

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*In the Matter of:*

Stream Restoration Incorporated	:	
434 Spring Street Extension	:	Pine Glen Treatment Trust
Mars, PA 16046	:	

**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement (“COA”) is entered into this 14<sup>th</sup> day of June, 2016, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and Stream Restoration Incorporated (“SRI”).

The Department has found and determined the following:

**PARTIES**

A. The Department is the agency with the duty and authority to administer and enforce the Surface Mining Control and Reclamation Act, Act of May 31, 1945, P.L. 1198, *as amended*, 52 P.S. §§ 1396.1-1396.19a (“Surface Mining Act”); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, No. 394, *as amended*, 35 P.S. §§ 691.1-691.1001 (“Clean Streams Law”); the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, *as amended*, 52 P.S. §§ 1406.1-1406-21 (“Mine Subsidence Act”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”) and the rules and regulations promulgated thereunder.

B. SRI is a Pennsylvania non-profit corporation with an office and place of business at 434 Spring Street Extension, Mars, Pennsylvania 16046-3728. SRI is an organization whose mission focuses on the restoration of streams impacted by abandoned coal mine discharge.

C. Surface coal mining permits issued before March 31, 1983, are known as pre-primacy permits. Permits issued after that date are known as primacy permits. Certain matters related to treatment of acid mine drainage (AMD) from pre-primacy sites are covered by Title IV of the federal Surface Mining Control and Reclamation Act (SMCRA). Primacy matters are covered by Title V of SMCRA.

D. Avery Coal Co., Inc., (Avery Coal) mined a site in Burnside Township, Centre County known as the Pine Glen Mine pursuant to a permit originally issued in 1980 and reissued as a primacy permit in 1984. Mining occurred from 1984 through 1989. Avery failed to treat a severe acid mine discharge known as SP3. In 1993, the Department forfeited and collected the bonds posted by Avery for the Pine Glen Mine. Subsequent to the forfeiture, the Department discovered additional seeps of AMD connected to the Pine Glen Mine.

E. SP3 discharges to the Boake Run Stream Diversion which was originally constructed in the 1960s by Rougeux & Trimpey Coal Co. to convey degraded AMD from its operations away from Boake Run, a high quality stream used as a secondary water supply by the community of Pine Glen. The diversion discharges to an unnamed tributary of Seven Mile Run, a degraded stream. The location of SP3 is depicted in the aerial photograph attached as **Exhibit A2**. The latitude and longitude coordinates for SP3 are as follows: Latitude 41° 04' 26.9" N and Longitude 78° 01' 12.1" W. Discharge characteristics for SP3 are presented in Table 1.

<b>TABLE 1</b>						
<b>SP3 Discharge Characteristics</b>						
<b>Average Values</b>						
<b>Flow (gpm)</b>	<b>Lab pH (s.u.)</b>	<b>Acidity (mg/L)</b>	<b>T Fe (mg/L)</b>	<b>T Mn (mg/L)</b>	<b>T Al (mg/L)</b>	<b>SO4 (mg/L)</b>
<b>100</b>	<b>3.6</b>	<b>303</b>	<b>13</b>	<b>66</b>	<b>28</b>	<b>2009</b>

F. In 1984, Avery improved the diversion to collect all of the former headwaters of Boake Run due to AMD degradation upstream of the Pine Glen Mine associated with pre-primacy abandoned mine lands.

G. In 2003, the Department completed the reclamation of pre-primacy abandoned mine lands (AML) in the vicinity of the former headwaters of Boake Run. The reclamation included the construction of two, 3,600-foot long, Bureau of Abandoned Mine and Reclamation highwall drain pipes (BAMR Dual Pipes) that collect AMD from the former abandoned mines. The pipes drain to the Boake Run Stream Diversion. The location of the BAMR Dual Pipes is depicted in the aerial photograph attached as **Exhibit A1**. The latitude and longitude coordinates are: Latitude 41° 04' 19.5" N and Longitude 78° 00' 40.1" W. Discharge characteristics for the BAMR Dual Pipes is presented in Table 2.

