

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*In the Matter of:*

New Enterprise Stone & Lime Company, Inc.	:	
3912 Brumbaugh Road	:	SMP 4077SM7 (Boswell Quarry)
P. O. Box 77	:	
New Enterprise, PA 16664	:	

**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 5 day of August, 2015, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and New Enterprise Stone & Lime Company, Inc. (“New Enterprise”).

The Department has found and determined the following:

A. The Department is an agency with authority to administer and enforce the Clean Streams Law, the Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. § 691.1, *et seq.*; the Noncoal Surface Mining Conservation and Reclamation Act, the Act of December 19, 1984, P.L. 1093, *as amended*, 52 P.S. § 3301.1, *et seq.*; Section 1917-A of the Administrative Code, the Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17A; and, the Rules and Regulations of the Environmental Quality Board adopted thereunder.

B. New Enterprise is a Pennsylvania corporation with an office and place of business at 3912 Brumbaugh Road, P.O. Box 77, New Enterprise, Pennsylvania 16664. New Enterprise is and has been engaged in non-coal quarry mining in the Commonwealth of Pennsylvania pursuant to mining license 1917. Paul Detwiler III is the president of New Enterprise and is responsible

for the day to day operation of New Enterprise.

C. New Enterprise is the permittee of the Boswell Quarry located in Jenner Township, Somerset County. The Department issued the original permit, 4077SM7, to Dixon Stone Company, Inc. on August 2, 1977. The permit was transferred to Commonwealth Stone on December 20, 1977 and to New Enterprise on October 27, 1999. Department records indicate that there may have been mining activity prior to 1977. New Enterprise mined sandstone at the Boswell Quarry before completing surface reclamation in 2011.

D. In 2002, New Enterprise submitted an overburden analysis of the rock from two drill holes. That analysis showed that the two sandstone formations being mined were generally acidic and had limited neutralization potential. Also, the Clarion Formation which contains both coal and black shales comprised the interburden between the sandstone formations. The interburden had been spoiled as part of the mining operation and was not specifically handled prior to the permit transfer to New Enterprise.

E. In a hydrogeologic investigation dated April 12, 2001, the Department determined mining at the Boswell Quarry was hydrogeologically connected to a seep zone on the north side of Quemahoning Creek immediately adjacent to the permit boundary(see Exhibit A.). The seep zone is approximately 200 feet long and is monitored at two points (8/BQ2 and 10/BQ1) see Exhibit B. The estimated average flow from the seep zone is 6 gallons per minute. The seeps are acidic and have high concentrations of metals.

F. The seep zone is in an area where both access and treatment are, at best, problematic. Generally, the length and location of the entire seep zone make collection challenging, and impossible for excavating equipment. The seep in the vicinity of monitoring point 10/BQ1 ("Seep 10") emerges from a rock outcrop along the stream bank which made

collection impractical. The steep slope above the seeps makes access difficult. The narrow flood plain where the seep in the vicinity of monitoring point 8/BQ2 (“Seep 8”) emerges allows for only a small treatment sump size which is sometimes inadequate to treat the acid mine drainage.

G. Seep 8 flows into a treatment system which consists of a shallow sump area and a small settling sump, which discharges directly into Quemahoning Creek. Caustic soda treatment is added before the seep flows into the small settling sump. Seep 10 emerges from a rock outcrop and bypasses the small existing treatment system because the seep is on the bank of Quemahoning Creek. Sludge removal, which has not been attempted, would require pumping the sludge up the steep outslope. The treatment sumps are located in the flood plain and the treatment area experiences cyclical flooding.

H. The NPDES permit (no. PA0212580) for Boswell Quarry contains an outfall (003) for one mine drainage treatment facility.

I. The Department estimates that the flow of Quemahoning Creek adjacent to seep zone ranges from 13,500 gallons per minute (gpm) to 140,000 gpm.

J. Coal mining conducted in the previous century had a negative impact on Quemahoning Creek. For more than 20 years, various and diverse efforts have been undertaken to improve water quality. Numerous groups, including the Mountain Laurel Chapter of Trout Unlimited, the Cambria Somerset Authority, the Pennsylvania Fish and Boat Commission, the Jenners Rod & Gun Club, Inc., the Stoneycreek-Conemaugh River Improvement Project and the Somerset Conservation District, have participated in studies, projects, acquisitions, funding and other initiatives aimed at improving water quality in, and increasing public usage of, Quemahoning Creek.

