

**ALLEGHENY COUNTY HEALTH DEPARTMENT  
AIR QUALITY PROGRAM**

In the Matter of:      Neville Island Coke Plant  
                                 Shenango Incorporated  
                                 Neville Township  
                                 Allegheny County

**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 19<sup>TH</sup> day of JUNE, 2012 (hereinafter "Effective Date") by and between the Allegheny County Health Department (hereinafter "ACHD" or "Department") and Shenango Incorporated (hereinafter "Shenango"), collectively referred to as "Parties."

**RECITALS**

**WHEREAS**, the ACHD has found and determined the following:

1. The Director of the ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q (hereinafter "CAA"), and the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4001-4014, and the ACHD is a local health agency organized under the Local Health Administration Law, 19 P.S. §§ 12001-12028, whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including, but not limited to, the ACHD's Rules and Regulations, Article XXI, Air Pollution Control (Allegheny County Ordinance No. 16782) (hereinafter "Article XXI").
2. Shenango is a Pennsylvania corporation that maintains a mailing address within the Commonwealth of Pennsylvania at 200 Neville Road, Pittsburgh, PA 15225-1690.
3. Shenango's Neville Island Coke Plant (hereinafter "Coke Plant" or "Facility") located in Neville Township is a coke manufacturing and by-products recovery plant that performs destructive distillation of coal to produce metallurgical coke and by-products such as

tar, light oil, sodium phenolate, and ammonium sulfate. Coke oven gas ("COG") fuel, which is used to underfire the coke battery and to fuel the boilers, is also produced. The Coke Plant includes one coke battery made up of 56 individual ovens that has a nominal rated capacity of 1,500 tons coal/day (the "Coke Oven Battery"), a coke by-products recovery plant, and environmental control units, including a wastewater treatment plant and a COG Desulfurization Plant.

4. In 2000, Shenango, the ACHD, the U.S. Environmental Protection Agency, and the U.S. Department of Justice, entered into a Consent Decree (hereinafter "2000 Consent Decree") to resolve certain alleged violations relating to the Desulfurization Plant. The 2000 Consent Decree granted Shenango relief from stipulated penalties for Scheduled Annual Repair and Maintenance and Unscheduled Repair and Maintenance when its Desulfurization Plant was offline. Pursuant to the 2000 Consent Decree, which was incorporated by reference at paragraph 28 of the Title V Permit No. 0025, issued March 21, 2006 (hereinafter "TVOP"), Shenango was permitted 336 consecutive hours in each calendar year for a scheduled maintenance outage at the Desulfurization Plant to provide preventative and scheduled maintenance. Furthermore, in the event of an upset condition at the Desulfurization Plant, Shenango was also permitted two hundred forty (240) hours of unscheduled repair and maintenance for each calendar year.

5. The 2000 Consent Decree is being terminated, and ACHD and Shenango have agreed to enter into this order to preserve the Scheduled Annual Repair and Maintenance and the Unscheduled Repair and Maintenance rights and obligations in the 2000 Consent Decree relating to downtime at the Desulfurization Plant, clarify these provisions, add provisions addressing soaking emissions, and eliminate obsolete provisions.

**WHEREAS**, after a full and complete negotiation of all matters set forth in this Agreement and upon mutual exchange of covenants contained herein, the Parties agree that this agreement is in the best interest of the Parties and the public;

**NOW, THEREFORE**, without any final determination or admission of fact or law, and intending to be legally bound hereby, the Parties hereto agree as follows:

## I. JURISDICTION

Solely for the purposes of this Agreement, Shenango waives all objections and defenses that it may have to jurisdiction or venue. Shenango shall not challenge the ACHD's jurisdiction to enter into or to enforce this Agreement.

## II. APPLICABILITY

A. The provisions of this Agreement shall apply to, be binding upon, and inure to the benefit of the ACHD and Shenango and upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

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

C. If Shenango proposes to transfer the Coke Plant to an unaffiliated entity, Shenango shall provide written notice to the ACHD of the proposed transfer at least thirty (30) Days prior to the transfer. Shenango shall also provide a copy of this Agreement to any person or entity to which Shenango intends to make any such transfer at least thirty (30) Days prior thereto except that this provision does not apply to a transfer to a lender or lenders taking a security interest in the Coke Plant.

D. The undersigned representative of Shenango certifies that he or she is fully authorized to execute this Agreement on behalf of Shenango, and to legally bind Shenango to this Agreement.

