

TRUST ID# 88

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Enf ID# 352009

Tracking# 173024

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In The Matter Of:

Hoffman Mining, Inc./Shade Mining Company	:	<u>Hoffman Mining, Inc.</u>
P.O. Box 130	:	10 East Mine, SMP #11050102
118 Runway Road	:	Shaffer Mine, SMP #56050104
Friedens, PA 15541	:	Potochar Mine, SMP #56070101
	:	Hoffman No. 10 Mine, SMP #11000104
	:	Hoffman No. 10 West, SMP #11060103
and	:	Varner Mine, SMP #56070108
	:	Landstreet II Mine, SMP #56970105
Travelers Casualty and Surety Co. of America	:	No. 2 Hill Job 26, SMP #56090108
1 Tower Square	:	Landstreet South Mine, SMP #56100103
Hartford, CT 06183-0001	:	Landis Mine, SMP #56130110
	:	Yantus Mine, SMP #56140102
	:	Arrow Mine, SMP #56080105 ✓
and	:	
	:	
Berwind Corporation	:	<u>Shade Mining Company</u>
3000 Centre Square West	:	Shaulis Strip, SMP #4173SM6
1500 Market Street	:	Shade No. 3, SMP #56813050
Philadelphia, Pennsylvania 19102	:	Long-Term Treatment Trust

CLM

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 27th day of March 2017, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), Travelers Casualty and Surety Company of America ("Travelers") and Berwind Corporation ("Berwind").

FINDINGS

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, *as amended*, 52 P.S. § 1396.1 et seq. ("Surface Mining Act"); the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, *as amended*, 52 P.S. § 1406.1 et seq.

("Subsidence Act"); the Coal Refuse Disposal Control Act, Act of September 24, 1968, P.L. 1040, *as amended*, 52 P.S. § 30.51 et seq. ("Coal Refuse Disposal Act"); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. § 691.1 et seq. ("Clean Streams Law"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative Code"); and the rules and regulations promulgated thereunder ("Rules and Regulations").

PARTIES

B. Hoffman Mining Company ("Hoffman") is a Pennsylvania corporation owned and operated by Donald Hoffman with a business address of P.O. Box 130, 118 Runway Road, Friedens, PA 15541, whose business included the mining of coal by the surface method.

C. Shade Mining Company ("Shade") is a Pennsylvania corporation owned and operated by Donald Hoffman with a business address of P.O. Box 130, 118 Runway Road, Friedens, PA 15541, whose business included the mining of coal by the surface method.

D. Travelers is a Connecticut corporation with a business address of One Tower Square, Hartford, CT 06183-0001, whose business includes, among other things, the issuance of reclamation surety bonds for mining operations in Pennsylvania.

E. Berwind is a Pennsylvania corporation with an address of 3000 Centre Square West, 1500 Market Street, Philadelphia, Pennsylvania 19102 and is in the business of real estate and mineral property holdings.

HOFFMAN PERMITS AND BONDS

F. Hoffman is the permittee of the surface mines identified in Table 1.

G. In support of, and as a condition to, the Department's issuance of the surface mining permits, Travelers posted the surety bonds for Hoffman as described in Table 1.

TABLE 1

<u>Permit No.</u>	<u>Mine Name</u>	<u>Travelers Bond No.</u>	<u>Current Amt.</u>
11050102	10 East Mine	104931981	\$ 8,257.00
56050104	Shaffer Mine	105015155	\$ 38,024.00
		104877836	\$ 10,902.00
56070101	Potochar Mine	105015146	\$ 8,080.00
11000104	Hoffman No. 10 Mine	104753248	\$ 53,252.40
		105169987	\$ 27,330.00
11060103	Hoffman No. 10 West	105398499	\$ 118,850.80
56070108	Varner Mine	105108713	\$ 49,442.00
56970105	Landstreet II Mine	105169970	\$ 152,644.00
		105169992	\$ 19,886.00
56090108	No. 2 Hill Job.26	105433560	\$ 272,048.00
		105931743	\$ 28,155.00
56100103	Landstreet South Mine	105625725	\$ 140,910.00
56130110	Landis Mine	105808545	\$ 487,790.00
		105484152	\$ 314,094.00
56140102	Yantus Mine	106175469	\$ 403,870.00
56080105	Arrow Mine	105169967	\$ 396,531.00

H. Travelers did not provide surety bonds for Shade and bears no responsibility whatsoever regarding the Shade mines under the terms of this Consent Order and Agreement.

