - 1842 - CD

Jury Trial Demanded

MAR21'07 AM11:07

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: Commissioner of State Police
1800 Elmerton Avenue
Harrisburg, PA 17112

Within twenty (20) days after service of this subpoena you are ordered by the court to produce the following documents or things:

- Entire file regarding report that was initially made on or about October 16, 2003 by District Attorney, Paul Cherry on behalf of Albert L. Nelson regarding unlawful taking of property from Mr. Nelson's land situate in Brady Township, Clearfield County. Said property being known as the "Benjamin Carson Place" and consisting of approximately 50 acres of land. The report was made to Pennsylvania State

Police, Troop C, DuBois Station located at 101 Preston Way, Falls Creek, Pennsylvania 15840. Trooper David A. Ray of Troop C investigated the matter.

at NADDEO & LEWIS, LLC, 207 East Market Street, P.O. Box 552, Clearfield, Pennsylvania 16830.

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

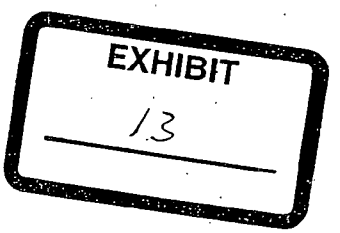
James A. Naddeo
Pa I.D. 06820
207 East Market Street
P.O. Box 552
Clearfield, PA 16830
814-765-1601
Attorney for Plaintiff

BY THE COURT:

DATE: March 13, 2007

By _____
Prothonotary

Seal of the Court



Average Price on Monthly Basis:

January 2001	$	28.33	January 2002	$	
February 2001	$	27.43	February 2002	$	
March 2001	$	27.77	March 2002	$	
April 2001	$	29.19	April 2002	$	
May 2001	$	31.37	May 2002	$	
June 2001	$	29.99	June 2002	$	29.88
July 2001	$		July 2002	$	26.32
August 2001	$	28.36	August 2002	$	27.15
September 2001	$	29.57	September 2002	$	26.58
October 2001	$	31.82	October 2002	$	25.76
November 2001	$	30.48	November 2002	$	29.49
December 2001	$	29.11	December 2002	$	26.77

January 2003	$	23.62	January 2004	$	25.79
February 2003	$	23.71	February 2004	$	29.02
March 2003	$	21.74	March 2004	$	30.71
April 2003	$	24.59	April 2004	$	29.05
May 2003	$	24.37	May 2004	$	45.92
June 2003	$	25.54	June 2004	$	54.68
July 2003	$	25.63	July 2004	$	41.83
August 2003	$	22.22	August 2004	$	43.63
September 2003	$	23.81	September 2004	$	47.79
October 2003	$	25.16	October 2004	$	43.63
November 2003	$	24.45	November 2004	$	41.18
December 2003	$	24.19	December 2004	$	34.36

January 2005	$	44.35
February 2005	$	52.84
March 2005	$	43.21
April 2005	$	42.85
May 2005	$	44.58
June 2005	$	33.85
July 2005	$	39.13
August 2005	$	27.68
September 2005	$	41.95
October 2005	$	34.05
November 2005	$	38.24
December 2005	$	44.38

Total:
$ 1,759.10

Average
$ 32.58

Def. Waroquiers'
Response to
Item 9

Average Price on Monthly Basis
Al Nelson v. Waroquier Coal

January 1, 2001	$28.33
February 1, 2001	$27.43
March 1, 2001	$27.77
April 1, 2001	$29.19
May 1, 2001	$31.37
June 1, 2001	$29.99
August 1, 2001	$28.36
September 1, 2001	$29.57
October 1, 2001	$31.82
November 1, 2001	$30.48
December 1, 2001	$29.11
June 1, 2002	$29.88
July 1, 2002	$26.32
August 1, 2002	$27.15
September 1, 2002	$26.58
October 1, 2002	$25.76
November 1, 2002	$29.49
December 1, 2002	$26.77
January 1, 2003	$23.62
February 1, 2003	$23.71
March 1, 2003	$21.74
April 1, 2003	$24.59
May 1, 2003	$24.37
June 1, 2003	$25.54
July 1, 2003	$25.63
August 1, 2003	$22.22
September 1, 2003	$23.81
October 1, 2003	$25.16
November 1, 2003	$24.45
December 1, 2003	$24.19
January 1, 2004	$25.79
February 1, 2004	$29.02
March 1, 2004	$30.71
April 1, 2004	$29.05
May 1, 2004	$45.92
June 1, 2004	$54.68
July 1, 2004	$41.83
August 1, 2004	$43.63
September 1, 2004	$47.79
October 1, 2004	$43.63
November 1, 2004	$41.18
December 1, 2004	$34.36
January 1, 2005	$44.35
February 1, 2005	$52.84
March 1, 2005	$43.21
April 1, 2005	$42.85
May 1, 2005	$44.58
June 1, 2005	$33.85

July 1, 2005	$39.13		
August 1, 2005	$27.68		
September 1, 2005	$41.95		
October 1, 2005	$34.05		
November 1, 2005	$38.24		
December 1, 2005	$44.38		
TOTAL	$1,759.10	AVERAGE	$32.58



Articles of Agreement

This agreement made the 17th day of April, 2003, by and between, Albert L. Nelson trustee of the Albert L. Nelson Living Trust, 1149 S. Main St. DuBois, PA 15801, the Lessor,

And

Roger A. Thomas and Miriam R. Thomas t/d/b/a RAMM COAL Co. of R.D. #1, Box 16, Rockton, PA, whether one or more, called the Lessee.

Witnesseth:

1. Lessor, for and in consideration of the sum of One ($1.00) Dollar, in hand paid, the receipt whereof is hereby acknowledged, does hereby let, lease and demise unto Lessee, ALL of that piece or parcel of land, to get underlying said piece or parcel of land, being in Brady Township, Clearfield County, Pennsylvania, containing 49 acres, more or less, and bounded as follows:

   One the north by Kimble;
   On the east by Crescent Brick Division of RESCO Products Inc.
   On the south by Crescent Brick Division of RESCO Products Inc.
   On the west by Jacob D. Hayes

   Parcel No. D06-00-038.1

   This agreement contemplates a memorandum of lease for recording.

   Lessor covenants with Lessee that Lessor is the owner of the surface and all coal in, under, and upon the said described premises and agree to save and hold harmless the Lessee from any and all actions at law or equity which may result in the event the Lessor is found not to be the owner of the same.

2. Lessor further grants to Lessee the right of ingress, egress, and regress into, through and upon the above described premises for the purpose of examining, searching for, prospecting, mining said coal by the surface, drift, deep or strip mining methods, and preparing said coal for market, and taking, storing, removing and transporting the same, and for these purposes the said Lessee shall have the right to mine and remove the coal by the surface, drift, deep or strip mining process, together with the right to use and occupy so much of the surface of the aforesaid land so far as may be necessary or convenient for the proper operation of mining for the removal of said coal or the shipping of the same, together with the right to deposit dirt or waste from such operation upon the surface there of except as otherwise provided here in.

3. Lessor further grants to Lessee a release of all damages to the surface and right to surface support, both lateral and subjacent strata of said land, the waters therein or thereon, and building and objects now or hereafter to be erected thereon, and trees which may be caused by prospecting, drilling, testing, mining and removal of the said coal.

4. It is further agreed that this lease does contemplate mining by surface mining methods including, but not limited to, strip mining. The Lessor, therefore, leases and lets unto Lessee all rights of title possessed by the said Lessor which may not be referred to above, to allow the surface exploration, drilling, testing, mining, removal, marketing and transporting of the coal in the premises.

5. This lease shall continue for a period of five (5) years from the date hereof and so long thereafter as continuous coal mining operations are taking place. This lease shall unconditionally terminate five years from the date hereof or when actual coal mining operations on the property cease to be continuous, whichever last occurs. Upon termination of the lease, Lessee may remove all equipment, buildings and machinery from the premises, provided no royalty is then due. Termination of this lease shall in no way waive or release Lessee's obligation of compliance with Federal or State law or regulations pertaining to operations conducted on the premises. This agreements, however, recognizes that Lessee may be required to maintain at one piece of equipment on the premises because of security required by the Commonwealth of Pennsylvania restrictions and regulations to comply with backfilling and restoration of the premises. In such cases the maintenance of said equipment, for security purposes, shall not be considered a breach of carryover by either party. This lease further recognizes that after removal of coal from the premises within the term of this lease, complete compliance with the required backfilling, contouring, retopsoiling and planting may not be possible. Lessee therefore shall have the right of carryover for purposes only of compliance with State or Federal law or regulation. Such carryover, however, shall not be construed or meant to be a carryover for the purpose of mining or removing coal.

6. Lessee agrees to pay as royalty to Lessor an amount equal to the sum of Two ($2.00) dollars or Ten (10%) percent of pit price per ton of 2,000 pounds of coal whichever is greatest. Settlement in payments of royalty shall be made on the last day of each month for all coal mined and removed from the premises during the preceding calendar month. Royalty computation shall be based on the weights by which the coal is marketed, and shall be evidenced by truck weight invoices or statements of coal transported by truck from the premises and accordingly weighed for tonnage, or railroad receipts or statements of coal loaded from the premises at railroad tipple sites. It is further understood and agreed that there shall be no advanced royalty payments.

7. Lessee agrees to keep at all times full and complete records and books of account showing the amount of coal mined and removed and shipped from the leased premises, which records and books of account shall be open at all reasonable times for the inspection and examination of the Lessor, their agents, or successors. Lessee shall and will also give Lessor, Lessor's duly authorized agent, at reasonable times, access to any and all portions of the leased premises and to the operations in connection therewith.

8. Lessee covenants and agrees to operate by approved methods and to comply with all Federal and State laws or regulations regarding mining, operating and transportation of said coal, including but not limited to, backfilling and drainage and anti-pollution laws of the State and Federal government. Lessor, or Lessor's agent, shall have access to the operations on or in the leased premises at any reasonable time.

9. This agreement recognized that after entry by Lessee the exclusive control of the premises actually being used by Lessee ad the exclusive control of all mining from the surface, shall be with the Lessee, and Lessee agrees that any charge, liability or cause of action arising from his use of the premises or from any tortious conduct on the part of his agents, officers and employees shall be the responsibility of Lessee. Furthermore, Lessee agrees to release, save, indemnify and hold harmless Lessor from any cause of action, claim or liability arising because of the conduct or omissions of Lessee, his agents, officers and servants or because of the said Lessee's use of the premises.

10. Lessor agrees to pay assessments on the value of the coal in place, as it is now being taxed. Should there be an assessment or a reassessment during the course of mining operations Lessee agrees to pay the increased assessment caused by the mining and severance of the coal.

11. On the failure of the Lessee to pay the minimum royalty on coal actually mined and keep all of the covenants in this lease or remove from the premises at the determination of the same and failure to remedy said breach within ninety (90) days after notice, then the Lessee hereby authorized and empowers any attorney of any court of record in Pennsylvania to appear in court and confess

judgment in favor of Lessor and against Lessee, in an amicable action of ejectment for the premises above described, and authorize the immediate issuance of a writ of habere facias possessionem, with a clause fieri facias, for royalty due within five (5) days from the confession of said judgement.

12. It is expressly understood and agreed between the parties hereto that this lease and the grants hereunder are made subject to all restrictions, reservations, conditions, exceptions, covenants and agreements under the deed, grants and conveyances by virtue of which Lessor is only granting such rights as Lessor has the right to grant under and by virtue of the said instrument of conveyance.

13. This agreement reserves the right unto Lessee to cancel and terminate the lease agreements at any time by giving a thirty (30) day notice to Lessor. Any cancellation hereunder shall not relieve the Lessee of any obligation of payment for any amounts owing under the lease. Furthermore, all amounts paid to Lessor shall remain that of Lessor as a consideration for this lease without any duty to refund or rebate.

14. It is mutually understood and agreed that the rights, duties and obligations created hereby shall extend to and be binding upon the parties, their heirs, executors, and administrators, and that the singular here- in shall include the plural.

15. This agreement contains the entire understanding of the parties. It may be changed only by agreement in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LESSOR
ALBERT L. NELSON, trustee Albert L. Nelson Living Trust

Albert L. Nelson, Trustee
Albert L. Nelson

LESSEE
ROGER A. THOMAS AND MIRIAM R. THOMAS

t/d/b/a

RAMM COAL CO.

Roger A. Thomas
Roger A. Thomas

Miriam R. Thomas
Miriam R. Thomas

County of Jefferson
State of PA
Roger A. Thomas & Miriam R. Thomas appeared before me and signed on this the 12th day of April 2003.

Notarial Seal
Kathy D. Wymer, Notary Public
Gaskill Twp., Jefferson County
My Commission Expires Oct. 16, 2003
Member, Pennsylvania Association of Notaries

(STATE OF PENNSYLVANIA

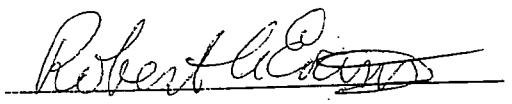
ss. (

(COUNTY OF ALLEGHENY

On April 16, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared ALBERT L. NELSON, TRUSTEE, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

NOTARY SEAL

Signature 

My Commission Expires _____

NOTARIAL SEAL
ROBERT A EVANS, NOTARY PUBLIC
CITY OF GREENSBURG, WESTMORELAND CO., PA
MY COMMISSION EXPIRES JULY 5, 2005

ADDENDUM TO ARTICLES OF AGREEMENT
Dated 12 day of April month, 2003

This agreement reserves the right unto the lessor. To cancel and terminate this lease agreement as to any piece or parcel of land under this agreement for which the lessee is unable to obtain a mining permit from the Commonwealth of Pennsylvania, at any time by giving a 30 day written notice to the lessee.

LESSOR
ALBERT L. NELSON, trustee Albert L. Nelson Living Trust

A. Albert L. Nelson, Trustee
Albert L. Nelson

Roger. A. Thomas and Miriam R. Thomas t/d/b/a
RAMM COAL COMPANY

Roger A. Thomas
Roger A. Thomas

Miriam R. Thomas
Miriam R. Thomas

County of Jefferson
State of PA
Roger A. Thomas & Miriam R. Thomas appeared before me and signed on this the 12th day of April 2003.

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Kathy D. Wymer, Notary Public
Gaskill Twp., Jefferson County
My Commission Expires Oct. 16, 2003
Member, Pennsylvania Association of Notaries

(STATE OF PENNSYLVANIA

ss. (

(COUNTY OF ALLEGHENY

On April 16, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared ALBERT L. NELSON, TRUSTEE, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

NOTARY SEAL

Signature Robert A Evans

My Commission Expires

NOTARIAL SEAL
ROBERT A EVANS, NOTARY PUBLIC
CITY OF GREENSBURG, WESTMORELAND CO., PA
MY COMMISSION EXPIRES JULY 5, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC.,
Plaintiff

vs.

ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust,
Defendant

No. 2007-112-CD

Type of case:
CIVIL

Type of Pleading:
EVIDENCE EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (6, 7 & 8)

Filed on behalf of:
Plaintiff

Counsel of Record for Plaintiff
Peter F. Smith, Esquire
Supreme Court ID #34291
30 South Second Street
P. O. Box 130
Clearfield, PA 16830
(814) 765-5595

Counsel of Record for Defendant:
James A. Naddeo, Esquire
Supreme Court ID #06820
207 East Market Street
P. O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: December 11, 2007

2055108
RECORD
MAY 12 2008
OF

FILED NO CC
01/2:46 BA
DEC 11 2007 GK
William A. Shaw
Prothonotary/Clerk of Courts

#19

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAROQUIER COAL CO., INC., Plaintiff	:	No. 2007- 112-CD
vs.	:	
ALBERT L. NELSON, Trustee of the Albert L. Nelson Living Trust, Defendant	:	

EVIDENCE EXHIBITS IN SUPPORT OF PLAINTIFF' S MOTION FOR SUMMARY JUDGMENT

Plaintiff, Waroquier Coal Company, Inc., by its undersigned counsel, respectfully files the following documents being attached hereto as evidentiary exhibits in support of its Motion for Summary Judgment filed contemporaneously herewith:

EXHIBIT	DESCRIPITON
6	DEP Inspection Report dated August 12, 1999, marked item 13 f.
7	Spreadsheet prepared by Roger Thomas and produced by the Defendant Albert L. Nelson, Trustee
8	Deposition of Albert L. Nelson taken December 7, 2006 for case No. 2005-1842-CD

(The Plaintiff' s first 5 exhibits are attached to the Complaint. The following exhibits are numbered sequentially for the sake of consistency and to avoid confusion.)

Respectfully submitted,

Date: December 11, 2007

Peter F. Smith, Attorney for
Waroquier Coal Co., Inc.

5600-FM-MB0005.8 Rev. 9/95

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

Date 8/2-95

PARTIAL, FOLLOWUP, AND AERIAL
Inspection Report
Bituminous Coal

Mine Name Kimble

Weather Dry

On Site Times AM

PERMITTEE	TOWNSHIP	COUNTY	PERMIT NO.
Winston Dressler Box 39 Rockton, PA 15856	Brady	Clearfield	17990105

ADDRESS

PARTIAL ☑ FOLLOWUP ☐ AERIAL ☐

VIOLATIONS NOTED ☐ FOLLOW-UP INSP. REQUIRED ☐
PREVIOUS VIOLATIONS: COMPLIANCE ORDER ☐
CORRECTED ☐ FTC ORDER ☐ CEASE ORDER ☐
UNCORRECTED ☐ OUTSTANDING ENFORCEMENT ☐

LICENSE NO. & EXP. DATE

OPERATIONAL STATUS Active

GENERAL MINING INFORMATION

a. Phases-Seams-Pit Dimensions (L/W/H)-Method: 1 C'C Kittanning Shale, NA, NA

b. Acreage (total): Bonded 26.5 Affected 0 Regraded 0 Reclaimed 0

c. Equipment-Use & Condition: NA

d. Contract Miner ☑ yes ☐ no e. Blasting at Site ☐ yes ☑ no f. Augering ☐ yes ☑ no g. Disposing of Refuse ☐ yes ☑ no (Explain yes answers)

KEYED IN OCT 04 PM.

PERFORMANCE STANDARDS BITUMINOUS COAL

Obs.	STANDARD		Viol.	Comp. Date	Obs.	STANDARD		Viol.	Comp. Date
✓	1. Signs & Markers	(87.92)				56. Backfilling-Final Slopes	(87.144)		
	4. Effluent Standards	(87.102)				34. Regrade Rills/Gullies	(87.146)		
	8. Treatment Facilities	(87.107)				35. General Revegetation	(87.147)		
	7. Sediment Control Measures	(87.106)				49. General Safety	(Chapter 209)		
	9. Sediment Ponds	(87.108)				53. Permit Condition			
	11. Toxic Forming Spoil	(87.110)				54. Violation History			
	33. Cover Toxic Material	(87.145)				00. Unauthorized Mining			
	19. Water Accumulations	(4.2 Law)							
	31. General Backfilling	(87.141)							

CAM

COMMENTS AND RECOMMENDATIONS:

Post Issuance meeting w/ Winston Dressler, John Geary, and This Inspector

Bonding Increment 01 Flagged. Pinnacle in place.

No OS Removal to DAR. No Equipment on Site

Contract Miner - No Present.

Person Contacted	Title	Discharge/Seeps yes ☐ no ☑ Samples Collected yes ☐ no ☑ Range of Samples Collected _____ to _____
Signature		Investigator Signature & I.D. No.

The Operator's signature acknowledges that he has read the report, including necessarily mean he agrees with the report.

Def. Waroquiers' Response to Item 13f.

opportunity to discuss it with the investigator. The signature does not

DISTRICT FILE

WAROQUIER EXHIBIT 6

RAMM Coal Co.

Kimble Job Luthersburg, Pa.

