

WALTER SHUMSKI,	:	IN THE COURT OF COMMON PLEAS
	:	OF LACKAWANNA COUNTY
	:	
Plaintiff	:	
	:	
	:	CIVIL ACTION – LAW
	:	
vs.	:	
	:	
	:	JURY TRIAL DEMANDED
THETA LAND CORPORATION; JAFLO,	:	
INC.; KEYSTONE SANITARY	:	
LANDFILL, INC.; PENNSYLVANIA	:	
AMERICAN WATER CO.;	:	
PENNSYLVANIA DEPARTMENT OF	:	
TRANSPORTATION, PENNSYLVANIA	:	
GAME COMMISSION; & ANTHRACITE	:	
RED ASH COAL COMPANY,	:	
	:	
	:	04 CV 2323
Defendants	:	

SETTLEMENT AGREEMENT

This Settlement Agreement is made, between, on the one hand, the Settlement Class (as that term is defined below) and the Named Plaintiff (as that term is defined below), and, on the other hand, the Defendants (as that term is defined below). As set forth more fully below, this Settlement Agreement will be binding and effective only upon final approval and entry of a Dismissal Order, as set forth in Section III. ¶ 9. hereof.

I. DEFINED TERMS

1. **Class Action.** “Class Action” refers to the action captioned Walter Shumski v. Theta Land Corporation and JAFLO, Inc., et al., C.C.P. Lackawanna County, NO. 04-CV-2323.

2. **Court.** The “Court” means the Court of Common Pleas in Lackawanna County.

3. **Defendants.** “Defendants” shall mean Theta Land Corporation; JAFLO, Inc.; Pennsylvania American Water Company; the Pennsylvania Department of Transportation and the Pennsylvania Game Commission; Keystone Landfill; and any and all other persons or entities affiliated with said person, companies or entities, and any other person, company or entity charged or chargeable with responsibility or liability and their insurers, assigns, predecessors, successors, heirs, executors and administrators and their agents, servants, employees and representatives for all persons, companies and entities described above.
4. **Named Plaintiff.** “Named Plaintiff” means Walter Shumski.
5. **Class Members.** “Class Members” means individuals and entities who owned or occupied property in the Boroughs of Jermyn and Mayfield or the Township of Carbondale and sustained real, and/or personal property damages and/or economic losses as a result of the flooding of the Rushbrook Creek on September 4-5, 2003.
6. **Settlement Class.** “Settlement Class” means the Named Plaintiff in this action and all Class Members who have already provided an estimate of damages sustained as a result of the flooding of the Rushbrook Creek on September 4-5, 2003, and /or who provide an estimate or repair bill for such damages with their timely Proof of Claim, which estimate or repair bill is reasonably contemporaneous with the date of the flood, as evidenced by a date on the estimate or repair bill that is reasonably contemporaneous with the dates of the flood on September 4-5, 2003.

7. **Plaintiff's Counsel.** Alan M. Feldman, Esquire and Thomas More Marrone, Esquire of the law offices of Feldman, Shepherd, Wohlgelernter, Tanner, Weinstock & Dodig, are proposed to be designated by the Court as "Plaintiff's Counsel."
8. **Effective Date.** The effective date of this Settlement Agreement shall be thirty (30) days after entry of "Final Judgment", as that term is defined herein.
9. **Preliminary Approval Order.** "Preliminary Approval Order" means an order, in substantially the same form as Exhibit A to this Settlement Agreement, preliminarily approving this Settlement Agreement and conditionally certifying the Settlement Class.
10. **Final Judgment.** "Final Judgment" shall be deemed entered only after both of the following have occurred:
 - a. the Court gives final approval to this Settlement Agreement by executing an Order that is the same in substance as the form of Final Judgment and Dismissal Order attached hereto as Exhibit B; and
 - b. the time in which to seek review or appeal of such Order has expired without any review or appeal having been taken, or, if such review or appeal is taken, such review or appeal has been finally determined (subject to no right of further review or appeal) by the highest court before which such review or appeal can be sought and allowed, and such review or appeal has been resolved in such manner as to permit the consummation of this Settlement Agreement in accordance with all of its terms and provisions.

11. **Notice of Proposed Class Action Settlement.** “Notice of Proposed Class Action Settlement” means notice of this proposed settlement as detailed in Section III, ¶ 5 hereof and in substantially the same form as Exhibits C and D to this Settlement Agreement.

II. RECITALS

1. During the evening of September 4, 2003 and continuing into the next morning September 5, 2003, the Lackawanna County area sustained heavy rainfall and devastating floods of, among others, waterways, Rushbrook Creek and the Lackawanna River.
2. Rushbrook Creek is a large tributary which flows through its watershed a part of which lies in Carbondale Township and the Boroughs of Mayfield and Jermyn, Pennsylvania into the Lackawanna River in Jermyn. Rushbrook Creek flows through extensive woodlands allegedly owned, possessed, controlled, maintained, trespassed upon, deforested and/or logged by each of the above named Defendants.
3. The Lackawanna River flows for nearly 60 miles through a 350 square mile watershed in Northeastern-Pennsylvania and passes through, among other boroughs, and townships, Carbondale Township, the Borough of Mayfield and the Borough of Jermyn.
4. Named Plaintiff alleges that he sustained property damage, real, personal, and/or other damages as a result of flooding from Rushbrook Creek which occurred on September

- 4-5, 2003. Named Plaintiff further alleges that the flooding was not as a result of natural causes, but instead occurred due to the negligent conduct of the named Defendants. Specifically, Named Plaintiff claims that timber and other debris in the Creek resulted in unnatural damming that caused the flooding to occur.
5. On June 9, 2004, Named Plaintiff filed a Civil Action Complaint (the “Complaint”) against Defendants, alleging, *inter alia*, that he and others similarly situated sustained damages and losses as a result of Defendants’ failing to maintain Rushbrook Creek and/or the watershed of Rushbrook Creek so as to minimize the excessive accumulation of timber and debris in Rushbrook Creek; failing to exercise reasonable care to discover that the excessive accumulation of timber and debris within Rushbrook Creek could cause flooding, to the detriment of the Class Members as are now defined herein; failing to warn the Class Members as are now defined herein of the foreseeable risk of flooding; and violating applicable regulations, statutes, ordinances and/or laws relating to the maintenance of Rushbrook Creek, and/or its watershed.
 6. Preliminary Objections to the Complaint were filed by defendants.
 7. On September 20, 2004, Named Plaintiff filed a First Amended Class Action Complaint (the “Amended Complaint”) on his own behalf and on behalf of all persons who, currently own or occupy property in the Boroughs of Jermyn and Mayfield and/or the Township of Carbondale.
 8. Preliminary Objections to the First Amended Complaint were filed by Defendants.