E. Nothing in this Agreement is intended to limit or alter the ACHD's or Shenango's obligations or rights under Article XXI with regard to the transfer of installation or operating permits.

### III. GENERAL TERMS

A. This Agreement addresses and is intended to preserve certain rights and obligations that would otherwise terminate upon the termination of the 2000 Consent Decree, to memorialize the continued and amended provisions for scheduled and unscheduled repair and maintenance outages, and to set soaking emission limits at the Facility.

B. Nothing contained herein is intended to limit the authority of the ACHD with respect to violations that may occur after the date of this Agreement or to limit the authority of the ACHD to seek further enforcement of this Agreement in the event that Shenango fails to successfully comply with its terms and conditions.

C. The provisions of this Agreement are severable. If any provision or part thereof is declared invalid or unenforceable, or is set aside for any other reason, the remainder of the Agreement shall remain in full effect.

D. This 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.

E. No changes, additions, modifications or amendments to this Agreement shall be effective unless they are set forth in writing and signed by the Parties hereto.

F. A title used at the beginning of any paragraph of this Agreement shall not be considered to control but may be used to aid in the construction of the paragraph.

G. This Agreement shall become effective upon signature by the Parties as of the Effective Date first noted above.

H. In the event that Shenango fails to comply with any provision of this Agreement, and the ACHD believes that such failure has created an emergency which may lead to immediate or irreparable harm to the environment or community, the ACHD may, in addition to the

remedies prescribed herein, pursue any remedy available for a violation of an order of the ACHD, including an action to enforce this Agreement, or any other enforcement option available to it under the federal Clean Air Act, the Pennsylvania Air Pollution Control Act, the Local Health Administration Law, the Rules and Regulations of the ACHD, or other applicable statutes or regulations. Shenango does not waive any defenses it may have to such action by ACHD.

I. The ACHD reserves the right to attempt to require additional measures to achieve compliance with this Agreement. Shenango reserves the right to challenge any action that the ACHD may take to require such additional compliance measures.

J. Shenango shall be liable for any violations of this Agreement caused by, contributed to, or allowed by its officers, agents, or employees.

K. Except as otherwise specified in Section VIII.D (Reporting), all correspondence with the ACHD concerning this Agreement shall be addressed to:

Enforcement Chief  
Allegheny County Health Department  
Air Quality Program  
301 39<sup>th</sup> Street, Bldg. No. 7  
Pittsburgh, PA 15201  
E-mail: [eperesie@achd.net](mailto:eperesie@achd.net)  
Tel.: 412-578-7963  
Fax: 412-578-8144

L. All correspondence with Shenango concerning this Agreement shall be addressed to:

Shenango Incorporated Inc.  
Attn: Plant Manager  
200 Neville Road  
Pittsburgh, PA 15225  
E-Mail: [guzys@dteenergy.com](mailto:guzys@dteenergy.com)  
Tel: 412-777-6655

Shenango Incorporated  
Attn: Assistant General Counsel  
414 South Main Street, Suite 600  
Ann Arbor, MI 48104  
E-Mail: [richardsta@dteenergy.com](mailto:richardsta@dteenergy.com)  
Tel: 734-302-5306

M. In the event of a change in a contact person's name, title, or address, the party with such a personnel change shall notify the other party within thirty (30) Days.

N. Service of any notice or legal process for any purpose under this Agreement, including its enforcement, may be made by mailing an original or true and correct copy by First Class mail to the above contacts and addresses.

#### IV. DEFINITIONS

Unless otherwise explicitly defined herein, any term used in this Agreement that is defined in the CAA, the regulations promulgated thereunder, or Article XXI shall have the meaning given it therein.

For purposes of this Agreement, the following words and phrases shall have the meaning stated:

1. "ACHD" shall have the meaning set forth in the preamble.
2. "Agreement" shall mean this Consent Order and Agreement and all appendices hereto.
3. "Allegheny County" shall mean the County of Allegheny, Commonwealth of Pennsylvania.
4. "CEM" or "CEMS" means continuous emission monitoring system or device.
5. "CAA" or "the Act" shall have the meaning set forth in the Recitals.
6. "Coke Plant" or "Facility" shall have the meaning set forth in the Recitals.
7. "Daily Average Sulfur Compounds" shall mean the arithmetic average of the sum of the hourly concentrations, for each Day, of hydrogen sulfide (H<sub>2</sub>S), carbon disulfide (CS<sub>2</sub>), carbonyl sulfide (COS) and sulfur dioxide (SO<sub>2</sub>) expressed as grains of H<sub>2</sub>S per hundred dscf of COG, as calculated pursuant to this Agreement.
8. "Day" shall mean a calendar day unless expressly stated to be a Working Day. In computing any period of time for submitting reports or notices under this Agreement, where the

last Day would fall on a Saturday, a Sunday, or a holiday recognized by the United States or Allegheny County, the period shall run until the close of business of the next Working Day.