Blasting Data for Coal sold by Waroquier

War. CUT	Shot Pattern	Approx. Shot Area	Depth	Shot Activity	Log book Entry
	Oct. 1999 2000				Roger began contract stripping for W.R. Dressler
					Roger stripped 1st Dressler cut approx. 80'x720'
					Roger stripped 2nd Dressler cut approx. 80'x430'
					Dressler sold job to Waroquier
	2001			**Waroquier**	
1/2	1/16 2x11+5	85'x260'	48'	end of 2nd Cut (for Waroquier), approx.85'x280'	
	3/13			started 3rd cut	start 1st Waroquier cut, Luthersburg
	4/17 3x6	85'x160'	22'	Luthersburg shot	
1st	4/17 2x10+11	85'x260'	47'	shot Middle Kittanning, 1st Waroquier cut approx.100'x690'	
	4/25				start Middle Kittanning; 1st Waroquier cut
	5/1 3x10	85'x240'	49'		
	5/24 3x5	85'x140'	47'		
	7/18			started 4th cut	2nd Waroquier cut,Luthersburg
	7/31				shipped Luthersburg
2nd	8/1 2x7	65'x180'	51'-52'	shot Middle Kittanning, 2nd Waroquier cut approx. 85'x620'	
	8/7 2x10	65'x240'	50'-51'		
	9/7 2x8	65'x200'	50'		
3rd	12/7 2x9	65'x220'	48'-50'	started 5th cut, 3rd Waroquier cut approx.75'x460'	
	12/21 3x5	85'x140'	48'		
	2002			End Cuts - change direction of cuts	approx.1.5acres
4th	1/15 2x10	65'x240'	50'	start 1st end cut; Waroquier	85'x260'
5th	2/21 2x7	65'x180'	50'	start 2nd end cut; Waroquier	85'x200'
6th	6/11 3x8	85'x200'	47'	start 3rd end cut; Waroquier	100'x210'
	9/2	Moved Dragline off Kimble Job to GFCC			

Roger's Estimated coal stripped for Waroquier	**6 acres**	**41040 tons**
Roger's Estimated coal stripped for Dressler 2001	**0.5 acres**	**3420 tons**

Revised 4/06

WAROQUIER EXHIBIT 7

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ALBERT L. NELSON,

Plaintiff,

vs. No.: 2005-1842-CD

WAROQUIER COAL AND JOSEPH L., WAROQUIER, JR., and GARY V. WAROQUIER, individually and co-partners t/d/b/a WAROQUIER COAL COMPANY, a partnership, and WAROQUIER COAL COMPANY, INC.,

Defendants.

vs.

W. RUSKIN DRESSLER, a/k/a RUSKIN DRESSLER d/b/a W. RUSKIN DRESSLER COAL, ROGER A. THOMAS, MIRIAM R. THOMAS and RAMM COAL, INC.,

Additional Defendants.

- - -

PROCEEDINGS: Deposition of W. RUSKIN DRESSLER

DATE: December 7, 2006

TIME: 10:41 a.m. - 1:54 p.m.

PLACE: Clearfield County Courthouse Annex
Clearfield County Commissioner's Hearing Room
230 East Market Street
Clearfield, Pennsylvania

REPORTER: Roberta Swank
CSR 6042 - RPR 6846
Notary Public

Certified Copy
ASAP COURT REPORTING
1-866-38-COURT

APPEARANCES:

For the Plaintiff Albert L. Nelson:

JAMES A. NADDEO, ESQUIRE
Law Offices of James Naddeo
207 East Market Street
Clearfield, Pennsylvania 16830

For the Litigants Waroquier Coal, Joseph L. Waroquier, Jr., and Gary V. Waroquier:

PETER F. SMITH, ESQUIRE
Law Offices of Peter F. Smith
30 South Second Street
Clearfield, Pennsylvania 16830

For the Litigant W. Ruskin Dressler:

TIMOTHY E. DURANT, ESQUIRE
Law Offices of Timothy Durant
201 North Second Street
Clearfield, Pennsylvania 16830

APPEARANCES (CONTINUED):

For the Litigant Roger A. Thomas:

THOMAS T. FRAMPTON, ESQUIRE
- and -
MANDI L. SCOTT, ATTORNEY AT LAW
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, Pennsylvania 15219

Also Present:

Joseph L. Waroquier, Jr.
Gary V. Waroquier
Roger A. Thomas
Miriam R. Thomas

- - -

STIPULATION

It is stipulated and agreed by and among counsel for the respective parties and the deponent that the inspection, reading and signing of the deposition may be and are waived.

- - -

INDEX

WITNESS	EXAMINATION	PAGE
W. RUSKIN DRESSLER		
	By Mr. Smith	5, 135
	By Mr. Durant	84
	By Mr. Naddeo	87
	By Mr. Frampton	117

- - -

EXHIBITS

NUMBER	DESCRIPTION	MARKED
No. 1	Option and Lease Agreement	11
No. 2	Option and Lease Agreement	12
No. 3	Coal Surface Mining Permit	13
No. 4	1-18-01 Agreement	29
No. 5	Handwritten Outline	41
No. 6	June 8, 2006 Statement	77

W. RUSKIN DRESSLER,
having been first duly sworn, deposed as follows:
- - -
EXAMINATION
BY MR. SMITH:
Q. A couple of preliminary matters. Mr. Dressler, my name is Peter Smith. I'm attorney for every entity involved in this litigation that has the word Waroquier in it. I'll be asking you some questions today.
Before we get started, shall we stipulate that we're going to make objections only as to the form of questions and reserve others?
MR. FRAMPTON: That's fine with me. Will this apply to all the depositions today?
MR. SMITH: Yes.
MR. NADDEO: Yes.
MR. FRAMPTON: Suits me fine.
BY MR. SMITH:
Q. There are a number of names that will keep popping up today. I'll try to be as precise as I can. I want you to stop me if there's any doubt in your mind. Typically when I refer to "the parcel" or "the land," I most likely will be referring to Mr. Nelson's property in Brady

Township, Clearfield County, that is the subject of this litigation. When I say "Mr. Thomas," it will be Mr. Roger Thomas, Waroquier Coal Company. Again, I will try to be clear, so there's no doubt. If you ever have any difficulty hearing me or understanding what I've said or asked of you, please stop me, ask me to explain or repeat. I'll be happy to.
Keep in mind that your testimony is being recorded, and Roberta, the court reporter, is very good, but she can't read minds and really can't interpret body language, so your answers have to be verbal.
Will you please state your full name.
A. W. Ruskin Dressler.
Q. Mr. Dressler, something that I've wondered since the beginning of this problem is what does the W stand for?
A. Wilmer.
MR. FRAMPTON: I'm sorry?
THE WITNESS: Wilmer.
BY MR. SMITH:
Q. Mr. Dressler, do you do business under any assumed or fictitious names?
A. No.

Q. How about W. Ruskin Dressler Coal or Coal Sales?
A. Yes. I use W. Ruskin Dressler Coal, yes.
Q. Is there anybody else involved in your business?
A. No.
Q. Let me ask you first to describe your business activity for me. What do you do for a living?
A. I surface mine coal.
Q. How long have you been in that business?
A. About since 1985, I believe, if I remember correctly.
Q. How old are you today?
A. I'm 67.
Q. What did you do prior to 1985?
A. Trucking and excavating.
Q. Were those endeavors in any way related to the coal industry? For example did you haul coal in your truck?
A. No.
Q. Have you had an interest in any other coal businesses either as a partner or as a shareholder, something like that?
A. Yes, Beverly Hill Coal Company.

Q. Do you still have that interest?
A. Yes.
Q. Is anyone else involved in Beverly Hill Coal Company?
A. The other party is now retired. There were two of us.
Q. Who was that?
A. That was Beverly Bryington.
MR. FRAMPTON: Can I ask you to keep your voice up a little bit? You are talking softly. It's fine. Just keep it up a little bit.
BY MR. SMITH:
Q. Is Beverly Coal Company actively engaged in any surface mining presently?
A. No. There is one old site that is being -- the ponds and so forth have to be put back, but there's been no mining activity for a number of years.
Q. When did it cease?
A. I can't tell you at this moment. I'd have to go back and look.
Q. Was Beverly Coal Company involved in your operations on either the Kimble or Nelson properties in Brady Township?
A. No.

Q. Changing gears here a little bit, Mr. Dressler. What is the address of your residence?
A. **It's box -- I'm sorry. Yeah. It's P.O. Box 231 -- I'm sorry. It is 252 Sabula Outing Club Road, DuBois, PA.**
Q. Are you married?
A. **No.**
Q. Were you married in, say, the year 2000?
A. **No.**
Q. Have you ever been married?
A. **Yes.**
Q. When did your marriage end?
A. **20 some years ago. I don't have the exact date with me.**
Q. That's close enough, Mr. Dressler.
What caused you to first get into -- let me ask you this: How did you get into the coal business?
A. **I was advised by others who worked for coal companies that that would be a good change to make from excavating.**
Q. What type of excavation did you do?
A. **For homes, commercial, residential.**
Q. Mr. Dressler, I'm going to hand you a

document and ask you to take a look at it. I'm showing him the Kimble lease. Do you recognize that document?
A. **Yes, I do.**
Q. What is it, Mr. Dressler?
A. **A lease between Richard Kimble and Nancy C. Kimble and W. Ruskin Dressler.**
Q. Is that your signature on the second page?
A. **Yes.**
Q. What is the date of this agreement?
A. **Well, I have -- I see the 3rd of March, 1998.**
Q. You are looking at an acknowledgment at the end of the second page?
A. **Uh-huh.**
Q. How about at the top of the first page? What is the date?
A. **13th day of February, 1998.**
Q. If you go down maybe a fourth of the way on page 1, there is a description of, I believe, the property subject to this lease, approximately 50 acres?
A. **Yes.**
Q. And the Kimbles were the owners?

A. **Yes.**
Q. And there's reference to adjoining landowners and on the south the Kimble property was bounded by that of an Albert L. Nelson --
A. **Yes.**
Q. -- am I correct? Is that the same property that is the subject of this litigation?
A. **Yes.**
MR. SMITH: Why don't we mark that Dressler Deposition Exhibit 1.
(Dressler Exhibit No. 1 marked for identification, attached hereto.)
BY MR. SMITH:
Q. Mr. Dressler, I'm going to show you another document here and ask you to take a careful look at it, please.
Do you recognize that document?
A. **Yes, I do.**
Q. What is that, please?
A. **That's a lease agreement between W. Ruskin Dressler and Albert Nelson Living Trust.**
Q. On page 2, is that your signature?
A. **Yes.**
Q. This lease on page 1, is the date line at the top completed?

A. **This is a copy I would say and I don't -- I don't see the date other than the year, 1996.**
Q. And then the notary's acknowledgements on page 2, what are the dates there?
A. **I see 3rd of February, 1997.**
Q. This property is 49 acres in Brady Township, Clearfield County; is that correct?
A. **Yes.**
Q. And does this lease correspond to the real estate that is the subject matter of this litigation?
A. **I believe so.**
Q. You mentioned that this lease is a copy and the Kimble lease is also a copy.
Do you have originals in your possession?
A. **I turned everything that I had over to the Waroquier Coal Company.**
MR. SMITH: Let's mark this Dressler Deposition Exhibit 2, please.
(Dressler Exhibit No. 2 marked for identification, attached hereto.)
BY MR. SMITH:
Q. Mr. Dressler, I'm handing you another bundle of papers that I've had marked Dressler Deposition Exhibit 3. Would you take a look at

that, and not just the first page, please, but all of them. And while you are doing that, it's the mining permit.

As we have produced documents for one another in this case, there's been different configurations of this document, so what I'm showing Mr. Dressler is here. If you want to take a look at it, so you know exactly what he's looking at; by inference, what he's not looking at.

MR. NADDEO: Is this the one you produced from discovery?

MR. SMITH: Yes.

(Dressler Exhibit No. 3 marked for identification, attached hereto.)

BY MR. SMITH:

Q. Do you recognize that document, Mr. Dressler?

A. Yes.

Q. What is that?

A. This is the coal surface mining permit issued from DEP.

Q. To whom?

A. To W. Ruskin Dressler, Box 39, Rockton, PA.

Q. Could you tell us which properties, if any, this permit applies to?

A. Yes. It applies to the Kimble property and the Nelson property.

Q. And would it also correspond to the leases that I showed you as Exhibits 1 and 2 this morning?

A. Yes.

Q. What was the issuance date of this permit, Mr. Dressler?

A. This was August 4th, 1999.

Q. Expiration date?

A. August 4th, 2004.

Q. Could you flip back six pages in this bundle of documents and you should hit a page, at the top it states Exhibit 5. Do you see it there, Mr. Dressler?

A. I don't see where it says Exhibit 5.

Q. Here's the one I'm looking for.

A. Okay.

Q. Do you have it there?

A. Uh-huh.

Q. The top half of this page lists a number of individuals, the Kimbles, the Hayes, the second Hayes, and then the Albert Nelson Trustee?

A. Uh-huh.

Q. Are those all the properties that were subject to this particular permit?

A. Yes.

Q. Would you take a look at the next page in this bundle of documents, Mr. Dressler? What is that?

A. This is a contractual consent of landowner.

Q. From whom? Who signed it?

A. Albert Nelson Trust.

Q. What is the date above that signature?

A. Third day of February, 1997.

Q. Does this document designate an operator?

A. Pardon?

Q. Does it designate an operator? Who is the mining company?

A. Yes.

Q. Who is it? I'll give you a little more help. Right up here. That's your name, W. Ruskin Dressler.

A. Yes.

Q. My next question is, did you secure this -- it's typically referred to as a supplemental C?

A. Yes, I did.

Q. You secured it from Mr. Nelson?

A. Yes.

Q. Was there a map attached to it, as there is in your packet, when you had Mr. Nelson sign it?

A. Yes.

Q. Did Mr. Nelson sign both these pages in your presence?

A. Yes.

Q. If you would flip to that map, do you have it there?

A. Yes.

Q. It's the next page. It looks like it's been copied from Clearfield County Tax Maps; am I correct?

A. Probably. Yes.

Q. Did you prepare this map?

A. Did I prepare it?

Q. Yes, sir.

A. What do you mean by --

Q. Did you make the copy?

A. No, I didn't actually make the copy.

Q. Did you have somebody prepare this supplemental C for you?

A. Yes.
Q. Who was that?
A. That would have been Fennell -- Attorney Fennell's office in DuBois.
Q. Let's go back to the leases, Mr. Dressler. I'd like to ask you a number of questions about the lease with Mr. Nelson, okay?
A. Okay.
Q. After signing that lease with Mr. Nelson, did you ever execute any written amendments of that lease with him?
A. To the best of my knowledge, this is -- this was the final.
Q. Just to make doubly certain that you understand me, what I'm asking you this morning is, after that document was signed, did you and Mr. Nelson sign another document that might have changed it in any way? I don't know the answer to this question. That's why I'm asking you.
A. I don't recall that we did. I don't think so.
Q. Did you ever receive any -- I'm going to ask you some specific questions -- any written notification from Mr. Nelson that he considered that lease terminated?

A. Nothing written.
Q. Did he ever say to you verbally, either in person or over the phone, that he considered that lease terminated?
A. He -- if I recall correctly, he did challenge it verbally.
Q. When did that occur?
A. I don't recall just exactly when that was. Probably a couple years ago.
Q. A couple would put it in 2004. Would that be accurate?
A. I don't know that it would be accurate, but I'm thinking I could look that up. At this point in time I can't give you the accurate date, but I would say that was in the time frame.
Q. In the ballpark?
A. I would say.
Q. Let me ask you this: Would Mr. Nelson have challenged the validity of that lease before or after you assigned the permit that I showed you as Exhibit 3 to the Waroquiers?
A. Will you please state that again?
Q. Okay. I'm going to try to ask the question with reference to another event. That event would have been the date you transferred the

surface mining permit for the Kimble and the Nelson properties to the Waroquiers. Let me suggest to you that that date occurred in the year 2001. Does that --
A. Yes.
Q. Is that accurate?
A. Yes.
Q. Did Mr. Nelson's challenge of the lease you are looking at occur before or after the transfer of the permit?
A. Definitely after and maybe -- I'm not sure on the date. I could go back and look at some information that might tell me a little closer, but I'm saying two years ago, maybe it was two and a half. I'm just not sure. Maybe three. It might even be three.
Q. Don't let me cut you off either, Mr. Dressler. I don't mean to be rude.
Do you remember where this conversation might have occurred?
A. Yes.
Q. Where?
A. At my shop there, DuBois shop.
Q. What is the address of the shop? Does it have a 911 address?

A. It does. It does have one.
Q. But you don't remember it?
A. I don't use it.
Q. That's okay.
A. Sorry.
Q. I've gone by it.
A. I use my post office, the Box 39.
Q. Is it the one with the antique tractor sitting in front of it?
A. That's the one. It does have a 911 number.
Q. Was anyone else present for this conversation?
A. No.
Q. What else was discussed during this conversation?
A. Well, it's a while back, but at that point in time he had been notified that possibly Waroquier Coal had mined on him without his knowledge.
Q. Was anything else said?
A. Pertaining to?
Q. This discussion in its entirety.
A. That was the basic thing. He was -- at that point in time he felt that there was a

criminal case and that he would be notified -- possibly notifying the state police.

Q. What was your response to the statements by Mr. Nelson?

A. Well, this was very sudden, shocking to me. I had no inkling that anything like that was occurring. I had left the -- shortly after the transfer of the lease and I was away from the job site. I no longer knew the daily activities.

Q. Do you recall the date when you left the job site? By that I mean the site where the mining operations permitted under Dressler Exhibit 3 were conducted.

A. I stayed on just -- just to sell the balance of the little bit of house coal that was designated to me.

Q. That tells me why you stayed on. I'm asking you a date. Do you recall that?

A. Yeah, that would have been -- no, I don't have this recorded, but I'm thinking it was probably March.

Q. Of which year?

A. The same year.

Q. 2001?

A. Yeah. It would be a couple months, would

probably -- I'm thinking would be the --

Q. Let me jump back to this discussion at your shop with Mr. Nelson. Did you and he look at any documents at that time?

A. I'm not sure whether we did at that time. We either did at that time or shortly after. Then I produced documents for him to copy.

Q. What did you show him?

A. I showed him tonnage reports --

Q. Let me stop you please. Tonnage reports from whom? Your company? Someone else's?

A. OSM reports from my company, from this job site only.

Q. Follow-up question to that. Tonnage reports you filed with OSM while you were actively mining this property?

A. That is correct.

Q. And I mean both properties. I don't mean to trick you into specifying it was either Nelson or Kimble.

A. This property, I wasn't on.

Q. I know that's your position. We'll talk about that later.

Did you show him anything else at that time?

A. That was -- that was the -- the tonnage was the big thing. Maps. I'm sorry. I showed him maps. In fact I gave him --

Q. Which maps were those?

A. These would be like Exhibit 9 -- 8 -- different -- I'm not just sure what all I did give him in maps.

Q. Would these maps have been part of your application for the surface mining permit?

A. Yes.

Q. Who prepared those maps?

A. That would be Lee Simpson in DuBois.

Q. Did you use that firm for the engineering work involved in this permit?

A. Yes.

Q. Did you use any other engineering firms in conjunction with this permit?

A. No, just Lee Simpson's.

Q. Was there a particular person you used?

A. Dwayne Berry.

Q. Do you know if anyone helped Mr. Berry?

A. That I -- I would think that there would be staff. The staff would help him.

Q. Did Mr. Nelson have any documents with him during this conversation that he showed to

you?

A. I'm not positive on that. It's been a while.

Q. Let me jump back to something else that you said that I'm interested about. When I was asking you about the date of this conversation, you said that perhaps you could pin it down with further accuracy by looking at some other information you have.

What types of other information do you have or have you given to your attorney that bears upon this litigation, records, notes?

