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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION **KEYED IN**

NOV - 1 2005

In the Matter of:

Harbison-Walker Refractories Company	:	MDP No. 4475SM10 (Sanborne Mine)
Cherrington Corporate Center	:	Woodward Township, Clearfield County
400 Fairway Drive	:	Alternative Financial Assurance Mechanism
Moon Township, PA 15108	:	COA # <u>054026</u>

**A.P.**

POSTMINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 22<sup>nd</sup> day of September 2005, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Harbison-Walker Refractories Company ("Harbison-Walker").

A. The Department is the agency with authority to administer and enforce the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. § 691.1 et seq., ("Clean Streams Law"), the Noncoal Surface Mining Conservation and Reclamation Act, Act of December 19, 1984, P.L. 1093, No. 219, as amended, 52 P.S. § 3301 et seq., ("Noncoal Surface Mining Act"), Section 1917-A of the Administrative Code, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17, and the Rules and Regulations of the Environmental Quality Board adopted thereunder ("Rules and Regulations").

B. Harbison-Walker has offices at Cherrington Corporate Center, 400 Fairway Drive, Moon Township, Pennsylvania 15108, and has engaged in non-coal surface mining. Harbison-Walker filed for bankruptcy on February 14, 2002 at Case No.02-21627. The Department received notice of the bankruptcy, but filed no claim.

C. Harbison-Walker is the permittee of the following non-coal mine which is associated with a post-mining discharge:

NAME	PERMIT NO.	TOWNSHIP	COUNTY
Sanborne Mine	MDP #4475SM10	Woodward	Clearfield

D. Chemical treatment facilities were historically operated at the reclaimed Sanborne Mine until December 12, 2004 when a passive system approved by the Department was brought on-line.

E. The surface discharge at the Sanborne Mine is referred to as AMD17. The discharge appears as an area of diffuse surface seeps that originate and are treated entirely on permit. The historic chemical treatment system consisted of a large collection pond where the untreated raw water was periodically pumped through a pebble lime Aquafix system and then flowed by gravity through a series of three ponds prior to discharge ("Historic Treatment System"). The replacement treatment system is a passive system that was designed, approved by the Department and constructed ("Passive Treatment System"). This system includes collection ditches, forebay, vertical flow pond, deep and shallow water wetland, a polishing horizontal flow limestone bed (for optional use), and an integrated by-pass for the horizontal flow limestone bed.

F. Harbison-Walker has the legal responsibility to treat or abate the discharge identified in Paragraph E.

G. The effluent limits applicable to the discharge are: one outfall, pH not less than 6.0 and not more than 9.0, no floating solids or visible foam other than in trace amounts, and total suspended solids maximum of 90 mg/l.

H. Surface reclamation is completed at the Sanborne Mine, except for areas and facilities needed for treating AMD17.

I. Annual treatment costs for operating and maintaining the Historic Treatment System were \$31,832, and for the Passive Treatment System are estimated to be \$9,438. Capital costs for the Historic Treatment System were \$77,549, and for the Passive Treatment System are estimated to be \$85,000.

J. Raw water quality at AMD17 is set forth in Exhibit A.

K. Harbison-Walker has a surety bond in place in the amount of \$68,400.

L. Harbison-Walker is willing 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 its reclamation bond in accordance with this COA.

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 maintain the proper amount of financial backing.

N. The parties agree to use the information and figures which will be provided by the Accounting required by Paragraph 4 for the Historic Treatment System, or the Passive Treatment System as provided in paragraph 14, 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 alternative financial assurance 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 Harbison-Walker 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 3311(b) of the Noncoal Surface Mining Act, 52 P.S. § 3301 et seq.; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of Harbison-Walker to comply with any term or condition of this Consent Order and Agreement shall subject Harbison-Walker to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. Harbison-Walker agrees that the findings in Paragraphs A through N are true and correct and, in any matter or proceeding involving Harbison-Walker and the Department relating to this COA, Harbison-Walker 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 4 of this Agreement.

b. Actual Treatment Cost. For the Historic Treatment System, the average of three consecutive years of the costs and expenses of treatment, calculated by using the Accountings for those three years. For the Passive Treatment System, 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. Thirty (30) days after the last day of Harbison-Walker's fiscal year.

d. 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.

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

f. 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.

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

$$PV = (A/[E-1]) + A$$

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

A = Current Actual Treatment Cost

E = Expected annual earnings/Interest Rate (assumed to be \_\_\_% or \_\_\_)\*

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

\* This assumption will remain the same unless the parties agree otherwise.

