

BERKSHIRE REGIONAL PLANNING COMMISSION
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KYLE HANLON, Chair
SHEILA IRVIN, Vice-Chair
MARIE RAFTERY, Clerk
CHARLES P. OGDEN, Treasurer

NATHANIEL W. KARNS, A.I.C.P.
Executive Director

AGENDA

Rest of River Municipal Committee
November 1, 2016, 3:00 p.m.
Selectman's Room, Stockbridge Town Office Building

1. Introductions
2. Review of minutes of October 20, 2016 meeting
3. Intergovernmental Agreement
4. Budget update and payment approval
5. Executive Session – further legal strategy for probable EPA appeal and appeals court proceedings
6. Adjournment

City and Town Clerks: Please post this notice pursuant to M.G.L. Chapter 39, Section 23B.

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Meeting Minutes

Rest of River Municipal Committee
November 1, 2016, 3:00 p.m., Stockbridge Town Office Building

1. Introductions. The meeting opened at 3:07 p.m. Attending the session were the following Committee members:

Warren Archey, Lenox Select Board
Pat Carlino, Lee Select Board
Christopher Ketchen, Lenox Town Manager
Jim McGrath, Pittsfield Community Development
Bob Nason, Lee Town Administrator
Steve Shatz, Stockbridge Selectman

Others present:

Lauren Gaherty, BRPC
Nat Karns, BRPC

2. Review of minutes of Oct. 20, 2016 meeting. Motion to accept by S. Shatz, seconded by W. Archey. Typographical errors corrected: Pg. 1 first paragraph replace “spoke” with “spoken;” pg. 2 last paragraph replace “change” to “chance;” pg. 3 first full paragraph add the words “possibility of” after the word remote. Minutes unanimously accepted as amended.

3. Renewal of the Intergovernmental Agreement (IGA). N. Karns reported that the City of Pittsfield has given a verbal notice to withdraw from the IGA, but that the Committee has never received formal written agreement. Pittsfield’s City Solicitor notified Mr. Karns over the phone on September 14th. The current IGA requires that notice be given in writing 30 days in advance for formal withdrawal to take place. Mr. Karns requested that the Committee consider waiving the written requirement and accept the City’s notification as of Sept. 14th. S. Shatz made the motion to waive the written requirement and accept the City’s verbal withdrawal notification; seconded by P. Carlino. The motion passed unanimously and Mr. Karns stated that Pittsfield was hereby formally withdrawn from the IGA.

L. Gaherty presented the revised Preamble to the Committee for consideration. This version

incorporated the edits discussed at the last meeting and a few grammatical changes offered by C. Rembold via email. The Committee accepted the edits, which were shown in purple on the handout. There were two additional edits made to the Preamble at the meeting: 1) pg. 2, item #5, last sentence remove the word “adamantly;” and 2) p. 1, 3rd paragraph last sentence, remove the words “as noted in its October 8, 2014 comment letter to EPA.”

S. Shatz summarized the edits to the IGA that he would propose, reporting that he is keeping most of the substance of the original IGA and cleaning up the language. Language changes include clarify the upcoming EPA administrative and the court appeals that the Committee will be engaged in, labeling this whole process “the Appeals.” He also changed reference to the Pawa Law Firm to “the Law Firm.” He also cleaned up and shortened references to what is meant by a unanimous vote. The unanimous vote remained in the settlement of and distribution of any financial compensation from GE or any other entity. The Committee discussed and agreed also that unanimity is required for any formal agreement on siting of a local landfill. The Committee discussed the issue that unanimity brings, which is the possibility of a stalled vote due to veto of one member. S. Shatz also noted that he revised the paragraph describing the mediation process, which was non-binding, and this may help to resolve a possible veto situation.

N. Karns brought forth a request from the Mayor of Pittsfield to share the draft version of the IGA with the City. The Mayor was unaware of the 5 major goals of the IGA as now laid out in the agreement. Members agreed that the IGA would need to be approved by each Select Board and would thus be public record, so the issue of confidentiality was not present here. The Committee agreed to share the new version of the draft IGA with the City of Pittsfield.