A. I would see Mr. Nelson to get a more accurate date.

Q. There's nothing else you would have at your shop?

A. Not that I'm sure of, no.

Q. Do you keep a daily log book or journal?

A. Pertaining to?

Q. Your business operations in general.

A. No. I'm sorry, other than the MSHA, my log book on daily operations.

Q. You were keeping that in 1999, 2000 and 2001?

A. The MSHA book, yes, sir.

Q. How many employees did you have working for your company during that period?
A. None. No employees.
Q. At any point when you were working on the mining under this permit, did you have any employees?
A. No.
Q. Subsequent to this first meeting with Mr. Nelson -- and "first" is a bad term. You obviously met with him when you got the lease in 1996, 1997?
A. Yes.
Q. Around 2004, maybe you met with him again. Subsequent to the 2004 meeting, did you have any other meetings with him?
A. Pertaining to this?
Q. Yes, sir.
A. No, sir.
Q. Meetings pertaining to other matters?
A. Such as?
Q. I don't know. That's why I'm asking you.
A. Yes, there were meetings on other matters.
Q. What would those other matters be?
A. This would be previous mining done on

land his father owned.
Q. When did that mining take place?
A. That was back in the 1980's.
Q. After you first got started in business.
A. Uh-huh.
Q. Where was that property?
A. That property was this same property.
Q. So do I understand you that prior to getting a lease -- prior to getting the lease that we've identified as D-2, Dressler 2, you had mined that same property a number of years prior?
A. Yes. For his father.
Q. That would have been I guess when his dad owned it?
A. Yes.
Q. What were the issues relating to that prior mining that you had to discuss subsequently with Mr. Nelson?
A. Those issues were mainly I was making payments to his father and then made payments to Mr. Nelson.
Q. By that do you mean --
A. Royalty payments.
Q. By that do you mean that you hadn't completely paid --

A. Yeah, there was a balance which --
Q. What was the amount of that balance in 2004, do you know?
A. 2004, I can't tell you at this time exactly what it was.
Q. Could you tell me the balance when you left that -- the job that time?
A. When I left the job, approximately if I remember correctly, probably $50,000.
Q. Subsequently when you went to Mr. Nelson to obtain what I'll refer to as the 1996 lease that you've seen as Exhibit 3, did the subject of this earlier lease and the balance owed come up with him?
A. Yes. It was discussed.
Q. How was that handled?
A. We reached a mutual agreement.
Q. What was that?
A. That I would continue until the balance was paid.
Q. Was that agreement ever reduced to writing?
A. Yes.
Q. Is there a document, a number of documents? What do you have?

A. What do I have?
Q. Yes, sir.
A. I didn't bring anything.
Q. I mean in the general sense of the word -- here, your house, your shop, under the seat of your pickup, what do you have?
A. What do I have? I have an agreement with him.
Q. Is there just one -- is it a note, basically a glorified IOU?
A. Mortgage note.
Q. Back in the 1980's when you leased this property from his dad, did you get a surface mining permit then?
A. Yes.
Q. Who helped you with the engineering at that point?
A. Lee Simpson.
Q. Mr. Berry again?
A. Yes.
Q. Did you ever have a survey of the Nelson property prepared either the first time or the second time?
A. No. No.
Q. What did Lee Simpson then use for maps in

the permitting process?
A. The assessment maps, I'm assuming that's what they used.
Q. Let me show you the next document, Mr. Dressler. We're up to Dressler 4.
(Dressler Exhibit No. 4 marked for identification, attached hereto.)
BY MR. SMITH:
Q. Would you take a look at what I've handed you, Mr. Dressler, that's been marked D-4, Dressler Deposition 4. Do you recognize that document?
A. Yes.
Q. What is that?
A. This is the agreement between myself and Waroquier Coal.
Q. On page 2, is that your signature?
A. Yes.
Q. This agreement is dated January 22, 2001; is that correct?
A. Yes.
Q. The purposes of this agreement was to transfer the permit on these two properties to Waroquier?
A. Yes.

Q. Am I right on that?
It transferred your entire rights to both properties or just a portion of them? You tell me.
A. Entire rights.
Q. Once you had signed the agreement with Mr. Nelson and it's notarized February 3, 1997, did you ever assign any portion of your right to mine the Nelson property under that 1997 agreement, to anybody other than Waroquier?
A. No.
Q. This is a term I see more often in the gas industry, but I'll use it. Did you ever surrender the lease back to Mr. Nelson and say, here, you can have this back, Mr. Nelson, I'm not going to use it?
A. No.
Q. Did you ever surrender any portion of the acreage --
A. No.
Q. -- to Mr. Nelson?
A. No.
Q. Follow-up question, somewhat redundant. Did you ever assign a portion of your mining rights under the agreement with Mr. Nelson to

Mr. Roger A. Thomas?
A. No.
Q. How about his wife Miriam R. Thomas?
A. No.
Q. Ramm Coal Company, Inc.?
A. No.
Q. Any entity that either Mr. or Mrs. Thomas are or were involved in?
A. No.
Q. Did Mr. Thomas, being Roger Thomas, ever ask you to assign him a portion of the Nelson property for surface mining?
A. No.
Q. Have you ever mined on any of the properties adjoining either the Kimble or the Nelson properties in Brady Township?
A. Adjoining. You are saying past --
Q. I'm talking if, for example, these two documents are Nelson and Kimble, one being the Nelson lease and the other being the Kimble lease, did you ever mine on any of the properties that butt up against the boundaries of those?
A. No.
Q. Not in the late 1990's?
A. I'm sorry.

Q. Got you.
A. You got me.
Q. I was guessing, too.
A. No. Excuse me. I mined years ago on what is now the Albert Nelson property.
Q. Right. But what I'm talking about are properties next door, so to speak.
A. No.
Q. Never ever?
A. No.
Q. Speaking of the Nelson property in general, to your knowledge had any person or company mined that property prior to your arrival there in the mid to late 1980's? Had there been prior mining?
A. Yes.
Q. What can you tell us about that? Who did it? When? What seams they took?
A. I know that there was a Maple Hill Coal Company, I believe, removed the upper -- it would be the Upper Kittanning on probably Mr. Nelson, and I'm not sure about on Mr. Kimble, but definitely on Mr. Nelson's property.
Q. When would that have been, do you have any idea?

A. It was way back, before my --
Q. Was it stripped or deep mined?
A. Surface mined and also deep mined.
Q. What do you know about the deep mining?
A. I know that the deep mining was very extensive on the eastern portion of the Nelson property, heavily mined.
Q. Was -- go ahead --
A. I'm sorry.
Q. -- please complete your answer.
A. That came from the initial test drilling by Forsyth Drilling Company.
Q. When you say "test drilling," this was done -- was Forsyth the drilling company?
A. Yes.
Q. Did you retain them directly or did Lee Simpson?
A. I did.
Q. When was that?
A. That was prior to beginning the permitting process.
Q. Which time, Mr. Dressler?
A. My guess is that would have been in 1988. That's my guess. Possibly late 1997.
Q. Either the 1980's or in 1997, you can't

tell me with certainty?
A. I can't tell you exactly.
Q. Did you have the entire property drilled?
A. Yes.
Q. When you say drill --
A. Now you are saying entire property?
Q. Yes, sir.
A. Each property.
Q. We're talking about Nelson.
A. Nelson. Okay. Not the entire property at that time because it had previously been mined by me, so it was not necessary to drill the entire property.
Q. That makes sense. The first time you mined out there, can you tell me how many acres that you mined?
A. I can't tell you at this time.
Q. Would you have some records that I could check to answer that question? Do you have anything left from that era?
A. That I don't -- I could look, but I don't know that I do.
Q. When it was drilled by Forsyth, describe for me the drilling. Just one hole? A number of holes?

A. A number of holes.
Q. How many would that be?
A. I can't tell you.
Q. Did you get a written report?
A. I did.
Q. Do you still have that report?
A. I don't believe I do.
Q. Would you look for that as well, please?
A. Okay.
Q. In relation to the boundary between the Nelson property and the Kimble property, can you locate that Forsyth drilling for me?
A. Would you ask that again, please?
Q. Again using the leases with Mr. Nelson and with the Kimbles, what I'm asking you, in relation to the line where those two properties adjoin one another, where did Forsyth drill on the Nelson property, do you recall?
A. I can't tell you the exact locations, but I do remember that the eastern portion was heavily mined.
Q. Does the Kimble property -- which point of the compass does the Kimble property lie on with respect to the Nelson property?
A. North.

Q. North?
A. Basically north.
Q. Do you have any recollection, did Dave Benjamin or any of his companies do any mining out in this area?
A. Yes. Benjamin.
Q. Did he mine on the Nelson property do you know?
A. I think so, yes. A portion, just ...
Q. Let's divide the Nelson property into four equal, I'll call them quadrants. The eastern portion was deep mined extensively you said.
A. Yes.
Q. That whole half or just the one corner quadrant?
A. I don't know the extent of the deep mines. They go --
MR. NADDEO: Would you mind clarifying that question just for the record? I understand what you are attempting to do. Why don't you call it the northeast quadrant. I think that's where you are going. I don't care where you start, but just to --
MR. SMITH: Good suggestion.
Q. Do you follow Mr. Naddeo's comments?

A. Yes.
Q. So northeast, northwest, southwest, southeast quadrants in the Nelson property. Could you locate, please, the deep mining?
A. Well, the most extensive would be in the northeast portion.
Q. Did that continue into any of the other portions, do you know? If you don't know, Mr. Dressler, obviously you can't answer.
A. I don't really. When I was previously mining there, I did encounter some.
Q. You hit some old works?
A. Yes.
Q. When you were mining in the 1980's?
A. Yes.
Q. How about in the 1990's, did you hit any of those old works, deep mine works?
A. Yes. Just evidence, more evidence. I knew previously by drilling that there was no point in --
MR. NADDEO: Are we still talking the northeast quadrant?
THE WITNESS: Yes.
BY MR. SMITH:
Q. Now the Benjamin mining, can you locate

that in one of these quadrants for me?
A. That would be the same.
Q. To your knowledge, did that extend into any of the other quadrants, or was it confined to the --
A. I think it was confined to that area.
Q. Now, when you took this lease from Mr. Nelson in the late -- mid to late 1990's, where did you plan to mine? Again using these quadrants.
A. More so the western, would be the western --
Q. Northwestern or southwestern?
A. On his property would be northwestern.
Q. Mr. Dressler, if you look at the dates on the Kimble and the Nelson leases, you'll see that Kimble was executed almost a year to the day after the Nelson lease was signed -- was notarized.
A. Yes.
Q. Why was it that you approached Mr. Nelson first?
A. I knew Mr. Nelson personally. I did not know Mr. Kimble.
Q. Had you formulated a mining plan at that point, how you were going to tackle this

particular project?
A. Not at that point.
Q. Had you consulted your engineers yet?
A. Not at that point.
Q. Focusing on your second agreement for the Nelson tract, notarized February 3, 1997, you had a conversation you think in 2004 with Mr. Nelson.
Did you ever pay him any royalties under that lease?
A. No.
Q. Did he ever make inquiry of you what was happening under it prior to 2004?
A. Yes.
Q. What was the nature of that inquiry?
A. He would inquire as to how, you know, how close I would be or how soon I would be on his property.
Q. How would he make these inquiries?
A. By telephone usually.
Q. When did this start?
A. When I was still actively engaged mining on the Kimble property.
Q. There must have been some point -- did he ever call you after you assigned this permit to the Waroquiers?

A. Yes.
Q. What did you tell him then?
A. That after -- yes, I'm still not on your property, Mr. Nelson.
Q. You didn't mention anything to him about the assignment of the permit?
A. Oh, yes. Yes. That was told immediately.
Q. What was his -- how did you tell him?
A. By telephone, if I remember correctly.
Q. You say "immediately." That would have been done the same day that you signed the agreement with the Waroquiers, January 22, 2001?
A. I don't recall that it would be the same day, but it would be within a very short time frame.
Q. Do you recall what Mr. Nelson's response was, if any, to that information?
A. I can't really think of anything outstanding.
Q. Even a casual remark, like "who the heck are they?"
A. Well, yes, he probably did ask who they were.
Q. Did you ever, while you were actively

engaged under this permit -- let me ask you this first. When did you first start moving earth and rock under this permit?

A. This would have been in the month of August of 1999.

Q. At some point subsequently, did you enter into an agreement with Mr. Thomas to assist you in this mining operation?

A. We had discussed it in that time frame, yes.

Q. Did he in fact come on?

A. Well, if I recall, yes, he did come on, yes. Yes.

(Dressler Exhibit No. 5 marked for identification, attached hereto.)

BY MR. SMITH:

Q. Mr. Dressler, I'm showing you what has been marked Dressler Deposition Exhibit 5. Take a look at it, please.

Mr. Dressler, first of all, whose handwriting is this on page 1 of Dressler 5?

A. This would be Mr. Thomas's.

Q. And then on page 2, is that your signature again?

A. Yes.

Q. Still looking at page 2, left-hand margin, I see an insertion, Middle Kittanning. Whose handwriting is that?

A. That would be Mr. Thomas, I believe.

Q. It's not quite as thick as, say, the sentence that is right next to it, is it?

A. No.

Q. Was that put in afterwards? Is that the explanation? Do you know? If you don't know, Mr. Dressler --

A. I don't know.

Q. Down below at the end of that paragraph that starts "coal proceeds" ...

Again, the thickness of the lettering changes a little. Whose handwriting is that?

A. Would you please run that by me again?

Q. Here. I'll show you. Who wrote that in, commences "when Dressler has paid moneys" ...

A. I believe Mr. Thomas.

Q. And still looking at that portion of this document, it makes reference to previous months October 1999 and then I think it should be through February 2000? Am I correct?

A. Where are you?

Q. I'm right there (indicating).

A. Oh, okay.

Q. Above your signature, it is dated November 23, 1999, do you see that?

A. Uh-huh. Yes.

Q. Had Mr. Thomas actually been operating on the property prior to November 23, 1999?

A. I don't think so. Excuse me for interrupting, but the drag line was moved in about October and it took quite some time to assemble it, so this would be about the beginning -- the time he would begin.

Q. Here's why I ask. In that same line where I pointed the O-C-T period 1999, it makes reference to "remove Luthersburg overburden in previous months." It sounds to me like he had been removing overburden prior to November 23, 1999.

A. This apparently was done -- was done with the dozer while the drag was being assembled.

Q. If you could tell me, how did you and Mr. Thomas divide responsibilities between yourselves? Did he just take over completely once this document was signed?

A. No. We worked mutually together.

Q. What did he do, and what did you do?

A. My responsibility was dozer, the dozer work and his was the excavating drag line.

Q. Who broke up the coal?

A. Once it was uncovered?

Q. Correct. Was that you?

A. That would be me.

Q. How about loading it?

A. Yes, I did the bulk of the loading.

Q. Did he help you with that?

A. He may have a very small amount.

Q. Was he around while you were doing that?

A. Yes, we were both there on a daily basis.

Q. How did you get the coal from this permitted site to wherever you sold it? Who transported it for you?

A. Various coal companies.

Q. Trucking companies?

A. Trucking.

Q. Could you name them for me, please.

A. Yes. I have them. I think maybe off the top of my head, Energy Link.

Q. Who owns that company and where are they located?

A. At that point in time they were in DuBois. I'm not sure where they are now.

Q. Can you give me a person's name that you dealt with?
A. **Don Hudson.**
RKR Enterprises.
Q. Give me a contact person's name for that company, please.
A. **Rick Wills.**
Strischock Coal Company. That would be Mark Strischock.
Waroquier Coal Company and that would be Joseph Waroquier, Junior and Gary Waroquier.
Q. Anybody else?
A. **Let me look back. Falls Creek Energy.**
Q. Contact person's name?
A. **At that time it would have been William Bowser, I believe.**
Q. Is that it?
A. **Uh-huh. Yes.**
Q. How did you determine where the boundaries are on the Kimble property? I'm shifting from Nelson to Kimble here, Mr. Dressler. I don't mean to mislead or confuse you. How did you know?
A. **There's corner markers on both ends.**
Q. What are those markers?

A. **Stone.**
Q. When you say "both ends," orient me.
A. **That would be on the boundary between the northern part of the Nelson property and southern part of the Kimble property.**
Q. These stones --
A. **They would run basically somewhat east and west.**
Q. When did you first observe those stones?
A. **Before I started mining.**
Q. Way back in the 1980's or the second time?
A. **Second time. Both times really.**
Q. These stones, are they carved monuments or just a stone?
A. **They are carved.**
Q. Could you describe it further for me, please.
A. **They are made of sandstone.**
Q. Let me be a little more precise. Let's start with the stone on the western end of this line. Describe that for me, please.
A. **The stone itself?**
Q. Yes, sir.
A. **They are just a carved stone sticking up.**

Q. What is the shape of it?
A. **Kind of square, squarish.**
Q. Actually embedded in the earth?
A. **Yes, embedded in the earth.**
Q. Is there anything written on it or chiseled into it?
A. **Not that I know.**
Q. Let's go to the other end of this line, that would be the eastern more or less.
A. **Same.**
Q. When was the last time you checked to see that those stones were there, if ever?
A. **Well, certainly before I started mining, I checked. And during the mining process, I kept looking at them.**
Q. How did you conclude that those stones actually marked the boundary? Who told you that or how did you determine that?
A. **Well, originally Mr. Hayes lived next door to where everything was.**
Q. Did you ever have a surveyor tell you that, yeah, I've done a complete survey and those stones are on the corners?
A. **No, never had it surveyed.**
Q. In the 1990's, Mr. Dressler, could you

list for me the machinery you had on this job?
A. **Yes. 988 --**
Q. That's a dozer?
A. **-- Caterpillar loader. Loader.**
41 Fiat dozer.
Q. What was the size of the bucket on the 988?
A. **Six-yard bucket.**
Q. And on the dozer?
A. **Size of the blade?**
Q. Yes, sir.
A. **About close to -- about 19 feet.**
Q. Those are the only pieces of equipment you ever had on the job?
A. **A little backhoe, a little Case backhoe.**
Q. Anything else?
A. **That's all I recall. Water pump.**
Q. Who did you use for your blasting?
A. **Tyler Blasting.**
Q. Exclusively?
A. **Yes.**
Q. With whom at Tyler did you deal? Was there a single person?
A. **Roger usually took care of contacting them, Mr. Thomas.**

Q. The employees that -- who did Tyler send out? Did they send out the same crew or was it a different person?
A. **If I recall, it varied.**
Q. I want to call your attention, Mr. Dressler, to one of the averments you made way back when I first was trying to join you as a defendant to this case. I'm going to show you or maybe Mr. Durant has it there, paragraph 12 of your reply to Motion to Join Additional Defendants.
MR. DURANT: Why don't you show it to him, Mr. Smith. When I find it, I'll change off.
BY MR. SMITH:
Q. Here is the cover page. It is filed on your behalf. I flipped it to the page where paragraph 12 appears. I'm going to ask you some questions about that. If you can read it for a moment.
MR. DURANT: Here. He can have his back.
MR. SMITH: Thank you very much.
Q. Do you have it there, Mr. Dressler?
A. **Yes.**
Q. That states that you stood on one spot on the Kimble property and pointed in the general

direction of two boundary markers.
I think I know what that means, but you are the witness and you are the guy that was standing there. The two boundary markers referred to in paragraph 12, are those the two that we've just been discussing?
A. **Yes.**
Q. When you say that you stood in one spot on the Kimble property, can you tell me approximately where on the Kimble property you were?
A. **If I recall correctly, we were on the top of the hill, which would be -- the boundaries between the two properties would be on the hilltop.**
Q. Who were you standing there with?
A. **Gary Waroquier.**
Q. Anybody else?
A. **I don't recall anyone else.**
Q. Did you ever have any subsequent conversations with any of the Waroquiers about the location of the line or these monuments?
A. **From that point on?**
Q. Yes, sir.
A. **Not that I recall.**

Q. You go on to state in this paragraph that you did not walk the line.
A. **That is correct.**
Q. Did you ever walk this line with Mr. Nelson?
A. **No.**
Q. Did you ever discuss boundaries with Mr. Nelson, corner markers?
A. **No.**
Q. How about with his dad?
A. **Pretty sure that I did. It's been -- it was a long time ago, but I'm sure that we did.**
Q. Had Benjamin mined on any of the Kimble properties, do you know?
A. **Yes. A portion of it.**
Q. Was there deep mining under a portion of the Kimble property, do you know?
A. **There was a little on them, yes.**
Q. What seam would that deep mining have taken under the Kimble property, if you know?
A. **The bulk of that would have been the Lower Kittanning.**
Q. Any other seams?
A. **A portion of the Middle Kittanning.**
Q. Did you ever have the Kimble property

drilled?
A. **Yes.**
Q. "Yes"?
A. **Yes.**
Q. Would that have been done by -- help me here -- Forsyth?
A. **Yes.**
Q. Was that done contemporaneously with the Nelson?
A. **Yes, in the same time frame.**
Q. Did you show Forsyth where this boundary line was between Kimble and Nelson?
A. **No, it was immaterial to a test run.**
Q. How about material to your evaluation of the properties? That didn't factor? You didn't want to know --
Let me ask you this: Did they give you a map that showed where they drilled?
A. **They give a drill report, kind of a little bit of a chart. It's not -- it's not a map.**
Q. And that report contains data on it; does it not --
A. **Yes. Eventually that information would be transferred on to the -- the engineer would**

incorporate those holes usually on the map.
Q. Okay. Go ahead.
A. Not all of them necessarily, but --
Q. That's the point of my question. That report doesn't do you much good unless you know where that hole is; is that correct?
A. Yeah. You need to know about where it is. It's not difficult in that small of an area to remember.
Q. What was Forsyth working from? How did they know where the hole was located in order to report it back to you or your engineers?
A. Their operators would use -- the drill roads and so forth were references.
Q. And they just hand draw a map?
A. Yes.
Q. Did you give them any maps?
A. No. No, there were no maps produced at that time. This is the initial test drilling, and I would like to point out that I walked the property line with Mr. Kimble, which is the same line.
Q. When was that?
A. That was prior to mining and after mining.

