

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Bituminous Coals, Inc.	:	MDP No. 40A77SM11
Fetterolf Mining, Inc.	:	MDP No. 5679116
227 New Centerville Road	:	SMP No. 56773136
Somerset, PA 15501-8755	:	SMP No. 56800103

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 4th day of March 2014, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Bituminous Coals, Inc. ("BCI") and Fetterolf Mining, Inc. ("FMI") ("collectively referred to as the "Operators").

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. Pursuant to Section 4(d.2) of the Surface Mining Act, 52 P.S. § 1396.4(d.2), the Department may establish alternative financial assurance mechanisms which shall achieve the objectives and purposes of the bonding program. These mechanisms include the establishment

of a site-specific trust fund funded by a mine operator for the treatment of post-mining discharges of mine drainage. The post-mining treatment trust being established as required by this Consent Order and Agreement through the accompanying Post-Mining Discharge Treatment Trust Agreement constitutes an alternative financial assurance mechanism authorized by Section 4(d.2) of the Surface Mining Act, 52 P.S. § 1396.4(d.2). Pursuant to Sections 5, 315 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.315 and 691.610; Section 4.3 of SMCRA, 52 P.S. § 1396.4c; Sections 3.1 and 9 of the Coal Refuse Disposal Act, 52. P.S. §§ 30.53a and 30.59; and Section 9 of the Subsidence Act, 52 P.S. § 1406.9, the Department has authority to issue such orders as are necessary to aid in the enforcement of the provisions of these acts, including orders compelling an operator to establish a post-mining discharge treatment trust as an alternative financial assurance mechanism.

C. BCI is a Pennsylvania corporation with a business address of 227 New Centerville Road, Somerset, Pennsylvania 15501-8755, whose business included the mining of bituminous coal in the Commonwealth of Pennsylvania by the surface method. M. Mitchell Fetterolf is the President, Treasurer and Chief Executive Officer of BCI and is the person responsible for BCI's day-to-day operations.

D. At all times material hereto, BCI was authorized to conduct surface mining in Pennsylvania pursuant to Surface Mining Operator's License No. 3342, which license expired on December 31, 2005 and was not renewed.

E. At all times material hereto, BCI conducted coal surface mining in the Commonwealth in Addison Township, Somerset County pursuant to the surface mine permits referenced below:

<u>NAME</u>	<u>PERMIT NO.</u>
Addison #1	MDP No. 40A77SM11
Addison #1 Mine	MDP No. 5679116
Addison Strip	SMP No. 56773136

F. In support of, and as a condition to, the Department's issuance of the above-listed surface mine permits to BCI, BCI posted the following surety bonds:

<u>Permit No.</u>	<u>Bond No.</u>	<u>Bond Amount</u>
40A77SM11	B1142	\$29,000
	BD1288	\$28,600
	BD1336	\$20,000
	BD1452	\$54,400
	BD1634	\$17,200
	BD1337	\$39,500
	BD1368	\$4,300
	BD1828	\$8,600
	BD2732	<u>\$4,800</u>
		\$206,400
5679116	BD1629	\$18,000
56773136	BD2900	\$280,240

G. FMI is a Pennsylvania corporation with a business address of 227 New Centerville Road, Somerset, Pennsylvania 15501-8755, whose business included the mining of bituminous coal in the Commonwealth of Pennsylvania by the surface method. M. Mitchell Fetterolf is the President, Treasurer and Chief Executive Office of FMI and is the person responsible for FMI's day-to-day operations.

H. At all times material hereto, FMI was authorized to conduct surface mining in Pennsylvania pursuant to Surface Mining Operator's License No.3356, which license expired on December 31, 2005 and was not renewed.

I. At all times material hereto, FMI conducted coal surface mining in the Commonwealth at the Stutzman Mine in Stonycreek Township, Somerset County, pursuant to MDP No. 56800103, which Permit was transferred to FMI on July 10, 1980.

J. In support of, and as a condition to, the Department's issuance of MDP No. 56800103, FMI posted Surety Bond No. BD2374 in the amount of \$8,700.00.

K. Mineral removal has ceased on all of the above-listed surface mine permits, and the only activity remaining is the treatment of several acid mine drainage ("AMD") discharges and seeps identified below.