The Committee revisited the issue of unanimity for financial settlement and distribution. All at the table agreed that the purpose of the Committee was to act as a united regional body, and that any discussion of a financial settlement from GE or another entity should be held through this group. After further discussion the Committee decided that settlement and distribution of financial compensation would require a “majority plus one” vote, but that the landfill issue would remain as an issue that required a unanimous vote.

The last edits to the IGA discussed by the Committee regarded section 2.b. that referenced the Committee’s budget. Some members believed that listing the budget in the IGA was not important, as the budget changes constantly as invoices are paid and new appropriations are added. B. Nason liked having the budget amount in to note the exact amount that was approved as a cap on spending. The Committee agreed to inserting the FY17 budget amount of the 5-member Committee and add a phrase that acknowledges future appropriations.

S. Shatz will make the changes to the IGA as discussed and L. Gaherty will work with him to renumber all the sections once edits are made.

L. Gaherty asked the Committee for clarification on the process to renew the IGA, noting that it needs to be reviewed and approved by all the towns’ select boards. Due to the varied calendar schedules of the 5 boards, it could take several weeks to become approved and signed by each, and this would probably go beyond the current IGA end date of Nov. 21st. The agreement would also need to be approved by the BRPC Full Commission. S. Shatz made the motion to extend the current IGA date to

Dec. 23, 2016, seconded by P. Carlino; the motion passed unanimously (Great Barrington and Sheffield not present, and Pittsfield is no longer a member).

N. Karns noted that the Pawa Law Firm has submitted an invoice for work through August 2016, and these were handed out to each member. If there was no objection from any Committee member BRPC will send payment to the firm, which is accordance with procedures laid out in the current IGA.

4. **Executive Session.** The Committee moved into Executive Session to discuss legal strategy at 4:10 p.m., with the intent of not returning to regular session, motion made by S. Shatz and seconded by P. Carlino. Roll call vote: S. Shatz, Stockbridge AYE; W. Archey, Lenox AYE; P. Carlino, Lee AYE (Great Barrington and Sheffield not present, and Pittsfield is no longer a member).

5. **Adjournment.** The Committee did not return to regular session.

Meeting Materials:

- Meeting Agenda 11-1-16
- Meeting Minutes of 10-20-16
- Intergovernmental Agreement Amendment 10-27-16
- Pawa Law Group invoices

Respectfully submitted,
Lauren Gaherty, BRPC

PREAMBLE

Draft Version 10-27-16

The cleanup of the Housatonic River of PCBs is viewed as one of the most important regional issues in recent Berkshire County history due to the geographical extent of the cleanup, the duration of proposed cleanup activities and the associated socioeconomic impacts on Berkshire communities. The Housatonic River Watershed encompasses approximately 53% of Berkshire County and contains all or a portion of 26 of the 32 Berkshire communities. The Commonwealth of Massachusetts has designated portions of the watershed as Areas of Critical Environmental Concern, and the Massachusetts Natural Heritage and Endangered Species Program has noted the rich biodiversity of the Housatonic River Watershed.

The East and Main branches of the Housatonic River between Pittsfield and Sheffield in Massachusetts are heavily contaminated by PCBs due to the handling and disposal operations of General Electric Company (GE). Under the Consent Decree of 1999 and its subsequent amendments GE has agreed to conduct cleanup activities to remove PCBs from the river. GE's Corrective Measures Study of 2010 offers projected cleanup activities that could last between five and 50 years, depending on the level of work that is required by the U.S. Environmental Protection Agency (EPA). The impacted section of the Housatonic River in Massachusetts encompasses the City of Pittsfield and the Towns of Lenox, Lee, Stockbridge, Great Barrington, and Sheffield (the "Rest of River Communities").

In 2014 the EPA issued its *Draft Modification to the Reissued RCREA Permit (Permit)* which directed GE to clean up the "Rest of River", which is defined as the Housatonic River downstream of the confluence of the West and East Branches and extending south to Long Island Sound. The *Permit* outlines a cleanup that is estimated by the EPA to reduce the downstream transport of PCBs by 88-89% by removing approximately 990,000 cubic yards of contaminated material over an estimated period of 13-15 years. Overall the Housatonic Rest of River Municipal Committee supports the EPA's *Permit*, although there are areas where the Committee believes that the *Permit* could be improved to provide more long-term protection of human health and the environment, as noted in its October 8, 2014 comment letter to EPA.