9. On December 15, 2004, the Court heard oral argument on the Preliminary Objections to the First Amended Complaint. By Order dated February 28, 2005, the Court permitted additional discovery and the filing of a Second Amended Complaint.
10. On September 6, 2005, Named Plaintiff filed the Second Amended Complaint.
11. Preliminary objections to the Second Amended Complaint were filed by all Defendants. Following oral argument, by Order dated April 7, 2006, the court dismissed the claim for negligence *per se*, ordered that the request for costs and attorney's fees be stricken and limited the class definition to "individuals and entities in the Boroughs of Jermyn and Mayfield and/or the Township of Carbondale, who suffered real, and/or personal property damages and/or economic losses as a result of the flooding of Rushbrook Creek which occurred on September 4-5, 2003."
12. On September 21, 2007, Named Plaintiff filed a Motion for Class Certification and on October 11, 2007 Named Plaintiff filed an Amended Memorandum of Law in Support of the Motion for Class Certification. Oral argument on the Motion was scheduled but not held due to the agreement to participate in Mediation by all parties.
13. On March 5, 2009, the Parties participated in Mediation in which a settlement was stipulated and agreed to, as described more fully in Section III. herein.
14. Plaintiff's Counsel has investigated the facts and circumstances underlying the issues raised in this action, and has researched the law applicable to these issues and claims. Plaintiff's Counsel recognizes the difficulty of complex litigation, the uncertainty

inherent in predicting the outcome of the Class Action, and the desire to provide an immediate benefit to the Settlement Class rather than to continue this litigation where the benefit obtained, if any, will be further delayed. Based on these considerations, Plaintiff's Counsel has concluded that the settlement made evident by this Settlement Agreement, which is the product of arm's length negotiations between the parties, is fair, reasonable, adequate, and in the best interests of the Named Plaintiff and the Settlement Class.

15. Defendants deny any and all liability but recognize the expense and time necessary to continue the litigation of the Class Action. The Named Plaintiff and Plaintiff's Counsel likewise recognize the expense and time necessary to continue the litigation of the Class Action and the uncertainty inherent in predicting its outcome. Defendants, the Named Plaintiff and Plaintiff's Counsel have concluded, therefore, that it is in their best interests to resolve the Class Action now, and to put to rest all of the claims that were, or can ever be, brought in the Class Action.
16. This Settlement Agreement reflects a compromise between the parties of disputed claims, and shall, in no event, be construed or be deemed to be an admission or concession by any party regarding any claim or defense asserted in the Class Action.

NOW, THEREFORE, intending to be legally bound hereby, the parties hereto agree as follows:

III. AGREEMENT

1. The foregoing Definitions and Recitals are incorporated herein by reference and are made a part of this Settlement Agreement.
2. **Class Certification.** The parties hereto will seek, as a condition to this Settlement Agreement, an Order of the Court conditionally certifying the Settlement Class.
3. **Class Members' Right to Opt Out.** Any Class Member may elect to be excluded from the Settlement Class by opting out of the Settlement Class within thirty (30) days from the date of notice as contemplated and made evident by ¶ 5 of this section and Exhibits C and D attached hereto (the "Opt-Out Period"). A Class Member shall opt out of the Settlement Class by returning to Plaintiff's Counsel the Opt-Out Request form attached hereto as Exhibit F, indicating a desire to opt out of the Settlement Class, which mailing shall be postmarked no later than the end of the Opt-Out Period. Any Class Member who timely mails notice of a desire to opt out of the Settlement Class shall be deemed to have opted out of the Settlement Class. Any Class Member who opts out shall neither be bound by the terms of this instant Settlement Agreement nor be entitled to any of the benefits set forth in this instant Settlement Agreement. As set forth in Section III, ¶11 of this instant Settlement Agreement, any of the Defendants shall have the exclusive right, exercisable in their sole discretion, to void this instant Settlement Agreement if any Class Member elects to Opt Out. Plaintiff's

counsel bears the affirmative duty and responsibility to inform the Court and all Defendants of all evidence relevant to opt out activity by third parties.

4. **Final Approval of Settlement Terms.** Once this Settlement Agreement receives Final Approval and Final Judgment is entered, then the following relief shall be provided:
 - a. The settlement shall be a full and final settlement as to the Settlement Class, certification of which will not be opposed by the Defendants, in the amount of Two Hundred Thousand Dollars (\$200,000.00);
 - b. The settlement proceeds, after payment of attorney's fees and costs, and the named plaintiff's incentive fee, will be distributed *pro rata* to the Settlement Class;
 - c. In the event any class member opts out of this settlement, such settlement shall become null and void at the option of any Defendant;
 - d. The settlement amount shall be the full amount payable by Defendants under any circumstances (i.e. attorney's fees, costs, costs of claim administration, payments to class members, incentive fee, etc. are all to be paid from the \$200,000.00 fund);
 - e. None of the Defendants are required to pay any amount for any reason in excess of their respective and agreed share of the total settlement amount;
 - f. Named Plaintiff shall execute a General Release of all claims addressed by this settlement agreement as attached hereto as Exhibit E; and
 - g. Notice of the proposed settlement and hearing thereon shall be given in a form to be approved by the court;

5. **Notice of Proposed Class Action Settlement.** If the Court enters the Preliminary Approval Order, then Plaintiff's Counsel agrees to promptly provide Court-approved notice to the Settlement Class, as follows:

a. Method:

i. Individually mailing the Notice of Proposed Class Action Settlement (in the form attached as Exhibit D) to class members who are currently known to Plaintiff's Counsel;

I. With each deposit to the mails Plaintiff's counsel shall obtain a proof of mailing being United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service. Upon completion of all mailing the said proofs shall be filed with the Clerk of Judicial Records under Praecipe and true copies shall be served upon all counsel of record. The Opt-out period for those intended to be notified by this method begins to run from the date of mailing so certified to the Court.

ii. Posting the Notice of Proposed Class Action Settlement (in the form attached as Exhibit D) on Plaintiff's Counsel's firm website at www.feldmanshepherd.com for the period from one day following the

Court's entry of an Order preliminarily approving the proposed class action settlement through the date of the hearing regarding final approval of the proposed class action settlement; and

iii. Placing a single publication in The Scranton Times-Tribune of the form attached hereto as Exhibit C.

I. Plaintiff's counsel shall obtain a proof of publication from the Times-Tribune as is issued by that periodical in the usual fashion, file the original with the Clerk of Judicial Records and serve a true copy upon each counsel of record. The Opt-out period for those intended to be notified by this method begins to run from the date of publication as certified by the Times-Tribune.

b. *Content:* In addition to such other matters as the Court may require, the notices shall:

- i. Inform the Class Members of the material terms of the proposed settlement;
- ii. Inform the Class Members that a final hearing to determine the fairness, reasonableness, and adequacy of the proposed settlement, and the reasonableness of the proposed fee award to Plaintiff's Counsel, will be held on a date set by the Court; and
- iii. Notify the Class Members that any objections to the proposed settlement, and/or to the proposed fee award to Plaintiff's Counsel, along with the reasons for each said objection, may be served, in writing, upon Plaintiff's

Counsel before the date of the final hearing or may be raised at the final hearing as permitted by the Court.