- h. Primary Basis Valuation. 100% of the present value of the future cost of treatment as determined by the Formula.
- i. Primary Target Valuation. 116% percent of the present value of the future cost of treatment as determined by the Formula.
- j. Primary Trust Account. The sub-account within the Trust that is primarily used to finance annual operating and maintenance costs of the Treatment Systems.
- k. 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. Annual Treatment Costs; Records; Factors; Accounting

- a. Harbison-Walker 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: Labor, including benefits; Maintenance; Sampling; Overhead; and Miscellaneous. The individual item shall be tracked and reported for each general category.
- b. Harbison-Walker shall keep separate records for the Historic and Passive Treatment Systems:
- c. Harbison-Walker 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 January 1 and continuing December 31 of each year, or other fiscal

*due March 30 of each year*

year as Harbison-Walker 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 Harbison-Walker attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

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

e. In the event of a dispute about the costs and expenses of treatment incurred by Harbison-Walker, Harbison-Walker shall bear the burden of proving the accuracy and completeness of the Accounting and the records upon which the Accounting is based. A Special Report prepared under Generally Accepted Accounting Principles as to the treatment costs incurred by Harbison-Walker, prepared by an independent licensed public or certified public accountant, shall satisfy Harbison-Walker's burden of proof as to any of these matters.

5. Treatment Trust

a. Harbison-Walker shall establish an irrevocable trust to be known as the Harbison-Walker Sanborne Treatment Trust ("Trust"). The Trust shall secure Harbison-Walker's obligation to treat discharge AMD17, including its obligation to operate and maintain either the Existing Treatment System or the Passive Treatment System, as required by law, or until water treatment is no longer necessary, and to provide financial resources to the Department on behalf of the citizens of the Commonwealth to maintain and operate the Treatment Systems, and to treat the mine drainage in perpetuity in the event Harbison-Walker becomes unable or unwilling to meet its 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 agreement establishing the Trust is attached as Exhibit B.

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

6. Funding of the Primary Trust Account

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726,974<sup>00</sup> 1st pay

a. Initial Payment to the Primary Trust Account: Upon its execution of this Consent Order and Agreement, Harbison-Walker shall deposit an amount of \$25,000 into the Primary Trust Account.

b. Ongoing Payments to the Primary Trust Account: Harbison-Walker will deposit \$7,800 into the Primary Trust Account on a monthly basis until the Primary Trust Account is fully funded.

c. Surety Bonds as part of the Corpus of the Primary Trust Account: Upon its execution of this Consent Order and Agreement, Harbison-Walker shall deliver to the Trustee a fully executed rider or riders, containing language prepared by the Department and agreed to by Harbison-Walker, to the \$68,400 surety bond posted for the Sanborne Mine prior to this Consent Order and Agreement. This surety bond is more particularly described as Safeco Insurance Company of America, \$68,400.00 surety bond executed March 4, 1995, CLB Instrument No. 5730308.

7. Annual Distribution or Contribution Payments - Primary Trust Account

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

b. If the Primary Trust Valuation does not include the value of surety bonds, then Distribution Payments shall be made according to paragraph 7.c. Otherwise, Distribution Payments shall be made according to Paragraph 7.d. and e.

c. If at the end of any year the Primary Trust Valuation is greater than the Primary Target Valuation, then a Distribution Payment shall be made to Harbison-Walker. The amount of such Distribution Payment will be equal to the difference between the Primary Trust

Valuation and the Primary Target Valuation, or equal to the Calculated Treatment Cost, whichever is less. This amount is depicted graphically at Point 1, 2 & 3 on Exhibit C.

d. If at the end of any year the Primary Trust Valuation is greater than the Primary Target Valuation, then a Distribution Payment shall be made to Harbison-Walker in the form of a surety bond reduction of the surety bond(s) identified in Paragraph 6.c. This amount is depicted graphically at Point 1 on Exhibit C. Such surety bond reduction shall be in an amount determined by the following formula:

$$BR = ((1+RoR) (TR - B) + B) - (1.03(TV))$$

Where: BR = surety bond reduction  
B = surety bond amount  
RoR = assumed net rate of return or effective rate of return  
TV = Primary Target Valuation  
TR = Primary Trust Valuation

e. In the year the final bond is released, if the Primary Trust Valuation after the final surety bond release remains greater than the newly calculated Primary Target Valuation, then an additional Distribution Payment shall be made under paragraph 7.c.