9. "Effective Date" shall have the meaning set forth in the preamble.

10. "Desulfurization Plant" means the Facility's Sulfiban unit, HCN Reactor, and Sulferox unit connected in series.

11. "dscf" means dry standard cubic feet.

12. "HCN Reactor" means the vessel containing catalysts used by Shenango for the destruction of cyanide and other compounds at the Desulfurization Plant.

13. "Monthly Average Sulfur Compounds" shall mean the arithmetic average of the hourly concentrations during each month that are used in the calculation of the Daily Average Sulfur Compounds pursuant to paragraph VI.D of this Agreement.

14. "Notify" or "Submit" or other terms signifying an obligation to transmit or communicate documents or information shall mean, for the purpose of meeting any deadline for written communication set forth in this Agreement, the date that the communication is postmarked and sent by certified mail, return receipt requested or by a reputable delivery service that maintains a delivery tracking system. In the event the communication is sent by facsimile or e-mail, as mutually agreed upon by the Parties, the effective date is the date of receipt. Oral communications, where required or permitted by mutual agreement of the Parties, must be confirmed in writing within seven (7) Days of the oral communication.

15. "SulFerox® unit" is defined as the air pollution control equipment, which is employed by Shenango to remove sulfur from the acid gas stream at the Desulfurization Plant by means of liquid reduction-oxidation chemical reactions.

16. "Sulfiban unit" is defined as that air pollution control equipment utilized by Shenango to remove sulfur compounds from the sour COG stream at the Desulfurization Plant which employs a two stage liquid absorption/steam stripping solution regenerating process to

remove sulfur species, hydrogen cyanide (HCN), ammonia (NH<sub>3</sub>), and some CO<sub>2</sub> from sour COG.

17. "Working Day" shall mean a Day other than a Saturday, a Sunday, or a holiday recognized by the United States or Allegheny County. In computing any period of time under this Agreement regarding submittal of reports or notices, where the last Day would fall on a Saturday, a Sunday, or a holiday recognized by the United States or Allegheny County, the period shall run until the close of business of the next Working Day.

## V. COMPLIANCE REQUIREMENTS

A. Soaking Emissions. Beginning sixty (60) calendar days after the Effective Date of this Agreement, at no time shall soaking emissions from a standpipe cap opening exceed twenty (20%) opacity. An exclusion for this opacity limit shall be allowed for two (2) minutes after a standpipe cap is opened. Soaking emission from a standpipe cap shall be defined as uncombusted emissions from an open standpipe which has been dampered off in preparation of pushing the coke mass out of the oven and shall end when pushing begins, i.e., when the coke side door is removed. Compliance with this standard shall be determined through observing the standpipe from a position where the observer can note the time the oven is dampered off and, following the two minute exclusion, read the uncombusted emissions from the open standpipe in accordance with Method 9.

1. Shenango shall perform two (2) soaking observations on the Coke Oven Battery per calendar day, in accordance with Method 9, except that if it is an overcast day or if the plume is in a shadow, the reader need not position himself with his back to the sun. Within seven (7) Days, Shenango shall give written notification to the ACHD in the event that the two daily soaking observations could not be obtained in the event of an outage, malfunction, breakdown, unacceptable conditions to conduct observations or other extraordinary circumstances as supported by appropriate justification.

2. It is the intention of the Parties that the soaking emissions standard established in paragraph V.A, above, shall be superseded and automatically terminate when the



Department promulgates a soaking emissions standard rule pursuant to its rulemaking authority and such rule becomes effective.

B. Daily Average Sulfur Compounds. From the Effective Date of this Agreement, Shenango shall neither operate, nor allow to be operated, any source at the Coke Plant in such manner that unburned COG is emitted into the open air. Except as permitted under paragraphs V.C and V.D, Shenango shall not flare or combust COG, or allow such gas to be flared or combusted, unless the Daily Average Sulfur Compounds, measured as hydrogen sulfide, in such gas is less than or equal to 34 grains per hundred dscf of COG.

