

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
and)
)
PENNSYLVANIA DEPARTMENT OF)
ENVIRONMENTAL PROTECTION)
)
Plaintiff-Intervenor,)
)
and)
)
COUNTY OF ALLEGHENY,)
)
Plaintiff-Intervenor,)
)
v.)
)
SHENANGO INCORPORATED,)
)
Defendant.)
)
_____)

CIVIL ACTION No. 12-1029

CONSENT DECREE

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 SHENANGO INCORPORATED,)
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 Defendant.)
)
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CIVIL ACTION No. 12-1029

CONSENT DECREE

WHEREAS:

1. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA” as defined herein), and Plaintiff-Intervenor the County of Allegheny, Pennsylvania, on behalf of the Allegheny County Health Department (“ACHD” as defined herein) (hereinafter collectively referred to as “Plaintiffs”) filed a Motion for Civil Contempt and to Enforce Consent Decree on September 22, 1999 (“1999 Motion for Contempt”), for civil contempt of the Consent Decree dated April 13, 1993 and entered by this Court in this case on August 23, 1993 (“1993 Decree”);

2. Defendant Shenango Incorporated (“Defendant” as defined herein) is a Pennsylvania corporation doing business in the Western District of Pennsylvania;
3. Defendant owns and operates a coke making facility, located in Allegheny County, Pennsylvania (the “Facility” as defined herein). Plaintiffs’ 1999 Motion for Contempt was based on Defendant’s alleged violations of the 1993 Decree at the Facility;
4. Defendant’s Facility includes, *inter alia*, a Coke Oven Battery S-1 (“COB S-1” as defined herein);
5. In accordance with the 1993 Decree, Defendant replaced its then existing technology for reduction of the amount of sulfur and sulfur compounds contained in coke oven gas (“COG”) generated at COB S-1 with a new sulfur removal technology, known as SulFerox. Although in 1996, Defendant successfully demonstrated compliance with applicable final emission standards, Defendant thereafter began to experience frequent operational difficulties with both its SulFiban and the SulFerox units, which resulted in periods during which Defendant failed to meet the final emission standard set forth in the 1993 Decree and in Article XXI, Rules and Regulations of the Allegheny County Health Department (“Article XXI”);
6. Ultimately, the Parties agreed to a revised Consent Decree which addressed issues between the Parties relating to settlement of claims for stipulated and civil penalties, past and ongoing noncompliance with emission standards applicable to certain portions of the Facility and certain Corrective Action and other Work to be implemented by Defendant;
7. That revised Consent Decree was entered by this Court on June 26, 2000 (the “2000 Consent Decree”);
8. ACHD issued a number of notices of violations of Article XXI to Shenango during the second half of 2005. Defendant resolved those alleged violations. See, August 30, 2005 Administrative Consent Order and Agreement between ACHD and Shenango; December 6,

2005 ACHD offer to settle certain other violations and Shenango's January 11, 2006 response thereto;

9. This Consent Decree addresses issues between the Parties relating to settlement of claims for civil penalties and injunctive relief based upon alleged violations included in the Complaint and as more specifically set forth in Section XVI.A (Effect of Settlement) of this Consent Decree.

10. The Parties intend that, after this Consent Decree is entered, the 2000 Consent Decree be terminated in its entirety and that Civil Action No. 80-1172, in which the 2000 Consent Decree was entered, be closed. To that end, the Parties have agreed that Plaintiff United States will file a motion for termination in Civil Action No. 80-1172 which Defendant Shenango will not oppose. The Parties also intend that this Consent Decree resolve the claims set forth in the Complaint filed in this civil action. The Parties further intend that this Consent Decree supersede and replace the November 4, 1999 Consent Order and Agreement between PADEP and Defendant and the obligations contained therein in its entirety; and

11. The Parties agree, and the Court finds, that this Consent Decree has been negotiated by the Parties in good faith and that this Consent Decree is fair, reasonable and in the public interest.

NOW THEREFORE, without admission, trial or adjudication of any issue of fact or law and upon the consent of the Parties hereto, it is ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this Consent Decree and the Parties herein pursuant to 42 U.S.C. § 7413(b) and 28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper in this judicial district under 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c), because the alleged violations of the 2000 Consent Decree and those violations alleged in the April 28, 2006 EPA NOV and the 2010 PADEP NOV are alleged to have occurred in, and Defendant resides in, and has its principal place of business in, the Western District of Pennsylvania. The Complaint filed with this Consent Decree states claims for which, if the allegations were proved, relief could be granted. Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

II. GENERAL PROVISIONS

This Consent Decree shall apply to and be binding upon Defendant, its successors and assigns. In any action to enforce this Consent Decree, Defendant shall not raise as a defense to liability the failure of any of its officers, directors, agents, attorneys, employees, servants, contractors, subcontractors, successors, assigns or of any person(s) acting on its behalf, to take action necessary to comply with the provisions hereof. This Consent Decree shall also apply to and be binding upon the United States, PADEP and Allegheny County.

III. DEFINITIONS

A. Any term used in this Consent Decree that is defined in the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* (the "CAA"), the Clean Water Act, as amended, 33 U.S.C. §§1251 *et seq.* (the "CWA"), the regulations promulgated thereunder, or County of Allegheny,

Pennsylvania, Ordinance No. 16782, and Allegheny County Health Department (“ACHD”) Rules and Regulations, Article XXI Air Pollution Control (“Article XXI”) shall have the meaning given it therein.

B. For purposes of this Consent Decree, the following words and phrases shall have the meaning stated:

1. “ACHD” shall mean the Allegheny County Health Department and any successor departments or agencies of Allegheny County.
2. “Agencies” shall mean EPA, PADEP and ACHD.
3. “Allegheny County” shall mean the County of Allegheny, Commonwealth of Pennsylvania, including but not limited to ACHD.
4. “Biological Treatment” shall be consistent with its use by EPA in the Development Document for Final Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category and shall mean the use of bio-oxidation to remove organic materials from the wastewater generated at the Facility’s bi-product recovery plant. Microorganisms under aerobic conditions use the organic materials as substrates, thus removing them by microbial respiration and synthesis. Biological treatment with nitrification also incorporates ammonia removal via conversion to nitrated by biological processes. Biological denitrification then converts the nitrate to nitrogen gas.
5. “Coal Pile Runoff Management Plan” or “CPRMP” shall mean the plan submitted by Defendant and approved by PADEP and EPA, including any modifications made to the Plan following any appeal rights Defendant asserts, to manage and treat discharges from the Coal Pile Storage Area, identified in Section VI of this Consent Decree, below. The Coal Pile Runoff Management Plan is intended to control and provide the conditions under which coal pile runoff from the Facility will be discharged under permit to waters of the United States.

6. "COMS" shall mean continuous opacity monitoring system or device.
7. "Certified Observer" shall mean an individual certified in accordance with the procedures specified at 40 C.F.R. Part 60, Appendix A, Method 9.
8. "COB S-1" shall mean Coke Oven Battery S-1.
9. "Consent Decree" or "Decree" shall mean this Consent Decree and all Appendices hereto.
10. "Construction Completion" as used in Section VI. (Clean Water Act Compliance) shall mean placement in operation of all units and related appurtenances necessary for start-up or operation.
11. "Corrective Action" shall mean (1) the construction, replacement, alteration or maintenance of new or existing plant and equipment, (2) the acquisition and installation of equipment for, or required in connection with, the construction, replacement, alteration or maintenance of new or existing plant and equipment, and (3) the planning and investigation to determine the feasibility of any Corrective Action undertaken pursuant to this Decree, including studies, designs, plans, working drawings, specifications, permits and other action necessary for the carrying out of any Corrective Action undertaken pursuant to this Decree.
12. "Day" shall mean, for purposes of computing time for compliance with this Consent Decree, a calendar day unless expressly stated to be a Working Day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, a Sunday, or a holiday recognized by the United States, PADEP, or Allegheny County, the period shall run until the close of business of the next Working Day.
13. "Defendant" shall mean Defendant in this action, Shenango Incorporated.

14. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

15. "Facility" shall mean a coke manufacturing and by-products plant owned and operated by Defendant located on Neville Island, Allegheny County, Pennsylvania, including the WWTP and all equipment or units to control emissions and to treat wastes.

16. "Government" or "Governments" shall mean the United States and the Commonwealth of Pennsylvania and Allegheny County.

17. "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 Consent Decree, 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) Working Days of the oral communication.

18. "Operational Level" as used in Section VI (Clean Water Act Compliance) shall mean that the WWTP is able to perform as intended and meeting the applicable effluent limitations contained in the Part I NPDES Permit.

19. "PADEP" shall mean the Pennsylvania Department of Environmental Protection and any successor departments or agencies of the Commonwealth of Pennsylvania.

20. "Part I NPDES Permit" shall mean the NPDES Permit No. PA 0002437 issued by PADEP to Defendant, and any renewals thereof, including any modifications made to the such Permit.

21. “Part I NPDES Final Permit Date” shall mean the date that is the later of (i) the date that is thirty (30) Days after receipt by Defendant of the proposed renewal of the Part I NPDES Permit, or (ii) the date on which any appeal of such permit taken by Defendant is exhausted. Nothing in this Consent Decree is intended to abrogate the rights of Defendant to appeal the renewal of the Part I NPDES Permit. Appeal of any condition related solely to the CPRMP shall not delay or impact the schedule for the design or construction of the Biological WWTP as described in Section VI.C.

22. “Parties” shall mean the United States, PADEP, and Allegheny County (“Plaintiffs”) and Shenango Incorporated (“Defendant”).

23. “Party” shall mean the United States, PADEP, and Allegheny County (“Plaintiffs”) or Shenango Incorporated (“Defendant”).

24. “Plaintiffs” shall mean the United States on behalf of EPA, PADEP, and Allegheny County on behalf of the ACHD.

25. “United States” shall mean the United States of America, including but not limited to the U.S. Department of Justice and EPA.

26. “Wastewater Treatment Plant” or “WWTP” shall mean the wastewater treatment plant at the Facility that is subject to the Part I NPDES Permit.

27. “Water Quality Management Part II Permit” or “WQM Part II Permit” shall mean the permit issued by PADEP to Defendant for the design and construction of any treatment facility, related appurtenances or Work which requires such permit before commencement under the Clean Water Act Compliance Section of this Consent Decree, Section VI, below.