MDP No. 40A77SM11- Addison #1

L. During field inspections by Department staff on April 14, 1981 and September 16, 1981, water samples taken of a mine discharge on MDP No. 40A77SM11 did not meet established effluent limits set forth in the permit, resulting in the issuance of two Notices of Violation dated April 27, 1981 and October 14, 1981 for violating permit conditions.

M. In response to the requirement to abate the effluent violations, Timothy L. Ellenberger, Mine & Safety Engineer for Fetterolf Group, an investment holding company that owns and controls all of the capital stock of BCI and FMI, sent a letter to the Department dated February 19, 1982, informing the Department that old deep mine discharges on MDP No. 40A77SM11 had been affected by the company's mining activities, and that BCI agreed to temporarily treat the discharges in order to abate the effluent limit violations issued

N. On or about March 1, 1982, BCI began treating the mine discharge later designated as MD13 with a caustic soda drip treatment system prior to the discharge flowing into an old sediment basin on MDP No. 40A77SM11 and eventually into an unnamed tributary to White's Creek, which is classified as a High Quality, Cold Water Stream.

O. After investigation, the Department determined that as a result of the company's mining activities on MDP No. 40A77SM11, BCI had negatively affected the quality of the old abandoned deep mine discharges on the permit and required BCI to continue to treat MD13 to meet effluent limits.

P. On July 29, 1983, the Department issued Abatement Order No. E-83-106 to BCI for exceeding the effluent limits set forth in the Department's regulations at 25 Pa. Code § 87.102 and ordered BCI to treat adequately MD13 and submit to the Department for approval a plan and schedule for treating the discharge so as to meet effluent limits. BCI did not file an appeal from Abatement Order No. E-83-106.

Q. BCI continued to treat MD13 on MDP No. 40A77SM11; however, the Department issued several more Compliance Orders to BCI for inadequate treatment of the mine discharge on November 23, 1984, March 25, 1985, and July 23, 1985. BCI did not file an appeal from these Compliance Orders.

R. Mineral removal on MDP No. 40A77SM11 ceased on or about October 4, 1985; however, BCI continued to treat MD13. Additional violations for exceeding effluent limits continued to occur in connection with BCI's treatment of the discharge, and the Department issued seven (7) more Compliance Orders to BCI requiring adequate treatment of MD13 so as to meet the effluent limits set forth in the Department's regulations at 25 Pa. Code § 87.102. BCI did not file appeals from any of the Compliance Orders.

S. The Orders referenced in Paragraphs P, Q, and R above are unappealed and, therefore, they are administratively final orders of the Department directing the continued treatment of AMD discharge referred to as MD13 on MDP No. 40A77SM11.

MDP No. 5679116 – Addison #1 Mine

T. Mineral removal on MDP No. 5679116 ceased on September 16, 1981; however, in response to the requirement to abate the effluent violations on MDP No. 40A77SM11, on or about March 1, 1982, BCI began treating an old deep mine discharge later designated as MD which was emanating onto MDP No. 5679116 from MDP No. 40A77SM11.

U. BCI constructed a treatment system on MDP No. 5679116 consisting of a treatment barrel filled with caustic soda briquettes which the discharge flowed through prior to flowing into a treatment basin and eventually into an unnamed tributary to White's Creek, which is classified as a High Quality, Cold Water Stream. The system was subsequently changed to a conventional caustic soda drip treatment system.

V. During a June 9, 1982 field inspection on MDP No. 5679116 conducted by Department staff, water samples taken from the treatment basin which collected MD did not meet established effluent limits set forth in the permit, resulting in the issuance of a Notice of Violation dated July 19, 1982 to BCI for violating permit conditions.

W. On January 13, 1983, the Department issued Abatement Order No. E-83-4 to BCI for allowing the discharge identified as MD to flow untreated into an unnamed tributary to White's Creek in violation of effluent limits imposed by the Department, and ordered BCI to adequately treat the discharge on MDP No. 5679116 so as to meet the effluent limits set forth in the Department's regulations at 25 Pa. Code § 87.102. BCI did not file an appeal from the Abatement Order.

X. BCI continued to treat discharge MD on MDP No. 5679116; however the Department issued seven (7) Compliance Orders to BCI for inadequate treatment of the mine discharge ordering BCI to adequately treat discharge MD so as to meet the effluent limits set

forth in the Department's regulations at 25 Pa. Code § 87.102. BCI did not file appeals from any of the Compliance Orders.