- c. The parties stipulate that this notification is the best practicable notice and is reasonably calculated to notify Class Members of the proposed settlement.
6. **Plaintiff's Counsel's Attorneys' Fees and Costs, and Incentive Award.** If this Settlement Agreement receives Final Approval, Plaintiff's Counsel will request the Court's approval of the following reasonable compensation for their services in an amount not to exceed \$66,600 plus reasonable costs and expenses as well as an incentive award in the amount of \$1,000.00 in favor of the Named Plaintiff, Walter Shumski, which sums are to be paid from the Defendants' collective tender of Two Hundred Thousand Dollars (\$200,000.00) as full and final settlement of all claims of the Settlement Class, including attorney's fees, costs, costs of claim administration, payments to class members, etc. Defendants agree that they shall not object to the foregoing. Plaintiff's Counsel and the Settlement Class shall not accept fees in excess of the foregoing, and Defendants shall not be responsible for the payment of such fees or costs, even if approved by the Court.
 7. **Payment of Settlement Monies:** Defendants shall pay the settlement amount set by ¶ 4 of this Section within thirty (30) days after entry of "Final Judgment" as that term is defined at Section I, ¶ 10 hereof. Plaintiff's Counsel shall distribute the relief as described in ¶ 4 of this Section to the Settlement Class. As stated at ¶ 4 of this Section none of the Defendants are required to pay any amount for any reason in excess of their respective and agreed share of the said settlement amount. Plaintiff's Counsel

and the Settlement Class shall not accept fees in excess of said settlement amount, and Defendants shall not be responsible for the payment of any monetary sum or value what so ever that exceeds the said settlement amount, even if approved by the Court.

8. **Preliminary Approval of Settlement.** As soon as practicable, but in any event within five (5) days after signing this Settlement Agreement, Plaintiff 's Counsel and Defendants shall jointly file an application to the Court for entry of a Preliminary Approval Order substantially in the form of Exhibit A attached hereto, which:
- a. Finds preliminarily that this instant Settlement Agreement has been achieved in good faith and is fair, reasonable, adequate and in the best interests of each of the Class Members;
 - b. For purposes of this Settlement only:
 - i. Conditionally certifies the Settlement Class;
 - ii. Conditionally designates Walter Shumski as the Class Representative of the Settlement Class; and
 - iii. Conditionally designates Alan M. Feldman and Thomas More Marrone as Plaintiff's Counsel for the Settlement Class;
 - c. Schedules a hearing to finally determine the fairness of this Settlement Agreement, the same being no sooner than 90 days from the entry of the said Preliminary Approval Order; and
 - d. Orders and decrees that the Notice of Proposed Class Action Settlement, in substantially the same form as that attached hereto as Exhibits C and D, be given by the method set forth in ¶ 5 of this Section (and any other such notice as the

Court may require) are adequate and that such notice satisfies the requirements of due process and state and federal law.

9. **Dismissal Order.** Concurrent with the parties' application for Preliminary Approval of this Settlement Agreement, the parties will jointly petition the Court for a Final Judgment and Dismissal Order, substantially in the form attached hereto as Exhibit B, whereby the Court will:
- a. Find that the notices to the Class Members satisfy the requirements of due process and federal and state law;
 - b. Find that the Settlement Agreement is fair, reasonable and adequate to the Named Plaintiff and Class Members;
 - c. Find that the Named Plaintiff and each Class Member who does not timely opt out of the Settlement Class in accordance with the procedures set forth herein, shall be bound by this Settlement Agreement, including the release and covenant not to sue contained in ¶ 13 of this Section and Exhibit E hereof;
 - d. Order and decree that this Settlement Agreement should be, and is, approved;
 - e. Dismiss with prejudice all claims made in the pleadings, or related by fact or law thereto;
 - f. Permanently enjoin each and every Class Member of the Settlement Class who does not properly opt out of the settlement from bringing, joining, and/or continuing to prosecute against Defendants any claim that was, could have been, or may be brought in this, or any other, action or otherwise, for which a release is being given under ¶13 of this Section and Exhibit E hereof;

- b. If either party (i.e., the Named Plaintiff or Defendants) desires to appeal such ruling, then both parties may participate and join in such appeal, and if the Dismissal Order or its equivalent in all material respects is not in effect after the termination of all proceedings arising out of such appeal, this Settlement Agreement shall become null and void, the Class Action may continue, and the parties shall move jointly that any and all orders entered pursuant to this Settlement Agreement be vacated.

12. **Termination:** Each and any of the Defendants shall have the option to terminate this Settlement Agreement if any Class Member Opts-Out of this Settlement Agreement in accordance with the procedure set forth in ¶ 3 of this Section and as contemplated by the form at Exhibit G hereto attached and all parties agree that:
 - a. Defendants' option to terminate shall be exercised, if at all, within thirty (30) days following the entry of the Final Judgment and Dismissal Order as defined in Section I, ¶ 10 a. hereof.
 - b. In the event that any of the Defendants exercise this option, that Defendant must file a Praecipe with the Clerk of Judicial Records of the Court explicitly exercising its right of termination and promptly serve all counsel of record with a copy bearing the time stamp of the same Clerk of Judicial Records;
 - c. Where the said Praecipe to terminate is filed and served the Settlement achieved and made evident by this Settlement Agreement is void in its entirety; the case shall proceed from the point in litigation where it was abated; and the parties shall

have no obligation to undertake any of the terms or provisions in this Settlement Agreement;

- d. Plaintiffs counsel, shall file with the Clerk of Judicial Records, no later than ten business days prior to the date set for hearing contemplated under ¶ 8 c. of this Section, true copies of any documents related and records made relating to notice of each and every opt out or objection, marked as exhibits and attached to Praecipes identifying the information; and where such documentation is received or made by Plaintiff's counsel within ten or less days prior to the date set for hearing contemplated under ¶ 8 c of this Section the same shall be forthwith faxed or emailed to all acting counsel of record.
13. **Released Parties:** Upon achievement of Final Judgment as defined in Section I, ¶10 of this Settlement Agreement, the Named Plaintiff and all Class Members (who have not opted out of the Settlement Class in accordance with the procedure set forth in ¶ 3 of this Section and as contemplated by the form hereto attached as Exhibit G) for themselves and their respective heirs, executors, representatives, agents, attorneys, employees, successors and assigns, *shall be deemed* to have released and forever discharged each and all of the following persons (collectively, "Released Parties"): Defendants, and all of their current, former and future subsidiaries, departments, divisions, boards, successors, assigns, affiliates and parents, and their current, former or future directors, officers, members, and employees, and their heirs, executors, and administrators, and any and all representatives, shareholders, agents, accountants, attorneys, predecessors, successors and assigns of any of the foregoing, as set forth more fully in Exhibit E hereof.

14. **Counterparts:** This Settlement Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement. Photocopies of executed copies of this Settlement Agreement may be treated as originals.
15. **Binding Effect:** Each and every term of this Settlement Agreement shall be binding upon, and inure to the benefit of, the Named Plaintiff, the Settlement Class, any of their successors and personal representatives, and the Defendants and the Released Parties. All of these persons and entities are intended to be beneficiaries of this Settlement Agreement.
16. **Modification:** This Settlement Agreement shall not be amended or modified without the express, written authorization of each of the Defendants given through the acting counsel of record. The ability of counsel of record to make such changes by their signatures is hereby authorized as between all parties to this Settlement Agreement. Notwithstanding the foregoing, to the extent that such changes conflict with or alter the material terms of any Court Order, then such changes shall not take effect until after they have received court approval.
17. **Time Periods:** The time periods and/or dates described in this Settlement Agreement with respect to the giving of notices and hearing as provided in this Settlement Agreement are subject to approval and change by the Court.
18. **Exclusivity:** This Settlement Agreement may not be relied upon for any purpose by, or create any rights in, any person who is not a Class Member by definition or opt-out.
19. **Governing Law:** This Settlement Agreement shall be governed and construed under the laws of the Commonwealth of Pennsylvania.

