

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

BRODHEAD WATERSHED	:	
ASSOCIATION, and	:	
	:	
CITIZENS FOR PENNSYLVANIA’S FUTURE	:	
	:	
Plaintiffs	:	CA No.: 3:10-CV-02520
v.	:	
	:	(Judge James M. Munley)
MOUNT POCONO MUNICIPAL AUTHORITY	:	
	:	
Defendant	:	

CONSENT DECREE

WHEREAS, on December 10, 2010, Plaintiffs Brodhead Watershed Association and Citizens for Pennsylvania’s Future filed a Complaint (Dkt. 1) against Defendant Mount Pocono Municipal Authority pursuant to Section 505 of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. § 1365, and Section 601 of the Pennsylvania Clean Streams Law (Clean Streams Law), 35 P.S. § 691.601, for violations of the Clean Water Act, 33 U.S.C. §§ 1251-1387, and the Clean Streams Law, 35 P.S. §§ 691.1-691.1001, in connection with discharges to Forest Hills Run from the municipal sewage treatment facility in Mount Pocono Borough, Monroe County, Pennsylvania (the Facility);

WHEREAS, Plaintiffs and Defendant (collectively, the Parties) have negotiated and reached a settlement aimed at resolving the claims alleged in the Complaint and improving the water quality of Forest Hills Run; and

WHEREAS, the Parties agree, and the Court by entering this Consent Decree finds, that settlement of the claims alleged in the Complaint without further litigation or trial of any issues is fair, reasonable, and in the public interest.

THEREFORE, before the taking of any testimony and without the adjudication of any issue of fact or law, it is hereby ADJUDGED, ORDERED, and DECREED as follows:

Jurisdiction and Venue

1. **Jurisdiction.** This Court has subject matter jurisdiction over the claims specified in the Complaint pursuant to 33 U.S.C. § 1365(a) (Clean Water Act citizen suit provision), 28 U.S.C. § 1331 (establishing federal question jurisdiction), and 28 U.S.C. § 1367 (establishing supplemental jurisdiction).
2. **Venue.** Venue in the Middle District of Pennsylvania is proper pursuant to 33 U.S.C. § 1365(c) and 28 U.S.C. § 1391(b), because the source of the violations is located in this District.

Provisions

3. **Stream Monitoring.**
 - a. Within 60 days of the Execution Date (defined in this Consent Decree as the date on which the last party signs the Consent Decree), Defendant shall retain a qualified independent third party agreed upon by the Parties to collect benthic macroinvertebrates every April and October of each year (commencing October 2012) at a monitoring station located immediately upstream from the discharge from the Facility to Forest Hills Run (Monitoring Station 1), a monitoring station located immediately downstream from the discharge from the Facility to Forest Hills Run (Monitoring Station 2), and a monitoring station located further downstream from the discharge from the Facility to Forest Hills Run (at a location agreed upon by the Parties in consultation with the Pennsylvania Department of Environmental Protection

(PADEP)) (Monitoring Station 3), using peer-reviewed biological assessment procedures to compare Monitoring Station 2 and Monitoring Station 3 to Monitoring Station 1 and to ascertain aquatic life use of attainment or impairment of Forest Hills Run at the monitoring stations. The assessment shall be based on *Rapid Bioassessment Protocols for Use in Streams and Rivers: Benthic Macroinvertebrates and Fish*, Plafkin, et al., (EPA/444/4-89-001), as updated and amended (hereinafter RBP), and *A Benthic Index of Biotic Integrity for Wadeable Freestone Riffle-Run Streams in Pennsylvania*, PADEP (April 2009), as updated and amended (hereinafter IBI). Within 60 days of collection, Defendant will submit to PADEP a report containing an analysis of the information gathered, with a copy to Plaintiffs. The obligations in this Paragraph shall terminate 10 years after final completion of the final phase of the Project (defined in Paragraph 6) that Defendant is obligated to complete pursuant to the terms of this Consent Decree or upon final completion of Phase IV of the Project.

- b.** Within 60 days of the Execution Date, Defendant will (subject to obtaining all necessary access and owner approvals) deploy water temperature data loggers at locations agreed upon by the Parties in consultation with PADEP and record the water temperature every 10 minutes. Defendant will submit, along with the Discharge Monitoring Reports that it submits to PADEP, the water temperatures recorded during the time period covered by the Discharge Monitoring Report, with a copy to Plaintiffs. The obligations in this Paragraph shall terminate 10 years after final completion of the final phase of

the Project (defined in Paragraph 6) that Defendant is obligated to complete pursuant to the terms of this Consent Decree or upon final completion of Phase IV of the Project.