Y. On February 19, 2009, the Department discovered that the tank holding the caustic soda used for treatment of discharge MD on MDP No. 5679116 was damaged and the treatment system was no longer effective to treat discharge MD.

Z. The Orders referenced in Paragraphs W and X above are unappealed and, therefore, they are administratively final orders of the Department directing the continued treatment of the AMD discharge referred to as MD on MDP No. 5679116.

SMP No. 56773136 – Addison Strip

AA. During a field inspection conducted by Department staff on October 21, 1986, the Department noted that the operator had moved a large tank of caustic soda onto SMP No. 56773136 to treat several toe-of-spoil mine discharges later identified as TOS1, TOS2, and TOS3 which were emanating on Phase I of the Permit.

BB. Mineral removal on SMP No. 56773136 ceased on April 2, 1987; however, BCI continued to treat the AMD discharges TOS1, TOS2, and TOS3 with a caustic soda drip treatment system consisting of several drip lines, treatment ponds and a bog. The receiving stream for discharges TOS1, TOS2, and TOS3 is an unnamed tributary to White's Creek, which has been classified as a High Quality, Cold Water Stream.

CC. During a field inspection conducted by Department staff on March 13, 1989, water samples taken from the treatment ponds and the bog on SMP No. 56773136 exceeded the established effluent limit for manganese resulting in the issuance of Compliance Order No. 89-3-075-S dated April 4, 1989 to BCI for discharging mine drainage which failed to comply with the effluent limits. BCI did not file an appeal from the Compliance Order.

DD. BCI continued to treat the discharges; however, the Department issued five (5) more Compliance Orders to BCI for inadequate treatment of AMD discharges TOS1, TOS2, and TOS3 and ordered BCI to adequately treat the mine discharges so as to meet the effluent limits set forth in the Department's regulations at 25 Pa. Code § 87.102. BCI did not file appeals from any of the Compliance Orders.

EE. The Orders referenced in Paragraphs CC and DD above are unappealed and, therefore, they are administratively final orders of the Department directing the continued treatment of the AMD discharges referred to as TOS1, TOS2, and TOS3 on SMP No. 56773136.

MDP No. 56800103 – Stutzman Mine

FF. Shortly after mineral removal operations ceased in February of 1986 at the Stutzman Mine, MDP No. 56800103, the Department began investigating signs of possible water degradation at a monitoring point referred to as SP7 located on an unnamed tributary to Stonycreek River, which is located to the North of MDP No. 56800103.

GG. In the spring of 1988, the Department discovered several springs in the area of MDP No. 56800103 that had also been degraded.

HH. On September 17, 1988, Paul Miller, a neighboring property owner to the north of the Stutzman Mine, filed an objection with the Department to the release of the Stage III Reclamation Bonds on MDP No. 56800103 due to acid mine drainage that was seeping from the mine site onto his property and damaging his crops and timber.

II. On October 5, 1988, the Department investigated Mr. Miller's complaint and discovered three large areas of dead vegetation to the north of MDP No. 56800103 on the properties of Paul Miller and another neighbor, Carl Brandt. All three areas of concern were located in the same drainage basin as the degradation noted on the unnamed tributary to

Stonycreek River, and the Department withheld final bond release pending further hydrologic investigation.

JJ. As a result of its initial hydrologic investigation, the Department determined that the off-permit AMD discharges on the Miller and Brandt properties were caused by FMI's mining activities on MDP No. 56800103 and that AMD emanating from the permit area had also resulted in degradation to the unnamed tributary to Stonycreek River.

KK. The bonds for MDP No. 56800103 were not released due to the AMD emanating from the mine site, and in 1989, FMI began to treat the AMD seeps by placing soda briquettes directly in the seeps.

LL. The Department continued its hydrologic investigation and by June 9, 1992 had identified a total of four (4) AMD discharge seeps, designated as MD101, MD102, MD103 and MD104, located both on and off MDP No. 56800103 that had been affected by FMI's mining activities on the permit and did not meet water quality effluent limits. The Department concluded that FMI was responsible for treatment of the mine drainage seeps located both on and off MDP No. 56800103.

MM. FMI continued to treat the seeps with soda briquettes placed directly in the seep locations; however, the Department requested that FMI implement a permanent abatement plan for treating the AMD discharges on and off MDP No. 56800103.