20. **Notice:** Written communications contemplated by this Settlement Agreement or required by the Court shall be directed to acting counsel of record as follows:

For the Named Plaintiff & the Settlement Class:

Alan M. Feldman, Esquire
Thomas More Marrone, Esquire
FELDMAN-SHEPHERD-WOHLGELERNTER-
TANNER- WEINSTOCK
1845 Walnut Street, 25th Floor
Philadelphia, PA 19103
Walter H. Swayze, III
SEGAL-MCCAMBRIDGE
30 S. 17th Street, Suite 1700
Philadelphia, PA 19103

For the Defendants:

Walter H. Swayze, III
SEGAL-MCCAMBRIDGE
30 S. 17th Street, Suite 1700
Philadelphia, PA 19103

Douglas J. Kent, Esquire
MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
1845 Walnut Street
Philadelphia, PA 19103-4797

Robert Borthwick, SDAG
Commonwealth of Pennsylvania
Office of Attorney General
Room 136 Samters Building
101 Penn Avenue
Scranton, PA 18503-2025

And the persons and addresses designated in this Paragraph as agents may be changed by the represented party by written notice to the other signatories hereto in accordance with this Paragraph.

21. **Entire Agreement:** This document (including the referenced exhibits) constitutes the full and entire agreement between the Named Plaintiff and Plaintiff's counsel, on the one hand, and the collective Defendants, on the other with regard to the subject hereof, and supersedes any prior agreements, representations, promises, or warranties, oral or otherwise, made by either. Neither shall be liable or bound for any prior agreement, representation, promise or warranty, oral or otherwise, except for those expressly set forth in this Settlement Agreement. However, notwithstanding the nature of this agreement, the same does not abridge the rights and obligations held and due between the several defendants.
22. **Headings:** The headings herein are for convenience only and shall not affect the interpretation or construction of this Settlement Agreement.
23. **Authority:** Each person executing this Settlement Agreement in a representative capacity hereby represents and warrants that he or she is fully authorized to do so by virtue of the capacity indicated.
24. **Jurisdiction/Disputes:** The parties hereby stipulate and agree that the Court shall retain jurisdiction to hear and determine all disputes arising under this Settlement Agreement. Notwithstanding the foregoing, however, the parties further stipulate and agree that they shall first enter into good faith negotiations to resolve any dispute arising under this Settlement Agreement, and if they are unable to resolve a dispute among themselves, they shall mediate the dispute with a third party mediator agreed to

by the parties. Only where the parties are unable to resolve a dispute after mediation shall they submit the dispute to the Court for resolution.

IN WITNESS WHEREOF, the parties hereto hereunto set their hands upon the dates indicated by them as follows:

FOR THE PLAINTIFF AND THE
SETTLEMENT CLASS

Dated: _____, 2009 BY: _____
WALTER SHUMSKI on his own
behalf and for all others similarly
situated

FOR DEFENDANT, JAFLO, INC.:

Dated: _____, 2009 BY: _____
FOR DEFENDANT THETA LAND
CORP.

Dated: _____, 2009 BY: _____
FOR DEFENDANT PENNSYLVANIA
AMERICAN WATER COMPANY

Dated: _____, 2009 BY: _____

FOR DEFENDANTS
PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION &
PENNSYLVANIA GAME
COMMISSION


Dated: September 1, 2009 BY: 
PENNSYLVANIA OFFICE OF ATTORNEY
GENERAL, ROBERT BORTHWICK,
DEPUTY

EXHIBIT A

WALTER SHUMSKI,	:	IN THE COURT OF COMMON PLEAS
	:	OF LACKAWANNA COUNTY
Plaintiff	:	
	:	
	:	CIVIL ACTION – LAW
vs.	:	
	:	
THETA LAND CORPORATION; JAFLO,	:	JURY TRIAL DEMANDED
INC.; KEYSTONE SANITARY	:	
LANDFILL, INC.; PENNSYLVANIA	:	
AMERICAN WATER CO.;	:	
PENNSYLVANIA DEPARTMENT OF	:	
TRANSPORTATION, PENNSYLVANIA	:	
GAME COMMISSION; & ANTHRACITE	:	
RED ASH COAL COMPANY,	:	
	:	
Defendants	:	04 CV 2323

ORDER OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

AND NOW, this ____ day of _____, 2009, upon consideration of the Joint Motion for Preliminary Approval of Class Action Settlement, it is hereby ORDERED that the Joint Motion is GRANTED as follows:

1. The Court preliminarily approves the Settlement Agreement dated _____ attached as Exhibit A to the Joint Motion.

The Settlement Agreement shall be submitted to the Settlement Class for their consideration and for a hearing to determine whether the settlement will be approved by the Court;

2. For purposes of the Joint Motion only, the Court:
 - a. Conditionally certifies the Settlement Class as defined in the Settlement Agreement;

- b. Conditionally designates Walter Shumski as the Named Plaintiff of the Settlement Class, as defined in the Settlement Agreement; and
 - c. Conditionally designates Alan M. Feldman and Thomas More Marrone as Plaintiff's Counsel for the Settlement Class as defined in the Settlement Agreement;
3. A fairness hearing shall be held on _____ at _____, __.m. in Courtroom _____, Lackawanna County Courthouse, Pennsylvania, (being no sooner than 90 days from the date of this Order) to consider whether the Court should give final approval to the settlement set forth in the Settlement Agreement, including a determination of the Class Representative's incentive award and any award of attorney's fees and costs to Plaintiff's Counsel;
 4. Objections to the settlement by Class Members will be considered by the Court if received in writing by Plaintiff's Counsel in advance of the fairness hearing or if asserted at the fairness hearing. Plaintiff's Counsel shall serve each of the Counsel for Defendants and file with the Court copies of all objections received in advance of the fairness hearing, together with a statement of reasons, if any, why the objection should be overruled;
 5. At the hearing, Class Members may be heard orally in support of or in opposition to the settlement; Plaintiff's Counsel and Defendants' counsel should be prepared at the hearing to respond to any objections filed by the members of the Settlement Class and to provide other information, as appropriate, bearing on whether or not the settlement should be approved;

6. The Court approves the following as the sole notice required to be given to members of the Settlement Class:
 - a. a single publication of the short notice, as more fully appears at Exhibit C of the Settlement Agreement, in The Scranton Times-Tribune, at Plaintiffs' counsel's cost;
 - b. the mailing of individual notices in the form attached as Exhibit D to the Settlement Agreement to class members who are already known to Plaintiff's Counsel; and
 - c. the posting on Plaintiff's Counsel's firm website of the Notice of Proposed Class Action Settlement (Exhibit D to the Settlement Agreement) for the period stated in the settlement agreement.
7. Such notice will be given within thirty (30) days of the date hereof.
8. The Court finds that the method and content of the same notice satisfies the requirements of due process and State and Federal law;
9. Plaintiff's Counsel is directed to file with the Clerk of Judicial Records, prior to the fairness hearing, and to serve upon counsel to the defendants, certification of service of notice to the Settlement Class meaning service upon all class members who are currently known to Plaintiff's Counsel; certification of publication upon the web site of Plaintiff's Counsel as well as a true copy of the proof of the publication of notice in the usual form available from the Scranton Times-Tribune.
10. Members of the Settlement Class shall opt out of the Settlement by returning the Opt Out form in the form attached to the Settlement Agreement as Exhibit G within the opt out period as defined in the settlement agreement.