- 4. Limitation on Discharge Flow.** Notwithstanding the terms of National Pollutant Discharge Elimination System (NPDES) Permit Number PA0044997 (the Permit), or any subsequent NPDES permit or renewal or revision issued to Defendant authorizing Defendant to discharge wastewater from the Facility to Forest Hills Run, Defendant's 30 day average discharge flow of wastewater from the Facility to Forest Hills Run shall not exceed 0.40 million gallons per day (MGD), unless and until Monitoring Station 2 and Monitoring Station 3 attain a bioassessment benthic macroinvertebrate score greater than 83% of Monitoring Station 1, based on RBP, and Monitoring Station 2 and Monitoring Station 3 attain aquatic life use, based on IBI, in which case Defendant's 30 day average discharge flow of wastewater from the Facility to Forest Hills Run may exceed 0.40 MGD but shall not exceed 0.50 MGD.
- 5. Land Acquisition.** Within 365 days of the Execution Date, Defendant will acquire the real property in Monroe County, Pennsylvania, depicted on the map in Exhibit A ("the Property"), which testing has confirmed is the only land in the immediate vicinity of the Facility suitable for high-volume land application of treated wastewater.
- 6. Project.** The purpose of the project ("Project") is to improve the water quality of Forest Hills Run by (a) installing equipment allowing Defendant to land apply treated wastewater from the Facility to the Property to reduce the annual volume

of treated wastewater that Defendant discharges from the Facility to Forest Hills Run, and, if necessary, (b) installing equipment sufficient to cool the discharge from the Facility to Forest Hills Run to the degree necessary to comply with the temperature limits in the Permit, or with any more stringent temperature limits in any subsequent NPDES permit or renewal or revision issued to Defendant authorizing Defendant to discharge wastewater from the Facility to Forest Hills Run. Defendant will use its best efforts to negotiate for use of existing utility rights-of-way to limit disturbance in completing the Project, provided that the use of any such rights-of-way are reasonably consistent with the appropriate design of the various phases of the Project.

- 7. Phase I of the Project.** In Phase I of the Project, Defendant will take the following steps (and whatever other steps are necessary) to install equipment capable of land applying at least 0.36 MGD of treated wastewater from the Facility to the Property.
 - a.** Within 120 days of (a) execution by Defendant of an agreement of sale for the Property, or (b) a disposition under 26 Pa. C.S. § 306 or entitlement to possession or right of entry under 26 Pa. C.S. § 307, whichever of (a) or (b) comes sooner, Defendant will prepare and deliver to Mount Pocono Borough an Act 537 Plan revision necessary to carry out the Project, with a copy to Plaintiffs, which Defendant will encourage Mount Pocono Borough to adopt and submit to PADEP. Defendant will notify Plaintiffs as soon as Mount Pocono Borough submits the Act 537 Plan revision to PADEP.

- b.** Within 30 days of PADEP's approval of the Act 537 Plan revision, Defendant will submit a Water Quality Management Part II Permit application covering Phase I of the Project to PADEP, an application for an NPDES Permit for Stormwater Discharges Associated with Construction Activities covering Phase I of the Project to PADEP and the Monroe County Conservation District (MCCD), an application (if necessary) for a Water Obstruction & Encroachment Permit covering Phase I of the Project to PADEP, and any other applications for permits, approvals or dockets necessary to carry out Phase I of the Project, with copies to Plaintiffs.
- c.** Within 30 days of obtaining all necessary permits described in Paragraph 7.b., Defendant will submit application materials for financing for Phase I of the Project to the Pennsylvania Infrastructure Investment Authority (PennVEST) and any other potential sources of financing, both public and private, with a copy to Plaintiffs.
- d.** Within 90 days of approval of financing for Phase I of the Project, Defendant will put a contract to complete Phase I of the Project out for bid, with a copy to Plaintiffs.
- e.** Within 30 days of closing on all financing for Phase I of the Project, which closing shall not be unreasonably delayed by Defendant, Defendant will issue a Notice to Proceed, with a copy to Plaintiffs.
- f.** Within thirteen (13) months of issuance of the Notice to Proceed, Defendant will achieve final completion of Phase I of the Project, defined as completion of installation of equipment capable of land applying at least 0.36 MGD of

treated wastewater from the Facility to the Property, and notify Plaintiffs of same.

g. Land Application Rates and Limitations on Discharge Flow. Upon final completion of Phase I of the Project:

- i.** Between March 15 and November 15 of each year, Defendant will land apply up to 0.36 MGD of treated wastewater from the Facility to the Property, provided that such application is consistent with Defendant's Water Quality Management Part II Permit. Between March 15 and November 15 of each year, except as provided in Paragraph 12 of this Consent Decree, Defendant's 30 day average discharge flow of treated wastewater from the Facility to Forest Hills Run shall not exceed 0.04 MGD, unless and until Monitoring Station 2 and Monitoring Station 3 attain a bioassessment benthic macroinvertebrate score greater than 83% of Monitoring Station 1, based on RBP, and Monitoring Station 2 and Monitoring Station 3 attain aquatic life use, based on IBI, in which case Defendant's 30 day average discharge flow of wastewater from the Facility to Forest Hills Run may exceed 0.04 MGD but shall not exceed 0.14 MGD. Nothing in this Paragraph shall prevent Defendant from land applying up to 0.36 MGD of treated wastewater from the Facility to the Property earlier than March 15 and later than November 15 if conditions permit. Defendant may apply more than 0.36 MGD if site conditions allow,

provided that such application is consistent with Defendant's Water Quality Management Part II Permit.