SHADE PERMITS AND BONDS

I. Shade operated two permitted mines and posted Letters of Credit and Certificates of Deposit issued by Somerset Trust Company as described in Table 2.

TABLE 2

<u>Permit No.</u>	<u>Mine Name</u>	<u>Financial Guarantor</u>	<u>Bond Instrument No.</u>	<u>Amt.</u>
4173SM6	Shaulis Strip	Somerset Trust Co.	S48 LOC	\$ 930.00
4173SM6	Shaulis Strip	Somerset Trust Co.	S51 LOC	\$ 12,075.00
4173SM6	Shaulis Strip	Somerset Trust Co.	S52 LOC	\$ 5,360.00
4173SM6	Shaulis Strip	Somerset Trust Co.	S53 LOC	\$ 26,280.00
56813050	Shade No. 3	Somerset Trust Co.	S56 LOC	\$ 123,500.00
56813050	Shade No. 3	Somerset Trust Co.	2002989787 CD	\$ 87,200.00
56813050	Shade No. 3	Somerset Trust Co.	2002989779 CD	\$ 100,000.00

J. The Department and Shade entered into a Post-mining Treatment Trust Consent Order and Agreement ("Shade CO&A") dated September 3, 2015, under which Shade agreed to

fund a long-term treatment trust ("Shade Trust") related to the operation and maintenance of water treatment at the Shaulis and Shade No. 3 mines. The Shade Trust was to have two accounts: 1) Primary Trust Account; and 2) Capital Improvement Account. The Primary Trust corpus was calculated in Paragraphs 5-10 of the Shade CO&A of September 3, 2015 to be \$573,739.93. (See Exhibit C)

K. The Certificates of Deposit issued by Somerset Trust Company totaling \$187,200 were assigned to the Shade Trust Primary Trust Account in accord with the terms of the Shade CO&A. The Certificates of Deposit and the Letters of Credit (valued at \$168,145) were cashed in and deposited into the Shade Treatment Trust on March 24, 2016.

HOFFMAN TERMINATION OF OPERATIONS/BOND FORFEITURE

L. By letter dated October 3, 2015, Hoffman informed the Department that it was terminating business operations.

M. By correspondence dated October 23, 2015, the Department notified Hoffman that it was suspending the Company's surface mining permits and that it intended to forfeit the bonds identified in Table 1. The Department's action was based upon Hoffman's outstanding violations of the Surface Mining Act, the Clean Streams Law and the rules and regulations promulgated thereunder, including but not limited to: failure to maintain liability insurance, failure to backfill concurrently with mining, failure to maintain adequate erosion and sedimentation controls, failure to monitor surface and/or groundwater in the vicinity of the mine sites and report the results to the Department, site abandonment, failure to comply with an order of the Department, and failure to maintain and operate water treatment systems.

N. By letters dated March 24, 2016 and April 6, 2016, the Department notified Hoffman that the bonds identified in Table 1 were declared forfeit (the "forfeited bonds") due to

the unabated violations described in the Notices of Intent to forfeit bonds described in Paragraph M, above.

O. Travelers received notice of the forfeitures on or about March 31, 2016 and April 12, 2016.

P. On April 22, 2016, Travelers appealed the Department's bond forfeitures to the Pennsylvania Environmental Hearing Board, which have been docketed as detailed in Table 3.

