

**BERKSHIRE REGIONAL PLANNING COMMISSION**  
**1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201**  
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[www.berkshireplanning.org](http://www.berkshireplanning.org)

SHEILA IRVIN, Chair  
KYLE HANLON, Vice-Chair  
MARILYN WILEY, Clerk  
CHARLES P. OGDEN, Treasurer

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

**AGENDA**

**Rest of River Municipal Committee**  
**Monday, September 30, 2013 -- 3:00 p.m.**  
**Stockbridge Town Hall**

1. Introductions
2. Review of notes of September 9, 2013 meeting
3. Status of Intergovernmental Agreement
  - a. Voting
  - b. Schedule for signing of Agreement
4. Establish Negotiating Team
5. Other Business
6. Adjournment

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**Meeting Minutes**  
**Rest of River Municipal Committee**  
**September 30, 2013 @ Stockbridge Town Offices**

The meeting opened at 3:00 pm

**1. Introductions**

Attending the meeting were the following:

Doug Clark, Pittsfield Community Development Dir.  
Lauren Gaherty, BRPC  
Jorja Marsden, Stockbridge Town Administrator  
Nat Karns, BRPC  
Jim McGrath, Pittsfield Park, Open Space, and Nat. Res. Program Manager  
Bob Nason, Lee Town Manager  
Jennifer Tabakin, Great Barrington Town Manager  
Jeff Vincent, Lenox Special Projects Manager  
Rene Wood, Sheffield Select Board

**2. Review of Meeting Notes of 7-12-13 and 8-22-13**

Meeting Notes, 9-9-13.

- Section 3, paragraph 5, sentence 1: Corrected to read: "The Committee agreed on language regarding a supermajority vote, which for a 6-member Committee, would be 5; for a 5-member Committee supermajority would be 4, and for a 4-member Committee supermajority would be 3."
- Section 3, paragraph 7, sentence 2: the words "help determine" replaced the word "dictate."
- Motion to accept meeting notes as amended by Rene Wood; seconded by Jeff Vincent. Approved unanimously as amended.

**3. Status of Agreements**

Doug stated that city solicitors are concerned with portions of the Intergovernmental Agreement (IGA) that require supermajority. This would allow 5 communities to join together and prevail, leaving one community with a decision it did not like. The solicitors stated that Pittsfield will be the community most impacted by the cleanup. The solicitors would prefer a unanimous vote be required for important decisions. Other members of the Committee did not agree that Pittsfield will be the most impacted by the cleanup, because the Remedy still had not been announced. Lee and Lenox will certainly bear impacts also. They were concerned that complete consensus on important decisions would hold up or stall the negotiation process, which would be detrimental to the entire group. Rene suggested that the IGA retain the supermajority, but that the supermajority would need to include the two most impacted

communities to go forth. Pittsfield would certainly be one, and probably Lenox or Lee would be the other. The two most impacted communities would be dependent on what type of cleanup will be required under the final Remedy. This arrangement would avoid the requirement of a complete consensus. The group then discussed the different types of “impacts” that might be considered to determine the two most impacts communities. Would it be amount of PCBs removed from each community? Would it also include the greatest impacts on property values or traffic? Mayor Bianchi would support the revised supermajority makeup. Bob Nason stated that Select Board member Pat Carlino would support going with a complete consensus if necessary. Jennifer Tabakin suggested that consensus or unanimous decisions would demonstrate that the communities are united and strong in their positions. The group agreed that unanimous votes would replace supermajority votes, and the IGA will be amended to reflect this. Simple majority votes for general business will remain the same.

The Committee then proceeded to conduct final edits to the draft IGA dated September 23, 2013. The Committee agreed on edits to Section 1 of the IGA to more clearly define what “current” members of COMMITTEE means when it comes to voting. The 4<sup>th</sup> sentence of Section 1 was amended to read: “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.”

The Committee discussed the various types of “settlement” from GE that might be acceptable to the communities, including the direct financial settlements (money) and the value of improvements projects (such as bike paths, river access, etc). Some municipal counsels were concerned with the distribution of at least 5% of any financial settlement to each of the municipalities, and were wondering how the remaining settlements would be determined. It should be clarified how the direct, monetary settlement would be determined and distributed. A closing sentence was added to Section 3.c.: “Distribution of any remaining balance of the settlement(s) shall require a unanimous vote of the COMMITTEE.”