The Committee has determined that the cleanup of the Housatonic River must at a minimum meet the following goals to be protective of human health, the natural environment and residents' quality of life:

1. A strict adherence to the *Permit's* directive that GE "shall dispose of all contaminated sediment and soil, as well as other waste material, off-site at existing licensed facilities that are approved to receive such waste material and are in compliance with EPA's off-site rule (40 C.F.R. 300.440.) The Permittee shall maximize the transport of such waste material to off-site facilities via rail" (*Permit*, Sec. II.B.6 and Attachment D).

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2. The Massachusetts Hazardous Waste Facility Siting Act (MGL c21D) is listed as an Applicable or Relevant and Appropriate Requirement (ARAR) for all temporary cleanup activities that are listed in that act (staging and construction areas, storage areas, dewatering and treatment facilities, etc.). The Committee acknowledges that handling, moving, dewatering and stockpiling of contaminated sediments and soils will occur during the cleanup, but all agree that such activities must be temporary and derived solely from Rest of River PCB cleanup activities.

3. GE remains responsible in perpetuity for monitoring, controlling and removing PCBs whenever contamination levels exceed performance standards during and after completion of the cleanup. EPA's *Permit* allows significant volumes and concentrations of PCBs to remain in the Rest of River environment, employing capping throughout the river system to control PCBs left behind after the cleanup is completed. It is imperative that the entirety of the legal liability and financial burden remains squarely on the shoulders of GE and any of its successors to avoid becoming an unfair burden of future generations to monitor and manage those PCBs left behind.

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4. EPA requires GE to aggressively search for and employ new or emerging technologies that have the potential to destroy PCBs or break them into less- or non-toxic components as alternatives to conventional technologies that include excavation/dredging and disposal of contaminated soils and sediments. New or emerging technologies that reduce disturbance of significant floodplain or wetland habitats or that can be done *in situ* should be given highest priority.

5. The definition of "on-site" is narrowly confined to only those areas that are currently contaminated and are specifically listed in the *Permit* as sites that GE must clean up. On-site does not extend to areas that are currently uncontaminated by PCBs or are contaminated by PCBs in concentrations that are below the standards listed in the *Permit*. The EPA's *Permit* is already allowing PCBs to remain in millions of cubic yards of river/wetland/impoundment sediment, riverbank and floodplain soils throughout the river corridor, from Pittsfield to Long Island Sound. We adamantly oppose any action that will~~It is unconscionable to~~ allow GE to expand the area of land within the Housatonic River Watershed that would be permanently impacted by PCB contamination, including the siting of any permanent hazardous materials or waste facility.

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The following amendment reflects the events that have occurred since the signing of the original IGA of 2013 and the current strategy of the Rest of River municipal governments as they jointly and as a united entity move forward through the EPA permitting process and ~~the high probability of a~~ highly probable federal appeals court process. This IGA outlines how the Rest of River Municipal Committee will proceed through and retain legal counsel to proceed through the EPA permitting process and the federal appeals court process if necessary.

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INTERGOVERNMENTAL AGREEMENT

This AGREEMENT (the “Agreement”) is made and entered into this ~~22nd~~ day of ~~October~~November, 20136 by and among the BERKSHIRE REGIONAL PLANNING COMMISSION (hereafter “BRPC”), having principal offices at 1 Fenn Street, Suite 201, Pittsfield, MA 01201, and the municipalities of Great Barrington, Lee, Lenox, ~~Pittsfield~~, Sheffield and Stockbridge (hereafter “MUNICIPALITIES”), all governmental units as defined under M.G.L. c. 40, §4A.

The MUNICIPALITIES ~~will continue to actively participate in the EPA permitting and appeals process and, where deemed necessary, participate in the other administrative and/or court proceedings (collectively the “Appeals”) to protect the health and welfare of the environment and the people within the six Rest of River communities. The MUNICIPALITIES may pursue opportunities to will begin~~ negotiateions with GE regarding compensation for socioeconomic damages to the MUNICIPALITIES associated with the contamination and cleanup of the Housatonic River Site, as defined by the EPA. The MUNICIPALITIES, while undertaking ~~thesethis actions as the six municipalities cited in the Rest of River cleanup studies and/or agreements,~~ are deeply mindful of the impacts and consequences that ~~the~~ cleanup activities will have on Berkshire County residents, businesses, resources, economic development and municipal operations.