K. The Department has determined that untreated water from the seep zone has a minimal effect on, and causes no measurable downstream degradation to, Quemahoning Creek. As mentioned earlier, the flow from the seep zone is low (6 gpm), especially in comparison to the flow in the creek (13,500 to 140,000 gpm), and treatment of the seeps is problematic. The Department and New Enterprise have had discussions about upgrading or relocating the treatment system. As an alternative, the company proposed that it undertake a water quality improvement project elsewhere in the watershed. In response, the Department suggested that New Enterprise place money into a trust which money would be used to fund such watershed projects. The Department then talked to the Somerset Conservation District and other local watershed groups who submitted letters in support of the creation of a trust dedicated to funding watershed conservation projects. See Exhibits C and D.

L. The Department and New Enterprise have had discussions about the appropriate amount of money to be placed in the Trust. The agreed upon amount is based upon normal factors considered when forming a treatment trust. The total trust of \$205,168.40 is derived from the current estimated annual treatment cost of \$5,270.00 and a multiplier of 1.55 (which multiplier represents the occurrence of three consecutive years when the trust interest income is low).

M. The Department agreed that if New Enterprise placed the money into a trust that would be used to perform watershed projects such as listed in Exhibit D, that the company would be relieved of its obligation to treat the seep zone and that the Department would terminate the mining and NPDES permits.

N. The Department's willingness to enter this Consent Order and Agreement is based on the collective number of unique and unusual circumstances which exist, including those

described in Paragraphs F and G. In addition, the positive long-term impact of the various watershed projects which will be paid from the trust will benefit the stream far more than any enhanced treatment of the low flow seeps which are only minimally affecting Quemahoning Creek.

## **ORDER**

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by New Enterprise as follows:

1. 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 and 691.610, Section 11 of the Noncoal Surface Mining Act, 52 P.S. § 3311, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of New Enterprise to comply with any term or condition of this Consent Order and Agreement shall subject New Enterprise to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

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

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

3. Escrow Agreement

Within 15 days of the execution of this Consent Order and Agreement, New Enterprise

shall deposit into an escrow account held by the Clean Streams Foundation, the sum of \$205,168.40, pursuant to the Escrow Agreement appended hereto as Exhibit E.

4. Release of Bonds and Termination of Permits

Within 30 days of the execution of this Consent Order and Agreement, New Enterprise shall submit to the Department a Completion Report for the site. The Department shall process the release of the reclamation bonds and shall terminate the permits associated with this site in a timely manner. Once the bonds have been released and the permits have been terminated, absent a showing of fraud or a willful/intentional violation of law, New Enterprise shall have no further treatment or reclamation obligations at or with the Boswell Quarry and New Enterprise, its officers, shareholders and directors will not be required to contribute additional funding to the Trust.

5. Release of Escrow

Pursuant to the Escrow Agreement, upon release of the reclamation bonds and termination of the permits by the Department, the moneys in the Escrow Account shall be placed in a trust account to be administered in accordance with the Participation Agreement. In the event that the Department does not release the reclamation bonds and terminate the permits within six months of execution of this Consent Order and Agreement, pursuant to the terms of the Escrow Agreement, the moneys deposited in escrow by New Enterprise shall be repaid to New Enterprise and this Consent Order and Agreement shall be terminated as null and void.

6. Right of Entry

Within 30 days of the effective date of this Consent Order and Agreement, New Enterprise shall submit to the Department and the Trustee a Right of Entry needed by the Department, the Trustee, and any third party Administrators to access the Property to conduct

watershed projects, and to monitor the mine seeps and the stream. The Right of Entry shall be substantially in the same form as the Right of Entry attached hereto as Exhibit F. If any portion of a property subject to the Right of Entry is sold, New Enterprise shall obtain a properly executed Consent to Right of Entry form from the new owner and submit it to the Department and the Trustee.

7. Stipulated Civil Penalties

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

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

District Mining Manager  
Department of Environmental Protection  
Cambria District Mining Office  
286 Industrial Park Road  
Ebensburg, PA 15931-4119

c. Any payment under this paragraph shall neither waive New Enterprise's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel New Enterprise's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only New Enterprise's liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

8. Additional Remedies

a. In the event New Enterprise fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. In the event New Enterprise defaults on the obligations of this Consent Order and Agreement New Enterprise will be subject to a permit block on the Department's compliance tracking system and the federal Applicant Violator System. In addition to any other remedy or penalty prescribed herein, the Department will list New Enterprise as a violator on the Department's compliance tracking system and on the federal Applicant Violator System.

c. The remedies provided by this Consent Order and Agreement are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.

