

BERKSHIRE REGIONAL PLANNING COMMISSION
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201
TELEPHONE (413) 442-1521 · FAX (413) 442-1523
Massachusetts Relay Service: TTY: 771 or 1-800-439-2370
www.berkshireplanning.org

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

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

AGENDA

Rest of River Municipal Committee
December 8, 2014 -- 3:00 p.m.
Stockbridge Town Offices

1. Introductions
2. Review of minutes of October 8, 2014
3. Committee Business
 - Budget update and approval
 - Intergovernmental Agreement update
4. Executive Session – legal strategy over key critical issues
5. Adjournment

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

Please Note: In the case of inclement weather on the day of the meeting, please call BRPC at 413-442-1521, ext. 15 to confirm if the meeting is still being held.

BERKSHIRE REGIONAL PLANNING COMMISSION

1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201

TELEPHONE (413) 442-1521 · FAX (413) 442-1523

Massachusetts Relay Service: TTY: 771 or 1-800-439-2370

www.berkshireplanning.org

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

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

**Meeting Minutes
Rest of River Municipal Committee
December 8, 2014 @ Stockbridge Town Offices**

- 1.** The meeting opened at 3:02 p.m. Attending the session were the following Committee members:
Doug Clark, Pittsfield Community Development Director
Lauren Gaherty, BRPC
Nat Karns, BRPC
Chris Ketchen, Lenox Town Manager (joined at 3:10 pm)
Jorja Marsden, Stockbridge Town Administrator
Jim McGrath, Pittsfield Park, Open Space, and Natural Resources Program Manager
Bob Nason, Lee Town Administrator
Jennifer Tabakin, Great Barrington Town Manager (joined at 3:12 pm)
Rene Wood, Sheffield Selectman
- 2. Review of minutes of October 8, 2014.** Motion to accept the minutes as presented was made by D. Clark and seconded by R. Wood. The motion passed with 3 ayes and 1 abstention (Sheffield).
- 3. Budget Update.** L. Gaherty and N. Karns provided a review of both Pawa Law Group's and BRPC's invoices for work done to date. Members were told of a \$2,000 reduction by Pawa Group in their invoice to \$20,790.91, which per prior Committee agreement will be paid by 5 municipalities (\$4,158.18), with Sheffield exempt due to in-kind services of minute taking. Discussion ensued regarding their overbilling and doing work without informing the Committee of having gone past the previously approved amount for their legal services. BRPC was requested to write them a letter conveying the Committee's comments and requesting that in the future, when they reach 75% of expense authorization to so inform the group. L. Gaherty reviewed the process which the municipalities have previously agreed to for processing these invoices. N. Karns discussed the BRPC invoice for this same time period and noted that this amount will be divided by 6, as the Sheffield agreement did not include BRPC bills. He noted a lower amount would be billed, specifically \$786.00 per municipality. A Rest of River Committee budget summary was provided and reviewed with the comment that due to EPA review of public comments, he did not expect any substantial activity or expense for at least the next six months. Municipalities concurred with the recommendation to seek minimum FY2016 budget requests of \$10,000 per municipality for future ROR legal and technical expenses.

The Committee discussed the process going forward, commenting that from GE's filed comments it is likely GE will internally appeal to EPA Region 1 once the Final Remedy is issued, likely in Spring 2015. Following exhaustion of this avenue, GE has other litigation options, which may go on for several years. Consensus was that at a minimum, GE would contest the EPA decision on avoidance of an in-county landfill and related matters.

The Committee discussed the status of the DLTA grants and the Governor's proposed mid-year budget cuts. Pittsfield has filed a 2015 DLTA application for BRPC services for Rest of River (ROR) activity and the request was made for all ROR municipalities to file as partner municipalities.

The Intergovernmental Agreement between the ROR municipalities was discussed; all felt it was fine.

4. Motion to enter into Executive Session. The following statement was read by N. Karns: "Request a motion to go into Executive Session to discuss the Pawa Law firm's advice regarding the appropriate strategy to best protect the Rest of River Municipalities' legal rights regarding the Draft Permit and such discussion, if held in open meeting, may have a detrimental effect on the legal position of the Rest of River Municipalities during the pending legal action by GE". He noted that, as the Agenda for the meeting stated, the Committee expects to adjourn from Executive Session and not reconvene in regular session.

The motion was made by J. Tabakin and seconded by C. Ketchen. Roll call vote: C. Ketchen, Lenox: AYE; Doug Clark, Pittsfield: AYE; Bob Nason, Lee: AYE; Jennifer Tabakin, Great Barrington: AYE; Jorja Marsden, Stockbridge, AYE; Rene Wood, Sheffield, AYE. The Committee went into Executive Session at 3:38 p.m.

5. Adjournment. The meeting was adjourned at 3:38 p.m. on the above motion and second by unanimous vote.

Respectfully submitted,
Rene C. Wood, Sheffield Delegate to ROR Committee

Meeting materials:

Draft meeting minutes for October 8, 2014.

Meeting agenda for December 8, 2014.

Memo from BRPC re: BRPC technical assistance invoice for Rest of River, dated December 8, 2014.

Housatonic Rest of River Municipal Committee Budget Update, dated December 8, 2014.

Pawa Law Group Invoice, Slip date: 6-1-06/6-28-06

BERKSHIRE REGIONAL PLANNING COMMISSION
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201

TELEPHONE (413) 442-1521 · FAX (413) 442-1523

Massachusetts Relay Service: TTY: 771 or 1-800-439-2370

www.berkshireplanning.org

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

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

MEMO

To: Housatonic Rest of River Municipal Committee
From: Berkshire Regional Planning Commission (BRPC)
Subject: Projected BRPC Budget
Date: August 26, 2014

Below is the estimated budget for BRPC to provide technical assistance to the Rest of River Municipal Committee for the period August 1 – October 1, 2014. These services will include drafting, consolidating, and overseeing the submission of comments from the Committee to the U.S. EPA on the *Draft Modification to the Reissued RCRA Permit and the Statement of Basis for EPA's Proposed Remedial Action for the Housatonic River "Rest of River."*

Estimated costs for services total \$4,716. If total costs are divided evenly between all six Rest of River Municipal Committee members, the cost for each municipality will be \$786.

BRPC Cost Item	Hours Est.	Cost
Organize & attend Hudson River trip; draft mtg notes*	5	487
Edits and Submission of Municipal Committee Comments	14	1,364
Attend 4 Committee meetings	16	1,559
Committee meeting prep & follow up	8	779
Attend Sept. 23rd EPA Public Hearing*	2	195
Mileage (90 mi. to NY; 104 to Stockbridge X 4)*		109
Subtotal		4,493
5% Exec. Dir. Oversight		223
Total	45	4,716

*Costs for these tasks are shared between the Committee and the BRPC.

BERKSHIRE REGIONAL PLANNING COMMISSION
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201

TELEPHONE (413) 442-1521 · FAX (413) 442-1523

Massachusetts Relay Service: TTY: 771 or 1-800-439-2370

www.berkshireplanning.org

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

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

MEMO

To: Housatonic Rest of River Municipal Committee
From: Berkshire Regional Planning Commission (BRPC)
Subject: BRPC Technical Assistance Invoice for Rest of River
Date: December 8, 2014

In a memo dated August 26, 2014, the BRPC presented a cost estimate of \$4,716 for BRPC staff to provide technical assistance drafting, consolidating, and overseeing the submission of comments from the Committee to the U.S. EPA on the *Draft Modification to the Reissued RCRA Permit and the Statement of Basis for EPA's Proposed Remedial Action for the Housatonic River "Rest of River."* This cost estimate included 45 hours of staff time and some direct costs.

Actual time spent drafting and editing comments exceeded the 14 hours allocated in the budget. This time included drafting and submitting a joint letter to the EPA requesting an extension, consolidating comments from the various municipalities and from the Pawa Law Group on four revisions of the comment letter, preparing relevant appendices and submitting the approved final comment packet to the EPA by the deadline. As a result, staff time totaled 57.3 hours, for a total cost of \$5,535.78.

The final staff costs shown here do not fully represent the time that BRPC staff dedicated to providing technical assistance to the Committee in the months of September and October. In an effort to reduce costs to the six municipalities, BRPC directed additional FY14 District Local Technical Assistance (DLTA) funds to allow staff to provide additional administrative support, attend Pittsfield public meetings, conduct a public presentation in Lenox Dale, participate in a meeting of local environmental organizations hosted by Mass Audubon, and to work closely with legal counsel at the Pawa Law Group. DLTA funding covered approximately 30 additional staff hours and \$2,890 in staff costs related to the deliberation and final submission of the Committee's comments to the EPA.

**Final Costs Summary for BRPC Staff Support to the Housatonic Rest of River Municipal Committee
August – October 2014***

<i>Municipal Committee Task Support</i>	<i>Original Hours Estimate</i>	<i>Original Cost Estimate</i>	<i>Actual Hours Spent & Charged</i>	<i>Actual Costs Charged*</i>
Organize & attend Hudson River trip	5	487	8.3	783.77
Edits and Submission of Municipal Comments to EPA	14	1,364	23.5	2,219.39
Attend 4 Committee meetings	16	1,559	16.5	1,558.10
Committee meeting prep & follow up	8	779	9	849.87
Attend Sept. 23rd EPA Public Hearing	2	195	0	-
Mileage (90 mi. to NY; 104 to Stockbridge X4)		109		124.66
<i>Subtotal</i>		<i>\$4,493</i>		<i>\$5,535.78</i>
5% Exec. Dir. Oversight		223		-
<i>Total</i>	<i>45</i>	<i>\$4,716</i>	<i>57.3</i>	<i>\$5,535.78</i>

**Note: Actual Costs Charged does not include 30 additional hours of staff time and \$2,890 funded by additional FY 14 DLTA funds diverted to ROR technical assistance.*

Pawa Law Group, P.C.

1280 Centre Street
Suite 230
Newton Centre, MA 02459

Invoice submitted to:
Housatonic River

Slip Dates: 6-1-06/6-28-06

In Reference To:Housatonic River

Professional Services

			<u>Hrs/Rate</u>	<u>Amount</u>
2/19/2014 -	MFP	Call with N. Karns regarding status and scope of legal work pending remedy	0.25 400.00/hr	NO CHARGE
5/16/2014 -	BK	Compose email to Matt Pawa regarding potential work prior to issuance of proposed Rest of River remedy	0.25 250.00/hr	NO CHARGE
5/28/2014 -	BK	Phone conversation with Nat Karns regarding work to be done by June 30, including review of EPA proposed remedy and initial memorandum regarding issues for comment	0.25 250.00/hr	NO CHARGE
7/3/2014 -	BK	Phone conversation with Nat Karns concerning review of EPA's proposed remedy, comment strategy and timeline for submission of comments	0.25 250.00/hr	NO CHARGE
-	BK	Compose email to Matt Pawa and Wesley Kelman summarizing phone conversation with Nat Karns concerning review of EPA's proposed remedy comment strategy and timeline for submission of comments	0.25 250.00/hr	NO CHARGE
8/11/2014 -	BK	Review four documents sent by Lauren Gaherty for review concerning proposed Rest of River remedy, including requests for legal advice on certain issues and draft comments to proposed Rest of River remedy	1.50 250.00/hr	375.00
-	BK	Phone conversation with Nat Karns regarding issues to be reviewed by Pawa Firm concerning proposed Rest of River remedy	0.25 250.00/hr	62.50
-	BK	Legal research regarding standing to seek judicial review of proposed Rest of River remedy and specificity of comments in order to maintain standing to challenge proposed remedy	1.25 250.00/hr	312.50