The MUNICIPALITIES have agreed that BRPC, as agent for the MUNICIPALITIES, shall ~~retainhire the law firm of Pawa Law Group, P.C., 1280 Centre Street, Suite 230, Newton, MA 02459 (hereafter “Pawa Firm”) a law firm (hereafter the “Law Firm”) approved by the municipalities; that BRPC shall communicate the position of the MUNICIPALITIES to the PawaLaw Firm regarding filing of legal arguments for~~ during the EPA permit and appeals process, during the federal Appeals in negotiations with GE; and that, if it is deemed necessary by the MUNICIPALITIES to pursue litigation related to the river cleanup, ~~including but not limited to an appeal of EPA’s remedy under the federal Resource Conservation and Recovery Act (“RCRA”).~~ BRPC shall so communicate the position of the MUNICIPALITIES to the PawaLaw Firm for the purposes of pursuing ~~such litigation~~the Appeals. The MUNICIPALITIES have agreed that BRPC will be responsible for all coordination between ~~the Law~~Pawa Firm and the MUNICIPALITIES; that BRPC shall act as the agent and representative of the MUNICIPALITIES, subject to advice and approval from the MUNICIPALITIES per this Agreement, in assisting the PawaLaw Firm in these matters; and that BRPC shall act as the MUNICIPALITIES’ fiscal agent as described in Section 2.

Each party to this Agreement has obtained authority to enter into this Agreement pursuant to M.G.L. c. 40, § 4A. The MUNICIPALITIES have obtained authorization by vote of their Boards of Selectmen ~~or City Council with the approval of the Mayor~~. BRPC has obtained authorization by vote of the Commission.

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Therefore, in consideration of the mutual promises, payments and agreements contained herein, the parties, intending to be legally bound thereby, agree as follows:

1. Governing Body and Voting Procedures. The MUNICIPALITIES shall form a governing body ("COMMITTEE") consisting of two representatives from each municipality. ~~The Mayor of Pittsfield shall appoint the two City representatives.~~ The Boards of Selectmen from the Towns of Great Barrington, Lee, Lenox, Sheffield and Stockbridge shall each appoint two representatives from their respective towns. Each municipality shall have one vote on the COMMITTEE, ~~unless a municipality has withdrawn in accordance with Section 5b, whereupon it shall lose its vote on the COMMITTEE.~~ A majority of MUNICIPALITIES must have at least one appointed representative present in order to constitute a quorum and to conduct any business. General business shall be conducted using a majority vote of the MUNICIPALITIES present and constituting a quorum. Business involving the Appeals shall require a majority vote of the MUNICIPALITIES present and constituting a quorum. Business involving negotiating positions and final settlement agreements with GE shall require a unanimous vote of the COMMITTEE.

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a) The PawaLaw Firm. The COMMITTEE shall deliberate and provide direction to the BRPC in order for BRPC to provide direction to the LawPawa Firm regarding the negotiations on the MUNICIPALITIES' behalf with GE regarding compensation for socioeconomic damages to the MUNICIPALITIES associated with the contamination and cleanup of the Housatonic River Site and, if necessary, in prosecuting all Appeals litigation (e.g., an appeal of EPA's remedy under RCRA).

The COMMITTEE shall, by majority vote of the MUNICIPALITIES present and constituting a quorum, establish rules that govern its operating practices, and vote and approve estimated budgets of time and out-of-pocket costs payable to the PawaLaw Firm and BRPC prior to incurring any costs.

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b. GE. Decisions regarding settlement offers ~~regarding claims against third parties~~ such as GE, or acceptance of settlement offers by GE, shall require a unanimous vote of the COMMITTEE and subject to acceptance by the appropriate municipal authority in each municipality. Any position to allow (i.e., to propose or accept a settlement offer or not to pursue an appeal of) an in-county landfill of PCB's from the Rest of River site shall require a unanimous vote of the COMMITTEE and be subject to approval by the Select Boards of each of the MUNICIPALITIES.