- ii. Between November 16 and March 14 of each year, Defendant's 30 day average discharge flow of treated wastewater from the Facility to Forest Hills Run shall not exceed 0.40 MGD, unless and until Monitoring Station 2 and Monitoring Station 3 attain a bioassessment benthic macroinvertebrate score greater than 83% of Monitoring Station 1, based on RBP, and Monitoring Station 2 and Monitoring Station 3 attain aquatic life use, based on IBI, in which case Defendant's 30 day average discharge flow of wastewater from the Facility to Forest Hills Run may exceed 0.40 MGD but shall not exceed 0.50 MGD.

8. Phase II of the Project. If within 365 days of final completion of Phase I of the Project or any time thereafter Monitoring Station 2 and Monitoring Station 3 do not attain a bioassessment benthic macroinvertebrate score greater than 83% of Monitoring Station 1, based on RBP, or Monitoring Station 2 and Monitoring Station 3 do not attain aquatic life use, based on IBI, Defendant will take the following steps (and whatever other steps are necessary) to install equipment capable of land applying (in addition to the 0.36 MGD from Phase I of the Project) at least 0.09 MGD of treated wastewater from the Facility to the Property.

- a. Within 90 days of determining that Monitoring Station 2 and Monitoring Station 3 do not attain a bioassessment benthic macroinvertebrate score

greater than 83% of Monitoring Station 1, based on RBP, or Monitoring Station 2 and Monitoring Station 3 do not attain aquatic life use, based on IBI, Defendant will immediately submit a Water Quality Management Part II Permit application covering Phase II of the Project to PADEP, an application for an NPDES Permit for Stormwater Discharges Associated with Construction Activities covering Phase II of the Project to PADEP and MCCD, an application (if necessary) for a Water Obstruction & Encroachment Permit covering Phase II of the Project to PADEP, and any other applications for permits, approvals, or dockets necessary to carry out Phase II of the Project, with copies to Plaintiffs.

- b.** Within 30 days of obtaining all necessary permits described in Paragraph 8.a., Defendant will submit application materials for financing for Phase II of the Project to PennVEST and any other potential sources of financing, both public and private, with a copy to Plaintiffs.
- c.** Within 90 days of approval of financing for Phase II of the Project, Defendant will put a contract to complete Phase II of the Project out for bid, with a copy to Plaintiffs.
- d.** Within 30 days of closing on all financing for Phase II of the Project, which closing shall not be unreasonably delayed by Defendant, Defendant will issue a Notice to Proceed, with a copy to Plaintiffs.
- e.** Within thirteen (13) months of issuance of the Notice to Proceed, Defendant will achieve final completion of Phase II of the Project, defined as completion of installation of equipment capable of land applying (in addition to the 0.36

MGD from Phase I of the Project) up to 0.09 MGD of treated wastewater from the Facility to the Property, and notify Plaintiffs of same.

f. Land Application Rates and Limitations on Discharge Flow. Upon final completion of Phase II of the Project:

- i.** Between March 15 and November 15 of each year, Defendant will land apply up to 0.45 MGD of treated wastewater from the Facility to the Property, provided that such application is consistent with Defendant's Water Quality Management Part II Permit. Between March 15 and November 15 of each year, except as provided in Paragraph 12 of this Consent Decree, Defendant shall not discharge any treated wastewater from the Facility to Forest Hills Run, unless and until Monitoring Station 2 and Monitoring Station 3 attain a bioassessment benthic macroinvertebrate score greater than 83% of Monitoring Station 1, based on RBP, and Monitoring Station 2 and Monitoring Station 3 attain aquatic life use, based on IBI, in which case Defendant's 30 day average discharge flow of wastewater from the Facility to Forest Hills Run shall not exceed 0.05 MGD. Nothing in this Paragraph shall prevent Defendant from land applying up to 0.45 MGD of treated wastewater from the Facility to the Property earlier than March 15 and later than November 15 if conditions permit. Defendant may apply more than 0.45 MGD if site conditions allow, provided that such application is consistent with Defendant's Water Quality Management Part II Permit.

ii. Between November 16 and March 14 of each year, Defendant's 30 day average discharge flow of treated wastewater from the Facility to Forest Hills Run shall not exceed 0.40 MGD, unless and until Monitoring Station 2 and Monitoring Station 3 attain a bioassessment benthic macroinvertebrate score greater than 83% of Monitoring Station 1, based on RBP, and Monitoring Station 2 and Monitoring Station 3 attain aquatic life use, based on IBI, in which case Defendant's 30 day average discharge flow of wastewater from the Facility to Forest Hills Run may exceed 0.40 MGD but shall not exceed 0.50 MGD.