NN. In response, M. Mitchell Fetterolf sent a letter to the Department dated October 16, 1992, advising that FMI intended to treat the seeps and asking for an extension of time in which to submit an abatement plan to the Department.

OO. In an inspection conducted on March 30, 1993, the Department noted that the limestone trench that FMI had installed on the permit to collect and treat the seeps had been

crushed or clogged, and as a result, the seeps had reemerged in their original locations and were not being treated. The Department requested that FMI immediately begin providing interim treatment and submit a proposed permanent abatement plan to the Department by April 21, 1993.

PP. FMI requested, and the Department agreed to, several additional extensions of time for submission of the abatement plan to the Department; however, FMI never submitted a plan to the Department to treat the acid mine drainage seeps located both on and off MDP No. 56800103.

QQ. On December 22, 1993, the Department issued Compliance Order No. 933197 to FMI for discharging mine drainage which failed to comply with the effluent limits set forth in the Department's regulations at 25 Pa. Code § 87.102, and ordered the operator to treat the discharge seeps so as to meet the effluent limitations. FMI did not file an appeal from the Compliance Order.

RR. FMI continued, intermittently, to treat the AMD seeps located both on and off MDP No. 56800103 with soda briquettes; however, the company failed to submit a plan to the Department to permanently abate the seeps.

SS. On August 1, 1995, the Department issued Compliance Order No. 953051E2 to FMI for discharging mine drainage which failed to comply with the effluent limits set forth in the Department's regulations at 25 Pa. Code § 87.102, and ordered the mine operator to submit an abatement plan to the Department, including a schedule, for providing acceptable treatment of the discharges so as to meet the effluent limitations. FMI did not file an appeal from the Compliance Order.

TT. FMI continued, intermittently, to treat the discharge seeps, but the company failed to submit a plan to the Department for permanent abatement of the AMD discharges.

UU. The Department determined that treatment of mine discharge seeps MD101, MD102, MD103 and MD104 using soda briquettes continued to be ineffective, and as a result, the Department issued seven (7) more Compliance Orders to FMI for inadequate treatment of the AMD discharge seeps and directed FMI to design, construct and maintain permanent treatment facilities capable of treating the AMD discharge seeps so as to meet the effluent limitations set forth in the Department's regulations at 25 Pa. Code § 87.102 at all times. FMI did not file appeals from any of the Compliance Orders.

VV. On December 19, 2005, the Department issued Compliance Order No. 053055, dated October 5, 2005, to FMI for the company's failure to comply with the previous compliance order in that FMI had failed to construct permanent treatment facilities to treat the on and off-permit AMD discharges associated with SMP No. 56800103. FMI did not file an appeal to the EHB from Compliance Order No. 053055.

WW. To date, FMI has failed to design and construct treatment systems adequate to treat the AMD discharge seeps associated with SMP No. 56800103 so as to meet the effluent limitations set forth in the Department's regulations at 25 Pa. Code § 87.102 on a continuous basis.

XX. The Orders referenced in Paragraphs QQ, SS, UU, and VV above are unappealed and, therefore, they are administratively final orders of the Department directing the continued treatment of the AMD discharges referred to as MD101, MD102, MD103, and MD104 on MDP No. 56800103.

Post-Mining Discharge Treatment Obligations

YY. Acid mine drainage is an "Industrial Waste" as that term is defined under Section 1 of The Clean Streams Law, 35 P.S. § 691.1.

ZZ. Section 301 of The Clean Streams Law, 35 P.S. § 691.301, prohibits the discharge of industrial waste into waters of the Commonwealth.

AAA. A mine operator is responsible for collecting and treating unauthorized discharges of acid mine drainage emanating from a mining permit as a matter of law, without proof of fault or causation, pursuant to Section 315(a) of The Clean Streams Law, 35 P.S. § 691.315(a).

BBB. Section 316 of The Clean Streams Law, 35 P.S. § 691.316, provides in relevant part:

Whenever the department finds that pollution or a danger of pollution is resulting from a condition which exists on land in the Commonwealth the department may order the landowner or occupier to correct the condition in a manner satisfactory to the department

CCC. Before a surface mine operator can commence operations, the permittee must post a bond with the Department to ensure that the operator will reclaim the area after mining and abate polluting mine discharges. 25 Pa. Code § 86.143. The Department may require additional bond amounts to guarantee sound future treatment of pollutional discharges. 52 P.S. § 1396.4(d) and (g); 35 P.S. § 691.315(b); 25 Pa. Code § 86.152.

