

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of: Carpentertown Treatment Trust

Carpentertown Coal & Coke Co.
c/o Mueller Industries, Inc
8285 Tournament Drive, STE 150
Memphis, TN 38125

Mines & Permit Nos. Mahoning Creek #2 Mine
Pine Township, Armstrong
County CMA Permit
#03831304

ACE, USA
1601 Chestnut Street
Two Liberty Place
Philadelphia, PA 19101-1484

Alternative Financial Assurance Mechanism

POSTMINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 20th August day of July, 2003, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), Carpentertown Coal & Coke Company ("Carpentertown"), the operator, and ACE USA ("ACE"), the surety for reclamation performance bonds posted at the mine site.

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, 35 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.

B. Carpentertown is a Pennsylvania corporation with a mailing address of Attn: Michael Baum, President, P. O. Box 309, Wynnc, Arkansas 72396. Carpentertown was engaged in the business of mining coal in Pennsylvania, and operated an underground mine known as the Mahoning Creek #2 Mine in Pine Township, Armstrong County, Pennsylvania.

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C. On or about June 15, 1989, Carpentertown filed a petition in the United States Bankruptcy Court for the Western District of Pennsylvania. Carpentertown is without operating personnel or funds to respond to any environmental conditions associated with its former coal mining operations, including, but not limited to, the further reclamation and maintenance of existing reclaimed areas and water treatment facilities at its former mining operation at the Mahoning Creek #2 Mine.

D. ACE, a division of ACE INA Holdings, Inc., a Delaware corporation, has a mailing address of 1601 Chestnut Street, Two Liberty Place, P. O. Box 41484, Philadelphia, Pennsylvania 19101-1484. ACE is the surety which issued the reclamation performance bonds for the Mahoning Creek #2 Mine, for which there remains posted \$1,357,400.00 under Bond No. K02608747 (of which \$609,200.00 is for demolition of surface structures; \$56,900.00 is for mine seals; and \$691,300.00 is for surface disturbance), and \$10,000.00 posted on subsidence bond B-465-1.

E. Carpentertown is the permittee of the following coal mine which is associated with post-mining discharge liability:

NAME	PERMIT NO.	TOWNSHIP	COUNTY
Mahoning Creek #2	03831304	Pine	Somerset

This discharge originates as five (5) small seeps which are approximately 40 to 50 feet apart at the toe of a small hillside refuse material area. The discharge produces from ½ to 1 gallon per minute. The discharge is not related to the underground mine pool at this site or any other underground mine source.

F. On or about June 18, 1984, the Department issued CMAP No. 1383304 to Carpentertown which authorized underground coal mining with surface effects at the Mahoning Creek No. 2 Mine.

G. On or about December 1987, Carpentertown ceased active coal extraction at the Mahoning Creek # 2 Mine.

H. On or about November 7, 1990, Carpentertown sealed the Mahoning Creek No. 2 Mine.

I. On October 1, 1991, the Department reissued the permit for the same operation. However, the permit was redesignated as CMAP No. 03831304.

J. In July 1993, discharges of acid mine drainage appeared in the area of the cleaning plant at the Mahoning Creek #2 Mine.

K. Following certain enforcement actions taken by the Department, Carpentertown caused steps to be taken to resolve the violations at the #2 Mine, and on November 30, 1993, submitted to the Department a plan to provide for the treatment and abatement of the pollutional discharges.

L. In order to resolve the enforcement and threatened bond forfeiture actions, Carpentertown and the Department entered into a Consent Order and Agreement on February 3, 1994, requiring Carpentertown to, among other things, reconstruct a stream channel at the site and begin interim treatment of the AMD discharges at Mine #2.

M. The permanent passive treatment system existing at the site consists of an 18,620 R² surface area wetland, including a 6" compacted clay liner; 4" thickness of No. 5-7 limestone aggregate; 6" to 8" of loam/topsoil planting medium; and appropriate passive treatment system vegetation.

N. The surface reclamation, mine sealing, structure demolition and revegetation of the Mahoning Creek Mine #2 has been completed by Carpentertown with the financial assistance of ACE, with the only other remaining obligation being the treatment of the discharges through the operation and maintenance of the passive treatment systems described in Paragraph M and the providing of an alternative financial assurance mechanism as the financially backed enforceable contract to provide for the long term treatment of the discharges.

O. Carpentertown agrees it has the legal responsibility to treat or abate the discharges identified in Paragraph E.

P. The effluent limits currently applicable to the discharge are as follows:

<u>Parameter</u>	<u>30-day Average</u>	<u>Daily Maximum</u>	<u>Instantaneous Maximum</u>
iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
suspended solids	35 mg/l	70 mg/l	90 mg/l
pH ¹		greater than 6.0; less than 9.0	
alkalinity greater than acidity ¹			

¹ The parameter is applicable at all times.

Q. The wetland passive treatment system was installed in 1995 and is expected to have a 25-year life.

R. Potential capital expenditures for the wetland passive treatment system include: \$35,250 to reconstruct the existing wetland treatment system pond and secondary pond (including earthwork); \$12,081 to reconstruct the collection ditches and install limestone rip-rap; and \$4,000 for other costs including to reseed/re-plant wetland vegetation, and reseed/mulch affected areas and pond embankments, etc., for a total of \$51,324.

S. The annual operating and maintenance costs for the wetland passive treatment system would involve such items as cleaning influent and effluent channels, inspecting the berms and repairing them as necessary, water quality sampling and analysis and correcting any short-circuiting that might occur in the pond. Actual annual operating and maintenance costs have been determined to be \$3,599.

T. Total capital costs are thus \$51,324 and total annual operating costs is \$3,599 per year.

U. The parties agree to use the information and figures provided in Paragraphs P through T above to calculate the proper size of the alternative financial assurance mechanism as described below. The parties also agree to use the formulas set forth below to calculate the present value of the alternative financial assurance mechanism.

V. Carpentertown and ACE would like to provide an alternative financial assurance mechanism as the financially backed enforceable contract to provide for the long-term treatment of post-mining discharges, and secure the release of the existing reclamation bonds and subsidence bond since of all other reclamation requirements including demolition, mine sealing and revegetation has been completed.

ORDER

1. 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 Carpentertown and ACE as follows: 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; Sections 3.1 and 9 of the Coal Refuse Disposal Act, 52 P.S. §§ 30.53a and 30.59; Section 9 of the Subsidence Act, 52 P.S. § 1409.9, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of to comply with any term or condition of this Consent Order Carpentertown and ACE and Agreement shall subject Carpentertown and ACE to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. Carpentertown and ACE agree that the findings in Paragraphs A through V are true and correct and, in any matter or proceeding involving Carpentertown, ACE and the Department, Carpentertown and ACE 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. Actual Treatment Cost. The costs and expenses of treatment as set out in Paragraphs R through T.
- b. Annual Anniversary Date. The annual recurrence of the month and day that this Consent Order and Agreement is executed.
- c. Calculated Treatment Cost. The projected future annual cost of treatment, based on the Actual Treatment Cost, compounded at three and one tenth percent (3.1%) annually.
- d. Capital Improvement Account. The sub-account within the Trust that is primarily used to finance anticipated and periodic capital expenditures for the Treatment Systems.
- e. 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.
- f. Formula. The equation used to calculate the Present Value of the future operation and maintenance ("O&M") of the Treatment Systems. The equation is:

PV	=	(A/[E-I]) + A
where: PV	=	Present Value of the O&M Costs
A	=	Current Actual Treatment Cost
E	=	Expected net annual earnings/Interest Rate (assumed to be 8.4% or 0.084)*
I	=	Inflation Rate (assumed to be 3.1% or .031)
- * This assumption will remain the same unless the parties agree otherwise.
- g. Primary Basis Valuation. 100% of the present value of the future cost of treatment as determined by the Formula.
- h. Primary Target Valuation. 116% of the present value of the future cost of treatment as determined by the Formula.
- i. Primary Trust Account. The sub-account within the Trust that is primarily used to finance annual operating and maintenance costs of the Treatment Systems.
- j. Primary Trust Valuation. The cash, cash equivalents, investments at market value of investments and the face amount of surety bond currently held by the Trust in the Primary Trust Account.

4. Treatment Trust

a. ACE shall establish an irrevocable account to be known as the Carpentertown Treatment Account ("Treatment Account") within the Clean Streams Foundation (CSF) existing Treatment Account. The CSF is a charitable trust which has been approved under Section 510(c)(3) of the Internal Revenue Code. The Treatment Account shall secure Carpentertown's obligation to treat discharges of mine drainage, in perpetuity, or until water treatment is no longer necessary, and to provide financial resources to the Department and the citizens of the Commonwealth to maintain and operate the Treatment Systems, and to treat the mine drainage in perpetuity since Carpentertown is unable to meet those obligations. The Trust shall also provide for the demolition of treatment facilities and reclamation of the treatment site should treatment no longer be needed. The participation agreement establishing the Treatment Account is attached as Exhibit B.

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

5. Funding of the Primary Trust Account

Upon its execution of this Consent Order and Agreement, ACE shall deposit an amount of \$82,502.04 into the Primary Trust Account.

6. Capital Improvement Account

a. ACE 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. On the date of this Consent Order and Agreement the required annual balance of the Capital Improvement Account for a 75 year period shall be determined and made a part of this agreement as Exhibit E.

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 water treatment facility has been in operation for a significant period of time, then for each planned capital replacement component or activity, the estimated number of years until the next replacement or activity is needed will be determined.
- (iv) For each planned capital replacement component or activity, the future value of the first replacement or activity will be calculated using a Present Value equal to the current cost, a rate of 3.1 percent, the amount of payment equal to \$0.00, the number of payment periods equal to the number of years from the date of this agreement until the next replacement or activity, and a beginning of period payment.
- (v) For each planned capital replacement component or activity, the Present Value will be calculated using the Future Value calculated in paragraph 10.c.iv. above, a rate equal to the assumed net rate of return used elsewhere in this agreement, and all other variables the same as used in paragraph 10.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 10.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 10.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 the calculations are being made.

(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 10.c.v. above except the value for the number of payment periods which shall be determined in like manner to Paragraph 10.c.vi. above.

(viii) The required balance in the Capital Improvement Account for the initial year shall be equal to the sum of all Present Values calculated in Paragraph 10.b.v. and vii. above. Upon its execution of this Consent Order and Agreement, ACE shall deposit an amount of \$32,870.00 into the Capital Improvement Account.

7. a. If the Primary Trust Valuation is greater than the Primary Target Valuation, then a transfer of funds to the Capital Improvement 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 Exhibit E. 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.

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 Exhibit E, then such surplus funds may be used for the following purposes:

b. Surplus funds in the Capital Improvement Account shall be transferred to the Primary Trust Account

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the Trustee to pay for unanticipated capital expenditures, or anticipated capital expenditures that exceed the calculated cost of the capital improvement as indicated on Exhibit E.

d. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the Trustee to finance implementation of a new treatment technology.

e. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the Trustee to implement remediation or abatement activities to reduce or eliminate the discharge, or to improve the quality of the discharge.

8. Real and Personal Property

Within forty-five (45) days after the execution of this Consent Order and Agreement, Carpentertown shall convey to the Carpentertown Treatment Trust an easement, to the fullest extent that it has the power and authority to do so, to provide access to the Mahoning Creek No. 2 Mine for the wetlands passive treatment system described in Paragraph M and to perform all necessary activities to operate, maintain, construct or reconstruct the wetlands passive treatment system and its appurtenances. The easement shall extend to the Carpentertown Treatment Trust, its agents, contractors, successors and assigns.

9. Final Bond Release

ACE has complied with the requirements of 25 Pa. Code § 86.171 for final bond release. Within thirty (30) days after the execution of this Consent Order and Agreement, the Department shall fully release Bond No. K02608747 and Bond No. B-465-1.

10. Remedies

a. In the event ACE fails to comply with the funding portion of this Consent Order and Agreement, the Department may 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 failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy.

11. 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
Arbrust Professional Center
RR#2 Box 603-C
Greensburg, PA 15601

with a copy to:

District Mining Operations
California District Mining Office
25 Technology Drive
California Technology Park
Coal Center, PA 15423

12. Correspondence with Carpentertown

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

Carpentertown Coal & Coke Company
Attn: Michael Baum

P.O. Box 309
Wynne, Arkansas 72396

b. Carpentertown 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. Correspondence with ACE

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

Henry R. Minissale, Esq.
ACE USA
1601 Chestnut Street - TL33L
P. O. Box 41484
Philadelphia, PA 19101-1484

With a courtesy copy to:

William T. Gorton, Esq.
Stites & Harbison
250 West Main Street
Suite 2300
Lexington, KY 40507-1758

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

Except for Paragraphs 5 and 6, 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 Carpentertown or ACE may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

20. 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 Carpentertown and ACE 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 each; that Carpentertown and ACE consent to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Carpentertown and ACE 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, 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 Carpentertown's and ACE's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR CARPENTERTOWN COAL AND COKE COMPANY:

President

FOR ACE USA:

[Title]

Attorney for ACE USA

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

Michael Terzetti

District Mining Manger

[Signature]

Assistant Counsel
[Southwest] Region OCC

of law. Signature by Carpentertown's and ACE's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR CARPENTERTOWN COAL AND COKE COMPANY:

Michael W. Baum

President

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

District Mining Manager

Assistant Counsel
[Southwest] Region OCC

FOR ACE USA:

[Title]

Attorney for ACE USA

CB

Year	EXHIBIT E Carpentertown Capital Improvement Sub-Account Balance	Capital Expense (F.V.)
Initial Deposit	\$32,870.00	
1	\$35,640.94	
2	\$38,645.47	
3	\$41,903.29	
4	\$45,435.73	
5	\$49,265.96	
6	\$53,419.09	
7	\$57,922.31	
8	\$62,805.17	
9	\$68,099.64	
10	\$73,840.44	
11	\$80,065.19	
12	\$86,814.69	
13	\$94,133.16	
14	\$102,068.59	
15	\$29,539.42	\$81,133.55
16	\$32,029.59	
17	\$34,729.69	
18	\$37,657.40	
19	\$40,831.92	
20	\$44,274.05	
21	\$48,006.36	
22	\$52,053.29	
23	\$56,441.38	
24	\$61,199.39	
25	\$66,358.50	
26	\$71,952.52	
27	\$78,018.12	
28	\$84,595.05	
29	\$91,726.41	
30	\$99,458.95	
31	\$107,843.34	
32	\$116,934.53	
33	\$126,792.11	
34	\$137,480.68	
35	\$149,070.31	
36	\$161,636.93	
37	\$175,262.93	
38	\$190,037.59	
39	\$206,057.76	

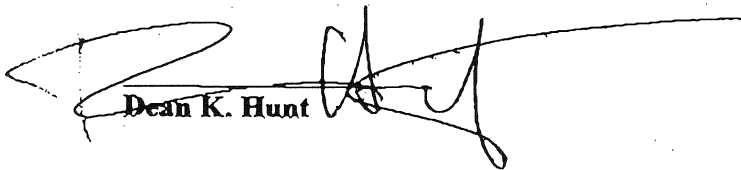
40	\$49,381.20	\$174,047.23
41	\$53,544.03	
42	\$58,057.80	
43	\$62,952.07	
44	\$68,258.93	
45	\$74,013.15	
46	\$80,252.46	
47	\$87,017.75	
48	\$94,353.34	
49	\$102,307.33	
50	\$110,931.84	
51	\$120,283.39	
52	\$130,423.28	
53	\$141,417.96	
54	\$153,339.50	
55	\$166,266.02	
56	\$180,282.24	
57	\$195,480.03	
58	\$211,959.00	
59	\$229,827.14	
60	\$249,201.57	
61	\$270,209.27	
62	\$292,987.91	
63	\$317,686.79	
64	\$344,467.78	
65	\$37.96	\$373,365.12
66	\$41.15	
67	\$44.60	
68	\$48.35	
69	\$52.41	
70	\$56.81	
71	\$61.58	
72	\$66.76	
73	\$72.36	
74	\$78.44	
75	\$85.03	




Dean K. Hunt, Esq.

520 West Short Street
Lexington, Kentucky 40507-1252
859-252-3476 fax: 859-252-4167
deankhunt@qx.net

Receipt

Received this 4th day of September, 2003 from ACE American Insurance Company,
\$115,372.04 payable to the Clean Streams Foundation Carpentertown Trust.


Dean K. Hunt

 ACE American Insurance Company ACE Property and Casualty Insurance Company Westchester Fire Insurance Company and Affiliated Insurers		40 147837
FILE NO 510 B 323774-0	CLAIM GROUP 	DATE 8/7/03
DOLLARS SCRIPTED One Hundred Fifteen Thousand Three Hundred Seventy-Two Dollars & 04/100		DOLLARS \$ 115,372.04
TO THE ORDER OF Clean Streams Foundation, Carpentertown Trust		AUTHORIZED SIGNATURE 
FLEET NATIONAL BANK, HARTFORD, CT		PHILA. H. O. Bond
FOR Full/Final Settlement of Claim	POLICYHOLDER Carpentertown Coal	
DATE OF EVENT 6/7/89	CLAIMANT Commonwealth of Pennsylvania	

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