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c. Appeals. Decisions regarding settlement offers that may arise out of the Appeals or acceptance of settlement offers shall require a unanimous vote of the COMMITTEE

and subject to acceptance by the appropriate municipal authority in each municipality.

b.

d. Weighting of Votes. Any ~~future~~ decisions regarding weighting of votes based on contributions for payments of costs and/or based on socioeconomic impacts suffered by the individual MUNICIPALITIES due to cleanup activities shall require a unanimous vote of the COMMITTEE.

2. Payment of Fees, Costs and Expenses.

a. Subject to the provisions of this Agreement, the MUNICIPALITIES have agreed to pay all approved fees, costs and expenses, including reasonable out-of-pocket costs, payable to the PawaLaw Firm, for legal services in accordance with its legal contract, and all approved fees, costs and expenses incurred by BRPC, subject to approval by the COMMITTEE as required in Section 1 of this agreement.

b. The MUNICIPALITIES have ~~initially~~ funded this Agreement by ~~an~~through specific appropriations beginning in fiscal year 2013, with a current approved FY17 budget of \$164,103.30, as shown in Attachment ~~of Sixty Thousand Dollars (\$60,000), which is~~ These funds are available for payment of costs to the PawaLaw Firm and BRPC as stipulated in Section 1.a., 2.a., 2.c. – 2.f.

c. The MUNICIPALITIES have agreed that a negotiating team of COMMITTEE members selected by the COMMITTEE will participate with the PawaLaw Firm in any negotiations between the MUNICIPALITIES and GE. The PawaLaw Firm will participate in an initial meeting with GE ~~in this matter~~ under a capped fee agreement, to be negotiated and agreed upon by the COMMITTEE prior to the commencement of the negotiations. ~~Pawa Firm will cap fees on its preparation and participation in the initial meeting at \$23,000 such that any time incurred in excess of the cap will not be billed to BRPC. In addition, out of pocket costs of up to \$1,000 are also budgeted.~~

d. BRPC will review and submit all estimated budgets, including time and out-of-pocket costs, prepared by Pawathe Law Firm to the COMMITTEE for review and approval prior to incurring expenses as set forth in Section 1. Upon receipt of bills from the ~~PawaLaw~~ Firm ~~for time and expenses which have been authorized by the~~ COMMITTEE, BRPC will promptly circulate the bills to the representatives of the COMMITTEE who shall indicate their approval or any objections to BRPC within five business days. If there are no objections, BRPC will promptly invoice the

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MUNICIPALITIES who will promptly process payment to BRPC. When all MUNICIPALITIES have paid, BRPC will promptly process payment to the PawaLaw Firm, however BRPC shall have authority but no obligation to make partial payments to the PawaLaw Firm when fewer than all the MUNICIPALITIES have made payment to BRPC ~~with respect to a Pawa Firm bill~~. Provided that the COMMITTEE has previously approved the PawaLaw Firm bill, the MUNICIPALITIES hereby agree to make prompt payment to BRPC so that BRPC may remit payment to the PawaLaw Firm within 40 days of receiving a bill.

- e. If the PawaLaw Firm ~~legal services~~ contract is cancelled, the MUNICIPALITIES will be responsible for any fees, costs or expenses, including out-of-pocket expenses, incurred by PawaLaw Firm incurred prior to the date of cancellation and pre-approved by the COMMITTEE ~~and payable by BRPC up to the time of notice of cancellation~~.
- f. The MUNICIPALITIES have agreed to provide compensation to the BRPC for its services in contracting with the PawaLaw Firm on behalf of the MUNICIPALITIES and in coordinating negotiations and/or litigation between the MUNICIPALITIES and GE. BRPC will submit estimated budgets, including time and direct costs, to the COMMITTEE for review and approval prior to incurring expenses.

g. INSERT PROPORTION OF FUNDS HERE

g-h. At any point in the future, if additional funds are needed beyond the initial \$60,000 current fiscal year budget provided in Section 2.b., the COMMITTEE will have the option to redefine what portion of the additional funds will be supplied by each member municipality. Any additional funds will be subject to municipal appropriation. Approving the redefined share of costs shall require a unanimous vote of the COMMITTEE.

3. Distribution of Future Settlement(s).

- a. The initial payments from any future financial settlement between the MUNICIPALITIES and GE, or through the Appeals, shall be ~~issued distributed~~ to each of the MUNICIPALITIES which are then a COMMUNITY under this Agreement to reimburse them for their portion of the approved costs incurred under this Agreement, ~~including any municipality which has withdrawn from the Agreement~~.