TABLE 3

<u>Permit No.</u>	<u>Mine Name</u>	<u>EHB Docket No.</u>
56080105	Arrow Mine	EHB 2016-057
56140102	Yantus Mine	EHB 2016-058
56130110	Landis Mine	EHB 2016-059
56100103	Landstreet South Mine	EHB 2016-060
56090108	No. 2 Hill Job 26	EHB 2016-061
56970105	Landstreet II Mine	EHB 2016-062
56070108	Varner Mine	EHB 2016-063
11060103	Hoffman No. 10 West	EHB 2016-064
11000104	Hoffman No. 10 Mine	EHB 2016-065
56070101	Potochar Mine	EHB 2016-066
56050104	Shaffer Mine	EHB 2016-067
11050102	10 East Mine	EHB 2016-068

PRELIMINARY FINDING OF CONTROL

Q. By letter dated October 23, 2015, the Department made a preliminary finding of control of Hoffman by Berwind.

R. By letter dated November 23, 2015, the Department made a preliminary finding of control of Shade by Berwind.

S. Berwind has responded to the Department's preliminary findings of control of Hoffman and Shade by Berwind, and denies that it owned or controlled Hoffman or Shade. There has been no final determination of Berwind's ownership or control of Hoffman or Shade.

REPLACEMENT OF TRAVELERS' BONDS.

T. Berwind has provided to the Department, on Department approved forms, Letter of Credit No. 18127208-00-000 issued by PNC Bank in the total amount of \$2,530,066.20 (the "Letter of Credit"). The Letter of Credit represents a dollar for dollar replacement of the existing Travelers bonds issued for the Hoffman sites, as set forth in Table 1. The Letter of Credit will secure Berwind's performance of reclamation of the Hoffman mine sites as described in this Agreement.

U. Upon execution of this Consent Order and Agreement, the Department has agreed to a replacement of the Travelers bonds in Table 1 with the Letters of Credit, and further to release Travelers from any responsibility under the bonds in Table 1 or this Consent Order and Agreement.

RECLAMATION OF HOFFMAN MINE SITES

V. Berwind has agreed to conducting and funding reclamation activities as detailed in the Reclamation Plans prepared by Travelers and attached hereto as Exhibit A. Reclamation of the Hoffman sites can be accomplished more efficiently by Berwind in accordance with the Reclamation Plan under this Consent Order and Agreement than it could if the Department forfeited and collected the bonds.

WATER TREATMENT TRUSTS

W. The Hoffman Arrow Mine, has a long-term acid mine drainage discharge that requires treatment to meet applicable effluent discharge criteria. This mine site requires conventional chemical treatment and the establishment of a long-term treatment trust as described herein to provide funds in perpetuity for the maintenance and operation of the treatment system. The Primary Trust corpus was calculated to be \$725,997.52. (See Exhibit B).

X. The Hoffman Landstreet II Mine and No. 2 Hill Job 26 mines may have long-term water treatment issues. The Department acknowledges that further study and evaluation following the completion of reclamation as described further herein is necessary in order to fully determine the extent, if any, of the long-term water treatment issues and agrees to allow Berwind a reasonable time (as more particularly described herein) to conduct the necessary due diligence on the potential long-term water treatment issues.

Y. The Shade sites have long-term acid mine drainage discharges that require treatment to meet applicable effluent discharge criteria. The Primary Trust corpus was calculated to be \$573,739.93. (See Exhibit C).

Z. The Shade Trust, as discussed in Paragraph J above, is partially funded.

AA. The Department and Berwind desire to address the Hoffman reclamation and water treatment issues and those described in the Shade CO&A and avoid disputes related to whether or not Berwind is a controller of Hoffman or Shade.

BB. The Department, Berwind and Travelers desire to expeditiously address the Hoffman reclamation and water treatment issues and avoid the need for litigation concerning the bond forfeiture, collections and the Department's preliminary findings of control of Hoffman and Shade by Berwind and, therefore, collectively enter into this Consent Order and Agreement.

CC. Pursuant to this Consent Order and Agreement, Travelers has developed a Reclamation Plan and Berwind assumes the obligations to cause the reclamation activities on the Hoffman sites described herein to be funded and performed. Berwind will also fund any related long-term water treatment trusts related to the Hoffman mines as discussed herein. Berwind will also complete the funding of the Shade Trust on the terms, conditions, and schedules described herein.