11. All evidence relevant to opt out activity received by Plaintiff's Counsel shall be served upon defense counsel and filed of record with the Clerk of Judicial Records as agreed between the parties.
12. Each and any of the Defendants shall have the option to terminate this Settlement Agreement if any Class Member Opts-Out of this Settlement Agreement in accordance with the procedure set forth in the Settlement Agreement. Defendants' option to terminate shall be exercised, if at all, within thirty days of entry by this Court of a *Final Judgment and Dismissal Order* as contemplated by the settlement agreement. In the event that any of the Defendants exercise this option, then the Settlement Agreement is void in its entirety and the parties shall have no obligation to undertake any of the terms or provisions in this Settlement Agreement.
13. The settlement shall be a full and final settlement as to the Settlement Class, certification of which will not be opposed by the Defendants, in the amount of Two Hundred Thousand Dollars (\$200,000.00). The settlement amount shall be the full amount payable by Defendants under any circumstances (i.e. attorney's fees, costs, costs of claim administration, payments to class members, etc. are all to be paid from

the \$200,000.00 fund. None of the Defendants are required to pay any amount for any reason in excess of their respective and agreed share of the total settlement amount.

BY THE COURT,

BY: _____
Carmen D. Minora, J.

EXHIBIT B

WALTER SHUMSKI,	:	IN THE COURT OF COMMON PLEAS
	:	OF LACKAWANNA COUNTY
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION – LAW
	:	
THETA LAND CORPORATION; JAFLO,	:	JURY TRIAL DEMANDED
INC.; KEYSTONE SANITARY	:	
LANDFILL, INC.; PENNSYLVANIA	:	
AMERICAN WATER CO.;	:	
PENNSYLVANIA DEPARTMENT OF	:	
TRANSPORTATION, PENNSYLVANIA	:	
GAME COMMISSION; & ANTHRACITE	:	
RED ASH COAL COMPANY,	:	
Defendants	:	04 CV 2323

FINAL JUDGMENT AND ORDER OF DISMISSAL

AND NOW, this _____ day of _____, 2009, upon consideration of whether the proposed settlement of the above-referenced litigation (the “Litigation”) should be finally approved, the parties having presented their settlement agreement to the Court, after due and adequate notice to the Class Members, the Court having held a hearing on _____ 2009 upon the fairness of the proposed settlement of the Litigation, at which hearing objectors to the settlement were provided the opportunity to be heard, and the Court being fully advised of any objections, it is hereby ORDERED and decreed that:

1. The Court has jurisdiction over the subject matter of this action and over all parties to this action, including all Class Members.

2. Notice of the proposed settlement has been duly provided to all class members and such notice satisfies the requirements of Rule 1714(c) of the Pennsylvania Rules of Civil Procedure and due process.
3. As more fully appears upon the record, _____ objections to this settlement have been received.
4. The Settlement Agreement submitted with the parties' Petition for Preliminary Approval is APPROVED as fair, reasonable and adequate pursuant to Rule 1714(a) of the Pennsylvania Rules of Civil Procedure, and the parties are directed to consummate such agreement in accordance with this Order.
5. The Named Plaintiff and each member of the Settlement Class who has not timely opted out of the Settlement Class in accordance with the procedures established by the Court are hereby bound by the Settlement Agreement, including the release and covenant not to sue contained in Section III, ¶ 13 and Exhibit E of the Settlement Agreement.
6. The Litigation is hereby dismissed, with prejudice and without costs. All class members are permanently enjoined from bringing, joining, and/or continuing to prosecute against Defendants any claim that was, could have been, or may be brought in this, or any other, action or otherwise, for which a release is being given under Section III, ¶ 13 and Exhibit E of the Settlement Agreement. Any party violating the Court's injunction shall pay costs and attorney's fees incurred by any Released Party as a result of a violation of the Court's injunction.
7. Consummation of the settlement shall proceed as described in the Settlement Agreement; and, without affecting the finality of this Judgment in any way, this Court hereby retains jurisdiction over this matter in order to resolve any dispute which may arise in the

implementation of this Final Judgment and Order of Dismissal. This Court retains continuing jurisdiction for purposes of supervising the implementation of the Settlement Agreement.

8. To sum total amount of the settlement is Two Hundred Thousand Dollars (\$200,000.00) which sum constitutes a full and final settlement of any and all claims. Defendants shall pay their agreed upon respective shares within 30 days of Final Judgment as that term is defined in the Settlement Agreement.
9. Plaintiff's Counsel's fees and all associated costs will be taken from the total settlement amount noted above.
10. This Court retains jurisdiction of all matters relating to the modification, interpretation, administration, implementation, effectuation and enforcement of the Settlement Agreement.
11. In the event the Settlement does not become effective, the Court, after due notice and hearing upon due petition, shall vacate this Final Judgment and Order of Dismissal and all Orders entered in connection with this Settlement shall be rendered null and void and without prejudice in any way to the parties.

BY THE COURT,

BY: _____
Carmen D. Minora, J.

EXHIBIT C

TO BE PUBLISHED IN *THE SCRANTON TIMES-TRIBUNE*:

NOTICE

If on September 4-5, 2003 you owned or occupied property in the Boroughs of Jermyn and Mayfield or the Township of Carbondale and you sustained real, and/or personal property damages and/or economic losses as a result of the flooding of the Rushbrook Creek on September 4-5, 2003, this Notice may affect your rights.

Summary of the Proposed Settlement: A settlement has been proposed, and preliminarily approved in *Shumski v. Theta Land Corporation, et al*, Case No. 04-CV-2323, a class action that has been filed in the Lackawanna County Court of Common Pleas. The parties have agreed to the certification of a Settlement Class consisting of all persons who, on September 4-5, 2003, owned or occupied property in the Boroughs of Jermyn and Mayfield and/or the Township of Carbondale and who sustained real and/or personal property damage, and/or other economic losses as a result of the flood of the Rushbrook Creek on those dates who submit timely and fully completed Proof of Claim and an estimate or repair bill for flood damage or repair which is dated within a reasonable time after the dates of the flood.

If you fit the description stated above, then you are a Settlement Class Member and can make a claim for the relief offered under the proposed settlement; or exclude yourself from the proposed settlement; or object to the proposed settlement. You may file a claim, exclude yourself, or object by following the directions in the Long Form Notice, which is available from Class

Counsel identified below. If you do nothing, then you will be bound by the terms of the proposed settlement, if approved by the Court.

The Court has preliminarily approved the proposed settlement, but the settlement will not be final unless the Court decides to approve it after a Fairness Hearing. The Fairness Hearing is scheduled for the _____, 2009 before the Honorable Carmen D. Minora, in Courtroom ____, on the _____ Floor of the Lackawanna County Court House.

