



Permit No.

**CONSENT TO RIGHT OF ENTRY FOR DESIGN AND STUDY AND
FOR CONSTRUCTION, OPERATION AND
MAINTENANCE OF MINE DRAINAGE TREATMENT FACILITY**

Property Owner(s): List everyone with an ownership interest in the property which is the subject of this Agreement.

Name: _____

Name: _____

Address: _____

Address: _____

WHEREAS, the Property Owner(s) own surface property containing acres located in _____ Township, _____ County, Pennsylvania, and described in Deed Book Volume _____, Page _____, in the _____ County Recorder's Office (the Property);

WHEREAS, the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP) is authorized, pursuant to the Surface Mining Conservation and Reclamation Act, 52 P.S. § 1396.1 et seq. (SMCRA), the Clean Streams Law, 35 P.S. § 691.1 et seq., and their implementing regulations, to perform mine reclamation activities on mine sites for which the bond has been forfeited, including the construction, operation and maintenance of facilities designed to remediate the effects of abandoned mine drainage;

WHEREAS, the Property has been affected by a mine site for which the bond was forfeited and reclamation of the mine site was not completed in accordance with the requirements of SMCRA and the Clean Streams Law;

WHEREAS, DEP has requested and the Property Owner(s) is willing to grant DEP a right of entry into, under, over and upon the Property to conduct mine reclamation activities on the Property, including study, design, construction, operation and maintenance of abandoned mine drainage treatment facilities, as more fully described in the attached Scope of Work;

WHEREAS, DEP has determined that abandoned mine drainage is discharging from or passing through the Property, and that the abandoned mine drainage on the Property is causing pollution, or a danger of pollution, to waters of the Commonwealth;

WHEREAS, pursuant to Section 316 of the Clean Streams Law, 35 P.S. § 691.316, whenever DEP finds that pollution, or a danger of pollution, to waters of the Commonwealth exists on land within the Commonwealth, DEP may order the landowner to correct the condition in a manner satisfactory to DEP (such as by constructing and operating a mine drainage treatment facility); or, DEP may order the landowner to allow DEP or DEP's agent access to the land to take action to remediate the pollution (such as by constructing and operating a treatment facility);

WHEREAS, pursuant to Section 8106 of the Environmental Good Samaritan Act, 27 Pa. C.S. § 8106, a landowner who provides access to the land, without charge or other consideration, for purposes of enabling installation of a water pollution abatement project shall be immune from liability for the operation, maintenance or repair of the water pollution abatement facilities installed during the project, unless the landowner negligently damages or destroys the facilities or denies access to those persons who operate, maintain or repair the facilities;

WHEREAS, pursuant to Section 8106 of the Environmental Good Samaritan Act, 27 Pa. C.S. § 8106, a landowner who provides access to the land, without charge or other consideration, for purposes of enabling installation of a water pollution abatement project shall not be deemed to assume legal responsibility for any pollution resulting from a water pollution abatement project, and shall not be subject to a citizen suit filed under the Clean Streams Law for pollution resulting from a water pollution abatement project;

WHEREAS, DEP proposes to undertake mine reclamation activities on the Property, either through Commonwealth employees or through a third-party contractor, which include study and design, and constructing, operating and maintaining facilities for treating abandoned mine drainage to improve the quality of water discharging from or passing through the Property, and thereby abating pollution in accordance with the applicable provisions of SMCRA, the Clean Streams Law, and their implementing regulations;

WHEREAS, DEP has determined that the abandoned mine drainage treatment facilities to be constructed on the Property qualify as a water pollution abatement project under the Environmental Good Samaritan Act and the Property Owner(s) will be subject to protection under that Act by providing access, at no charge, to the Department for purposes of constructing, operating and maintaining the treatment facilities on the Property;

WHEREAS, the Property Owner(s) acknowledge that completion of mine reclamation on the Property and treatment of the abandoned mine drainage on the Property will provide benefits to the Property Owner 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 the Property Owner(s) and the general public will receive, and with the intention of being legally bound, it is agreed as follows:

1. Right of Entry. The Property Owner(s) hereby grants and conveys to DEP, its employees, agents, servants, contractors and subcontractors, a right of entry into, under, over and upon the Property. This consent gives the Commonwealth the right to enter, inspect, study, sample, monitor water quality, and perform all other actions reasonably necessary to complete the design of mine drainage treatment facilities adequate to treat any abandoned mine drainage discharging from or passing through the Property. This right of entry includes all necessary rights of ingress, egress and regress with all personnel, materials, and equipment needed to perform the mine reclamation activities described in the attached Scope of Work. It is specifically agreed and understood that this contractual consent gives the Commonwealth, or its agent, the right to construct, operate and maintain all treatment facilities necessary to remediate pollution from any abandoned mine drainage discharging from or passing through the Property. This contractual consent does not constitute any ownership interest by the Commonwealth in the Property.

2. Duration of Right of Entry. The term of this Right of Entry shall extend for the length of time necessary to complete the reclamation activities described in the attached Scope of Work. It is specifically understood and agreed that the term of this Right of Entry extends for the length of time necessary to operate and maintain all mine drainage treatment facilities to be constructed on the Property, in furtherance of the goal of remediating water pollution, and shall only terminate when such treatment facilities are no longer necessary to remediate or prevent pollution to waters of the Commonwealth.

3. Insurance. In the event that the mine reclamation activities described in the attached Scope of Work are conducted by DEP contractors, DEP will require its contractors to obtain and keep in force insurance coverage sufficient to protect DEP and the Property Owner(s) against damage or injury resulting from the negligence or fault of its contractors. DEP will also require its contractors to name the Property Owner(s) as an additional insured under the insurance coverage.

4. Property Use. During the term of this Right of Entry, the Property Owner(s) will not, without the written consent of DEP, make any use of the Property which will interfere with the reclamation activities performed by the Department on the Property or with the construction, operation or maintenance of the mine drainage treatment facilities installed on the Property.

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

(a) Prior to installation of the mine drainage treatment facilities on the Property as described in the attached Scope of Work, DEP or its agent will provide reasonable notice to the Property Owner(s) prior to entering the Property.

6. Representation of Interests. The Property Owners represent that they are the only persons or entities who have any legal interest in the Property, including any easements or rights-of-way, and that the Property Owner(s) are authorized to grant access to the Department or its agent for construction, operation and maintenance of the mine drainage treatment facility. A map of the proposed facility and the existing property boundaries is attached as part of the Scope of Work.

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, the Property Owner sets its hand and seal, for itself, its heirs, executors, administrators, successors and assigns, intending to be legally bound, this _____ day of _____, 20_____.

The Property Owner(s)

(Each owner sign and print or type their name under the signature.)

Name:

Name:

Name:

Name:

Title:

ACKNOWLEDGMENT

STATE OF _____ :
 :
 COUNTY OF _____ : ss

On this, the _____ day of _____, 20_____, before me, the undersigned Notary, personally appeared

(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) _____
Notary Public

My Commission Expires: _____