DD. The Department will irrevocably waive collection of Travelers' bonds, rescind its preliminary finding of control of Hoffman and Shade Mining by Berwind, consent to the replacement of the Travelers' bonds with the Letters of Credit provided by Berwind, and accordingly release Travelers from further responsibility or liability, according to the plans, terms, conditions and schedules described herein.

ORDER

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by the Department, Berwind and Travelers as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 9 of the Mine Subsidence Act, 52 P.S. § 1406.9; Sections 4.2 and 4.3 of the Surface Mining Act, 52 P.S. §§ 1396.4b and 1396.4c; Sections 5, 316, 401 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.316, 691.401 and 691.610; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. **Findings.**

a. Berwind and Travelers agree that the findings in Paragraphs A through DD above are true and correct and, in any matter or proceeding involving Berwind and/or Travelers and the Department, neither Berwind nor Travelers shall challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. **Bond Replacement.** The Department agrees to allow the replacement of the bonds identified in Table 1 hereof with the Letters of Credit provided by Berwind in the amount of \$2,530,066.20 and agrees to immediately release the bonds in Table 1 to Travelers upon the execution of this Consent Order and Agreement. The Letters of Credit shall secure Berwind's performance of the reclamation of the Hoffman sites, as described in this Consent Order and Agreement. Should Berwind fail to perform its reclamation obligations at the Hoffman sites, the Department shall have the authority, pursuant to 25 Pa. Code §§ 86.180 – 86.190 to draw upon the Letters of Credit to complete reclamation of the sites.

4. **Withdrawal of Appeals.** Within seven (7) days of the date of this Consent Order and Agreement, Travelers will notify the Environmental Hearing Board that the cases identified in Table 3 have been settled and request that the dockets be marked settled and discontinued.

5. **Reclamation Plan.**

a. A proposed reclamation plan and schedule (the "Reclamation Plan") regarding the Hoffman mines identified in Table 1 is attached as Exhibit A.

(i) The Reclamation Plan is hereby approved by the Department and incorporated herein by reference.

(ii) Commencing upon the effective date of this Consent Order and Agreement, Berwind shall fully implement the Reclamation Plan in accordance with the schedule set forth therein (subject to any amendments authorized under Paragraphs 5.b. and 5.c. of this Consent Order and Agreement).

(iii) Travelers has no obligation of any kind or nature to complete the work described in the Reclamation Plan.

(iv) Upon the replacement of the Travelers bonds in Table 1 as described in Paragraph 3, above, Travelers shall have no further obligations or responsibilities of

any kind with respect to this Consent Order and Agreement, the Hoffman sites, the Shade sites, or the bonds identified in Table 1.

b. Berwind may request, in writing, to amend the Reclamation Plan to include proposed land use changes or to request that specific ponds, ditches or other facilities remain as permanent structures. Requests for structures to remain as permanent structures must be accompanied by landowner requests on forms approved by the Department.

c. The Department shall review any proposed amendment in a reasonable time frame and approve, approve with modifications, or deny the proposed amendment (to the extent the Department's failure to timely act on a proposed amendment adversely impacts the ability of Berwind to meet any deadlines set forth in the Reclamation Plan, said deadlines shall be stayed for a reasonable period of time pending a decision from the Department on the proposed amendment). In the event the Department determines that any requested amendment is deficient, Berwind shall address all deficiencies within 15 days of receipt of a deficiency letter unless the Department grants Berwind additional time to address any identified deficiency.

6. Except as set forth below in Paragraph 7.d., the Reclamation Plan comprises Berwind's full and total obligations regarding reclamation of the Hoffman mines subject to this Consent Order and Agreement.

