

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Shenango Incorporated	:	Mines & Permit Nos.
Luzerne Township, Fayette County	:	Old Broadwater Mine: SMP 3371BISM42
	:	New Broadwater Mine: SMP 26713049
	:	Collins Young Mine: SMP 26810123 &
	:	3371BISM27
	:	Lanison Mine: SMP 3373SM10
	:	
	:	Alternative Financial Assurance Mechanism

POSTMINING DISCHARGE TREATMENT TRUST CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 4th day of January, 2009, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), and Shenango, Incorporated (collectively, the “Parties”).

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 Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.1 et seq. (“Clean Streams Law”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 (“Administrative Code”) and the rules and regulations promulgated thereunder.
- B. Shenango Incorporated (“Shenango”) is a Pennsylvania corporation with a mailing address of 200 Neville Road, Neville Island, Pennsylvania. Shenango’s corporate affiliate, Luzerne Coal Corp., (“Luzerne”) previously conducted coal mining activities in the Commonwealth of Pennsylvania by the surface mining method.
- C. Luzerne is the permittee of the following four (4) inactive coal mines (“Mines”) located in Luzerne Township, Fayette County having post-mining discharges:

NAME	PERMIT NO.
Old Broadwater Mine	SMP 3371BSM42
New Broadwater Mine	SMP 26713049
Collins Young Mine	SMP 26810123 and
	SMP 3371BSM27
Lamison Mine	SMP 3373SM10

D. The following is a brief description of each of the Mines identified in Paragraph C:

1. **Old Broadwater Mine** Luzerne operated this surface coal mine in Luzerne Township, Fayette County from which coal was previously extracted in accordance with Surface Mining Permit ("SMP") 3371BSM42 prior to 1985. The Old Broadwater Mine has been reclaimed and successfully revegetated with grasses and legumes. Two (2) post-mining discharges exist on the Old Broadwater Mine, which have been identified as the "Curly" and "Spaghetti" discharges. A map of the Old Broadwater Mine showing the location of these two (2) discharges is attached hereto and labeled Exhibit A. Descriptions of the current treatment system schematics for the Curley and Spaghetti discharges are set forth herein in the attached Exhibit A.1 and Exhibit A.2, respectively.

2. **New Broadwater Mine:** Luzerne operated this surface coal mine in Luzerne Township, Fayette County from which coal was previously extracted in accordance with SMP 26713049 prior to 1985. The New Broadwater Mine has been reclaimed and successfully revegetated with grasses and legumes. Two (2) post-mining discharges exist on the New Broadwater Mine, which have been identified as the "Boartz" and "Thomas" discharges. A map of the New Broadwater Mine showing the location of these two (2) discharges is attached hereto and labeled Exhibit A. Descriptions of the current treatment system schematics for the Boartz and Thomas discharges are set forth in the attached Exhibit A.3 and Exhibit A.4, respectively.

3. **Collins Young Mine:** Luzerne operated this surface coal mine in Luzerne Township, Fayette County from which coal was previously extracted in accordance with SMP 26810123 and SMP 3371BSM27 prior to 1985. The Collins Young Mine has been reclaimed and successfully revegetated with grasses and legumes. Two (2) post-mining discharges exist on the Collins Young Mine, which have been identified as the “Aluminator” and “East Riverside” discharges. A map of the Collins Young Mine showing the location of these two (2) discharges is attached hereto and labeled Exhibit A. Descriptions of the current treatment system schematics for the Aluminator and East Riverside discharges are set forth in the attached Exhibit A.5 and Exhibit A.6, respectively.

4. **Lamison Mine:** Luzerne operated this surface coal mine in Luzerne Township, Fayette County from which coal was previously extracted in accordance with SMP 3373SM10 prior to 1985. The Lamison Mine has been reclaimed and successfully revegetated with grasses and legumes. One (1) post-mining discharge exists on the Lamison Mine, which has been identified as the “Lamison” discharge. A map of the Lamison Mine showing the location of this discharge is attached hereto and labeled Exhibit A. A description of the current treatment systems schematics for the Lamison discharge is set forth in the attached Exhibit A.7.