C. Scheduled Annual Repair and Unscheduled Repair and Maintenance. Shenango shall be permitted the Scheduled Annual Repair and Maintenance and Unscheduled Repair and Maintenance outage hours to provide preventative and unscheduled maintenance at its Desulfurization Plant, as outlined in paragraphs IX.K and IX.L of this Agreement, which outage hours need not, in Shenango's discretion, be counted in calculating the Daily Average Sulfur Compounds. Shenango may submit a written notice to ACHD every month for up to four (4) hours of planned maintenance, if such planned maintenance is necessary in its judgment, and these hours will be accounted for as Unscheduled Maintenance hours.

D. Unscheduled Repair and Maintenance. Shenango will use a minimum of one (1) hour for the first increment of claimed unscheduled maintenance hours used on the COG Daily Average Sulfur Compounds Monthly Report (attached hereto as Appendix 1), then use hours in increments of one half hour (0.5) for additional unscheduled maintenance. Pursuant to Article XXI § 2108.01.c, in the event that an outage for Unscheduled Repair becomes necessary, Shenango shall notify ACHD orally of the condition requiring the shutdown within sixty (60) minutes and shall confirm such notification in writing within seven (7) Days.

## VI. EMISSIONS MONITORING REQUIREMENTS

A. Continuous Emissions Monitoring. Shenango, as of the Effective Date, operates a CEM, Applied Automation Gas Chromatograph, or other CEM such as, but not limited to, laser technology, to determine the sulfur compound concentrations in the treated COG. Shenango

shall maintain, calibrate and operate the CEM device to monitor the sulfur content of the desulfurized COG in accordance with the Continuous Emission Monitoring Quality Assurance/Quality Control Manual, attached hereto and incorporated herein as Appendix 2. The CEM device may be replaced with another CEM approved by ACHD and in such case the Parties agree to update Appendix 2 to only include the Continuous Emission Monitoring Quality Assurance/Quality Control Manual applicable to the new ACHD approved CEM.

B. Monitoring in the Event of a CEM Failure. In the event that the CEM becomes non-operational or otherwise fails to provide certifiably accurate monitoring results, then Shenango shall:

1. within three (3) Working Days of the CEM becoming non-operational, repair, adjust and recalibrate the CEM and place the CEM back into continuous operation, or

2. if the CEM cannot be repaired and must be replaced, then, (i) within six (6) months of the CEM becoming non-operational, subject to timely receiving from ACHD any necessary approvals, replace the non-operational CEM with a similar new CEM of equal or greater technical accuracy and capabilities, adjust and recalibrate the CEM and place it into operation, and (ii) within fourteen (14) calendar days of the CEM becoming non-operational, substitute the Alternate CEM Method identified in Appendix 3.

3. In the event that the CEM becomes inoperative or otherwise fails to provide certifiably accurate monitoring results for more than three (3) hours:

a. Shenango shall utilize a laboratory based gas chromatograph to analyze COG samples to be collected at the meter building at approximately 8 a.m., 10 a.m., 12 p.m. and 2 p.m. until the CEM returns to operation. The analyses will be conducted by qualified personnel and recorded. The analyses will provide concentrations of H<sub>2</sub>S, COS and CS<sub>2</sub>, which will be combined with the grains of SO<sub>2</sub> as determined in paragraph VI.C and utilized in the calculation of the Daily

Average Sulfur Compounds. The samples will be averaged to provide the sulfur compounds concentration of the COG for the period during which the CEM is non-operational.

b. In the event that the laboratory based gas chromatograph becomes inoperative, or qualified personnel are not available to operate the chromatograph, Shenango shall analyze the samples required by VI.B.3.a above using the Tutweiler procedure. Shenango shall analyze and report the H<sub>2</sub>S concentration of the clean COG from this procedure. Shenango shall estimate the COS and CS<sub>2</sub> concentrations of the clean COG stream using the average results for each component as reported for the calendar month immediately preceding the unavailability of the CEM. Shenango shall sum the H<sub>2</sub>S concentrations with the average COS and CS<sub>2</sub> concentrations identified in this section and with the grains of SO<sub>2</sub> as determined in paragraph VI.C.

c. In the event that the CEM is operating properly but the data processing system becomes inoperative for more than six (6) hours, Shenango shall record the hourly instantaneous CEM readings manually and use them in the average to compute the Daily Average Sulfur Compounds.