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b. ~~Reasonable~~ All efforts will be made to ~~fully~~ reimburse each of the MUNICIPALITIES which remain as participants under this Agreement for costs incurred in negotiating a final settlement agreement with GE or through any Appeals. In the event that the ~~signed~~ settlement agreement between the MUNICIPALITIES and GE does not cover the total amount of the approved costs incurred by the MUNICIPALITIES, initial settlement payments to each of the MUNICIPALITIES shall be proportionally pro-rated to reflect the costs incurred by each municipality as a percentage of the total costs incurred by the MUNICIPALITIES as a whole. ~~In the event that no settlement funds are recovered as part of the signed agreement between the MUNICIPALITIES and GE, none of the MUNICIPALITIES will receive reimbursement funding.~~

c. After payments described in Sections 3.a. and 3.b. have been made, the COMMITTEE will determine the proportional distributions of the value of any settlement(s) between the MUNICIPALITIES and GE, or the MUNICIPALITIES and the paying entity, depending on circumstances at the time of the settlement(s). Such distributions shall require a unanimous vote of the COMMITTEE and be subject to approval by the appropriate municipal authority in each municipality. Each municipality that is a member of the COMMITTEE at the time negotiations between the MUNICIPALITIES and GE or between the MUNICIPALITIES and the paying entity are finalized ~~and committed to writing by the MUNICIPALITIES and GE~~ shall receive a minimum of 5% of any financial settlement, net of the payments described in Sections 3.a. and 3.b. Distribution of any remaining balance of the settlement(s) shall require a unanimous vote of the COMMITTEE.

4. Term. The term of this Agreement shall be for three years, commencing with the date of execution of the Agreement. It is further understood and agreed that the ~~initial three~~ year term may be extended by a majority vote of the COMMITTEE present and constituting a quorum with renegotiations commencing three (3) months prior to the expiration of the three-year period. Participation by each of the MUNICIPALITIES is, however, subject to annual appropriation.

5. Termination.

a. The COMMITTEE, upon majority vote of those present and constituting a quorum, or BRPC may terminate this ~~a~~ Agreement upon thirty (30) days written notice, without cause. Upon notice of termination, all work shall cease, except that necessary ~~to close the agreement~~ terminate obligations created under this Agreement and to withdraw from all Appeals. BRPC will immediately inform the PawaLaw Firm of the termination and order that all work cease except as may be otherwise

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~~required as set forth in the second sentence of this Section 5.a.~~ The MUNICIPALITIES will be responsible for paying the budgeted and pre-approved costs incurred to the date of termination as described in Sections 2.a.-2.f.

b. Any individual municipality may terminate its ~~involvement-participation~~ in this Agreement and the COMMITTEE upon thirty (30) days' notice, without cause. Notification will be submitted to the COMMITTEE and BRPC in writing. The withdrawing municipality will continue to be responsible for paying its share of the pre-approved budgeted expenses that exist on the date that the termination notice is submitted to the COMMITTEE and will continue to strictly abide by the terms of the Confidentiality and Non-Disclosure section of this Agreement.

c. ~~An individual~~ municipality withdrawing from this Agreement shall ~~not~~ be reimbursed for its contributed costs incurred for negotiations between the MUNICIPALITIES and GE ~~or between the MUNICIPALITIES and the paying entity~~, as described under Section 3.a. and 3.b. ~~An individual municipality withdrawing from this Agreement before negotiations between the MUNICIPALITIES and the GE are finalized and signed by the MUNICIPALITIES and by GE should expect to have forfeited its right to any further recovery from any settlements arising out of such negotiations under Section 3.c.—The MUNICIPALITIES hereby acknowledge that in the event any of them withdraw from this Agreement, the Pawa Firm may continue to represent BRPC as agent of the MUNICIPALITIES who have not withdrawn.~~

6. Confidentiality and Non-Disclosure. To the extent permitted by law, all municipal representatives currently serving, or who have served, on the COMMITTEE or other municipal officials who have been briefed on the negotiations and/or litigation, as well as involved BRPC staff, shall treat all communications labeled as privileged and confidential and briefings, deliberations and decisions made in Executive Session as privileged and confidential and legally protected. If any municipality determines to withdraw from this Agreement, all such communications and briefings, deliberations and decisions shall continue to be treated as privileged and confidential and legally protected unless and until agreements are reached which require final action in open session.