9. **Phase III of the Project.** If within 365 days of final completion of Phase II of the Project or any time thereafter Monitoring Station 2 and Monitoring Station 3 do not attain a bioassessment benthic macroinvertebrate score greater than 83% of Monitoring Station 1, based on RBP, or Monitoring Station 2 and Monitoring Station 3 do not attain aquatic life use, based on IBI, Defendant will take the following steps (and whatever other steps are necessary) to install equipment capable of land applying (in addition to the 0.45 MGD from Phases I and II of the Project) at least 0.05 MGD of treated wastewater from the Facility to the Property.

a. Within 90 days of determining that Monitoring Station 2 and Monitoring Station 3 do not attain a bioassessment benthic macroinvertebrate score greater than 83% of Monitoring Station 1, based on RBP, or Monitoring Station 2 and Monitoring Station 3 do not attain aquatic life use, based on IBI,

Defendant will submit a Water Quality Management Part II Permit application covering Phase III of the Project to PADEP, an application for an NPDES Permit for Stormwater Discharges Associated with Construction Activities covering Phase III of the Project to PADEP and MCCD, an application (if necessary) for a Water Obstruction & Encroachment Permit covering Phase III of the Project to PADEP, and any other applications for permits, approvals, or dockets necessary to carry out Phase III of the Project, with copies to Plaintiffs.

- b.** Within 30 days of obtaining all necessary permits described in Paragraph 9.a., Defendant will submit application materials for financing for Phase III of the Project to PennVEST and any other potential sources of financing, both public and private, with a copy to Plaintiffs.
- c.** Within 90 days of approval of financing for Phase III of the Project, Defendant will put a contract to complete Phase III of the Project out for bid, with a copy to Plaintiffs.
- d.** Within 30 days of closing on all financing for Phase III of the Project, which closing shall not be unreasonably delayed by Defendant, Defendant will issue a Notice to Proceed, with a copy to Plaintiffs.
- e.** Within thirteen (13) months of issuance of the Notice to Proceed, Defendant will achieve final completion of Phase III of the Project, defined as completion of installation of equipment capable of land applying (in addition to the 0.45 MGD from Phases I and II of the Project) up to 0.05 MGD of

treated wastewater from the Facility to the Property, and notify Plaintiffs of same.

f. Land Application Rates and Limitations on Discharge Flow. Upon final completion of Phase III of the Project:

- i.** Between March 15 and November 15 of each year, Defendant will land apply up to 0.50 MGD of treated wastewater from the Facility to the Property, provided that such application is consistent with Defendant's Water Quality Management Part II Permit. Between March 15 and November 15 of each year, except as provided in Paragraph 12 of this Consent Decree, Defendant shall not discharge any treated wastewater from the Facility to Forest Hills Run. Nothing in this Paragraph shall prevent Defendant from land applying up to 0.50 MGD of treated wastewater from the Facility to the Property earlier than March 15 and later than November 15 if conditions permit. Defendant may apply more than 0.50 MGD if site conditions allow, provided that such application is consistent with Defendant's Water Quality Management Part II Permit.
- ii.** Between November 16 and March 14 of each year, Defendant's 30 day average discharge flow of treated wastewater from the Facility to Forest Hills Run shall not exceed 0.40 MGD, unless and until Monitoring Station 2 and Monitoring Station 3 attain a bioassessment benthic macroinvertebrate score greater than 83% of Monitoring Station 1, based on RBP, and Monitoring Station 2 and Monitoring

Station 3 attain aquatic life use, based on IBI, in which case Defendant's 30 day average discharge flow of wastewater from the Facility to Forest Hills Run may exceed 0.40 MGD but shall not exceed 0.50 MGD.

10. Phase IV of the Project. If within 365 days of final completion of Phase III of the Project or any time thereafter Monitoring Station 2 and Monitoring Station 3 do not attain a bioassessment benthic macroinvertebrate score greater than 83% of Monitoring Station 1, based on RBP, or Monitoring Station 2 and Monitoring Station 3 do not attain aquatic life use, based on IBI, Defendant will, within 30 months, install equipment sufficient to cool the discharge from the Facility to Forest Hills Run to the degree necessary for Defendant to comply with the temperature limits in the Permit, or with any more stringent temperature limits in any subsequent NPDES permit or renewal or revision issued to Defendant authorizing Defendant to discharge wastewater from the Facility to Forest Hills Run. Defendant will copy Plaintiffs on all application materials that it submits in connection with Phase IV of the Project and notify Plaintiffs upon final completion of Phase IV of the Project.

a. Land Application Rates and Limitations on Discharge Flow. Upon final completion of Phase IV of the Project:

i. Between March 15 and November 15 of each year, Defendant will land apply up to 0.50 MGD of treated wastewater from the Facility to the Property, provided that such application is consistent with Defendant's Water Quality Management Part II Permit. Between

March 15 and November 15 of each year, except as provided in Paragraph 12 of this Consent Decree, Defendant shall not discharge any treated wastewater from the Facility to Forest Hills Run. Nothing in this Paragraph shall prevent Defendant from land applying up to 0.50 MGD of treated wastewater from the Facility to the Property earlier than March 15 and later than November 15 if conditions permit. Defendant may apply more than 0.50 MGD if site conditions allow, provided that such application is consistent with Defendant's Water Quality Management Part II Permit.

