

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

REM Coal Co., Inc.

~~RR3 Box 369~~

Brookville, PA 15825-8412

present address
104-2 Deer Run A.D.B

ACE-INA

1601 Chestnut Street

Philadelphia, PA 19101-1484

Surface Mining Permit Nos. 33810109 &
16753059

R.E.M. Coal Company, Inc

Oliveburg Mine

Oliver Township, Jefferson County,

Kemmer Mine,

Limestone Township, Clarion County

Pennsylvania

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 4th day of September,

2008, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (the "Department") and R.E.M. Coal Co., Inc. ("R.E.M."), the operator, and ACE-INA ("ACE-INA"), the primary Surety on the operator's reclamation performance bonds posted at the Kemmer and Oliveburg Mine Sites.

FINDINGS

The Department has found and determined the following findings which ACE-INA and R.E.M. agree are true and correct.

Parties

A. The Department is the agency with the duty and authority to administer and enforce the Surface Mining Conservation and Reclamation Act of May 31, 1945, P.L. 1198, as amended, 52 P.S. § 1396.1 *et seq.* ("Surface Mining Act"); the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. § 691.1 *et seq.* ("Clean Streams Law"); Section 1917-A

of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-7 (“Administrative Code”) and the rules and regulations promulgated thereunder (the “Rules and Regulations”).

B. ACE-INA is a corporation with a business address of 1601 Chestnut Street, Philadelphia, PA 19101-1484, whose business includes, among other things, the issuance of surety bonds for mining operations in Pennsylvania.

C. Mid-Continent is a corporation with a business address of 124 North Center Avenue, Somerset, Pennsylvania, 15501, whose business includes, among other things, the issuance of surety bonds for mining operations in Pennsylvania.

D. R.E.M. is a corporation with a mailing address of Attn: Don Bullers, RR 3, Box 369, Brookville, PA 15825. R.E.M. was engaged in the business of mining coal in Pennsylvania, and operated a surface mine known as Oliveburg in Oliver Township, Jefferson County, Pennsylvania and a surface mine known as Kemmer in Limestone Township, Clarion County, Pennsylvania.

E. At all times material hereto, R.E.M. was authorized to conduct surface mining in Pennsylvania pursuant to Surface Mining Operator’s License No. 100932.

F. R.E.M. conducted coal surface mining at the Oliveburg Mine in Oliver Township, Jefferson County, pursuant to Surface Mining Permit (“SMP”) No. 33810109 issued by the Department.

G. R.E.M. conducted coal surface mining at the Kemmer Mine in Limestone Township, Clarion County, pursuant to Surface Mining Permit (“SMP”) No. 16753059.

H. In support of, and as a condition to, the Department’s issuance of SMP No. 33810109, R.E.M. posted various bonds, the remainder of which are as follows:

Bond No.	Bond Amount	Surety
BD2450	\$11,280.00	Mid-Continent
S806238	\$1,640.00	ACE-INA
S807877	\$7,840.00	ACE-INA
S810713	<u>\$8,880.00</u>	ACE-INA
Total	\$29,640.00	

Mid-Continent and ACE-INA are co-sureties on the Oliveburg Mine Site.

I. In support of, and as a condition to, the Department's issuance of SMP No. 16753059, R.E.M. posted cash collateral and various bonds, the remainder of which are as follows:

Bond/Account No.	Amount	Surety/Holder
K02982389	\$298,835.00	ACE-INA
K03369067	\$6,180.00	ACE-INA
K03368567	\$22,140.00	ACE-INA
K03445136	\$17,500.00	ACE-INA
CD182685	<u>\$29,800.00</u>	First Seneca Bank
Total	\$374,455.00	

J. Unauthorized post-mining discharges of acid mine drainage exist on both the Oliveburg and Kemmer Mine Sites.

K. The Department prepared an estimate of a combined treatment trust account for the Oliveburg and Kemmer Mine Sites. Full funding for the Oliveburg/Kemmer treatment trust account is \$207,673.00.

L. The Department has not taken formal action to adjust the value of the bonds nor have the bonds on the Oliveburg and Kemmer Mine Sites been forfeited.