28. “Water Quality Management Part II Final Permit Date” or “WQM Part II Final Permit Date” shall mean the date that is the later of (i) the date that is thirty (30) Days after

receipt by Defendant of the WQM Part II Permit, or (ii) the date on which any appeal of such permit taken by Defendant is exhausted. Nothing in this Consent Decree is intended to abrogate the rights of Defendant to appeal the WQM Part II Permit. Appeal of any condition of the Water Quality Management Part II Final Permit related solely to the CPRMP or the Immediate WWTP Work or the Additional WWTP Improvements, shall not delay or impact the schedule for the design or construction of the Biological WWTP as described in Section VI.C.

29. "Work" shall mean those activities, other than Corrective Action, that Defendant is required to perform under this Consent Decree.

30. "Working Day" shall mean a day other than a Saturday, a Sunday, or a holiday recognized by the United States, PADEP, or Allegheny County.

31. "Week" shall mean seven (7) consecutive Days.

IV. CLEAN AIR ACT COMPLIANCE REQUIREMENTS

A. Coke Oven Battery S-1 Combustion Stack

1. Standards.

On and after the date of entry of this Decree, and subject to Section XVI.D., Defendant shall operate the Facility in compliance with Article XXI., Part E, Subpart 2, §§ 2105.21f.1, f.3, and f.4 of the Rules and Regulations of the ACHD pertaining to coke oven emissions from combustion stacks, as in effect on the date of entry of this Decree. Specifically, Defendant shall not operate, or allow to be operated, any battery of coke ovens at the Facility in such manner that, at any time, emissions from any coke oven battery combustion stack at the Facility (including emissions from the COB S-1 combustion stack):

- a. exceed a particulate concentration of 0.015 grains per dscf;
- b. equal or exceed any opacity of 20% for a period or periods aggregating in excess of three (3) minutes in any 60 minute period; or

c. equal or exceed any opacity of 60% at any time.

2. Inspection and Maintenance Program.

Defendant, as of the date of lodging of this Consent Decree, shall implement the following :

a. the Elevated Opacity Response Protocol attached hereto and incorporated as **Appendix 2**,

b. the Battery Heating Protocol attached hereto and incorporated as **Appendix 3**,

c. the Coke Oven Proactive Maintenance Program attached hereto and incorporated as **Appendix 4**. Records of Defendant's inspection and maintenance program described in this Paragraph IV.A.2 and associated appendices shall be maintained by Defendant pursuant to the requirements of Section X (Recordkeeping & Record Retention).

3. End Flue Repairs and Ceramic Welding.

Defendant has completed end flue repairs at Coke Oven Battery S-1 as follows:

Wall No. original	Revised Wall No.	Pusher Date work completed	Coke Side Date work completed
1	1	Pusher side 2005	Coke side 2006
2	2	Pusher side 2004	Coke side 2006
3	3	Pusher side 2004	Coke side 2005
4	4	Pusher side 2005	Coke side 2005
5	5	Pusher side 2005	Coke Side 2007
6	6	Pusher Side 2006	Coke Side 2007
7	7	Pusher Side 2006	Coke side 2006
8	8	Pusher side 2005	Coke Side 2007
9	9	Pusher side 2005	Coke Side 2007
11	10	Pusher side 2005	Coke Side 2007
12	11	Pusher Side 2006	Coke side 2004
13	12	Repair not needed	Coke side 2004
14	13	Pusher Side 2007	Coke side 2004
15	14	Pusher side 2002	Repair not needed
16	15	Pusher Side 2007	Coke side 2004
17	16	Pusher Side 2007	Coke Side 2007

Wall No. original	Revised Wall No.	Pusher Date work completed	Coke Side Date work completed
18	17	Pusher Side 2007	Repair not needed
19	18	Pusher side 2005	Repair not needed
21	19	Pusher side 2005	Repair not needed
22	20	Pusher side 2005	Repair not needed
23	21	Pusher side 2005	Coke Side 2007
24	22	Pusher side 2005	Coke Side 2007
25	23	Pusher side 2004	Coke Side 2007
26	24	Pusher side 2005	Coke side 2006
27	25	Pusher side 2005	Coke side 2006
28	26	Pusher side 2005	Coke side 2005
29	27	Pusher side 2003	Coke side 2005
31	28	Pusher side 2003	Coke side 2005
32	29	Pusher side 2003	Coke side 2006
33	30	Pusher side 2005	Coke side 2005
34	31	Pusher side 2005	Coke side 2005
35	32	Pusher side 2005	Repair not needed
36	33	Pusher side 2005	Repair not needed
37	34	Pusher side 2003	Repair not needed
38	35	Pusher side 2003	Repair not needed
39	36	Pusher Side 2007	Repair not needed
41	37	Pusher Side 2007	Coke side 2005
42	38	Pusher side 2005	Coke side 2005
43	39	Pusher side 2005	Coke side 2005
44	40	Pusher side 2004	Coke side 2005
45	41	Pusher side 2005	Coke side 2004
46	42	Pusher side 2005	Coke side 2004
47	43	Repair not needed	Coke side 2004
48	44	Repair not needed	Coke side 2006
49	45	Pusher Side 2007	Coke side 2006
51	46	Pusher Side 2007	Coke side 2006
52	47	Pusher Side 2006	Coke side 2005
53	48	Pusher Side 2006	Coke side 2005
54	49	Pusher Side 2007	Coke side 2005
55	50	Pusher Side 2007	Coke side 2005
56	51	Pusher Side 2007	Coke side 2005
57	52	Pusher Side 2006	Coke side 2006
58	53	Repair not needed	Coke side 2006
59	54	Repair not needed	Coke side 2006
61	55	Pusher side 2001	Coke side 2006
62	56	Pusher side 2001	Coke side 2006
62A	56A	Pusher side 2001	Coke side 2006

Defendant has completed ceramic welding on the ovens/oven walls of Coke Oven Battery S-1 as reflected in the chart below, and will complete ceramic welding on the remaining oven/oven walls by no later than June 30, 2012:

Oven No. original	Revised Oven No.	Pusher Date work completed	Coke Side Date work completed
1	1	2010	To be completed
2	2	2010	2010
3	3	2010	2010
4	4	2009, 2010	2009
5	5	2009	2009
6	6	To be completed	To be completed
7	7	2010	2010
8	8	2010	To be completed
9	9	2011	2011
11	10	2011	To be completed
12	11	2010	2010
13	12	2010, 2011	To be completed
14	13	To be completed	2009
15	14	To be completed	To be completed
16	15	To be completed	To be completed
17	16	To be completed	2011
18	17	To be completed	2010
19	18	2010	2010
21	19	2010	2010
22	20	2011	2011
23	21	To be completed	To be completed
24	22	To be completed	To be completed
25	23	2009	2009, 2010
26	24	To be completed	To be completed
27	25	2011	To be completed
28	26	2010	To be completed
29	27	To be completed	2010
31	28	2010, 2011	2010
32	29	2009	2009
33	30	To be completed	2010, 2011
34	31	2010	2010, 2011
35	32	2011	2011
36	33	To be completed	To be completed
37	34	To be completed	2011
38	35	To be completed	2010
39	36	2010	2010, 2011
41	37	2009	2009

Oven No. original	Revised Oven No.	Pusher Date work completed	Coke Side Date work completed
42	38	To be completed	2009
43	39	2009	2009
44	40	2009	2009
45	41	2009	2009
46	42	To be completed	To be completed
47	43	2010	To be completed
48	44	To be completed	To be completed
49	45	To be completed	To be completed
51	46	To be completed	To be completed
52	47	2009	2009
53	48	To be completed	To be completed
54	49	To be completed	2010
55	50	To be completed	To be completed
56	51	2010	2010
57	52	To be completed	To be completed
58	53	2011	To be completed
59	54	To be completed	To be completed
61	55	2010, 2011	2011
62	56	2009, 2011	2009, 2011
62A	56A	2009	2009

In addition, in accordance with the Coke Oven Proactive Maintenance Program described in **Appendix 4**, Defendant shall, during the life of this Decree, continue its evaluation of coke oven wall conditions and, as necessary, perform additional end flue repairs and/or ceramic welding.

V. EMISSIONS MONITORING REQUIREMENTS

A. Coke Oven Battery S-1 Combustion Stack.

1. Transmissometer.

As one method to determine compliance with the standard in Paragraph IV.A.1, Defendant has equipped the COB S-1 combustion stack at the Facility with a Teledyne Monitor Labs, Inc. Lighthawk 560 transmissometer and associated data processing equipment. Defendant shall operate, maintain and calibrate the existing COB S-1 transmissometer and associated data

processing equipment, or an equivalent device and associated data processing equipment that meets the requirements of 40 C.F.R. Section 63.7331(j) 1 thru 5. Operation, maintenance and calibration of the COB S-1 transmissometer shall be carried out in accordance with the calibration and quality assurance/quality control requirements specified by the monitor manufacturer and all applicable federal, state, and local regulations governing the accuracy of such monitor data, as well as with the Continuous Opacity Monitoring System Quality Assurance/Quality Control Manual, attached hereto and incorporated as **Appendix 1**.

2. Spare Parts and Transmissometer Repair.

Defendant shall maintain on-site at the Facility reasonable quantities of spare parts to effectuate repair of the COB S-1 transmissometer. Defendant shall repair, calibrate and return the transmissometer to operation in accordance with Paragraph V.A.1. within three (3) Working Days of any event which causes transmissometer damage, malfunction or failure. Defendant shall have a repaired or replacement transmissometer audited within five (5) Working Days after placing the same into operation.

3. Monitoring in the Event of a Transmissometer Failure.

In the event that the COB S-1 combustion stack transmissometer becomes non-operational or otherwise fails to provide certifiably accurate monitoring results for a period in excess of forty-eight (48) hours, and until such time as the non-operational COB S-1 combustion stack transmissometer is repaired, adjusted and recalibrated or a new transmissometer is installed and properly adjusted, calibrated and placed into continuous operation, Defendant shall conduct visible emissions observations of the combustion stack without the operational transmissometer in the manner set forth below:

a. Such visible emission observations shall be conducted by a certified observer.

b. Such visible emission observations shall be conducted for three consecutive daylight hours on each Day at the COB S-1 combustion stack.

c. Such visible emission observations shall be conducted and recorded in accordance with the methods and procedures specified in 40 C.F.R. Part 60, Appendix A, Method 9, as modified by the ACHD Source Testing Manual, Chapter 9.

d. Once any such visible emission test is initiated, it shall continue for the full three-hour duration to its final conclusion, unless prevented by a force majeure event, as identified in Section XIII (Force Majeure).