9. Reservation of Rights

Except as expressly waived pursuant to Paragraph 4 above, the Department reserves the right to require additional measures to achieve compliance with applicable law. New Enterprise reserves the right to challenge any action which the Department may take to require those measures.

10. Correspondence with Department

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

District Mining Manager  
Department of Environmental Protection  
Cambria District Mining Office  
286 Industrial Park Road  
Ebensburg, PA 15931-4119

11. Correspondence with New Enterprise

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

Paul Detwiler III, President  
New Enterprise Stone & Lime Company, Inc.  
P. O. Box 77  
New Enterprise, PA 16664 :

b. New Enterprise 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.

12. Force Majeure

a. In the event that New Enterprise is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstances beyond New Enterprise's control and which New Enterprise, by the exercise of all reasonable diligence, is unable to prevent, then New Enterprise may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond New Enterprise's control. New Enterprise's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.

b. New Enterprise shall only be entitled to the benefits of this paragraph if it

notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by New Enterprise to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) working days of its submission. New Enterprise's failure to comply with the requirements of this paragraph specifically and in a timely fashion shall render this paragraph null and of no effect as to the particular incident involved.

c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by New Enterprise and other information available to the Department. In any subsequent litigation, New Enterprise shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it

13. 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.

14. 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.

15. 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.

16. Modifications

Except as provided in Paragraph 10, 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.

17. 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.

18. Successors

This Consent Order and Agreement shall be fully and completely binding upon any successor of New Enterprise. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) New Enterprise consolidates with or merges into or permits to merge with it and New Enterprise is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of New Enterprise's properties or assets which include, but is not limited to, voting stock of New Enterprise. Successor does not include any corporation or other entity to which New Enterprise transfers or assigns all or substantially all of its financial or non-financial liabilities.

New Enterprise shall notify the Department, without delay, of any successor as defined herein and shall provide such successor with a copy of this Consent Order and Agreement.

19. Counterpart Signatures

The parties agree that this Consent Order and Agreement may be executed by counterpart signatures transmitted via electronic means.

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 New Enterprise 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 New Enterprise; that New Enterprise consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that New Enterprise hereby knowingly waives its rights to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by New Enterprise's attorney certifies only that the agreement has been signed after consulting with counsel.

**FOR NEW ENTERPRISE STONE &  
LIME COMPANY, INC.:**



\_\_\_\_\_  
President or Vice President



\_\_\_\_\_  
ASST.  
Secretary or Treasurer



\_\_\_\_\_  
John Carroll  
Attorney for New Enterprise Stone & Lime  
Company, Inc.

**FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION:**



\_\_\_\_\_  
Daniel Sammarco, P.E.  
District Mining Manager



\_\_\_\_\_  
Nels J. Taber  
Regional Counsel  
Southcentral Region OCC

Exhibit A

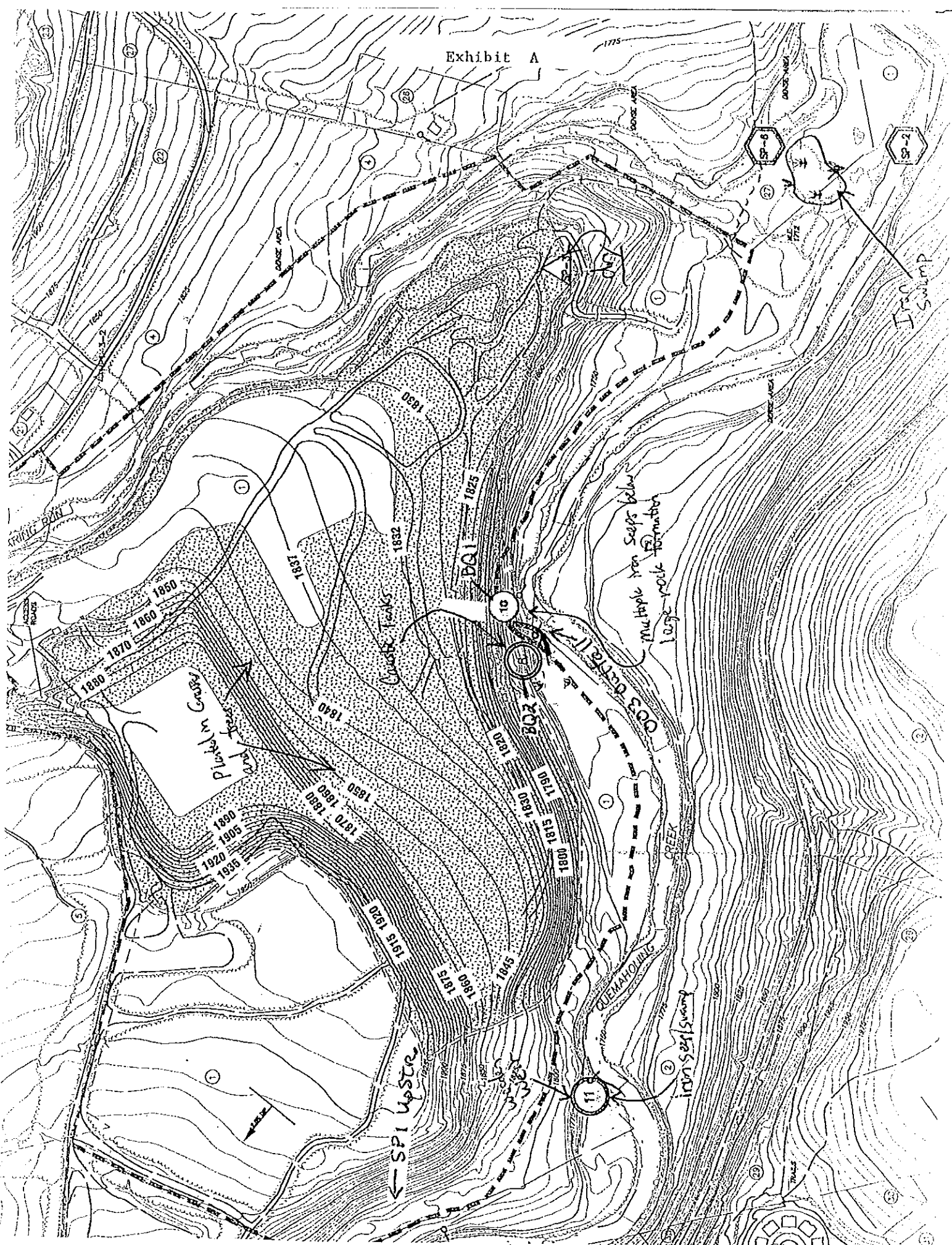


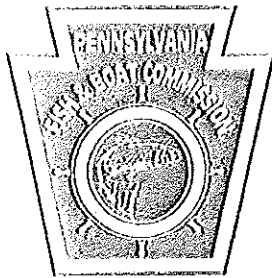
Exhibit B

NES Boswell Quarry 4077SM7

ID	Sample #	Date	Flow (gpm)	Meth	pH (su)	Alk (mg/l)	Acidity (mg/l)	Fe (mg/l)	Mn (mg/l)	Al (mg/l)	Sulfate (mg/l)	S.S. (mg/l)	Na (mg/l)
BQ1 Seep at rock overhang beside stream (s.a. 10 on NES map)													
4304	538	11/1/2000	2	Est	3.5	0	428	146.0	230.1	0.7	1005.3	51.4	<10
4304	147	4/4/2001	2	Est	3.3	0	344	140.0	23.0	2.1	764.0	40.0	5.07
4304	224	5/1/2001	5	Est	3.4	0	258	1.5	34.3	29.5	1262.9	<3	
4304	419	7/27/2001	5	Est	3.2	0	379	2.1	35.0	21.3	1092.6	<3	
4304	248	6/17/2002			4.6	6.6	55.2	2.0	2.4	<.5	82.1	<3	
4304	106	3/28/2003			4.2	5.8	202	0.7	21.9	12.3	1273.3	8.0	
4336	601	6/20/2006	1	Est	3.2	0	618.2	208.0	61.6	4.2	2015.6	26.0	
		<i>backfilling</i>											
4336	288	3/28/2012	2	Est	5.6	31.2	208.2	85.7	22.8	0.6	892.3	8.0	
4360	978	12/5/2013			5.7	29.6	154	87.6	20.9	0.6	751.6	26.0	
4360	13	1/9/2014	1	Est	5.9	26.2	140.2	109.0	20.0	1.1	690.6	24.0	

BQ2 Seep above sumps in the flood plain (s.a. 8 on NES reporting)