To the extent permitted by law, all communications between the PawaLaw Firm and BRPC, between the PawaLaw Firm and any of the MUNICIPALITIES and between BRPC and the MUNICIPALITIES concerning the PawaLaw Firm's legal advice shall be protected by the attorney-client privilege when labeled as privileged and confidential, that such information provided by the PawaLaw Firm to BRPC and/or the MUNICIPALITIES shall be treated as privileged and confidential attorney work product

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(whether or not such information is shared by BRPC with the municipalities), and that privileged and confidential information shared under this agreement is to be protected from disclosure under the Public Records Act.

7. Amendment and Payment Schedules. This Agreement ~~and the payment provisions contained herein,~~ may be amended from time to time but only by a ~~written amendment signed by all parties~~ unanimous vote of the MUNICIPALITIES.

8. Notices. BRPC shall be responsible for providing notice of meetings and copies of all material to the COMMITTEE members and shall provide copies of all agendas to the six municipal clerks for posting to the extent required by the Open Meeting Law. BRPC shall also post all COMMITTEE agendas on its website to the extent required by the Open Meeting Law and shall maintain the official copy of all meeting materials and minutes.

9. Resolution of Disputes. In the event of any dispute between the BRPC and the COMMITTEE, ~~whether or amongst the MUNICIPALITIES arising out of this Agreement or under the provisions of this Agreement,~~ the BRPC, MUNICIPALITIES and the COMMITTEE agree to submit their disputes to a neutral third party for mediation. ~~BRPC and the COMMITTEE~~ Each party to mediation shall pay ~~an equal~~ prorated share of the cost of such mediation. ~~In this instance, consent of the COMMITTEE shall mean a majority vote of the MUNICIPALITIES present and constituting a quorum. In the absence of the consent of a majority of the COMMITTEE and BRPC, either party may seek dispute resolution through a court of competent jurisdiction.~~

9. A party wishing to subject a dispute of nonbinding mediation shall give notice to the other party(ies) within sixty (60) days after a dispute shall arise which notice shall contain the name of the proposed mediator. Any party may object to the choice of mediator by notice given within thirty (30) days thereafter and seek to have a mediator chosen by the Chief Judge of the Superior Court for Berkshire County. Upon the appointment of a mediator, mediation shall be concluded within sixty (60) days. If a mediatio of such dispute is not successfully achieved any aggrieved party may pursue such remedies as are afforded under law.

10. Law Governing. This Agreement and all rights and obligations, including matters of construction, validity and performance shall be governed by the laws of the Commonwealth of Massachusetts.

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11. Severability. Should any part of this Agreement be rendered or declared invalid by a court of competent state or federal jurisdiction, such invalidation shall not invalidate the remaining portions thereof, and they shall remain in full force and effect.

12. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Agreement nor the intent of any provision hereof.

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties and any other agreements, whether written or oral, that may exist are excluded from the terms herein.

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~~Linda M. Tyer, Mayor
City of Pittsfield~~

Sean A. Stanton, Chairman
Great Barrington Board of Selectmen

Thomas Wickham, Chairman
Lee Board of Selectmen

Warren Archey, Chairman
Lenox Board of Selectmen

Nadine A. Hawver, Chairman
Sheffield Board of Selectmen

Ernest J. Cardillo, Chairman
Stockbridge Board of Selectmen

Nathaniel W. Karns, Executive Director
Berkshire Regional Planning Commission

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Pawa Law Group, P.C.