Q. When you say "after mining," approximately when?
A. After mining was commenced. I'm sorry.
Q. Approximately when?
A. Very shortly before I transferred the permit to Waroquiers.
MR. NADDEO: I'm sorry. Your voice is low. Who did you walk the line with?
THE WITNESS: Mr. Kimble, the other property owner.
BY MR. SMITH:
Q. That would be Richard L. Kimble?
A. Yes.
Q. You said after mining commenced shortly before you transferred the permit to Waroquier.
A. That was the last time, yeah. We did this more than one time.
Q. What was the particular purpose of that walk?
A. To be sure that I was where I thought I was.
Q. There's some other reference point on the property maybe. When you discussed the boundary between Kimble and Nelson with Gary Waroquier, was any reference made to the horizon or horizon line?

A. I don't recall. I had measured previous to that. I used the township road as a measurement, an existing township road to the north which runs through the Kimble property. That was another point that I used, a compass point.
Q. You said that you measured? From where on that township road to where on the boundary line?
A. I would measure from the ditch line.
Q. That ditch runs along the road, correct?
A. Yes.
Q. Which point on the road did you take your measurement from?
A. Various points.
Q. How did you then calculate those distances in terms of the boundary line?
A. The -- using the mine maps.
Q. How would you use them?
A. Well, they are on a scale. That's how I determined, using their scale.
Q. Did you ever use -- there's a gas well, I want to say, to the southeast of the Nelson property. Is that ringing a bell with you?
A. There's one on the northeast.

Q. I stand corrected. Did you ever use that as a reference point in any fashion?
A. Yes.
Q. How did you use it?
A. With measuring.
Q. With measuring?
A. Used it the same as the township road.
Q. How about in terms of site lines, just standing on top of the Kimble hill and eyeballing things.
A. Along with the measuring.
Q. But you did do that?
A. Yes.
Q. Did you make any reference to that gas well when you were speaking with Gary Waroquier?
A. I don't recall.
Q. There's a tree line, too, I believe that came off the Hayes property, if I'm correct?
A. On the western portion?
Q. Maybe. You tell me.
A. There is a tree line on the western portion.
Q. Does that bear any relationship to this Nelson-Kimble boundary?
A. I don't believe so.

Q. Since you are looking at it, if you drop down to paragraph 14 in your reply, the very last line there's a parenthetical including maps, do you see that?

A. Yes.

Q. Could you tell me, please, which maps specifically did you give to the Waroquiers?

A. Various maps, all the maps required to conduct mining activities.

Q. Tell me, Mr. Dressler. Just saying all doesn't give me any additional information. If I look at a bundle of maps, how do I know if I'm looking at all of them unless you tell me.

A. First of all, Gary Waroquier has been in the coal business for many years. This is nothing new to him. He knew what he was required to have.

Q. Let's just say for the purpose of argument -- for the purpose of advancing this deposition I'll grant you all that.

Which maps? Maybe you don't know.

A. I can go back and look. Everything I had.

Q. But you have been in the coal business a day or two yourself. Yes?

A. Yes.

Q. Why can't you tell me, sitting here this morning, which maps you gave the man? You are telling me everything involved with the permit, right?

A. Right.

Q. Tell me what that is.

A. It would take a while. I'm sorry.

Q. I've got all day.

A. The topographic maps, Exhibit 9 was one of them.

MR. FRAMPTON: What? Keep your voice up on that.

THE WITNESS: I can't sit here and recall how many maps are in the package and what they are called.

BY MR. SMITH:

Q. You made reference to an Exhibit 9 though.

A. Yes.

Q. Would that be an exhibit to the permit application?

A. Yes.

Q. Anything else specifically you can think of? I'm not out to torture you. I'm trying to get to the bottom of this. Anything else

specifically you can think of?

A. Not at this point in time.

Q. Mr. Dressler, as a rule of thumb I've heard kicked around in the coal industry -- you tell me whether you are familiar with it and whether you think it is accurate, inaccurate -- that there's approximately 131 tons of coal to a one inch, one acre square. Are you familiar with that?

A. I'm familiar with that and also another one.

Q. Well, let's stick with this one.

A. Yes.

Q. You've peaked my curiosity. Do you use that? In other words, do you think it is generally accurate?

A. I think it's generally accurate.

Q. Give me the other one.

A. The old timers computed by -- they come out to a hundred tons, the same formula created 100 tons.

Q. So it was coming out lower?

A. Yes.

Q. The old-time miners or the old-time property owners?

A. The first I ever heard was the 100 ton per inch, per acre.

Q. How long ago was that?

A. I don't recall how long ago it was. The second one you mentioned, yes, I've heard that used.

Q. Could the difference in mining techniques, deep mining versus surface mining, impact that rule or that rule of thumb, do you know?

A. Yes. Oh, yes. There's many variables.

Q. Completely different line of questioning. Who did your accounting in the period 1999 through 2001?

A. Myself.

Q. You didn't use anybody to assist you with bookkeeping?

A. Very little. Very, very little.

Q. That very little, who would have helped you?

A. That would have been Beverly Bryington.

Q. And this is the Bryington from the coal company?

A. From Beverly Hill Coal, yes.

Q. How about preparing your tax returns?

A. Mickey Catalano here in Clearfield.
Q. How about your OSM reports, who did those?
A. She worked on them for me at that point in time. Since then, I've been doing my own.
Q. I'm just -- we're focusing on 1999 through 2001.
A. Part of that I did myself, the last few.
Q. How about reports to the DEP during 1999 through 2001?
A. Yeah. I did them.
Q. Was there anyone else at all who helped you with any of your paperwork, so to speak, associated with your activities under this permit?
A. No.
MR. SMITH: Does anybody need to take a break?
Let's go back to the Nelson/Kimble boundary. Was there a fence there in the late 1990's?
A. No.
Q. How about in the 1980's when you were there?
A. No.
Q. Was it posted "No Trespassing"?

A. Yes. Back then there was --
Q. "Back then" being 1990's or 1980's?
A. In the 1980's.
Q. How about in the 1990's?
A. I do recall seeing some that the neighbors had put up.
Q. On their lines?
A. I think some of the neighbors, unauthorized neighbors, put up on other people's property. I did see them.
Q. Were there other visible differences between Mr. Nelson or his trust property and the Kimble property, anything at all?
A. Not that I recall.
Q. Did you ever use a GPS, global positioning system, one of those handheld gizmos?
A. No.
Q. As the mining progressed in the 1990's, Mr. Dressler, how did you know where you were on the properties?
A. By the measurements that I mentioned.
Q. Did you do anything else in that regard to verify where you were?
A. Such as?
Q. I don't know. That's why I'm asking.

A. No. The measuring and the -- the sighting.
Q. And sighting being --
A. And walking, walking the line.
Q. Let's take a couple steps back. The measuring would have been from the township road?
A. Yes.
Q. And from that gas well?
A. Yes.
Q. When you say "measured," how did you do that? A tape?
A. A tape, yes, hundred-foot tape.
Q. Did you take measurements from any other natural or man-made monuments or things?
A. The distance from the stone to stone, I didn't take that measurement.
Q. What I'm asking --
A. Corner to corner, I didn't take measurements that way.
Q. You said something about then that you would also use sightings. When you did that, exactly what were you doing?
A. I would measure from the township road and establish a marker and then sight from the existing markers to that.

Q. Were you using any other equipment when you were doing these measurements or calculations?
A. No.
Q. Nothing else?
A. No.
Q. How did you know which direction you were going in? You didn't.
A. Yes, I did. North and south. I know north and south, east and west.
Q. Sure you do, as a general matter.
A. The maps are showing me that, too.
Q. Wouldn't you agree, Mr. Dressler -- let's just put it in real terms -- taking measurements from where I'm seated this morning, if I measure directly over your head to that wall, it's one distance, correct? If I shoot from this chair over Mr. Naddeo's head, it is going to be a different distance; is that correct?
A. It's obviously a different angle.
Q. How did you verify those angles?
A. Ninety degrees.
Q. How did you know it was 90 if all you had out there was a tape? Tell me.
A. I believe I was reasonably accurate.
Q. Your arrangement with the Waroquiers, you

got paid what I think is typically referred to as an override. Am I correct?
A. Yes.
Q. How much was that?
A. I don't have that with me.
Q. $1.00 a ton?
A. Oh, a dollar a ton, yes, was the amount.
Q. I wasn't asking the total.
A. Yes, a dollar a ton.
Q. And that was paid on a monthly basis?
A. Yes.
Q. I don't know if Mr. Durant had a chance to show you, but I produced, as part of this litigation, a whole thick stack of royalty statements.
A. Yes.
Q. Have you seen those?
A. Yes.
Q. Did you get basically a cover letter from the Waroquiers with these checks paying you your overrun?
A. Yes.
Q. You got those on a monthly basis?
A. Yes.
Q. You had an opportunity to review them at

the time; is that correct?
A. Yes.
Q. At any point since then, Mr. Dressler, have you disputed the accuracy of those checks that were sent to you? In other words, was it enough?
A. I didn't dispute the amount of the checks.
Q. Did you ever dispute the tonnage statements that accompanied those checks?
A. No.
Q. And isn't it correct that since you are being paid on a per ton basis that you have a clear financial incentive to make sure that those reports were accurate? Is that correct?
A. Yes.
Q. Did you ever get one of those checks in the mail and maybe call Lee Waroquier, Joe, Junior, for example, and say, "you know, I don't think this is right, but I'm going to cash it anyhow under protest"? Did you ever do anything like that?
A. No, I didn't.
Q. Let's talk a little bit about the house coal that came from this project. Looking at

Dressler 5, this is D-5, okay, first page, and right there where my index finger is, "all house coal to be split 50/50."
So you were selling house coal from this property -- from this permit? Whatever you dug under this permit, you were selling some house coal?
A. From the Kimble property.
Q. Do you have any records that indicate how much house coal was sold?
A. No.
Q. Is that typically done on a cash basis, Mr. Dressler?
A. Yes.
Q. Was it you that was arranging these sales, or did Mr. Thomas participate in that?
A. I arranged individuals.
Q. He never did any of that?
A. No.
Q. How often did you make this 50/50 split?
A. On a regular basis. This was only a short time frame.
Q. What was the time frame?
A. The season. On this permit, there was no house coal available until October, November and

December.
Q. In other words, when people needed it?
A. Yes.
Q. What kind of accountings did you give Mr. Thomas of the house coal? Just hand him a wad of dollar bills or what?
A. Basically. The house coal was of such quality that the sales were kept down. They were down to that level because of the type of coal. The people didn't like it for house coal.
Q. The other coal that was sold, that was mined under this permit and sold through third parties, how did you go about selling that? Did you use a broker?
A. Part of the time, but usually we'd just get various coal companies, larger coal companies that call, to see if they were interested.
Q. What companies did you sell coal to from this permit?
A. The ones previously.
Q. Basically the trucking companies?
A. Coal companies, sold directly to these that I mentioned earlier.
Q. Let me ask you this: Was part of the deal, for example, you did sell some coal to one

of the Waroquiers companies?
A. Let me back up a little bit, please.
Q. Go ahead.
A. I did use -- if I remember correctly, RKR was involved in the sales of some of this coal.
Q. As a broker?
A. As a broker. Some I sold.
Q. The question I started to ask you, just using the Waroquier company as an example, was the deal, I'll sell you 100 tons of coal, you come and get it? Was that the way you worked it?
A. Whatever was available in the pile, in the pit.
Q. What did you do to determine the actual quantity of coal that was sold to any of these particular third parties?
A. Took their weights and measures.
Q. You didn't undertake any independent verification?
A. There were no scales on the site.
Q. Did you do anything else to at least keep track in a general way of what you were selling to these people?
A. Yes, truck loads. That's the best we could do.

Q. How would you record that?
A. That was recorded usually in a little loader book.
Q. If you recall, early on in this deposition, I asked you about journals and things like that. It was that sort of thing that I was getting at.
A. Oh, okay.
Q. So you've got a loader book that's got this stuff ticked off?
A. Yes. Did have.
Q. Do you still have that?
A. No. Once the weigh slips came, then that was the accurate tonnage.
Q. During this period Mr. Thompson is working this permit with you, correct?
A. Yes.
MR. DURANT: Thomas? I thought you said Thompson.
MR. SMITH: I meant Mr. Thomas, Roger A. Thomas.
THE WITNESS: Yes.
BY MR. SMITH:
Q. What attention was he paying to the amount of coal that was taken out of the project?

A. I'm sure he paid close attention. He had a concern.
Q. Of course he did --
A. Yes.
Q. -- but how do you know that?
A. I assume he did.
Q. Did you account to him?
A. For the coal?
Q. Yes, sir.
A. Yes.
Q. How did you work the payments between you and Mr. Thomas?
A. Weigh slips. I gave him a copy of each and every weigh slip.
Q. Along with his check?
A. Yes.
Q. Did he ever question the tonnage?
A. Not that I recall.
Q. Do you have any recollection of him making notes as trucks were loaded or anything like that, similar to your loader book?
A. Not that I recall. He had a view from the drag line of seeing the activity.
Q. Could you tell me what equipment Mr. Thomas or his company had on this permit at

the time you were working out there?
A. One drag line.
Q. Is that it?
A. One dozer and one loader.
Q. Did he have any employees working for him during this period?
A. No.
Q. Do you know the capacities of those pieces of equipment, size of the bucket on the drag for example?
A. Not for sure, but probably six or seven yard.
Q. If you don't know for sure, I'm going to ask Mr. Thomas. But you don't know for sure?
A. Not for sure. Can I back up just a little bit on something.
Q. If you want to clarify something, sure.
A. On the statements from the Waroquier Coal and marked tonnage and checks enclosed, after the point in time Mr. Nelson made this discovery, I continued to get letters saying check enclosed with the tonnage being shown, but no check. I believe that Mr. Waroquier made the statement that those checks from that point on would be put in escrow until this was settled.

Q. Did Mr. Kimble visit your operation periodically to check on the progress?
A. **Yes, he did.**
Q. How frequently?
A. **I don't recall how frequently, but it seemed maybe on a monthly basis, possibly.**
Q. He lives out in that area?
A. **No, he lives in Liberty, PA.**
Q. So he would travel up here for that purpose?
A. **Yes.**
Q. After transferring this permit to the Waroquiers, did you ever visit the permitted areas of the two properties?
A. **On several occasions.**
Q. When did you do that?
A. **I don't recall when I did it, but I know that I did. A couple times I just drove by, didn't enter the site, just drove by.**
MR. DURANT: Mr. Smith, let me ask you to clarify. He testified that he did house coal for about two months afterwards. Are you talking about after that, or -- when you talking about visiting, was it after the house coal was done or --

MR. SMITH: I'm completely off of house coal. When he was answering those questions, I heard October, November and December, basically the heating season.
THE WITNESS: Yes.
BY MR. SMITH:
Q. I think what Mr. Durant is getting at, did you ever sell house coal from this property after you transferred the permit to the Waroquiers?
A. **Yes. There was still coal there on the house coal site.**
Q. So you continued to do that, sort of sideline business?
A. **Yes.**
Q. And certainly you would have visited the property for that purpose?
A. **Yes.**
Q. Can you quantify those visits for us, how frequently and how many times in total?
A. **No, I can't.**
Q. How about in terms of dollars, any idea?
A. **In terms of dollars for the -- amount of dollars, proceeds from the house coal?**
Q. Right.

A. **Yes. Around $6,000 total.**
Q. This is after transferring of the permit to the Waroquiers?
A. **No. This was --**
Q. The whole deal?
A. **This was before and --**
Q. And after?
A. **Yeah.**
Q. How do you know that amount, Mr. Dressler?
A. **Well, based on how much I would sell on a Saturday.**
Q. Are you telling me --
A. **Saturday morning was --**
Q. -- that was the big day for house coal?
A. **Yes.**
Q. Are you telling me that at this point in time you are guesstimating?
A. **Yes.**
Q. So you don't know for certain?
A. **Not for certain. Very close.**
Q. Why did you decide to transfer this permit to the Waroquiers?
A. **Well, at the time, at that time, my health was not good.**

Q. That was it?
A. **That was one of the main reasons.**
Q. What were any of the other reasons?
A. **The other reasons -- that was probably at my age. My age. I was approaching 62.**
Q. Were you thinking about retiring?
A. **At that time I was, yes.**
Q. I really don't mean to pry or embarrass you, Mr. Dressler, but could you share with me the health problems?
A. **Diabetes. I ended up in the hospital at the time of this transfer.**
Q. Did you negotiate with any other potential buyers?
A. **Yes.**
Q. Who would they be?
A. **Strischock Coal Company.**
Q. Anyone else?
A. **Larry Bumgardner.**
Q. Is that it?
A. **That would be the ones I can -- the Waroquiers, Mark Strischock and Larry Bumgardner. I'm sorry. There was one other one. Junior Contracting.**
Q. Did you engage in extensive negotiations

with the Waroquiers on this deal?
A. I would not call it extensive.
Q. Were lawyers used?
A. No. Regretfully, no.
(Dressler Exhibit No. 6 marked for identification, attached hereto.)
BY MR. SMITH:
Q. Mr. Dressler I'm handing you what's been marked Dressler deposition Exhibit 6. This is the statement that I believe Mr. and Mrs. Thomas attached to the end of their reply to my Motion to Join.
A. Yes.
Q. Right? Recognize that statement?
A. Yes.
Q. Is that your signature?
A. Yes.
Q. It is dated June 8, 2006?
A. Yes.
Q. Who actually did the typing?
A. That is not known to me.
Q. Where did it come from?
A. Mr. Thomas brought it to me.
Q. What was the context of his presenting this document to you? There was certainly a

discussion.
A. Yes. I'm sure there was.
Q. Would you please tell me your recollection of what was discussed?
A. Well, he was -- the responsibility for this was placed on him as well as me.
Q. But what was actually said, Mr. Dressler?
A. I don't recall.
Q. The upshot was that you signed this document?
A. Yes.
Q. Did you show it to Mr. Durant before you signed it?
A. I don't think I did.
Q. The statement that "I, W. Ruskin Dressler, was responsible for paying the royalties for coal removed from the job known as the Kimble mine," is that a true statement?
A. Yes.
Q. During the period of 1999 through January 2001 you paid all the royalties that were paid for coal from that property?
A. Yes.
Q. To whom did you pay those royalties?
A. Kimbles.

