

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

ACE-INA	:	EHB Docket No. 2001-096-R
Surface Mining Permit No. 56733134	:	Consolidated with 2001-66-R
1501 Chestnut Street	:	Mine Drainage Permit No. 4073SM7
Philadelphia, PA 19192-2201	:	Black Township
	:	Somerset County, Pennsylvania
American States Insurance Company	:	(Soberdash Coal & Coke Co.)
1600 N. Collins Blvd., Suite 3000	:	
Richardson, TX 75083-3960	:	
	:	
	:	
	:	
	:	Surface Mining Permit No. 56841316
	:	Brothersvalley Township
	:	Somerset County, PA
	:	(Top Grade Fuels, Inc.)

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 28 day of July, 2003, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (the "Department") and ACE-INA ("ACE-INA"), and American States Insurance Company ("American States") (collectively, the "Sureties").

FINDINGS

The Department has found and determined the following findings which the Sureties 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. § 510-17 (“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 19192-2201, whose business includes, among other things, the issuance of surety bonds for mining operations in Pennsylvania.

C. ACE-INA is the successor in interest to Cigna Property & Casualty Inc. Co. (“Cigna”), and the Insurance Company of North America (“INA”), and whose businesses included, among other things, the issuance of surety bonds for mining operations in Pennsylvania.

D. American States is a corporation with a business address of 1600 North Collins Boulevard, Suite 3000, Richardson, TX 75083-3960, whose business includes, among other things, the issuance of surety bonds for mining operations in Pennsylvania.

E. Soberdash Coal and Coke Company (“Soberdash”) is a corporation with a business address of RR 2, Box 55A, Dunbar, PA 15431, whose business included the surface and underground coal mining in Pennsylvania.

F. Top Grade Fuels, Inc. (“Top Grade”) is a corporation with a business address of RR2, Box 55A, Dunbar, PA 15431, whose business included the surface and underground mining of coal in Pennsylvania and is affiliated under common control and ownership with Soberdash.

Dunmeyer Mine

G. At all time material hereto, Soberdash was authorized to conduct surface mining in Pennsylvania pursuant to Surface Mining Operator's License No. 1205, which is now expired.

H. Soberdash conducted coal surface mining at the Dunmeyer Mine in Black Township, Somerset County, pursuant to Surface Mining Permit ("SMP") No. 56733134 and Mine Drainage Permit ("MDP") No. 4073SM7 issued by the Department.

I. In support of, and as a condition to, the Department's issuance of SMP No. 56733134, Soberdash posted the following bonds in the following amounts issued by the following sureties:

Bond No.	Bond Amount	Surety
KO2917804	\$336,000	Cigna
KO3369468	\$163,000	INA
KO3505236	<u>\$ 31,700</u>	INA
Total	\$530,700	

J. In support of, and as a condition to, the Department's issuance of MDP No. 4073SM7, Soberdash posted the following bonds in the following amounts issued by the following sureties:

Bond No.	Bond Amount	Surety
EX323-182	\$ 5,600	American States
EX323-182A	\$ 18,632	American States
EX348-033	\$ 14,440	American States
EX411-476	\$ 37,240	American States
EX471-244	\$ 3,000	American States
EX452-494	<u>\$105,800</u>	American States
Total	\$184,712	

K. Various postmining discharges emanating from and hydrologically connected to SMP No. 56733134 and MDP No. 4073SM7 developed on the Dunmeyer Site. These discharges are commonly referred to as discharges 1, 2, 3, 4, 5, MD-1 and MD-2. These discharges violate

the effluent limitations of 25 Pa. Code § 87.102 and conditions of the SMP, and are contributing to the degradation of the receiving stream, Weimer Run.

L. In addition, groundwater discharges as base flow into the upper reaches of Weimer Run. These discharges contribute to Weimer Run as base flow off of the Dunmeyer Mine to the north of the permit area, but are hydrologically connected to SMP No. 56733134 and MDP No. 4073SM7. These discharges are contributing to the degradation of Weimer Run.

M. Further, several portions of the Dunmeyer Site were not fully reclaimed. Specifically, a pond was not reclaimed, surface drainage control is incomplete, and abandoned equipment, water treatment facilities, and structures remain on site.

