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7. Since at least 1987, Quarto has exceeded the final effluent discharge effluent outfall OIL00071004 set forth in its NPDES permit for total suspended solids, iron, pH, and manganese on several occasions (Attachment A), in violation of ORC Sections 6111.04 and 6111.07. Ohio EPA Southeast District Office (SEDO) has notified Quarto by Notices of Violation (NOVs) of its obligation to comply with its NPDES permit. Quarto's PTI (#06-5551) includes the relocation of the flow pipe that currently transports water from Pond #6 to Pond #8. This pipe will be relocated to maximize the use of Pond #8.
8. During an inspection conducted in January 1997 by representatives of Ohio EPA, inspectors found that Quarto has failed to remove coal fines from ponds tributary to outfall OIL00071004. This failure to provide optimum operation and maintenance of its treatment systems constitutes a violation of part III.J of the NPDES permit, and therefore constitutes a violation of ORC Sections 6111.04 and 6111.07.
9. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders, and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of Chapter 6111 of the Revised Code.

#### Orders

1. Quarto shall achieve compliance with ORC Chapter 6111 and its NPDES permit (No. OIL00071\*DD) as expeditiously as practicable, but not later than the dates in the following schedule:
  - a. Within thirty (30) days of the effective date of these Findings and Orders, Quarto shall submit to Ohio EPA a complete PTI application with approvable detail plans for necessary equipment that will be sufficient to achieve compliance with the effluent limits in NPDES permit No. OIL00071\*DD and any modifications or renewals thereafter.
  - b. Within thirty (30) days of the effective date of these Findings and Orders, Quarto shall submit to Ohio EPA a PTI application to upgrade the sump at the site described in Finding No. 4 above, to be impermeable and to provide for pumping water from the sump to Pond #6.
  - c. Within six (6) months of the effective date of any of the PTIs described in Findings No. 5 and 7 and in Orders No. 1a and 1b above, Quarto shall begin reclamation activity or the construction of such facilities as required by such approved PTI and within twelve (12) months of the effective date of any such PTI, complete such reclamation activity, or construction of such facilities, as required by the same.
  - d. Within fourteen (14) months of the effective date of all PTIs described in Findings No. 5 and 7, and in Orders No. 1a and 1b above, Quarto shall achieve compliance with final effluent limitations of its NPDES permit (No. OIL00071\*DD) and any modifications or renewals thereafter.

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2. Within fourteen (14) days of the milestone dates in Orders 1c and 1d above, Quarto shall submit written notification of compliance with said Orders to Ohio EPA.
3. Quarto shall pay to Ohio EPA the following amount in settlement of Ohio EPA's claim for civil penalties for violations of ORC Chapter 6111 that occurred at Powhatan Mine No. 4. These penalties may be assessed pursuant to Chapter 6111 of the Ohio Revised Code:
  - a. a ninety two thousand, six hundred and twenty dollars (\$92,620) payment in settlement of civil penalties shall be made by tendering a certified check made payable to "Treasurer, State of Ohio" for the full amount within forty-five (45) days of the effective date of these Findings and Orders to the following address:  
 Edith Long, Office of Fiscal Administration  
 Ohio Environmental Protection Agency  
 1800 Watermark Drive  
 P.O. Box 1049  
 Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Ohio EPA SEDO.

- b. In lieu of paying an additional ten thousand dollar (\$10,000) civil penalty settlement, Quarto shall send a check in the amount of ten thousand dollars (\$10,000), made payable to "Treasurer, State of Ohio" by October 1, 1998 to the address listed in Order No. 3a above. The \$10,000 shall be used to fund an evaluation of the economic impacts of Ohio EPA's Antidegradation Rule, to be performed under the direction of Ohio EPA by the Ohio State University (OSU) Development Fund, Economic Evaluation of Ohio EPA's Antidegradation Rule Including Socioeconomic Review Project, under the Department of Agricultural Economics.