f. If the Primary Trust Valuation is less than or equal to the Primary Target Valuation, but greater than or equal to the Primary Basis Valuation, then no Distribution Payment shall be made and no additional contribution shall be required. This provision is depicted graphically as Point 4 on Exhibit C.

g. If the Primary Trust Valuation is less than the Primary Basis Valuation, then Harbison-Walker shall make an additional contribution into the Primary Trust Account in an amount equal to the difference between the Primary Basis Valuation and the Primary Trust Valuation, or in an amount equal to the Calculated Treatment Cost, whichever is less except as provided in Paragraph 13.a. This amount is depicted graphically as points 5 & 6 on Exhibit C. This provision does not apply until Harbison-Walker has fulfilled its obligations to make ongoing payments under paragraph 6.b.



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

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

b. If the Actual Treatment Cost for any year is greater than or equal to 110% (\$35,015 for the Existing Treatment System or \$10,382 for the Passive Treatment System) percent or less than or equal to 90% percent (\$28,649 for the Existing Treatment System, or \$8,494 for the Passive Treatment System) of the Calculated Treatment Cost, the Department will calculate a new Primary Basis Valuation using the Formula and the newly determined Actual Treatment Cost. A new Primary Target Valuation will then be determined by calculating 116% percent of the new Primary Basis Valuation. Exhibit D is a graphical depiction of the adjustment.

9. Distribution Payments for Adjustments to the Primary Target Valuation

a. If the Primary Trust Valuation does not include the value of pledged surety bonds, then Distribution Payments shall be made according to paragraph 9.c. Otherwise, Distribution Payments shall be made according to paragraph 9.d.

b. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 8 above is less than the Primary Trust Valuation, no distribution payment shall be made under this paragraph.

c. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 8 above is based on a reduced Actual Treatment Cost, and the Primary Trust Valuation is greater than the newly calculated Primary Target Valuation, then a Distribution Payment shall be made to Harbison-Walker. The amount of such Distribution Payment will be equal to the percent change in Actual Treatment Cost times the Primary Trust Valuation, or in an amount equal to the difference between the Primary Trust Valuation and the newly calculated Primary Target Valuation, whichever is less. The amount of such Distribution Payment shall be determined by the following formulas:

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

Or

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

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

d. If the newly calculated Primary Target Valuation which has been adjusted under paragraph 8 above is based on reduced Actual Treatment Cost, and the Primary Trust Valuation is greater than the newly calculated Primary Target Valuation, then a distribution payment shall be made to Harbison-Walker in the form of a surety bond reduction. Such bond reduction shall be in an amount determined by the following formula:

$$BR = (1 + \text{RoR}) (TR - B) + B - (1.03(\text{TV}))$$

Where: BR = surety bond reduction  
RoR = assumed net rate of return or effective rate of return  
TV = Primary Target Valuation  
TR = Primary Trust Valuation  
B = surety bond amount

e. In the year the final surety bond is released, if the Primary Trust Valuation after the final surety bond release remains greater than the newly calculated Primary Target Valuation, then an additional Distribution Payment shall be made under Paragraph 9.c.

#### 10. Capital Improvement Account

a. Harbison-Walker 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, and said balance shall be adjusted in accordance with paragraph 14 hereof.

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 treatment system 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 current year shall be equal to the sum of all Present Values calculated in Paragraph 10.b.v. and vii above.
- ix. The required balance in the Capital Improvement Account shall be recalculated on an annual basis and each time a Distribution Payment is contemplated under Paragraph 12. Such recalculation shall be deemed an amendment to Exhibit E and this Consent Order and Agreement, and shall

be used in making all future calculations involving the Capital Improvement Account.

11. Transfer of Funds to the Capital Improvement Account

- a. The provisions of this Paragraph do not apply if the Primary Trust Valuation includes the value of surety bonds.
- b. If the Primary Trust Valuation after any Distribution Payment under paragraph 7 above 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.

12. Distribution Payments from the Capital Improvement Account

- a. A distribution payment shall be made to Harbison-Walker any time a planned capital replacement is made as indicated on Exhibit E. The capital replacement and maintenance activities shall be made as needed, which may be sooner or later than the projected time. The amount of the Distribution Payment shall be equal to the calculated cost of the Capital Improvement as indicated on Exhibit E, or in an amount equal to the difference between the current balance in the Capital Improvement Account and the required balance after the capital improvement Distribution Payment, whichever is less.
- b. Each time a Distribution Payment from the Capital Improvement Account is contemplated under this Paragraph or Paragraph 13 below, the required balance in the Capital Improvement Account must be recalculated to determine the required balance after the proposed Distribution Payment, and to determine the appropriate Distribution Payment.

