

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

WESTERN HICKORY COAL COMPANY, INC.	:	EHB Docket No. 2007-159-L
	:	(Consolidated with
and	:	EHB Docket No. 2007-160-L)
	:	
TRAVELERS CASUALTY AND SURETY COMPANY	:	Campbell Mine
	:	SMP# 10803018
	:	Treatment Trust
	:	
v.	:	
	:	
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 2nd day of June, 2008,
by and between the Commonwealth of Pennsylvania, Department of Environmental Protection
("Department"), Western Hickory Coal Company, Inc. ("Western Hickory"), and Travelers
Casualty and Surety Company ("Travelers").

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. §§ 1396.1-1396.19a ("Surface Mining Act"); the Bituminous Mine
Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, *as amended*, 35 P.S.
§§ 1406.1-1406.21 ("Subsidence Act"); the Coal Refuse Disposal Control Act, Act of September
24, 1968, P.L. 1040, *as amended*, 52 P.S. §§ 30.51-30.206 ("Coal Refuse Disposal Act"); the

Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 (“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. Western Hickory is a Pennsylvania corporation with a business address of 122 Kerry Lane, Portersville, PA 16051.

C. Travelers is the successor to Seaboard Surety Company and a Connecticut corporation with its principal place of business at One Tower Square, Hartford, Connecticut, 06183, whose business includes, among other things, the issuance of surety bonds for mining operations in Pennsylvania.

D. Western Hickory is the permittee of Surface Coal Mine Permit (“SMP”) No. 10803018, located in Venango Township, Butler County, and known as the Campbell Mine, which has post-mining discharge liability.

E. In support of, and as a condition to, the Department’s issuance of SMP No. 10803018, Western Hickory posted the following surety bonds (“Bonds”):

<u>Bond No.</u>	<u>Bond Amount</u>
Seaboard Surety Company Bond No. 101480	\$370,255.00
Seaboard Surety Company Bond No. 126294	\$ 16,400.00
Seaboard Surety Company Bond No. 125966	\$ 62,740.00

The Bonds were issued on behalf of Western Hickory to the Department by Seaboard Surety Company, predecessor to Travelers.

F. At the time Western Hickory began mining activities at the Campbell Mine under its pre-primacy permit in June 1982, there were three pre-existing discharges in existence at the Campbell Mine, known as MP 35, MP 36, and MP 37. The Department determined that Western Hickory's mining activities adversely affected MP 35, MP 36, and MP 37 and directed Western Hickory to treat MP 35, MP 36, and MP 37.

G. Western Hickory began treating MP 35 and MP 36 in January 1988, and began treating MP 37 in March 1996. Western Hickory treats discharges MP 35, MP 36 and MP 37 from the Campbell Mine using an active treatment system consisting of three vertical flow ponds, two open water ponds and lime ("Treatment System").

H. Western Hickory has been unable to abate the long-term pollutional discharges associated with Campbell Mine as required by the Permit and applicable law.

I. The effluent limits set forth in 25 Pa Code Section 87.102 are applicable to the discharges identified in Paragraph G. Western Hickory has failed to consistently treat the discharges identified in Paragraph G.

J. Western Hickory agrees it has the legal responsibility to treat or abate the discharges identified in Paragraph G.

K. Surface reclamation, sealing and structure demolition is completed at the Campbell Mine except for the areas and facilities needed for treating the discharge identified in Paragraph G.

L. The Department released Stage I bond in the amount of \$28,360 in September 1986 and released Stage II bond in the amount of \$10,125 in October 1986. The remaining bond in the amount of \$449,395, is in the form of a surety bond.

M. By letter dated May 22, 2007, the Department declared the Surety Bonds in the amount of \$449,395 forfeit and demanded payment by Travelers of the Bonds' penal amounts.

N. The Department has determined that the present value of the treatment cost for the discharge from Western Hickory's Campbell Mine is \$421,881.51 ("Trust Amount") based on an annual cost of \$16,486 and capital costs of \$80,421.

O. Travelers and Western Hickory each appealed the Department's forfeiture to the Environmental Hearings Board. By Order dated June 26, 2007, the Environmental Hearing Board ("EHB") consolidated Travelers' and Western Hickory's appeals at EHB Docket No. 2007-159-L (Consolidated with EHB Docket No. 2007-160-L).

P. The Department, Travelers, and Western Hickory desire to resolve the foregoing matters without resort to further litigation or administrative process by Western Hickory and Travelers by consenting to the bond forfeiture and providing for an alternative financial assurance mechanism in the form of a Sub-Account with the Clean Streams Foundation Master Trust as the financially backed enforceable contract to provide for the long-term treatment of post-mining discharges from the Campbell Mine.

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 Western Hickory and Travelers as follows:

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

2. Findings.

a. Western Hickory and Travelers agree that the findings in Paragraphs A through P are true and correct and, in any matter or proceeding involving Western Hickory, Travelers and the Department, Western Hickory and Travelers 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. Withdrawal of Appeals. Within fifteen (15) days of the date of this Consent Order and Agreement, Western Hickory and Travelers shall withdraw with prejudice their respective appeals of the Bonds forfeiture related to the Campbell Mine which are presently before the Environmental Hearing Board at EHB Docket No. 2007-159-L.