N. On September 8, 2000, the Department inspected the Site and determined that:

a. Soberdash had failed to construct and maintain a treatment system to treat discharges MD-1 and MD-2 and that these discharges were violating the effluent limitations of 25 Pa. Code § 87.102; and

b. Soberdash had failed to construct and maintain a treatment system to treat discharges 1, 2, 3, 4, and 5 and that these discharges were violating the effluent limitations of 25 Pa. Code § 87.102.

O. Accordingly, on September 8, 2000, the Department issued the following Compliance Orders to Soberdash:

a. Compliance Order No. 003082 for failing to construct and maintain treatment facilities based on good engineering design sufficient to treat discharges MD-1 and MD-2 and for allowing acid mine drainage to discharge from the Dunmeyer Mine in violation of the effluent limitations of 25 Pa. Code § 87.102; and

b. Compliance Order No. 003083 for failing to construct and maintain treatment facilities based on good engineering design sufficient to treat discharges 1, 2, 3, 4 and 5 and for allowing acid mine drainage to discharge from the Dunmeyer Mine in violation of the effluent limitations of 25 Pa. Code § 87.102.

P. Neither Soberdash nor any of the Sureties appealed Compliance Orders No. 003082 or 003083.

Q. On October 11, 2000, the Department again inspected the Site and determined that Soberdash had not constructed and maintained a treatment system to treat discharges MD-1 and MD-2, and that it was still allowing acid mine drainage to discharge from the Dunmeyer Mine in violation of the effluent limitations of 25 Pa. Code § 87.102.

R. Accordingly, on October 11, 2000, the Department issued Compliance Order No. 003089 to Soberdash for failure to comply with an Order of the Department, specifically Compliance Order No. 003082 issued September 8, 2000.

S. Neither Soberdash nor any of the Sureties appealed this Compliance Order.

T. On October 20, 2000, the Department again inspected the Site and determined that Soberdash had not constructed and maintained a treatment system to treat discharges 1, 2, 3, 4 and 5, and that it was still allowing acid mine drainage to discharge from the Dunmeyer Mine in violation of the effluent limitations of 25 Pa. Code § 87.102.

U. Accordingly, on October 20, 2000, the Department issued Compliance Order No. 003092 to Soberdash for failure to comply with an Order of the Department, specifically Compliance Order No. 003083 issued September 8, 2000.

V. Neither Soberdash nor any of the Sureties appealed this Compliance Order.

W. The bonds issued by the Sureties may be forfeited for any violation of the law or regulations including, but not limited to, the Surface Mining Act, The Clean Streams Law, the Rules and Regulations, the terms and conditions of Soberdash's permit, and Department orders pertaining to Soberdash's conduct under the permit.

X. On March 26, 2001, the Department forfeited the bonds posted for that portion of the Dunmeyer Mine covered by SMP No. 56733134, including all three bonds listed in Paragraph I, above.

Y. On April 25, 2001, ACE-INA appealed the Department's forfeiture action to the Environmental Hearing Board. This appeal was docketed as EHB Docket No. 2001-096-R.

Z. On June 25, 2001, the Department forfeited the bonds posted for that portion of the Dunmeyer Mine covered by MDP No. 4073SM7, including all six bonds listed in Paragraph J, above.

AA. On July 16, 2001, American States appealed the Department's forfeiture action to the Environmental Hearing Board. This appeal was docketed as EHB Docket No. 2001-166-R, and was later consolidated with the appeal filed by ACE-INA.

Black Mountain Mine

BB. At all time material hereto, Top Grade was authorized to conduct surface mining in Pennsylvania pursuant to Surface Mining Operator's License No. 4417, which is now expired.

CC. Top Grade conducted underground coal mining at the Black Mountain Site in Brothersvalley Township, Somerset County, pursuant to Surface Mining Permit ("SMP") No. 56841316 issued by the Department.

DD. In support of, and as a condition to, the Department's issuance of MDP No. 4073SM7, Top Grade posted the following bonds in the following amounts issued by the following sureties:

Bond No.	Bond Amount	Surety
KO3271936	\$202,000	Insurance Co. of North America
KO3271948	<u>\$ 10,000</u>	Insurance Co. of North America
	\$212,000	

EE. The Black Mountain Site consists of a large excavated box cut to the underground coal seam elevation in order to construct a deep mine entrances.