			<u>Hrs/Rate</u>	<u>Amount</u>
8/11/2014	- BK	Review Rest of River proposed remedy	1.25 250.00/hr	312.50
	- MFP	Review remedy	3.00 400.00/hr	1,200.00
8/12/2014	- BK	Review Statement of Basis for EPA's Proposed Remedial Action for the Housatonic River "Rest of River"	1.50 250.00/hr	375.00
	- BK	Review four documents sent by Lauren Gaherty for review concerning proposed Rest of River remedy, including requests for legal advice on certain issues and draft comments to proposed Rest of River remedy	0.75 250.00/hr	187.50
	- BK	Phone conversation with Nat Karns and Lauren Gaherty regarding requests for legal advice from Pawa Firm on certain issues and draft comments to proposed Rest of River remedy	1.00 250.00/hr	250.00
	- BK	Legal research regarding answers to legal questions posed to Pawa Firm regarding proposed Rest of River remedy	1.50 250.00/hr	375.00
8/13/2014	- BK	Legal research regarding answers to legal questions posed to Pawa Firm regarding proposed Rest of River remedy and draft internal memorandum regarding same	3.75 250.00/hr	937.50
	- BK	Phone conversation with Rest of River Municipal Committee regarding requests for legal advice from Pawa Firm on certain issues, draft comments to proposed Rest of River remedy and strategy for comments	1.00 250.00/hr	250.00
8/19/2014	- BK	Legal research concerning meaning of "temporary" storage of contaminated soil under TSCA in Attachment D to proposed remedy for Rest of River	0.50 250.00/hr	125.00
8/25/2014	- BK	Review materials summarizing key lessons learned from municipalities' meeting with Fort Edwards officials and EPA Region 1 regarding Hudson River cleanup	0.25 250.00/hr	62.50
8/26/2014	- BK	Phone conversation with Nat Karns and Lauren Gaherty concerning municipalities' meeting with Fort Edwards officials and EPA Region 1 regarding Hudson River cleanup and strategy for comments and potential meeting with GE	0.75 250.00/hr	187.50
	- BK	Draft list of questions for Nat and Lauren concerning municipalities' meeting with Fort Edwards officials and EPA Region 1 regarding Hudson River cleanup	0.25 250.00/hr	62.50
	- BK	Compose email to Matt Pawa summarizing phone conversation with Nat Karns and Lauren Gaherty concerning municipalities' meeting with Fort Edwards officials and EPA Region 1 regarding Hudson River cleanup and discussing recommendation for strategy for potential meeting with GE	0.25 250.00/hr	62.50

			<u>Hrs/Rate</u>	<u>Amount</u>
9/10/2014	- BK	Edit Rest of River Municipal Committee comments to EPA regarding proposed Rest of River remedy	2.75 250.00/hr	687.50
	- WK	Review draft comment letter, review remedy, review other remedies to find precedents for various requests	5.25 300.00/hr	1,575.00
	- MFP	Edit comments and discuss with co-counsel	2.50 400.00/hr	1,000.00
9/11/2014	- BK	Edit Rest of River Municipal Committee comments to EPA regarding proposed Rest of River remedy	3.25 250.00/hr	812.50
	- BK	Phone conversation with Lauren Gaherty regarding advice and comments to Rest of River Municipal Committee comments to EPA regarding proposed Rest of River remedy	0.25 250.00/hr	62.50
	- BK	Legal research regarding presidential executive orders directing federal agencies to consider global warming impacts for potential inclusion in Rest of River Municipal Committee comments to EPA regarding proposed Rest of River remedy	0.50 250.00/hr	125.00
	- BK	Meet with Matt Pawa and Wes Kelman to discuss advice, comments and edits to Rest of River Municipal Committee comments to EPA regarding proposed Rest of River remedy	0.75 250.00/hr	187.50
	- MFP	Edit comment letter and discuss with co-counsel	2.75 400.00/hr	1,100.00
	- WK	Emails to BK regarding comments on letter to EPA	0.50 300.00/hr	150.00
9/12/2014	- BK	Review research by Wes Kelman regarding siting of hazardous waste facilities in Massachusetts and email Wes regarding application to proposed remedy and further research	0.25 250.00/hr	62.50
9/16/2014	- WK	Confer with Ben Krass regarding preemption argument	0.50 300.00/hr	150.00
9/17/2014	- BK	Edit memorandum on potential application of Massachusetts hazardous waste facility siting law to siting of facility for temporary storage of PCBs	0.50 250.00/hr	125.00
	- WK	Draft internal memo regarding 21D and CERCLA preemption	5.25 300.00/hr	1,575.00
9/18/2014	- BK	Edit draft email to client concerning potential application of Massachusetts hazardous waste facility siting law to siting of facility for temporary storage of PCBs	0.50 250.00/hr	125.00
	- MFP	Review proposed insert regarding Chapter 21D, review CERCLA and RCRA statute and case law, review Consent Decree provisions relating to preemption of state law, review Chapter 21D	4.50 400.00/hr	1,800.00