7. Water Treatment Trust Funding.

a. **Arrow Mine.** Within thirty (30) days of the establishment of a water treatment trust account for the Arrow Mine (the "Arrow Mine Trust"), Berwind will deposit the amount of \$725,997.52 into said account. The Arrow Mine Trust shall be established by the Department with the Clean Streams Foundation, Inc., 746 Westland Drive, Suite 110, Lexington, KY 40504. Aside from this one-time payment into the Arrow Mine Trust, Berwind shall have no further responsibility for the ongoing treatment of the discharge from the Arrow Mine.

Specifically, Berwind shall not be held liable for any exceedances of water quality criteria and shall not be responsible for the payment of any operation and maintenance costs associated with the ongoing treatment at the Arrow Mine.

b. **Shade Trust.** Within thirty (30) days of the effective date of this Consent Order and Agreement, Berwind shall deposit the amount of \$218,394.93 with The Somerset Trust Company, P.O. Box 1330, Somerset PA 15501 to fully fund the existing Shade Trust. Aside from this one-time payment into the existing Shade Trust, Berwind shall have no further responsibility for the ongoing treatment of the discharge from the Shaulis and Shade No. 3 Mines. Specifically, Berwind shall not be held liable for any exceedances of water quality criteria and shall not be responsible for the payment of any operation and maintenance costs associated with the ongoing treatment at the Shaulis and Shade No. 3 Mines.

c. Berwind and the Department have agreed that the foregoing amounts are sufficient to fully fund the Arrow Mine Trust and Shade Trust.

d. Berwind shall engage in the evaluation and study of the potential long-term water discharges from the Landstreet II mine and the No. 2 Hill Job 25 mine in order to determine whether any sub-standard discharges have abated during the reclamation process. The evaluation and study of these two sites shall be completed within eighteen (18) months of the entry of this Consent Order and Agreement. Upon completion of this study, Berwind shall submit a Water Treatment Report to the Department for each of the two sites. To the extent that an individual Water Treatment Report demonstrates that no long-term treatment for water discharge is necessary and the Department agrees, the Department shall provide Berwind with written notice that no long-term treatment for water discharge is necessary. To the extent that an individual Water Treatment Report demonstrates that a long-term treatment for water discharge is necessary, Berwind and the Department shall arrange a meeting to discuss options for

addressing long-term treatment for water discharge. Nothing herein shall require Berwind to address any long-term treatment for water discharge unless the parties cannot reach an agreement about how to proceed and the Department issues an enforcement action. Under no circumstances shall the Department issue any such action until the parties have met to discuss options. Berwind shall retain any and all rights to challenge any conclusions reached by the Department with respect to a requirement that Berwind implement long-term treatment for water discharges from the Landstreet II mine and the No. 2 Hill Job 25 mine.

8. a. Upon fully funding the Hoffman and Shade Trusts in the amounts set forth in Paragraphs 7(a) and 7(b), the Department will issue to Berwind the letter attached hereto as Exhibit D which: (1) rescinds the Department's preliminary determination of Berwind control for Hoffman; (2) rescinds the Department's preliminary determination of Berwind control for Shade.

b. Berwind's remaining obligations with respect to Hoffman will be to meet its reclamation obligations under Paragraph 5(a) and to comply with the requirements of Paragraph 7(d) of this Consent Order and Agreement. In the event Berwind fails to fully perform its remaining reclamation obligations under Paragraph 5(a) and to comply with the requirements of Paragraph 7(d) of this Consent Order and Agreement with respect to Hoffman, the Department may reinstate its preliminary determinations of Berwind's control of Hoffman and proceed accordingly. Berwind reserves all objections and defenses should the Department elect to proceed in this manner. Once Berwind has satisfied all of its obligations under this Consent Order and Agreement with respect to Hoffman, the Department will issue to Berwind the letter attached hereto as Exhibit E which makes clear that Berwind has no further obligations with respect to this Consent Order and Agreement.