FF. Top Grade informed the Department in advancing the underground mine workings, it encountered adverse geologic conditions making the continued mining operations technically and economically infeasible. Top Grade abandoned the operation in 2002 leaving a large open box-cut pit with vertical highwalls on all sides, which began to fill with polluted water.

GG. On October 16, 2000, the Department inspected the Black Mountain Mine and determined that:

a. Top Grade had caused or allowed water to accumulate in the pit, creating an unsafe condition and/or a potential for pollution in violation of Section 4.2(a) of the Surface Mining Act, 52 P.S. § 1396.4b(a), and Section 402 of the Clean Streams Law, 35 P.S. § 691.402; and

b. Top Grade had failed to properly dispose of noncoal wastes in violation of 25 Pa. Code § 89.63.

HH. Accordingly, on October 16, 2000, the Department issued the following Compliance Orders to Top Grade:

a. Compliance Order No. 003090 for causing or allowing water to accumulate in the pit, creating an unsafe condition and/or a potential for pollution in violation of Section 4.2(a) of the Surface Mining Act, 52 P.S. § 1396.4b(a), and Section 402 of the Clean Streams Law, 35 P.S. § 691.402; and

b. Compliance Order No. 003091 for failing to properly dispose of noncoal wastes in violation of 25 Pa. Code § 89.63.

II. Neither Top Grade nor any of the Sureties appealed Compliance Orders No. 003090 or 003091.

JJ. On November 8-10, 2000, the Department again inspected the Site and determined that Top Grade had failed to pump down the pit water and that the pit water had risen to the second portal. The Department further determined that noncoal waste continued to exist on the Black Mountain Mine.

KK. Accordingly, on November 13, 2000, the Department issued the following Compliance Orders to Top Grade:

1. Compliance Order No. 003102 for failure to comply with an Order of the Department, specifically Compliance Order No. 003090 issued October 16, 2000; and

2. Compliance Order No. 003103 for failure to comply with an Order of the Department, specifically Compliance Order No. 003091 issued October 16, 2000.

LL. Neither Top Grade nor any of the Sureties appealed these Compliance Orders.

MM. The bonds issued by the Sureties may be forfeited for any violation of the law or regulations including, but not limited to, the Surface Mining Act, The Clean Streams Law, the

Rules and Regulations, the terms and conditions of Top Grade's permit, and Department orders pertaining to Top Grade's conduct under the permit.

NN. On June 25, 2001, the Department forfeited the bonds posted for the Black Mountain Mine, including the two bonds listed in Paragraph BB, above.

OO. On or about September 18, 2001, ACE-INA paid to the Department an amount of \$202,000 on reclamation surety bond No. KO3271936 and \$10,000 on subsidence bond No. KO3271948. The Department deposited this amount into the Surface Mining Conservation and Reclamation Fund.

Proposed Surety Reclamation for the Dunmeyer and Black Mountain Mines

PP. Presently, discharges 1, 2, 3, 4, 5, MD-1 and MDP-2 continue to flow untreated from the Dunmeyer Site. The discharges continue to be in violation of the effluent limitations of 25 Pa. Code § 87.102 and the conditions described in paragraph M remain unreclaimed.

QQ. Presently, the pit at the Black Mountain Site remains open, flooded, and unreclaimed.

RR. Under Section 4(h) of the Surface Mining Act, 52 P.S. § 1396.4(h), a corporate surety issuing bonds which are forfeited by the Department shall have the option of reclaiming the forfeited site upon the consent and approval of the Department.

SS. The Sureties have elected to reclaim the Dunmeyer Site by constructing passive treatment systems to treat the discharges, and by reclaiming the pond, revegetating portions of the site affected by reclamation activities, and removing the maintenance building unless requested by landowner to remain, and abandoned equipment.

TT. The Sureties have elected to reclaim the Black Mountain Site by filling and regrading the pit, developing positive drainage, removing structures and revegetating the site.

UU. The Sureties have submitted and the Department has approved plans for reclaiming the Dunmeyer and Black Mountain Sites ("Dunmeyer Plan" and "Black Mountain Plan") The Dunmeyer Plan is attached to this Consent Order and Agreement as Exhibit "A" and is incorporated herein by reference, and the Black Mountain Plan is attached to this Consent Order and Agreement as Exhibit "B" and is incorporated herein by reference.