The Committee then laid out the process for finalizing review and approval of the revised IGA with legal counsels, select boards, city council and BRPC. BRPC will incorporate today’s edits, the revised IGA will be run once more by town & city counsels, and the final counsel-approved version will begin to be circulated for approval and signature by select boards and mayor.

BRPC will develop an overall outline for next steps between the municipalities, their counsel and GE. This outline will include major milestones, timeline and budget.

The Committee decided that it would be helpful to hold a conference call with Matt Pawa to discuss the case, once he has had the time to become acquainted with the background of the situation. BRPC will make sure Matt has the consent decree and any other materials pertinent to the case.

Regarding EPA’s timeline for issuance of the Remedy, Nat reported that EPA was hoping to issue it by end of the year, but there were no guarantees.

#### **4. Establish Negotiating Team**

This item was tabled.

#### **5. Other Business**

No other business was discussed.

#### **8. Adjournment**

The meeting was adjourned at 4:36 pm.

Meeting materials:

1. Agenda 9-30-13
2. Intergov Agreement 2013-09-23
3. Meeting Notes of September 30, 2013.

## **PREAMBLE**

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 has projected cleanup activities 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"). As referenced in the *Cleanup of the Housatonic "Rest of River" Socioeconomic Impact Study* of 2012, the Rest of River Communities expect to experience a series of negative socioeconomic impacts during the cleanup including, but not limited to, property devaluation, damages to road infrastructure, loss of tax revenues, a decrease in outdoor recreation and tourism, and a diminished quality of life for residents near construction sites or along transportation routes.

## **INTERGOVERNMENTAL AGREEMENT**

This AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 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 begin negotiations 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 this action 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 will have on Berkshire County residents, businesses, resources, economic development and municipal operations.

REST OF RIVER INTERGOVERNMENTAL AGREEMENT

September 18<sup>23</sup>, 2013

Page 1 of 8

The MUNICIPALITIES have agreed that BRPC, as agent for the Municipalities, shall hire the law firm of Pawa Law Group, P.C., 1280 Centre Street, Suite 230, Newton, MA 02459 (hereafter “Pawa Firm”); that BRPC shall communicate the position of the MUNICIPALITIES to the Pawa Firm for negotiations with GE; and that, if it is deemed necessary by the Municipalities to pursue litigation related to the river, 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 Pawa Firm for the purposes of pursuing such litigation. The MUNICIPALITIES have agreed that BRPC will be responsible for all coordination between 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 Pawa 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.

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. A majority of MUNICIPALITIES must have at least one 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 negotiating positions and final settlement agreements with GE shall require a supermajority vote of all current member MUNICIPALITIES.
  - a) The Pawa Firm. The COMMITTEE shall deliberate and provide direction to the BRPC in order for BRPC to provide direction to Pawa Firm regarding the negotiations on the MUNICIPALITIES’ behalf with General Electric regarding compensation for socioeconomic damages to the MUNICIPALITIES associated with the contamination and cleanup of the Housatonic River Site and, if necessary, in prosecuting litigation (e.g., an appeal of EPA’s remedy under RCRA).

**Commented [NK1]:** Pittsfield would like to have use of consensus, rather than super-majority, discussed, particularly in regards to “final settlement agreements.”

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

- b. GE. Decisions regarding settlement offers to GE, or acceptance of settlement offers by GE, will preferably be made by consensus of the COMMITTEE and subject to acceptance by the appropriate municipal authority in each MUNICIPALITY. In the absence of complete consensus on such issue(s), the COMMITTEE shall make such decisions by supermajority vote of all current member MUNICIPALITIES. 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 decision of the COMMITTEE.

Commented [NK2]: Consensus vs. supermajority?

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, as well as decisions about any dispersion of settlements from GE to the MUNICIPALITIES, shall require a supermajority vote of all current member MUNICIPALITIES.

Commented [NK3]: Particular point of concern to Pittsfield.

Commented [NK4]: Consensus vs. supermajority?

## 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 Pawa 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 appropriation of Sixty Thousand Dollars (\$60,000), which is available for payment of costs to the Pawa 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 Pawa Firm in negotiations between the MUNICIPALITIES and GE. The Pawa Firm will participate in an initial meeting with GE in this matter under a capped fee agreement. 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. BRPC Pawa Firm

Commented [NK5]: These sentences do not really belong in the IGA but definitely need to be in the LSA.

will submit estimated budgets for future phases of work by the Pawa Firm for the COMMITTEE's review and approval prior to commencing additional work.

Commented [NK6]: This is already covered in the first sentence of the next subsection so is unnecessary.

- d. BRPC will review and submit all estimated budgets, including time and out-of-pocket costs, prepared by Pawa Firm to the COMMITTEE for review and approval prior to incurring expenses as set forth in Section 1. Upon receipt of bills from Pawa 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 days. If there are no objections, BRPC will promptly invoice the MUNICIPALITIES who will promptly process payment to BRPC. When all MUNICIPALITIES have paid, BRPC will promptly process payment to the Pawa Firm, however BRPC shall have authority but no obligation to make partial payments to the Pawa 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 Pawa Firm bill, the MUNICIPALITIES hereby agree to make prompt payment to BRPC so that BRPC may remit payment to the Pawa Firm within 40 days of receiving a bill.
- e. If the Pawa Firm legal services contract is cancelled, the MUNICIPALITIES will be responsible for any fees, costs or expenses, including out-of-pocket expenses, incurred by Pawa Firm 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 Pawa 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. At any point in the future, if additional funds are needed beyond the initial \$60,000 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 supermajority vote of all the current member MUNICIPALITIES.



3. Distribution of Future Settlement(s).

- a. The initial payments from any future financial settlement between the MUNICIPALITIES and GE shall be issued to each of the MUNICIPALITIES to reimburse them for their portion of the approved costs incurred under this Agreement, including any municipality which has withdrawn from the Agreement.
- b. All efforts will be made to fully reimburse each of the MUNICIPALITIES for costs incurred in negotiating a final settlement agreement with GE. 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 depending on circumstances at the time of the settlement(s). Such distributions will be determined by a supermajority of all current members MUNICIPALITIES and 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 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.

Commented [NK7]: Pittsfield would like for this to be by consensus, not supermajority.

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.

5. Termination.

- a. The COMMITTEE, upon majority vote of those present and constituting a quorum, or BRPC may terminate this agreement upon thirty (30) days written notice, without cause. Upon notice of termination, all work shall cease, except that necessary to close the agreement. BRPC will immediately inform the Pawa Firm of the termination and order that all work cease. 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 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 be reimbursed for its contributed costs incurred for negotiations between the MUNICIPALITIES and GE, 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 Pawa Firm and BRPC, between the Pawa Firm and any of the MUNICIPALITIES and between BRPC and the MUNICIPALITIES concerning the Pawa Firm's legal advice shall be protected by the attorney-client privilege when labeled as privileged and confidential, that such information provided by the Pawa Firm to BRPC and/or the MUNICIPALITIES shall be treated as privileged and confidential attorney work product (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.
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 arising out of this Agreement or under the provisions of this Agreement, the BRPC and the COMMITTEE agree to submit their disputes to a neutral third party for mediation. BRPC and the COMMITTEE shall pay an equal share of the cost of such ~~arbitration~~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.
10. Law Governing. This Agreement and all rights and obligations, including matters of construction, validity and performance shall be governed by the law of Massachusetts.

- 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.

\_\_\_\_\_  
Daniel Bianchi, Mayor  
City of Pittsfield

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Chair, Board of Selectmen  
Town of Great Barrington

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Chair, Board of Selectmen  
Town of Lee

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Chair, Board of Selectmen  
Town of Lenox

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Chair, Board of Selectmen  
Town of Sheffield

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Chair, Board of Selectmen  
Town of Stockbridge

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Nathaniel W. Karns  
Executive Director  
Berkshire Regional Planning Commission