Q. Did you ever pay anything to Mr. Nelson?
A. No.
Q. Mr. Dressler, when did it first come to your attention that the Waroquiers either were or may be over the line between the Kimble and Nelson properties?
A. When Mr. Nelson notified me.
Q. You had absolutely no clue of that before that?
A. No clue whatsoever.
Q. How about when you went out there to load out house coal, it never dawned on you?
A. I didn't go beyond that point. That was not part of the active mine site. I could not see from that point.
Q. Why not?
A. Because it was spoil ponds. Existing spoil ponds.
Q. So you went onto the property to a stockpile of coal, loaded up and left?
A. Yes.
MR. DURANT: Can you clarify what property?
MR. SMITH: Kimble. The Kimble property.
Q. So you entered this project from the

township road over the Kimble property?
A. Yes.
Q. At any point while you were mining on the property, did you ever construct a haulage road or other roads over the Nelson property?
A. No.
Q. Do you know if the Waroquiers did?
A. I would assume they did. I do not know.
Q. You do not know.
Was coal ever augured --
A. No.
Q. -- on this project?
Have you ever done any of your own blasting?
A. No.
Q. When you met with Mr. Thomas on the occasion of this June 8, 2006 statement that you signed, what did he tell you about the boundary line in regard to the mining operations?
A. Well, as I recall, he felt that the Waroquiers were mining on Mr. Nelson.
Q. Did he explain to you why he felt that way?
A. Running the drag line, his position, he had an idea of where everything was property-wise.

Q. So the cab of the drag line is elevated up --
A. **Yes.**
Q. -- above the operation?
A. **Yes.**
Q. And I believe they pivot on an axle when digging and dumping?
A. **Yes. And of course he would be mining for them, so he would go with the machine where he was directed to mine.**
Q. I may have asked you this, Mr. Dressler, but refresh my recollection. Did you have a set of mining maps there at the job?
A. **Yes.**
Q. Were they in a trailer?
A. **A little field office, yes.**
Q. Did Mr. Thomas have access to that?
A. **Yes.**
Q. Did he have access to those maps?
A. **Yes.**
Q. Do you know if he ever took a look at them?
A. **I'm sure he did.**
Q. Did you ever discuss those maps with him, say, walk out on the Kimble property with the map,

top of a spoil pile and just orient yourselves?
A. **At what time frame?**
Q. At any point.
A. **I don't recall that.**
Q. As you are removing overburden in a surface mining operation, Mr. Dressler, does the pit get smaller or greater as you get deeper?
A. **Smaller as you get deeper.**
Q. The walls slope inward?
A. **Yes.**
Q. Give me a second here. Do you want to take a break here, Mr. Dressler?
A. **No. We'll chug along.**
Q. When you would pick up house coal from this permitted area, whom did you speak to about it? In other words, did you speak with Gary Waroquier or some representative? How did they know what you were doing, is what I'm asking.
A. **Oh, they -- as soon as they moved in, they were in charge of everything other than -- I mean I was not permitted to be in the permit, and didn't expect to be in the pit. That was off limits for me.**
Q. When you were operating under this permit, were there regular inspections by the DEP?

A. **Yes.**
Q. Monthly basis?
A. **Quite often.**
Q. Was it always the same inspector or were there various individuals who showed up?
A. **DEP inspector was usually -- always the same one.**
Q. Who was that?
A. **Jim Parlevecchio.**
Q. Did you ever have any discussions with him in regard to the boundary between Nelson and Kimble?
A. **Not while I was still there, no.**
Q. Did you show him the corners?
A. **No.**
Q. Did you have any permit problems or violations while you were operating on --
A. **Not that I recall.**
Q. Did you ever see Mr. Parlevecchio out there taking pictures?
A. **No.**
Q. Mr. Dressler, I don't have anything further for you. I want to thank you for your patience.
Now, the rule is the other attorneys here

get to ask you questions if they would like.
A. **Yes.**
Q. So you might want to take that break.
A. **Thank you.**
Q. Do you need a break?
A. **Yes. I'll take a break now.**
(Recess taken.)
- - -
EXAMINATION
BY MR. DURANT:
Q. Mr. Dressler, I'm Timothy Durant. As you know, I'm your counsel.
A. **Yes.**
Q. I have two small areas that I want to deal with. There was some question about whether you were satisfied with regard to the coal tonnage reports that you received from the Waroquiers and whether you were satisfied that you had received the appropriate amount of money, I believe, was the question. Is that correct?
A. **Yes.**
Q. Are you satisfied that you have been fully paid by the Waroquiers as to your override which is referred to in this agreement of the 22nd of January, 2001.

A. **No.**
Q. In what regard are you not satisfied?
A. **Not satisfied with the fact that the checks were -- that were not enclosed, but it was marked as such on the tonnage report. I have no problem with the tonnage reports or the amount of checks actually sent to me. It's the missing checks that I have a problem with.**
Q. On occasion there were some letters that said "check enclosed" and in fact there was no check enclosed?
A. **That is correct.**
Q. Have you contacted the Waroquiers about that?
A. **Yes, I did and was informed that they were being placed in escrow until this matter was resolved.**
Q. Who did you speak to?
A. **Mr. Joseph Waroquier.**
Q. And then one other housekeeping detail. I want to try to avoid having to file any more papers here. You filed Answers to Interrogatories and just recently made reference to a January 22 agreement and that is, I believe, the same agreement that's been marked as Dressler

Deposition No. 4. Put your glasses on and keep them on, please, just like me.
A. **Okay.**
Q. This document Dressler Deposition Exhibit 4 says January 18 at the top left corner typed, and then it has this 22nd, handwritten in there, of January, 2001.
So is that the only agreement between you and the Waroquiers with regard to the transfer and the rights transferred that pertain to this lawsuit?
A. **Yes. Yes.**
Q. And in fact I'm going to have you look here at paragraph 12 of your Answers to Interrogatories. The last sentence where it says "as supporting documentation, see Kimble lease of February 13, 1998 and the agreement of January 21, 2001."
Is that in error?
A. **January 22nd.**
Q. This is referring to Dressler No. 4, Deposition No. 4 exhibit, right?
A. **I don't see 22nd on the --**
Q. It should have said the 22nd instead of 21st?

A. **Yes.**
Q. Paragraph 12?
A. **Yes.**
Q. And also the answer to paragraph 6 which is in the Request for Production of Documents, paragraph 6, states, "there are no documents except for the agreement of January 21, 2001.
In fact you meant the agreement of January 22, 2001; is that correct?
A. **Yes.**
Q. And that was erroneously placed as 21st, but there is only one agreement. It's this one hand dated 22nd; is that right?
A. **Yes.**
Q. That's all the questions I have. Would you like to have your answers modified to that extent, so that, to make it clear, this is the document to which you refer?
A. **Yes.**
Q. That's all I have.

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EXAMINATION

BY MR. NADDEO:
Q. Mr. Dressler, my name is Jim Naddeo, and I represent the plaintiff in this action,

Mr. Nelson.
A. **Yes.**
Q. As I commented to some of the attorneys, excluding Mr. Smith, when we were in the hall, until this morning I only thought I was losing hair and teeth, but now I think I'm losing some hearing, too, because I didn't catch all of your answers, all right? So I don't mean to be repetitive, but I want to cover a few areas that I'm not sure that I have correct. Then we'll try to get into new areas and get done. Okay?
A. **Yes.**
Q. First of all, you stated that you have been in the business of surface mining coal, I wrote down 1965. Is that correct?
A. **1979 would have been the year, the very first ...**
Q. So the first time you got into the business of surface mining was 1979.
A. **Yes.**
Q. And I think I understood that you are presently still engaged in that business?
A. **Yes.**
Q. Have you been exclusively a surface miner from 1979 to the present?

A. Yes, except in between waiting for permits.
Q. By that I mean you have engaged -- do you or have you engaged in any other business for profit other than surface mining?
A. No, sir.
Q. I understand there was a period of time when your health caused you to discontinue your business as a surface miner.
A. Yes.
Q. That occurred about the time that you got into the business relationship with Waroquier Coal.
A. Yes.
Q. How long were you out of the business?
A. Probably close to a year.
Q. And after a year, you went back into surface mining?
A. Yes.
Q. You stated that you had a relationship with Mr. Nelson for some years.
A. Yes.
Q. Was that through his father?
A. Yes, sir. That was to start.
Q. Started with his father?

A. Yes.
Q. And continued on with Mr. Nelson?
A. Yes.
Q. So you have some knowledge of the Nelson property, which is the subject of this lawsuit, which goes back a number of years.
A. Yes.
Q. Now, were you actively engaged in surface mining as your occupation in 1996?
A. Yes.
Q. There's been a document identified as Dressler Exhibit No. 2 (indicating), which purports to be an Option and Lease Agreement between you and Mr. Nelson.
A. Yes.
Q. You are familiar with that document?
A. Yes.
Q. You have a copy of that document?
A. Yes.
Q. The first line of that document, if you would direct your attention to that, states, this article of agreement made and concluded this blank day of blank, 1996. There's no day, there's no month, but there is a year, correct?
A. Correct.

Q. There's a handwritten notation in there, correct me if I am wrong, but it looks like U/T/A, dated 10-1-93. Do you see that?
A. Yes.
Q. Is that your handwriting?
A. I'm not sure.
Q. Can you explain that handwritten entry on this agreement?
A. No, I can't.
Q. Now, when I go to the second page, it appears that the Option and Lease Agreement was signed by Albert Nelson and by Ruskin Dressler --
A. Yes.
Q. -- correct?
A. Yes.
Q. Without explanation, looking at this agreement, one might reasonably infer that the signatures were affixed in 1996. Would that be true?
A. Well, I see --
MR. DURANT: Objection. Clarification, please. Would the assumption be true or the date be true? In other words --
MR. NADDEO: Well --
MR. DURANT: Would the assumption be

true? Is that the question?
BY MR. NADDEO:
Q. I guess what I'm asking, and maybe I didn't word it accurately, but since the agreement is dated 1996, do you recall whether the signatures were affixed in 1996?
A. No, I don't.
Q. It appears to be fairly clear that the signatures were notarized in February, February 3rd, to be exact, of 1997.
A. Yes.
Q. Could the signatures have been affixed to this agreement before the date that the signatures were acknowledged?
A. Any notary that I've ever been to had to have the person present the day that they did the paper -- their paperwork.
Q. Do you know whether that was the case here?
A. I'm sure anyplace I've ever been myself, yes.
Q. So based on experience, your answer is yes?
A. Yes.
Q. But you don't specifically recall that?

A. I do now that I look at the notary, yes.
Q. Good. All right. So it's your recollection that the signatures were affixed to this agreement the same day that they were notarized?
A. Yes.
Q. Thank you.
Let's talk about the terms of that agreement. That agreement does purport to be a lease for 49 acres of land?
A. Yes.
Q. And would that be the same 49 acres which is the subject of this lawsuit?
A. Yes.
Q. The agreement, in paragraph 2, provides for a royalty rate?
A. Yes.
Q. And correct me if I am wrong, but the royalty appears to be $2.00 per ton or 10 percent of the pit price, whichever is greater.
A. Yes.
Q. Is that how you understood the lease?
A. Yes.
Q. Now, in paragraph 3 there is a term, correct? There's a term specified?

A. Yes.
Q. And paragraph 3 reads that: Lessee covenants and agrees to commence mining operations upon said premises within three years. The effective date of this lease and in the event of failure so to commence mining operation agrees to pay lessor as a minimum royalty the sum or price of triple X per year, payable quarterly in advance.
Did I read that correctly?
A. Yes.
Q. What is triple X?
A. It would equate to zero.
Q. So that if you didn't commence stripping operations within three years, you didn't have to pay anything?
A. I don't see a figure, so ...
Q. Did you understand that you were to commence operations on this property within three years?
A. It was always my understanding that if I activated a permit, all involved with that permit were considered a part of the mine site.
Q. But the lease pretty specifically says commence mining operations which -- again I'm

asking your understanding -- but commencing mining operations, I guess if I were looking at this meant you had to be digging coal. You didn't understand that to be the case?
A. I've never run into this situation before.
Q. It was your understanding that as long as you applied for a permit within the three-year period, you had complied with the terms of the lease?
A. The permit -- my understanding is the permit has to be activated. Whether it be on Mr. Nelson or Mr. Kimble, someplace on that permit you have to be moving dirt.
Q. Now, "upon said premises," said premises would have been the Nelson property.
A. Yes.
Q. Not the Kimble property, true?
A. Yes.
Q. I want to make sure that ...
Now, in response to the discovery that was served upon you, which Mr. Durant partially went over with you, I believe you answered that you never conducted any mining operations on Mr. Nelson's property after January -- at any

time?
A. At any time.
Q. That's not exactly true, is it?
A. I'm not sure I heard everything correctly. Would you --
Q. Let me go back. You testified in response to some of Mr. Smith's questions that you had previously mined the Nelson property. By "previously," I mean prior to the date of your lease agreement with Albert Nelson.
A. Yes.
Q. So you have at some point in time conducted mining operations on the Nelson property.
A. Yes, under another permit.
Q. So when you answered your interrogatories, I think what you meant is that you did not conduct any mining after the effective date of your lease with Albert Nelson.
A. This is correct.
Q. Would that be a more accurate response --
A. Yes.
Q. -- to that? Is that your position?
A. Yes.
Q. Now, you also obtained a lease on

property owned by Richard L. Kimble and Nancy C. Kimble.

A. Yes.

Q. That lease has been marked for the purposes of your deposition as Dressler Exhibit No. 1.

A. Yes.

Q. After acquiring those leases you proceeded to apply for a permit, correct?

A. Yes.

Q. And that permit has been identified for the record as Dressler Exhibit No.3.

A. Yes.

Q. I believe you have already indicated that this is a true and correct copy of the coal mining permit that you submitted to the Pennsylvania Department of Environmental Protection?

A. That was submitted to me from them.

Q. This was in response to your application.

A. Yes.

Q. That permit purports to be a permit for 75 acres -- do you have a copy of that, please?

MR. SMITH: Right here (indicating).

THE WITNESS: Yes.

BY MR. NADDEO:

Q. First line, 75 acres of which 63 coal acres are planned to be affected.

A. Yes.

Q. I need some education on that terminology. Does that mean that you will be mining on 63 acres or does that mean that there was 63 acres of coal to be recovered?

A. 63 acres to be affected. Not 63 acres of coal.

Q. Under part C of the permit, if you would go to that, please --

A. Yes.

Q. -- second to the last page.

A. All right.

Q. Under heading A, the permit states that, "Permittee is hereby authorized to conduct coal mining activities on lands of Richard L. Kimble and Nancy C. Kimble, Mary A. Hayes and Albert L. Nelson." Did I read that correctly?

A. Yes.

Q. There the permit specifically states the property owners whose properties are involved with this permit?

A. Yes.

Q. Correct? How does Mary A. Hayes fit in

this picture?

A. A portion of the one vein of coal underlying the surface of Mr. Kimble.

Q. So Mary A. Hayes had an interest in the coal?

A. Yes, a small portion.

Q. Do you know whether Mary A. Hayes was paid any royalty?

A. No.

Q. Did you pay her any royalty?

A. No.

Q. Do you know whether her coal was mined?

A. There was some controversy on that as to whether, you know --

Q. There's a lot of controversy on this.

A. -- as to whether she actually had anything coming.

Q. So your answer is, you don't know whether her coal was mined or not?

A. I would assume -- I would assume it was, but --

Q. But you are certain that you did not pay this particular property owner any royalty?

A. That is correct.

Q. Was the coal owned by -- strike that.

The coal owned by Mary A. Hayes was under which property, the Kimble property or --

A. The Kimble property.

Q. Back to the first page of that permit. Again, the first sentence, and I'm going to start, "On the area of the permit outlined on the authorization to mine and accompanying maps contained in part C of this permit ..."

Do you see that language? Again, I would like some education. Were there maps which accompanied this permit?

A. Yes.

Q. Who prepared those maps?

A. Lee Simpson.

Q. Were those maps submitted to DEP along with your application for this permit?

A. Yes.

Q. Do you know at this point in time where the mining map is located for your original permit?

A. That was given to the Waroquier Coal Company, the original. I have made some copies and distributed them to Mr. Nelson and Mr. Thomas, but not the complete set of maps. There's so many maps goes with the permit application.

Q. Do you have any independent recollection of what was contained on those maps without referencing them?

A. Well, they would show the initial bonded area and areas to be bonded. Of course, they show the property lines.

Q. I guess that's my question. Did the mining maps submitted with your permit show the boundary lines on the various properties to be affected?

A. Yes.

Q. So that the Kimble property would appear on the map and the boundaries would be defined on the map?

A. Yes.

Q. The boundaries of the Nelson property would also be defined on that map?

A. Yes.

Q. Would the map also show where the various seams of coal stopped or started?

A. Yes.

Q. And the map would also have an area which was to be or would denote an area which was to be mined --

A. Yes.

Q. -- is that right?

A. Yes.

Q. So if I had that map, I would see all of those items on the map?

A. Yes.

Q. We have another document which has been marked as Dressler Exhibit No. 4, which purports to be an agreement between Waroquier Coal Company, Inc, and Ruskin Dressler.

A. Yes.

Q. Do you have a copy of that handy?

A. Yes.

Q. I'd like to talk about this a minute. First of all, if I'm -- "This 22nd of January 2001, Waroquier Coal Company, Inc., agrees to resume the permit No. 179 90105 of Ruskin Dressler." Did I read that correctly?

A. Yes.

Q. Is that permit number the appropriate permit number that appears in Dressler Exhibit No. 3?

A. This is correct.

Q. It goes on, "Also a payment of an override of $1.00 for each ton of coal mined off of this permit"?

A. Yes.

Q. "Settlements and payments of royalty shall be made on the 25th day of each month for all coal mined and removed from the premises during the preceding calendar month and shall be accompanied by a copy of all weight slips showing the number of tons of coal mined and removed."

A. Yes.

Q. I want some explanation of that. Does that phraseology mean the $1.00 override? Is that what was intended here?

A. Yes.

Q. Because it refers to royalty rather than override.

A. Yes. The $1.00 override is correct.

Q. Now, is there anything in this agreement that mentions an assignment of the Kimble lease?

A. Not as such.

Q. Is there anything in this agreement which mentions an assignment of the Nelson lease?

A. No.

Q. This agreement talks about the transfer of a license?

A. Permit.

Q. Permit?

A. Yes.

Q. Well, permit, license. Okay. I'll use "permit."

A. Yes.

Q. Feel better with "permit"?

A. Yes.

Q. This agreement pertains to the transfer of a permit.

A. Yes.

Q. Do you know when the application was made to transfer the permit which you had obtained on the Kimble and Nelson properties?

