

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between THE MUNICIPAL AUTHORITY OF THE CITY OF MCKEESPORT (“The Authority”), with its governmental offices located at 100 Atlantic Avenue, McKeesport, PA 15132, AND CLEAN WATER ACTION, a non-profit organization incorporated under the laws of Washington, D.C. with an address of 100 Fifth Avenue #1108, Pittsburgh, PA 15222, and THREE RIVERS WATERKEEPER, a Pennsylvania non-profit organization with an address of 623 E. 8th Avenue, Homestead, PA 15230. Clean Water Action and Three Rivers Waterkeeper will hereinafter collectively be referred to as “Plaintiffs.”

WHEREAS, Clean Water Action and Three Rivers Waterkeeper filed suit in the United States District Court for the Western District of Pennsylvania, Civil Action No. 2:11-cv-00940-NBF, against The Authority under section 505 of the Clean Water Act, 33 U.S.C. § 1365, relating to oil and gas wastewaters alleged to have been discharged by the Authority; and

WHEREAS, The Authority filed an Answer contesting the allegations in the Complaint; and

WHEREAS, The Authority, Clean Water Action and Three Rivers Waterkeeper have agreed to settle their dispute without resorting to further litigation.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and intending to be legally bound hereby, the Parties agree as follows:

1. The Authority will not accept at its publicly owned treatment works (“POTW”) Coalbed Methane wastewaters or Shale Gas wastewaters until the following conditions have been met:
 - a. The Authority has submitted an application to the Pennsylvania

Department of Environmental Protection (“PADEP”) for an amendment to the POTW’s Authority’s National Pollutant Discharge Elimination System Permit (“NPDES Permit”), or for a new NPDES permit.

- b. Either PADEP has processed the application and determined that neither an amendment nor a new permit is necessary; or, PADEP has processed the application, determined that an amendment or a new permit is necessary, and has issued either a new NPDES permit or a final amendment to the existing NPDES permit.
2. Within eighteen (18) months of the date of this Agreement, with respect to any Coal Bed Methane wastewaters or Shale Gas wastewaters for which the Authority submits an application for an NPDES permit or permit amendment under Paragraph 1 hereof:
- a. The Authority shall request from the generator an initial analysis of the oil and gas wastewater including the constituents listed in Table 1 below;
 - b. In the event The Authority is interested in seeking either an amendment to its NPDES permit or a new NPDES permit after reviewing the initial analysis, The Authority shall require submission of the results of a second sample of the oil and gas wastewater collected on a different date, which sample shall be analyzed for the constituents listed in Table 1 below and any other constituents required to be analyzed by PADEP. In addition, The Authority shall require that the generator of the oil and gas wastewater forward a third sample of that wastewater, collected on a

different day than the first two samples, to one consultant selected by Plaintiffs for analysis. All costs relating to the collection, shipment and analysis of the sample to be sent to the consultant selected by Plaintiffs, including all costs related to the services provided by the consultant, shall be borne exclusively by Plaintiffs.

- c. Before requesting a second analysis of the Coal Bed Methane or Shale Gas wastewater under paragraph (2)(b) above, The Authority shall advise Plaintiffs in writing of its intention to request additional analyses and request that Plaintiffs provide The Authority with the name and address of the consultant that Plaintiffs intend to use to analyze samples of the oil and gas wastewaters under paragraph (2)(b) above. Within five (5) days of receiving the request from the Authority, Plaintiffs shall respond in writing identifying the name and address of the consultant they have selected.
- d. Concurrent with the submission of an application for a NPDES permit amendment or new NPDES permit to accept the Coal Bed Methane or Shale Gas wastewaters set forth in paragraph 1 hereof, The Authority shall advise PADEP in writing of this settlement and that Plaintiffs may be analyzing samples of the Coal Bed Methane or Shale Gas wastewater and submitting the results of such analyses to PADEP for consideration as part of the agency's review of the NPDES application.
- e. Plaintiffs shall provide The Authority with copies of all analytical results from the samples of wastewater analyzed by or on behalf

of Plaintiffs.

3. In the event application for the NPDES permit or permit amendment that is the subject of Paragraph 1 hereof is submitted after eighteen (18) months from the execution of this Agreement, The Authority shall have any Coal Bed Methane or Shale Gaswastewaters for which The Authority submits an application analyzed for all constituents required to be analyzed by PADEP. In addition:
 - a. The Authority shall request from the generator an initial analysis of the oil and gas wastewater to be analyzed for all constituents required to be analyzed by PADEP; and
 - b. In the event The Authority intends to seek either an amendment to its NPDES permit or a new NPDES permit after reviewing the initial analysis, The Authority shall require submission of the results of a second sample of the oil and gas wastewater collected on a different date, which sample shall be analyzed for the constituents required to be analyzed by PADEP. In addition, The Authority shall require that the generator of the oil and gas wastewater forward a third sample of that wastewater, collected on a different day than the first two samples, to one consultant selected by Plaintiffs for analysis. All costs relating to the collection, shipment and analysis of the sample to be sent to the consultant selected by Plaintiffs, including all costs related to the services provided by the consultant, shall be borne exclusively by Plaintiffs.
 - c. Before requesting a second analysis of the Coal Bed Methane or Shale Gas wastewater under paragraph (3)(b) above, The Authority shall advise

Plaintiffs in writing of its intention to request additional analyses and request that Plaintiffs provide The Authority with the name and address of the consultant that Plaintiffs intend to use to analyze samples of the oil and gas wastewaters under paragraph (3)(b) above. Within five (5) days of receiving the request from the Authority, Plaintiffs shall respond in writing identifying the name and address of the consultant they have selected.

- d. Concurrent with the submission of an application for a NPDES permit amendment or new NPDES permit to accept the Coal Bed Methane or Shale Gas wastewaters set forth in paragraph 1 hereof, The Authority shall advise PADEP in writing of this settlement and that Plaintiffs may be analyzing samples of the Coal Bed Methane or Shale Gas wastewater and submitting the results of such analyses to PADEP for consideration as part of the agency's review of the NPDES application.
 - e. Plaintiffs shall provide The Authority with copies of all analytical results from the samples of wastewater analyzed by or on behalf of Plaintiffs.
4. The requirements in paragraphs 1 through 3 do not apply to pilot tests of technologies to treat oil and gas wastewaters as long as the following conditions are met:
- a. PADEP approves of the pilot testing in advance.
 - b. The Authority provides to the Plaintiffs all hard copy and electronic information submitted to PADEP for the pilot testing approval. Such provision to the Plaintiffs will occur simultaneously with the provision to

PADEP.

5. This Agreement shall not be construed to authorize The Authority to accept wastewater that results from the production of natural gas.
6. Upon the execution of this Agreement, Plaintiffs shall voluntarily dismiss this action pursuant to Fed. R. Civ. 41(A)(1)(a), which dismissal shall be without prejudice. Plaintiffs agree that they will not seek an award of their attorneys' fees or costs, and the Parties shall bear their own costs and fees of this action.
7. The entry into this Settlement Agreement shall not be considered as an admission of any liability by The Authority.
8. All notices and communications required to be made under this Agreement shall be addressed to the parties as follows:

To The Authority

Joseph Rost, Executive Director
Municipal Authority of the City of McKeesport
100 Atlantic Avenue
McKeesport, PA 15132

To Clean Water Action

Myron Arnowitz, Pennsylvania State Director
Clean Water Action
100 Fifth Avenue, #1108
Pittsburgh, PA 15222

To Three Rivers Waterkeeper

Kim Teplitzky, President of the Board of Directors
Three Rivers Waterkeeper
623 East 8th Avenue
Homestead, PA 15120

9. This Agreement constitutes the entire agreement between the parties, superseding

any oral discussions between them or prior drafts.

10. Each signatory represents and warrants that he or she is authorized to act on behalf of the entity for whom they sign, that such party has had a chance to review this Agreement with counsel and that this Agreement is voluntarily undertaken, without reliance on any representations other than as set forth herein. The Authority represents and warrants that it has authorized this settlement and has further authorized the person signing below to execute this Agreement on its behalf by an appropriate resolution and/or other action consistent with governing law. Clean Water Action and Three Rivers Waterkeeper each separately represent and warrant that they have authorized this settlement and have further authorized the person signing below to execute this Agreement on its behalf by an appropriate resolution and/or other action consistent with the bylaws of each organization.
11. This Agreement may be signed in multiple counterparts, each one of which shall be deemed to be an original.

INTENDING TO BE LEGALLY BOUND HEREBY, the Parties affix their signatures below, having signed on the dates shown:

WITNESS:

Dee R McCall

THE MUNICIPAL AUTHORITY OF THE
CITY OF MCKEESPORT

Nickolas Shermenti
By: Nickolas Shermenti

Title: Chairman

Dated: 4-10-12

CLEAN WATER ACTION

WITNESS:

Cara Capp

Kathleen E. Aterno
By: Kathleen E. Aterno
Title: National Managing Director
Dated: January 30, 2012

THREE RIVERS WATERKEEPER

WITNESS:

Al Oni
Jared Ondovchik

Kimberly Tepitzky
By: Kimberly Tepitzky
Title: Acting Executive Director
Dated: 3/26/12

Table 1

Acidity	Cobalt	pH
Alkalinity (Total as CaCO ₃)	Copper	Phenolics (Total)
Aluminum	Ethylene Glycol	Radium 226
Ammonia Nitrogen	Gross Alpha	Radium 228
Arsenic	Gross Beta	Selenium
Barium	Hardness (Total as CaCO ₃)	Silver
Benzene	Iron – Dissolved	Sodium
Beryllium	Iron – Total	Specific Conductance
Biochemical Oxygen Demand	Lead	Strontium
Boron	Lithium	Sulfates
Bromide	Magnesium	Toluene
Cadmium	Manganese	Total Dissolved Solids
Calcium	MBAS (Surfactants)	Total Kjeldahl Nitrogen
Chemical Oxygen Demand	Mercury	Total Suspended Solids
Chlorides	Molybdenum	Uranium
Chromium	Nickel	Zinc
	Nitrite-Nitrate Nitrogen	
	Oil & Grease	