4304	537	11/1/2000	0.5	Est	3.4	0	308	96.4	19.2	7.3	731.7	192.0	<10
4304	148	4/4/2001	8	Est	3.2	0	270	4.5	45.4	31.6	1330.0	12.0	7.25
4304	222	5/1/2001	1	Est	3.6	0	336	87.6	30.1	15.8	1028.1	6.0	
		<i>backfilling</i>											
4336	289	3/28/2012	2	Est	4.6	9.8	90.8	4.0	22.4	7.3	1037.9	6.0	
4360	976	12/5/2013			5.5	8.2	71.8	25.7	14.5	1.3	571.4	<5	
4360	14	1/9/2014	1	Est	6.4	104.2	16	85.4	18.0	1.4	834.6	122.0	



established 1866

## Pennsylvania Fish & Boat Commission

Bureau of Fisheries  
 Division of Environmental Services  
 450 Robinson Lane  
 Bellefonte, PA 16823  
 814-359-5117

April 3, 2014

Malcolm Crittenden, Watershed Manager  
 PA Department of Environmental Protection  
 286 Industrial Park  
 Ebensburg, PA 15931

Dear Mr. Crittenden:

The Pennsylvania Fish and Boat Commission (PFBC) reviewed the proposal for the creation of a Trust Fund in response to an existing discharge associated with the New Enterprise Stone and Lime Company's Boswell Quarry, Somerset County. The water quality of this discharge has historically shown to have acidic water quality conditions and elevated metal concentrations however; recent data trends have shown an increase in pH (> 6.0) and iron (Fe) concentrations remaining at elevated levels. Because of the relatively low volume of water (3-6 GPM) that is associated with this discharge, the water quality data suggests that there is no or minimal impacts to Quemahoning Creek downstream of the discharge location.

The development of the \$190,000.00 Trust Fund should generate necessary monies for the Somerset County Conservation District to have the opportunity to conduct important water quality improvement projects within the Quemahoning Creek watershed. Water quality improvement projects that may be funded by this Trust Fund should be conducted with oversight from both the Department and the PFBC in order to help insure project success.

In summary, the PFBC strongly supports the proposed creation of the Trust Fund in lieu of on-site treatment at the Boswell Quarry discharge seep. We also fully endorse the Fund to be administered by the Somerset County Conservation District. Thank you for providing us the opportunity to comment and please feel free to contact Steve Kepler at (814) 359-5117 if we can be of any further help.

Sincerely,

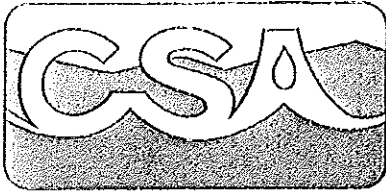
David E. Spotts, Chief  
 Division of Environmental Services

c: PFBC-S. Kepler, L. Young  
 Somerset Conservation District-Lichvar

Our Mission:

[www.fishandboat.com](http://www.fishandboat.com)

*To protect, conserve and enhance the Commonwealth's aquatic resources and provide fishing and boating opportunities.*



Cambria Somerset Authority  
www.cambriasomersetwater.com

April 8, 2014

Mr. Malcolm Crittenden, Watershed Manager  
PA Department of Environmental Protection  
286 Industrial Park Road  
Ebensburg, PA 15931

Re: **Quemahoning Creek Watershed  
Trust Fund**

Dear Mr. Crittenden:

The Cambria Somerset Authority (CSA) is in receipt of a letter from Mr. Len Lichvar of the Somerset Conservation District (SCD) dated March 21, 2014. The topic of the letter pertains to a proposed Trust Fund dedicated toward watershed improvement projects in the Quemahoning Creek watershed in Somerset County.

The CSA Board of Directors, at their meeting on April 3, 2014, voted in favor of support of the proposed Trust Fund. The CSA is very much in favor of working with the Somerset Conservation District to develop watershed improvement projects within the Quemahoning Creek watershed.

Please note that the CSA's support is strictly to work in unison with the SCD in development of watershed improvement projects. The CSA's financial position makes it impossible to provide any financial support for the watershed projects. Therefore, the CSA will not provide any financial support in the design, permitting, or construction of the projects.

Should you have any questions or require additional information, please contact us at 814-532-8851 or via e-mail at [cambriasomersetauthority@atlanticbbs.net](mailto:cambriasomersetauthority@atlanticbbs.net).