		<u>Hrs/Rate</u>	<u>Amount</u>
9/18/2014 -	WK Emails with Matt Pawa and Ben Krass regarding CERCLA preemption and Chapter 21D; research regarding same	1.25 300.00/hr	375.00
9/19/2014 -	BK Legal research regarding whether Massachusetts hazardous facility siting state law is preempted by CERCLA or RCRA	1.00 250.00/hr	250.00
-	BK Telephone conference with Matt Pawa and Wes Kelman to develop best arguments that Massachusetts hazardous facility siting state law must be followed by GE for siting of any facility for the temporary storage of PCB's	0.75 250.00/hr	187.50
-	BK Legal research regarding meaning of "permit" within CERCLA section 121(e) providing that responsible party does not need to obtain federal, state or local permits for on-site activities in CERCLA cleanup	0.50 250.00/hr	125.00
-	MFP Review CERCLA and RCRA statute and case law, review Consent Decree provisions relating to preemption of state law, review Chapter 21D, review proposed insert to comment	3.75 400.00/hr	1,500.00
-	WK Emails with Matt Pawa and Ben Krass regarding CERCLA preemption; draft 21D comment	1.50 300.00/hr	450.00
9/20/2014 -	BK Legal research regarding RCRA and CERCLA savings clauses and caselaw interpreting them and draft internal memorandum regarding same	2.00 250.00/hr	500.00
-	MFP Edit proposed insert to comment	1.00 400.00/hr	400.00
9/22/2014 -	MFP Review CERCLA, edit proposed insert to comment	2.50 400.00/hr	1,000.00
9/23/2014 -	BK Legal research regarding regulations implementing chapter 21D and definition of temporary storage	0.50 250.00/hr	125.00
-	BK Edit proposed comment to EPA regarding applicability of chapter 21D	0.50 250.00/hr	125.00
-	BK Legal research regarding hazardous waste regulations forwarded by Lauren Gaherty and compose email to Matt Pawa and Wes Kelman regarding same	0.25 250.00/hr	62.50
-	WK Edit comment regarding 21D	1.50 300.00/hr	450.00
9/24/2014 -	WK Email to L. Gaherty regarding 21D	0.25 300.00/hr	75.00
9/26/2014 -	WK Email to Matt Pawa and Ben Krass regarding L. Gaherty's email on additional comments	0.25 300.00/hr	75.00

			<u>Hrs/Rate</u>	<u>Amount</u>
9/29/2014 - BK	Edit draft answers to Lauren Gaherty's follow up questions regarding comments to EPA on proposed Rest of River remedy		0.25 250.00/hr	62.50
9/30/2014 - WK	Draft response to L. Gaherty's email		0.75 300.00/hr	225.00
10/1/2014 - MFP	Edit email to L. Gaherty responding to questions on Comment		0.50 400.00/hr	200.00
- WK	Draft response to L. Gaherty's email; review permit and Consent Decree		2.50 300.00/hr	750.00
- BK	Edit reply to Lauren Gaherty's follow up questions on September 25 regarding Committee's comments to EPA on proposed Rest of River remedy		0.50 250.00/hr	125.00
10/8/2014 - WK	Emails, consult CD regarding "in perpetuity" language		0.50 300.00/hr	150.00
10/9/2014 - WK	Research regarding authority to require new response actions, telephone call and draft permit language regarding same		1.75 300.00/hr	525.00
10/10/2014 - WK	Review final draft of letter to EPA, discuss with MP and send along to L. Gaherty		0.75 300.00/hr	225.00
Subtotal of charges				\$22,637.50
Courtesy discount				(\$2,000.00)
For professional services rendered			75.00	\$20,637.50
Additional Charges :				
3/3/2014 - MFP	Postage			1.61
8/1/2014 - WK	Lexis			50.00
9/1/2014 - WK	Copying cost			1.80
9/2/2014 - WK	Lexis			50.00
10/1/2014 - WK	Lexis			50.00
Subtotal of charges				\$153.41
Total costs				\$153.41
Total amount of this bill				\$20,790.91