The \$10,000 check shall be deposited into the account established as "4K4 Lino Item #715 650, for the Division of Surface Water fund of Ohio EPA or such fund as may be specified by Ohio EPA for conducting an evaluation of the economic impacts of Ohio EPA's Antidegradation Rule." After satisfactory resolution of the scope of work to be performed by OSU, Ohio EPA will make payment of \$10,000 to Tax ID # 31 602 5986, payable to:

The Ohio State University  
 Attn: Claudia Riser  
 Room 104, Agricultural Administration Building  
 2120 Fyffe Road  
 Columbus, Ohio 43210

A photocopy of the check shall be sent to Ohio EPA SEDO. This payment shall be made on or before October 1, 1998. If payment is not made by that date, then Quarto shall pay an additional ten thousand (\$10,000) civil penalty settlement to Ohio EPA on or before November 1, 1998, in the manner provided in Order No. 3a above.

4. All reports, applications, and notifications shall be submitted to the following address:  
 Ohio EPA Southeast District Office  
 Attn: DSW Enforcement Group Leader  
 2195 Front Street  
 Logan, Ohio 43138

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Other Applicable Laws

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Quarto's operation of its Mine #4 facility.

Reservation of Rights

These Orders do not prevent Ohio EPA from enforcing the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Quarto for noncompliance with these Orders. These Orders do not prevent Ohio EPA from exercising its authority to require Quarto to perform additional activities pursuant to Chapter 6111 of the Ohio Revised Code or any other applicable law in the future. These Orders do not restrict the right of Quarto to raise any administrative, legal or equitable claim or defense for any additional activities that Ohio EPA may seek to require of Quarto. These Orders do not limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

Termination

Quarto's obligations under these Orders shall be satisfied and terminate when Quarto demonstrates in writing and certifies to the satisfaction of Ohio EPA that all obligations under these Orders have been performed and the Ohio EPA, Division of Surface Water acknowledges in writing this demonstration and certification.

This certification shall be submitted by Quarto to the Southeast District Office (ATTN: DSW Enforcement Group Leader) and shall be signed by a responsible official of Quarto. A responsible official is as defined in OAC 3745-33-03 (D) (1) for a corporation, OAC 3745-33-03 (D) (2) for a partnership, OAC 3745-33-03 (D) (3) for a sole proprietorship, and OAC 3745-33-03 (D) (4) for a municipal, state, or other public facility. The certification shall contain the following attestation:

*"I certify under the penalty of the law that I have personally examined and am familiar with the information contained in or accompanying this certification, and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."*

Waiver

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations addressed in these Orders, Quarto agrees to comply with these Orders and Quarto agrees that these Orders are lawful and reasonable and that the

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times provided for compliance herein are reasonable. Compliance with these Orders shall be a full accord and satisfaction of Quarto's liability for the violations cited herein. Ohio EPA specifically does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights paragraph of these Orders.

Quarto hereby waives the right to appeal the issuance, terms and service of these Orders and it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Quarto agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Quarto retains the right to intervene and participate in such appeal. In such an event, Quarto shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

Quarto does not waive its rights to adjudicate whether a force majeure defense exists and whether the facts amount to force majeure should an enforcement action be brought. However, failure to notify Ohio EPA in writing of any circumstance which may cause noncompliance with these Orders prior to violation of any term or condition of these Orders shall constitute a waiver of this potential defense. Quarto may wish to assert this defense if it believes that its inability to meet a compliance date or schedule for performance set forth herein was caused by reasons beyond its control, and that same constitutes an excusable delay.

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

**IT IS SO AGREED:**

Quarto Mining Company:

B. W. Jetter <sup>st</sup>  
By

9-14-98  
Date

President  
Title

**IT IS SO ORDERED AND AGREED:**

Ohio Environmental Protection Agency

Donald R. Schegardus <sup>to</sup>  
Donald R. Schegardus  
Director

October 30, 1998  
Date

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ATTACHMENT A

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Entity Name: Quarto Mining Company  
 Powhatan Mine No. 4

Permit No. 1586 OIL00071\*CD

D10 E.P.A.