1280 Centre Street
Suite 230
Newton Centre, MA 02459

Invoice submitted to:
Housatonic River

Slip Dates: 12-1-15/6-30-16

*In Reference To:*Housatonic River

Professional Services

			<u>Hrs/Rate</u>	<u>Amount</u>
12/1/2015 -	WK	Draft memo regarding options during and after dispute resolution; review CD regarding same	1.50 300.00/hr	450.00
12/15/2015 -	BK	Legal research regarding deadline and requirements for BRPC to appeal final RCRA permit to EAB	0.75 250.00/hr	187.50
-	WK	Review procedures and options to contest certain aspects of ROR remedy, including review of EAB procedures, word limits etc	1.50 300.00/hr	450.00
1/21/2016 -	WK	Telephone clients and PLG team regarding potential EAB filings	0.25 300.00/hr	75.00
3/14/2016 -	WK	Review factual history of DEP's application of 21D; read GE SOP; telephone call with L. Gaherty regarding same	1.50 300.00/hr	450.00
3/16/2016 -	MFP	Prep for call with DEP regarding Hazardous Waste Facility Siting Act applicability	0.50 400.00/hr	200.00
-	MFP	Call with DEP and BRPC regarding HWFSA	1.00 400.00/hr	400.00
-	MFP	Discussion with Kelman and BRPC to debrief regarding DEP call	0.25 400.00/hr	100.00
-	WK	Phone call with DEP and N. Karns, L. Gaherty et al regarding applicability of 21D to CERCLA sites; preparation regarding same	1.50 300.00/hr	450.00
3/21/2016 -	WK	Review of Siting Council memos on 21D as ARAR at New Bedford	0.25 300.00/hr	75.00
4/13/2016 -	WK	Advise client regarding letter to DEP on draft dispute resolution decision	0.25 300.00/hr	75.00

			<u>Hrs/Rate</u>	<u>Amount</u>
4/26/2016 -	WK	Review 21D materials sent to us by J. Mickelson at DEP	0.75 300.00/hr	225.00
-	MFP	Review materials regarding New Bedford released by Mass DEP	1.00 400.00/hr	400.00
5/2/2016 -	WK	Review DEP memos on 21D from J. Mickelson at DEP	0.25 300.00/hr	75.00
5/13/2016 -	WK	Telephone call with J. Michelson regarding on DEP's position and records on 21D	0.75 300.00/hr	225.00
5/16/2016 -	WK	Memo to file regarding J. Michelson phone call (on DEP's position and records on 21D), next steps	0.25 300.00/hr	75.00
5/24/2016 -	WK	Research regarding Hudson remedy (ROD, responsiveness summary); email to team regarding same	1.50 300.00/hr	450.00
6/1/2016 -	WK	Telephone call with J. Michelson regarding 21D on draft ARARs charts	0.25 300.00/hr	75.00
Subtotal of charges				\$4,437.50
For professional services rendered			14.00	\$4,437.50
Additional Charges :				
12/1/2015 -	WK	Lexis		50.00
1/1/2016 -	WK	Lexis		50.00
2/1/2016 -	WK	Lexis		50.00
3/1/2016 -	WK	Lexis		50.00
4/1/2016 -	WK	Lexis		NO CHARGE
5/1/2016 -	WK	Lexis		NO CHARGE
6/1/2016 -	WK	Lexis		NO CHARGE
Subtotal of charges				\$200.00
Total costs				\$200.00
Total amount of this bill				\$4,637.50

Pawa Law Group, P.C.

1280 Centre Street
Suite 230
Newton Centre, MA 02459

Invoice submitted to:
Housatonic River

Slip Dates: 7-1-16/8-18-16

In Reference To:Housatonic River

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
8/12/2016 -	WK Email to M. Pawa to discuss strategy regarding AGO call	0.25 300.00/hr	75.00
8/16/2016 -	MFP Prep for call with B. Harper of AG regarding 21D issues; review New Bedford memos, CMR regs, emails, etc	0.75 400.00/hr	300.00
-	MFP Call with B. Harper regarding 21D issues	0.75 400.00/hr	300.00
-	MFP Consult with W. Kelman and draft email to clients reporting on call	0.50 400.00/hr	200.00
-	WK Telephone all with Mass AGO office and discussion with M. Pawa to coordinate	0.75 300.00/hr	225.00
Subtotal of charges			<u>\$1,100.00</u>
For professional services rendered			<u>3.00</u> <u>\$1,100.00</u>

Additional Charges :

7/1/2016 -	WK Lexis		NO CHARGE
8/1/2016 -	WK Lexis		50.00
Subtotal of charges			<u>\$50.00</u>
Total costs			<u>\$50.00</u>

Total amount of this bill \$1,150.00