- ii. Between November 16 and March 14 of each year, Defendant's 30 day average discharge flow of treated wastewater from the Facility to Forest Hills Run shall not exceed 0.40 MGD, unless and until Monitoring Station 2 and Monitoring Station 3 attain a bioassessment benthic macroinvertebrate score greater than 83% of Monitoring Station 1, based on RBP, and Monitoring Station 2 and Monitoring Station 3 attain aquatic life use, based on IBI, in which case Defendant's 30 day average discharge flow of wastewater from the Facility to Forest Hills Run may exceed 0.40 MGD but shall not exceed 0.50 MGD.

- 11. **Maximization of Land Application.** Defendant shall land apply treated wastewater from the Facility to the Property to the greatest extent that Defendant's Water Quality Management Part II Permit and site conditions allow, and Defendant shall not discharge treated wastewater from the Facility to Forest

Hills Run until Defendant has land applied treated wastewater from the Facility to the Property to the greatest extent that Defendant's Water Quality Management Part II Permit and site conditions allow.

12. Limited Exceptions to Land Application Rates and Limitations on Discharge

Flow. Defendant may only depart from the application rates and limitations on discharge flow set forth in Paragraphs 7.g.i., 8.f.i., 9.f.i., and 10.a.i. in the following situations:

- a. unusual heavy precipitation conditions between March 15 and November 15;
- b. unusual winter-like conditions between March 15 and November 15;
- c. a land application system failure; or
- d. Defendant has land applied treated wastewater from the Facility to the Property to the greatest extent that Defendant's Water Quality Management Part II Permit and site conditions allow.

In situation a., Defendant must notify PADEP and Plaintiffs within 48 hours of the end of the precipitation event that triggers this condition, and Defendant shall abide by the applicable application rates and limitations on discharge flow as soon as possible thereafter. In situation b., Defendant must notify PADEP and Plaintiffs five (5) days in advance of its intent to suspend land application prior to November 15 or to resume land application after March 15, and Defendant shall abide by the applicable application rates and limitations on discharge flow as soon as possible thereafter. In situation c., Defendant must submit to PADEP and Plaintiffs documentation that confirms that the land application system has failed and that Defendant must reduce the volume of treated wastewater that it is land

applying to the Property, and Defendant shall remedy the land application system failure as soon as possible thereafter.

13. Land Protection, Access and Trails.

a. Within 90 days of final completion of the final phase of the Project that Defendant is obligated to complete pursuant to the terms of this Consent Decree, Defendant will:

- i. record a deed restriction, which shall be made enforceable by the Brodhead Watershed Association, Citizens for Pennsylvania's Future, and PADEP, prohibiting, on areas of the Property located within 75 feet of Forest Hills Run (Riparian Buffer Area):
 1. any land development except for a trail or equipment installed for the Project, and
 2. any disturbance of the existing riparian buffer except for any disturbance necessary to develop a trail or to maintain, replace, upgrade or repair equipment installed for the Project; and
- ii. work with the Monroe County Planning Commission, the Monroe County Conservation District or other agencies or organizations to develop as quickly as possible on the Riparian Buffer Area a trail no more than 50 feet from Forest Hills Run, that is accessible to the public and compatible with trail planning efforts in Monroe County; provided that Defendant shall not be required to permit development of any trail on the north side of Forest Hills Run west of Route 611 where the Facility is located.

- b. Nothing in this Consent Decree requires Defendant to assume any costs of construction or maintenance of any trail or to assume any liability incurred as a result of the public access provided by Defendant.
- c. If Defendant purchases the Property or any portion thereof using funds associated with the Monroe County Open Space Program or any other open space program that imposes requirements regarding land protection, access and trails, Defendants shall also abide by those requirements.

14. Reports. After the Execution Date, Defendant will submit to Plaintiffs copies of the following reports that it submits to PADEP on the same day that Defendant submits them to PADEP: (a) Discharge Monitoring Reports (as defined in 25 Pa. Code Chapter 92a, as updated and amended); and (b) Annual Reports (as described in 25 Pa. Code Chapter 94, as updated and amended).