How to Get More Information: For complete information on the proposed settlement, or if you wish to discuss this lawsuit or have any questions concerning your rights or interests with respect to these matters, contact Class Counsel: Alan M. Feldman, Esquire & Thomas More Marrone, Esquire, Feldman, Shepherd, Wohlgelernter, Tanner, Weinstock & Dodig, 1845 Walnut Street, 25th Floor, Philadelphia, PA 19103, telephone (215) 567-8300; email: feldman@feldmanshepherd.com or tmarrone@feldmansheph.com

DO NOT CONTACT THE COURT OR THE DEFENDANTS

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: Individuals and entities in the Boroughs of Jermyn and Mayfield and/or the Township of Carbondale, who suffered real and/or personal property damages and/or economic damages as a result of the flooding of the Rushbrook Creek, which occurred on September 4-5, 2003.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY THE PROPOSED SETTLEMENT OF THIS CLASS ACTION.

PLEASE DO NOT CONTACT THE COURT OR DEFENDANTS CONCERNING THIS NOTICE

THIS IS NOT A NOTIFICATION THAT YOU HAVE BEEN SUED

This Notice is given pursuant to an Order entered by the 45th Judicial District being the Court of Common Pleas in and for Lackawanna County. The purpose of this Notice is to inform you that a proposed Settlement has been reached in this class action lawsuit, and that you may be a class member that is entitled to participate in the settlement.

WHAT IS THE LAWSUIT ABOUT?

On or about September 4-5, 2003, a band of heavy showers moved across Lackawanna County and dumped approximately 2 to 3 inches of rain on the region. In turn, the heavy rainfall poured into Rushbrook Creek, which caused the Creek and neighboring Lackawanna River to rise and overflow its banks in multiple spots. Flash flooding occurred in parts of Carbondale Township, Mayfield Borough and/or Jermyn Borough and several areas sustained common flood

damage. Plaintiff, Walter Shumski, filed a lawsuit against multiple Defendants alleging that he sustained personal property damage as a result of flooding from Rushbrook Creek which occurred on September 4-5, 2003. He further alleged that the flooding was not as a result of natural causes, but instead occurred due to the negligent conduct of the named Defendants in, among other allegations, allegedly failing to maintain the Creek bed and/or watershed of Rushbrook Creek so as to minimize the excessive accumulation of timber and debris in the Creek, which allegedly enhanced the flooding. The Court has not made any determination with respect to the validity of Mr. Shumski's claims or Defendants' defenses. Defendants deny any and all liability asserted against them.

WHAT ARE THE GENERAL TERMS OF THE SETTLEMENT?

The Named Plaintiff and Defendants have reached a settlement of all claims, subject to the Court's final approval. The Court will hold a hearing to determine whether the settlement will be approved.

The terms of the settlement are, in essence, as follows:

1. The settlement shall be a full and final settlement as to all Class Members, as certified by the Court.
2. The total settlement is in the amount of Two Hundred Thousand Dollars (\$200,000.00).
3. From that amount, attorney's fees and costs in an amount to be approved by the Court and an incentive fee to be paid to the named plaintiff will be paid and the remaining amount will be distributed to the Settlement Class *pro rata*.
4. The Settlement Class consists of all Class Members who have already provided an estimate of the damages sustained as a result of that flood of the Rushbrook Creek on September 4-5, 2003, and/or who provide an estimate or itemized repair bill of such

damages with their timely Proof of Claim, which estimate or repair bill was obtained within a reasonable time after the September 4-5, 2003 flood and which estimate or itemized repair bill is dated within a reasonable time after the September 4-5, 2003 flood.

5. In the event that any class member opts out of this settlement, the settlement shall become null and void at the option of any Defendant.
6. The settlement amount shall be the full amount payable by Defendants under any circumstances, i.e., attorneys' fees, costs, costs of claim administration, payments to class members, etc., are all to be paid from the \$200,000.00 fund.
7. None of the Defendants are required to pay any amount for any reason in excess of their respective and agreed share of the total settlement amount.

You may obtain a copy of the entire proposed settlement agreement and other information regarding this action at www.feldmanshepherd.com or by requesting a copy from Plaintiff's Counsel, identified below.

HOW DO I DETERMINE IF I AM A CLASS MEMBER?

You are a class member if you are an individual and/or entity who:

1. On September 4-5, 2003, owned and/or occupied property in the Boroughs of Jermyn and Mayfield and/or the Township of Carbondale in the blocks that flooded on those dates (see attached map); and who
2. Sustained damage to your real estate and/or personal property and/or economic losses as a result that flood.

WHY DID I RECEIVE THIS NOTICE?

You have received this Notice because you are an individual in the Boroughs of Jermyn or Mayfield or the Township of Carbondale who may have sustained real and/or personal property

damage or other economic loss as a result of the flooding of the Rushbrook Creek on September 4-5, 2003.

IF I AM A CLASS MEMBER HOW DO I PARTICIPATE IN THE SETTLEMENT?

If you are a Class Member and do not wish to be bound by the terms of the proposed settlement, you must fill out the Opt Out Form accompanying this Notice, indicating that you do not want to participate in the Settlement and, therefore, wish to opt out of the Settlement. If you opt out of the Settlement Class, you will not be bound by the proposed settlement and will not be entitled to any relief. (See section below titled Release, Opt-Out Procedure, and Effect of Failure to Opt Out.)

If you are a Class Member (on September 4-5, 2003 you lived in the Boroughs of Jermyn or Mayfield or the Township of Carbondale and you sustained damages in the flood of the Rushbrook Creek on September 4-5, 2003) and if you wish to participate in the Settlement, you must do the following things and send the following documents to Plaintiff's Counsel:

1. completely fill out the attached Proof of Loss form, sign it; date it and send it to Plaintiff's Counsel; and
2. Send in to Plaintiff's Counsel a damage estimate or repair bill(s) that itemizes damaged items and the cost of repair for property damages in the flood of the Rushbrook Creek on September 4-5, 2003. In order to qualify to participate in the Settlement you must have received your estimate or repair bill within a reasonable time after the flood and the estimate or repair bill must be dated within a reasonable time after the flood on September 4-5, 2003.

Your fully completed, signed and dated Proof of Loss form and estimate or repair bill must be received by Plaintiff's Counsel no later than the date that appears on the top of the Proof of Loss form, as evidenced by the postmark.

Please mail your Proof of Loss and estimate or repair bill by the date specified at the top of the Proof of Loss form to Plaintiff's Counsel as follows:

Alan M. Feldman, Esq.
Thomas More Marrone, Esq.
Feldman, Shepherd, Wohlgelernter,
Tanner, Weinstock & Dodig
1845 Walnut Street, 25th Floor
Philadelphia, PA 19103
(215) 567-8300

- DO NOT SEND IN BOTH AN OPT OUT FORM AND A PROOF OF LOSS FORM.
- YOU MUST DECIDE IF YOU QUALIFY TO PARTICIPATE IN THE SETTLEMENT. IF SO, THEN SEND IN EITHER AN OPT OUT FORM IF YOU DO NOT WISH TO PARTICIPATE IN THE SETTLEMENT OR A PROOF OF LOSS FORM IF YOU DO WISH TO PARTICIPATE IN THE SETTLEMENT.
- DO NOT CONTACT DEFENDANTS OR THE COURT. IF YOU HAVE ANY QUESTIONS YOU SHOULD CONTACT PLAINTIFF'S COUNSEL BELOW:

Alan M. Feldman, Esq.
Thomas More Marrone, Esq.
Feldman, Shepherd, Wohlgelernter,
Tanner, Weinstock & Dodig
1845 Walnut Street, 25th Floor
Philadelphia, PA 19103
(215) 567-8300

ATTORNEYS' FEES, COSTS AND EXPENSES, AND NAMED PLAINTIFF'S INCENTIVE

AWARD

Plaintiff's Counsel will request the Court's approval of reasonable compensation for their services, costs and expenses, in the amount of \$66,600.00 plus reasonable costs and expenses. In addition, Plaintiff's Counsel will request the Court's Approval of an incentive award for the named plaintiff, Walter Shumski, in an amount not to exceed \$1000.00. The attorneys' fees and costs and the incentive award will be paid out of the total settlement amount of \$200,000.00.