C. Monitoring to be Provided. Shenango shall monitor the blend of: (i) treated COG from the SulFiban unit, and (ii) treated acid gas from the SulFerox® unit, downstream from the point where the desulfurized acid gas is introduced back into the desulfurized COG stream at a location identified as the "meter building." The following sulfur compounds shall be continuously monitored: H<sub>2</sub>S, CS<sub>2</sub>, and COS. The sum of the actual measurements of H<sub>2</sub>S, CS<sub>2</sub> and COS shall be combined with 0.04 grains of SO<sub>2</sub>, expressed as grains per hundred dscf of H<sub>2</sub>S, and shall be considered the concentration of sulfur compounds in the COG. The compound SO<sub>2</sub> may be monitored by a quarterly grab sample, and the value for the concentration of SO<sub>2</sub> may be adjusted quarterly upon Agreement of the parties based upon grab sample results.

D. Daily Average Sulfur Compounds. For purposes of this Agreement, the calculation of the Daily Average Sulfur Compounds will be based on a nominal 24-hour average.

The data used for the calculation of the averages will be uninterrupted hours of CEM hourly data, with one hour per Day being omitted for CEM calibrations. If CEM data is unavailable for the reasons identified in paragraph VI.B, the data acquired under paragraph VI.B. will be used to calculate Daily Average Sulfur Compounds. For purposes of measuring Daily Average Sulfur Compounds, Shenango in its discretion may also eliminate from the Daily Average Sulfur Compounds calculation any Desulfurization Plant downtime taken for scheduled or unscheduled maintenance pursuant to paragraphs V.C or V.D of this Agreement, provided, however, that Shenango may eliminate downtime only to the maximum extent of scheduled and unscheduled maintenance hours permitted for maintenance pursuant to paragraphs IX.K and L. To the extent Desulfurization Plant downtime exceeds the maintenance hours identified in paragraphs IX.K and L, below, or in the event Shenango elects not to utilize maintenance hours on the occasion of a Desulfurization Plant outage, for such period of Desulfurization Plant downtime or outage, Shenango shall calculate Daily Average Sulfur Compounds based on a concentration of sulfur compounds of 325 grains per 100 dscf of COG. For purposes of this Agreement, the Monthly Average Sulfur Compounds shall be calculated as an arithmetic average using the hourly data during such month that are used in the calculation of the Daily Average Sulfur Compounds.

E. Records. Shenango shall keep and maintain the following records of the measurements conducted under this paragraph pursuant to the requirements of Section VII (Recordkeeping & Record Retention):

1. an identification of calibrations, zero and span drift checks, and other quality assurance procedures;
2. an identification of each period during which the CEM is non-operational or otherwise fails to provide certifiably accurate monitoring results;
3. the nature of repairs or adjustments performed;
4. an identification of Days during the reporting period that the Daily Average Sulfur Compounds of COG obtained from the CEM exceeded 34 grains per 100

dscf (determined in accordance with paragraphs VI.C and VI.D and except as permitted under paragraph V.C or V.D);

5. an identification of the quantity of COG treated at Shenango's Desulfurization Plant and the quantity of sulfur produced at the SulFerox® unit;

6. all Daily Average Sulfur Compounds and Monthly Average Sulfur Compounds measured by the CEM (or appropriate alternative methods); and

7. any additional gas sampling and analysis required to be taken as provided in paragraph VI.B.3.

F. Reporting. In each Quarterly Report that Shenango is required to submit to the ACHD in accordance with the requirements of Section VIII (Reporting Requirements), Shenango shall report the results of its monitoring in the form of the COG Daily Average Sulfur Compounds Monthly Report a blank sample of which are attached hereto as Appendix 1.

## VII. RECORDKEEPING AND RECORD RETENTION

A. Specific Records. Shenango shall keep and maintain at the Coke Plant:

1. The records and information required by paragraph IX.K (Scheduled Annual Repair and Maintenance), and all forms, reports and specific information requirements of each of the Appendices to this Agreement; and

2. Copies of all reports submitted to the ACHD under Section VIII and any document or printed data generated by Shenango or in Shenango's possession that is relied upon in such reports.

B. Monitoring Data. Shenango shall keep and maintain records of any COG sampling records and analytical results taken pursuant to paragraph VI.B.3.

C. Retention Requirements. Any and all records that Shenango is required to keep and maintain pursuant to this Section VII shall be made available to ACHD, upon request, for

inspection and copying. Shenango shall preserve such records for a minimum of five (5) years after initial creation. Nothing in this Agreement in any way limits Shenango's obligations, under any federal, state or local law, regulation or permit, to preserve any record, log or document for more than five (5) years.

