

Court of Appeals
of the
State of New York

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NEW YORK STATE
COURT OF APPEALS

In the Matter of the Application of the SIERRA CLUB; PEOPLE FOR A
HEALTHY ENVIRONMENT, INC.; COALITION TO PROTECT NEW YORK;
JOHN MARVIN; THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners-Appellants,

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

(For Continuation of Caption See Inside Cover)

RECORD ON APPEAL
Volume 1 of 2 (Pages 1 to 344)

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of the
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– against –

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP;

Respondents-Respondents,

and the WELLSBORO AND CORNING RAILROAD, LLC,

Respondent-Respondent.

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STATEMENT PURSUANT TO CPLR 5531

STATEMENT PURSUANT TO CPLR 5531

1. Index No.: 2012-0810

2. Full Names of the Parties:

PETITIONERS: SIERRA CLUB; PEOPLE FOR A HEALTHY ENVIRONMENT, INC.; COALITION TO PROTECT NEW YORK; JOHN MARVIN; THERESE FINNERAN; MICHAEL FINNERAN; VIRGINIA HAUFF; and JEAN WOSINSKI

RESPONDENTS: THE VILLAGE OF PAINTED POST; PAINTED POST DEVELOPMENT, LLC; SWEPI, LP; and the WELLSBORO AND CORNING RAILROAD, LLC

3. The Court and County in which the action was commenced is Supreme Court, Steuben County.

4. Date the action was commenced – June 25, 2012.

5. The Nature and object of this action is: Article 78 proceeding.

6. This appeal is from the Order of the Decision and Order of the Supreme Court, Steuben County, Hon. Kenneth R. Fisher, Supreme Court Justice Presiding, dated March 25, 2013, and entered in the Steuben County Clerk's Office on April 8, 2013.

7. This appeal is on the full record reproduced below.

NOTICE OF APPEAL, DATED APRIL 22, 2013 [2-3]

STATE OF NEW YORK
SUPREME COURT COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN; VIRGINIA
HAUFF; and JEAN WOSINSKI,

NOTICE OF APPEAL

Index No. 2012-0810

Petitioners,

For a Judgment Pursuant to Article 78
Of the Civil Practice Law and Rules

-against-

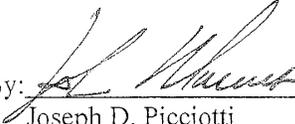
THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the WELLSBORO
AND CORNING RAILROAD, LLC,

Respondents.

PLEASE TAKE NOTICE that the Respondents The Village of Painted Post, Painted Post Development, LLC and SWEPI, LP (collectively "Respondents"), hereby appeal to the Appellate Division of the Supreme Court, Fourth Judicial Department, from the Decision and Order of the Supreme Court, Steuben County, Hon. Kenneth R. Fisher, Supreme Court Justice Presiding, dated March 25, 2013, entered in the Steuben County Clerk's Office on April 8, 2013, with Notice of Entry served by mail upon Petitioners' counsel on April 12, 2013. A copy of the Decision and Order is attached hereto as Exhibit "A" and Respondents hereby appeal from each and every part of the Decision and Order, except that part of the Decision and Order which dismissed the Second and Third Causes of Action of the Verified Petition.

Dated: April 22, 2013

HARRIS BEACH PLLC

By: 
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AFFIDAVIT OF SERVICE OF NOTICE OF APPEAL, SWORN TO ON APRIL 22, 2013 [4-5]

*Kathleen*STATE OF NEW YORK
SUPREME COURT COUNTY OF STEUBENIn the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN; VIRGINIA
HAUFF; and JEAN WOSINSKI,*AFFIDAVIT of Service*
~~NOTICE OF APPEAL~~

Index No. 2012-0810

Petitioners,

For a Judgment Pursuant to Article 78
Of the Civil Practice Law and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the WELLSBORO
AND CORNING RAILROAD, LLC,

Respondents.