VV. The Sureties have further represented to the Department that they are willing to set aside a portion of the Dunmeyer bond funds for the establishment of a trust fund as a financial guarantee for the continual operation and maintenance of the treatment systems on the Dunmeyer Site.

WW. Reclamation of the Dunmeyer and Black Mountain Sites can be accomplished more quickly and effectively by the Sureties under this Consent Order and Agreement than it could if the Department forfeited and collected the bonds for each site. Only by combining the bonds from both of these sites and addressing the reclamation of these sites under this Consent Order and Agreement can the Sureties accomplish the reclamation with this degree of effectiveness and speed.

XX. The Department and the Sureties are desirous of expeditiously achieving reclamation at the Dunmeyer and Black Mountain Mines and avoiding the need for litigation concerning the bond forfeiture actions of March 26, 2001 and June 25, 2001 related to the Dunmeyer Site and, therefore, enter into this Consent Order and Agreement.

The parties desire to resolve the foregoing matters without resorting to further 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 the Sureties as follows:

1. **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. § 510-17. The failure of the Sureties to comply with the terms or conditions of this Consent Order and Agreement shall subject the Sureties to all penalties and remedies provided by those statutes for failing to comply with an Order of the Department.

2. **Findings.** The Sureties agree that the findings in Paragraphs A through SS are true and correct and, in any matter or proceeding involving the Department and the Sureties, the Sureties 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.

3. **Forbearance of Collection.** Execution of this Consent Order and Agreement constitutes an agreement by the Department to forbear collection of the following bonds:

a. Bonds issued for that portion of the Dunmeyer Mine covered by SMP No.

56733134:

Bond No.	Bond Amount	Surety
KO2917804	\$336,000	Cigna
KO3369468	\$163,000	INA

KO3505236 \$ 31,700 INA

b. Bonds issued for that portion of the Dunmeyer Mine covered by MDP No. 4073SM7:

Bond No.	Bond Amount	Surety
EX323-182	\$ 5,600	American States
EX323-182A	\$ 18,632	American States
EX348-033	\$ 14,440	American States
EX411-476	\$ 37,240	American States
EX471-244	\$ 3,000	American States
EX452-494	\$105,800	American States

4. **Withdrawal of Appeals.** Upon execution of this Consent Order and Agreement, ACE-INA shall withdraw its appeal to the Environmental Hearing Board docketed at No. 2001-099-R and American States shall withdraw its appeal to the Environmental Hearing Board docketed at No. 2001-166-R.

5. **Treatment of Discharges at the Dunmeyer Mine.**

a. Within thirty (30) days of the execution of this Consent Order and Agreement, the Sureties shall commence construction of the treatment systems to treat the discharges at the Dunmeyer Mine as set forth in the Plan approved by the Department and attached to this Consent Order and Agreement as Exhibit "A".

b. The Sureties shall complete construction and installation of the treatment systems within ninety (90) days of the execution of this Consent Order and Agreement.

c. The Sureties shall obtain any and all approvals, variances or permits required by law to construct and install the treatment systems and to treat the discharges on the Dunmeyer Site.

6. **Financial Guarantee for Treatment.** Within thirty (30) days of the completion of the work specified in the Plan (Exhibit "A"), the Sureties 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 Dunmeyer Mine in the amount of \$125,000. ACE-INA will fund the trust by contributing \$92,737.50 cash. American States will fund the Trust by contributing \$32,262.50 in cash.

7. **Surface Reclamation of Dunmeyer Site.**

a. Within thirty (30) days of the execution of this Consent Order and Agreement, the Sureties shall commence the surface reclamation of the Dunmeyer Site as set forth in the Plan approved by the Department and attached to this Consent Order and Agreement as Exhibit "A".

b. The Sureties shall complete the surface reclamation of the Dunmeyer Site described in Paragraph 7(a) above and Exhibit "A" within one hundred twenty (120) days of the execution of this Consent Order and Agreement.