Sincerely,

Earl F. Waddell, P.E.  
Operations Manager

cc: James L. Greco, Ph.D. – CSA Chair  
Len Lichvar – Somerset Conservation District  
James F. Beener, Esq. – Barbera, Clapper, Beener, Rullo & Melvin, LLP  
Correspondence File



**JENNER ROD & GUN CLUB, INC.**

5154 FRONT ST  
JENNERS, PA 15546

1937 – 2006

814-629-5809  
[jennrodgun@adelphia.net](mailto:jennrodgun@adelphia.net)

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Malcolm Crittenden

September 15, 2014

Watershed Manager

PA DEP

286 Industrial Park Road

Ebensburg, PA 15931

Dear Malcolm,

The Jenner Rod and Gun Club has been an active participant in the water quality improvements in the Quemahoning Creek watershed. The club has also contributed significant funding to the water quality improvement projects in the Quemahoning Creek watershed for many years.

The club supports the creation of a Trust Fund to enable the Somerset Conservation District to develop and implement needed additional watershed improvement projects. The Club strongly supports this concept to ensure the continued growth of both recreational as well as economic opportunities in the Quemahoning Creek watershed.

Sincerely,



Dante Petrocelli

President

Jenner Rod and Gun Club

021171.9 001 3 141120

## Exhibit D

### Potential Quemahoning Creek Watershed Projects:

1. Alkaline Addition: projects (like those recommended by *Trout Unlimited*) such as the addition of limestone sand into the headwater streams would add valuable alkalinity to this stream system which support a trout fishery along some stream sections
2. AMD Remediation: projects (like those recommended by the *Somerset Conservation District*) could address pre-act iron seepage on a nearby stream by diversion through existing ponds
3. Stream Bank Stabalization: projects (like those recommended by the *Jenners Rod & Gun Club*) could stabilize eroding stream bank sites with limestone riprap in order to reduce stream sedimentation
4. Aquatic Habitat Projects: projects (like those recommended by the *PA Fish and Boat Commission*) would enhance fish habitat within both the Quemahoning Lake and the trout fishery along Quemahoning Creek
5. Stream Access Sites: projects (like those recommended by the *Cambria Somerset Authority*) would enhance public access to a variety of stream recreational opportunities; and signage & programs that offer watershed education to the public.

## EXHIBIT E

### ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") is dated this \_\_\_\_ day of \_\_\_\_\_, 2015, and is by and among New Enterprise Stone & Lime Company, Inc., a Pennsylvania business corporation ("NESL"), the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and the Clean Streams Foundation, Inc., a Pennsylvania non-profit corporation ("Foundation").

#### BACKGROUND/RECITALS

A. NESL and Department entered into a Consent Order and Agreement dated \_\_\_\_\_, 2015, at Docket Number SMP 4077SM7, with respect to the Boswell Quarry ("Consent Order"). A true and correct copy of the Consent Order is attached as Exhibit A, and is incorporated by reference.

B. NESL, Department and Foundation entered into a Participation Agreement for the Clean Streams Foundation, Inc. Trust dated \_\_\_\_\_, 2015 ("Participation Agreement"). A true and correct copy of the Participation Agreement is attached as Exhibit B, and is incorporated by reference.

C. NESL, Department and Foundation desire to enter into this Escrow Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and intending to be legally bound, the parties hereto agree as follows:

1. Deposit of Funds with Foundation. Upon execution of this Escrow Agreement, NESL shall deposit with Foundation by cash, bank check or wire transfer (or any combination thereof) the sum of TWO HUNDRED FIVE THOUSAND ONE HUNDRED SIXTY-EIGHT AND 40/100 DOLLARS (\$205,168.40) ("Funds"). The deposit of the Funds by NESL shall constitute full compliance with NESL's obligations under Paragraph 3 of the Consent Order.

2. Funds to be Held in Escrow. Foundation shall hold the Funds in escrow pending receipt of written confirmation that Department has released the reclamation bonds and terminated the permits listed in the Consent Order pursuant to the requirements of Paragraph 4 of the Consent Order ("Written Confirmation").

3. Release of Funds from Escrow. Upon receipt of the Written Confirmation, Foundation shall release the Funds from escrow and shall immediately use the Funds to fund the Quemahoning Creek Watershed Conservation Trust Sub-Account (the "Sub-Account") under Section 2.3 of the Participation Agreement. Upon funding of the Sub-Account, each of the parties' duties and obligations under this Escrow Agreement shall be terminated.

4. Return of Funds to NESL. Should the Written Confirmation not be issued by Department to Foundation within six (6) months of the date of the Consent Order due to Department's failure to perform its obligations regarding the release of the reclamation bonds

and termination of permits under Paragraph 4 of the Consent Order, Foundation shall return the Funds to NESL, and, upon return of the Funds to NESL, each of the parties' duties and obligations under this Escrow Agreement shall be terminated.