DDD. Where, as a result of mining activities, a discharge develops which does not meet the applicable effluent limits, the permittee is required to treat said discharge to meet the effluent standards established by law or permit. 25 Pa. Code § 87.102.

EEE. Section 610 of The Clean Streams Law, 35 P.S. § 691.610, and Section 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c, authorize the Department to issue orders to compel an individual to comply with the requirements of those statutes and their implementing regulations.

FFF. Section 18f of the Surface Mining Act, 52 P.S. § 1396.18f, provides, "It shall be unlawful to fail to comply with any rule or regulation of the department or to fail to comply with

any order or permit or license of the department, to violate any provisions of this act or rules and regulations adopted hereunder, or any order or permit or license of the department. . . .”

GGG. BCI’s and FMI’s mining activities on the surface mine permits identified in Paragraphs E and I above, have adversely affected and impacted the post-mining hydrologic balance on and off the Addison and Stutzman Mine sites causing polluttional discharges to waters of the Commonwealth.

HHH. BCI and FMI did not challenge the Department’s determinations that they are responsible for treating the AMD discharges and seeps resulting from mining operations on the MDP No. 40A77SM11, MDP No. 5679116, SMP No. 56773136 and MDP No. 56800103, nor did BCI or FMI file any appeals from the any of the above-referenced Orders issued by the Department requiring treatment of the AMD discharges and seeps.

III. As a result, BCI and FMI have admitted liability and are legally required to treat and/or permanently abate the AMD discharges and seeps emanating from and hydrologically related to the Addison and Stutzman Mine sites pursuant to the above-referenced mine permits, the Department Orders which are unappealed and thus administratively final, the Surface Mining Act, and The Clean Streams Law.

JJJ. BCI and FMI are required to establish a long-term financial guarantee in the form of adequate bond or a treatment trust to guarantee the cost of treatment of the AMD discharges and seeps resulting from mining activities on the above-referenced mine permits.

KKK. On October 1, 2004, the Department notified BCI and FMI that the bonds posted for MDP No. 40A77SM11, MDP No. 5679116 and SMP No. 56773136, in the amount of \$504,640, and MDP No. 56800103, in the amount of \$8,700, were insufficient to guarantee

payment of the cost of perpetual treatment of the post-mining AMD discharges and seeps resulting from mining activities on those mine permits.

LLL. In correspondence to the Department dated June 2, 2005, M. Mitchell Fetterolf, President of BCI and FMI, claimed that BCI and FMI lacked the financial resources to post additional bond or establish a long-term treatment trust to provide for the perpetual treatment of the mine discharges resulting from mining operations on MDP No. 40A77SM11, MDP No. 5679116, SMP No. 56773136 and MDP No. 56800103.

MMM. On or about September 8, 2005, M. Mitchell Fetterolf gave the Department notice that treatment of the AMD discharges and seeps referenced hereinabove would cease when the current supply of treatment materials was exhausted.

NNN. On or about December 31, 2005, BCI and FMI stopped treatment of the AMD discharges and seeps associated with the mine permits referenced hereinabove.

OOO. Immediately thereafter, the Department took over treatment of the AMD discharges and seeps and has continued treatment to date.

PPP. By letters dated January 12 and 13, 2006, the Department notified BCI and FMI that it intended to forfeit the above-listed surety bonds posted for the Addison and the Stutzman Mine sites as a result of outstanding violations of the Surface Mining Act, The Clean Streams Law, and the rules and regulations promulgated under those Acts, including, but not limited to the mine operators' abandonment of the permit areas and failure to continue treatment of the mine discharges and seeps.