M. The Department has calculated the contributions of REM and the Sureties, INA-ACE and Mid-Continent to the treatment trust fund for the Kemmer and Oliveburg Mine Sites as follows:

ACE-INA	\$166,593.00
Mid-Continent	\$11,280.00
R.E.M.	\$29,800.00

N. ACE-INA has represented to the Department that it is willing to set aside its share of funds for the establishment of a trust fund as a financial guarantee for the continual operation and maintenance of the treatment systems on the Oliveburg and Kemmer Mine Sites.

O. ACE-INA has represented to the Department that it is willing to complete specific repairs at the Oliveburg and Kemmer Mine Sites, as described in Attachment A.

P. R.E.M. has represented to the Department that it is willing to set aside funds from the certificate of deposit held by First Seneca Bank, now known as National City Bank, for the establishment of a trust fund as a financial guarantee for the continued operation and maintenance of the treatment systems on the Oliveburg and Kemmer Mine Sites.

Q. Mid-Continent has not responded to correspondence and phone calls concerning the establishment of the treatment trust fund from R.E.M. and the Department. This CO&A does not affect Mid-Continent's responsibilities and liability for the Oliveburg Mine.

R. The continued operation and maintenance of the Oliveburg and Kemmer Mine Sites treatment system can be accomplished more quickly and effectively by ACE-INA and R.E.M. under this Consent Order and Agreement than it could if the Department forfeited and collected these bonds for each site and readjusted the value of the bonds.

The parties desire to resolve the foregoing matters without resorting to litigation.

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 ACE-INA and R.E.M. as follows:

Authority. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 4.2 and 4.3 of the Surface Mining Act, 52 P.S. §§ 1396.4b, 1396.4c, and 1396.4(h) Section 5 of the Clean Streams Law, 35 P.S. § 691.5, and Section 1917-A of the Administrative Code of 1929, 71 Pa. C.S. § 510- 7. The failure of ACE-INA or R.E.M. to comply with the terms or conditions of this Consent Order and Agreement shall subject ACE-INA or R.E.M. to all penalties and remedies provided by those statutes for failing to comply with an Order of the Department.

2. **Findings.** ACE-INA and R.E.M. agree that the findings in Paragraphs A through R are true and correct and, in any matter or proceeding involving the Department and ACE-INA and/or R.E.M., ACE-INA and R.E.M. shall not challenge the accuracy or validity of these findings. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any other matter or proceeding.

Repairs to Existing Treatment Systems at Oliveburg and Kemmer Mine Sites. The plan for repairs to the existing acid mine drainage systems at Oliveburg and Kemmer Mine Sites is attached as Attachment A and is approved by the Department and incorporated herein as an obligation of ACE-INA. ACE-INA need not obtain any additional authorizations from the Department. The Department's agreement to settle and release in accordance with paragraph 5 is in consideration of ACE-INA's implementation of the approved reclamation repairs under the schedule set forth in Attachment A.

4. **Financial Guarantee for Treatment Trust.** Within thirty (30) days of the execution of this Consent Order and Agreement and completion of the Repairs to the Existing Treatment Systems at the Oliveburg and Kemmer Mine sites described in Paragraph 3 above, whichever is later, however, no later than ^{August 15 2008} ~~May 13~~, 2008, the Sureties and R.E.M. shall enter into a Participation Agreement, and fully fund, a financial mechanism through the Clean Streams Foundation Trust (the "Trust") as a financial guarantee for the treatment of the discharges on the Oliveburg and Kemmer Mines in the amount of \$207,673.00. ACE-INA will fund the trust by contributing \$166,593.00 in cash. Mid-Continent will fund the Trust by contributing \$11,280.00 in cash. R.E.M. will fund the Trust by contributing \$29,800.00 in cash.

5. **Release of Financial Guarantee and Return of Any Monies Paid.** Within fifteen (15) days of execution of the Participation Agreement for the Trust and full funding of the Trust, the Department shall release and forever discharge the active existing financial guarantees issued for the Oliveburg and Kemmer Mine Sites to ACE-INA and R.E.M. These releases and waivers of the financial guarantees posted by ACE-INA and R.E.M. have no effect on Mid-Continent's continuing obligation.