4. Bond Forfeiture. Travelers and Western Hickory consent to the Department's forfeiture of the bonds identified in Paragraph E above and further agree to the payment of the bond forfeiture proceeds to the Treatment Trust according to the schedule described in this Consent Order and Agreement.

5. Treatment Trust. Western Hickory and Travelers shall establish an irrevocable trust to be known as the Western Hickory Treatment Trust Account ("Trust") as a Sub-Account in the Clean Streams Foundation, Inc. Master Trust and sign a Participation Agreement with the Clean Streams Foundation. The Trust shall secure Western Hickory's obligation to treat discharges of mine drainage, including its obligation to operate and maintain the Treatment System, in perpetuity, or until water treatment is no longer necessary, and to provide financial resources to the Department and the citizens of the Commonwealth to maintain and operate the Treatment System, and to treat the mine drainage in perpetuity in the event Western Hickory becomes unable or unwilling to meet these obligations. The Trust shall also provide for the demolition of treatment facilities and reclamation of the treatment site should treatment no longer be needed. The Participation Agreement with the Clean Streams Foundation establishing the Trust is attached as Exhibit A.

6. Funding of the Trust. The Trust corpus when fully funded shall be in the amount of \$421,881.51 as calculated by the Department using its AMD Treat model and the Treatment Bond/Trust Calculator. Within fifteen (15) days of its execution of this Consent Order and Agreement, the entire Trust corpus will be deposited with the Trustee.

7. Bond Waiver of Collection. The Department, upon demonstration that the Trust has been fully funded will waive collection of all of the bonds.

8. Treatment System Easements.

a. Western Hickory shall use good faith best efforts to obtain easements from each of the landowners at the Campbell Mine on whose property access to and the Treatment System for discharges M 35, M 36, and M 37 are located. At a minimum, the easements shall permit ingress and egress and all necessary maintenance, improvement and reconstruction of the access and Treatment System. The easements shall run in favor of Western Hickory, the Clean Streams Foundation, the Department, and the agents thereof, and shall expire upon the Department's determination that treatment of discharges M 35, M 36, and M 37 is no longer needed at the Campbell Mine.

b. Western Hickory shall, within thirty ("30") days of the execution of any easement, send a copy of the easement to the Department and shall record the easement with the Butler County Recorder of Deeds.

c. In the event Western Hickory is dissolved as a corporation under Pennsylvania law, or through bankruptcy, Western Hickory shall convey title to any and all equipment that is associated with the Treatment System at the Campbell Mine to the Trust. Western Hickory shall provide notice to the Department of the dissolution of its corporate status.

9. Public Liability Insurance.

a. Western Hickory until dissolved shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities

associated with the Treatment System. The Trustee of the Trust and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policy.

b. Western Hickory until dissolved shall continue to maintain general liability insurance under 25 Pa. Code § 86.168(a)-(e).

10. Stipulated Civil Penalties.

a. In the event Western Hickory or Travelers fail to comply in a timely manner with any term or provision of this Consent Order and Agreement, Western Hickory or Travelers shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$100.00 per day for each violation.

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

District Mining Manager
Department of Environmental Protection
Knox District Mining Office
White Memorial Building
P.O. Box 669
Knox, PA 16232-0669

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

11. Additional Remedies.

a. In the event Western Hickory or Travelers 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.

b. In the event Western Hickory defaults on the obligations of this Consent Order and Agreement, Western Hickory 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 Western Hickory 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.

12. Reservation of Rights.

a. The Department reserves the right to require additional measures to achieve compliance with applicable law.

b. Western Hickory and Travelers reserve the right to challenge any action which the Department may take to require those measures.

13. Liability of Western Hickory and Travelers.

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

b. Travelers shall not, by virtue of this Consent Order and Agreement or any of its agents' activities hereunder: (i) be deemed an operator or occupier of a surface mine operation under the Surface Mining Act, the Coal Refuse Disposal Act, the Clean Streams Law or any regulations promulgated thereunder; or (ii) be deemed to have assumed any liabilities or obligations of Western Hickory except to the extent set forth in this Consent Order and Agreement.

14. Transfer of Campbell Mine 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 Campbell Mine site or any part thereof.

b. If Western Hickory intends to transfer any legal or equitable interest in the Campbell Mine site which is affected by this Consent Order and Agreement, Western Hickory 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 District Mining Manager of such intent.

c. The Department in its sole discretion may agree to modify or terminate Western Hickory's duties and obligations under this Consent Order and Agreement upon transfer of the Campbell Mine site. Western Hickory waives any right that it may have to challenge the Department's decision in this regard.

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

District Mining Manager
Department of Environmental Protection
Knox District Mining Office
White Memorial Building
P.O. Box 669
Knox, PA 16232-0669

16. Correspondence with Western Hickory and Travelers.

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

Western Hickory Coal Company
Attn: VERNON Y. KERRY, PRESIDENT
122 Kerry Lane
Portersville, PA 16051

With a copy to:

Bruno A. Muscatello, Esquire
Stepanian & Muscatello, LLP
222 South Main Street
Butler, PA 16001-5939

b. All correspondence with Travelers concerning this Consent Order and Agreement shall be addressed to:

Travelers Casualty and Surety Company
Attn: Robert L. Scanlon, Esquire

One Tower Square, 2SHS
Hartford, CT 06183

With a copy to:

William T. Gorton III, Esquire
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, KY 40507

c. Western Hickory and Travelers 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.

17. 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.

18. 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.

19. 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.

20. Modifications. Except as otherwise provided herein, 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.

21. 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.


22. Decisions under Consent Order. Any decision which the Department makes under the provisions of this Consent Order and Agreement is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection which Western Hickory or Travelers may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

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

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

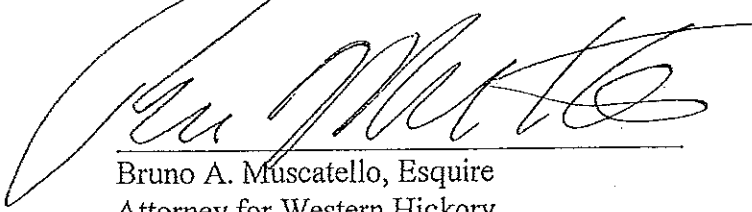
IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Western Hickory and Travelers certify under penalty of law, as provided by 18 Pa.C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Western Hickory and Travelers; that Western Hickory and Travelers consent to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Western Hickory and Travelers 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) and Chapters 5A and 7A; or any other provision of law. Signature by Western Hickory's and Travelers' attorneys certifies only that the agreement has been signed after consulting with counsel.

FOR WESTERN HICKORY
COAL COMPANY:


By: Vern Y. Kerry
Its: President

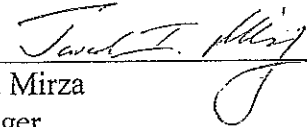
FOR TRAVELERS CASUALTY
AND SURETY COMPANY:

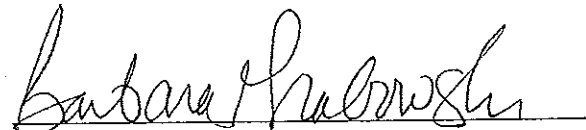
By:
Its:


Bruno A. Muscatello, Esquire
Attorney for Western Hickory

William T. Gorton III, Esquire
Attorney for Travelers

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

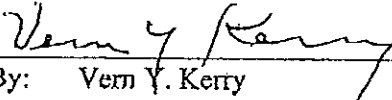

Javed Mirza
Manager
Knox District Mining Office

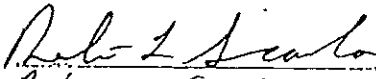

Barbara J. Grabowski
Assistant Counsel
Southwest Region OCC

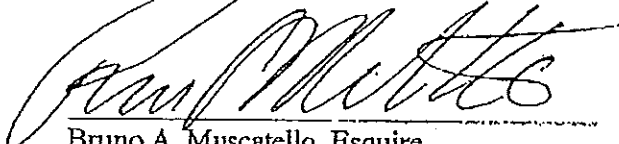
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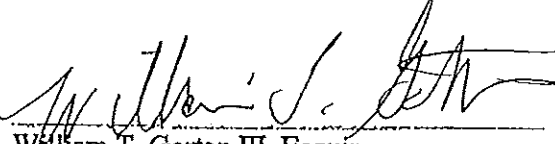
FOR WESTERN HICKORY
COAL COMPANY:

FOR TRAVELERS CASUALTY
AND SURETY COMPANY:

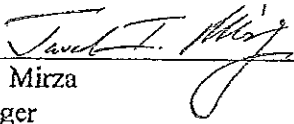

By: Vern Y. Kerry
Its: President

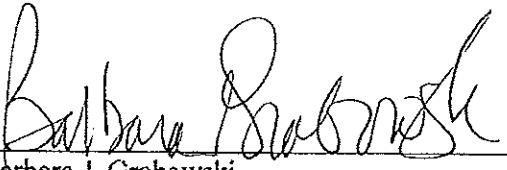

By: Robert L. Scanlon
Its: Senior Claim Counsel


Bruno A. Muscatello, Esquire
Attorney for Western Hickory


William T. Gorton III, Esquire
Attorney for Travelers

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:


Javed Mirza
Manager
Knox District Mining Office


Barbara J. Grabowski
Assistant Counsel
Southwest Region OCC

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CONSENT AND ACKNOWLEDGMENT

The Department of Environmental Protection hereby consents to Participant entering into this Participation Agreement pursuant to the Agreement between the Participant and the Department dated June 3, 2008 and acknowledges the Commonwealth of Pennsylvania's and the Department's status as the beneficiary of the Trust and to evidence its consent and acknowledgment of the terms and conditions set forth herein, as well as the powers and authorities granted to the Department hereunder.

BENEFICIARY:

THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
COMMONWEALTH OF PENNSYLVANIA

By Michael Terrette
Its Director, District Mining Operations

EXHIBIT "A"
CONSENT ORDER AND AGREEMENT BETWEEN
THE PARTICIPANTS AND THE DEPARTMENT

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