QQQ. By letters dated February 16, 2006 (attached hereto as Exhibit "A"), the Department notified BCI and FMI of its declaration of bond forfeiture on the bonds posted for MDP No. 40A77SM11, MDP No. 5679116, SMP No. 56773136 and MDP No. 56800103. The

Department's action was based upon the operators' 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 treat and/or permanently abate the AMD discharges and seeps emanating from the Addison and Stutzman Mine sites, and failure to comply with Orders of the Department. No appeals were filed from the Department's action forfeiting the bonds referenced hereinabove. To date, the Department has not received the money from the bond forfeitures. That money is currently held by Mid Continent Insurance Company. In lieu of receiving that money and placing it in the ABS Legacy Sites Trust Account, pursuant to 25 Pa. Code § 86.187(a)(2)(i), the Department intends to establish a separate Trust, as set forth in Paragraph 4, below, to specifically provide for the treatment of the post-mining AMD discharges and seeps resulting from mining activities on the BCI and FMI Mine Permits referenced herein.

RRR. The forfeited bonds are insufficient to guarantee payment of the cost of perpetual treatment of the post-mining AMD discharges and seeps resulting from mining activities on the BCI and FMI Mine Permits referenced herein.

SSS. On November 12, 2009, the Department filed a Complaint in Commonwealth Court seeking to require BCI and FMI to comply with the Department's Orders and resume and/or begin to treat all of the AMD discharges and seeps resulting from the operators mining activities on the Addison and Stutzman Mine Permits and to post a long-term financial guarantee in order to provide for the treatment of the AMD discharges and seeps.

TTT. As set forth more fully in Paragraphs 3 and 4 below, the parties have reached an agreement to settle the pending Commonwealth Court litigation. BCI and FMI have agreed to construct and/or repair the treatment systems for the AMD discharges and seeps referenced in Paragraphs L through XX above. In addition, BCI and FMI have agreed that, as set forth in

Paragraph 4, below, the Department may direct the Mid Continent Insurance Company, Inc., to transfer funds to the Clean Streams Foundation to be placed in a long-term treatment trust to provide for the perpetual treatment of the mine discharges resulting from mining operations on MDP No. 40A77SM11, MDP No. 5679116, SMP No. 56773136 and MDP No. 56800103. In exchange, the Department will irrevocably waive collection of the forfeited surety bonds identified in Paragraphs F and J above.

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 BCI and FMI as follows:

1. Authority. 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; Sections 4.2 and 4.3 of the Surface Mining Act, 52 P.S. §§ 1396.4b and 1396.4c; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings.

a. BCI and FMI agree that the findings in Paragraphs A through TTT are true and correct and, in any matter or proceeding involving BCI and/or FMI and the Department, BCI and FMI 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. Corrective Action.

a. On or before July 1, 2014, BCI and FMI shall begin construction and repair of the treatment systems for the AMD discharges and seeps on MDP No. 40A77SM11, MDP No. 5679116, SMP No. 56773136 and MDP No. 56800103 in accordance with the Scope of Work as approved by the Department, and attached hereto and incorporated herein as Exhibit B.

b. BCI and FMI shall complete construction and repair of the treatment systems for the AMD discharges and seeps on MDP No. 40A77SM11, MDP No. 5679116, SMP No. 56773136 and MDP No. 56800103 pursuant to the approved Scope of Work on or before November 30, 2014.

c. The work set forth in the Scope of Work constitutes a design standard. Within 10 days of completion of all work contemplated by the Scope of Work, BCI and FMI shall submit a certification of construction to the Department. The certification shall state that the work was completed in accordance with the approved plans and specifications and shall be signed by the professional engineer or other person responsible for the work.

d. Upon the Department's receipt of the certification of construction, BCI and FMI shall be relieved of all further obligations to collect, treat or abate the AMD discharges and seeps described in Paragraphs L through XX above.

4. The Bonds.

a. Nothing in this Consent Order and Agreement or the Department's willingness to enter into it shall affect the forfeiture of the bonds posted by BCI and FMI. The forfeiture remains a final, unappealed action.

b. The Department agrees to waive collection of the surety bonds identified in Paragraphs F and J, above, and, instead, direct that the funds currently held by Mid Continent Insurance Company be placed into a Post-Mining Treatment Trust. The Department's waiver of collection and agreement to settlement are in consideration of BCI's and FMI's agreement, pursuant to Paragraph 3, above, to construct and repair the treatment systems for the AMD discharges and seeps on MDP No. 40A77SM11, MDP No. 5679116, SMP No. 56773136 and MDP No. 56800103 in accordance with the Scope of Work as approved by the Department.

c. Within thirty (30) days of execution of this Consent Order and Agreement, the Department shall direct Mid Continent Insurance Company, Inc. to deposit the forfeited surety bonds in the total amount of \$513,340.00, identified in Paragraphs F and J above, into the Bituminous/Fetterolf Post-Mining Treatment Trust which will be established by the Department with the Clean Streams Foundation to provide for the perpetual operation and maintenance of the treatment systems constructed on the Addison and Stutzman Mine sites.

d. The Department will automatically be deemed to have waived collection of the surety bonds identified in Paragraphs F and J above upon confirmation that the payment to the Trust described in Paragraph 4.c. has been made.

5. Publication.

Within 30 days of the effective date of this Consent Order and Agreement, the Department shall publish notice of this Consent Order and Agreement in the Pennsylvania Bulletin. If this Consent Order and Agreement is appealed by a third party, BCI's and FMI's obligations under this agreement shall be stayed during the pendency of any such appeal.

6. Stipulated Civil Penalties.

a. In the event BCI and FMI fail to comply in a timely manner with any term or provision of this Consent Order and Agreement, BCI and FMI 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 \$750 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month. The payment shall be made by corporate check or the like made payable to the "Commonwealth of Pennsylvania" and submitted to the Department of Environmental Protection, Cambria District Mining Office, 286 Industrial Park Road, Ebensburg, PA 15931.

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

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

7. Additional Remedies.

a. In the event BCI and/or FMI fail 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. The remedies provided by this paragraph and Paragraph 6 (Stipulated Civil Penalties) 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. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

8. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. BCI and FMI reserve the right to challenge any action which the Department may take to require those measures.

9. Liability of Operator. BCI and FMI shall be liable for any violation of the Consent Order and Agreement, including those caused by, contributed to, or allowed by their officers agents, employees, or contractors. BCI and FMI also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by their successors and assigns.

10. Transfer of Site.

a. 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 Addison Mine Sites or the Stutzman Mine Site, or any part thereof.

b. If BCI or FMI intend to transfer any legal or equitable interest in any of the Mine Sites which are affected by this Consent Order and Agreement, BCI and/or FMI 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 Cambria District Mining Office of the Department of such intent.

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

Daniel Sammarco, P.E.
District Mining Manager
Pennsylvania Department of Environmental Protection
Cambria District Mining Office
286 Industrial Park Road
Ebensburg, PA 15931
(814)472-1900
(814)472-1939

12. Correspondence with BCI and FMI. All correspondence with BCI and/or FMI concerning this Consent Order and Agreement shall be addressed to:

Gregg M. Rosen, Esquire
McGuireWoods LLP
Dominion Tower
625 Liberty Avenue, 23 FL
Pittsburgh, PA 15222-3142
(412)667-6000
(412)667-6050 (FAX)

BCI and/or FMI 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.

13. Force Majeure.

a. In the event that BCI and/or FMI are 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 their control and which BCI and/or FMI, by the exercise of all reasonable diligence, are unable to prevent, then BCI and FMI 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 BCI's and/or FMI's control. BCI's and/or FMI'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. BCI and/or FMI shall only be entitled to the benefits of this paragraph if they notify the Department within five (5) working days by telephone and within ten (10) working days in writing of the date they 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 BCI and/or FMI to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten working days of its submission. BCI's and/or FMI'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 BCI and/or FMI and other information available to the Department. In any subsequent litigation, BCI and/or FMI 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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

19. Decisions Under Consent Order. Any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, 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 BCI and/or FMI may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.


20. Execution of Agreement. This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Facsimile signatures shall be valid and effective.

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 BCI and FMI 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 BCI and FMI; that BCI and FMI consent to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that BCI and FMI hereby knowingly waive their right 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. Signature by BCI's and FMI's attorney certifies only that the agreement has been signed after consulting with counsel.


FOR BITUMINOUS COALS, INC.:

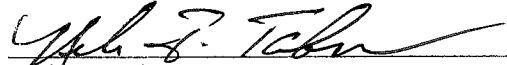

Name M. Mitchell Fetterolf
Title President


FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:


Name Daniel Sammarco, P.E.
Title District Mining Manager

FOR FETTEROLF MINING, INC.:


Name M. Mitchell Fetterolf
Title President


Name Nel J. Taber
Title Assistant Counsel


Name Gregg M. Rosen, Esquire
Title Attorney for Bituminous Coals, Inc. and
Fetterolf Mining, Inc.