<b>TABLE 2</b>						
<b>BAMR Dual Pipes Discharge Characteristics</b>						
<b>Average Values</b>						
<b>Flow (gpm)</b>	<b>Lab pH (s.u.)</b>	<b>Acidity (mg/L)</b>	<b>T Fe (mg/L)</b>	<b>T Mn (mg/L)</b>	<b>T Al (mg/L)</b>	<b>SO4 (mg/L)</b>
<b>200</b>	<b>3.4</b>	<b>170</b>	<b>23</b>	<b>33</b>	<b>22</b>	<b>781</b>

H. In 2010, the Department awarded a grant to Stream Restoration Inc. (SRI), in the amount of \$461,866, to design and construct a chemical treatment system to treat the post-mining acid mine drainages from the Pine Glen Mine. In fulfillment of the grant, a hydrated lime treatment plant was constructed in 2014 and activated in May 2015 (Pine Glen Mine Drainage Treatment Plant). The intake structure to the Pine Glen Mine Drainage Treatment Plant is located at the Boake Run Stream Diversion. The plant was designed and constructed to treat up to 100 gallons per minute (gpm) of AMD from the Pine Glen Mine. The Department will fund operation and maintenance (O&M) of the Pine Glen Mine Drainage Treatment Plant using Title V funds deposited in the Reclamation Fee O&M Trust Account.

I. In 2013, the Department awarded a second grant to SRI, in the amount of \$664,373 to expand the Pine Glen Mine Drainage Treatment Plant to include treatment of the pre-primacy AMD emanating from the BAMR Dual Pipes which account for the majority of the AMD from the former headwaters of Boake Run. Construction began in August 2014 and was completed in September 2015. The grant funds the construction of expanded facilities to treat up to an additional 200 gpm and provides an O&M trust fund of \$540,564 to finance the Title IV annual treatment costs. Under the grant, SRI agreed to be the Settlor of the trust being created by this agreement. A copy of the executed trust agreement is attached as **Exhibit B**.

J. The discharge known as SP3 referenced in Paragraph E and the BAMR Dual Pipe discharges referenced in Paragraph G flow into an existing beaver pond located within the former headwaters of Boake Run. The location of the beaver pond is depicted in the aerial photograph attached as **Exhibit A2**. The Pine Glen Mine Drainage Treatment Plant collects flow from the beaver pond at the intake structure to the plant known as monitoring point PGRW.

The latitude and longitude coordinates are: Latitude 41° 04' 21.8" N and Longitude 78° 01' 14.8" W. Characteristics of monitoring point PGRW are presented in Table 3.

<b>TABLE 3</b> <b>Summary of Boake Run Stream Diversion</b> <b>Monitoring Point PGRW Characteristics</b> <b>(Average Values)</b>						
<b>Flow</b> (gpm)	<b>Lab pH</b> (s.u.)	<b>Acidity</b> (mg/L)	<b>T Fe</b> (mg/L)	<b>T Mn</b> (mg/L)	<b>T Al</b> (mg/L)	<b>SO4</b> (mg/L)
<b>300</b>	<b>3.4</b>	<b>136</b>	<b>6</b>	<b>30</b>	<b>16</b>	<b>635</b>

K. The parties agree that the present value of the fully-funded Trust for the discharges covered by this Consent Order and Agreement is \$965,912. This sum constitutes the current present value of the estimated future operation and maintenance costs for the Pine Glen Mine Drainage Treatment Plant, and the current present value of the estimated future recapitalization costs for the plant. The estimated annual operation and maintenance costs and the trust fund amount are attached as **Exhibit 1 to the Fully-Executed Trust Agreement attached as Exhibit B.**

L. SRI's and the Department's access to the treatment plant is permitted under a landowner agreement known as the "Consent to Right of Entry for Design and Study and for Construction, Operation and Maintenance of Mine Drainage Treatment Facility" executed February 26, 2013 by Robert D. Confer for the property described in Deed Book Volume 2024, Page 0786, in the Centre County Recorder's Office. A copy of this document is found in **Exhibit C.**

M. SRI's and the Department's permission to use an access road on an adjacent landowner property is secured under an agreement known as the "Consent of Adjacent Landowner to Right of Entry for Mine Reclamation Project" executed July 9, 2013 for the property described in Deed Book Volume 0362, Page 0056, in the Centre County Recorder's Office. A copy of this document is found in **Exhibit D**.

N. The Moshannon District Mining Office will manage the O&M contract for the Pine Glen Mine Drainage Treatment Plant and will split the costs between Title IV and Title V.