A. I don't know the exact date.

Q. Do you know if the transfer was ever approved?

A. Yes.

Q. Do you know when it was approved?

A. There is a copy of the mining license in Waroquiers' name which would have that date.

Q. I don't know that you have a copy of that.

I believe your counsel is exhibiting a document which is titled Commonwealth of Pennsylvania, Department of Environmental Protection, Bureau of Mining and Reclamation, Coal

Surface Mining Permit No. 179 90105, Permittee Waroquier Coal Company?
A. Yes.
Q. And it has an entry there says, "transfer date" and the transfer date states "October 16, 2001."
A. Yes.
Q. In part C of that permit, it again refers to 75 acres. No. No. No. I'm sorry. Front page.
A. Oh, okay.
Q. See that?
A. Yes.
Q. Of which 63 acres are planned to be affected.
A. Yes.
Q. That's exactly the same language or wording that appears in the permit that was transferred.
A. Yes.
Q. If we go back to part C, I believe part C also contains part C, heading A?
A. What page is that?
Q. I don't know. Part C, heading A, again, "Permittee is hereby authorized to conduct coal

mining activities on lands of Richard L. Kimble, Nancy C. Kimble, Mary A. Hayes and Albert L. Nelson."
A. Yes.
Q. So the permit as transferred continued to apply to the same properties.
A. Yes.
Q. Namely Kimble and Nelson.
A. Yes.
Q. If we go back to the front of the permit, again, there is a reference in line 1 to mine and accompanying maps contained in part of this permit. First sentence.
A. Yes.
Q. Which tells us, correct me if I am wrong, that along with this permit a map or maps were submitted to DEP.
A. Yes.
Q. Have you ever seen those maps?
A. Yes.
Q. You have?
A. Yes.
Q. Do you know who prepared those maps?
A. Yes. Lee Simpson.
Q. I'm talking about the permit to

Waroquiers. Have you ever seen the maps that went in for the Waroquiers?
A. I'm sorry.
Q. We're on the Waroquier permit.
A. I've not seen those.
Q. That would be my guess. So you haven't seen those maps?
A. No, I have not seen those maps.
Q. So whatever maps accompanied the application and are part of the permit, you are not privy to those, you haven't seen them?
A. That is correct.
Q. You have no idea what is on them, correct?
A. Correct.
MR. DURANT: Referring to the assigned permit.
MR. NADDEO: Yes.
MR. DURANT: Or the permit as assigned.
BY MR. NADDEO:
Q. You testified, in response to one of Mr. Smith's questions, that at some point you informed him that the Nelson permit had been assigned to Waroquier.
A. Run that by me again, please?

Q. You testified that you told Mr. Nelson that the permit that you had, the Dressler permit, had been assigned to Waroquiers.
A. Yes.
Q. Do you recall when you told Mr. Nelson that the permit had been transferred or assigned?
A. No, I don't recall.
Q. When you told him that the permit had been transferred or assigned to Waroquiers, did you tell him that the lease had been assigned?
A. Well, I considered the document to be an assignment.
Q. That's not my question. Did you tell Mr. Nelson had you had assigned the lease to the Waroquiers?
A. I am pretty sure that I did, yes. I thought I did. Yes, I would have told him.
Q. Are you sure that you told him, or are you trying to speculate to give me an answer?
A. I'm sure that I told him.
Q. Okay. Fine.
There's also been some testimony that when you discussed this job or the transfer of this job, if you will, to the Waroquiers, that you met with Gary Waroquier?

A. **Yes.**
Q. Did you also meet with Joe, Junior?
A. **I only remember meeting with Gary on the directions.**
Q. One of the things you did with Gary Waroquier was to kind of look at the property lines between these two properties?
A. **Yes.**
Q. And at that point in time you thought that the corners were demarcated by some stones of some sort?
A. **Yes.**
Q. Did you point out the stone corners to Mr. Waroquier?
A. **I did not show him the stones themselves, but pointed in the general directions where he could find them.**
Q. Do you know whether those stones were ever stripped out as part of this operation?
A. **No, they were never stripped out.**
Q. So if I went there today, those stones would still be there?
A. **They should be.**
Q. I believe that you also testified that you didn't actually walk the lines of these

properties with Gary Waroquier.
A. **That is correct.**
Q. So do I understand then that the only line that you talked about was the line separating the two properties?
A. **Yes.**
Q. So the line that you discussed with Gary Waroquier was the line which divided the two properties north and south?
A. **I'm thinking more east and west.**
Q. We've been talking north -- I thought the Kimble property was north of the Nelson property.
A. **This is true.**
Q. So was the line that you discussed with Gary Waroquier the north-south line, the one that demarcated these properties north Kimble, south Nelson?
A. **Yes.**
Q. That's the line you went over?
A. **Yes.**
Q. In addition to pointing to the stones, did you do anything else?
A. **No.**
Q. Now, under the terms of your agreement with the Waroquiers, you were to receive a $1.00

override per ton of coal mined from the property.
A. **Both properties.**
Q. I'm sorry, from the job.
A. **Yes.**
Q. Thank you. That's more accurate.
A. **Yes.**
MR. NADDEO: Show him this.
MR. DURANT: Is that it?
MR. SMITH: Which number is that?
MR. NADDEO: I'm on this. This would have been your exhibit, item 4 in your Response to Production of Documents.
MR. SMITH: Thank you.
BY MR. NADDEO:
Q. Mr. Dressler, your counsel has shown to you a document which is titled Defendant Waroquiers' Response to Item 4-A, at the bottom of the page. Do you see that?
A. **Yes.**
Q. That purports to be a reconciliation of coal and royalties paid to various persons.
A. **Yes.**
Q. Would you agree? That's what it appears to be.
A. **Yes.**

Q. And there are three headings, one for Thomas, one for Dressler and one for Kimble.
A. **Yes.**
Q. Let's start with Dressler. Let's start in the middle.
A. **Yes.**
Q. On the second page, there we have some totals. Do you see that?
A. **Yes.**
Q. Under the Dressler column, the total tons is listed as 34,489.99 tons --
A. **Yes.**
Q. -- correct?
A. **Yes.**
Q. Were you paid for 34,489.99 tons of coal?
A. **I don't believe so.**
Q. Now, let's shift to the Kimble column. Under that column it shows total tonnage of 27,285 tons.
A. **Yes.**
Q. Do you know whether Kimbles were paid for 27,285 tons?
A. **No.**
Q. If the Kimbles were paid, what was your understanding as to who was to pay them?

A. This would be Waroquiers'.
Q. Because you had transferred the job?
A. Yes.
Q. And part of your arrangement was for Waroquiers to pay the royalty to the property owner?
A. Yes.
Q. Was that your understanding?
A. Yes.
Q. To your knowledge, did Waroquiers ever affirm that that was their understanding?
A. Yes.
Q. Which person specifically affirmed that to you?
A. That would be Joseph Waroquier.
Q. Joe, Junior?
A. Joe, Junior.
Q. Let's go to the Thomas column. In the Thomas column it shows total tons of 15,660.09 tons. Do you see that?
A. Yes.
Q. To your knowledge, was anybody paid royalty for those tons?
A. I don't know.
Q. But if royalty was due, did you

understand it to be Waroquiers' obligation to pay for that coal?
A. Yes.
Q. The same as with Kimble?
A. Yes.
Q. Now, if you would quickly add Thomas tonnage to Kimble tonnage for me and you are going to come up with 42,945 tons without the decimals. I'm asking you to add Kimble to Thomas.
MR. DURANT: According to my calculator (indicating).
THE WITNESS: 54,570.
MR. NADDEO: Oh, I must have added wrong.
MR. DURANT: Let's do it again.
MR. NADDEO: Yes, indeed.
THE WITNESS: 42,945.
BY MR. NADDEO:
Q. According to this schedule, this would have been for coal removed from the period starting January of 2001 through, I guess, looks like sometime around September of 2005.
A. Correct.
Q. You didn't prepare this schedule?
A. No.
Q. But you were entitled to some kind of

compensation for the coal removed from these properties?
A. Yes.
Q. Are you in a position to explain the inconsistencies between the totals here?
A. No.
Q. I have two other documents. I guess this is getting in the area of education. You have been in the mining business since, I guess, now it's 1979 to the present.
A. Yes.
Q. Are you familiar with the quarterly reports which you are required to file with OSM?
A. Yes.
Q. I've asked your counsel to show you what is titled OSM Quarterly Reports pertaining, according to the records, to the Kimble property.
MR. DURANT: He's looking at a thing called part 3, paragraph 12. Is that what you are referring to, Mr. Naddeo?
MR. SMITH: It is item 5 in my production.
MR. NADDEO: Thank you.
Q. It is Defendant Waroquiers' response to item 5. OSM Quarterly Reports.

A. Yes.
Q. In your experience as a coal operator, are you required to report to OSM the number of tons of coal mined from a specific job or property?
A. Yes.
Q. And in this particular case, the OSM quarterly report identified as Waroquiers' Response to Item 5, indicates that there was a total of 34,963.08 tons of coal removed?
A. Yes.
Q. For the period starting in the first quarter of 2001 and apparently ending in the third quarter of 2005.
A. Yes.
Q. Now, are surface miners also required to report tonnage to DEP?
A. Yes, on a yearly basis.
Q. Now, I'm going to ask you to take a look at Defendant Waroquiers' response to item 6. That document is titled DEP End of Year Production Reports. Do you see that?
A. Yes.
Q. And purports to show total tonnage of 16,233.35 tons.

A. Yes.
Q. Can you explain to me, from your experience as a coal operator, why the OSM reports would not be the same as the DEP report?
A. I cannot explain that. No explanation how they could be different.
MR. NADDEO: No further questions. Thank you.
THE WITNESS: You are welcome.
- - -
EXAMINATION
BY MR. FRAMPTON:
Q. Mr. Dressler, can you hear me all right if I sit at this end of the table?
A. Yes.
Q. Mr. Dressler, my name is Tom Frampton. I'm an attorney representing Roger and Mariam Thomas and also Ramm Coal. Believe me, I only have a few questions to ask you. We will see how true I am to my word.
If you would first look and I believe it's Dressler Deposition Exhibit No. 1 which is the Kimble lease.
A. Yes.
Q. I notice that the lessors would be

Richard L. and Nancy Kimble.
A. Yes.
Q. Are they still located in this area?
A. Liberty, PA.
Q. Where is Liberty PA?
A. I'm not sure where it's -- I'm not sure where Liberty is.
Q. When was the last time you had contact with them?
A. When I signed the -- signed this agreement. It was shortly after this agreement between Waroquier and I.
Q. Back in 1998?
A. Yes. Not 1998. I'm sorry. 2001.
Q. Oh, 2001, that agreement. I'm sorry. Okay.
You also would have sent them some checks over the years?
A. Yes.
Q. Up until the time you transferred the permit over to Waroquiers; is that correct?
A. Yes.
Q. And did you send the checks to Liberty, Pennsylvania?
A. Yes.

Q. Since those times, since 2001 approximately, you have had no contact with them?
A. That is correct.
Q. So you are not sure whether they live in Liberty, PA or not?
A. No.
Q. Now if you will turn to Exhibit No. 5 which is the agreement between Ramm Coal and W. Ruskin Dressler. Do you have it handy? It's two pages.
MR. DURANT: This one?
BY MR. FRAMPTON:
Q. That's it.
A. We found it.
Q. This is the agreement that's been identified, I believe, in Mr. Smith's questioning of you as the agreement whereby Ramm Coal, specifically Roger Thomas, was to remove the overburden on what is referred to as the Kimble job; is that correct?
A. Yes.
Q. So in other words, he was working for you to remove the overburden; is that correct?
A. As a contractor-operator.
Q. He was a contractor with you to remove

the overburden from that property?
A. Yes.
Q. And just as a follow-up to a question Mr. Smith -- I guess it was a response you gave to a question Mr. Smith asked. You said that, I believe, Mr. Thomas had his drag line and he goes with his machine where he's told to mine?
A. Yes.
Q. That's correct?
A. Correct.
Q. So he operated under your direction as to where he was to mine; is that correct?
A. Correct.
Q. I'm not sure I want to go back into this, but I'm going to ask a couple of questions. We've talked about a lot of maps today; is that correct?
A. Yes.
Q. Is it your testimony as I understand it that every single map that you had you turned over to Waroquiers when you assigned the permit?
A. Yes.
Q. Now, one of the maps is called an operations map; is that correct?
A. Yes.
Q. That's a terminology you are familiar

with?
A. **Yes.**
Q. What is an operations map?
A. **It shows the work area, the present work area, the bonded area that you have to stay within. It's the guideline to where you are supposed to be as far as the royalty, decide where the royalty is going to go to.**
Q. Do you file that operations map with DEP for example --
A. **Yes.**
Q. -- with your permit?
A. **Yes.**
Q. Do you keep a copy of the operations map out at the site with you, so you can refer to it periodically?
A. **Yes.**
Q. Does that have any other name, a copy of the one out at the site, like the working map or something like that?
A. **Well Exhibit 9 is one of them.**
Q. That would be the one that would kind of be subject to day-to-day operations out at the site?
A. **Yes.**

Q. Would have dirt all over it and mud and whatever --
A. **There are other supportive maps showing the elevations and ...**
Q. I guess my question is, the one copy that you have out at the site, do you put any other kind of markings on that as far as when you are doing certain things or when you are directing certain people what to do? Do you put additional marks on the one you have out at the site?
A. **Yes, usually always, yes.**
Q. Would you on this particular job, the Kimble job?
A. **Yes.**
Q. What are the kinds of markings you would put on that particular map?
A. **Of course showing where you had previously removed dirt and where you are going to move dirt, something as that. Where the ponds will be located, E and S controls, things of that nature.**
Q. Would you actually have a pen or pencil or something and would write right on the map what you are going to be doing?
A. **Yes.**

Q. On this particular job, would you be the one, during the time that you were operating under that permit, to make those markings on that map?
A. **Yes, I would be the one. I was the one.**
Q. And do you put certain dates on it at all as to when things would be done?
A. **Sometimes, yeah.**
Q. Do you recall whether there were dates done in this situation?
A. **I don't recall.**
Q. Now, that particular map that I'm referring to, the one that would have been at the site, the operations map that would have been used on a daily basis, was that map -- strike that.
The operations map that was out at the site, can I assume from your testimony that's one of the maps that was turned over to Waroquiers?
A. **A cleaner copy, not that one -- not that particular one. It was pretty well marked up. One exactly identical.**
Q. With all the pencil markings on it?
A. **No.**
Q. So there's a map that doesn't have pencil markings on it that was turned over to Waroquier?
A. **Yes, clean maps.**

Q. Let's talk about the dirty map for a minute. Where is the dirty map for the Kimble project?
A. **I don't have a clue now. It's been a while back.**
Q. Is there a possibility you turned that over to Waroquiers, or you would have kept that?
A. **I can't remember now for sure. But the maps they got show, in color, where everything is.**
Q. I appreciate that. I've seen some of those. I know what you are talking about.
A. **They are very informal.**
Q. They sure are. I agree with you. The one that would have these pencil markings all over it, perhaps some dates, might that still be in your office someplace or at your home?
A. **It was in the field office. The field office was replaced by other field offices since then. So it's -- it's -- it's possible that I could find it. It's a probability that I could.**
Q. There's a probability that you could find it?
A. **At that time I had no reason to believe I needed to keep it.**
Q. Let me back up on that for a second.

A. **Yes.**
Q. At the time, in January 2001, that the transfer of the permit to Waroquiers, correct?
A. **Yes.**
Q. As I take from your testimony, there's a whole bundle of stuff that you transferred over to them, a lot of maps and --
A. **Very thick bundle.**
Q. Other than maps, what did you transfer over to Waroquiers?
A. **A wealth of information pertaining to the geographics and the geology and all the terms of the -- and conditions that they were to abide by.**
Q. So where would all that information have come from?
A. **My engineer, Lee Simpson, they determined that and then DEP would approve. Their engineers would go over everything that my engineer submitted and approve or disapprove.**
Q. So we have a bundle of papers that Lee Simpson prepared, correct?
A. **Yes.**
Q. And we have these maps we've talked about, correct?
A. **Yes.**

Q. Were there other documents handed over to Waroquiers?
A. **The agreement and leases, copies.**
Q. The lease agreements?
A. **Yes, lease agreements.**
Q. Anything else, to the best of your recall?
A. **The supplemental C's. Everything that was needed to transfer a permit was provided.**
Q. Let's go to the other side of that question. Were there papers that you didn't transfer over to them in connection with the Kimble job?
A. **None that I know of.**
Q. How about this dirty map, the one that had been written on? Did you hold on to that yourself?
A. **That was my daily work map.**
Q. Right. So that's one paper you probably did hold on to.
A. **That's one I held onto. That's the only one that I recall.**
Q. Can you think of anything else that you held onto?
A. **No.**

Q. So you have this map that has your daily recordings on it, correct?
A. **They would not be daily. It would be occasionally.**
Q. Periodic recordings?
A. **Yes. Yes. Yes.**
Q. And what did you do with that document?
A. **You mean at the time?**
Q. Let's start at the time and we'll work our way up.
A. **I kept it in the field office.**
Q. Where was the field office?
A. **On the site.**
Q. Did you have a file folder or anything you put it in?
A. **It laid on the work table, just a simple place to -- where we kept our -- whatever documents we had to keep in there on site were either on the wall or on that table.**
Q. So then at some point you weren't going to be on site anymore.
A. **This is true.**
Q. And so you moved all your papers out of there --
A. **Uh-huh.**

Q. -- is that correct?
A. **Yes.**
Q. Where did you take them?
A. **What papers were left, I would have taken them to my office, my shop office.**
Q. That's the one that's still in existence?
A. **Yes. That's the one --**
MR. NADDEO: The one with the tractor in front of it.
MR. FRAMPTON: I've been by it. I know right where it is. Can't hide that tractor, right?
MR. SMITH: No, you can't.
BY MR. FRAMPTON:
Q. Did you get a file folder and say, look, these are all my papers from the Kimble job; I'm going to put them in a file folder and put them in a drawer someplace?
A. **Things like OSM stuff, yes. Various things like that.**
Q. And this map that had the periodic markings on it?
A. **I don't recall that I even saved it. At that point in time, I was done with it. I didn't feel that it would help anybody else. It was for**

my own use.

Q. Do you have a file cabinet where you keep documents?

A. Yes, I do. Limited space, but I do have one.

Q. Since this lawsuit started, have you gone back through your records in your office to determine if there is a file folder that says anything like "Kimble job" or where any of these documents might be?

A. Yes, I searched back through the archives, yes.

Q. And did you find any?

A. Yes.

Q. Did you give those to your lawyer?

A. Yes.

Q. Was that map with the periodic notations on it one of those things found?

A. No.

Q. So you think it no longer exists?

A. I doubt it very much if it does.

Q. Would there be other places it could be?

A. Not likely.

Q. You were asked a couple of times whether you received full payment from Waroquiers for your

--

A. No.

Q. Your answer is no?

A. Right.

Q. You said you received some payments for a while, correct?

A. Correct.

Q. And at some point they stopped?

A. Correct.

Q. But you continued to get letters and it would say "check enclosed" --

A. Correct.

Q. -- but there was no check enclosed?

A. No check.

Q. And you said you had contact with one of the Waroquiers about that --

A. Yes.

Q. -- and asked them about it. I'm not sure I really heard your response to that. What were you told?

A. I was told that, from that point on, they would be put in escrow until this matter was settled.

Q. Do we know what point that was?

A. It was after they were notified by

Mr. Nelson that they were -- had been mining on him without his permission.

Q. I have a whole stack of letters addressed to you from Waroquier Coal that have been supplied through the responses we got from Mr. Smith. I'm not going to introduce them as an exhibit because I think everybody has it. I don't think the court reporter wants to copy them all either. I'll ask you to take a look at them for a second.

MR. SMITH: Give me the item number. I don't have that.

MR. FRAMPTON: It would be item 8. Defendant Waroquiers' Response to item No. 8.

Q. Just take a look at those. They begin on February 23, 2001. I believe they are in order, and they go all the way through, I believe, July 25, 2004. Just take a look at them for a minute, and we'll just talk about them.

A. Okay.

Q. Is it okay if I look over your shoulder for a second?

A. Sure.

MR. DURANT: Do you want to give him these to use?

MR. FRAMPTON: That's fine. Thank you.

Q. Now, if you look through there, you said there were some checks, some letters that indicated "check enclosed" where there was no check enclosed?

A. Correct.

Q. Maybe the first way to ask this, were there times that it said "check enclosed" when there was in fact a check enclosed?

A. Yes, earlier on.

Q. By looking at these and from my review of them, they are in chronological order, can you find the time frame in which you began not receiving checks?

A. I don't have it with me today, but I can find it.

Q. Can you tell by looking at those documents?

A. I can't tell by these. There's no check marks or anything on them. I have a set of my own that I put little check marks on to know that --

Q. Just so we're clear, these items, this number of copies of letters that are under item No. 8, do those look like the letters you received from Waroquier Coal?