8. **Surface Reclamation of Black Mountain Mine.**

a. Within thirty (30) days of the execution of this Consent Order and Agreement, the Sureties shall commence the surface reclamation of the Black Mountain Mine as set forth in the Plan approved by the Department and attached to this Consent Order and Agreement as Exhibit "B".

b. The Sureties shall complete the surface reclamation of the Black Mountain Mine described in Paragraph 7(a) above and Exhibit "B" to this Consent Order and Agreement within two hundred and ten (210) days of the execution of this Consent Order and Agreement.

9. **Release of Financial Guarantee and Return of Monies Paid.** Upon completion of the work specified in the Dunmeyer Plan (Exhibit "A") and the Black Mountain Plan (Exhibit "B") and the establishment of the Trust as required by Paragraph 6 of the Consent Order and Agreement, the Department shall:

a. Release \$530,700 to ACE-INA according to the following schedule:

- (i) 85% upon installation of the passive treatment systems and drainage control structures; and
- (ii) 15% upon: (a) a demonstration of successful revegetation of disturbed areas; (b) a demonstration of a net alkaline discharge to Weimer Run from the installed passive treatment system; and (c) establishment of the Trust as required by Paragraph 6 of the Consent Order and Agreement.

b. Release \$184,712 to American States according to the following schedule:

- (i) 85% upon installation of the passive treatment systems and drainage control structures; and
- (ii) 15% upon: (a) a demonstration of successful revegetation of disturbed areas; (b) a demonstration of a net alkaline discharge to Weimer Run from the installed passive treatment system; and (c) establishment of the Trust as required by Paragraph 6 of the Consent Order and Agreement.

c. The Department will return to ACE-INA the \$202,000 paid to the

Department in connection with the Department's forfeiture and collection of the reclamation

surety bond No. K03271936 for the Black Mountain Mine under the following conditions: Upon completion of the reclamation work at the Black Mountain Mine, ACE-INA will notify the Department that work is complete and request a final inspection. Following a satisfactory inspection that the work is complete and upon a date to be determined, there shall be a closing at which time ACE-INA shall certify that the reclamation work is completed and the Department shall return to ACE-INA the \$202,000 paid to the Department. The Department's withholding return of this money until the date that ACE-INA completes the reclamation work on the Black Mountain Mine constitutes acceptable financial assurances pursuant to Section 4(h) of the Surface Mining Act, 52 P.S. § 1396.4(h).

10. **Limitation of Liability.** For purposes of this Consent Order and Agreement, the Sureties 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 Soberdash or Top Grade 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 Soberdash or Top Grade, 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.

11. **Stipulated Civil Penalties.** In the event that the Sureties fail to comply in a timely manner with the terms or provisions of this Consent Order and Agreement, the Sureties 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 One Hundred Fifty Dollars (\$150.00) per day

for each violation. The penalty shall be due automatically and without notice. Such penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be made by corporate check or the like made payable to Commonwealth of Pennsylvania Surface Mining and Reclamation Fund and sent to Donald R. Barnes, District Mining Manager, Department of Environmental Protection, Cambria District Mining Operations, 286 Industrial Park Road, Ebensburg, PA 15931. It is understood by the parties hereto that payment of any money under this Paragraph shall neither constitute a waiver of the Sureties' duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel the Sureties' compliance with the terms and conditions of this Consent Order and Agreement, or any applicable statute, rule, regulation, permit or order of the Department.

12. **Existing Obligations Unaffected.** Nothing set forth in this Consent Order and Agreement is intended, nor shall be construed, to relieve or limit the Sureties' 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.

13. **Additional Remedies.** In the event that the Sureties fail to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement. The remedies provided by this Paragraph and Paragraph 11 (relating to Stipulated Civil Penalties) are cumulative and the

exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.

14. **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.

15. **Liability of Operator.** The Sureties shall inform all persons necessary for the implementation of this Consent Order and Agreement of the terms and conditions of this Consent Order and Agreement. The Sureties shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by their directors, officers, agents, managers, servants, employees, privies and any persons, contractors or consultants acting under or for the Sureties. Except as provided in Paragraph 19 (relating to Force Majeure), the Sureties remain liable for any violation of this Consent Order and Agreement caused, contributed to or allowed by its successors and assigns.