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

If the Primary Trust Valuation exceeds the Primary Target Valuation in the Primary Trust Account, or if the balance in the Capital Improvement Account exceeds the required balance as indicated on Exhibit E, then such surplus funds may be used for the following purposes:

a. Surplus funds in the Capital Improvement Account shall be transferred to the Primary Trust Account to reduce or completely satisfy Harbison-Walker's obligation to make a contribution payment under Paragraph 7.g. This amount is depicted graphically at Point 5 on Exhibit C. However, the amount of surplus funds transferred to the Primary Trust Account may exceed Harbison-Walker's obligation under paragraph 7.g. if additional funds are needed so that the Primary Trust Valuation equals the Primary Basis Valuation. This amount is depicted graphically at Point 6 on Exhibit C.

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

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the Harbison-Walker to finance implementation of a new treatment technology, provided the application of such treatment technology is first approved by the Department.

d. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by the Harbison-Walker to implement remediation or abatement activities to reduce or eliminate the discharge, or to improve the quality of the discharge, provided the Department first approves such activities.

14. a. Harbison-Walker constructed and is operating the Passive Treatment System to treat AMD17 in accordance with plans approved by the Department.

b. Harbison-Walker will fund the Trust monthly based on costs to fund the Trust for the Historic Treatment System over a period of eight years; provided, however, that once the Passive Treatment System has achieved compliance with applicable effluent limitation of

25 Pa. Code § 77.522 for twenty-four consecutive months, the Trust calculations will be adjusted to substitute the Passive Treatment System costs for those of the Historic Treatment System, and any distributions to Harbison-Walker under the provisions of this Consent Order and Agreement shall be promptly made.

15. Real and Personal Property

Harbison-Walker has been operating as a debtor in possession under chapter 11 of the United States Bankruptcy Code since February 14, 2002, and as such it retains control of all its real and personal property. Harbison-Walker expects to reorganize and emerge from chapter 11 as an operating entity in essentially the same form that it currently operates. There is no intention to liquidate Harbison-Walker or any significant portion of its real and personal property. There is nothing in Harbison-Walker's currently proposed plan of reorganization that would interfere with its ability to carry out its obligations thereunder, and there is no intention of amending the proposed plan in a way that would alter that fact.

16. Public Liability Insurance

a. Harbison-Walker shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the Treatment Systems and the real and personal property which is identified in the Post Mining Treatment Trust Agreement as part of the Trust Principal. The Trustee and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policy.

b. In addition to the requirements of Paragraph 16.a. the public liability insurance shall also be on the terms and conditions required by 25 Pa. Code § 86.168(a)-(e), or, in the alternative, as provided by Paragraph 16.c.

c. In lieu of the insurance requirements of Paragraph 16.b. and, in addition to the requirements of Paragraph 16.a., the public liability insurance shall be written on an occurrence basis and shall provide bodily injury and property damage coverage in the minimum amounts of \$250,000 per person and \$1,000,000 per occurrence. The insurance shall include a rider requiring the insurer to notify the Department 30 days prior to substantive changes being made to

the policy or prior to termination or failure to renew. Proof of insurance shall consist of a certificate of insurance filed annually with the Department which certifies Harbison-Walker has a public liability insurance policy in force meeting the requirements of this Paragraph.

17. 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 trust fund; to calculate, recalculate or adjust the size of the Primary Target Valuation, the Calculated Treatment Cost, and distribution payments from or additional payments into the trust fund; and to address any other issues that may concern this Consent Order and Agreement or its implementation.

18. Harbison-Walker's Continuing Obligation

Neither Harbison-Walker's agreement to fund the Trust nor the full or partial funding of the Trust, nor the exhaustion of the Trust shall in any way limit Harbison-Walker's obligation to operate the Passive Treatment System.

Furthermore, exhaustion of the Trust shall not excuse Harbison-Walker from Harbison-Walker's obligation to adequately treat or to abate the discharge.