4. Opacity Self-Monitoring Records.

Defendant shall keep and maintain the following COB S-1 stack opacity self-monitoring records conducted pursuant to Paragraphs V.A.1., V.A.2., and V.A.3. above, in accordance with the requirements of Section X (Recordkeeping & Record Retention):

a. Records of Continuous Opacity Monitoring System Quality Assurance/Quality Control procedures performed pursuant to **Appendix 1**;

b. An identification of each period during which the COMS was inoperative, except for zero and span drift check;

c. The nature of repairs or adjustments performed;

d. Information required to be generated by the transmissometer data processing system concerning exceedances, specifically, an identification of (i) each hour during the reporting period that opacity exceeded the applicable emission standard(s) set forth in Paragraph IV.A.1., (ii) an identification of the emission standard(s) exceeded, (iii) the total time during the hour identified that the standard(s) was exceeded, and (iv) the maximum opacity measured during the hour;

e. All daily transmissometer charts; and

f. The results of all certified visible emissions observations that Defendant has conducted.

5. Visible Emission Observation Reporting.

In each Quarterly Report that Defendant is required to submit to the Agencies pursuant to Section XI (Reporting Requirements), Defendant shall report the results of all visible emission observations that it has conducted at the COB S-1, shall attach copies of all visible emission observations recorded during the quarterly reporting period, and shall submit the Combustion Stack Summary Opacity Data form attached hereto and incorporated as **Appendix 5**.

VI. CLEAN WATER ACT COMPLIANCE

A. Construction Completion and full operation and maintenance of the following Work to its WWTP shall be achieved by Defendant within three hundred and sixty (360) Days after entry by the Court of this Consent Decree or after the WQM Part II Final Permit Date, whichever occurs later (the "Immediate WWTP Work"). To the extent that a WQM Part II Permit is required for all or part of the Immediate WWTP Work, a complete and accurate permit application must be submitted within sixty (60) Days after entry of the Consent Decree. The Immediate WWTP Work shall consist of the following:

- a. Install rope skimmer, dissolved air flotation unit, and decant tank/pumps;
- b. segregate the reflux stream for further treatment, or install rapid mix tank and chemical metering pumps and pH adjustment system and pH instrumentation/automation, or any other method approved by PADEP; and

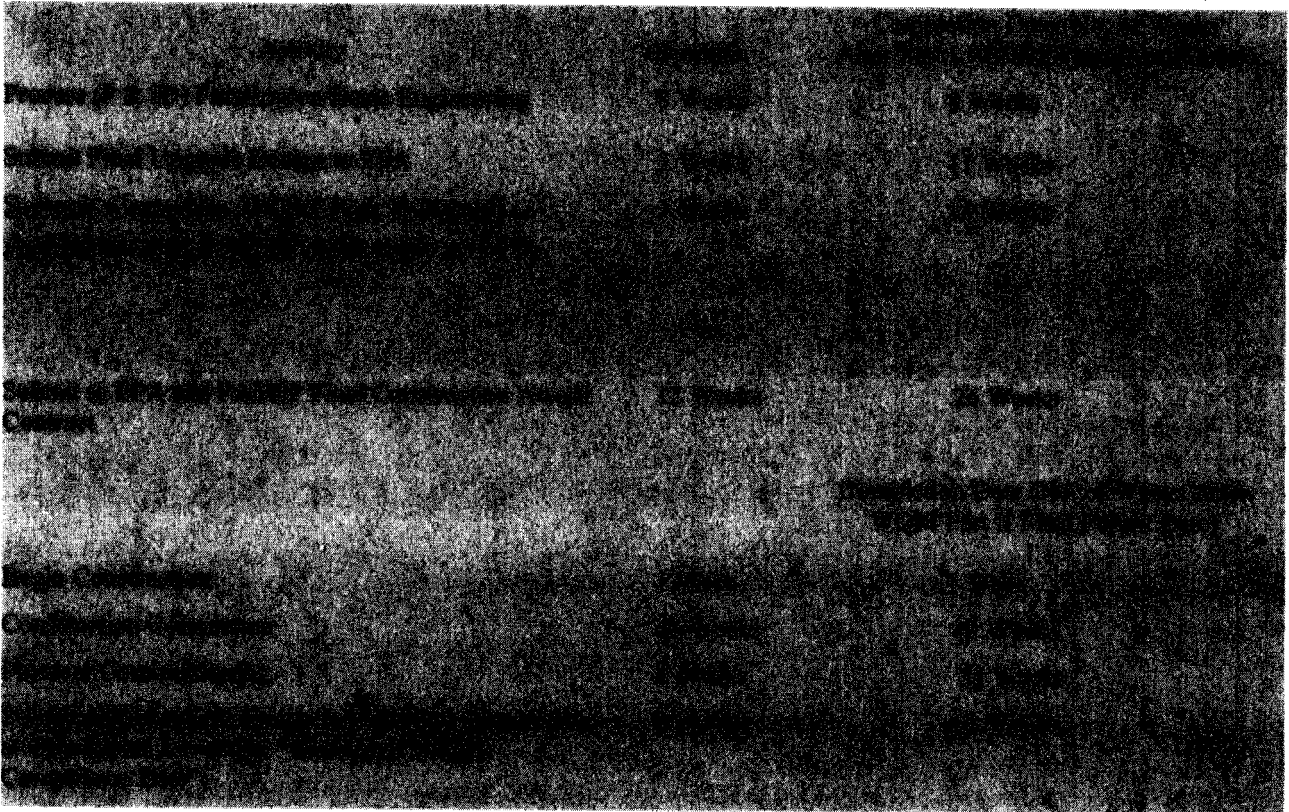
c. Install any required foundations, piping and electrical associated with the Work required herein.

B. Within sixty (60) Days after the third of three (3) daily effluent limitation violations for the same parameter of the Part I NPDES Permit after completion of the Immediate WWTP Work, Defendant shall provide a workplan to EPA and PADEP identifying additional immediate improvements to the WWTP (“Additional WWTP Improvements”) designed to eliminate ongoing and prevent future violations. EPA and PADEP shall review and approve the workplan before the Additional WWTP Improvements are to be initiated. Construction Completion and full implementation of the Additional WWTP Improvements shall be implemented within ninety (90) Days after EPA and PADEP approval of the workplan. If a WQM Part II Permit is required to implement the Additional WWTP Improvements, it shall be included with the workplan and the Additional WWTP Improvements required by this paragraph shall be completed within ninety (90) Days after the WQM Part II Final Permit Date, or other timeframe requested by Defendant and approved by PADEP or EPA. The requirements of this paragraph shall remain in force until the Biological WWTP Compliance Date (as defined in the milestones chart in Section VI.C) and are in addition to any stipulated penalties that attach pursuant to this Consent Decree.

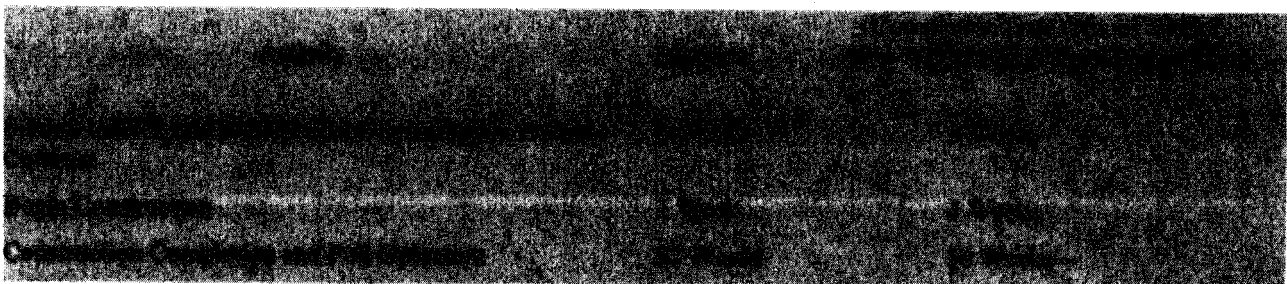
C. Defendant shall upgrade its WWTP through the addition of Biological Treatment (“WWTP Upgrade”) as set forth in this Section. The WWTP Upgrade shall be designed to ensure compliance with the Part I NPDES Permit, the Effluent Limitation Guidelines contained in 40 C.F.R. § 420.13(a) (Iron and Steel Manufacturing Point Source Category, Subpart A: Coke Making subcategory) and applicable variances, including specifically those provided under 40

C.F.R. § 125. 31 and Section 301(g) of the CWA. Defendant shall complete the WWTP

Upgrade consistent with the following milestones:



D. Within forty-five (45) Days after entry of this Decree, Defendant shall submit the Coal Pile Runoff Management Plan (“CPRMP”) to EPA and PADEP for approval. Within forty-five (45) Days after approval of the CPRMP, Defendant shall submit a Complete WQM Part II Permit Application to PADEP, with a copy to EPA. Commencing upon the WQM Part II Final Permit Date, Defendant shall implement the CPRMP (the “CPRMP Work”) pursuant to the following schedule, and shall comply with the following milestones:



E. Defendant will continue to haul and dispose of cyanide waste generated by its facility off-site unless and until PADEP and EPA provide permitting approval to treat such wastes on-site consistent with requirements in an applicable NPDES permit.

VII. PENALTIES

A. Penalty.

Defendant consents to the imposition of a civil penalty in the amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) to be paid as provided in Paragraph VII.B. Plaintiffs shall accept such penalty in full and complete settlement of all claims described in Section XVI.A (Effect of Settlement).

B. Payment of Penalty.

The above penalty shall be divided among Plaintiffs United States, PADEP, and Allegheny County as follows: Eight Hundred Seventy Five Thousand Dollars (\$875,000.00) paid to Plaintiff United States, Six Hundred Twenty Five Thousand Dollars (\$625,000.00) to Plaintiff Allegheny County, and Two Hundred Fifty Thousand Dollars (\$250,000.00) to Plaintiff PADEP. The penalties shall be payable as follows:

1. Within thirty (30) Days of the date of entry of this Consent Decree, Defendant shall make a payment of Eight Hundred Seventy Five Thousand Dollars (\$875,000.00) to Plaintiff United States of America, in accordance with Paragraph VII.B. All payments to the United States shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice ("DOJ") account in accordance with written instructions to be provided to Defendant by the United States Attorney's Office for the Western District of Pennsylvania following lodging of the Consent Decree. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a

transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Shenango, Inc.* and shall reference the civil action number, DOJ case number 90-5-2-3-1099/1 and USAO File Number [1998Z00011].

2. Within thirty (30) Days of the date of entry of this Consent Decree, Defendant shall make a payment of Two Hundred Fifty Thousand Dollars (\$250,000.00) to PADEP's Clean Water Fund, by corporate check or the like, which shall be mailed or delivered to the attention of Compliance Specialist, Water Management, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, Pa, 15222-4745.

3. Within thirty (30) Days of the date of entry of this Consent Decree, Defendant shall make a payment of Six Hundred Twenty Five Thousand Dollars (\$625,000.00) to the Allegheny County Clean Air Fund, by corporate check or the like, which shall be mailed or delivered to Manager, Air Quality Program, Allegheny County Health Department, 301 39th Street, Bld. No. 7, Pittsburgh, Pennsylvania 15201-1891.

C. Taxes.

Defendant shall not deduct, for local, state, or federal income tax purposes, its payment of all or any portion of the penalty paid to the United States, PADEP, and to Allegheny County, or any Stipulated Penalties that may be paid pursuant to Section VIII (Stipulated Penalties), or otherwise seek or obtain any favorable tax treatment as a result of the payment of any such penalties.

VIII. STIPULATED PENALTIES

A. Identification of Stipulated Penalties.

Unless otherwise excused under the provisions of this Consent Decree, Defendant shall be liable for the following stipulated penalties:

1. Failure to Make Payment.

For Defendant's failure to make any penalty payment pursuant to the requirements of Paragraph VII.B., Defendant shall pay stipulated penalties in the following amounts for each day during which any penalty payment remains overdue and unpaid:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th Day	\$ 5,000
16th through 30th Day	\$ 7,500
31st Day and beyond	\$ 10,000

2. Combustion Stack.

a. On and after the date of entry of this Consent Decree, for each clock hour that Defendant fails to maintain compliance at the COB S-1 combustion stack with any of the requirements referenced in Paragraph IV. A. 1. of this Decree, as determined by the combustion stack COM, Defendant shall be liable for the following stipulated penalties:

<u>Date of Non-Compliance</u>	<u>Stipulated Penalty per Clock-Hour of Non-Compliance</u>
Date of Entry to 6/30/2012	\$ 100
7/1/2012 – Termination	\$ 450

The first thirty-three (33) clock-hour opacity limit violations in any calendar quarter shall not be counted for purposes of nor subject to stipulated penalties.

b. On and after the date of entry of this Consent Decree, for any failure on the part of Defendant to comply with any of the requirements referenced in Paragraph IV. A. 1. of this Decree during any quarterly reporting period, based upon opacity readings of Certified Observers employed by ACHD or EPA pursuant to 40 C.F.R. Part 60, Appendix A, Method 9, Defendant shall be liable for the following stipulated penalties:

<u>Days of Violation Per Quarter</u>	<u>Stipulated Penalties Per Day</u>
1 to 6	\$ 250
7 and up	\$1,000

3. Reports.

For Defendant's failure to submit any report or other submission identified in Section XI (hereinafter called a "Report") on or before the date required in this Consent Decree, or as extended by agreement of the Agencies, or for Defendant's failure to submit any such Report in accord with the specific requirements of this Consent Decree, Defendant 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) Working Days of the applicable due date for the Report.

4. Monitoring Equipment.

a. Defendant shall be liable for a stipulated penalty of \$25,000 for each calendar quarter that the COM transmissometer availability is less than ninety-five percent (95%). These stipulated penalties shall be due and owing automatically within thirty (30) Days after the close of each quarter in which the COM availability is less than 95%. The requirements for payment of stipulated penalties shall continue until termination of the Consent Decree.

5. Ceramic Welding.

a. For Defendant's failure to complete the specified ceramic welding by June 30, 2012 in accordance with Paragraph IV. A. 3 of this Decree, Defendant shall pay stipulated penalties as follows:

<u>Days of Violation</u>	<u>Penalty Per Violation</u>
1st through 10th Day	\$ 750
11th through 30th Day	\$ 1,500
31st Day and beyond	\$ 3,000

6. Recordkeeping and Other Requirements.

For any material failure on the part of Defendant to comply with any of the recordkeeping or record retention requirements of Section X (Recordkeeping & Record Retention), Defendant shall pay a penalty of \$1,000 for each such material failure. For Defendant's failure to comply with any of the entry, inspection, information collection or testing requirements of Section IX (Entry, Inspection, Information Collection and Testing), any of the requirements of Section XXIII (Cessation of Operations), or any of the notification or other requirements of Section XXII (Transfer of Interest), Defendant shall pay a penalty of \$1,000 per Day, per violation for each Day of noncompliance.

7. NPDES Effluent Limit Violations

a. From the effective date of this Consent Decree through one hundred and eighty (180) Days after the later of the effective date of this Decree or the date of issuance of the WQM Part II Permit necessary for the implementation of the Immediate WWTP Work, stipulated penalties shall accrue per violation per Day for each violation of the effluent limits contained in the Part I NPDES Permit as follows:

Type of Violation: Daily Penalty Per Violation

\$ 400 Per Violation Per Day

Type of Violation: Monthly Average

\$ 800 per monthly average violation per calendar month

b. From the end of the time period in Paragraph VIII.A.7.a above through the Biological WWTP Compliance Date (as defined in the milestones chart in Section VI.C), stipulated penalties shall accrue per violation per Day for each violation of the effluent limits contained in the Part I NPDES Permit as follows:

Type of Violation: Daily Penalty Per Violation

\$1,500 Per Violation Per Day

Type of Violation: Monthly Average

\$3,000 per monthly average violation per calendar month

c. From the Biological WWTP Compliance Date (as defined in the milestones chart in Section VI.C) through the termination of the Consent Decree, stipulated penalties shall accrue per violation per Day for each violation of the effluent limits contained in the Part I NPDES Permit as follows:

Type of Violation: Daily Penalty Per Violation

\$2,500 Per Violation Per Day

Type of Violation: Monthly Average

\$5,000 per monthly average violation per calendar month

8. Clean Water Act Work Violations

a. For Defendant's failure to meet any of the timeframes or milestones for the Immediate WWTP Work or to complete the Immediate WWTP Work within the timeframe required by this Consent Decree, stipulated penalties shall accrue per Day for each Day until the Immediate WWTP Work timeframe or milestone is met or the work is complete as follows:

Days of Violation	Penalty Per Violation Per Day
1st through 15th Day	\$ 750
16th through 30th Day	\$1,500
31st Day and beyond	\$3,000

b. For Defendant's failure to meet any of the milestones or timeframes for the WWTP Upgrade required by this Consent Decree, stipulated penalties shall accrue per Day for each Day until the timeframe is met or the milestone is achieved as follows:

Days of Violation	Penalty Per Violation Per Day
1st through 15th Day	\$ 500
16th through 30th Day	\$1,000
31st Day and beyond	\$2,500

c. For Defendant's failure to meet any of the timeframes or milestones for the CPRMP Work required by this Consent Decree, stipulated penalties shall accrue per Day for each Day until the timeframe is met or the milestone is achieved as follows:

Days of Violation	Penalty Per Violation Per Day
1st through 15th Day	\$ 500
16th through 30th Day	\$1,000
31st Day and beyond	\$2,500

d. For Defendant's failure to meet any of the timeframes or milestones for the Additional WWTP Improvements required by this Consent Decree, stipulated penalties shall accrue per Day for each Day until the timeframe is met or the milestone is achieved as follows:

Days of Violation	Penalty Per Violation Per Day
1st through 30th Day	\$ 500
31st Day and beyond	\$1,000

B. General Provisions Applicable to Stipulated Penalties.

1. Date of Accrual.

Except as otherwise expressly provided in this Consent Decree, stipulated penalty liability shall accrue from the date of violation and shall be cumulative.

2. Reservation of Rights.

Defendant shall be subject to any other remedies, in addition to stipulated penalties and interest, available to Plaintiffs for violations of this Consent Decree, and any other applicable federal, state, and local law. The provisions of this Section VIII (Stipulated Penalties) shall not be construed to limit any other remedies available to Plaintiffs for violations of this Consent Decree or other provisions of any applicable federal, state, and local law.

3. Method of Payment.

Stipulated penalties required under this Section VIII for air pollution-related Decree violations shall be paid 50% to the "Treasurer of the United States," and 50% to the "Allegheny County Clean Air Fund" and tendered in accordance with provisions of Section VII (Penalties) of this Consent Decree. Stipulated penalties required under this Section VIII for water pollution-related Decree violations shall be paid 50% to the "Treasurer of the United States," and 50% to the "PADEP" and tendered in accordance with provisions of Section VII (Penalties) of this Consent Decree.

4. Demand for Penalties.

Stipulated penalties for violations of monitoring requirements in this Section VIII.A Paragraph 4 shall be due and owing automatically within thirty (30) Days after the close of each quarter in which the Defendant reports the violations pursuant to Section XI, unless Defendant invokes Dispute Resolution under Section XIV. All other stipulated penalties shall be due and owing within thirty (30) Days from the date of a demand by any Plaintiff for payment of

the penalty, unless Defendant invokes the Dispute Resolution Procedures in Section XIV. If Defendant does not dispute liability for stipulated penalties, such stipulated penalties shall be paid by Defendant, by corporate check or the like, to Plaintiffs as provided for in Paragraph VIII.B.3. Payments shall be mailed or delivered to the address stated in the demand. Defendant shall simultaneously deliver copies of any payment checks to the individuals identified, and at the addresses set forth in, Paragraphs VII.B.2. and B.3. of this Consent Decree.

5. Disputed Demand.

If Defendant does dispute Plaintiffs' entitlement to any stipulated penalties accruing hereunder, the Parties shall attempt to resolve the dispute, in accordance with Section XIV (Dispute Resolution) of this Consent Decree, and, if they are unable to do so, any Party may submit the dispute to the Court for resolution. If the Court finds entitlement to the accrued stipulated penalties, in whole or in part, Plaintiffs shall also be entitled to interest on such stipulated penalties, in accordance with Paragraph VIII.B.6., for which the Court finds entitlement, and the stipulated penalties and accrued interest shall be paid within seven (7) Days of the date of the Court's order, unless the Court's order provides otherwise.

6. Interest.

If Defendant fails to pay stipulated penalties when due, the United States, PADEP, and/or Allegheny County also may institute proceedings to collect the penalties, as well as interest. Defendant shall pay interest on the unpaid penalties at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717, beginning on the date penalties are due, and shall continue to accrue at the rate specified through the date of Defendant's full payment.

7. Penalty Provisions Not Standards.

The daily stipulated penalty provisions set forth in Paragraph VIII.A. are not, and shall not be deemed, standards under the CAA or CWA, the Pennsylvania SIP, or any regulations

of Allegheny County and have been established only for the purpose of serving as criteria for determining the degree of Defendant's stipulated penalty liability under this Consent Decree.

8. ACHD Quarterly Enforcement.

Any penalties paid by Defendant to the ACHD quarterly enforcement program shall be deducted from any stipulated penalty due under this Consent Decree if the alleged violations which gave rise to the stipulated penalties are the same as the alleged violations which gave rise to the penalty paid pursuant to the ACHD quarterly enforcement program. In the event Allegheny County does not agree that the alleged violations giving rise to the stipulated penalties are the same as the alleged violations giving rise to the penalty paid pursuant to the ACHD quarterly enforcement program, Defendant or Allegheny County may invoke Dispute Resolution under Section XIV (Dispute Resolution), below.

IX. ENTRY, INSPECTION, INFORMATION COLLECTION AND TESTING

A. Right of Entry.

Plaintiffs and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility at all reasonable times, upon presentation of credentials for the purpose of determining compliance with the requirements of this Consent Decree. Such right of entry and access to the Facility for inspection purposes shall include the right to inspect and obtain copies of any and all documents required to be submitted or kept or maintained under or in connection with this Consent Decree, and the right to test or sample emissions from any sources that are addressed in this Consent Decree and any other activities authorized by Federal Rule of Civil Procedure 34(a). Copies of all photographs and analytical results shall be provided to Defendant by EPA, PADEP or ACHD upon request.

B. Production of Documents.

In addition to those rights of entry and access set forth in Paragraph IX.A., Plaintiffs shall have the right and authority to request the production, by Defendant, of documents, records and other information relating to this Consent Decree, Defendant's compliance with the provisions hereof, and Defendant's performance of the Corrective Action required hereunder (regardless of whether such documents, records and other information were generated by Defendant, or its officers, directors, employees, agents, servants, successors and assigns or by contractors, consultants, firms, corporations or other persons acting under, through or for them, or in active concert or participation with them) in order to:

1. Assess Defendant's compliance with this Decree and with all applicable laws, regulations and requirements;
2. Verify the accuracy and completeness of any data or information submitted to EPA, PADEP or ACHD in accord with the terms of this Decree; and,
3. Review and copy any and all documents and records pertaining to compliance or noncompliance with this Consent Decree.

C. Confidential Documents.

Defendant or any contractor, consultant, firm, corporation or other person acting under, through or for it or in active concert or participation with it, may assert business confidentiality claims covering part or all of the documents, records or information submitted to EPA, PADEP or ACHD or acquired under Paragraph IX.A. under this Consent Decree to the extent permitted by and in accordance with 40 C.F.R. § 2.203(b) and pursuant to ACHD Article XXI, § 2101.07.d. Upon request by EPA, Defendant also shall provide narrative responses to the points listed at 40 C.F.R. § 2.204(e)(4) in order to verify and support any claim of confidentiality. Documents, records or information determined to be business confidential by

EPA will be afforded the protection specified by 40 C.F.R. Part 2 Subpart B. Documents, records or information determined to be business confidential by ACHD will be afforded the protection specified in ACHD Article XXI § 2101.07.d. If no claim of confidentiality accompanies documents, records or information when they are submitted to or acquired by EPA, PADEP or ACHD, or if EPA, PADEP or ACHD has notified Defendant that the documents, records or information are not confidential under 40 C.F.R. § 2.203(b) or ACHD Article XXI § 2101.07.d., the public may be given access to such documents, records or information without further notice to Defendant or any contractor, consultant, firm, corporation or other person acting under, through or for it or in active concert or participation with it. No claim of confidentiality shall be made with respect to any inspection, sampling, analytical, emission or monitoring data or information, and all documents and materials subject to public inspection pursuant to the requirements of the CAA or CWA shall not be entitled to confidential treatment.

D. Retention of Rights.

Notwithstanding any provision of this Consent Decree, Plaintiffs hereby retain all of their respective information gathering and inspection rights and authorities, and nothing in this Consent Decree shall be construed to limit the United States', EPA's, PADEP's or ACHD's rights of access, inspection or information gathering pursuant to the Clean Air Act, the Clean Water Act or any other federal, state or local laws, regulations or requirements, and Defendant retains all of its defenses. Defendant retains all of its rights to contest by resort to Section XIV (Dispute Resolution) any request under this Section IX as overly broad or burdensome.

X. RECORDKEEPING & RECORD RETENTION

A. Specific Records. Defendant shall keep and maintain at the Facility:

1. The records and information required by:
 - a. Paragraph IV.A.2. (Inspection and Maintenance Program);
 - b. Paragraph V.A.4. (Opacity Self-Monitoring Data);
 - c. Paragraph V.A.5. (Visible Emission Observation Reporting);
 - d. All forms reports and specific information requirements of each of

the Appendices to this Consent Decree.

2. Copies of all Reports submitted to the Agencies under Section XI and any document or printed data generated by Defendant or in Defendant's possession that is relied upon in such Reports.

B. Monitoring Data.

Defendant shall keep and maintain records of any mass emission tests of the COB S-1 combustion stack, visible emission observations conducted in accordance with Section V (Emissions Monitoring Requirements), any additional visible emission observations by Certified Observers beyond what is required under Section V (Emissions Monitoring Requirements), and COMS data.

C. Retention Requirements.

Any and all records that Defendant is required to keep and maintain pursuant to this Section X shall be made available to Plaintiffs, upon request, for inspection and copying. Defendant shall preserve such records for a minimum of five (5) years after initial creation. Nothing in this Consent Decree in any way limits Defendant'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.

XI. 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 Consent Decree, and thereafter within thirty (30) Days of the end of each succeeding calendar quarter through the termination of this Consent Decree, Defendant shall submit a written progress report for the sources subject to or work required by this Consent Decree, describing Defendant's compliance status with the requirements of this Decree during the preceding calendar quarter (the "Quarterly Report"). The Quarterly Reports shall include the following reports and updates thereto, as and when applicable:

1. Combustion Stack Summary Opacity Data containing the information required pursuant to Paragraph V.A. in the form provided in **Appendix 5**; and
2. The status of the additional ceramic welding specified in and required by Paragraph IV. A. 3 of this Decree.
3. The status of all work or activities required by Section VI, Clean Water Act Compliance, including, without limitation all DMRs submitted to PADEP.

B. Certification.

Each Quarterly Report and affidavit under Section XXIII (Cessation of Operations) that is submitted by Defendant shall be certified by a responsible corporate officer of Defendant, 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: _____

Defendant's failure to include the above certification with any such Quarterly Report, or affidavit shall render such submission incomplete and, therefore, deficient and shall subject Defendant to stipulated penalties pursuant to Paragraph V.III.A.3 of this Consent Decree.

C. Delivery of Submittals.

All submittals required of Defendant pursuant to this Consent Decree shall be sent either through certified U.S. Mail, return receipt requested, or 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 Defendant in its administrative files for at least five (5) calendar years from the date of initial submission.

D. Persons to Receive Submittals.

Any submission by Defendant in satisfaction of a requirement of this Consent Decree shall be submitted to:

To EPA (CAA): Director, Air Protection Division (3AP00)
 U.S. Environmental Protection Agency
 Region III
 1650 Arch Street
 Philadelphia, PA 19103-2029
 Telephone: (215) 814-5000
 Fax:

and

Chief, Air Branch (3RC10)
Office of Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(copy of transmittal letter only)

To EPA (CWA):

Director, Water Protection Division (3WP00)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Telephone: (215) 814-5000
Fax:

and

Chief, Water Branch (3RC20)
Office of Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(copy of transmittal letter only)

TO PADEP:

Environmental Program Manager
Water Management
Southwest Regional Office
Department of Environmental Protection
400 Waterfront Drive, Pittsburgh, Pa 15222-4745
Telephone: (412) 442-4000
Fax: (412) 442-4328

To ALLEGHENY COUNTY:

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

XII. SUBMISSIONS REQUIRING APPROVAL

A. Specified Submittals.

The submissions which Defendant is required to submit to the Agencies for approval (or approval solely by EPA, PADEP or ACHD) pursuant to Section VI shall be submitted to the Agencies in accordance with the provisions of Section XI (Reporting Requirements) of this Consent Decree. Unless otherwise specified in this Consent Decree, EPA will provide responsive approvals, disapprovals and other correspondence, as specified in Paragraph XII.B., immediately below, on behalf of the Agencies where such approval authority lies jointly with the Agencies. Where this Consent Decree provides that only one of the Agencies (*e.g.*, EPA, PADEP or ACHD) shall have approval authority with respect to a specific plan, program, protocol, report, document or other submission, such party shall be the “Approving Authority” for purposes of this Section.

B. Actions by the Agencies.

Failure by the Agencies to act promptly upon receipt of any plan, report, or other submission shall not be deemed an approval of such submission. Subsequent to the receipt of any such submission, the designated Approving Authority will:

1. Approve, in whole or in part, the submission;
2. Approve the submission upon specified conditions;
3. Direct Defendant to modify the submission to cure the deficiencies;
4. Disapprove, in whole or in part, the submission, notifying Defendant of the deficiency(ies); or
5. Undertake some combination of the above.

C. Deficient Submittals.

1. Upon receipt of any notice of disapproval or deficiency, or any notice requiring a modification to any submission requiring approval, Defendant shall correct the deficiencies, make any required modifications and resubmit the plan, report, or other submission for approval within such time period as specified in this Consent Decree or, if not specified herein, within such time period as specified by the Agencies, or the Approving Authority in such notice.

2. In the event of approval or approval upon conditions by the Agencies or by the Approving Authority, Defendant shall proceed to take any action required by the plan, report, or other submission, as approved, subject only to its right to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution) of this Consent Decree with respect to any modifications to such plan, report, or other submission directed by, the Agencies or the Approving Authority.

3. Notwithstanding any notice of disapproval, deficiency, conditional approval or directed modification, Defendant shall proceed, at the direction of the Agencies or of the Approving Authority, to take any action required by any non-deficient portion of any submission requiring approval.

4. In the event that a resubmitted plan, report or other submission, or portion thereof, is disapproved or found to be deficient by the Agencies or by the Approving Authority, the Agencies or the Approving Authority may again require the Defendant to correct the deficiencies, in accordance with Paragraph XII.C.1, above. Subject only to the right to invoke the Dispute Resolution procedures set forth in Section XIV (Dispute Resolution) of this Consent Decree, Defendant shall implement any such plan, report, or other submission requiring approval as directed by the Agencies or the Approving Authority. Implementation of any non-deficient

portion of a submission shall not relieve Defendant of any liability for stipulated penalties under Section VII (Stipulated Penalties) of this Consent Decree for any violations of this Consent Decree relating to any deficient portion of a submission requiring approval.

5. If a plan, report, or other submission requiring approval is disapproved by the Agencies or the Approving Authority after resubmission because the Agencies or the Approving Authority determine that such resubmittal remains substantially deficient, Defendant shall be in violation of the provision of this Consent Decree requiring the Defendant to submit such plan, report, or other submission, unless the Defendant invokes dispute resolution and this Court overturns such disapproval.

6. The provisions of Section XIV (Dispute Resolution) and Section VIII (Stipulated Penalties) of this Consent Decree shall govern the accrual and payment of any stipulated penalties during dispute resolution and the implementation of any Corrective Action and/or Work affected by any formal dispute relating to an obligation of the Defendant under this Section XII (Submissions Requiring Approval).

7. The content of each plan, report or other submission that the Defendant is required to submit to the Agencies for approval, pursuant to the requirements of this Consent Decree and in accord with Section XII (Submissions Requiring Approval), shall become enforceable requirements of this Consent Decree upon approval by the Agencies or by the Approving Authority, as appropriate. In the event that the Agencies or the Approving Authority approve only a portion of any plan, report or other submission that Defendant is required to submit under the terms of this Consent Decree, the approved portion of any such submission shall become an enforceable requirement of this Consent Decree.

XIII. FORCE MAJEURE

A. Definition.

“Force majeure,” for purposes of this Consent Decree, as applied to Defendant or to any entity or person controlled by Defendant, is defined as any event arising from circumstances or causes beyond the control of Defendant or of any entity or person controlled by Defendant, including but not limited to, its officers, directors, employees, agents, representatives, contractors, subcontractors and consultants, that could not have been prevented by reasonable due diligence and that delays or may delay or prevent the performance of any obligation under this Consent Decree despite Defendant's diligent efforts to fulfill the obligation. The requirement to exercise “diligent efforts to fulfill the obligation” includes using diligent efforts to anticipate any potential force majeure event and diligent efforts to address the effects of any potential force majeure event (i) as it is occurring, and (ii) following the potential force majeure event, such that the delay or nonperformance is minimized to the greatest extent possible.

“Force Majeure” does not include the following:

1. Defendant's financial inability to complete its obligations hereunder;
2. Unanticipated or increased costs of achieving and maintaining compliance with any provision of this Consent Decree; or
3. Changed financial circumstances of Defendant.

B. Notice.

If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Consent Decree, and if Defendant is to have the right to claim such event constitutes force majeure, Defendant shall:

1. Telephonically notify and inform the ACHD and /or PADEP as applicable, and EPA of the occurrence of the event within forty-eight (48) hours after Defendant first knew, or with the exercise of reasonable care should have known, of the event;

2. Provide in writing to the EPA, PADEP, and/or ACHD, as applicable, within seven (7) Working Days after Defendant first knew, or with the exercise of reasonable care should have known, of the event, a statement which:

- a. Describes and explains the reasons for the delay or nonperformance;
- b. Describes and explains the reasons for the duration or anticipated duration of the delay or nonperformance;
- c. Identifies all measures taken or to be taken by Defendant to prevent or minimize the delay or nonperformance;
- d. Includes a timetable and schedule pursuant to which such measures shall be implemented;
- e. Contains Defendant's rationale for attributing such delay or nonperformance to a force majeure event if it intends to assert such a claim;
- f. States whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment; and
- g. Includes available documentation which, to the best knowledge and belief of Defendant, supports Defendant's claim that the delay or nonperformance was attributable to a force majeure event.

C. Failure to Give Notice.

Failure by Defendant to comply with each of the notice requirements of Paragraph XIII.B. shall constitute a waiver of Defendant's right to invoke the provisions of this force majeure Section as a basis for delay or nonperformance under this Consent Decree.

D. Excused Performance By Agreement.

If Plaintiffs agree that a delay or nonperformance is attributable to a force majeure event, the time for performance or the performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended or excused for a period not to exceed the actual delay resulting from such event. An extension of one compliance date based on a particular incident shall not result in an extension of a subsequent compliance date or dates unless specifically agreed to by Plaintiffs. Defendant must make a separate showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.

E. Notice of Disagreement.

If Plaintiffs determine that a delay or nonperformance was not, or will not be, caused by a force majeure, or if the Parties are unable to agree on a stipulated extension of time, EPA (or PADEP or ACHD, as applicable) will notify Defendant, in writing, of Plaintiffs' position after its receipt of Defendant's written notice under Paragraph XIII.B.2. Plaintiffs' position shall control unless Defendant invokes the Dispute Resolution procedures of Section XIV (Dispute Resolution). EPA (or PADEP or ACHD, as applicable) will provide Defendant with written notice of Plaintiffs' position prior to issuing a stipulated penalty demand for the nonperformance or delay in performance of any Consent Decree obligation for which Defendant has made a claim of force majeure.

F. Dispute Resolution.

If Defendant elects to invoke the Dispute Resolution procedures set forth in Section XIV (Dispute Resolution) of this Consent Decree, it shall do so no later than thirty (30) Days after the receipt of EPA's (or PADEP's or ACHD's, as applicable) notice under Paragraph XIII.E. In Dispute Resolution proceedings, Defendant shall have the burden of demonstrating by a preponderance of the evidence that:

1. The delay or nonperformance has been caused by a force majeure event;
2. Diligent efforts were exercised to avoid and mitigate the effects of the force majeure event;
3. Defendant complied with each of the notice requirements of Paragraph XIII.B.; and
4. The requested period for delay or nonperformance is appropriate.

If it is determined that Defendant has carried this burden, the delay or nonperformance at issue shall not be deemed a violation by Defendant of the affected obligation of this Consent Decree and Defendant shall not be liable for stipulated penalties respecting such delay or nonperformance.

XIV. DISPUTE RESOLUTION

A. Exclusive Procedure.

Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section XIV shall be the exclusive procedure for resolution of disputes arising between Plaintiffs and Defendant regarding matters arising under this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by either Plaintiffs or Defendant to enforce obligations of the other that have not been disputed. This paragraph shall not be applicable to the issuance of any permit or any permit issuance disputes or

appeals, including any disputes concerning the Part I NPDES Permit or any WQM Part II Permit, its terms or issuance.

B. Notice of Dispute and Informal Negotiations.

If, in one Party's opinion, there is a dispute between the Parties with respect to implementation of this Consent Decree or the implementation of any provision of this Consent Decree, that Party may send a written Notice of Dispute to the other Party which outlines the nature of the dispute and requests informal negotiations to resolve the dispute. The Parties shall make reasonable efforts to informally and in good faith resolve all disputes or differences of opinion regarding the implementation of this Consent Decree. Such period of informal negotiations shall not extend beyond thirty (30) Days from the date when the Notice of Dispute was received unless the period is extended by written agreement of the Parties. The dispute shall be considered to have arisen when one Party receives written notification from the other that there is a dispute.

C. Creation of the Record.

In the event that the Parties cannot resolve a dispute by informal negotiations under Paragraph XIV.B., then the position advanced by EPA on behalf of Plaintiffs (including any interpretation advanced by the Plaintiffs) shall govern, control and be binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, Defendant invokes the formal dispute resolution procedures of this Section XIV by mailing to Plaintiffs a written statement of position on the matter in dispute, including any factual data, analysis or opinion supporting that position, and any supporting documentation relied upon by Defendant. Within thirty (30) Days following receipt of Defendant's statement of position submitted pursuant to this Paragraph XIII.C., EPA, on behalf of the Agencies, will issue a written statement of position on the matter in dispute, including available factual data, analysis, opinion and/or legal arguments

supporting the Agencies' position along with any supporting affidavits and/or documentation relied upon.

D. Petition to the Court.

The position of the Agencies shall be binding upon Defendant unless Defendant, within thirty (30) Days of receipt of EPA's written statement of position, files with the Court and serves upon the United States, PADEP, and Allegheny County a petition for dispute resolution setting forth the matter in dispute, the efforts made by the parties to resolve it and the relief requested, and any factual data, analysis, opinion, affidavits, legal argument and supporting documentation. Plaintiffs may file a response to Defendant's petition within thirty (30) Days of receipt thereof, along with any factual data, analysis, opinion and legal argument supporting Plaintiffs' position and any supporting documentation and affidavits relied upon by the Plaintiffs. These filings shall constitute the record for purposes of resolving the dispute, and the Court shall render its decision on the basis of that record.

E. Standard of Review.

Judicial review of any dispute governed by this Section XIV shall be governed by applicable provisions of law.

F. Effect of Proceeding.

The invocation of formal dispute resolution procedures under this Section shall not of itself extend, postpone or affect in any way any obligation of Defendant under this Consent Decree, except that the obligation to remit payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding any stay of the obligation to remit payment, stipulated penalties shall accrue from the first Day of noncompliance with any applicable provision of this Consent Decree. In the event that Defendant does not prevail on the disputed issue, stipulated penalties, where applicable, shall be

due and paid within thirty (30) Days after the Court's decision on the matter in dispute. In the event that Defendant does prevail on the disputed issue, and the Court finds that Defendant has not breached its obligations under this Decree, or that any noncompliance is the result of a force majeure event, as defined in Section XIII (Force Majeure) of this Decree, any penalty demanded shall be set aside and performance of any obligation found to be affected by a force majeure pursuant to Section XIII (Force Majeure) shall be excused or extended as appropriate.