RELEASE, OPT-OUT PROCEDURE, AND EFFECT OF FAILURE TO OPT-OUT:

Class Members have the opportunity to "opt-out" of the Settlement, to object, or to be heard prior to the Court's consideration of final approval of this Settlement. Absent taking such actions, all class members shall be bound by the Settlement and all orders of the Court relating to the Settlement. If the Settlement is approved by the Court, and you have not elected to opt out of the Settlement, you shall be deemed conclusively to have settled, resolved and released certain claims you had, have or may have in the future against Defendants and each of their current, former and future subsidiaries, divisions, departments, successors, assigns, affiliates and parents, and each of their current, former or future directors, members, officers, elected and appointed officials, employees, heirs, executors, and administrators, and any and all representatives, shareholders, agents, accountants, attorneys, predecessors, successors and assigns of any of the foregoing.

In addition to releasing the named Defendants in the lawsuit (Pennsylvania American Water Company, Theta Land Corporation, Inc., JAFLO, Inc., Pennsylvania Department of Transportation and Pennsylvania Game Commission), the settlement will also release claims against any and all of their current, former, and future subsidiaries, commissions, boards, departments, divisions, successors, assigns and affiliates and their current, former or future directors, officers, commissioners, members, elected and appointed officials, and employees, and their heirs, executors, and administrators, and any and all representatives, shareholders, agents, accountants, attorneys, predecessors, successors and assigns of any of the foregoing.

If you opt out of the Settlement, you will not receive any benefits of the Settlement and will not be bound by its terms. If you wish to opt out of the Settlement, you must sign and return to Plaintiff's Counsel a letter requesting your exclusion from the Settlement or sign and return to Plaintiff's Counsel the accompanying Opt Out Form. This request to opt out must be postmarked no later than the date set forth on the Opt Out Form, as evidenced by its postmark. The opt-out request must be signed by you and include your name, current address, and telephone number. Please note, in the event that any class member elects to "Opt-Out" of the Settlement Class, Defendants have the exclusive right, exercisable in their sole discretion, to void this Settlement.

This Notice is not the Settlement Agreement and merely provides summary information regarding the Settlement. The Orders of the Court, rather than the Settlement Agreement, control the rights, interests and obligations of the parties. If you have any questions regarding this Notice, the Opt-Out Procedure, the Order, or the Settlement Agreement, you should contact Plaintiff's Counsel or refer to the Frequently Asked Questions section for the Rushbrook Creek Flood Settlement information on Plaintiff's Counsel's website at www.feldmanshepherd.com.

If you do not follow the procedures and deadlines that are described in this Notice, you may lose significant legal rights, including but not limited to the right to have your objections considered by the Court.

FAIRNESS HEARING AND COURT APPROVAL

The Court will hold a hearing to consider the fairness, reasonableness and adequacy of the proposed Settlement in Courtroom No. 3, 2nd floor, Lackawanna County Courthouse, 200 N. Washington Avenue Scranton, PA 18503, on Monday, January 25, 2010 at 9:30 a.m. (the “Fairness Hearing”), or such other time as scheduled by the Court. If the date of the Fairness Hearing is rescheduled, you will not receive notice of the rescheduled date, and it is your responsibility to obtain the new date by communicating with Plaintiff’s Counsel.

At the Fairness Hearing, the Court will determine whether the proposed Settlement should be approved as fair, reasonable and adequate; whether the proposed Settlement Class should be certified; and any other matters that may be properly brought before the Court at that time. You may choose to appear in person or through an attorney (at your own expense) at the Fairness Hearing and be heard in support of, or in opposition to, the terms of the Settlement. You may also submit written objections to the proposed Settlement, which shall be heard by the Court.

If you wish to object to the Settlement, you may submit your objections in writing, along with the reasons for such objections, to Plaintiff’s Counsel at the address below on or before **October 24, 2009**. If you do so, Plaintiff’s Counsel will serve Defendants’ Counsel and file with the Court copies of all such objections together with a statement of reasons, if any, why such objections should be overruled. You may also raise objections orally at the Fairness Hearing. If you intend to appear at the Fairness Hearing, you may (but are not required to) file with the Clerk of Judicial Records, Civil Division, Brooks Building, 436 Spruce Street, Scranton, PA 18503, a

notice of intention to appear, together with a statement that indicates the basis for your opposition along with any supporting documentation, including evidence that you are a member of the Settlement Class. If you do so, you should serve copies of such notice, statement and documentation, together with copies of any other papers or briefs filed with the Court, either in person or by mail as follows:

Alan M. Feldman, Esq.
Thomas More Marrone, Esq.
Feldman, Shepherd, Wohlgelernter,
Tanner, Weinstock & Dodig
1845 Walnut Street, 25th Floor
Philadelphia, PA 19103

Any class member who fails to object in the manner provided above shall be deemed to have waived such objections and shall be forever barred from making any objections (by appeal or otherwise) to the Settlement. Any class member who is satisfied by the Settlement need not appear at the Fairness Hearing. Any class member who has filed objections may, but need not, appear at the Fairness Hearing.

EXAMINATION OF PAPERS

This notice is only a summary and does not describe all the details of the proposed Settlement, the Settlement Agreement, or the proceedings in the lawsuit generally. For complete information, or if you wish to discuss this lawsuit or have any questions concerning this notice or your rights or interests with respect to these matters, please contact Plaintiff's Counsel:

Alan M. Feldman, Esq.
Thomas More Marrone, Esq.
Feldman, Shepherd, Wohlgelernter, Tanner, Weinstock & Dodig
1845 Walnut Street, 25th Floor
Philadelphia, PA 19103
(215) 567-8300

afeldman@feldmanshepherd.com
tmarrone@feldmanshepherd.com

In addition, you may review complete files of papers submitted in this case during regular business hours at the Office of the Clerk of Judicial Records, Civil Division, Brooks Building, 436 Spruce Street, Scranton, PA 18503. Certain documents related to the proposed settlement and information regarding it can also be found at Plaintiff's Counsel's website at www.feldmanshepherd.com.