6. **Limitation of Liability.** For purposes of this Consent Order and Agreement, ACE-INA shall not, by virtue of this Consent Order and Agreement or any activities hereunder: (i) be deemed an "operator of a mine" or an "occupier of land" or a party related to R.E.M. under Section 315 or 316 of The Clean Streams Law, 35 P.S. §§ 691.315 or 691.316, or under the Surface Mining Act, or any regulations promulgated thereunder; or (ii) be deemed to have assumed any liabilities or obligations of R.E.M., except to the extent expressly set forth in this Consent Order and Agreement. This Consent Order and Agreement is not intended to create rights in any party other than the parties who have signed this Consent Order and Agreement.

7. **Existing Obligations Unaffected.** Nothing set forth in this Consent Order and Agreement is intended, nor shall be construed, to relieve or limit ACE-INA' or R.E.M.'s obligation to comply with any existing or subsequent statute, regulation, permit or order. In addition, nothing set forth in this Consent Order and Agreement is intended, nor shall be construed, to authorize any violation of any statute, regulation, order, or permit issued or administered by the Department.

8. **Additional Remedies.** In the event that ACE-INA or R.E.M. fail to comply with any provision 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. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy.

9. **Reservation of Rights.** With regard to matters not addressed by this Consent Order and Agreement, the Department specifically reserves all rights to institute equitable, administrative, civil and criminal actions for any past, present or future violation of any statute, regulation, permit or order, or for any pollution or potential pollution to the air, land or waters of the Commonwealth.

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

Javed Mirza
District Mining Manager
Knox District Office
White Memorial Building
P.O. Box 669
Knox, PA 16232
(814) 797-1191

with a copy to:

Michael J. Heilman
Southwest Regional Office
Office of Chief Counsel
400 Waterfront Drive
Pittsburgh, PA 15222-4745

11 Correspondence with ACE-INA. All correspondence with ACE-INA

concerning this Consent Order and Agreement shall be addressed to:

John J. Mangan, Jr.
ACE-INA
436 Walnut Street WA10A
Philadelphia, PA 19106
(215) 640-4569

with a copy to:

Stephen G. Allen, Esquire
Stites & Harbison PLLC
250 Lexington Financial Center
Lexington, KY 40507-1758
(859) 226-2300

ACE-INA shall notify the Department whenever there is a change in the contact person's name, title, or address. ACE-INA agree that 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.

12. Correspondence with R.E.M., the Operator. All correspondence with R.E.M.

concerning this Consent Order and Agreement shall be addressed to:

Attn. Don Bullers
RR 3 Box 369
Brookville, PA 15825-8412

R.E.M. shall notify the Department whenever there is a change in the contact person's name, title, or address. R.E.M. agrees that service of any notice or any legal process for any

purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

13. Force Majeure.

a. In the event that ACE-INA or R.E.M. are prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstances beyond ACE-INA' or R.E.M.'s control and which ACE-INA or R.E.M., by the exercise of all reasonable diligence, are unable to prevent, then ACE-INA or R.E.M. 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 ACE-INA' or R.E.M.'s control. ACE-INA' or R.E.M.'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. ACE-INA and R.E.M. 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 ACE-INA or R.E.M. 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. ACE-INA' or R.E.M.'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 ACE-INA or R.E.M. and other information available to the Department. In any subsequent litigation, ACE-INA or R.E.M. shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

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

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

16. **Modifications.** Except as provided in Paragraph 13 (relating to Force Majeure) 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.

17. **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.

18. **Decisions under Consent Order.** Any decision which the Department makes under the provisions of this Consent Order and Agreement shall not be deemed to be a final action under 25 Pa. Code § 1021.2(a), nor an adjudication under 2 Pa. C.S. § 101, and shall not be appealable to the Environmental Hearing Board or to any court. Any objection that ACE-INA or R.E.M. may have to the decision will be preserved until the Department enforces this Consent

Order and Agreement. At no time, however, may ACE-INA or R.E.M. challenge the content or validity of this Consent Order and Agreement or the Findings agreed to in this Consent Order and Agreement.