### VIII. REPORTING REQUIREMENTS

A. Quarterly Reports. Within thirty (30) Days of the end of the first full calendar quarter ending in March, June, September, or December following the date of entry of this Agreement, and thereafter within thirty (30) Days of the end of each succeeding calendar quarter through the termination of this Agreement, Shenango shall submit a COG Daily Average Sulfur Compounds Monthly Report containing the information required pursuant to paragraph VI.F (Reporting) in the form provided in Appendix 1 during the preceding calendar quarter (the "Quarterly Report"). Except as otherwise specifically provided herein, during the term of this Agreement, ACHD agrees to accept the Quarterly Reports in full satisfaction of any periodic reporting requirements under Article XXI relating to COG Daily Average Sulfur Compounds. The Quarterly Reports shall include the following reports:

B. Certification. Each Quarterly Report that is submitted by Shenango shall be certified by a responsible corporate officer of Shenango, as follows:

I certify to the best of my knowledge, information and belief that the information contained in and accompanying this report is true and accurate. With respect to any portions of this report and its attachments for which I cannot personally verify truth and accuracy, I certify that such portions were prepared in the ordinary course of business by qualified personnel and I further certify that this information is true and accurate to the best of my knowledge, information and belief formed after inquiry reasonable under the circumstances. I am aware that there may be significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Shenango's failure to include the above certification with any such Quarterly Report shall render such submission incomplete and, therefore, deficient and shall subject Shenango to stipulated penalties pursuant to paragraph IX.B of this Agreement.

C. Delivery of Submittals. All submittals required of Shenango pursuant to this Agreement shall be sent either through certified US Mail, return receipt requested, via a reputable delivery service that maintains a delivery tracking system, or, if mutually agreed upon by the Parties by facsimile or e-mail. All certified mail return receipts, overnight or other mail destination tracking documents (including facsimile receipt confirmations) shall be obtained and retained by Shenango in its administrative files for at least five (5) years from the date of initial submission.

D. Persons to Receive Submittals. Any submission by Shenango in satisfaction of a requirement of this Agreement shall be submitted to:

Manager, Air Quality Program  
Allegheny County Health Department  
301 Thirty-ninth Street  
Pittsburgh, PA 15201  
Telephone: (412)578-8103  
Telecopier: (412)578-8144

## IX. STIPULATED PENALTY

A. Daily Average Sulfur Compounds. On and after the Effective Date, for any exceedance of the limits set forth below for the Daily Average Sulfur Compounds (determined in accordance with paragraphs VI.C and VI.D and except as permitted under paragraph V.C or V.D), Shenango shall be liable for a stipulated penalty per calendar day for each calendar day of such exceedance, in accordance with the following schedule.

| <u>Daily Average Sulfur Compounds as<br/>grains per 100 dscf</u> | <u>Stipulated Penalty Per Calendar Day</u> |
|--|--|
| Equal to, or greater than, 40<br>but not greater than 50         | \$ 500                                     |
| Equal to, or greater than, 50<br>but not greater than 60         | \$1,000                                    |
| Equal to, or greater than, 60<br>but not greater than 150        | \$2,500                                    |
| Equal to, or greater than 150                                    | \$5,000                                    |

B. Reports. For Shenango's failure to submit the report required in Section VIII (hereinafter called a "Report") on or before the date required in this Agreement, or as extended by Agreement of the ACHD, or for Shenango's failure to submit any such Report in accord with the specific requirements of this Agreement, Shenango shall pay a stipulated penalty of \$500 per Day for each Day that such required Report remains unsubmitted. For purposes of stipulated penalties, the submission of a Report containing materially inadequate, incomplete or inaccurate data or other information, shall be deemed a failure to submit such Report, subject to the penalty provided for herein, unless such deficiency is corrected within five (5) Days of the applicable due date for the Report.

C. Monitoring Equipment. For Shenango's unexcused failure to operate, maintain, and/or properly calibrate the CEM required in paragraph VI.A of this Agreement, Shenango shall pay a stipulated penalty of \$1,000 per calendar day for each calendar day of such noncompliance. However, Shenango shall not be required to pay stipulated penalties as a result of any instance where the CEM required in paragraph VI.A of this Agreement is removed from service as the result of an operational malfunction, so long as Shenango reports the malfunction to ACHD within forty-eight (48) hours of its occurrence and Shenango complies with the provisions of paragraph VI.B.