G. Notice and Service.

Whenever service or process is required or notice is required of any dispute pursuant to this Section XIV (Dispute Resolution), a transfer of interest under Section XXII (Transfer of Interest) or a cessation of operations under Section XXIII (Cessation of Operations), such service or notice shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice in writing to the other Parties that another individual or address has been designated:

To the UNITED STATES:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
DOJ # 90-5-2-3-1099/3

and

Chief, Air Branch (3RC10)Office of Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

James Hagedorn (3AP12)
Environmental Engineer
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Douglas Frankenthaler (3RC20)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Kyle Zieba (3WP42)
Environmental Engineer
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

To PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL
PROTECTION:

Samuel C. Harper
Environmental Program Manager
Water Management Program
Southwest Regional Office
Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745

and

Charney Regenstein
Assistant Counsel,
Office of Chief Counsel
Commonwealth of Pennsylvania,
Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745

To ALLEGHENY COUNTY:

James Thompson
Manager, Air Quality Program
Allegheny County Health Department
301 Thirty-ninth Street
Pittsburgh, PA 15201

and

Michael Parker
Allegheny County Health Department
Legal Section
3333 Forbes Avenue
Pittsburgh, PA 15213

To DEFENDANT:

K&L Gates, LLP
210 Sixth Avenue
Pittsburgh, PA 15222
Attn: Thomas J. Smith, Esquire

and

Shenango Incorporated
200 Neville Road
Neville Island, PA 15225
Attn: Plant Manager

and

DTE Energy Services
414 Main Street
Suite 600
Ann Arbor, MI 48104
Attn: General Counsel

XV. COMPLIANCE WITH APPLICABLE LAWS

A. Compliance With Applicable Laws.

All activities undertaken by Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal, state and local laws, permits, and regulations. Nothing contained in this Consent Decree shall be construed to relieve Defendant of obligations to comply with all applicable federal, state and local regulations, statutes and laws, including but not limited to Section 303 of the Act, 42 U.S.C. § 7603, and § 2109.05 of ACHD Article XXI, Rules and Regulations of the Allegheny County Health Department or such regulations as may hereafter be approved by EPA as the applicable Allegheny County portion of the Pennsylvania SIP.

B. No Warranty.

Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's full and complete compliance with this Consent Decree will constitute or result in compliance with any federal, state or local laws, regulations or permits, nor shall the approval of any submission made by Defendant under this Consent Decree constitute a warranty that implementation by Defendant of the approved submission will result in compliance with the provisions of any federal, state or local laws, regulations or permits.

C. Permits.

Defendant shall be responsible for obtaining all federal, state and local permits which are necessary for the performance of any Corrective Action or Work required pursuant to this Consent Decree. This Consent Decree shall not be construed as a determination of any issue related to any federal, state, or local permit. Where performance of any portion of any Corrective Action or Work herein requires a federal, state or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all

such permits or approvals. Defendant's failure to obtain a requisite permit or approval from a regulatory agency or authority after Defendant has made all reasonable efforts to do so, including the making of a timely, appropriate, and complete application for such permit or approval, shall be considered a circumstance for which Defendant is entitled to relief under the provisions of Section XIII (Force Majeure) of this Consent Decree, where such failure to obtain a requisite permit or approval results in a delay in the performance of Corrective Action or Work. Whether or not Force Majeure does apply is subject to Dispute Resolution in accordance with Section XIV (Dispute Resolution).

XVI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

A. Effect of Settlement

This Consent Decree resolves, up to the date of lodging of this Consent Decree, the civil claims of the United States, ACHD, and PADEP for the violations alleged in the Complaint filed in this action and the violations alleged: (i) in the Clean Air Act Notice of Violations issued to Defendant by EPA on April 28, 2006; and (ii) in the Clean Water Act Notices of Violations issued to Defendant by PADEP on July 10, 2008, October 17, 2008, June 30, 2009, June 18, 2010, and October 6, 2010, which are included in **Appendix 6** hereto, and address, among other things, discharge monitoring report alleged violations and alleged violations related to runoff from the approximately 11-acre area of a coal pile storage area. This Consent Decree does not resolve any pushing violations at the facility occurring after December 31, 2010.

B. Reservation of Rights

1. The entry of this Consent Decree shall not limit or otherwise preclude Plaintiffs from taking criminal enforcement action and, except as provided in Paragraph XVI.A., shall not limit or otherwise preclude Plaintiffs from taking civil, judicial or administrative enforcement action against Defendant or any third parties pursuant to any federal or state law,

including, but not limited to, the Clean Air Act and Clean Water Act and any law or regulation promulgated thereunder. Nothing in this Consent Decree shall limit or prevent the United States, EPA, PADEP and/or ACHD from taking action to seek civil penalties or injunctive relief from Defendant for any statutory or regulatory violations which occur between the date of lodging of this Consent Decree and termination of this Consent Decree. Nothing herein shall be construed to limit or preclude any defense to any such actions.

2. In any subsequent administrative or judicial proceeding initiated by the United States or ACHD or PADEP for injunctive relief, civil penalties, or other appropriate relief relating to alleged violations by Defendant other than those addressed in or by this Consent Decree, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the United States or ACHD or PADEP in the subsequent proceeding were or should have been brought in the instant case.

3. By the execution of this Consent Decree, Defendant releases and shall hold harmless the United States, ACHD and PADEP, their instrumentalities, agents, and employees, in their official and personal capacities, of any and all liability or claims arising out of or otherwise related to the negotiations leading to this Consent Decree and all matters contained therein.

C. Interpretive Matters

This Consent Decree is neither a permit nor a modification of any existing permit and shall not be interpreted to be such. This Consent Decree is not to be construed as creating rights or obligations in third parties. This Consent Decree constitutes a settlement of material factual and legal issues and shall not constitute an admission or adjudication of any issue of fact

or law relating to the claims of the United States, PADEP, and of Allegheny County or defenses of Defendant, with the exception of those relating to jurisdiction of the Court as set forth in Section I.

D. More Stringent Laws

Plaintiffs reserve the right to impose more stringent emission limitations on Defendant's sources under any revised Pennsylvania SIP or any other CAA or CWA requirements which may become applicable. In addition, any new major source Defendant proposes to construct will be subject to the New Source Review requirements of the CAA, including Parts C and D of Title I of the Act, the applicable requirements of Allegheny County's portion of the Pennsylvania SIP, and any other applicable new source requirements. Defendant reserves whatever rights it may have to contest any such limitations or requirements.

E. ACHD Quarterly Enforcement Program

Nothing in this Consent Decree shall be construed to limit ACHD's quarterly enforcement program. Nothing herein shall limit or preclude any defense to any action taken under the ACHD Quarterly Enforcement Program.

XVII. COSTS

The Parties to this Consent Decree shall bear their own costs of litigation in this civil action, including, but not limited to, attorney and expert witness fees.

XVIII. ENTIRE AGREEMENT/MODIFICATIONS

This Consent Decree represents the entire agreement among the Parties. No modifications shall be made to this Consent Decree without written agreement of all Parties and written approval of the Court. Prior drafts of this Consent Decree shall not be used in any action involving the interpretation or enforcement of this Consent Decree. Paragraph headings are for convenience only and shall not be deemed or construed to modify the text.

XIX. PRE-ENTRY OBLIGATIONS

Obligations of Defendant under this Consent Decree that pre-date the entry of this Consent Decree (and not including any obligations imposed by the 2000 Consent Decree) shall be legally enforceable retroactively. Liability for stipulated penalties, if applicable, shall accrue for violations of such obligations and payment of such stipulated penalties may be demanded by Plaintiffs as provided in this Consent Decree after entry of the Consent Decree. The contempt authority of this Court shall also extend to violations of such obligations.

XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

Final approval of this Consent Decree by the United States is subject to the public notice and comment requirements of 28 C.F.R. § 50.7. Upon execution by the Parties, this Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the public comments establish that entry of this Consent Decree would be inappropriate, improper or inadequate. After reviewing the public comments, if any, the United States shall advise the Court by motion, served on Defendant, whether it seeks entry of this Consent Decree. Defendant agrees to the entry of this Consent Decree without further notice and shall not withdraw such consent after the Consent Decree is lodged with the Court, provided, however, that if the United States withdraws its consent pursuant to 28 C.F.R. § 50.7, this Consent Decree shall bind neither Defendant nor Plaintiffs.

XXI. EFFECTIVE DATE, RETENTION OF JURISDICTION AND TERMINATION

A. Continuing Jurisdiction.

This Court shall retain jurisdiction from the date of entry of this Consent Decree through the date of termination of this Decree for the purpose of modifying, construing and/or enforcing the rights and obligations of the Parties to this Consent Decree. In addition, prior to

and following the date of termination of this Consent Decree, this Court shall retain jurisdiction for the purposes of:

1. Enforcing any obligation of Defendant or resolving any dispute under Section VIII (Stipulated Penalties) of this Consent Decree where written demand for payment of a stipulated penalty is posted prior to the date of termination of this Decree;
2. Resolving any dispute under the provisions of Section XIV of this Decree (Dispute Resolution) where Notice of Dispute is served prior to the date of termination of this Decree; and
3. Disposing of any motion to enforce this Decree, or contempt petition, filed on or before the date of termination of this Decree.

B. Termination.

1. After consultation with EPA and ACHD, Defendant may file a motion with the Court to terminate this Consent Decree as to requirements related to the Clean Air Act when:
 - a. Defendant can demonstrate that it has complied with the requirements of Paragraph IV. A.3. of this Decree, and
 - b. Defendant can demonstrate that it has complied with the requirements in Paragraph IV.A.1. of this Decree, as demonstrated by the COM data, to the extent of at least 98.5% of the hours during two consecutive calendar quarters.
2. After consultation with EPA and PADEP, Defendant may file a motion with the Court to terminate this Consent Decree as to requirements related to the Clean Water Act when Defendant can demonstrate that it has complied with all of the requirements of Section VI,

Clean Water Act Compliance and has demonstrated compliance with the Part I NPDES Permit for a minimum of twelve (12) months following the Biological WWTP Compliance Date.

XXII. TRANSFER OF INTEREST

A. Effect of Transfer.

Any change in ownership of or control over the Facility, or any conveyance of title, assets, easement, or other interest in the Facility, including but not limited to any lease or transfer of assets or real or personal property, shall in no way alter the Defendant's responsibilities under this Consent Decree.