A. Yes, they are identical.

Q. And you can go back to wherever you keep this information and advise your attorney when you stopped receiving payments --
A. Yes.
Q. -- is that correct?
A. I can do that.
Q. Do you have your copies of these letters in your office or did you give them to your lawyer?
A. Of these (indicating)?
Q. Right.
A. I have them in my office. Well, he has a copy, too, don't you? Yeah. Yeah.
MR. DURANT: That's my copy.
THE WITNESS: Yeah, that's your copy.
MR. DURANT: The only copy I have is what we're looking at right now, here today, but that I received from Mr. Smith.
BY MR. FRAMPTON:
Q. But you, in your office, have a copy of basically these same letters, but you have an indication on them that you didn't get paid; is that correct?
A. Yes.
Q. You can provide that information to your

lawyer?
A. Yes.
Q. Are those in a file folder in your office?
A. Yes.
Q. Is it marked "Kimble job" on it?
A. Waroquier. It's marked "Waroquier."
Q. And have you looked in that file to determine whether this map that had your periodic notations on it?
A. It is not there.
Q. So you've made a complete search of everyplace you maintain records --
A. Yes.
Q. -- to determine whether or not this other map that had these periodic notations was available?
A. Yes.
Q. And it's not?
A. I have not found it.
MR. FRAMPTON: That's all I have. Thank you.
MR. SMITH: I have a couple of follow-ups. Just a point of order. Mr. Durant, would you and your client agree to make another

search for the dirty operations map? And I'd like to see the loader book, I mean the book, not copies.
MR. DURANT: I don't know if it exists, but ...
THE WITNESS: It doesn't exist.
- - -
FURTHER EXAMINATION
BY MR. SMITH:
Q. Would you do us a favor and look for it while you are doing it?
A. I would but -- once I get the weigh slips, then I'm no longer worried about the bill. Once the weigh slips come, then I'm done with it.
MR. DURANT: You want me to assist my client to search for the dirty map, loader book, and to respond to you with regard to whether it's been found or not, and that -- on what date we conducted the search. Is that right?
THE WITNESS: I never saved loader books for more than a year or so after.
BY MR. SMITH:
Q. You would start a separate book for each particular job?
A. Oh, yeah.

Q. Then the final thing, just for a point of clarity, I do have an operations map here marked as Exhibit 9, and I believe you've made reference to a map designated as such throughout your testimony today.
This one was prepared by Curry & Associates, not Lee Simpson. I produced it, I want to say as item 12, but don't hold me to that.
While everybody else is looking for it, Mr. Dressler, just take a look at what I have.
MR. DURANT: It says 12-A according to ...
BY MR. SMITH:
Q. Are you ready, Mr. Dressler?
A. Yes.
Q. In general, when you were referring to operations maps or Exhibit 9 in your testimony today, was it a map, maybe not this exact map, but a map like this to which you were referring?
A. It was produced by Lee Simpson. What variation would be between them, I don't know.
Q. Thank you. Let me ask you this: Was it the Lee Simpson version of Exhibit 9 that you marked up --
A. Yes.

Q. -- the so-called dirty map?
A. Yes.
Q. That's all I have on this. Unless other people would like another round with you, Mr. Dressler, I'm finished. I appreciate your patience.
MR. FRAMPTON: Can I have a second?
MR. SMITH: Absolutely.
MR. FRAMPTON: I have nothing else.
THE REPORTER: Signature?
MR. DURANT: You have a right to look at this document and approve it or to waive your right to do that and just rely on the professionalism of the court reporter. I would recommend that you waive your right and rely on her professionalism.
THE WITNESS: I waive my right.
MR. DURANT: He waives his right to read the deposition.
(At 1:54 p.m. the deposition was concluded. Signature waived.)

COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF ARMSTRONG)

I, Roberta Swank, Notary Public within and for the Commonwealth of Pennsylvania, do hereby certify that before the taking of the deposition, the said deponent, W. RUSKIN DRESSLER, was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, and that the above deposition was recorded in stenotype by me and reduced to typewriting under my direction.

I further certify that the reading and signing of the transcript of the deposition were waived by the deponent and by counsel for the respective parties and that the said deposition constitutes a true record of the testimony given by said deponent.

I further certify that I am not a relative or employee or attorney or counsel or financially interested directly or indirectly in this action.

I further certify that the said deposition was taken before me at the time and place specified in the notice.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Kittanning, Pennsylvania, on December 20, 2006.

ROBERTA SWANK
NOTARY PUBLIC

NOTARIAL SEAL
Roberta Swank, Notary Public
Kittanning Twp., Armstrong County
My commission expires December 26, 2009

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Option and Lease Agreement

EXHIBIT 1
WIT: Dressler
DATE: 12-7-06
ASAP Court Reporting

THIS ARTICLE OF AGREEMENT made and concluded this 13th day of February, 1998,
Richard L. Kimble & Nancy C. Kimble
Box 234
Liberty, Pa. 16930

..... of the first part, hereinafter designated as Lessor, and W. Ruskin Dressler Coal
of P.O. Box 39, Rockton, Pa. 15856 party.....
the second part, hereinafter designated as Lessee, witnesseth:

1. In consideration of the sum of $1.00, in hand paid, receipt whereof is hereby acknowledged, Lessor eby leases, lets, and demises unto Lessee, ALL of the Strip Mineable
m or vein of coal in, under and upon all that certain piece, parcel or tract of land situated in Brady
wnship, Clearfield County, Pennsylvania, bounded and described as follows:

North & West by Albert & Charles Hayes
North & East by O.J. Dressler
South by Albert L. Nelson

ntaining (50) Fifty acres, more or less.

TOGETHER with all the mining rights and easements owned by Lessor and appurtenant to the coal and land herein scribed, including the right of ingress, egress, and regress, in, to and upon said land for the purpose of exploring for d of mining, manufacturing, testing and preparing said coal for market, to build roads, railroads and tram roads, to ild buildings, tipples and chutes, to deposit waste material and refuse on the surface of the land, to build wire and e lines, to drain water upon the surface by any means, to transport coal from other properties through or over this emises and to do all things necessary, usual and proper in connection with said operations, and Lessor hereby waives right to surface support, both laterally and subjacent, and releases all liability for damage to buildings and objects reon and waters therein and thereon. Said coal may be removed either by drift mining or stripping process and all of e usual rights and privileges are hereby granted in connection therewith including the removal and redeposit of all nts and other objects and materials overlying said coal, to be exercised without further cost or liability for the damage used thereby.

ALSO TOGETHER WITH Surface & Coal

EXCEPTING AND RESERVING

2. Lessee covenants and agrees to pay to Lessor the sum of Two Dollars and No/ cents per ton of 2,000 unds for all mineable merchantable and marketable coal mined and removed from said premises. Settlements to be ade on the twenty-fifth day of each month for all such coal mined and removed from the premises during the preceding lendar month and all settlements shall be based upon the weights by which the coal is marketed. It is further under- ood and agreed that Mining must comence within (1) ~~Four Years~~ (2) Two YEARS, AT d of Two YEARS LESSOR will pay ($500.00) FIVE HUNDRED Dollars PER MO, MONEY to be Applied to Royalty PMT upon Coal REMOVAL

3. Lessee covenants and agrees to commence mining operations upon said premises within on the effective date of this lease and in event of failure so to commence mining operations agrees to pay Lessor as a nimum royalty the sum or price of r year, payable quarterly in advance.

4. Lessee agrees that all mining operations shall be conducted in accordance with the laws of Pennsylvania and odern mining methods prevailing in the industry. It is also understood that Lessor shall have access to the operations d scale records of Lessee at all reasonable times in person or by duly authorized agent.

5. This lease shall continue for a period Four years from the effective date hereof, or until all of the ineable and merchantable coal has been exhausted from the premises. Lessee may remove all equipment, buildings and achinery from the premises at the end of the term provided no royalty is then due.

6. This article of agreement shall constitute and be construed an option granted by Lessor to Lessee so that Lessee ay elect to accept or reject it at any time during XXXXXXXX days from the date hereof. Upon acceptance is instrument shall become immediately effective in all its terms as a lease of the coal in place. During the option riod Lessee may go upon the premises for the purpose of surveying, drilling, digging, exploring, testing, taking samples, d otherwise examining said coal, without liability for the damage, caused thereby or for the coal taken in such plorations. Lessee may exercise this option by notifying Lessor in writing of its elections to do so within the option riod aforesaid.

It is understood and agreed that in the event that Lessee should default in any payment provided for herein and h such default for a period of ninety days from the date when said payment becomes due, or should Lessee be default in any other respect and continue in such default for a period of ninety days after being notified in writing such default by Lessor, then, in either event, at the option of Lessor, this lease shall cease and terminate and Lessee reby authorizes any attorney of any Court of Record to appear for it and in its name to confess a judgment against in an amicable action of ejection to the end that a writ of habere facias possessionem may issue forthwith for the livery of possession to Lessor, together with clause of fieri facias for rent in arrears and costs.

8. It is further understood and agreed that This agreement will be binding without further notice by W. Ruskin Dressler Coal

It is mutually understood and agreed that the rights, duties and obligations created hereby shall extend to and binding upon the parties, their heirs, executors, administrators and assigns, and that the singular herein shall include plural.

10. Lessor hereby warrants generally the title to said coal and mining rights and this lease shall be free and clear all encumbrances except those for which waiver and consent hereto is obtained and Lessee may in all cases apply alty payments to the satisfaction of such encumbrances as may be found to exist.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals and caused this article of agreement be duly executed by their officers, the day and year aforesaid.

Ineest

Richard L. Kimble (Seal)

(Seal)

Nancy C. Kimble (Seal)

(Seal)

W. Ruskin Dressler (Seal)

(Seal)

MMONWEALTH OF PENNSYLVANIA
UNTY OF Clearfield } ss:

On this 13th day of February, before me, a notary public
and for the County of Clearfield and State of Pennsylvania, came the above named
W. Ruskin Dressler

who in due form of law acknowledged the foregoing Article of Agreement to be his act and ed, and desired the same to be recorded as such.

ess my hand and official seal the day and year aforesaid.

Kathryn E. Swartzlander

My Commission Expires

Notarial Seal
Kathryn E. Swartzlander, Notary Public
DuBois, Clearfield County
My Commission Expires Aug. 29, 2000
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Tioga } ss:

On this 3rd day of March, 1998, before me, a Clerk of Orphans Court
in and for the County of Tioga and State of Pennsylvania, came the above named
Richard L. Kimble & Nancy C. Kimble

who in due form of law acknowledged the foregoing Article of Agreement to be their act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

Jane E. Wetherbee

My Commission Expires 1st Monday of January 2008

Option and Lease Agreement

EXHIBIT 2
WIT: Dressler
DATE: 12-7-06
ASAP Court Reporting

THIS ARTICLE OF AGREEMENT made and concluded this ..... day of ....., 19 96,
between ALBERT L. NELSON, Trustee of The ALBERT L NELSON Living Trust UNDER
1149 South Main Street, DuBois, PA 15801
L/T/A DATED 10/1/93

party of the first part, hereinafter designated as Lessor, and W. RUSKIN DRESSLER, of Box 39,
Rockton, Pennsylvania, 15856 party
of the second part, hereinafter designated as Lessee, witnesseth:

1. In consideration of the sum of $ 1.00 in hand paid, receipt whereof is hereby acknowledged, Lessor hereby leases, lets, and demises unto Lessee, ALL of the surface ~~and~~ mineable or gas
seam or vein of coal in, under and upon all that certain piece, parcel or tract of land situated in Brady
Township, Clearfield County, Pennsylvania, bounded and described as follows:

North - Kimble
East - Crescent Brick Division of RESCO Products, Inc.
South - Crescent Brick Division of RESCO Products, Inc. and Broad
West - Jacob D.Hayes Deed Book Vol 1572 Page 148
Recorded 11-30-93

containing 49.0 acres, more or less.

TOGETHER with all the mining rights and easements owned by Lessor and appurtenant to the coal and land herein described, including the right of ingress, egress, and regress, in, to and upon said land for the purpose of exploring for and of mining, manufacturing, testing and preparing said coal for market, to build roads, railroads and tram roads, to build buildings, tipples and chutes, to deposit waste material and refuse on the surface of the land, to build wire and pipe lines, to drain water upon the surface by any means, to transport coal from other properties through or over this premises and to do all things necessary, usual and proper in connection with said operations, and Lessor hereby waives all right to surface support, both laterally and subjacent, and releases all liability for damage to buildings and objects thereon and waters therein and thereon. Said coal may be removed either by drift mining or stripping process and all of the usual rights and privileges are hereby granted in connection therewith including the removal and redeposit of all drift and other objects and materials overlying said coal, to be exercised without further cost or liability for the damage caused thereby.

ALSO TOGETHER WITH: XXXX

EXCEPTING AND RESERVING XXXX

2. Lessee covenants and agrees to pay to Lessor the sum of Two Dollars ($2.00) ~~XXXX~~ per ton of 2,000 pounds for all mineable merchantable and marketable coal mined and removed from said premises. Settlements to be made on the twenty-fifth day of each month for all such coal mined and removed from the premises during the preceding calendar month and all settlements shall be based upon the weights by which the coal is marketed. It is further understood and agreed that Lessee will pay ten (10%) percent of pit price or $2.00 per ton, whichever is greater.

3. Lessee covenants and agrees to commence mining operations upon said premises within three (3) years from the effective date of this lease and in event of failure so to commence mining operations agrees to pay Lessor as a minimum royalty the sum or price of XXX per year, payable quarterly in advance.

4. Lessee agrees that all mining operations shall be conducted in accordance with the laws of Pennsylvania and modern mining methods prevailing in the industry. It is also understood that Lessor shall have access to the operations and scale records of Lessee at all reasonable times in person or by duly authorized agent.

5. This lease shall continue for a period three (3) years from the effective date hereof, or until all of the mineable and merchantable coal has been exhausted from the premises. Lessee may remove all equipment, buildings and machinery from the premises at the end of the term provided no royalty is then due.

6. This article of agreement shall constitute and be construed an option granted by Lessor to Lessee so that Lessee may elect to accept or reject it at any time during XXX days from the date hereof. Upon acceptance this instrument shall become immediately effective in all its terms as a lease of the coal in place. During the option period Lessee may go upon the premises for the purpose of surveying, drilling, digging, exploring, testing, taking samples, and otherwise examining said coal, without liability for the damage, caused thereby or for the coal taken in such explorations. Lessee may exercise this option by notifying Lessor in writing of its elections to do so within the option period aforesaid.

7. It is understood and agreed that in the event that Lessee should default in any payment provided for herein and remain in such default for a period of ninety days from the date when said payment becomes due, or should Lessee be in default in any other respect and continue in such default for a period of ninety days after being notified in writing of such default by Lessor, then, in either event, at the option of Lessor, this lease shall cease and terminate and Lessee hereby authorizes any attorney of any Court of Record to appear for it and in its name to confess a judgment against it in an amicable action of ejectment in the end that a writ of habere facias possessionem may issue forthwith for the delivery of possession to Lessor, together with clause of fieri facias for rent in arrears and costs.

8. It is further understood and agreed that XXX

9. It is mutually understood and agreed that the rights, duties and obligations created hereby shall extend to and be binding upon the parties, their heirs, executors, administrators and assigns, and that the singular herein shall include the plural.

10. Lessor hereby warrants generally the title to said coal and mining rights and this lease shall be free and clear of all encumbrances except those for which waiver and consent hereto is obtained and Lessee may in all cases apply royalty payments to the satisfaction of such encumbrances as may be found to exist.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals and caused this article of agreement to be duly executed by their officers, the day and year aforesaid.

Witness:

D. W. Eam

MERIDIAN

Albert L. Nelson, Trustee (Seal)
(Albert L. Nelson) Lessor

(Seal)

(Seal)

(Seal)

W. Ruskin Dressler (Seal)
(W. Ruskin Dressler) Lessee

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD } ss:

On this 3rd day of FEBRUARY 1997 before me, a Notary Public in and for the County of CLEARFIELD and State of Pennsylvania, came the above named ALBERT L. NELSON

who in due form of law acknowledged the foregoing Article of Agreement to be HIS act and deed, and desired the same to be recorded as such.

Witness my hand and OFFICIAL seal the day and year aforesaid.

Andrew L Boott

My Commission Expires

Notarial Seal
Andrew L. Boott, Notary Public
DuBois, Clearfield County
My Commission Expires Oct. 14, 1997
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Clearfield } ss:

On this 3rd day of FEBRUARY, 1997, before me, a NOTARY PUBLIC in and for the County of CLEARFIELD and State of Pennsylvania, came the above named W. Ruskin Dressler

who in due form of law acknowledged the foregoing Article of Agreement to be his act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

Andrew L Boott

My Commission Expires

Notarial Seal
Andrew L. Boott, Notary Public
DuBois, Clearfield County
My Commission Expires Oct. 14, 1997
Member, Pennsylvania Association of Notaries

ER-MR-310: Rev. 3/93 SMP99

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

COAL SURFACE MINING PERMIT
NO. 17990105

Permittee: W. Ruskin Dressler
Box 39
Rockton, PA 15856

Name of Operation: Kimble
Issuance Date: August 4, 1999

Type of Operation: Surface/Auger
Expiration Date: August 4, 2004

Permitted Seams: Upper Kittanning, Middle Kittanning, Luthersburg & Shale
Township: Brady

County: Clearfield

This approval is subject to the attached LIMITS OF AUTHORIZATION, MANDATED COAL MINING ACTIVITY PERMIT CONDITIONS AND REQUIREMENTS and to:

PART A EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS AND MANDATED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) CONDITIONS AND REQUIREMENTS

PART B SPECIAL CONDITIONS OR REQUIREMENTS

PART C AUTHORIZATION TO MINE

This permit is for 75 acres of which 63 coal acres are planned to be affected. Permittee may conduct surface coal mining activities only on that area of the permit outlined on the Authorization to Mine and accompanying maps contained in Part C of this permit. Initial authority to conduct mining activities is granted for an area of 26.9 acres described in Part C of this permit. Additional authority to conduct mining activities may be granted by written approval of the Department and attached to Part C of this permit. Permittee is prohibited from conducting coal mining activities on that portion of the permit area which has not been authorized for mining by the Department, in writing, and shown on the bond approval and mining authorization map(s) contained in Part C of this permit.

This permit is hereby issued in accordance with the provisions of the Surface Mine Conservation and Reclamation Act, Act of May 31, 1945 (P. L. 1198, No. 418), as amended, 52 P. S. §§1396.1 et seq., and the Clean Streams Law, Act of June 22, 1937 (P. L. 1987, No. 394), as amended, 35 P. S. §§691.1 et seq., The Air Pollution Control Act, Act of January 8, 1960 (1959 P. L. 2119, No. 787), as amended, 35 P. S. §§4001 et seq., and the regulations promulgated pursuant to these Acts. This permit is also issued in accordance with the following statutes and regulations if marked:

EXHIBIT 3
WIT: Dressler
DATE: 12-7-06
ASAP Court Reporting

☐ Coal Refuse Disposal Control Act, Act of September 24, 1968, (P. L. 1040, No. 318), as amended, 52 P.S. §§30.51 et seq., and the regulations promulgated pursuant to this Act.

☐ Dam Safety and Encroachments Act, Act of November 26, 1978 (P. L. 1375, No. 325), as amended, 32 P. S. §§693.1 et seq., and the regulations promulgated pursuant to this Act.

■ Air Pollution Control Act, Act of January 8, 1960 (1959 P. L. 2119), No. 787), as amended, 35 P. S. §4001 et seq., and the regulations promulgated pursuant to this Act.

☐ Solid Waste Management Act, Act of July 7, 1980 (P. L. 380, No. 97), 35 P. S. §§6018.101 et seq., and the regulations promulgated pursuant to this Act.