E. Each of the post-mining discharges identified in Paragraph D is currently being collected and treated by passive treatment systems previously approved by the Department (“Passive Treatment Systems”). A description of each of the seven (7) Passive Treatment Systems, including a summary of water quality associated with each discharge, is contained within a Passive Treatment System Report attached hereto and labeled Exhibit B (“Passive Treatment System Report”) as well as in Exhibits A.1 through A.7.

F. On or about May 17, 1989, Luzerne and Shenango entered into an Agreement and Plan of Merger pursuant to which Shenango became the surviving corporation. As a result of the merger, Shenango agrees that it has the legal responsibility to treat or abate the discharges identified in Paragraph D.

G. Shenango has calculated the total annual costs associated with implementation of the Passive Treatment Systems. A summary of these costs is set forth in the Passive Treatment System Report.

H. In accordance with the bonding requirements set forth in the Surface Mining Act, and as a precondition of obtaining its surface mining permits for the Mines, Luzerne posted surety bonds (“Surety Bonds”) with the Department. Those Surety Bonds as of the date of this Consent Order and Agreement are listed below,

along with the corresponding bond value balance.

Mine	Original Bond No(s).	Bond Amount	Current Surety
Old Broadwater	103190647	\$ 88,550	Travelers
	103497090	\$ 6,270	Travelers
	103497021	\$ 77, 800	Travelers
	103497227	\$ 13,512	Travelers
	3S100176548BCA	\$ 300	Travelers
Total Bond on Site:		\$ 186,432	
New Broadwater	100025368	\$ 637,155	Travelers
Collins Young	3S46061BCA	\$ 17,700	Travelers
	3S45732BCA	\$ 158,000	Travelers
	3S45733BCA	\$ 67,600	Travelers
	3S46016BCA	\$ 2,000	Travelers
	3S46062BCA	\$ 9,100	Travelers
	152E5338	\$ 19,205	Travelers
	152E9386	\$ 21,102	Travelers
	153E1578	\$ 13,512	Travelers
	312E5990	\$ 18,400	Travelers
	3S44018BCA	\$ 57,350	Travelers
	925A9671	\$ 7,420	Travelers
	497B9607	\$ 24,600	Travelers
	152E8261	\$ 42,600	Travelers
	312E8549	\$ 1,740	Travelers
	3S444433BCA	\$ 120	Travelers
924A648A	\$ 17,160	Travelers	
Total Bond on Site:		\$ 477,609	
Lamison	103190646	\$ 3,245	Travelers
	103497043	\$ 4,125	Travelers
Total Bond on Site		\$ 7,370	
Total Bond Amount		\$ 1,308,566	

I. Shenango currently pays the premiums for the Surety Bonds. Shenango would like to provide an alternative financial assurance mechanism as the financially backed enforceable contract for the long-term operation and maintenance of the Passive Treatment Systems, and secure the release of the Surety Bonds.

J. Below are the Department's findings relating to ten (10) of the Surety Bonds associated with the Collins Young Mine:

1. Shenango has filed Completion Reports with the Department for the areas covered by the following ten (10) Surety Bonds associated with the Collins Young Mine: 3S46061BCA, 3S45732BCA, 3S45733BCA, 3S46016BCA, 3S46062BCA, 152E5338, 152E9386, 153E1578, 312E5990, and 3S44018BCA. The total amount of these ten (10) Surety Bonds is: \$383,969.

2. The Department has determined that none of the areas associated with the ten (10) Surety Bonds identified in Paragraph J.1 is hydrologically connected to either of the two (2) post-mining discharges identified in Paragraph D.3 herein (the "Aluminator" and "East Riverside" discharges).

3. Based on the Department's review of the information provided in the Completion Reports, and its assessment of the Collins Young Mine, the Department has agreed to release the aforementioned ten (10) Surety Bonds upon entry of this Consent Order and Agreement.

K. The following is a summary of the adjustments to the financial assurance for each of the Mines necessary to provide for the long-term operation and maintenance of each of the Passive Treatment Systems through use of a trust fund established in accordance with the standards set forth in this Consent Order and Agreement:

Mine	Trust Fund Amt To Be Established	Equivalent Surety Amount	Bond	Current Surety Bond Amount	Difference Between Current and Equivalent Surety Amount
Old Broadwater	\$ 165,223	\$ 254,420		\$ 186,432	\$ (-) 67,988
New Broadwater	\$ 160,040	\$ 248,411		\$ 637,155	\$ 388,744
Collins Young	\$ 147,269	\$ 233,606		\$93,640 (reflects balance that will remain after DEP's release of bonds as detailed in Paragraph J)	\$ (-) 139,960
Lamison	\$ 68,589	\$ 110,955		\$ 7,370	\$ (-) 103,585
Total	\$ 541,121	\$ 847,392		\$ 924,597	\$ 77,205

L. The Parties have discussed the need to obtain accurate and timely information on the costs of operating and maintaining the Passive Treatment Systems in order to maintain the proper amount of financial assurance in the future. The Parties have agreed that the current annual total cost of operating and maintaining the Passive Treatment Systems is \$ 16,639. The Parties also agree that the current total present value cost of operating and maintaining the Passive Treatment Systems, including recapitalization costs, calculated in accordance with procedures approved by the Department, is \$541,121. The Parties agree that if a trust fund were established on the date of entry of this Consent Order and Agreement in the amount of \$541,121, that such trust fund would represent adequate financial assurance for the Passive Treatment Systems, and that the trust would be considered "fully funded", as defined in Paragraph 6.b.

M. In establishing future annual costs associated with the Passive Treatment Systems, the Parties agree to use the information and figures which will be provided by the Accounting required by Paragraph 4 to calculate and adjust the proper size of the alternative financial assurance mechanism as described below.

ORDER

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

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5 of the Clean Streams Law, 35 P.S. § 691.5; Section 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of Shenango to comply with any term or condition of this Consent Order and Agreement shall subject Shenango to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. Shenango agrees that the findings in Paragraphs A through M are true and correct and, in any matter or proceeding involving Shenango and the Department, Shenango shall not challenge the accuracy or validity of these findings.

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

3. Definitions

a. Accounting. The determination of costs and expenses of treatment required by Paragraph 4 of this Agreement.

b. Actual Treatment Cost The average of the three immediately preceding consecutive years of the costs and expenses of operation of the Passive Treatment Systems for all of the Mines, calculated by

using the Accountings for those three years or otherwise as mutually agreed by Shenango and the Department.

c. Annual Anniversary Date. The last month and day of the calendar year in which the Trust has been “fully funded” as defined in Paragraph 6.b of this Consent Order and Agreement and the annual recurrence of same for each year in which this Trust is in effect.

d. Applicant Violator System. The term Applicant Violator System, as used in Paragraph 20 (b) of this Consent Order and Agreement and as defined at 30 CFR § 701.5, shall mean the automated information system of applicant, permittee, operator, violation and related data maintained by the United States Department of the Interior, Office of Surface Mining (“OSM”) to assist in implementing the Surface Mining Control and Reclamation Act.

e. Calculated Treatment Cost. The projected future annual cost of treatment for the next succeeding year for all of the Mines, based on the Actual Treatment Cost, compounded at three and one-tenth percent (3.1%) annually.

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

g. Compliance Tracking System. The Department’s Compliance Tracking System, as used in Paragraph 20(b) of this Consent Order and Agreement, does not include the Department’s Bureau of Air Quality Compliance Docket established under Section 7.1 of the Air Pollution Control Act, 35 P.S. § 4007.1.

h. Distribution Payment. The trustee’s disbursement of money from the trust made at the written direction of the Department to a person and in an amount specified by the Department and as provided by this Consent Order and Agreement.

i. Formula. The equation used to calculate the present value of the future cost of operation and maintenance (“O&M”) of the Passive Treatment Systems. The equation is:

$$PV = (A/[E-I]) + A$$

where: PV = Present value of the future cost of O&M of the Passive Treatment Systems

A = Actual Treatment Cost

E = Expected annual earnings/interest rate (assumed to be 8.43% or .0843)*

I = Inflation rate (assumed to be 3.1% or .031)*

* This value will remain the same unless the Parties mutually agree otherwise.

j. Primary Basis Valuation. 100% of the present value of the future cost of O&M of the Passive Treatment Systems as determined by the Formula.

k. Primary Target Valuation. 116% of the present value of the future cost of O&M of the Passive Treatment Systems as determined by the Formula.

l. Primary Trust Account. The sub-account within the trust that is primarily used to finance annual O & M costs of the Passive Treatment Systems.

m. Primary Trust Valuation. The cash, cash equivalents, investments at market value and the face amount of bonds currently held by the trust in the Primary Trust Account.

4. Annual Treatment Costs; Records; Factors; Accounting

a. Shenango shall keep accurate financial records of all the costs and expenses of the Passive Treatment Systems for each year. The various cost factors fall into several general categories, including, but not limited to: (1) Material; (2) Labor; (3) Maintenance; (4) Sampling and Analysis; and (5) Ancillary Costs. The individual items shall be tracked and reported for each general category. As noted in Paragraph L above, the total annual amount of costs and expenses for the Passive Treatment Systems as of the date of entry of this Consent Order and Agreement is \$16,639.

b. Shenango shall keep separate records for the Passive Treatment Systems at each of the Mines.

c. Except as set forth in this Paragraph 4.c., Shenango shall provide an annual Accounting of the costs and expenses of annual treatment to the Department on or before the 90th day following the last day of the fiscal year for which the Accounting is being provided. The Accounting shall cover the period beginning January 1 and continuing through December 31 of each year, or other fiscal year as Shenango may adopt for its corporate finances in the future, and shall be in accordance with generally accepted accounting principles. The Accounting shall be accompanied by an affidavit of the treasurer or other corporate officer responsible for the financial affairs of Shenango and by the President of Shenango attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

d. Shenango's obligation to keep records and provide the Accounting shall continue for the period during which Shenango is operating the Passive Treatment Systems.

e. In the event of a dispute about the costs and expenses of treatment incurred by Shenango, Shenango shall bear the burden of proving the accuracy and completeness of the Accounting and the records upon which the Accounting is based. A special report prepared under generally accepted accounting principles as to the treatment costs incurred by Shenango, prepared by an independent licensed public or certified public accountant selected by Shenango, shall satisfy Shenango's burden of proof as to any of these matters.

5. Treatment Trust

a. Shenango shall establish an irrevocable trust to be known as the Shenango Treatment Trust ("Trust"). The Trust shall secure Shenango's obligation to treat the discharges of mine drainage identified in Paragraph D, including its obligation to operate and maintain the Passive Treatment Systems, for a period not exceeding 75 years and to provide financial resources to the Department and the citizens of the Commonwealth to maintain and operate the Passive Treatment Systems, and to treat the mine drainage in the event Shenango becomes unable or unwilling to meet these obligations. The Trust shall also provide for the reclamation of the location of the Passive Treatment Systems should treatment no longer be needed. The agreement establishing the Trust is attached as Exhibit C.

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

6. Funding of the Primary Trust Account

a. Initial Payment to the Primary Trust Account: Within thirty (30) days of the Department's entry of this Consent Order and Agreement, Shenango shall deposit an amount of \$100,000 into the Primary Trust Account ("Initial Payment").

b. Ongoing Payments to the Primary Trust Account: Unless modified by the Parties in accordance with the procedures set forth in this Consent Order and Agreement, within thirty (30) days of the initial payment of \$100,000, Shenango shall deposit \$20,000 per month into the Primary Trust Account for twenty-two (22) consecutive months, plus a final payment to be determined after the 22nd payment that will result in the Primary Trust Fund being "fully funded." For purposes of this Consent Order and Agreement, the Trust will be considered fully funded when it contains cash, cash equivalents and/or investments which at market value are adequate to cover the Primary Target Valuation, plus the costs of recapitalization of Passive Treatment Systems, as provided in the Passive Treatment System Report, for a period of 75 years from the date of entry of this Consent Order and Agreement. The Passive Treatment System Report identifies the amount necessary to fully fund each of the Passive Treatment Systems by the equation $PVt + PV \text{ recap}$. (See Exhibit B) .

7. Adjustment of Bonding; Replacement of Surety Bonds

a. The Parties agree that, at the time of the entry of this Consent Order and Agreement, the comparative value of each dollar to be paid by Shenango into the Trust equals \$1.57 in surety bonds. Based on this ratio, the amount in surety bonds necessary to fund the Passive Treatment Systems as of the date of entry of this Consent Order and Agreement is \$847,392.

b. As set forth in Paragraph K, and in recognition of the aforementioned exchange ratio of trust fund dollars to surety bond dollars, the value of the Surety Bonds held by the Department after the release of bonds as described in Paragraph K exceeds the amount needed to fund the Passive Treatment Systems by \$77,205. Accordingly, the Department has agreed to return the excess Surety Bonds (totaling \$77,205) to Shenango upon the entry of this Consent Order and Agreement.

- c. In recognition of the above principles, the Parties have agreed to the following schedule to adjust the amount of Surety Bonds held as financial assurance for the Passive Treatment Systems:
- i. Upon Shenango's Initial Payment into the Primary Trust Account (as described in Paragraph 6.a), the Department shall reduce Shenango's total Surety Bond obligation by \$ 150,000.
 - ii. When the balance of the Trust equals or exceeds \$ 220,000 (approximately six months after the Initial Payment is made), the Department shall reduce Shenango's Surety Bond obligation by an additional \$ 180,000.
 - iii. When the balance of the Trust equals or exceeds \$ 340,000 (approximately twelve months after the Initial Payment is made), the Department shall reduce Shenango's Surety Bond obligation by an additional \$ 180,000.
 - iv. When the balance of the Trust equals or exceeds \$ 460,000 (approximately eighteen months after the Initial Payment is made), the Department shall reduce Shenango's Surety Bond obligation by an additional \$ 180,000.
 - v. When the Trust is fully funded as described in Paragraph 6.b (approximately twenty-two months after the Initial Payment is made), the Department shall release Shenango's remaining Surety Bonds covering the Mines.
 - d. Nothing in the schedule set forth above is intended to preclude Shenango from fully funding the Trust at any time. In the event that Shenango fully funds the Trust prior to the completion of the schedule set forth above, the Department agrees to release Shenango's remaining Surety Bonds promptly thereafter.

8. Annual Distribution or Contribution Payments – Primary Trust Account

a. All calculations under this Paragraph shall be based on values as determined on the Annual Anniversary Date.

b. If at the end of any year after the Trust is fully funded, the Primary Trust Valuation is greater than the Primary Target Valuation, then a Distribution Payment shall be made to Shenango. The amount of such Distribution Payment will be equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, or equal to the Calculated Treatment Cost, whichever is less.

c. If the Primary Trust Valuation is less than or equal to the Primary Target Valuation, but greater than or equal to the Primary Basis Valuation, then no Distribution Payment shall be made and no additional contribution shall be required.

d. If the Primary Trust Valuation is less than the Primary Basis Valuation, then Shenango shall make an additional contribution into the Primary Trust Account in an amount equal to the difference between the Primary Basis Valuation and the Primary Trust Valuation, or in an amount equal to the Calculated Treatment Cost, whichever is less except as provided in Paragraph 14.a. This provision does not apply until Shenango has fully funded the Trust.

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

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

b. If the actual costs of operating and maintaining the Passive Treatment Systems for any year is greater than or equal to 110% or less than or equal to 90% of the Calculated Treatment Cost, the Department will calculate a new Primary Basis Valuation using the Formula and the newly determined Actual Treatment Cost, using that year's costs and expenses. A new Primary Target Valuation will then be determined by calculating 116% of the new Primary Basis Valuation.

10. Distribution Payments for Adjustments to the Primary Target Valuation

a. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 9 above is less than the Primary Trust Valuation, no distribution payment shall be made under this Paragraph.

b. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 9 above is based on a reduced Actual Treatment Cost, and the Primary Trust Valuation is greater than the newly calculated Primary Target Valuation, then a Distribution Payment shall be made to Shenango. The amount of such Distribution Payment will be equal to the percent change in Actual Treatment Cost times the Primary Trust Valuation, or in an amount equal to the difference between the Primary Trust Valuation and the newly calculated Primary Target Valuation, whichever is less. The amount of such Distribution Payment shall be determined by the following formulas:

$$DP = TR (1 - (\text{new } A / \text{prior } A))$$

Or

$$DP = TR - \text{new } TV$$

Where:	DP	=	Distribution Payment
	TR	=	Primary Trust Valuation
	TV	=	Primary Target Valuation
	A	=	Actual Treatment Cost

11. Capital Improvement Account

a. Shenango shall establish within the Trust a sub-account designated as the Capital Improvement Account. Assets of the Capital Improvement Account may be commingled with assets of the Primary Trust Account for purposes of investment, but must be accounted for and reported separately as if they are assets of a separate and distinct fund.

b. Upon establishment of the Trust, and annually thereafter for so long as the Trust exists, and at any other time required by this Consent Order and Agreement, the required annual balance of the Capital Improvement Account shall represent the recapitalization costs necessary to maintain the Passive Treatment Systems for a 75-year period from the date of entry of this Consent Order and Agreement.

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

- i. For each planned capital replacement component or activity, the current cost of that component or the cost to complete that activity will be determined.
- ii. For each planned capital replacement component or activity, the estimated number of years in the life cycle of the component or the number of years between when the activity is needed will be determined.
- iii. If the Passive Treatment System has been in operation for at least one year, then for each planned capital replacement component or activity, the estimated number of years until the next replacement component or activity is needed will be determined.
- iv. For each planned capital replacement component or activity, the future value (the "Future Value") of the first replacement or activity will be calculated using a current value equal to the current cost, a rate of 3.1 percent, the number of payment periods equal to the number of years until the next replacement or activity, and a beginning of period payment.
- v. For each planned capital replacement component or activity, the present value ("the Present Value") of the first replacement or activity will be calculated using the Future Value calculated in Paragraph 11.c.iv. above, a rate equal to the expected annual earnings/interest rate used in Paragraph 3 above, and all other variables the same as used in Paragraph 11.c.iv. above.
- vi. For each planned capital replacement component or activity, the Future Value of the second and each subsequent capital replacement or activity will be calculated using the same values as in Paragraph 11.c.iv. above except the value for the number of payment periods. The value for the number of payment

periods for the second replacement or activity will be equal to the number of years until the next replacement or activity plus the number of years in the expected life cycle as determined in Paragraph 11.c.ii. above. The number of payment periods for the third replacement will be equal to the number of years until the next replacement or activity plus two times the number of years in the expected life cycle. The number of periods for the fourth replacement will be equal to the number of years until the first replacement plus three times the years in the life cycle. The Future Value of each replacement will be calculated in like manner until the number of periods is equal to the number of years until the last replacement or activity is expected to occur that does not exceed 75 years from the year this Consent Order and Agreement was entered.

vii. For each planned capital replacement component or activity, the Present Value of the second and each subsequent capital replacement or activity will be calculated using the same values as in Paragraph 11.c.v. above except the value for the number of payment periods which shall be determined in like manner to Paragraph 11.c.vi. above.

viii. The required balance in the Capital Improvement Account for the current year shall be equal to the sum of all Present Values for each capital replacement component or activity expected to occur within 75 years from the year this Consent Order and Agreement was entered, as calculated in Paragraph 11.c.v. and vii. above.

ix. The required balance in the Capital Improvement Account shall be recalculated on an annual basis and each time a Distribution Payment is contemplated under Paragraph 13. Such recalculation shall be deemed an amendment to this Consent Order and Agreement, and shall be used in making all future calculations involving the Capital Improvement Account.

12. Transfer of Funds to the Capital Improvement Account

If the Primary Trust Valuation after any Distribution Payment under Paragraph 8 above is greater than the Primary Target Valuation, then a transfer of funds to the Capital Improvement Account from the Primary Trust Account shall be made if the current balance in the Capital Improvement Account is less than the required balance for the current year as indicated on the annual balance referenced in Paragraph 11.b above. The amount of such transfer will be equal to the difference between the required balance and the current balance, or in an amount equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, whichever is less.

13. Distribution Payments from the Capital Improvement Account

a. A Distribution Payment shall be made to Shenango any time a planned capital replacement component or activity is made as referenced in Paragraph 11.c above. The capital replacement and maintenance activities shall be made as needed, which may be sooner or later than the projected time. The amount of the Distribution Payment shall be equal to the Present Value of the capital improvement as indicated on the most recent Capital Improvement Account, or in an amount equal to the difference between the current balance in the Capital Improvement Account and the required balance after the capital improvement Distribution Payment, whichever is less.

b. Each time a Distribution Payment from the Capital Improvement Account is contemplated under this Paragraph or Paragraph 14 below, the required balance in the Capital Improvement Account must be recalculated to determine the required balance after the proposed Distribution Payment, and to determine the appropriate Distribution Payment.

14. Miscellaneous Distribution Payments from the Primary Trust Account and the Capital Improvement Account

If the Primary Trust Valuation exceeds the Primary Target Valuation in the Primary Trust Account, or if the balance in the Capital Improvement Account exceeds the required balance as indicated on the annual balance referenced in Paragraph 11.b above, then in addition to Distribution Payments to Shenango authorized under Paragraphs 8, 10 and 13 above, such surplus funds may be used for the following purposes:

- a. Surplus funds in the Capital Improvement Account may be transferred to the Primary Trust Account to reduce or completely satisfy Shenango's obligation to make a contribution payment under Paragraph 8.d. However, the amount of surplus funds transferred to the Primary Trust Account may exceed Shenango's obligation under Paragraph 8.d. if additional funds are needed so that the Primary Trust Valuation equals the Primary Basis Valuation.
- b. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by Shenango to pay for unanticipated capital expenditures, or anticipated capital expenditures that exceed the calculated cost of the capital improvement as indicated on the annual balance referenced in Paragraph 11.b above.
- c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by Shenango to finance implementation of a new treatment technology, provided the application of such treatment technology is first approved by the Department.
- d. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by Shenango to implement remediation or abatement activities, to reduce or eliminate a discharge, or to improve the quality of a discharge, provided the Department first approves such activities.

15. Annual Meeting

If requested by the Department in any year, the Parties will meet on or before the 30th day following delivery to the Department of the Accounting, or such other day as they may mutually agree to: (1) review and discuss the Accounting for the then completed fiscal year; (2) review the effectiveness of the Passive Treatment Systems and any change in the fiscal year; (3) resolve any issues which arise as a result of the performance of the Passive Treatment Systems or a change in the fiscal year; (4) calculate, recalculate or adjust the size of the Primary Target Valuation, the Calculated Treatment Cost, and Distribution Payments from or additional payments into the Trust; and (5) address any other issues that may concern this Consent Order and Agreement or its implementation.

16. Access To Mines

Shenango shall use good faith best efforts to secure and maintain site access from each surface landowner at the Mines in order to accomplish the objectives of this Consent Order and Agreement. At a minimum, these

access agreements shall provide for ingress and egress by Shenango, the Department and its agents to conduct all necessary maintenance, improvement and/or replacement activities for the Passive Treatment Systems. Shenango shall use good faith efforts to execute the Department's current Contractual Consent of Landowners form (otherwise known as a "Supplemental C") with all landowners of property where the Passive Treatment Systems are located. The Supplemental C's shall provide Shenango, the Department, and agents thereof, *inter alia*, access to the property for purposes of maintaining, improving and/or replacing the Passive Treatment Systems while the Passive Treatment Systems are in place and operating, and for a period of five (5) years after completion of the water treatment activities. Nothing in this paragraph is intended to imply that any existing landowner consent forms covering the Mines are ineffective in providing access to Shenango and/or the Department for purposes of operating and maintaining the Passive Treatment Systems.

17. Public Liability Insurance

- a. Shenango shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the Treatment Systems. The Trustee and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policy.
- b. In addition to the requirements of Paragraph 17a, the public liability insurance shall also comply with the terms and conditions required by 25 Pa. Code § 86.168(a)-(e).

18. Shenango's Continuing Obligation

Neither Shenango's agreement to fund the Trust nor the full or partial funding of the Trust, nor the exhaustion of the Trust shall in any way limit Shenango's obligation to operate the Passive Treatment Systems. Furthermore, exhaustion of the Trust shall not excuse Shenango from Shenango's obligation to adequately treat or to abate the discharges addressed by the Passive Treatment Systems.

19. Stipulated Civil Penalties

- a. In the event Shenango fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, Shenango shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$100.00 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded to:

District Mining Manager
Department of Environmental Protection
Greensburg District Mining Office
Armbrust Professional Center
8205 Route 819
Greensburg, PA 15601-8739

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

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

20. Additional Remedies

a. In the event Shenango fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. In the event Shenango defaults on the obligations of this Consent Order and Agreement, Shenango may be subject to a permit block on the Department's Compliance Tracking System and the federal Applicant Violator System and the Department may, in addition to any other remedy or penalty prescribed herein, list Shenango as a violator on the Department's Compliance Tracking System and on the federal Applicant Violator System.

c. The remedies provided by this Consent Order and Agreement are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy.

21. Reservation of Rights

The Department reserves the right to require additional measures to achieve compliance with applicable law. Shenango reserves the right to challenge any action which the Department may take to require those measures.

22. Liability of Shenango

Shenango 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.

23. Transfer of Mines

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by Shenango's transfer of any legal or equitable interest in the Mines or any part thereof.

b. If Shenango intends to transfer any legal or equitable interest in the Mines addressed in this Consent Order and Agreement, Shenango shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Department's District Mining Manager, Greensburg District Mining Office, of such intent.

c. The Department in its sole discretion may reasonably agree to modify or terminate Shenango's duties and obligations under this Consent Order and Agreement upon transfer of the Mines.

24. 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
Greensburg District Mining Office
Armbrust Professional Center
8205 Route 819
Greensburg, PA 15601-8739

25. Correspondence with Shenango

- a. All correspondence with Shenango concerning this Consent Order and Agreement shall be addressed to:

James Birsic
Vice President-Health, Safety,
Environment and Law and Secretary
Shenango Incorporated
200 Neville Road
Neville Island, PA 15225

- b. Shenango 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.

26. Force Majeure

- a. In the event that Shenango 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 circumstance beyond Shenango's control and which Shenango, by the exercise of all reasonable diligence, is unable to prevent, then Shenango 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 circumstance beyond Shenango's control. Shenango'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. Shenango shall only be entitled to the benefits of this Paragraph if it notifies the Department within five (5) business days by telephone and within ten (10) business 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 Shenango 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) business days of its submission. Shenango'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 Shenango and other information available to the Department. In any subsequent litigation, Shenango 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.

27. 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.

28. 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.

29. 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.

30. Modifications

Except as provided in Paragraph 11.c.ix, 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.

31. 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.

32. Decisions under Consent Order and Agreement

Except for determinations under this Consent Order and Agreement in which Shenango is required to make additional payments to the Trust, any decision which the Department makes under the provisions of this Consent Order and Agreement is intended to be neither a final action under 25 Pa. Code §1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection which Shenango may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

33. Successors

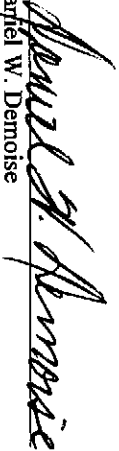
This Consent Order and Agreement shall be fully and completely binding upon any successor of Shenango.

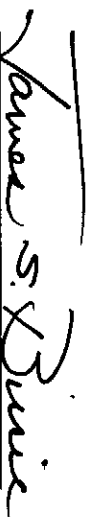
34. Counterpart Signatures


The Parties agree to execute this Consent Order and Agreement by counterpart signatures transmitted via facsimile.

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 Shenango 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 Shenango; that Shenango consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Shenango hereby knowingly waives its 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, the Act of July 13, 1988, P.L. 530, No 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa.C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by Shenango's attorney certifies only that the agreement has been signed after consulting with counsel.


FOR SHENANGO INCORPORATED :



Darfel W. Demoise
President


James S. Birsic
Secretary


Attorney for Shenango Incorporated

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:


C.R. Greene
For Joel Portareso
District Mining Manager


Barbara S. Grabowski
Assistant Counsel
Southwest Region OCC