5. No Amendment to Consent Order or Participation Agreement. Nothing herein shall be construed to amend or modify the Consent Order or the Participation Agreement, or any of each of the parties' obligations thereunder.

6. Miscellaneous.

a. This Escrow Agreement shall be binding upon and inure to the benefit of each party and their respective successors and assigns. This Escrow Agreement may not be changed orally or modified, amended or supplemented without an express written agreement executed by all of the parties.

b. This Escrow Agreement is intended to be for the sole benefit of the parties hereto and their respective successors and assigns, and none of the provisions of this Escrow Agreement are intended to be, and shall not be construed to be, for the benefit of any third person.

c. This Escrow Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

d. All notices shall be sent by certified mail, return receipt requested, or by a nationally recognized overnight delivery service, in writing.

e. This Escrow Agreement may be signed in counterparts each of which shall constitute an original.

f. All correspondence between NESL and the Department will be sent in accordance with the provisions of Paragraphs 9 and 10 of the Consent Order. All correspondence with the Foundation concerning this Escrow Agreement shall be addressed to:

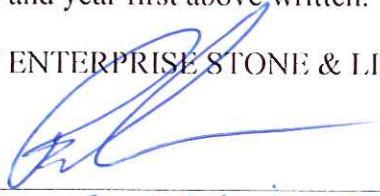
Dean K. Hunt, Administrator  
The Clean Streams Foundation, Inc.  
520 West Short Street  
Lexington, KY 40507-1252

**REMAINDER OF PAGE INTENTIONALLY BLANK**

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, NESL, Department and Foundation have executed this Escrow Agreement, intending to be legally bound, as of the day and year first above written.

NEW ENTERPRISE STONE & LIME CO.,  
INC.

By:   
Name: Paul Detwiler, III  
Title: President

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

By: \_\_\_\_\_  
Name:  
Title:

CLEAN STREAMS FOUNDATION, INC.

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

Consent Order

**EXHIBIT B**

Participation Agreement

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF MINING AND RECLAMATION

CONSENT TO RIGHT OF ENTRY FOR OPERATION AND  
MAINTENANCE OF MINE DRAINAGE TREATMENT FACILITY  
COVERED BY A POST-MINING DISCHARGE TREATMENT TRUST

**Property Owner(s):**

New Enterprise Stone & Lime Company, Inc. ("New Enterprise")  
P. O. Box 77  
New Enterprise, PA 16664

WHEREAS, the New Enterprise owns surface property containing approximately 161.4, 1.1, and 1.0 acres located in Jenner Township, Somerset County, Pennsylvania, and all described in Deed Book Volume 1464, Page 127; in the Somerset County Recorder's Office ("Property");

WHEREAS, the Pennsylvania Department of Environmental Protection ("Department") is an agency with authority to administer and enforce the Clean Streams Law, the Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. § 691.1, *et seq.*; the Noncoal Surface Mining Conservation and Reclamation Act, the Act of December 19, 1984, P.L. 1093, *as amended*, 52 P.S. § 3301.1, *et seq.*; Section 1917-A of the Administrative Code, the Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17A; and, the Rules and Regulations of the Environmental Quality Board adopted thereunder;

WHEREAS, New Enterprise conducted non-coal mining on and/or adjacent to the Property pursuant to SMP 4077SM7 (Boswell Quarry);

WHEREAS, in a hydrogeologic investigation dated April 12, 2001, the Department determined mining at the Boswell Quarry was hydrogeologically connected to a seep zone on the north side of Quemahoning Creek immediately adjacent to the permit boundary (see Exhibit A.). The seep zone is approximately 200 feet long and is monitored at two points (8/BQ2 and 10/BQ1) see Exhibit B. The estimated average flow from the seep zone is 6 gallons per minute. The seeps are acidic and have high concentrations of metals;

WHEREAS, the Department has determined that untreated water from the seep zone has a minimal effect on, and causes no measurable downstream degradation to, Quemahoning Creek. As an alternative, the company agreed to place money into a trust which money would be used to fund watershed projects on Quemahoning Creek;

WHEREAS, previous coal mining activity in the Quemahoning Creek watershed had a negative impact on Quemahoning Creek. For more than 20 years, various and diverse efforts have been undertaken to improve water quality. Numerous groups, including the Mountain Laurel Chapter of Trout Unlimited, the Cambria Somerset Authority, the Pennsylvania Fish and