Permittee is hereby authorized to conduct coal mining activities as described in the approved permit application and in accordance with, the laws and regulations and terms and conditions as referenced above. A violation of any provision of these laws and regulations and terms and conditions is a violation of this permit.

BY: John P. Vane
for Michael W. Smith

Title: District Mining Manager
For the Department of Environmental Protection

WS/hao

LIMITS OF AUTHORIZATION

1. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights.

2. Nothing herein contained shall be construed to be an intent on the part of the Department to approve any act made or to be made by the permittee which is inconsistent with the permittee's lawful powers or with existing laws of the Commonwealth regulating coal mining activities and the practice of professional engineering. This permit shall not be construed to sanction any act otherwise forbidden by federal or state law or regulation, or by local ordinance, not to pre-empt any duty to obtain state or local assent required by law for the coal mining activity.

3. The Permittee's failure to comply with the laws of the Commonwealth and the rules and regulations of the Department regarding coal mining activities, or failure to comply with the terms and conditions of this permit, may result in an enforcement action, in permit termination, suspension, revocation and reissuance, or modification, or in denial of a permit renewal application. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee of any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under the Acts pursuant to which this permit is issued or any other applicable provision of law.

4. The permittee is responsible for complying with local ordinances adopted pursuant to the Municipalities Planning Code, and all zoning ordinances in existence before January 1, 1972. Nothing in this permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee may be subject under Federal, State, or Local laws.

5. The Surface Mine Conservation Inspector (SMCI) shall be notified of all proposed changes to the permitted erosion and sedimentation control plan prior to implementation. With the concurrence of the SMCI, minor field adjustments or additions to the permitted erosion and sedimentation control plan can be made as necessary to insure that all runoff is properly controlled. If necessary, all changes to the erosion and sedimentation controls shall be included as changes in the as built engineer's certification submitted to the Department.

MANDATED COAL MINING ACTIVITY PERMIT CONDITIONS
AND REQUIREMENTS
(under 25 PA Code Chapter 86)

1. Except to the extent that the Department otherwise directs in this permit that specific actions be taken, the permittee shall conduct coal mining activities as described in the approved application. 86.41(1)

2. The permittee shall allow the authorized representatives of the Commonwealth without advance notice or a search warrant, upon presentation of appropriate credentials, without delay, to have access to areas in which coal mining activities will or are being conducted. 86.41(2)

3. The permittee shall affect by coal mining activities only those lands specifically approved in the permit for which a bond has been filed with the Department in accordance with Subchapter F (relating to bonding and insurance requirements). 86.41(3)

4. The permittee shall take all possible steps to prevent an adverse impact to the environment or public health and safety resulting from non-compliance with terms or conditions of this permit, including:

   a. Any accelerated or additional monitoring necessary to determine the nature and extent of non-compliance and the results of the non-compliance;

   b. Providing warning, as soon as possible after learning of the non-compliance, to a person whose health and safety is in imminent danger due to the non-compliance. 86.42(1)

5. The permittee shall conduct the activities in accordance with measures specified in this permit as necessary to prevent environmental harm or harm to the health or safety of the public. 86.42(2)

SMP99

PART A

COAL SURFACE MINING PERMIT NO. 17990105

NPDES PERMIT NO. PA 0238261

Permittee: W. Ruskin Dressler
Box 39
Rockton, PA 15856

Name of Operation: Kimble

Issuance Date: August 4, 1999

Type of Operation: Surface/Auger

Expiration Date: August 4, 2004

Permitted Seams: Upper Kittanning, Middle Kittanning, Luthersburg & Shale

Township: Brady

County: Clearfield

DISCHARGE TO (RECEIVING WATERS): Unnamed tributary to Luthersburg Branch, Luthersburg Branch, unnamed tributary to LaBorde Branch and LaBorde Branch to the West Branch of the Susquehanna River

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. MINE DRAINAGE TREATMENT FACILITIES DISCHARGING TO: Unnamed tributary "A" to LaBorde Branch.

Outfall Numbers	Latitude	Longitude
TB1	40° 04' 18"	78° 42' 05"

Based on the hydrologic data and anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or revisions, the following effluent limitations and monitoring requirements apply to the above listed outfall numbers.

Exhibit 5: Property Interest/Right of Entry

5.1 Permit Area

a	b	c
(1) Surface: Richard & Nancy Kimble RR #1, Box 234, Liberty, PA 16930 Coal: Same as Surface except for Middle Kittanning Coal - Mary A. Hayes, 6205 W. Rockrose Ln., Florence, MT 49053	Lease	Enclosed
(16) Surface: Albert C. and Charles Hayes Luthersburg, PA 15848 Coal: Same as Surface except for Middle Kittanning Coal - Mary A. Hayes, 6205 W. Rockrose Ln., Florence, MT 40953	Lease	Not Required
(14) Surface: Mary A. Hayes, 6205 W. Rockrose Ln., Florence, MT 59053 Coal: Middle Kittanning Coal Same as Surface	Lease	To be Submitted
(2) Surface: Albert Nelson Trustee Albert L. Nelson, Esq. CEBFA 2400 Koppers Building, Pittsburgh, PA 15219 Coal - Same as Surface	Lease	Enclosed

5.2 Contiguous Area

(4) Surface: Mary Janice Beutel, 5233 Rottstown Rd., Ravenna, OH 44266
Coal: Same as Surface

(19) Surface: Albert C. and Charles Hayes, Luthersburg, PA 15848
Coal: Same as Surface except for Middle Kittanning - Mary A. Hayes

(13) Surface: Robert L. and Ordean V. Welder, RD #1, Box 96, Luthersburg, PA 15848
Coal: Same as Surface

(10) Surface: Nerissa Broad, RR 1, Luthersburg, PA 15848
Coal: Same as Surface

(9) Surface: Emily Jean Broad, RR #1, Luthersburg, PA 15848
Coal: Same as Surface

(6) Surface: William F. and Janet C. Matko, 604 Green Glen Drive, DuBois, PA 15801
AND
DuBois Beaver Meadow Field Trial Association, Box 97, DuBois, PA 15801
Coal: Same as surface

ER—MR—10: Rev. 2/84
"Supplemental C"

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

APPL. NO. (Department Use Only)

CONTRACTUAL CONSENT OF LANDOWNER

(I) (We), the undersigned, being the owner(s) of 49.0 acres of land located in Brady Township, Clearfield (Township, Borough, City), _____ County, as described in the deed(s) recorded in the Recorder of Deeds Office Book(s) and page(s) Deed Book Vol 1572 Page 148 and shown by crosshatched lines on the map attached hereto which is signed in the original by the landowner upon which W. Ruskin Dressler (Name of Mining Operator) proposes to engage in surface mining activities for which application for permit will be made to the Department of Environmental Resources and of which application this consent will be made a part, *DO HEREBY ACKNOWLEDGE THAT THE MINING OPERATOR HAS THE RIGHT TO ENTER UPON AND USE THE LAND FOR THE PURPOSES OF CONDUCTING SURFACE MINING ACTIVITIES.* Furthermore, (I) (We), the undersigned, do hereby irrevocably grant to the Mining Operator and the Commonwealth of Pennsylvania, the right to enter upon the aforesaid land before beginning the mining activity(ies), during the mining activity(ies) and for a period of five (5) years after the completion or abandonment of the mining activity(ies) for the purposes of inspecting, studying, backfilling, planting and reclaiming the land and abating pollution in accordance with the provisions of the Surface Mining Conservation and Reclamation Act, The Clean Streams Law, and The Coal Refuse Disposal Act, as amended, rules and regulations promulgated thereunder, and the provisions of permit(s) issued to the Mining Operator. (I) (We) do hereby grant in addition to the Commonwealth, for the aforesaid period of time, a right of entry across any adjoining or contiguous lands owned by (us) (me) in order to have access to the land described herein. It is specifically agreed and understood that this contractual consent gives the Commonwealth the right to enter, inspect, study, backfill, plant and reclaim the land and abate pollution therefrom as a matter within the police power but does not obligate the Commonwealth to do so, and does not constitute any ownership interest by the Commonwealth in the aforesaid land.

This Consent shall not be construed to impair any contractual agreement between the Mine Operator and the landowner.

(INSERT ADDITIONAL PROVISIONS OR CROSS OUT)

In witness whereof and intending to legally bind (myself) (ourselves), (my) (our) heirs, successors and assigns, (I) (we) have hereunto set (my) (our) hand(s) and seal this 30th day of FEB, 1997.

Albert L. Nelson
LANDOWNER Grantee (Print Name)

By: Albert L. Nelson, Trustee
(Signature) (Seal)

(Print Name)

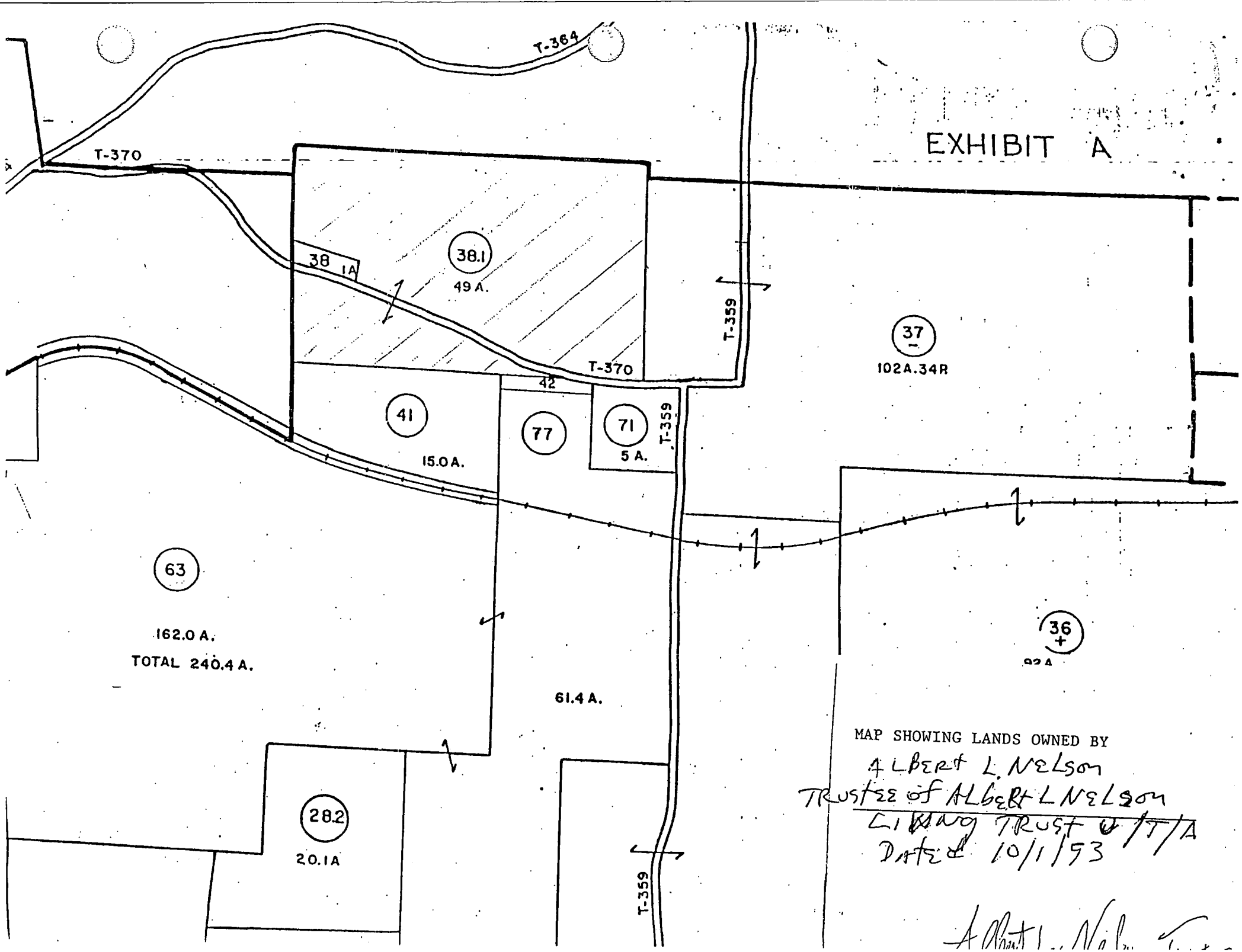
By: _____
(Signature)

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY, PA
Pennsylvania

INSTRUMENT NUMBER
199902726

RECORDED ON
Feb 23, 1999
11:51:31 AM

RECORDING FEES - $12.00
RECORDER
COUNTY IMPROVEMENT $1.00
FUND
RECORDER
IMPROVEMENT FUND $1.00
STATE WRIT TAX $0.50
TOTAL $15.50


EXHIBIT A
T-364
T-370
38.1
49 A.
38 1A
T-370
T-359
37
102A.34R
42
41
15.0A.
77
71
5 A.
T-359
63
162.0 A.
TOTAL 240.4 A.
61.4 A.
36
28.2
20.1A
T-359
MAP SHOWING LANDS OWNED BY
ALBERT L. NELSON
TRUSTEE of ALBERT L NELSON
LIVING TRUST U/T/A
Dated 10/1/93

PART C

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

AUTHORIZATION TO MINE
PERMIT NO. 1325-17990105T-01

Permittee: Waroquier Coal Company
P. O. Box 128
Clearfield, PA 16830

Name of Operation:	Kimble	Issuance Date:	October 16, 2001
Type of Operation:	Surface/Auger	Expiration Date:	August 4, 2004
		Township:	Brady
AUTH. ID:	348720	County:	Clearfield

A. Permittee is hereby authorized to conduct coal mining activities on lands of Richard L. Kimble and Nancy C. Kimble, Mary A. Hayes, and Albert L. Nelson situated in Brady Township, Clearfield County. Surface owners consent is attested to by inclusion of a properly executed Consent of Landowner form submitted in support of this approval.

B. Surface coal mining activities are limited to the area designated as Two Tones of Green (support); Brown and Purple (0 to 85 feet, mining);and Blue and Yellow (86 to 115 feet, mining) in the map submitted in support of the request for this Mining Authorization, which covers 38.5 acres.

C. The maximum allowed depth of pit or height of highwall is 115 feet. The maximum pit dimensions are described by Part B Condition #1.

D. Bond Description

☐ Original Bond ■ Transfer ☐ Additional Bond ☐ Bond Replacement

■ Surety Bond No. L-072001-17990105-01 in Amount of $94,300.00 dated July 7, 2001 with Lyndon Property Insurance Company as surety.

■ Additional Remarks - Reclamation Fee in the Amount of $1,160.00 supported by Check No. 1772 dated July 26, 2001.

E. The approved erosion and sediment control facility related to the area to be mined in accordance with this authorization must be constructed in accordance with the approved plan, certified by a professional engineer or land surveyor, and the certification submitted to the Department prior to the commencement of any earth disturbance activities in this area.

Waroquier Coal Company
Brady Township, Clearfield County

PERMIT99

BONDING INCREMENT SPECIAL CONDITIONS

There will be no blasting on this permit until Module 16 has been approved by this office.

The Supplemental "C", Consent of Landowner, for Richard L. Kimble & Nancy C. Kimble recorded February 23, 1999 at the Clearfield County Court House is filed herein.

The Supplemental "C", Consent of Landowner, for Albert L. Nelson recorded February 23, 1999 at the Clearfield County Court House is filed herein.

Variance to affect within 100 feet of T-384 is supported by the approval letter from Brady Township Supervisors dated June 7, 1999 is filed herein.

OFFICE: 814 765-5681
FAX: 814-765-5185

TIPPLE: 814 765-3492

WAROQUIER COAL, INC.

Coal Producers

P.O. BOX 128
CLEARFIELD, PA. 16830

EXHIBIT 4
WIT: Dressler
DATE: 12-7-06
ASAP Court Reporting

January 18, 2001

AGREEMENT

This 22 of January 2001, WAROQUIER COAL CO., INC. agrees to resume the permit #17990105 of Ruskin Dressler. We will pay Ruskin Dressler $15,000 (Fifteen Thousand Dollars) for this permit. Also, a payment of an override fee of $1.00 (One Dollar) for each ton of coal mined off of this permit. Settlements in payments of royalty shall be made on the 25th day of each month for all coal mined and removed from the premises during the preceding calendar month and shall be accompanied by a copy of all weight slips showing the number of tons of coal mined and removed.

Waroquier Coal Co., Inc. Agrees to pay Ruskin Dressler $5,000 (Five Thousand Dollar) for the road bond if Brady Township will not refund Ruskin Dresslers moneys for the road bond.

Waroquier Coal Co., Inc. agrees to sell Ruskin Dressler house coal out of this mine at pit price.

Waroquier Coal Co., Inc. will be working under Ruskin Dressler Permit until the transfer for the permit is made. Waroquier Coal Co., Inc. will be responsible for all mining activity through MSHA and DEP Regulations excluding Ruskin Dressler.

Ruskin Dressler is responsible for the up keep of this area and any MSHA fines that may accrue from his area.

In case of death the Royalty of this agreement will go to Bernice V. Oman, RD# 2 Box 231A, Dubois, PA 15801.

January 26th, 2001 Waroquier Coal Co., Inc. is advancing Ruskin Dressler $15,000 (Fifteen Thousand Dollars) on Advance Royalty in which Waroquier Coal Co., Inc. will recoup from the override fee of $1.00 (One Dollar) a ton when mining begins

until sum is collected. After sum is collected all will be based on what is stated in the first paragraph of this agreement.

ATTEST:

RUSKIN DRESSLER

WAROQUIER COAL CO., INC

GARY V. WAROQUIER,
SECRETARY OF TREASURER

NOTARIAL SEAL
TAWNEY J. BOWER, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires September 27, 2004

EXHIBIT 5
WIT: Dressler
DATE: 12-7-06
ASAP Court Reporting

W. RUSKIN DRESSLER COAL
BOX 39
ROCKTON, PA 15856

Kimble Job — W
SMP 17990105

Ramm Coal Co.
RD#1 Box 16
Rockton, Pa. 15856

Dressler obligations

Permit for job,
Bonding on job & Roads
Remove top soil & store in proper place. Build & maintain E+S pond, ditches & Treatment Basin.
Market coal, Payment to Ramm Coal 5 days after recieving payment from coal buyer.
Backfill & seeding AS required by DEP.
MSHA Fine to be responsibility of person at fault
Upper KT Dressler only.
All house coal to be split 50-50
Overburden on Lutheresburg seam to be removed by Dressler
Any shooting required shall be divided equally between Ramm & Dressler.

Ramm obligations

Own & operate 2400 dragline & maintain; fuel ~~for~~ cables, bucket parts.
Responsible for drilling & blasting for dragline. Middle Kittanni
Spoil overburden in a manner that would minimize doze shaping contour of hill for stage I release.

In the event that Dressler would not be able to continue operation of Kimble Job. Ramm coal would have option to continue operations until Job is finished. Bernice V. Oman will recieve per ton as an override fee of all coal production on Kimble

In the event of Ramm (death) being unable to finish operations Dressler shall have option to purchase Ramm's equipment at market price.

Any Auger coal will be Dressler's only.

Middle Kittanning Coal proceeds to be split 50-50 until Dressler puts his own bulldozer to work on Kimble Job. ~~After that~~ proceeds will be Dressler 55%; Ramm 45% when Dressler has paid monies owed RAMM for work done to remove Lutheesburg over burden in previous months Oct. 99 the Feb 2000

RAMM Coal Co
Roger A. Thomas
Nov. 23- 1999
owner
Roger A. Thomas

W Ruskin Dressler Co.
W Ruskin Dressler
Nov 23-1999
~~Co~~ owner
W Ruskin Dressler

June 8, 2006

I, W. Ruskin Dressler, was responsible for paying the royalties for coal removed from the job known as the "Kimble Mine" where Roger Thomas and I mined coal from October 1999 till January 2001.

W Ruskin Dressler

EXHIBIT 6
WIT: D. Dressler
DATE:
ASAP Court Reporting