19. **Titles.** A title used at the beginning of any Paragraph of this Consent Order and Agreement is provided solely for the purpose of identification and shall not be used to interpret that Paragraph.

20. **Counterparts.** This Agreement or any amendment thereto, may be executed in multiple counterparts, each of which shall be deemed an original agreement, and all of which shall constitute one agreement between the parties.

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 ACE-INA and R.E.M. 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 ACE-INA and R.E.M.; that ACE-INA and R.E.M. consent to the entry of this Consent Order and Agreement and the foregoing Findings as an ORDER of the Department; and that ACE-INA and R.E.M. 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

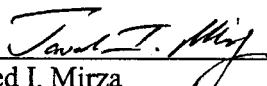
Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa.C.S. § 103(a); Chapters 5A and 7A; or any other provision of law. Signature of the attorney for ACE-INA certifies only that the agreement has been signed after consulting with counsel.

FOR ACE-INA:


Name
Title

Stephen G. Allen, Esq.
Attorney for ACE-INA

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




Javed I. Mirza
District Mining Manager




Michael J. Heilman
Assistant Regional Counsel

FOR R.E.M. COAL CO.:



Name
Title

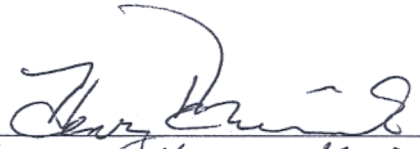


Attorney for R.E.M. Coal Company

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); Chapters 5A and 7A; or any other provision of law. Signature of the attorney for ACE-INA certifies only that the agreement has been signed after consulting with counsel.

FOR ACE-INA:

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:


Name Henry K. Minisda
Title VP

Javed I. Mirza
District Mining Manager


Stephen G. Allen, Esq.
Attorney for ACE-INA

Michael J. Heilman
Assistant Regional Counsel

FOR R.E.M. COAL CO.:

Name
Title

Attorney for R.E.M. Coal Company

ATTACHMENT A

Kemmer Repairs

Install an enhanced passive manganese treatment bed by construction of 200 ft by 25 ft aerobic limestone bed, approximately 4 ft deep.

Oliveburg Repairs

Remove clogged pipe on drainage system and replace it with a drainage ditch.

Schedule for Completion of Repairs

Kemmer: One Hundred Twenty (120) days following execution of this Consent Order & Agreement

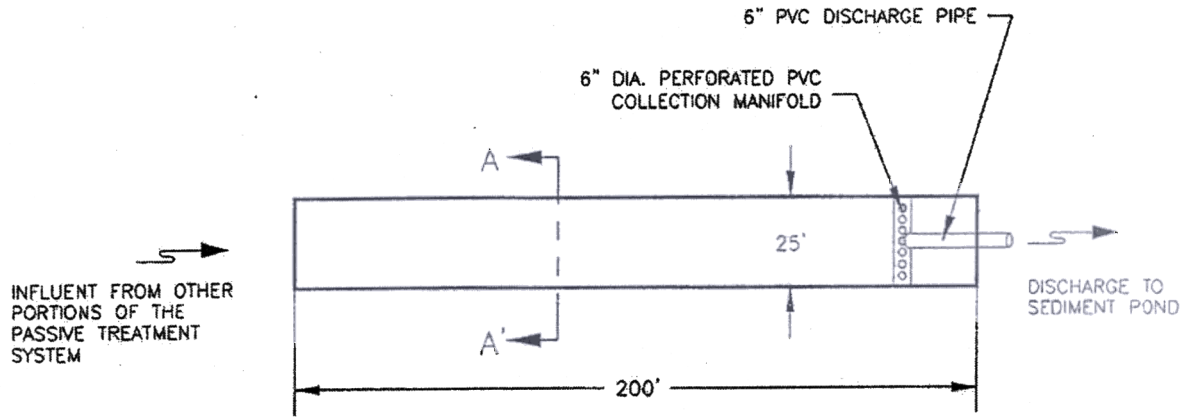
Oliveburg: Sixty (60) days following execution of this Consent Order & Agreement