D. Recordkeeping and Other Requirements. For any material failure on the part of Shenango to comply with any of the recordkeeping or record retention requirements of Section



VII (Recordkeeping & Record Retention), Shenango shall pay a penalty of \$1,000 for each such material failure.

E. Soaking Emissions. On and after the Effective Date, for any exceedance of the soaking emission standard set forth above in paragraph V.A, Shenango shall be liable for a stipulated penalty of \$600 per calendar day for each calendar day that such exceedance(s) occurred.

1. It is the intention of the Parties that stipulated penalty liability for violations of the soaking emissions standard set forth in paragraph V.A, above, shall automatically terminate when the Department promulgates a soaking emissions standard rule pursuant to its rulemaking authority and such rule becomes effective.

F. Effect of Stipulated Penalties. If a stipulated penalty is defined in this Section IX for a violation by Shenango of this Agreement, which violation is also a violation of the CAA, rules and regulations thereunder, or of Article XXI, and if Shenango pays a stipulated penalty, ACHD shall not seek, in any civil action under the CAA or Article XXI, any additional civil penalty assessment for such violations.

G. Method of Payment. Stipulated penalties required under this Section IX shall be paid by corporate check or the like made payable to the "Allegheny County Clean Air Fund" and shall be addressed to the Program Manager, Allegheny County Health Department, 301 39<sup>th</sup> Street, Bldg. No. 7, Pittsburgh, Pennsylvania 15201. Subject to Shenango's rights to administrative and judicial review in accordance with paragraph IX.J of this Agreement, Shenango shall place its payment for stipulated penalties in U.S. First Class Mail, or any equivalent or faster delivery method, within thirty (30) Days after the close of each calendar quarter in which the violation occurred.

H. Date of Accrual. All stipulated penalties shall be automatically owed and due within thirty (30) Days after the close of each calendar quarter in which the violation occurred. Stipulated penalties shall accrue from the date of the violation and shall be cumulative.

I. Interest. If Shenango fails to pay stipulated penalties when due, ACHD also may institute proceedings to collect the penalties, as well as interest. Shenango shall pay interest on the unpaid penalties at the rate established by the Secretary of Treasury pursuant to Article XXI, § 2109.06(a)(4), beginning on the date penalties are due, and shall continue to accrue at the rate specified through the date of Shenango's full payment.

J. Reservation of Right to Appeal. Notwithstanding any other provision of this Agreement, nothing herein shall waive Shenango's right to appeal a final action of the Department with respect to this Agreement under Article XI § 1103 (relating to right to appeal) and to a hearing or conference in lieu of hearing under Article XXI § 2109.06 (relating to civil proceedings) of the ACHD's Air Pollution Control Rules and Regulations, or to judicial review of the Director's or Hearing Officer's decision.

K. Scheduled Annual Repair and Maintenance. Notwithstanding the provisions of paragraph IX.A, Shenango shall not incur stipulated penalties under those paragraphs during periods when the Desulfurization Plant is shut down for scheduled repair or maintenance (the scheduled maintenance outage). Shenango shall be permitted 336 consecutive hours in each calendar year for a scheduled maintenance outage at the Desulfurization Plant to provide preventative and scheduled maintenance. The scheduled maintenance outage shall not be taken at any time during the months of May, June or September, unless otherwise approved in writing by ACHD. Shenango shall prepare and retain copies of work plans for each scheduled maintenance outage that will detail the work proposed and provide a schedule in which the work shall be performed. Shenango shall provide ACHD with notice of the scheduled maintenance outage at least fourteen (14) Days prior to shutdown.

L. Unscheduled Repair and Maintenance. In the event of unscheduled repair or maintenance at the Desulfurization Plant, Shenango shall notify ACHD orally of the upset condition requiring the shutdown within sixty (60) minutes and shall confirm such notification in writing within seven (7) Days. Notwithstanding the provisions of paragraph IX.A, Shenango shall not incur stipulated penalties when the Desulfurization Plant is shut down for unscheduled repair or maintenance because of an upset condition or other repair or maintenance so long as

such periods of unscheduled repair or maintenance do not exceed a total of two hundred forty (240) hours in a calendar year. Should Shenango complete the scheduled maintenance outage identified in paragraph IX.K in less than 336 consecutive hours in any calendar year, in addition to its allotted hours for unscheduled repair and maintenance, Shenango may use for unscheduled repair and maintenance any equivalent hours not used for the scheduled maintenance outage during that calendar year.