DO NOT CALL THE COURT OR DEFENDANTS

EXHIBIT E

GENERAL RELEASE AND SETTLEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS that Walter Shumski and all Class Members who have not opted out of the Settlement Class in accordance with the procedures set forth in the Settlement Agreement, for their respective heirs, executors, others similarly situated and their heirs, executors, administrators and assigns ("Plaintiff" or "Releasor"), for and in consideration of the payment in the amount of \$200,000.00 (Two Hundred Thousand Dollars) for distribution in accordance with the Order(s) of the Court, do hereby remise, release and forever discharge each of the following persons or entities (collectively, "Released Parties"): Theta Land Corporation; JAFLO, Inc.; Pennsylvania American Water Company; Pennsylvania Department of Transportation; Pennsylvania Game Commission; Keystone Landfill; and all of their current, former and future subsidiaries, departments, divisions, boards, any and all other persons or entities affiliated with said person, companies or entities, and any other person, company or entity charged or chargeable with responsibility or liability and her insurers, assigns, predecessors, successors, heirs, executors and administrators and their agents, servants, employees and representatives (collectively "Releasees"), of and from any, and all manner of , liability, actions and causes of action, suits, costs, fees, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims and demands whatsoever in law or equity, including any claim for any damage or injury, known or unknown, especially all claims that were or could have been litigated in any Court of competent jurisdiction, any claim for personal injuries against Released Parties involved in the event, and/or any other matter arising out of the event which allegedly occurred on or about September 4 and 5, 2003 and which is described in the Litigation captioned

as *Walter Shumski, individually and on behalf of all others similarly situated v. Theta Land Corporation, et al*, Court of Common Pleas of Lackawanna County, Pennsylvania, No. 04-CV-2323 (“the Litigation”), which Plaintiff ever had, now has or which they hereafter can, shall or may have against the said persons, companies or entities from the beginning of the world to the date of these presents.

The parties hereto further agree as follows:

1. Each party hereto shall bear all attorneys' fees and costs arising from the actions of their own counsel in connection with this General Release and Settlement Agreement and the matters and documents referred to herein, the filing of a dismissal, any Court approval of the settlement and all related matters.
2. This General Release and Settlement Agreement is executed for the sole purpose of compromising and settling the disputes and claims referred to herein. It is expressly understood and agreed, as a condition hereof, that neither this General Release and Settlement Agreement nor any payment or payments provided for herein, shall constitute or be construed to be an admission by anyone of any fault, wrongdoing or liability whatsoever or as evidencing or indicating in any degree an admission of the truth or correctness of any of the claims or allegations asserted by Plaintiff, all of which are expressly denied.
3. Plaintiff shall cause the Litigation to be dismissed in accordance with the terms of the Settlement Agreement. Plaintiff agrees to take any and all steps necessary to fulfill the obligations set forth in this Settlement Agreement, including but not limited to the payment of any court costs to terminate said action.

4. Plaintiff agrees that Releasees are not responsible to satisfy any lien or other claim of any insurer.
5. This General Release and the Settlement Agreement contains the entire agreement between the parties with regard to the matters set forth in the same and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.
6. In entering into this General Release and Settlement Agreement, Plaintiff represents that they have relied upon the legal advice of their attorney, who is the attorney of their own choice and that the terms of this Settlement Agreement have been completely read and explained to them by their attorney, and that these terms are fully understood and voluntarily accepted by them.
7. It is understood between the parties that the Releasers and/or Releasers' attorney did not rely upon any representations, express or implied, made by the Released Parties or any of their representatives, as to the tax consequences of this Agreement and that Releasers release the Released Parties from any and all liability in connection with any such tax consequences.
8. This General Release and Settlement Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.
9. The person(s) executing this Release represent that they have full authority to execute this Release and to bind Plaintiff.
10. All parties agree to cooperate fully and to execute any and all supplementary documents and to take any and all additional actions which may be necessary or appropriate to give

full force and effect to the basic terms and intent of this General Release and Settlement Agreement, including but not limited to any Order to Settle, Discontinue and End.

11. This General Release Settlement Agreement shall become effective immediately following execution.

IN WITNESS WHEREOF, the undersigned have caused this General Release and Settlement Agreement to be executed this _____ day of _____, 2009, intending to be legally bound.

Witness:

*ON HIS OWN BEHALF AND ON BEHALF OF
ALL CLASS MEMBERS WHO HAVE NOT
OPTED OUT OF THE SETTLEMENT CLASS
IN ACCORDANCE WITH THE PROCEDURES
SET FORTH IN THE SETTLEMENT
AGREEMENT*

Walter Shumski

WALTER SHUMSKI,	:	IN THE COURT OF COMMON PLEAS
	:	OF LACKAWANNA COUNTY
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION – LAW
	:	
THETA LAND CORPORATION; JAFLO,	:	JURY TRIAL DEMANDED
INC.; KEYSTONE SANITARY	:	
LANDFILL, INC.; PENNSYLVANIA	:	
AMERICAN WATER CO.;	:	
PENNSYLVANIA DEPARTMENT OF	:	
TRANSPORTATION, PENNSYLVANIA	:	
GAME COMMISSION; & ANTHRACITE	:	
RED ASH COAL COMPANY,	:	
Defendants	:	04 CV 2323

PROOF OF CLAIM

Must be postmarked no later than October 24, 2009.

I elect to participate in the Settlement. I certify that:

On September 4 - 5, 2003, I owned occupied (check one) the property located at

(Fill in complete street address, apartment, unit or suite number, town or township and zip code.)

On September 4 - 5, 2003, I sustained the following damages due to the flooding of the Rushbrook Creek (List in detail each item of damage and the cost to repair-continue on a separate sheet if necessary):

Attached is an estimate or repair bill that I received within a reasonable time after the flood of the Rushbrook Creek on September 4-5, 2003.

The total amount of damage that I sustained is \$ _____.

I agree to furnish additional information to Plaintiff's Counsel and to support this claim if requested to do so.

Sign on above line

Print your name and the date your signed on the above line

Print your address of the above lines with zip code

Print a telephone number on the above line where you can be reached from 9:00 A.M. to 5:00 P.M. Monday through Friday

If you have an e-mail address print it on the above line

*Return Completed Form and Estimate or Repair Bill by Mail to: Alan M. Feldman, Esquire
Thomas More Marrone, Esquire, Feldman, Shepherd, Wohlgelernter, Tanner, Weinstock &
Dodig, 1845 Walnut Street, 25th Floor, Philadelphia, PA 19103*

WALTER SHUMSKI,	:	IN THE COURT OF COMMON PLEAS
	:	OF LACKAWANNA COUNTY
Plaintiff	:	
	:	
	:	CIVIL ACTION – LAW
vs.	:	
	:	
THETA LAND CORPORATION; JAFLO,	:	JURY TRIAL DEMANDED
INC.; KEYSTONE SANITARY	:	
LANDFILL, INC.; PENNSYLVANIA	:	
AMERICAN WATER CO.;	:	
PENNSYLVANIA DEPARTMENT OF	:	
TRANSPORTATION, PENNSYLVANIA	:	
GAME COMMISSION; & ANTHRACITE	:	
RED ASH COAL COMPANY,	:	
	:	
Defendants	:	04 CV 2323

OPT OUT Form/REQUEST FORM

Must Be Postmarked No Later Than October 24, 2009.

I do not wish to participate in the Settlement. Therefore, I elect to Opt Out of the settlement.

Sign on above line

Print your name and the date your signed on the above line

Print your address of the above lines with zip code

Return Completed Form by Mail to: Alan M. Feldman, Esquire, Thomas More Marrone, Esquire
 Feldman, Shepherd, Wohlgelemer, Tanner, Weinstock & Dodig 1845 Walnut Street, 25th Floor,
 Philadelphia, PA 19103