Boat Commission, the Jenners Rod & Gun Club, Inc., the Stoneycreek-Conemaugh River Improvement Project and the Somerset Conservation District, have participated in studies, projects, acquisitions, funding and other initiatives aimed at improving water quality in, and increasing public usage of, Quemahoning Creek;

WHEREAS, the Department talked to the Somerset Conservation District and other local watershed groups who submitted letters in support of the creation of a trust dedicated to funding watershed conservation projects;

WHEREAS, on \_\_\_\_\_, 2015, the Department and New Enterprise entered into a Consent Order and Agreement in which, among other things, the parties agreed that \$205,168.40 would be placed into the Quemahoning Creek Watershed Conservation Trust ("Trust") for the purpose of performing watershed projects;

WHEREAS, the Department, the Trustee, and any third party Administrators must have access to the Property to conduct watershed projects, and to monitor the mine seeps and the stream;

WHEREAS, the Department has requested and New Enterprise is willing to grant the Department, the Trustee, and any third party Administrators a right of entry into, under, over and upon the Property to conduct watershed projects, and to monitor the mine seeps and the stream;

WHEREAS, New Enterprise acknowledges that watershed projects will provide benefits to New Enterprise and to the Commonwealth through abatement of a nuisance, restoration of land affected by mining operations, and prevention of pollution to waters of the Commonwealth;

NOW THEREFORE, in consideration of the benefits which New Enterprise and the general public will receive, and with the intention of being legally bound, it is agreed as follows:

1. Right of Entry. New Enterprise hereby grants and conveys to the Department and the Trustee, its employees, agents, servants, contractors and subcontractors, and any third party Administrators, a right of entry into, under, over and upon the Treatment Facility Property. This right of entry includes all necessary rights of ingress, egress and regress with all personnel, materials, and equipment needed to perform the discharge treatment activities.

2. Duration of Right of Entry. The term of this Right of Entry shall perpetual. It is specifically understood and agreed that the term of this Right of Entry extends for the length of time during which the Trust is in operation to perform watershed projects, and shall only terminate when the Trust ceases to exist.

3. Insurance. The Department will require all Treatment Contractors and/or the Trustee to obtain and keep in force insurance coverage sufficient to protect against damage or injury associated with the operation and maintenance of the mine drainage treatment facilities on the Property.

4. Property Use. During the term of this Right of Entry, New Enterprise will not, without the written consent of the Department, make any use of the Property which will interfere with the

construction, operation or maintenance of the mine drainage treatment facilities installed on the Treatment Facility Property.

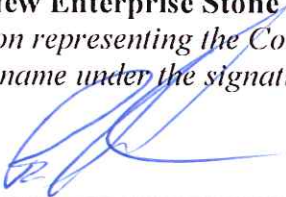
5. Notification. This Consent to Right of Entry shall be recorded by the Department in the Somerset County Recorder of Deed's Office within thirty days of its execution. In the event that New Enterprise intends to sell, lease, or otherwise transfer any interest in the Property prior to the termination of this Right of Entry, New Enterprise shall advise the prospective owner or lessee of the terms and conditions of this Right of Entry. New Enterprise shall advise the Department of the intent to sell the Property prior to any sale.

6. Representation of Interests. New Enterprise represents that it is the only person authorized to grant access to the Treatment Facility Property.

7. Binding on Successors. All the covenants, representations, consents, waivers and agreements contained herein shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.


IN WITNESS WHEREOF, each of the parties set its respective hand and seal, for itself, its heirs, executors, administrators, successors and assigns, intending to be legally bound, this 24 day of July, 2015.

**For New Enterprise Stone & Lime Company, Inc.**  
*(Person representing the Company sign and print their name under the signature.)*



Name: Paul I. Detwiler, III  
Title: President

**For the Department of Environmental Protection:**



Name: Daniel Sammarco  
Title: District Mining Manager

ACKNOWLEDGEMENT

STATE OF PA :  
COUNTY OF Bedford : SS

On this, the 24 day of June, 2015, before me, the undersigned Notary,  
personally appeared

Paul I. Detweiler III  
(Name (s))

known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to  
this instrument, and who acknowledged that (he, she or they) have executed the same and desire  
it to be recorded.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

(SEAL) Kelly M. Burtnett-Myers My Commission Expires: 4.16.17  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Kelly M. Burtnett-Myers, Notary Public  
South Woodbury Twp., Bedford County  
My Commission Expires April 16, 2017  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES