

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

The Florence Mining Company	:	Florence Mine (Robinson) No. 1
P. O. Box 51	:	Florence Mine (Blacklick) No. 1
1820 Mulligan Hill Road	:	Florence Mine No. 2
New Florence, PA 15944	:	CMAP Nos. 32841319, 32841308,
	:	32831308
	:	Alternate Financial Guarantee

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 5th day of November, 1999, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), and The Florence Mining Company (“Florence”).

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. §§ 1406.1-1406.21; 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. Florence is a Pennsylvania corporation with a principal place of business at 1820

Mulligan Hill Road, P.O. Box 51, State Route 2011, New Florence, Pennsylvania 15944. In the past, Florence was engaged in the business of mining coal by the underground method in Pennsylvania. Florence's main business now is pumping and treating water from its closed underground mines to meet the applicable effluent standards. Ralph Woods is the President of Florence.

C. Florence is the permittee of the following underground coal mines which are associated with post-mining discharge liability:

NAME	CMAP NO.	TOWNSHIP	COUNTY
Florence No. 1 (Blacklick) Mine ("Blacklick")	32841308	East Wheatfield	Indiana
Florence No. 1 (Robinson) Mine ("Robinson")	32841319	West Wheatfield	Indiana
Florence No. 2	32831308	West Wheatfield	Indiana

D. All of the underground coal mines identified in Paragraph C are closed; coal is no longer being actively mined at any of the mines.

E. Florence No. 2 and Robinson share a common mine pool. Water is pumped from the mine, chemically treated and discharged to the Conemaugh River from facilities located on the Robinson permit.

F. Blacklick has a small post-mining seep at the Blacklick portal which is chemically treated, using soda ash, that discharges to Blacklick Creek, and another small seep at its Dias portal site, which is passively treated with limestone and meets effluent limits before it leaves the permitted area.

G. Surface reclamation, sealing and structure demolition is completed at the Blacklick, Robinson and Florence No. 2 mines, except for areas and facilities needed for mine pool monitoring, pumping and treating.

H. Florence submitted an application to combine the Florence No. 2, Robinson and Blacklick permits.

I. Florence spends, on average, approximately \$219,369 per year pumping and treating water at the Florence No. 2, Robinson and Blacklick mines. This liability may continue in perpetuity. The capital cost of replacing the aeration pond is approximately \$50,000. The costs of replacing other equipment at the treatment facility is expensed on an annual basis.

J. Raw water quality at the Robinson, Blacklick and Florence No. 2 mines are set forth in Exhibit A.

K. Florence currently pays its sureties in excess of \$50,000 per year for bond premiums for its mines.

L. Florence would like to utilize an alternate financial assurance mechanism which will eliminate its need to pay bond premiums to its sureties, and also provide adequate fiscal protection to the Department and the citizens of the Commonwealth should Florence no longer be able to discharge its water treatment obligations.

M. The parties have discussed the need to obtain accurate and timely information on the costs of operating and maintaining the treatment systems in order to calculate the proper funding for an alternative financial assurance mechanism.

N. The parties agree to use the information and figures which will be provided by the annual accountings to calculate and adjust 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 alternate financial mechanism.

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 Florence 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; 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, supra. The failure of Florence to comply with any term or condition of this Consent Order and Agreement shall subject Florence to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings.

a. Florence agrees that the findings in Paragraphs A through N are true and correct and, in any matter or proceeding involving Florence and the Department, Florence 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 accounting required by Paragraph 5 of this Agreement.

b. Actual Treatment Costs. The average of two consecutive years of the costs and expenses of treatment, calculated by using the Accountings for those two years.

c. Annual Anniversary Date. November 30 of each year or thirty (30) days after the last day of any fiscal year which Florence may adopt in the future.

d. Calculated Treatment Costs. The projected future annual cost of treatment, based on the Actual Treatment Cost, compounded at three percent (3%) annually. For purposes of this definition, the Actual Treatment Cost is assumed to be \$219,369; this assumption does not change unless an adjustment is made in accordance with Paragraph 12.

e. Formula. The equation used to calculate the Present Value of the future operation and maintenance ("O&M") of the Treatment Systems. The equation is:

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

where: PV = Present Value of the O&M Costs

A = Current Actual Treatment Cost

I = Interest Rate (assumed to be 9% or .09)*

E = Inflation Rate (assumed to be 3% or .03)*

* These assumptions will remain the same unless the parties agree otherwise.

f. Target Valuation. 115% of the present value of the future cost of treatment as determined by the Formula.

g. Trust Valuation. The cash, cash equivalents, investments at market value of investments and property currently held by the Trust at the close of business on the Annual Anniversary Date.

4. Annual Treatment Costs; Records; Factors; Accounting.

a. Florence shall keep accurate financial records of all the costs and expenses of annual treatment for each year. The various cost factors fall into several general categories, including, but not limited to: Reagent; Polymer; Electrical; Sludge Removal; Labor; Maintenance; Sampling; and Miscellaneous.

b. Florence shall keep separate records for each Treatment System (Robinson and Blacklick).

c. Florence shall provide an annual accounting of the costs and expenses of annual treatment (“the Accounting”) 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 November 1 and continuing through October 31 of each year, or other fiscal year as Florence 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 Florence and by the President of Florence attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

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

e. In the event of a dispute about the costs and expenses of treatment incurred by Florence, Florence shall bear the burden of proving the accuracy and completeness of the Accounting and the records upon which the Accounting is based. A report, which shall mean a Special Report, prepared under Generally Accepted Auditing Standards as to the treatment costs

incurred by Florence, prepared by an independent public accountant, shall satisfy Florence's burden of proof as to any of these matters.

6. Florence Mining Treatment Trust. Florence shall establish an irrevocable trust to be known as the Florence Mining Treatment Trust ("Trust" or "FMTT"). The purpose of the FMTT is to secure Florence's obligations to treat discharges of mine drainage, including its obligations to operate the Treatment Systems in perpetuity thereafter. The Trust shall also provide for the reclamation of the treatment facilities, should treatment no longer be needed. The agreement establishing the trust (the "Post-Mining Discharge Treatment Trust Agreement") is attached as Exhibit C.

7. Initial Payment to Trust. Upon its execution of this Consent Order and Agreement, Florence shall pay an amount of \$3,875,519.

8. Sub-Account For Aeration Pond Replacement.

a. In addition to the payment required under Paragraph 7, Florence shall pay an additional \$50,000 into the Trust for the purpose of replacing the Aeration Pond at the treatment plant. This payment shall also be made to the Trust upon the execution of this Consent Order and Agreement.

b. The sums deposited under this paragraph shall be used solely to fund the Sub-Account For Aeration Pond Replacement ("Sub-Account"), and shall not be used for any calculation of the trust valuation or adjustment made pursuant to Paragraph Nos. 9 - 11. Any earnings that are attributable to funds deposited into the Sub-Account shall be attributed back to the Sub-Account.

c. If, while Florence is operating its treatment facilities, it incurs costs to

replace the Aeration Pond, Florence may request that the Department direct the Trustee to make payments to Florence pursuant to such costs from the sub-account. If any funds remain in the sub-account after this distribution for equipment replacement, Florence may request that the Department direct the Trustee to close the sub-account and distribute any funds remaining in the sub-account to the Florence Mining Trust dated April 15, 1992. The Department's decision concerning any request from Florence for distribution of funds under this sub-paragraph shall be in the Department's sole discretion and shall not be appealable to the Environmental Hearing Board or any court. However, a request for distribution of funds from the sub-account shall not be unreasonably withheld.

d. If, while Florence is operating its treatment facilities, it incurs costs to replace the Aeration Pond with other treatment equipment, Florence may request that the Department direct the Trustee to make payments to Florence pursuant to such costs from the sub-account. If any funds remain in the sub-account after this distribution for equipment replacement, Florence may request that the Department direct the Trustee to close the sub-account and distribute any funds remaining in the sub-account to the Florence Mining Trust dated April 15, 1992. The Department's decision concerning any request from Florence for distribution of funds under this sub-paragraph shall be in the Department's sole discretion and shall not be appealable to the Environmental Hearing Board or any court. However, a request for distribution of funds from the sub-account shall not be unreasonably withheld.

e. If the raw water quality improves to the point that neither the aeration pond nor other treatment equipment is required to meet the water quality discharge limits, Florence may request that the Department direct the Trustee to close the sub-account and pay

any funds remaining in the sub-account to the Florence Mining Trust dated April 15, 1992. The Department's decision concerning any request from Florence for distribution of funds under this sub-paragraph shall be in the Department's sole discretion and shall not be appealable to the Environmental Hearing Board or any court. However, a request for distribution of funds from the sub-account shall not be unreasonably withheld.

9. Adjustments to the Target Valuation for Ten Percent Changes in Actual Treatment Costs.

a. If the Actual Treatment Cost calculated 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 Present Value using the Formula. A new Target Valuation will be determined by calculating 115% of the new Present Value.

b. If the new Target Valuation is calculated pursuant to this Paragraph, it will be the basis for future adjustments under Paragraphs 9 and 10 of this Agreement.

10. Trust Valuation Greater Than Target Valuation: Cash Payouts.

On any Annual Anniversary Date, if the Trust Valuation is greater than the Target Valuation, then the following cash payouts to Florence will be made:

a. At the end of any year in which the Trust Valuation is greater than the Target Valuation, cash payouts will be made to the Florence Mining Trust dated April 15, 1992 in an amount equal to the difference between the Trust Valuation and the Target Valuation.

11. Target Valuation Greater Than Trust Valuation: Additional Payments into the Trust. On any Annual Anniversary Date, if the Trust Valuation is less than the Target Valuation:

a. If the amount of the deficiency is less than or equal to the Actual Treatment

Cost Florence shall make an additional payment into the Trust in an amount equal to the difference between the Target Valuation and the Trust Valuation.

b. If the amount of the deficiency is greater than the Actual Treatment Cost Florence shall pay only up to the amount of the Actual Treatment Cost in the year in which the shortfall exists. If any payment made, as limited under this subparagraph, results in the Trust Valuation remaining less than the Target Valuation then additional payments, which are not to exceed the Actual Treatment Cost, shall be made in each subsequent year until the Trust Valuation equals or exceeds the Target Valuation.

12. Annual Meeting. The parties will meet on or before the 30th day following delivery to the Department of the Accounting of each year: to review and discuss the Accounting for the then completed fiscal year; to review the effectiveness of the Treatment Systems and any change in the fiscal year; to resolve any issues which arise as a result of that change or the performance of the FMTT; to calculate, recalculate or adjust the size of the Target Valuation, the Calculated Treatment Cost, and payouts from or additional payments into the FMTT; and to address any other issues that may concern the Agreement or its implementation.

13. Florence's Continuing Obligation. Neither Florence's agreement to fund the FMTT nor the full or partial funding of the Trust, nor the exhaustion of the Trust shall in any way limit Florence's obligation to operate the Treatment Systems. Furthermore, exhaustion of the Trust shall not excuse Florence from operating the Treatment Systems.

14. Upon the execution of this Consent Order and Agreement and full funding of the Trust, the Department shall combine the three permits into CMAP No. 32841319, and shall release all bonds posted by Florence except for the subsidence bond for CMAP No. 32841319.

15. Stipulated Civil Penalties.

a. In the event Florence fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, Florence 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
McMurray District Mining Office
3913 Washington Road
McMurray, PA 15317

c. Any payment under this paragraph shall neither waive Florence's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Florence's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Florence'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.

16. Additional Remedies.

a. In the event Florence 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. The remedies provided by this 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. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.

17. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. Florence reserves the right to challenge any action which the Department may take to require those measures.

18. Liability of Florence. Florence 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. Florence also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

19. Transfer of Sites.

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 Florence Sites or any part thereof.

b. If Florence intends to transfer any legal or equitable interest in the Florence Sites which is affected by this Consent Order and Agreement, Florence 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 McMurray District Mining Office of the Department of such intent.

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

Florence Sites. Florence waives any right that it may have to challenge the Department's decision in this regard.

20. 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
McMurray District Mining Office
3913 Washington Road
McMurray, PA 15317

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

William J. Young
Vice President
The Florence Mining Company
1820 Mulligan Hill Road
P. O. Box 51
New Florence, PA 15944

Florence 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.

22. Force Majeure.

a. In the event that Florence is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstances beyond Florence's control and which Florence, by the exercise of all reasonable diligence, is unable to prevent, then Florence 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 Florence's control. Florence'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. Florence shall only be entitled to the benefits of this paragraph if it notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by Florence to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) working days of its submission. Florence'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 Florence and other information available to the Department. In any subsequent litigation, Florence 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. Decisions under Consent Order. Except for Paragraphs 10 and 11, 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 Florence may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

29. Successors. This Consent Order and Agreement shall be fully and completely binding upon any successor of Florence. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) Florence consolidates with or merges into or permits to merge with it and Florence is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of Florence's properties or assets which include, but is not

limited to, voting stock of Florence. Successor does not include any corporation or other entity to which Florence transfers or assigns all or substantially all of its financial or non-financial liabilities. Florence shall notify the Department, without delay, of any successor as defined herein and shall provide such successor with a copy of this Consent Order and Agreement.

30. 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 Florence 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 Florence; that Florence consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Florence 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 Florence's

attorney certifies only that the agreement has been signed after consulting with counsel.


**FOR THE FLORENCE MINING
COMPANY:**

Ralph Woods
President

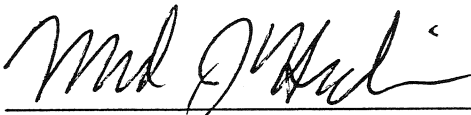
Todd E. Spahn
Secretary

James F. Beener
Attorney for The Florence Mining Company

**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**



Jeffrey Jarrett
Director
District Mining Operations

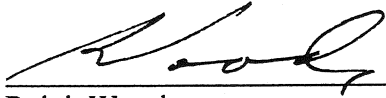


Michael J. Hellman
Assistant Counsel
Southwest Region OCC

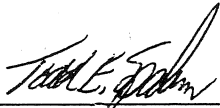
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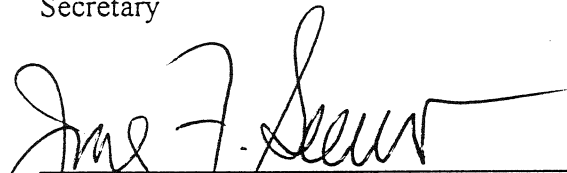
**FOR THE FLORENCE MINING
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**FOR THE COMMONWEALTH OF
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