O. SRI has no economic, legal or other connection to the Avery Coal Co., Inc. and/or Rougeux & Trimpey Coal Company. Furthermore, SRI has no responsibility for the AMD in the Boake Run Stream Diversion, or the unnamed tributary of Seven Mile Run and/or its treatment.

P. SRI has asked, and the Department has agreed, to limit SRI's liability for the Pine Glen discharges and their treatment.

### **ORDER**

1. After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of the covenants contained herein, the Parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by SRI as follows:

#### **2. Authority**

This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 5 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.401 and 691.610; Section 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

**3. Findings**

a. SRI agrees that the findings in Paragraphs A through P are true and correct and, in any matter or proceeding involving SRI and the Department, SRI shall not challenge the accuracy or validity of these findings.

b. The Parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

**4. SRI shall:**

a. Continue to assist DEP with design, permitting, construction and operational oversight of the Pine Glen Mine Drainage Treatment Plant as specified in the grant agreements referenced in Paragraphs H and I. SRI will submit an annual report to Department's Bureau of Abandoned Mine Reclamation, Division of Acid Mine Drainage Treatment in accordance with Item 3 of the Special Conditions for the Trust found on page 5 of Attachment E of the Growing Greener Grant Agreement, attached here to as **Exhibit E**. The annual report shall identify the work performed for the treatment plant, costs for such work, and work projected for the next year. The report shall also contain financial information for the Trust which includes, but is not limited to, the type and value of investments, rate of return, disbursements, and interest. The report shall be submitted within 60 days of the end of each annual term.

b. Upon receipt of the O&M Trust funds from the Growing Greener grant referenced in Paragraph I, immediately transfer the funds into the Trust established by the Department; and

c. Act as Settlor of the Pine Glen Trust.

**5. Liability of SRI**

a. SRI has no legal or equitable connection to the Avery Coal Co., Inc. and/or the Rougeux & Trimpey Coal Company. SRI has no responsibility for the AMD in the Boake Run Stream Diversion, or the unnamed tributary of Seven Mile Run and/or its treatment.

b. The Department will not assert in any forum or proceeding that SRI is responsible for treatment of any AMD discharges in Boake Run Stream Diversion or the unnamed tributary of Seven Mile Run associated with the Avery Coal Co., Inc. and/or the Rougeux & Trimpey Coal Company's mining activities.

c. The Department will not require SRI to pay additional funds, into the Trust Fund or otherwise, for the treatment of any AMD discharges in the Boake Run Stream Diversion or the unnamed tributary of Seven Mile Run associated with the Avery Coal Co., Inc. and/or the Rougeux & Trimpey Coal Company's mining activities.

d. The limitations on liability afforded to SRI in this Paragraph 4 are also intended to extend fully to SRI's parents, subsidiaries, affiliates, members, directors, officers, managers, authorized persons, contractors, representatives or agents as long as they similarly have no legal or equitable connection to Avery Coal Co., Inc. and/or the Rougeux & Trimpey Coal Company.



**6. Correspondence with Department**

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

Moshannon District Mining Operations  
District Mining Manager  
186 Enterprise Drive  
Philipsburg, PA 16866  
(814) 342-8200

**7. Correspondence with SRI**

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

Stream Restoration Incorporated  
Executive Director  
434 Spring Street Extension  
Mars, PA 16046  
PH: 724-776-0161  
sri@streamrestorationinc.org

SRI shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first-class mail to the above address.

**8. Severability**

The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

**9. Entire Agreement**

This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or

admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

**10. Attorney Fees**

The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

**11. Modifications**

No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

**12. Titles**

A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

**13. Execution of Agreement**

This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Facsimile signatures shall be valid and effective.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of SRI certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of SRI; that SRI consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that SRI hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law.

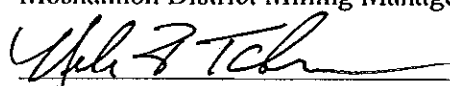
FOR STREAM RESTORATION  
INCORPORATED:

  
\_\_\_\_\_  
Margaret H. Dunn  
Executive Director

  
\_\_\_\_\_  
Timothy P. Danahy  
Secretary/Treasurer

FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION:

  
\_\_\_\_\_  
Michael Smith  
Moshannon District Mining Manager

  
\_\_\_\_\_  
Nels J. Taber  
Regional Counsel