19. Stipulated Civil Penalties

a. In the event Harbison-Walker fails to comply in a timely manner with any term or provision of this Consent Order and Agreement within thirty (30) days after receipt of written notice from the Department specifying the specific provision Harbison-Walker is not in compliance with, Harbison-Walker 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. The payment shall be by corporate check or the like, made payable to the "Commonwealth of Pennsylvania" and submitted to the:

Compliance Specialist  
Department of Environmental Protection  
Moshannon District Mining Operations  
186 Enterprise Drive  
Philipsburg, PA 16866

c. Any payment under this paragraph shall neither waive Harbison-Walker's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Harbison-Walker's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Harbison-Walker'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 within thirty (30) days after the written notice specified in paragraph 19(a) above.

20. Additional Remedies

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

b. In the event Harbison-Walker defaults on the obligations of this Consent Order and Agreement Harbison-Walker may be subject to a permit block on the Department's compliance tracking system and the Department may, in addition to any other remedy or penalty prescribed herein, list Harbison-Walker as a violator on the Department's compliance tracking system. Said permit block and/or listing will be removed upon Harbison-Walker's correction of any such default.

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

21. Reservation of Rights

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

22. Liability of Harbison-Walker

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

23. 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 Sanborne Mine or any part thereof.

b. If Harbison-Walker intends to transfer any legal or equitable interest in the Sanborne Mine which is affected by this Consent Order and Agreement, Harbison-Walker 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 Director, District Mining Operations of such intent.

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

24. Correspondence with Department

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

Michael W. Smith, District Mining Manager  
Department of Environmental Protection  
Moshannon District Mining Operations  
186 Enterprise Drive  
Philipsburg, PA 16866

25. Correspondence with Harbison-Walker

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

John Crooks  
Special Projects Manager  
Cherrington Corporate Center  
400 Fairway Drive  
Moon Township, PA 15108

610-780-8713

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

26. Force Majeure

a. In the event that Harbison-Walker 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 Harbison-Walker's control and which Harbison-Walker, by the exercise of all reasonable diligence, is unable to prevent, then Harbison-Walker 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 Harbison-Walker's control. Harbison-Walker'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. Harbison-Walker shall only be entitled to the benefits of this paragraph if it notifies the Department within ten (10) working days by telephone and within twenty (20) 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 Harbison-Walker 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. Harbison-Walker'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 Harbison-Walker and other information available to the Department. In any subsequent litigation, Harbison-Walker shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

27. Severability

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

28. Entire Agreement

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

29. Attorney Fees

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

30. Modifications

Except as provided in Paragraph 10.c.ix, no changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

31. Titles

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

32. Decisions under Consent Order

Except for decisions of the Department under paragraphs 4 through 14, 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 Harbison-Walker may have to decisions other than those under paragraphs 4 through 14 will be preserved until the Department enforces this Consent Order and Agreement.

33. Successors

This Consent Order and Agreement shall be fully and completely binding upon any successor of Harbison-Walker. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) Harbison-Walker consolidates with or merges into or permits to merge with it and Harbison-Walker is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of Harbison-Walker's properties or assets which include, but is not limited to, voting stock of Harbison-Walker. Successor does not include any corporation or other entity to which Harbison-Walker transfers or assigns all or substantially all of its financial or non-financial liabilities.

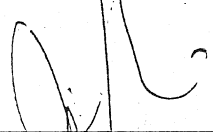
Harbison-Walker shall notify the Department, without delay, of any successor as defined herein and shall provide such successor with a copy of this Consent Order and Agreement.


34. Counterpart Signatures

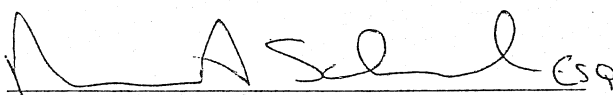
The parties agree to execute this Consent Order and Agreement by counterpart signatures transmitted via facsimile.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Harbison-Walker 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 Harbison-Walker; that Harbison-Walker consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Harbison-Walker 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 Harbison-Walker's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR HARBISON-WALKER  
REFRACTORIES COMPANY:

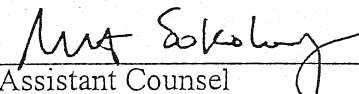
  
\_\_\_\_\_  
President or Vice President

  
\_\_\_\_\_  
Secretary or Treasurer

  
\_\_\_\_\_  
Attorney for Harbison-Walker

FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION:

  
\_\_\_\_\_  
District Mining Manager

  
\_\_\_\_\_  
Assistant Counsel