16. **Transfer of Site.**

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Site or any part thereof.

b. Should any of the Sureties intend to transfer any legal or equitable interest in the Site which is affected by this Consent Order and Agreement, the Surety(ies) shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Cambria District Office of the Department of such intent.

c. The Department in its sole discretion may agree to modify or terminate the Sureties' duties and obligations under this Consent Order and Agreement upon the transfer of any legal or equitable interest in the Site. The Sureties waive any right that it may have to challenge the Department's decision in this regard.

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

Donald R. Barnes
District Mining Manager
Cambria District Office
286 Industrial Park Road
Ebensburg, PA 15931
(814) 472-1900

with a copy to:

Martin Sokolow
Southcentral Regional Office
Office of Chief Counsel
909 Elmerton Avenue
Harrisburg, PA 17110-8200

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

Henry R. Minissale, Esq.
ACE-USA
1601 Chestnut Street - TL33L
Two Liberty Place

Philadelphia, PA 19101-1484
(215) 640-2641

Barbara Rogers
SAFECO
P.O. Box 833960
1600 N. Collins Blvd.
Richardson, Texas 75083-3960
(972) 808-4777

with a copy to:

William T. Gorton, Esquire
Stites & Harbison PLLC
250 Lexington Financial Center
Lexington, KY 40507-1758
(859) 226-2300

The Sureties shall notify the Department whenever there is a change in the contact person's name, title, or address. The Sureties 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.

19. Force Majeure.

a. In the event that the Sureties 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 the Sureties' control and which the Sureties, by the exercise of all reasonable diligence, is unable to prevent, then the Sureties 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 the Sureties' control. The Sureties' 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. The Sureties 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 the Sureties 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. The Sureties' 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 the Sureties and other information available to the Department. In any subsequent litigation, the Sureties 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.

20. **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.

21. **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.

22. **Modifications.** Except as provided in Paragraph 19 (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.

23. **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.

24. **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 the Sureties may have to the decision will be preserved until the Department enforces this Consent Order and Agreement. At no time, however, may the Sureties challenge the content or validity of this Consent Order and Agreement or the Findings agreed to in this Consent Order and Agreement.

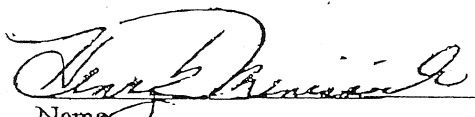
25. **Titles.** A title used at the beginning of any Paragraph of this Consent Order and Agreement is provided solely for the purpose of identification and shall not be used to interpret that Paragraph.

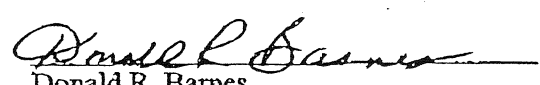
26. **Counterparts.** This Agreement or any amendment thereto, may be executed in multiple counterparts, each of which shall be deemed an original agreement, and all of which shall constitute one agreement between the parties.

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 the Sureties 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 the Sureties; that the Sureties consent to the entry of this Consent Order and Agreement and the foregoing Findings as an ORDER of the Department; and that the Sureties 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 the Sureties certifies only that the agreement has been signed after consulting with counsel.

FOR ACE-INA:

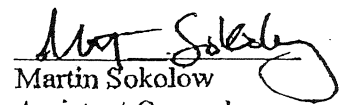
FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:


 Name _____
 Title Assistant Vice President


 Name Donald R. Barnes
 Title District Mining Manager

FOR AMERICAN STATES INSURANCE COMPANY:

 Name _____
 Title _____


 Name Martin Sokolow
 Title Assistant Counsel

03 JUL 28 PM 1 00 CAMBRIA OFF

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FOR ACE-INA:

Name
Title

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

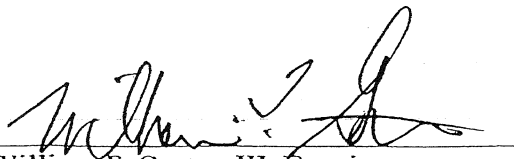
Donald R. Barnes
Donald R. Barnes
District Mining Manager

FOR AMERICAN STATES INSURANCE COMPANY:

Barbara Rodgers
Name Barbara Rodgers
Title Sr. Surety Claims Representative

Martin Sokolow
Martin Sokolow
Assistant Counsel

RECEIVED 1 DECEMBER 1993



William T. Gorton III, Esquire
Attorney for ACE-INA, and American States
Insurance Company