15. Correspondence. All submissions made pursuant to this Consent Decree shall be made to the following addresses (unless informed of a change in address by due notice in advance from a party):

If to Plaintiffs:

Brodhead Watershed Association
c/o President
Box 339
Henryville, PA 18332

and

Citizens for Pennsylvania's Future
c/o Brian Glass, Esq.
1500 Walnut Street, Suite 502
Philadelphia, PA 19102

If to Defendant:

Mount Pocono Municipal Authority
Attention: Chairman
303 Pocono Boulevard
Mt. Pocono, PA 18344

and

McFall, Layman & Jordan, P.C.
134 Broadway
Bangor, PA 18013

- 16. Lodging and Petition for Stay.** Within 10 days of the Execution Date, the Parties shall lodge the Consent Decree with the Court and shall jointly petition the Court for a stay of proceedings in this matter based upon a settlement having been reached. In their petition, the parties shall explain their intention to have this Consent Decree entered as an order of the Court following expiration of the 45-day period described in the next Paragraph.
- 17. Government Comment or Intervention; Entry.** Within 10 days of the Execution Date, Plaintiffs will, pursuant to 33 U.S.C. § 1365(c)(3), serve this Consent Decree on the Attorney General of the United States and the Administrator of the United States Environmental Protection Agency. If the United States does not comment or intervene within 45 days of receipt, the Parties shall submit this Consent Decree to the Court together with a joint motion for its entry as an Order of this Court. If the United States comments or intervenes in this proceeding, the Parties will work together and with the United States to determine whether this matter can still be resolved without further litigation. At any time following comment or intervention by the United States, one or more of the Parties may petition the Court to lift the stay of proceedings.

- 18. Costs of Litigation.** Pursuant to 33 U.S.C. § 1365(d), the Court, in issuing any final order in a citizen suit under the Clean Water Act, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate. In settlement of Plaintiffs' claims for costs of litigation in this proceeding, Defendant will, within 60 days of the Execution Date, submit payment to PennFuture of a previously agreed amount by check made payable to "Citizens for Pennsylvania's Future" and sent by certified mail, return receipt requested, to Edward McGovern, Director of Administration and Member Services, Citizens for Pennsylvania's Future, 610 N. Third Street, Harrisburg, PA 17101-1113. If Defendant fails to pay the agreed amount, Plaintiffs may file a motion for fees and costs with the Court, and may seek their full fees and costs in this proceeding up to and including such motion.
- 19. Continuing Jurisdiction.** The parties agree that the Court shall maintain jurisdiction over this matter to enforce the terms of this Consent Decree.
- 20. Sovereign Immunity.** Defendant will not assert sovereign immunity to prevent enforcement of this Consent Decree.
- 21. Severability.** If any provision of this Consent Decree is declared invalid or unenforceable, the remaining provisions shall continue in effect.
- 22. Entire Agreement.** This Consent Decree constitutes and contains the entire agreement among the Parties with respect to the subject matter hereof and merges and supersedes prior negotiations, understandings, agreements, representations and warranties among the Parties.

- 23. Modification.** This Consent Decree may not be amended or modified except by written order of this Court. Any modification of this Consent Decree by the Parties shall be in writing and approved by the Court before it will be deemed effective. Without limiting the foregoing, the Parties understand that the results of the stream monitoring required under Paragraph 3 of this Consent Decree may indicate that actions other than those required under Paragraphs 8, 9 and 10 of this Consent Decree would be more effective at improving the water quality of Forest Hills Run. Such actions may include, without limitation, Defendant's construction of storage lagoons on the Property to reduce Defendant's 30 day average discharge flow of treated wastewater from the Facility to Forest Hills Run between November 16 and March 14 of each year. If the Parties, after consultation with PADEP, agree that actions other than those required under Paragraphs 8, 9 and 10 of this Consent Decree would be more effective at improving the water quality of Forest Hills Run, the Parties will jointly move this Court to modify the Consent Decree under terms agreeable to the Parties. The Parties will serve a copy of their joint motion upon the Attorney General of the United States and the Administrator of the United States Environmental Protection Agency and ask the Court not to enter the proposed order for 45 days to allow the United States to comment or intervene.
- 24. Captions.** The captions or headings of the Paragraphs of this Consent Decree (for example, the heading of "Captions") are for convenience of reference only and in no way define, limit, or affect the scope or substance of any provision of this Consent Decree.

- 25. No Waiver.** The failure of any party to seek redress for violation of, or to insist upon strict performance of, any provision of this Consent Decree, shall not be a waiver of that provision by that party or estop that party from asserting fully any and all of its rights under this Consent Decree, or as to any subsequent violation of this Consent Decree.
- 26. Counterparts.** This Consent Decree may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. Delivery of an executed counterpart of this Consent Decree by facsimile, or by electronically scanning and emailing an executed counterpart signature page, while not specifically required, will be acknowledged as being equally as effective as delivery of a manually executed counterpart of this Consent Decree. The use of a signature page received by facsimile, or through an electronic scan and email, shall not affect the validity, enforceability, or binding effect of this Consent Decree.
- 27. No Permit Appeals.** The Parties agree not to appeal the Permit provided that it contains the same effluent limits, other than the flow limitation, proposed in the most recent draft noticed in the Pennsylvania Bulletin, 41 Pa. Bull. 744-45 (February 5, 2011), and provided that any flow limitations and other provisions are consistent with the terms of this Consent Decree. The Parties agree not to appeal any other permits, approvals or dockets necessary to carry out the Project provided that they are consistent with the terms of this Consent Decree.
- 28. No Obligation to Violate Permit.** This Consent Decree is not intended to obligate Defendant to take any action that is prohibited by any permit.