SKETCH OF AEROBIC LIMESTONE BED PROPOSED TO BE
 CONSTRUCTED AT R.E.M. COAL CO., KEMMER MINE, SMP #16753059
 LIMESTONE TOWNSHIP, CLARION COUNTY
 NOT TO SCALE

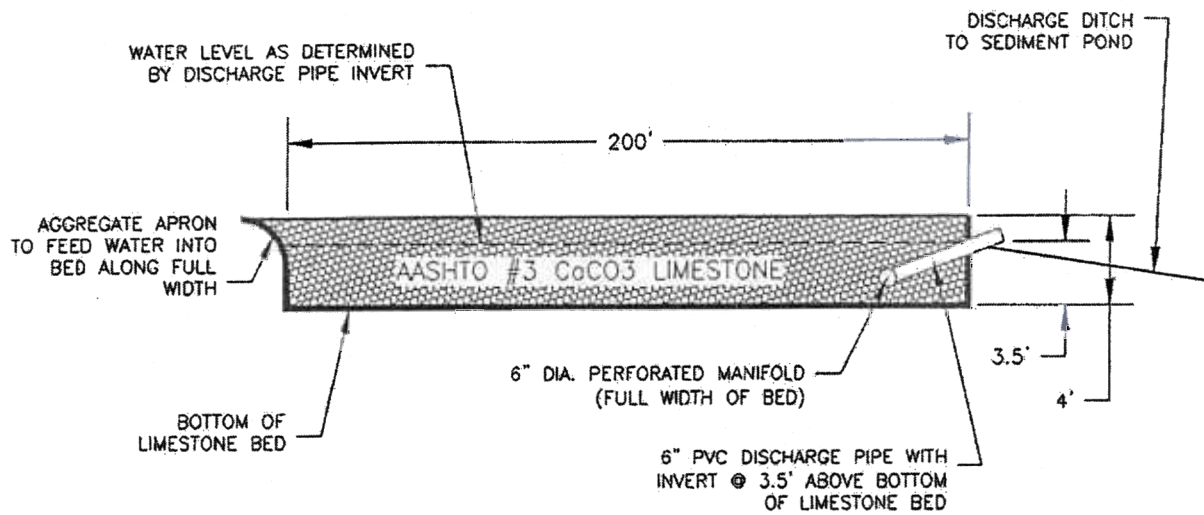
JACK R. CHAMBERLIN
 PROFESSIONAL LAND SURVEYOR
 SURVEYING AND CONSULTING
 128 CHAMBERLIN ROAD, BROOKVILLE, PA 15825

REV: 11/25/02

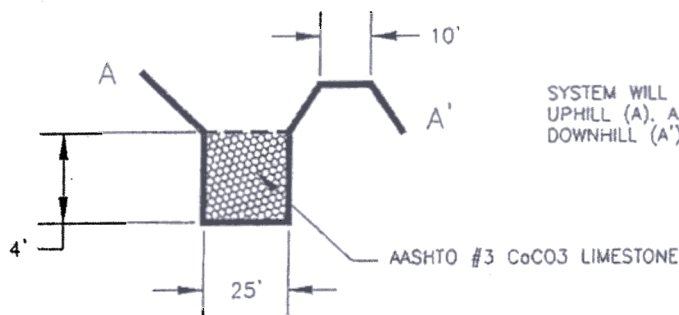
NOTE: INFORMATION CONTAINED IN THIS SKETCH PROVIDED BY HEDIN ENVIRONMENTAL



PLAN VIEW



SIDE VIEW



SYSTEM WILL BE CONTAINED BY EXISTING SLOPE
 UPHILL (A), AND BY CONSTRUCTED BERM
 DOWNHILL (A')

SECTION A-A'

COPY OF A PORTION OF R.E.M. COAL CO., INC. MINING PERMIT MAP

**FOR
KEMMER MINE, SMP # 16753059**

LIMESTONE TOWNSHIP

CLARION COUNTY

APPROXIMATE LOCATION OF PROPOSED AEROBIC LIMESTONE BED

SCALE : 1" = 400'

ORIGINAL MINING PERMIT MAP DONE BY WALTER E. FIKE PLS