9. Limitations of Liability.

a. Berwind's performance of its reclamation and other obligations under this Consent Order and Agreement shall be performed voluntarily for the purposes of resolving potential litigation, and Berwind shall not, by virtue of this Consent Order and Agreement, or any activities hereunder: (i) be deemed an "operator of a mine" or an "occupier of land" or a party related to Hoffman under Section 315 or 316 of the Clean Streams Law, 35 P.S. §§ 691.315 or 691.316, or under the Surface Mining Act, or any regulations promulgated thereunder; (ii) be deemed to have assumed any liabilities or obligations of Hoffman or Shade, except to the extent expressly set forth in this Consent Order and Agreement, or (iii) be deemed an "owner" or "controller" of Hoffman or Shade, or any of their respective parents, subsidiaries, or affiliates.

b. This Consent Order and Agreement is not intended to create rights in any party other than the parties who have signed this Consent Order and Agreement, below.

10. **Force Majeure.**

a. In the event that Berwind is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstances beyond Berwind's control and which Berwind, by the exercise of all reasonable diligence, is unable to prevent, then Berwind may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond Berwind's control. Berwind's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.

b. Berwind shall only be entitled to the benefits of this Paragraph if it notifies the Department within five (5) days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding

performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by Berwind to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) working days of its submission. Berwind's failure to comply with the requirements of this Paragraph specifically and in a timely fashion shall render this Paragraph null and of no effect as to the particular incident involved.

c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by Berwind and other information available to the Department. In any subsequent litigation, Berwind shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

11. **Decisions Under the Consent Order and Agreement.** With the exception of any determinations by the Paragraphs 7 and 8 of this Consent Order and Agreement, i.e., Water Treatment Trust funding and rescission of control findings related to Berwind, any decision or determination made by the Department regarding the terms and obligations of this Consent Order and Agreement shall not be deemed to be a final action of the Department under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101, and shall not be appealable to the Environmental Hearing Board or to any court. Any objection which Berwind or Travelers may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

12. **Notice; Collection.**

a. If the Department determines that Berwind or Travelers failed to comply in a timely manner with any requirements of this Consent Order and Agreement, the Department

shall give written notice to Berwind or Travelers stating in detail in what respect(s) Berwind and/or Travelers has failed to comply with these requirements. Berwind and/or Travelers shall reply to the Department in a timely manner, but in no event later than thirty (30) days after receipt of the notice, and identify actions Berwind or Travelers has taken and/or proposes to take, if any, to address the Department's concerns, including a proposed schedule of work.

b. The Department agrees that it will not take final action with respect to its preliminary control findings related to Berwind prior to following the procedures set forth in Paragraphs 8 or 12(a), above.

13. **Reservation of Rights.** The Department reserves the right to require additional measures to achieve compliance with applicable law. Berwind or Travelers reserve their rights to challenge any action which the Department may take to require those measures.

14. **Liabilities of Parties.**

a. **Liability of Travelers.** Notwithstanding any language to contrary herein, the parties acknowledge and agree that Travelers shall not assume liability for any violations of the Consent Order and Agreement by Berwind, including, but not limited to, Berwind's obligations to conduct reclamation and fund water treatment trusts as defined herein. The parties further agree that Travelers shall not assume liability for any violations of the Consent Order and Agreement by Shade or in connection with the Shade mines. Travelers shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

b. **Liability of Berwind.** Berwind shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Notwithstanding any language to the contrary herein, the parties acknowledge and agree that Berwind shall not assume liability for any violations of

the Consent Order and Agreement by Travelers, Shade, or Hoffman. Berwind shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

15. Transfer of Sites. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Hoffman mine sites referenced herein, or any part thereof.

16. Correspondence with Department. All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

District Mining Manager
Department of Environmental Protection
Cambria District Mining Office
286 Industrial Park Road
Ebensburg, PA 15931
(814) 472-1900
(814) 472-1898 (FAX)

With a courtesy copy to:

Regional Counsel
Department of Environmental Protection
Office of Chief Counsel
909 Elmerton Avenue
Harrisburg, PA 17110-8200
(717) 787-8790
(717) 250-5931 (FAX)

17. Correspondence with Travelers. All correspondence with Travelers concerning this Consent Order and Agreement shall be addressed to:

Bond Claim – Commercial Surety
ATTN: Laura M. Murphy, Esq.
Senior Claim Counsel
Travelers Casualty and Surety Company of America
1 Tower Square - S102A
Hartford, CT 06183
(860) 277-0328
(888) 201-5608 (FAX)

With a courtesy copy to:

William T. Gorton III, Esq.
Stites & Harbison PLLC
250 West Main Street, Suite 2300
Lexington, KY 40507
(859) 226-2241
(859) 253-9144 (FAX)

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

18. Correspondence with Berwind. All correspondence with Berwind concerning this Consent Order and Agreement shall be addressed to:

Robert Brumbaugh, President
Berwind Coal Sales Company
509-15th Street
Windber, PA 15963
(814) 241-0037

With a courtesy copy to:

Bruce D. Reed, Esq.
Assistant General Counsel
Berwind Corporation
3000 Centre Square West
1500 Market Street
Philadelphia, PA 19102
(215) 563-2800

Chauncey S. Curtz, Esq.
Dinsmore and Shohl LLP
250 W Main Street, Suite 1400
Lexington, KY 40507
(859) 425-1035

Berwind shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this

Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first-class mail to the above address.

19. **Severability.** The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

20. **Entire Agreement.** This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

21. **Attorney Fees.** The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

22. **Modifications.** No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

23. **Titles.** A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

24. **Choice of Law.** This Consent Order and Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

25. **Effectiveness.** This Consent Order and Agreement shall not become effective unless and until this Consent Order and Agreement is executed by Berwind, Travelers and the Department.

26. Counterpart Signatures. The parties agree to execute this Consent Order and Agreement by counterpart signatures transmitted electronically, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

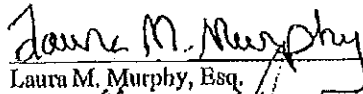
27. This Consent Order and Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Order and Agreement. This Consent Order and Agreement, being a resolution of disputed claim, establishes no legal or administrative precedent of any kind. Except in actions to enforce this Consent Order and Agreement or other actions related to and arising out of this Consent Order and Agreement and expressly contemplated herein, this Consent Order and Agreement shall not be admissible in evidence or otherwise relied upon by any party hereto or any third party to establish any factual or legal proposition in any administrative or judicial action or proceeding. If after execution of this Consent Order and Agreement, any information is discovered that reveals previously unknown material facts that should have been disclosed by Berwind in negotiating and executing this Agreement, the Department reserves the right to issue new Preliminary Findings and to seek any and all other remedies available under applicable law and regulation against Berwind.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Berwind and Travelers certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Berwind and Travelers; that Berwind and Travelers consent to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Berwind and Travelers hereby knowingly waive their rights to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing


Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signatures by Berwind's and Travelers' attorneys certify only that the Agreement has been signed after consulting with counsel.

FOR TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:



Laura M. Murphy, Esq.

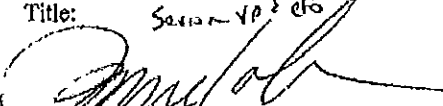
Daniel Sammarco, P.E.
District Mining Manager



William T. Gorton III, Esq.
Stites & Harbison PLLC
Counsel to Travelers Casualty and Surety Company of America

Nels J. Taber
Regional Counsel

BERWIND CORPORATION


Name: Raymond J. Brand
Title: Senior VP & CFO


Name: Pamela I. Lehrer
Title: Senior VP and General Counsel


Bruce D. Reed, Esq.
Assistant General Counsel

Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signatures by Berwind's and Travelers' attorneys certify only that the Agreement has been signed after consulting with counsel.

FOR TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

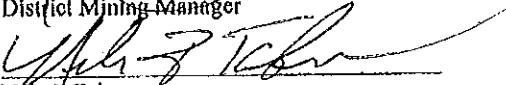
Laura M. Murphy, Esq.

William T. Gorton III, Esq.
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Counsel to Travelers Casualty and Surety
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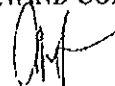


Daniel Sammarco, P.E.
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Name: Raymond J. Basso
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Name: Pamela L. Leher
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