#### **X. FORCE MAJEURE**

A. Force Majeure Event. For the purpose of this Agreement, "Force Majeure" as applied to Shenango or to any person or entity controlled by Shenango, is defined as any event arising from circumstances or causes beyond the control of Shenango, or any person or entity controlled by Shenango, including, but not limited to, its officers, directors, employees, agents, representatives, contractors, subcontractors, or consultants, that may delay or prevent performance of an obligation under this Agreement, despite Shenango's diligent efforts to fulfill the obligation. Such Force Majeure events include, but are not limited to, events such as floods, fires, tornadoes, other natural disasters, labor disputes, and unavailability of necessary equipment beyond the reasonable control of Shenango. The requirement to exercise "diligent efforts to fulfill the obligation" includes using diligent efforts to mitigate any delay caused by a Force Majeure event, as that event is occurring and/or following such an event, so that the delay or non-performance is minimized to the greatest extent reasonably possible.

B. Notice of Event. If Shenango is prevented from complying with any requirement of this Agreement due to a potential Force Majeure event, Shenango may claim that such an event constitutes Force Majeure and may petition the ACHD for relief by notifying the ACHD in the following manner:

1. By telephone within ninety-six (96) hours, and by U.S. Mail, or the equivalent, within ten (10) Days of the date that Shenango becomes aware, or with reasonable care should have become aware, of the potential Force Majeure event impeding performance.

2. Written notice of a potential Force Majeure event shall include the following:

a. A description of the event and a rationale for attributing the event to Force Majeure;

b. A description of the efforts that have been made to prevent, and efforts being made to mitigate, the effects of the event and to minimize the length of delay or non-performance;

c. An estimate of the duration of the delay or non-performance;

d. A description of a proposed timetable for implementing measures to bring Shenango back into compliance with this Agreement; and

e. Available documentation, which, to the best knowledge and belief of Shenango, supports Shenango's claim that the delay or non-performance was attributable to a Force Majeure event.

## **XI. REOPENING**

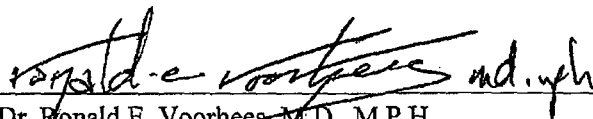
In the event that any condition contained in this Agreement is modified or declared void by the ACHD's Hearing Officer or a presiding court so as to create a substantial burden on Shenango to comply with the timeframes set forth in this Agreement, such timeframes may be extended for a time as agreed to by the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives. The undersigned representative(s) of Shenango certify under penalty of law, as provided by 18 Pa.C.S. § 4909, that he is authorized to execute this Agreement on behalf of Shenango; that Shenango consents to the entry of this Agreement as a final Order of the ACHD; and that, except as otherwise provided herein, Shenango hereby knowingly waives its rights to appeal this Agreement and to challenge its content or validity which may be available under Article XI of the ACHD's Rules and Regulations, the Pennsylvania Administrative Agency Law, 2 Pa.C.S. § 103(a), or any other applicable provision of law. Signature by Shenango's attorney certifies only that this Agreement has been signed after consulting with counsel.

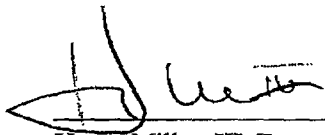
Executed to be effective upon signature by the Parties as of the Effective Date first noted above.

For:

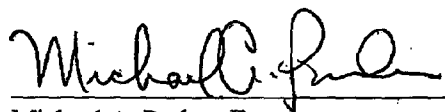
ALLEGHENY COUNTY HEALTH DEPARTMENT

  
\_\_\_\_\_  
Dr. Ronald E. Voorhees, M.D., M.P.H.  
Acting Director

6/19/2012  
Date

  
\_\_\_\_\_  
Henry Miller, III, Esq.  
Solicitor

6/19/12  
Date

  
\_\_\_\_\_  
Michael A. Parker, Esq.  
Assistant Solicitor

6/19/12  
Date

For:

SHENANGO INCORPORATED

Gerald S Endler  
Name  
Title Gerald S Endler, Sr. VP & General Counsel

6/14/12  
Date

Gary L. Gross  
Name  
Title Gary L. Gross  
VP STEEL

6/15/12  
Date

REVIEWED  
BY: [Signature]  
LEGAL