Table of Effluent Limitation Violations

DATE	OUTFALL	PARAMETER	REPORTED VALUE	UNITS	LIMIT
APR 98 AVG	004	IRON	38100	ug/l	3500
APR 98 AVG	004	TSS	204	mg/l	35
APR 30, 1998	004	IRON	15050	ug/l	7000
APR 18, 1998	004	IRON	161420	ug/l	7000
APR 18, 1998	004	TSS	922	mg/l	70
MAR 98 AVG	004	IRON	3832	ug/l	3500
MAR 98 AVG	004	TSS	42	mg/l	35
MAR 14, 1998	004	TSS	109	mg/l	70
FEB 98 AVG	004	IRON	4550	ug/l	3500
DEC 97 AVG	004	TSS	47	mg/l	35
AUG 97 AVG	004	IRON	4833	ug/l	3500
AUG 97 AVG	004	TSS	40	mg/l	35
AUG 31, 1997	004	pH	11.1	S.U.	9.0
JUNE 97 AVG	004	IRON	4240	ug/l	3500
JUNE 29, 1997	004	IRON	8800	ug/l	7000
MAY 97 AVG	004	IRON	39000	ug/l	3500
MAY 31, 1997	004	IRON	62860	ug/l	7000
APR 97 AVG	004	TSS	81	mg/l	35
APR 14, 1997	004	TSS	126	mg/l	70
MAR 97 AVG	004	IRON	3970	ug/l	3500
MAR 26, 1997	004	IRON	9260	ug/l	7000
FEB 97 AVG	004	IRON	3800	ug/l	3500
FEB 97 AVG	004	TSS	38	mg/l	35
FEB 10, 1997	004	pH	9.8	S.U.	9
MAY 96 AVG	004	TSS	39	mg/l	35
MAY 96 AVG	004	IRON	18000	ug/l	3500
MAY 29, 1996	004	IRON	12750	ug/l	7000
MAY 30, 1996	004	IRON	38370	ug/l	7000
APRIL 11, 199	004	IRON	8900	ug/l	7000
APRIL 96 AVG	004	IRON	5100	ug/l	3500
MAR 4, 1996	004	TSS	60	mg/l	35
MAR 27, 1996	004	pH	9.1	S.U.	9.0
MAR 29, 1996	004	TSS	68	mg/l	70
MAR 96 AVG	004	TSS	44	mg/l	35
FEB 27, 1996	004	pH	4.9	S.U.	6.0
FEB 27, 1996	004	IRON	48000	ug/l	7000
FEB 29, 1996	004	TSS	1145	mg/l	70
FEB 29, 1996	004	IRON	131000	ug/l	7000

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DATE	OUTFALL	PARAMETER	REPORTED VALUE	UNITS	LIMIT
FEB 29, 1996	004	MANGANESE	6500	ug/l	4000
FEB 96 AVG	004	TSS	476	mg/l	70
FEB 96 AVG	004	IRON	77000	ug/l	3500
FEB 96 AVG	004	MANGANESE	4100	ug/l	2000
JAN 96 AVG	004	IRON	3700	ug/l	3500
NOV 29, 1995	004	IRON	11000	ug/l	7000
NOV 95 AVG	004	IRON	6400	ug/l	3500
JUNE 95 AVG	004	IRON	3900	ug/l	3500
APR 95 AVG	004	IRON	4000	ug/l	3500
JAN 95 AVG	004	TSS	41	mg/l	35
DEC 16, 1994	004	MANGANESE	5900	ug/l	4000
DEC 96 AVG	004	MANGANESE	3400	ug/l	2000
NOV 84 AVG	004	TSS	42	mg/l	35
JUNE 94 AVG	004	TSS	36	mg/l	35
FEB 11, 1991	004	IRON	11000	ug/l	7000
DEC 29, 1989	004	TSS	75	mg/l	70
JAN 4, 1988	004	IRON	13500	ug/l	7000
OCT 7, 1987	004	TSS	88	mg/l	70