

Docket # 103016
Ent # 256029

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Svonavec, Inc.	:	Ohler Strip
150 West Union Street	:	Permit No. 56890102
Suite 201	:	Lower Turkeyfoot Township
Somerset, PA 15501	:	Somerset County
	:	Alternative Financial Assurance Mechanism

POSTMINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 5th day of March, 2019 by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Svonavec, Inc. ("Svonavec").

The Department has found and determined the following:

- A. The Department is the agency with the duty and authority to administer and enforce the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, as amended, 52 P.S. §§ 1396.1 et seq. ("Surface Mining Act"); the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, as amended, 52 P.S. §§ 1406.1 et seq. (Subsidence Act); the Coal Refuse Disposal Control Act, Act of September 24, 1968, P.L. 1040, as amended, 52 P.S. §§ 30.51 et seq. ("Coal Refuse Disposal Act"); the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.1 et seq. ("Clean Streams Law"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 ("Administrative Code") and the rules and regulations promulgated thereunder.
- B. Pursuant to § 4(d.2) of the Surface Mining Act, 52 P.S. § 1396.4(d.2), the Department may establish alternative financial assurance mechanisms which shall

achieve the objectives and purposes of the bonding program. These mechanisms include the establishment of a site-specific trust fund funded by a mine operator for the treatment of post-mining discharges of mine drainage. The post-mining treatment trust being established as required by this Consent Order and Agreement through the accompanying Post-Mining Discharge Treatment Trust Agreement constitutes an alternative financial assurance mechanism authorized by § 4(d.2) of the Surface Mining Act. Pursuant to Sections 5, 315 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.315 and 691.610, Section 4.3 of SMCRA, 52 P.S. § 1396.4c, Sections 3.1 and 9 of the Coal Refuse Disposal Act, 52 P.S. §§ 30.53a and 30.59, and Section 9 of the Subsidence Act, 52 P.S. § 1406.9, the Department has authority to issue such orders as are necessary to aid in the enforcement of the provisions of these acts, including orders compelling an operator to establish a post-mining discharge treatment trust as an alternative financial assurance mechanism.

C. Svonavec is a Pennsylvania corporation with a business address of 150 West Union Street, Suite 201, Somerset, PA 15501. David D. Svonavec, President, and Michael M. Svonavec, Secretary, are the principals and persons responsible for the day-to-day operations of Svonavec. Svonavec's business includes the mining of bituminous coal by the surface method in the Commonwealth of Pennsylvania pursuant to Surface Mining Operator's License No. 1266.

D. On November 1, 1989, the Department issued a permit to Svonavec to operate a bituminous surface coal mine, as follows:

NAME	SMP	TOWNSHIP	COUNTY
Ohler Strip	-56890102	Lower Turkeyfoot	Somerset

E. Svonavec posted the following surface mine reclamation bonds and amounts with the Department for the Ohler Strip:

SURETY COMPANY	BOND NO.	AMOUNT	TYPE
Rockwood Casualty Ins. Co.	ISM1014	\$59,000.00	Surety
Rockwood Casualty Ins. Co.	ISM1087	\$75,900.00	Surety
		<u>\$134,900.00</u>	

F. The Ohler Strip has on it eight pollutional discharges that developed along the toe of the spoil, and downslope of the toe, in the west/southwest corner of Phase I of the mine after backfilling of Phase I was completed in April 1994. These discharges are known as CD4A, P1N, DD1, SP14, SP15, SP16, SP24, and SP30. (The foregoing are hereinafter collectively referred to as the "Discharges"). The Discharges are identified and located on the topographic map attached hereto as **Exhibit A**. The latitude and longitude coordinates of the Discharges are as follows: CD4A is located at N39° 48' 33", W79° 18' 14"; P1N is located at N39° 48' 35", W79° 18' 15"; DD1 is located at N39° 48' 36", W79° 18' 14"; SP14 is located at N39° 48' 37", W79° 18' 13"; SP15 is located at N39° 48' 32", W79° 18' 13"; SP16 is located at N39° 48' 31", W79° 18' 03"; SP24 is located at N39° 48' 31", W79° 18' 13"; and SP30 is located at N39° 48' 32", W79° 18' 12".

G. The Discharges are characterized by depressed pH, acidity greater than alkalinity, and elevated metal concentrations that exceed the effluent limitations in 25 Pa. Code § 87.102, as more specifically described in the document attached hereto as **Exhibit B**.

H. Surface reclamation at the Ohler Strip has been completed, except for elimination or treatment of the Discharges and reclamation of the surface areas occupied by the Treatment System.

I. Svonavec agrees it has the legal responsibility to properly treat or abate the Discharges pursuant to, *inter alia*, the Surface Mining Act and the Clean Streams Law.

J. Svonavec currently collects and treats the Discharges using the following system. Seep CD4A is collected in an open ditch and directed to Sediment Pond 4. The discharge from Sediment Pond 4 is treated with a caustic drip and then flows to Sediment Pond 1, at which point discharges P1N, DD1 and SP14 enter. SP14 passes through limestone bed LS1 prior to entering Sediment Pond 1. A limestone ditch was constructed for collection of seeps SP15, SP16, SP24 and SP30. These seeps then are directed to limestone bed SELSD, which then discharges to Sediment Pond 1 after caustic drip. A collection sump captures flow downslope of Sediment Pond 1 and directs that flow to T4 upper pond. Sediment Pond 1 discharge also flows to T4 upper pond. The discharge from T4 upper pond flows to the final treatment pond, T4 lower pond. Caustic soda tanks of 5000 gallons and 1200 gallons are used at this site. Caustic soda from the 5000 gallon tank is dripped into the discharge from Sediment Pond 4, and into the discharges from LS1 and SELSD prior to the entry of all three of these flows into Sediment Pond 1. Caustic soda from the 1200 gallon tank is dripped into the inflows to T4 upper pond and T4 lower pond. (The foregoing is hereinafter collectively referred to as the "Treatment System"). Alkaline waste sludge from the Treatment System is disposed of into two sludge disposal boreholes located on the reclaimed mine site above the Treatment System, as approved under a revision to SMP No. 56890102. The Treatment System is depicted on the map attached hereto as **Exhibit C**.

K. The discharge of treated effluent from the Treatment System is identified as T4 and flows into an unnamed tributary to the Casselman River, a water of the Commonwealth. It is authorized by NPDES Permit No. PA0598372.

L. The effluent limits that apply to the discharge are as follows:

<u>Discharge Parameter</u>	<u>Average Monthly</u>	<u>Maximum Daily</u>	<u>Instant Maximum</u>
Iron, total (mg/l)	2.5	5.0	6.2
Manganese, total (mg/l)	2.0	4.0	5.0
Aluminum, total (mg/l)	1.0	2.0	2.5
Total suspended solids (mg/l)	35.0	70.0	90.0

- pH not less than 6.0 standard units nor greater than 9.0 standard units at all times.
- Alkalinity must exceed acidity at all times.

M. The Treatment System is situated on property currently owned by the Betty Ohler and Fay Edward Ohler Estate. Svonavec previously obtained a Consent to Right of Entry, also known as a Supplemental C, from Betty Ohler and Fay Edward Ohler Estate on September 6, 1989, which is recorded in the Recorder of Deeds Office of Somerset County in Deed Book Volume 1068, page 506. In accordance with Paragraph 14 of this Consent Order and Agreement, Svonavec must obtain from the Betty Ohler and Fay Edward Ohler Estate a newly executed Consent to Right of Entry form that grants the parties and the trustee a right of access to the property and the Treatment System. A copy of the Consent to Right of Entry form is attached hereto as **Exhibit F**.

N. Svonavec desires to establish an irrevocable post-mining treatment trust with Somerset Trust Company as an alternative financial assurance mechanism, (and a

financially-backed enforceable contract), in order to provide for the long-term treatment of post-mining discharges and secure the release of reclamation bonds upon completion of all other reclamation requirements. Svonavec agrees to establish the trust by executing a Post-Mining Treatment Trust Agreement (“Trust”) with Somerset Trust Company which conforms with the Department’s model trust agreement.

O. In order to calculate the amount necessary to fully fund the Trust, the Department and Svonavec have agreed to use actual operation and maintenance costs from past operations of the Treatment System, or AMDTreat cost estimates where insufficient operation and maintenance cost data exist. A summary of current annual operation and maintenance costs for the Treatment System is as follows:

Table of Current Annual Operation and Maintenance Costs

CATEGORY	SAMPLING	LABOR	MAINTENANCE	CHEMICAL (liquid caustic soda)	SLUDGE REMOVAL
Rate	\$27/sample	\$35/hr	-	\$1.00/gallon	-
Annual Cost	\$996	\$4,841	\$2,210	\$8,880	\$2,100

P. Based on actual operation and maintenance costs from past operations and AMDTreat cost estimates, the current annual cost of operating and maintaining the Treatment System is **Nineteen Thousand and Twenty Seven Dollars (\$19,027.00)**.

Q. In order to calculate the amount necessary to fully fund the Trust, the Department and Svonavec agree to use recapitalization and demolition cost data generated by the Department’s AMDTreat software tool. According to the AMDTreat software tool, the present value of recapitalization costs is **Three Thousand, Seven Hundred and Seventy**

Six Dollars (\$3,776.00). The AMDTreat Recapitalization Cost schedule for the Treatment System is attached hereto as **Exhibit G.**

R. In order to ensure adequate funding of the alternative financial assurance mechanism, the Department requires accurate and timely information on the costs related to operation and maintenance of the Treatment System.

S. The parties have agreed to use the formulas and procedures in this Consent Order and Agreement to determine the present value of the Trust. The parties agree that **Three Hundred Ninety Thousand, Six Hundred Twenty One Dollars and Forty Seven Cents (\$390,621.47 @ 0.65% Trustee Fee)** represents the current present value of the estimated future operation and maintenance costs for the Treatment System, and the current present value of the estimated future recapitalization costs for the Treatment System. The parties have also agreed to use the information and figures that will be provided by the Accounting required by Paragraph 4 to recalculate and adjust the amount of the Trust as described in Paragraphs 8 and 10 below.

T. Svonavec will fund the Trust by making annual deposits over the course of five (5) years in the amounts set forth herein. In order to partially secure the payments, Svonavec has agreed to assign to the Trustee the surety bonds posted for the Ohler Strip in the amount of One Hundred Thirty Four Thousand, Nine Hundred Dollars (\$134,900.00). A copy of the Surety Bond Assignment/Rider document is attached hereto as **Exhibit H.**

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 Svonavec as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 5 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5 and 691.610; Section 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c; Sections 3.1 and 9 of the Coal Refuse Disposal Act, 52 P.S. §§ 30.53a and 30.59; Section 9 of the Subsidence Act, 52 P.S. § 1409.9, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of Svonavec to comply with any term or condition of this Consent Order and Agreement shall subject Svonavec to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. Svonavec agrees that the findings in Paragraphs A through T are true and correct and, in any matter or proceeding involving Svonavec and the Department, Svonavec 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 Consent Order and Agreement.

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

c. Annual Anniversary Date. Thirty (30) days after the last day of Svonavec's fiscal year or thirty (30) days after the last day of any fiscal year that Svonavec may adopt in the future.

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 System.

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, 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 System. The equation is:

$$\begin{aligned} \text{PV} &= (A/[E-I]) + A \\ \text{where: PV} &= \text{Present Value of the O\&M Costs} \\ A &= \text{Current Actual Treatment Cost} \\ E &= \text{Expected annual earnings/Interest Rate (assumed to} \\ &\quad \text{be 9.28\% or .0928)} \\ I &= \text{Inflation Rate (assumed to be 3.1\% or .031)} \end{aligned}$$

h. Primary Basis Valuation. One hundred percent (100%) of the present value of the future cost of treatment, as determined by the Formula.

i. Primary Target Valuation. One hundred and sixteen percent (116%) 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 System.

k. Primary Trust Valuation. The cash, cash equivalents, the market value of investments, and the face amount of surety bonds currently held by the Trust in the Primary Trust Account.

4. Annual Treatment Costs; Records; Factors; Accounting

a. Svonavec shall maintain accurate financial records of all costs and expenses of annual treatment for each year. The various cost factors fall into several general categories, including, but not limited to: Reagent; Polymer; Electrical; Sludge Removal; Labor, including benefits; Maintenance; Sampling; Overhead; and Miscellaneous. Svonavec shall track and report each individual item that comprises each general category.

b. Svonavec shall provide an annual accounting of the costs and expenses of operating and maintaining the Treatment System to the Department on or before ninety (90) days following the last day of the fiscal year for which the accounting is being provided ("the Accounting"). The Accounting shall cover the period beginning the first day of January and continuing through the final day of December of each year, or other fiscal year as Svonavec 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 Svonavec and by the president of Svonavec attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

c. Svonavec's obligation to keep records and provide the Accounting shall continue for the period during which Svonavec is operating the Treatment System.

d. In the event of a dispute about the costs and expenses of treatment incurred by Svonavec, Svonavec 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 and expenses incurred by Svonavec, prepared by an independent licensed public or certified public accountant, shall satisfy Svonavec's burden of proof under this paragraph.

5. Treatment Trust

a. Svonavec shall establish an irrevocable trust to be known as the Svonavec Treatment Trust by executing a Post-Mining Treatment Trust Agreement with the Somerset Trust Company. The Svonavec Treatment Trust shall secure Svonavec's obligation to treat the Discharges, including its legal obligation to operate and maintain the Treatment System in perpetuity or until water treatment is no longer necessary. The Svonavec Treatment Trust shall also secure Svonavec's obligation to provide financial resources to the Department and the citizens of the Commonwealth sufficient to maintain and operate the Treatment System and to treat the Discharges in perpetuity in the event Svonavec becomes unable or unwilling to meet these obligations. The Svonavec Treatment 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 Svonavec Treatment Trust is attached hereto as **Exhibit I**.

b. Svonavec shall establish within the Svonavec Treatment Trust two sub-accounts: (i) a sub-account designated as the Primary Trust Account; and (ii) a sub-account designated as the Capital Improvement Account.

6. Funding of the Primary Trust Account

a. Payments to the Primary Trust Account: Svonavec shall make six (6) deposits to the Primary Trust Account that, with earnings, shall total **Three Hundred Ninety Thousand, Six Hundred Twenty One Dollars and Forty Seven Cents (\$390,621.47)**. This sum constitutes the current present value of the amount necessary to fully fund the Treatment Trust, and includes the current present value of the future operation and maintenance of the Treatment System and the current amount needed to finance anticipated and periodic capital expenditures for the Treatment System.

i. Initial Payment to the Primary Trust Account: On or before January 29, 2010, Svonavec shall deposit an amount of **Fifty Seven Thousand Dollars (\$57,000.00)** into the Primary Trust Account.

ii. Ongoing Payments to the Primary Trust Account:
Svonavec shall make five additional payments of **Fifty Seven Thousand Dollars (\$57,000.00)** into the Primary Trust Account on or before the annual anniversary date of the initial payment deposit set forth in subsection i. hereof.

b. Surety Bonds as part of the Corpus of the Primary Trust Account:
Upon its execution of this Consent Order and Agreement, Svonavec shall deliver to the Trustee a fully executed Rider for each surety bond described in Paragraph E. The Rider

shall be on a form prescribed and furnished by the Department. Unless otherwise released pursuant to this Consent Order and Agreement, the face value of the Surety Bonds shall be made a part of the Corpus of the Primary Trust Account.

7. Annual Distribution or Contribution Payments – Primary Trust Account

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

b. If the Primary Trust Valuation does not include the value of any surety bonds, then Distribution Payments shall be made according to paragraph 7.c. Otherwise, Distribution Payments shall be made according to Paragraphs 7.d and 7.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 Svonavec. 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 and 3 on **Exhibit D**.

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 Svonavec in the form of a surety bond reduction of the surety bond(s) identified in Paragraph E. This amount is depicted graphically at Point 1 on **Exhibit D**. 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 D**.

g. If the Primary Trust Valuation is less than the Primary Basis Valuation, then Svonavec 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 and 6 on **Exhibit D**. This provision does not apply until Svonavec has fulfilled its obligations to make ongoing payments under Paragraph 6.a.

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% percent or less than or equal to 90% percent 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 E** is a graphical depiction of the adjustment.

9. Distribution Payments for Adjustments to the Primary Target Valuation

a. If 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 greater 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 Svonavec. 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 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 Svonavec in the form of a surety bond reduction. Such 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
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. 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. The required balance in the Capital Improvement Account has been determined by use of the AMDTreat Recapitalization tool based on the following methodology: For each planned capital replacement activity, the current cost and the projected year of replacement, are determined. The future cost of each replacement activity is calculated by compounding the present cost at a rate of 3.1% annually. The

year in which each replacement activity will be needed is projected based on typical component life cycles. Assuming a net rate of return on investment of 9.28% the initial amount of the Capital Improvement Account must be sufficient to cover all anticipated expenditures for capital replacement activities for a 75-year period.

c. A schedule for the Capital Improvement Account balance and projected capital expenditures is made a part of this Agreement as **Exhibit G**. The required balance in the Capital Improvement Account may be recalculated on an annual basis or each time a Distribution Payment is contemplated under Paragraph 12. Such recalculation shall be deemed an amendment to **Exhibit G** 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 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 G**. 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 Svonavec any time a planned capital replacement is made as indicated on **Exhibit G**. 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 G**, 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 G**, 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 Svonavec's obligation to make a contribution payment under Paragraph 7.g. This amount is depicted graphically at Point 5 on **Exhibit D**. However, the amount of surplus funds transferred to

the Primary Trust Account may exceed Svonavec'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 D**.

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

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by Svonavec 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 Svonavec 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. Real and Personal Property

a. Within one (1) year of executing this Consent Order and Agreement, Svonavec shall submit an original, recorded "Consent to Right of Entry" document for the Betty Ohler & Fay Edward Ohler Estate granting perpetual access, operation, and maintenance rights of access concerning the Treatment System. Svonavec shall assign to the Trustee all rights of access to the Ohler Strip possessed by Svonavec.

b. Svonavec shall convey to the Trustee title to all equipment, pumps, plumbing, structures, tanks, etc., that together compose the Treatment System, as

described in Exhibit B of the Post-Mining Discharge Treatment Trust Agreement attached hereto as **Exhibit I**. Title shall be delivered to the Trustee on or before execution of this Consent Order and Agreement.

15. Public Liability Insurance

a. Svonavec shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the Treatment System 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 15.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 \$500,000 per person and \$1,000,000 per occurrence. The insurance shall include a rider requiring the insurer to notify the Department thirty (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 Svonavec has a public liability insurance policy in force meeting the requirements of this Paragraph.

16. Annual Requirements

a. The parties will meet on or before the thirtieth (30th) day following delivery to the Department of the Accounting of each year: (i) to review and discuss the Accounting for the then completed fiscal year; (ii) to review the effectiveness of the Treatment Systems and any change in the fiscal year; (iii) to resolve any issues which arise as a result of that change or the performance of the Svonavec Treatment Trust; (iv)

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 Svonavec Treatment Trust; and (v) to address any other issues that may concern this Consent Order and Agreement or its implementation.

b. Svonavec shall provide annually to the Department, on forms furnished by the Department, the information required by 25 Pa. Code § 86.62(b) and (c) (relating to identification of interests).

17. Svonavec's Continuing Obligation

Neither Svonavec's agreement to fund the Svonavec Treatment Trust nor the full or partial funding of the Trust, nor the exhaustion of the Trust shall in any way limit Svonavec's obligation to operate the Treatment System and to treat the Discharges in a manner that meets all applicable effluent limitations. Furthermore, exhaustion of the Svonavec Treatment Trust shall not excuse Svonavec from Svonavec's obligation to adequately treat or abate the discharges.

18. Stipulated Civil Penalties

a. In the event Svonavec fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, Svonavec 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 dollars (\$100.00) per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded to:

District Mining Manager
Department of Environmental Protection
Cambria District Mining Office
286 Industrial Park Road
Ebensburg, PA 15931

c. Any payment under this paragraph shall neither waive Svonavec's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Svonavec's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Svonavec's liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

19. Additional Remedies

a. In the event Svonavec 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 Svonavec defaults on the obligations of this Consent Order and Agreement Svonavec will be subject to a permit block on the Department's compliance tracking system and the Federal Applicant Violator System and the Department will, in addition to any other remedy or penalty prescribed herein, list

Svonavec as a violator on the Department's compliance tracking system and on the Federal Applicant Violator System.

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.

20. Reservation of Rights

The Department reserves the right to require additional measures to achieve compliance with applicable law. Svonavec reserves the right to challenge any action that the Department may take to require those measures.

21. Liability of Svonavec

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

22. Transfer of Interest

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 Ohler Strip or any part thereof.

b. If Svonavec intends to transfer any legal or equitable interest in the Ohler Strip, Svonavec 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 in writing the Director of District Mining Operations, Department of Environmental Protection, District Mining Office, 8205 Route 819, Greensburg, PA 15601, Facsimile: (724) 925-5557, and the District Mining Manager identified in Paragraph 23 of such intent.

c. The Department in its sole discretion may agree to modify or terminate Svonavec's duties and obligations under this Consent Order and Agreement upon such transfer of interest. Svonavec hereby knowingly waives any right that it may have to challenge the Department's decision under this paragraph.

23. Correspondence with Department

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

John Varner, District Mining Manager
Department of Environmental Protection
Cambria District Mining Office
286 Industrial Park Road
Ebensburg, PA 15931.

24. Correspondence with Svonavec

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

David D. Svonavec
150 Union Street
Suite 201
Somerset, PA 15501
Telephone: 814-443-1607
Facsimile: 814-443-4691.

b. Svonavec 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.

25. Force Majeure

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

26. 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.

27. 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.

28. 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.

29. Modifications

Except as provided in Paragraph 10.c., 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.

30. 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.

31. Decisions under Consent Order and Agreement

Except for Paragraphs 7, 12 and 13, any decision that 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 Svonavec may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

32. Successors

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

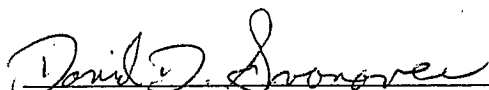
b. Svonavec shall notify the Department, without delay, of any successor as defined herein and shall provide such successor with a copy of this Consent Order and Agreement.

33. Counterpart Signatures

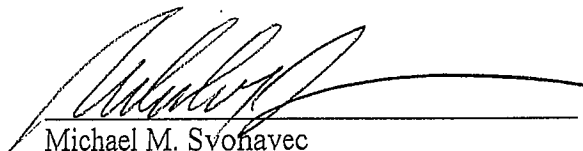
This Consent Order and Agreement may be executed by counterpart signatures transmitted via electronic means.

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 Svonavec 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 Svonavec; that Svonavec consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Svonavec 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 Svonavec's attorney certifies only that this Consent Order and Agreement has been signed after consulting with counsel.

FOR SVONAVEC, INC.:



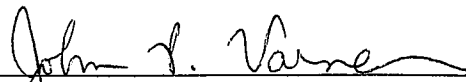
David D. Svonavec
President



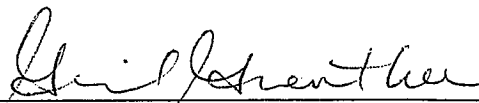
Michael M. Svonavec
Secretary

Name: _____
Attorney for Svonavec

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



John P. Varner
District Mining Manger



Gail Guenther
Assistant Counsel
Southwest Region. OCC

RECEIVED

JAN 13 2010