29. Release/Reservation of Rights. If Defendant fails to comply with any obligation under this Consent Decree, and such failure is within the control of Defendant, Plaintiffs shall have the right, after providing Defendant with written notice of and a 14-day right to cure the noncompliance, to pursue all remedies for contempt of this Consent Decree, and Defendant shall not assert Section 402(k) of the Clean Water Act, 33 U.S.C. § 1342(k), or any analog under the Clean Streams Law, as a defense against enforcement of this Consent Decree. Notwithstanding the foregoing, the Parties understand that some of the obligations of Defendant under this Consent Decree are dependent upon Defendant's ability to obtain all necessary permits and approvals from the appropriate governmental agencies, departments or commissions, and upon Defendant's ability to obtain reasonable financing at any stage, including but not limited to financing required to acquire the Property and to design and construct the Project. Should Defendant be unable, through no fault of its own, to obtain necessary permits or approvals or reasonable financing for the Project within 120 days of submission of application materials for the permit, approval, or financing at issue (including, without limitation, the delivery to Mount Pocono Borough of an Act 537 Plan revision necessary to carry out the Project as provided for in Paragraph 7(a)), Plaintiffs will have the right, after providing Defendant with written notice of and a 14-day right to seek to obtain the permit, approval, or financing at issue, to reopen the above-docketed matter and pursue before this Court the claims asserted in the Complaint, and Defendant will not assert statutes of limitation, laches, waiver, estoppel, or mootness, or otherwise challenge the sufficiency of the 60-Day

Notice Letter (Dkt. 1, Attach. 1) in defending against those claims. In consideration of Defendant's obligations under this Consent Decree, Plaintiffs, except as provided in the immediately preceding sentence, release Defendant from the claims asserted in the Complaint and from any present and future claims under the Clean Water Act or the Clean Streams Law for violations of the temperature effluent limitations set forth in the Permit or any subsequent NPDES permit or renewal or revision issued to Defendant authorizing Defendant to discharge wastewater from the Facility to Forest Hills Run, except for those violations of the temperature effluent limitations arising after final completion of Phase IV of the Project. Plaintiffs reserve all other rights.

- 30. Certification.** The undersigned representatives of each party certify that they are fully authorized by the party (or parties) they represent to consent to this Consent Decree.

DATED AND ENTERED THIS _____ DAY OF _____, 2012.

UNITED STATES DISTRICT JUDGE
MIDDLE DISTRICT OF PENNSYLVANIA

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *Brodhead Watershed Association and Citizens for Pennsylvania's Future v. Mount Pocono Municipal Authority (M.D. Pennsylvania)*.

FOR PLAINTIFFS BROADHEAD WATERSHED ASSOCIATION and CITIZENS FOR PENNSYLVANIA'S FUTURE:

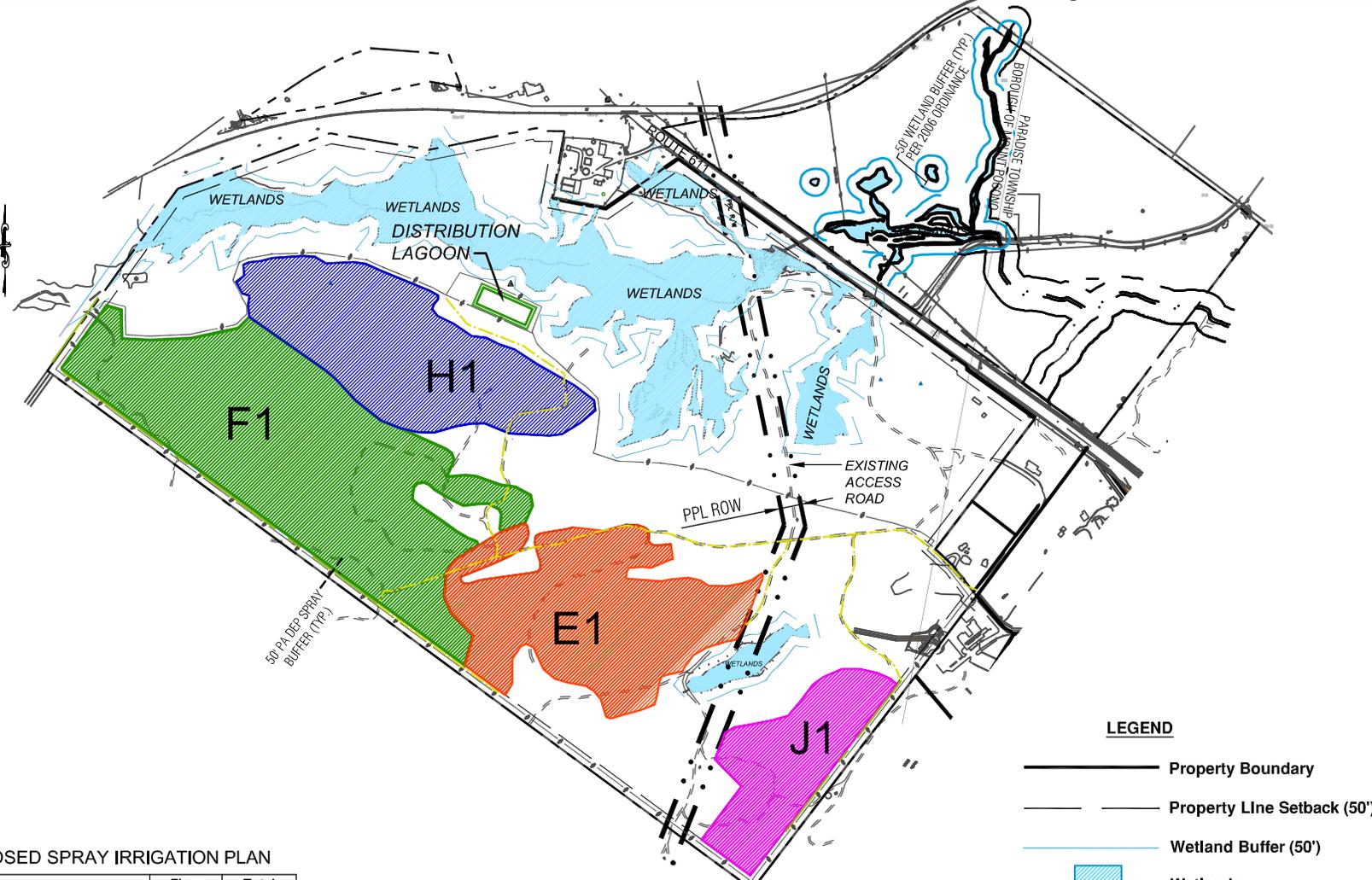
DATE: February 28, 2012

/s/ Brian G. Glass
Brian G. Glass, Esquire
PA 89405
Citizens for Pennsylvania's Future
1500 Walnut Street, Suite 502
Philadelphia, PA 19102
215-545-9694
215-545-9637 (fax)
glass@pennfuture.org

FOR DEFENDANT MOUNT POCONO MUNICIPAL AUTHORITY

Date: February 28, 2012

/s/ Paul J. Bruder
Paul J. Bruder Jr., Esquire
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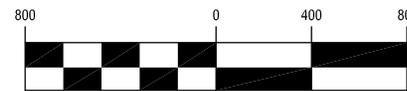
PROPOSED SPRAY IRRIGATION PLAN

Phase	TASK	Flow Capacity	
		GPD	GPD
	WWTP Upgrade, Distribution lagoon, Area F1, upfront nonconstruction costs	360,000	360,000
	Area E1		
	Area H1	90,000	450,000
	Area J1	50,000	500,000
IV	Cooling System		500,000
			Total

LEGEND

- Property Boundary
- Property Line Setback (50')
- Wetland Buffer (50')
- Wetlands
- Phase No. 1 Spray Area
- Phase No. 1 Spray Area
- Phase No. 2 Spray Area
- Phase No. 3 Spray Area

GRAPHIC SCALE



(IN FEET)
1 INCH = 800 FT.

PROJECT MANAGER WEG	DESIGNED BY	EXHIBIT A		AUTHORIZED USE	R.K.R. Hess Associates, Inc. We translate human needs into practical realities. Surveyors, Engineers and Environmental Scientists 112 North Courtyard Street, P.O. Box 266, East Stroudsburg, Pa. 18301 Telephone (570) 421-1550, Fax (570) 421-6720 Website: www.rkhess.com Email: engr@rkhess.com © 2012
DRAWN BY NLP	CHECKED BY	PROPERTY TO BE ACQUIRED BY MPMA FOR SPRAY IRRIGATION		PARADISE TOWNSHIP BOROUGH OF MOUNT POCONO	This drawing is the property of R.K.R. Hess Associates, Inc. Any reproduction, use or disclosure of the design or details contained herein is prohibited without the express written authorization of R.K.R. Hess Associates, Inc. - Care should be taken when scaling dimensions off of these plans due to printing device limitations.
DATE 2-17-2012	CHECKED DATE	MOUNT POCONO MUNICIPAL AUTHORITY		MONROE COUNTY, PA	P:\PA\Monroe Co\MT Pocono Bort_ Authorities\MT Pocono Mun Auth\MPMA Proj_09062_Series\09062.42 Assist Special Counsel\Engineering\Dr\MPMA Exhibit A 8x11.dwg
SCALE AS SHOWN	PROJECT NO. 09062.38	BOROUGH OF MOUNT POCONO		MONROE COUNTY, PA	BOROUGH OF MOUNT POCONO