B. Notice

Prior to termination of this Consent Decree, at least sixty (60) Days prior to Defendant's transfer of ownership or control of any real property or operations subject to this Consent Decree, including but not limited to conveyance of title or a leasehold interest in all or any portion of the Facility or Defendant's transfer of any right to operate all or any portion of the Facility, Defendant shall submit a written notification of such proposed transfer to the United States, PADEP, and Allegheny County, by sending such notice to the addresses specified in Paragraph XIV.G. of this Consent Decree, and shall simultaneously submit a copy of this Consent Decree and all Appendices hereto to the proposed transferee. This notification shall also include a description of both the current and anticipated future Consent Decree Corrective Action requirements and activities, if known, that remain to be performed at any portion of the Facility to be conveyed, leased or otherwise alienated. Defendant shall remain obligated and responsible for the requirements of this Consent Decree. Defendant shall condition any such sale or transfer upon agreement by the purchaser or transferee to take whatever actions are necessary to permit Defendant to fulfill its obligations under this Consent Decree and to submit to the jurisdiction of this Court.

C. Disclosure.

The existence of this Consent Decree and the fact that this Decree will apply to and bind Defendant and the transferee shall be noted in any agreement between Defendant and any party to whom any legal or equitable interest in all or any portion of the Facility is being transferred prior to termination of this Decree. It shall be a condition of any such transfer that the transferee(s) execute a document agreeing to be bound by the provisions of this Consent Decree and submitting to the jurisdiction of this Court.

XXIII. CESSATION OF OPERATIONS

A. Temporary Cessation of Production at COB S-1

1. In the event of a temporary cessation of production at COB S-1, Defendant may postpone meeting requirements of this Consent Decree and obligations of this Consent Decree may be extended, as follows:

a. Defendant shall notify Plaintiffs in the manner specified in Paragraph XIV.G. in writing if practicable within thirty (30) Days before any temporary cessation of production, and thirty (30) Days before any subsequent resumption of production, at such source.

b. Defendant shall not resume production unless:

- i. All operating and maintenance practices required by this Consent Decree can be, and are, properly implemented; and
- ii. All pollution controls required by this Consent Decree have been installed in accordance with the schedules established by this Decree or prior to recommencement of operation, whichever date later occurs.
- iii. Defendant complies with any new source requirements under the CAA and all applicable portions of Article XXI and/or the Pennsylvania SIP.

2. Upon resumption of production operations following a temporary cessation of production, Defendant can petition Plaintiffs for an extension of any deadlines in the Consent Decree for a time not to exceed one year.

B. Permanent and Complete Cessation of Operations at COB S-1.

1. Except as otherwise provided in this Consent Decree, Defendant shall have the right to achieve compliance with any requirement of this Decree at any time prior to the applicable compliance date required in this Decree by permanently and completely ceasing operation of COB S-1. For purposes of this Paragraph XXIII.B.1., “completely ceases to operate” or “complete cessation of operation” shall mean that a cessation of all production, maintenance, and repair activities occurs at COB S-1 and all heat is removed from the battery. In the event of any such complete cessation of operation:

a. Defendant shall notify Plaintiffs in writing within sixty (60) Days before any complete cessation of operation of COB S-1.

b. With such notice, Defendant must submit to the United States and to ACHD, an affidavit of the President of Defendant stating Defendant's intention to permanently and completely cease operation of COB S-1. Such affidavit must comply with the certification requirements set forth in Paragraph XI.B.4., above.

c. Upon providing such affidavit to Plaintiffs, the provisions of Paragraph XXIII.B.1.e, (with respect to termination of this Consent Decree), shall apply.

d. Any stipulated penalty liability for failure to complete any Corrective Action required pursuant to this Consent Decree shall not accrue beyond the date of complete cessation of operations at COB S-1.

e. Subject to the provisions of Paragraph XXI.A. and provided that notice is provided pursuant to Paragraph XXIII.B.1.a., upon permanent and complete cessation

of operations at COB S-1, this Consent Decree shall terminate by operation of law, subject to payment of any and all penalties due and owing pursuant to Section VII (Penalties) and Section VIII (Stipulated Penalties), and the resolution of any disputes, within the meaning of Section XIV of this Decree, in existence at the time Defendant notifies Plaintiffs of its intent to permanently and completely cease operations at COB S-1.

C. Impact of Cessation of Operations on Clean Water Act Compliance

Notwithstanding any provisions of Sections XXIII.A and XXIII.B, upon or after temporary or permanent cessation of production at COB S-1, Defendant must continue to comply with applicable laws and regulations related to any ongoing water discharges. Further, to the extent that coal pile runoff continues upon or after temporary or permanent cessation of production at COB S-1, Defendant shall not, as result of such cessation, be relieved of its obligations under Section VI.D to implement the CPRMP Work.

XXIV. AUTHORITY/SIGNATORIES/SERVICE

A. The Parties to this Consent Decree represent to this Court that one or more of their respective undersigned counsel and other signatories have full authority to approve the provisions of this Consent Decree, to execute this Decree, and to legally bind the respective Parties to this Consent Decree.

B. Defendant hereby agrees not to oppose the entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Defendant in writing that it no longer supports the entry of this Consent Decree.

C. Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of Defendant with respect to all matters arising under or relating to this Consent Decree. Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set

forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of summons.

Judgment entered in accordance with the foregoing Consent Decree this 6 day of November, 2012.

SO ORDERED:

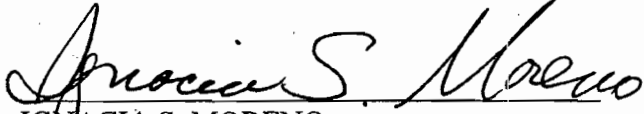
Western District of Pennsylvania



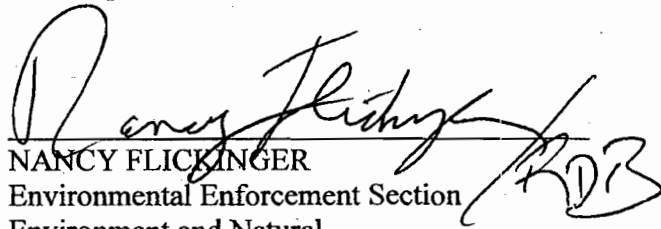
JUDGE, United States District Court

The undersigned hereby consent to the entry of the foregoing Consent Decree:

FOR THE UNITED STATES OF AMERICA:



IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural
Resources Division
U.S. Department of Justice



NANCY FLICKINGER
Environmental Enforcement Section
Environment and Natural
Resources Division
U.S. Department of Justice

The undersigned hereby consent to the entry of the foregoing Consent Decree:




DAVID J. HICKTON
United States Attorney
Western District of Pennsylvania

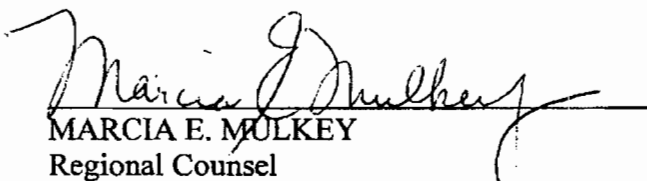
/s/ Christy Criswell Wiegand
CHRISTY CRISWELL WIEGAND
Assistant United States Attorney
Western District of Pennsylvania

The undersigned hereby consent to the entry of the foregoing Consent Decree:

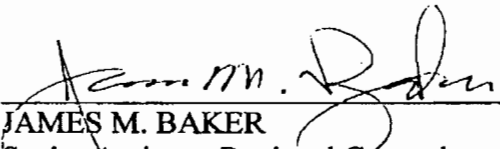
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



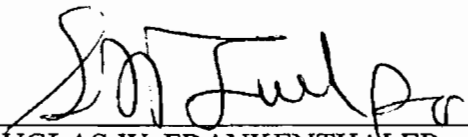
SHAWN M. GARVIN
Regional Administrator
U.S. Environmental Protection Agency
Region III



MARCIA E. MULKEY
Regional Counsel
U.S. Environmental Protection Agency
Region III



JAMES M. BAKER
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III



DOUGLAS W. FRANKENTHALER
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III

The undersigned hereby consent to the entry of the foregoing Consent Decree:

FOR PENNSYLVANIA DEPARTMENT OF
ENVIROMENTAL PROTECTION:



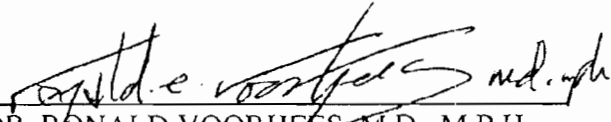
SAMUEL C. HARPER
Environmental Program Manager
Water Management Program
Southwest Regional Office
Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745

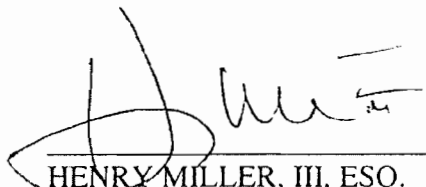


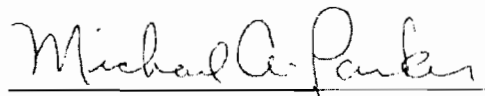
CHARNEY REGENSTEIN
Assistant Counsel
Office of Chief Counsel
Commonwealth of Pennsylvania,
Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745

The undersigned hereby consent to the entry of the foregoing Consent Decree:

FOR ALLEGHENY COUNTY:

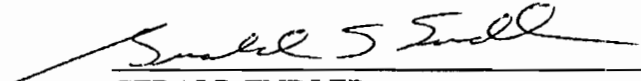

DR. RONALD VOORHEES, M.D., M.P.H.
Acting Director
Allegheny County Health Department


HENRY MILLER, III, ESQ.
Solicitor
Allegheny County Health Department


MICHAEL A. PARKER, ESQ.
Assistant Solicitor
Allegheny County Health Department

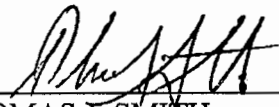
The undersigned hereby consent to the entry of the foregoing Consent Decree:

FOR SHENANGO INCORPORATED:



GERALD ENDLER
Senior Vice-President and General Counsel

REVIEWED
BY: 
LEGAL

 6/18/12

THOMAS J. SMITH
K&L Gates LLP
Counsel for Shenango Incorporated

The General Counsel is authorized to accept service with respect to all matters arising under or relating to this Consent Decree. Service may be made at the following address:

414 South Main Street
Suite 600
Ann Arbor, MI 48104