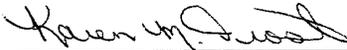
STATE OF NEW YORK)
COUNTY OF MONROE) ss:

Karen M. Trost, being duly sworn, deposes and says that she resides in the Town of Henrietta, State of New York, that she is over the age of eighteen years and is a legal administrative assistant in the law firm of Harris Beach PLLC, attorneys for Respondents. That on the 22nd day of April, 2013 before 7:00 p.m., at the Town of Henrietta, County of Monroe and State of New York, deponent served a copy of the foregoing **Notice of Appeal** addressed to the address designated by the attorney for that purpose, by depositing a true copy thereof, properly and securely enclosed in a sealed wrapper, with full postage prepaid thereon, in a U.S. Postal depository maintained under the exclusive care and custody of the United States Postal Service within the state, directed to:

Richard J. Lippes, Esq.
Richard J. Lippes & Associates
1109 Delaware Avenue
Buffalo, New York 14209

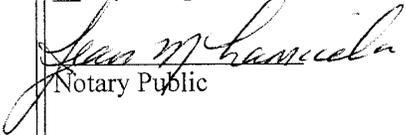
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Suite 300 S
8000 Midlantic Drive
Mt. Laurel, NJ 08054



Karen M. Trost

Sworn to before me this
23rd day of April 2013.


Notary Public

JEAN M. LAMICELA
Notary Public, State of New York
No. 01MC6006228
Commission Expires April 27, 20 14

DECISION AND ORDER, DATED MARCH 25, 2013 [6-40]

STATE OF NEW YORK
SUPREME COURT COUNTY OF STEUBEN

In the Matter of the Application of
the SIERRA CLUB,
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.,
COALITION TO PROTECT NEW YORK;
JOHN MARVIN; THERESA FINNERAN;
MICHALE FINNERAN; VIRGINIA HAUFF,
and JEAN WOSINSKI;

Petitioner,

v.

THE VILLAGE OF PAINTED POST;
PAINTED POST DEVELOPMENT, LLC;
SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondent.

DECISION AND ORDER
Index No. 2012/0000810

STEUBEN COUNTY
CLERK'S OFFICE

2013 APR - 8 P 2:52



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Fee Amt: \$210.00 Page 1 of 36
Steuben County, NY
Judith M. Hunter County Clerk

File 2012-00000810

Respondents move to dismiss this CPLR Article 78 proceeding on grounds that petitioners lack standing to maintain this proceeding, CPLR §3211(a)(3), and that petitioners fail to state a cause of action, 3211(a)(7). Alternatively, respondents move for summary judgment pursuant to CPLR §3212. The court turns first to the second and third causes of action, which easily may be disposed, and then returns to the difficult issues presented by the first cause of action on the record in this case.

Second and Third Causes of Action Dismissed

The second cause of action alleges that respondents violated the Water Supply Law, specifically §15-1505.1, by failing to

obtain a permit from the New York State Department of Environmental Conservation ("DEC"). Respondents argue that this cause of action must be dismissed because there is no private right of action to enforce the Water Supply Law. Petitioners concede this point, however. "Respondents have rightly pointed out that the statute requiring this permit does not provide a private right of action for its enforcement, and Petitioners concede this point." Petitioners' Memorandum of Law in Opposition to Respondents' Motion to Dismiss and/or for Summary Judgment, and in Support of Petitioners' Article 78 Petition, fn. 31. The second cause of action is, therefore, dismissed.

Petitioners' third cause of action must be dismissed as this court is without jurisdiction to determine whether a permit is required to operate the transloading facility. That determination lies exclusively with the Surface Transportation Board and federal courts.

It is undisputed by the parties that the STB has jurisdiction over the transloading facility. See e.g., Green Mountain R.R. Corp. v. Vermont, 404 F.3d 638, 640 (2d Cir. 2005).

Petitioners' third cause of action asserts that respondent Wellsboro and Corning Railroad, LLC, ("WCOR") failed to obtain a permit from the Surface Transportation Board ("STB") or the Federal Railway Administration ("FRA") allegedly required for the installation of rail spurs and construction and operation of rail

loading facilities. Petitioners maintain that, prior to the granting of any permit by the STB or FRA, an environmental review under the National Environmental Policy Act, 42 U.S.C. §4321 et seq., is required and that respondents have thus avoided such review.

Respondents argue that, while STB has jurisdiction over the issue, it would not regulate or issue a permit in this case because the construction and operation of the water transloading facility qualifies as ancillary track for which an STB permit is not required, and authority to issue such a permit resides exclusively with the STB. Petitioners respond that such a permit is in fact necessary in this case.

The federal statute which relates to the questioned regulatory approval for the transloading facility is 49 U.S.C. §10101. The general jurisdictional provision of the ICCTA provides that "[t]he jurisdiction of the [STB] over . . . (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive." 49 U.S.C. §10501(b)(2). The statute further provides for the express preemption of other laws and remedies: "Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are

exclusive and preempt the remedies provided under Federal or State law." 49 U.S.C. §10501(b).

This preemption clause has been found to evidence a clear congressional intent to broadly preempt state and local regulation of integral rail facilities. Pejepscot Indus. Park, Inc. v. Maine Cent. R. Co., 215 F.3d 195, 202 (1st cir. 2000); Wisconsin Cent. Ltd. v. City of Marshfield, 160 F.Supp.2d 1009, 1013 (W.D. Wis. 2000).

In Matter of Metropolitan Transp. Auth., 32 A.D.3d 943 (2d Dept. 2006), the Appellate Division considered whether it had subject matter jurisdiction to entertain a lawsuit concerning an eminent domain proceeding to acquire a railroad access easement by condemnation. Matter of Metropolitan Transp. Auth., 32 A.D.3d at 944. The Appellate Division found that "condemnation is regulation" and that the STB had exclusive regulatory authority. Id., 32 A.D.3d at 945-946. In that case, the court held that the ICCTA preempted the condemnation proceeding and it determined to dismiss the petition, reasoning that "no petition has been filed with the STB, nor has that board otherwise been consulted with regard to [the regulatory approval at issue here] . . . [and that] by reason of the exclusive jurisdiction over railroad matters which reposes in the STB, [] the courts of our State lack subject matter jurisdiction to entertain it." Id., 32 A.D.3d at 946. Petitioner's third cause of action must dismissed

for the same reason.

Respondent makes an alternative argument in Reply that, under the doctrine of primary jurisdiction, the court should defer the resolution of this cause of action pending a determination by the STB. The purpose of "[t]he doctrine of primary jurisdiction: [is] to "co-ordinate the relationship between courts and administrative agencies" and to give the principal responsibility for adjudicating the merits of disputes requiring special competence to the agency with the necessary expertise. Uniformed Firefighters Ass'n v. New York, 79 N.Y.2d 236, 241-242 (1992); United States v. Western Pac. R.r. Co., 352 U.S. 59, 63-64 (1956) (primary jurisdiction "comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body").

The court agrees that, although the regulatory scheme at 49 U.S.C. §10101 et seq. places with STB the determination whether STB need issue a permit to operate the transloading facility, deferral of this case is not appropriate. First, as noted above, issuance of permit is regulation every bit as much as condemnation, and STB's exclusive authority over railroad regulation has caused the Appellate Division to hold that New York courts are without subject matter jurisdiction. Moreover, the doctrine of primary jurisdiction provides for staying the

case pending the administrative determination. This the court cannot do for the additional reason that Congress has placed review of STB decisions exclusively in the hands of the federal courts at the Court of Appeals level pursuant to 28 U.S.C. §§2321(a) and 2342(5). The Court of Appeals "has exclusive jurisdiction to enjoin, set aside, suspend . . . or to determine the validity of . . . (5) all rules, regulations, or final orders of the Surface Transportation Board" 28 U.S.C. §2321(a).¹ Consequently, a stay of the action pending STB determination is not possible as this court has no jurisdiction to review STB

¹ The statute provides that: [a] person . . . may file with the Board a complaint about a violation of [49 U.S.C. §§10101, et seq.] by a rail carrier providing transportation or service subject to the jurisdiction of the Board. . . . The Board may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Board may not dismiss a complaint . . . because of the absence of direct damage to the complainant. 49 U.S.C.S. §11701(b) (1998). ~~If a violation is found,~~ the STB "shall take appropriate action to compel compliance. . . ." 49 U.S.C.S. §11701(a) (1998). The STB may enter a declaratory order pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. §721(a).

Flynn v. Burlington Northern Santa Fe Corp.,
98 F. Supp. 2d 1186, 1191 (E.D. Wash. 2000).

determinations.

As the District Court in Buffalo S. R.R. v. Vill. of Croton-On-Hudson, 434 F.Supp.2d 241, 253 (S.D.N.Y. 2006)

observed:

These are the exclusive, Congressionally-mandated remedies for [the railroad's] purported violation of the ICCTA. Significantly, Congress has not vested the federal courts with authority to impose penalties for a violation of Chapter 109's licensing regulations unless the STB brings a civil proceeding. Certainly nothing in the ICCTA suggests that a carrier's violation of the licensing provisions of that Act renders it and its facilities subject to the jurisdiction of states and localities, thereby thwarting Congress' clear intent that rail carrier facilities of all sorts be created, operated and discontinued only at the behest of the Surface Transportation Board. In fact, section 10501 clearly states that "remedies provided under this part... preempt the remedies provided under Federal or State law." 49 U.S.C. §10501(b). To put it succinctly, illegal operations by a rail carrier do not preempt preemption

434 F.Supp.2d at 253 (emphasis supplied).²

² The situation would be different if there was any bona fide dispute that a rail carrier operated the transloading facility, or that STB might disclaim primary jurisdiction, in which case a stay rather than dismissal is appropriate. Pinelawn Cemetery v. Coastal Distribution, LLC, 74 A.D.3d 938, 941 (2d Dept. 2010). Here, however, no party suggests that there is a procedure for STB to disclaim primary jurisdiction in a case like this, and there is no question that respondent WCOR (to whom the property was leased for construction and operation of the transload facility) is a licensed rail carrier. New York & Atlantic Railway Company v. Surface Transportation Board (Pinelawn Cemetery Corporation), 635 F.3d 66, 74 (2d Cir. 2011) ("where the railroad maintains the appropriate control over the transload facility, the STB exercises its exclusive

Further, the court does not find that petitioners have properly asserted a NEPA claim as such review is only triggered where STB determines that a permit is necessary. Consequently, the STB not having been consulted, and not having determined that a NEPA review is necessary, any NEPA cause of action is premature. Moreover, there is no private right of action under NEPA. Flynn v. Burlington Northern Santa Fe Corp., 98 F.Supp.2d at 1193 (citing Sierra Club v. Penfold, 857 F.2d 1307, 1315 (9th Cir. 1988 [NEPA itself authorizes no private right of action])).

Accordingly, petitioners' third cause of action is dismissed.

SEORA - STANDING

Respondents, the Village of Painted Post (the "Village"), Painted Post Development, LLC ("PPD") and SWEPI, LP ("SWEPI") move to dismiss the first cause of action challenging the Village's review pursuant to the New York State Environmental Quality Review Act ("SEQRA") on grounds that the petitioners lack standing. Although in the dissent on the issue of standing in Matter of Save the Pine Bush, Inc. v. Common Council of the City of Albany, 13 N.Y.3d 297 (2009), Judge Pigott summarized the primary rule of standing upon which the majority predicated its decision:

SEQRA cases involving standing issues have

 jurisdiction and federal preemption applies").

been decided under rules set down by this Court in Society of Plastics Indus. v. County of Suffolk (77 N.Y.2d 761 [1991]). In that case, we recognized that the Legislature did not intend every person or citizen to have the right to sue to compel SEQRA compliance (id. at 770). Rather, in order to have standing, a party must demonstrate an "injury in fact"--an actual legal stake in the matter being adjudicated--which falls within the "zone of interests, or concerns, sought to be promoted or protected by the statutory provision under which the agency has acted" (id. at 772-773 [citations omitted]). With particular reference to land use cases, we held that the injury must constitute a "special harm" such that the party would "suffer direct harm, injury that is in some way different from that of the public at large" (id. at 774). In other words, the plaintiff must show a "direct interest in the administrative action challenged, different in kind or degree from the public at large" (id. at 775).

Matter of Save the Pine Bush, Inc. v. Common Council of the City of Albany, 13 N.Y.3d 297, 308-309 (2009) (Pigott, J., concurring).

"These same principles of standing apply whether the party seeking relief is one person or . . . an association of persons."

Soc'y of Plastics Indus. v. County of Suffolk, 77 N.Y.2d 761, 775 (1991). For organizational petitioners, it is also required

"that some or all of the members themselves have standing to sue,

for standing which does not otherwise exist cannot be supplied by

the mere multiplication of potential plaintiffs." Dental Soc. of New York v. Carey, 61 N.Y.2d 330, 333 (1984).

The Village, PPC and SWEPI contend that the organizational petitioners have failed to allege that any of their members have

or would have standing in this action. That is, according to respondents, the organization petitioners have not alleged any harm to their members "different in kind or degree from the public at large." Matter of Save the Pine Bush, Inc. v. Common Council of the City of Albany, 13 N.Y.3d at 309.

Petitioners point out that the Court of Appeals has held that "an appropriate representative association should have standing to assert rights of the individual members of the association where such persons may be affected by a rezoning, variance or an exception determination of a zoning board." Douglaston Civic Association v. Galvan, 36 N.Y. 1, 14 (1974). They point to the affidavits of organization members who aver that members live above the Corning Aquifer or Elimra-Horseheads-Big Flats aquifer in Painted Post, in Corning, Elmira, Horseheads and Big Flats.³ Those affidavits allege that members will be adversely affected by contaminated or diminished drinking water supplies, blockages associated with increased rail and automobile traffic, and noise and air pollution from the rail loading facility. These generalized environmental injuries are insufficient and not different than those suffered by the public at large, and petitioners adduce no probative evidence⁴ that the

³ See affidavits of Sierra Club member Kate Bartholomew, People for Healthy Environment, Inc. president Ruth Young.

⁴ On the requirement of proof, as opposed to mere pleading, on the standing issue, see Matter of Noslen Corporation v.

injuries to its members are in any manner different than those impacting the public at large. Dental Soc. of New York v. Carey, 61 N.Y.2d at 333.

Further, as respondents point out, none of the individual petitioners assert that they are members of the organization respondents.⁵ Accordingly, the organizational petitioners do not have standing to challenge respondents' SEQRA review. An association or organization "must show that at least one of its members would have standing to sue, that it is representative of the organizational purposes it asserts and that the case would not require the participation of individual members." New York State Assn of Nurse Anesthetists v. Novello, 2 N.Y.3d 207, 211 (2004). See Matter of Hudson Property Owners' Coalition, Inc. v. Slocum, 92 A.D.3d 1198, 1199 (3d Dept. 2012); In re Citizens Emergency Committee to Preserve Preservation v. Tierney, 70 A.D.3d 576, 576-77 (1st Dept. 2010). Petitioners fail on the first element.

Turning to the individual petitioners (excepting John

Ontario County Bd. Of Supervisors, 295 A.D.2d 924, 925 (4th Dept. 2002); Matter of Piela v. Van Voris, 229 A.D.2d 94, 95 (3d Dept 1997) ("the distinction is particularly germane in a CPLR Article 78 proceeding").

⁵ Eugene Stolfi, of Corning, alleges that he is a member of The Sierra Club, but he is not an individual petitioner. He only "speculates that water removal for rail shipments for fracking in Pennsylvania is increasing the hardness of the water in this aquifer." Stolfi affidavit.

Marvin, who is separately analyzed), respondents argue that they have made only generalized allegations of harm that are no different than that experienced by the general public.

Respondents assert that concerns about quantity and quality of drinking water and new traffic patterns and noise pollution are unsupported and insufficient. The court agrees. Alleged harm associated with traffic patterns and noise levels and water quality in general are too generalized and are not distinct from the harm suffered by the public at large. Soc'y of Plastics Indus. v. County of Suffolk, 77 N.Y.2d at 775; Save Our Main Street Buildings v. Greene County Legislature, 293 A.D.2d 907, 909 (3d Dept. 2002) ("standing cannot be based on the claim that 'a project would "indirectly affect traffic patterns, noise levels, air quality and aesthetics throughout a wide area"'") (quoting Oates v. Village of Watkins Glen, 290 A.D.2d 758, 481 (3d Dept. 2002) and Society of Plastics, 77 N.Y.2d at 775); Matter of Gallahan v. Planning Bd of City of Ithaca, 307 A.D.2d 684, 685 (3d Dept. 2003) ("traffic patterns, noise levels, air quality and aesthetics throughout a wide area," [] generally are insufficient to establish standing"). "While standing has been afforded parties who have shown that the proposed action might affect the parties' water supplied by a well that could be impacted by storm water drainage (see Matter of Many v. Village of Sharon Springs Board of Trustees, 218 A.D.2d 845; Chase v.

Board of Education of the Roxbury School District, 188 A.D.2d 192), courts have denied standing where the injury alleged involves water supplied to the public at large. (See, e.g., Schulz v. Warren County Bd. Of Supervisors, 206 A.D.2d 672; Otsego 2000, Inc. v. Planning Bd. Of the Town of Ostego, 171 A.D.2d 259).” In re Application of Croton Watershed Clean Water Coalition, Inc. 2 Misc.3d 1010(A), 784 N.Y.S.2d 919 (Table), 2004 WL 829434 (Sup. Ct. West. Co. April 1, 2004).

As well explained by the Third Department, in Save the Pine Bush “the Court of Appeals did not remove the requirement that a member of the organization seeking standing experience actual harm, but, rather, held that such harm can be proven by a direct interference with an individual’s ability to experience and enjoy a natural resource, even if that individual does not live in close proximity to that resource, so long as the individual can demonstrate that he or she regularly uses the area to be impacted.” Finger Lakes Zero Waste Coalition, Inc. v. Martens, 95 A.D.3d 1420, 1422 n.1 (3d Dept. 2012).

Furthermore, contrary to petitioners’ argument, the case of Matter of Save the Pine Bush, Inc. v. Common Council of the City of Albany, 13 N.Y.3d 297, supra, does not aid petitioners’ standing argument. Petitioners seek to take advantage of the holding of Save the Pine Bush by reference to their members’ use and enjoyment of the Corning and downstream aquifers and their

interest in a clean and adequate water supply. Standing predicated upon similar generalized allegations was rejected in Long Island Pine Barrens Society, Inc. v. Planning Board Town of Brookhaven, 213 A.D.2d 484, 485-86 (2d Dept. 1995) ("generalized allegations that this project will have a deleterious impact upon the aquifer lying beneath South Setauket Pine Barrens are insufficient to establish their standing"). As in Clean Water Advocates of New York, Inc. v. New York State Dept. of Environ. Conserv., 103 A.D.3d 1006, 2013 WL 626923 (3d Dept. Feb. 21, 2013), petitioners' allegations of harm to any individual petitioner, or to the organizations' petitioners' members, by reason of deleterious effects of the project on the water supply are wholly speculative and conjectural. Id. 103 A.D.3d at ___ ("any claim of environmentally-related injury to these water bodies as a result of DEC's acceptance of the SPPP is devoid of evidentiary support and far too speculative and conjectural to demonstrate a specific injury-in-fact"). Moreover, "[a]lthough petitioner[s] alleg[e] that its members use the water bodies for recreational purposes and as their potable water source, . . . [they] d[o] not allege, much less submit evidence, that any of . . . [their] members do so any more frequently than any other person with physical access to those same resources." Id. 103 A.D.3d at ___. Accordingly, Save the Pine Bush is unavailing to petitioners on this record.

Hoping that he will confer standing on all petitioners,

Matter of Humane Society v. Empire State Dev. Corp., 53 A.D.3d 1013, 1017 n.2 (3d Dept. 2008) ("inasmuch as one of the petitioners has standing, it is not necessary to address respondents' challenges regarding the standing of the remaining petitioners"), the closest petitioner, John Marvin, asserts that he lives "one-half block" from the water loading facility, and in eye-sight of it across a school athletic field.⁶ He avers that train noises have woken him up at night and that this is harm not suffered by the general public. Mr. Marvin does not distinguish this noise from that of the previous train noises associated with the existing rail line or from the former industrial use of the area. Matter of Finger Lakes Zero Waste Coalition, Inc. v. Martens, 95 A.D.3d 1420, 1422-23 (3d Dept. 2012) ("Roll's

⁶ It is true that Marvin lives close enough that he can see the transloading facility from his front porch. The courts "have recognized standing based upon an allegation that a petitioner resides in the immediate vicinity of a project that will affect the petitioner's scenic view." Ziamba v. City of Troy, 37 A.D.3d 68, 71-72 (3d Dept. 2006) (citing Matter of Steele v. Town of Salem Planning Bd., 200 A.D.2d 870, 872 [3d Dept. 1994]; Matter of McGrath v. Town Bd. of Town of N. Greenbush, 254 A.D.2d 614, 616 [3d Dept. 1998]). However, if "a view of an abandoned landfill can hardly be characterized as the type of 'scenic view' that may be a relevant factor in establishing standing," Gallahan v. Planning Bd. of City Of Ithaca, 307 A.D.2d 684, 685 (3d Dept. 2003), neither can a view of the abandoned Ingersoll Rand foundry plant facility confer standing associated with proximity. Compare Ziamba v. City of Troy, 37 A.D.3d at 72 (standing conferred by scenic view of historic buildings proposed to be demolished). Nor does Marvin establish that his view of the facility involves "any adverse effects on scenic view [that] would be . . . different for [him] than for the public at large" in the area. Matter of Save Our Main St. Bldgs. v. Greene County Legislature, 293 A.D.2d at 909.

affidavit stating that she can presently hear some noise from the landfill does not indicate if, or to what extent, the noise level changed in November 2010 once work began in the soil borrow area. Roll's generalized assertions that the project will increase her exposure to noise and dust are insufficient to demonstrate that she will suffer damages that are distinct from those suffered by the public at large"). Marvin's undifferentiated complaint of train noise, however, may be considered in the context of an industrial and rail facility which fell into disuse for a considerable period of time prior to construction of the subject project, and thus his complaint of rail noise is availing to show harm distinct from that suffered by the general public.

It is urged in connection with Marvin that the inference of injury exception to the rule requiring proof of damages different than that to the public applies because he owns property in close proximity to the site where the action is carried out. See e.g., Matter of Sun-Brite Car Wash, Inc. v. Board of Zoning of Appeals of Town of North Hampton, 69 N.Y.2d 406 (1987). "[A] property owner in 'proximity to premises that are the subject of a zoning determination may have standing to seek judicial review without pleading and proving special damage, because adverse effect or aggrievement can be inferred from the proximity." Matter of Stumpo v. DeMartino, 283 A.D.2d 954, 954 (4th Dept. 2001) (citing Matter of Sun-Brite Car Wash, Inc. v. Board of Zoning of Appeals

of Town of North Hampton, 69 N.Y.2d at 409-410). On the other hand, "when no zoning-related issue is involved, there is no presumption of standing to raise a SEQRA challenge based on a party's close proximity alone." Save Our Main Street Buildings v. Greene County Legislature, 293 A.D.2d at 908. See Rent Stabilization Ass'n of N.Y.C., Inc. v. Miller, 15 A.D.3d 194, 194-95 (1st Dept. 2005) ("Since the instant case does not involve a zoning enactment, petitioners are not entitled to the presumption that they have suffered harm").

According to his affidavit and the petition, John Marvin lives a half block from the water loading facility. No other measurement of distance is offered in Petitioners' papers. This alone might be fatal to his claim of standing, Matter of Piela v. Van Voris, 229 A.D.2d 94, 95 (3d Dept 1997), but respondents concede that he lives .3 miles, or 1,584 feet, from the transloading facility. Unfortunately, respondents measure that distance along Charles Street down from Marvin's address to the intersection of West Water Street and up West Water to the *address* of the transloading facility. This is a circuitous route, however, inasmuch as the facility was built between West Water and West Chemung Streets, and is actually closer to West Chemung Street where the old rail line is situated than West Water Street. Accordingly, the real distance must be considerably shorter than respondents estimate. Measurement of

the isololose of the triangle depicted in the Piccotti affidavit (Exh. B) would yield a distance as the crow flies to the West Water Street address of some 1,180.6 feet, and the court concludes that about a third of that distance needs to be subtracted given where the facility is situate between West Water and Chemung Streets. In any event, the true distance is less than 1,000 feet.

As observed in Finger Lakes Zero Waste Coalition, Inc. v. Martens, 95 A.D.3d at 1421-22, there can be found cases denying the proximity presumption on distance grounds shorter than the court concludes separates the facility from Marvin's house. See Matter of Gallahan v. Planning Bd. of City of Ithaca, 307 A.D.2d 684, 685 [3d Dept. 2003], lv. denied 1 N.Y.3d 501 [2003] [no presumption at 700 feet]; Matter of Oates v. Village of Watkins Glen, 290 A.D.2d 758, 760-761 [3d Dept. 2002] [no presumption at 530 feet]; Matter of Buerger v. Town of Grafton, 235 A.D.2d 984, 985 [3d Dept. 1997], lv. denied 89 N.Y.2d 816 [1997] [no presumption at 600 feet]; Matter of Burns Pharm. of Rensselaer v. Conley, 146 A.D.2d 842, 844 [3d Dept. 1989] [no presumption at 1,000 feet]), all cited in Finger Lakes Zero Waste Coalition, Inc. v. Martens, supra. See also, Matter of Rediker v. Town of Philipstown, 280 A.D.2d 548 (2d Dept. 2001) (one-third of a mile not in close proximity [586.66 yards]). Fourth Department precedent, however, would support application of the presumption

if the proximity presumption was otherwise available. Matter of Ontario Heights Homeowners Assoc. v. Town of Oswego Planning Board, 77 A.D.3d 1465 (4th Dept. 2010) (petitioner owning property 697 feet from the subject property line and 1,242 from the edge of the proposed building improvements, and who alleges injury from the decision to permit the developer to construct a private sewage treatment plant thereon instead of using the municipal sewage system, has standing inferred from proximity); Matter of Michalak v. Zoning Board of Appeals of Town of Pomfret, 286 A.D.2d 906 (4th Dept 2001) (adverse affect or aggrievement can be inferred where petitioners own property 200 feet from the subject property).

Petitioners rely on another such case, Matter of La Delfa v. Village of Mt. Morris, 213 A.D.2d 1024 (4th Dept. 1995), but such reliance is misplaced as would be reliance on the last two cases cited in the immediately preceding paragraph. First, upon searching the Record on Appeal, specifically then Acting (now Appellate Division Associate) Justice Nancy Smith's decision, the cited case involved "legislative" municipal action which "effectively create[d] a change or amendment to the zoning ordinances of the municipality." Id. Record on Appeal, at 19 (Smith, J.). Accordingly, as alluded to above, an inference or presumption of injury by reason of proximity was permissible. Save Our Main Street Buildings v. Greene County Legislature, 293

A.D.2d at 908 ("when no zoning-related issue is involved, there is no presumption of standing to raise a SEQRA challenge based on a party's close proximity alone"); Rent Stabilization Ass'n of N.Y.C., Inc. v. Miller, 15 A.D.3d 194, 194-95 (1st Dept. 2005) ("Since the instant case does not involve a zoning enactment, petitioners are not entitled to the presumption that they have suffered harm"). Here, no zoning related issue is present, and accordingly the court cannot credit petitioners' invocation of the inference of injury presumption.

The court is left, therefore, with Marvin's proximity and complaint of train noise newly introduced into his neighborhood, which he maintains, and the court finds, is different than the noise suffered by the public in general. In other words, this is not a proximity "without more" case; Marvin has standing. Compare Clean Water Advocates of New York, Inc. v. New York State Dept. of Environ. Consv., 103 A.D.3d 1006, at ____ (proximity . . . to the proposed project does not, without more, give rise to a presumption").

Because Marvin has standing, the court need not dismiss the other petitioners who do not have standing. Matter of Humane Society v. Empire State Dev. Corp., 53 A.D.3d 1013, 1017 n.2 (3d Dept. 2008) ("inasmuch as one of the petitioners has standing, it is not necessary to address respondents' challenges regarding the standing of the remaining petitioners").

SEQRA - MERITS

The purpose of SEQRA "is to inject environmental considerations directly into governmental decision making."

Matter of Coca-Cola Bottling Co. v. Board of Estimate, 72 N.Y.2d 674, 679 (1988).

It is well established that SEQRA "is a law of general applicability" (Matter of Sour Mtn. Realty, Inc. v. New York State Dept. of Env'tl. Conservation, 260 A.D.2d 920, 923, 688 N.Y.S.2d 842 [1999], lv denied 93 N.Y.2d 815, 719 N.E.2d 923, 697 N.Y.S.2d 562 [1999]). Moreover, the Legislature has declared "that 'to the fullest extent possible' statutes should be administered by the State and its political subdivisions in accordance with the policies set forth in SEQRA and that environmental factors should be considered in reaching decisions on proposed projects." (Matter of Tri-County Taxpayers Assn. v. Town Bd. of Town of Queensbury, 55 N.Y.2d 41, 46, 432 N.E.2d 592, 447 N.Y.S.2d 699 [1982] of Tri-County Taxpayers Assn. v. Town Bd. of Town of Queensbury, 55 N.Y.2d 41, 46, 432 N.E.2d 592, 447 N.Y.S.2d 699 [1982] [quoting ECL 8-0103 (6)]).

City Council v. Town Bd., 3 N.Y.3d 508, 515-16 (2004)

"Under SEQRA, the individual agency having the primary authority to approve or disapprove a particular project application is responsible for making the environmental impact assessment (see, ECL §§8-0105[7]; 8-0109, 8-0111)." Matter of Long Island Pine Barrens Society, Inc. v. Planning Board of the Town of Brookhaven, 80 N.Y.2d 500, 515 (1992). "In reviewing whether a determination was made in accordance with SEQRA and its implementing regulations, the court is "limited to reviewing

whether the determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion." Matter of Gernatt Asphalt Prods. v. Town of Sardinia, 87 N.Y.2d 668, 688 (1996).

The court finds that the Village's Type II designation of the Surplus Water Sale Agreement ("Agreement") was arbitrary and capricious, but for reasons different than those posed by petitioners. The Village also violated SEQRA when it failed to consider the environmental impact of the Agreement with that of the Lease.

Under SEQRA, an action is either a Type I, Type II, or Unlisted. "[A] Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS. "For all individual actions which are Type I or Unlisted, the determination of significance must be made by comparing the impacts which may be reasonably expected to result from the proposed action with the criteria listed in section 617.7(c)." 6 NYCRR §617.4(a)(1). Type II actions are those actions that "have been determined not to have a significant impact on the environment." 6 NYCRR §617.5(a). The Type I and Type II actions listed in the regulations are applicable to all agencies. An Unlisted action is one that is "not identified as Type I or Type II action" 6 NYCRR §617.2(ak). "Unlisted actions range from very minor zoning

variances to complex construction activities falling just below the thresholds for Type I actions" SEQR Handbook, p. 27 (3d ed. 2010).

The SEORA regulations specifically provide that a Type I action occurs when the agency directly undertakes, funds or approves "a project or action that would use ground or surface water in excess of 2,000,000 gallons per day ["gpd"]." 6 NYCRR §617.4(b)(6)(ii). Here, the Surplus Water Sale Agreement (sometimes the "Agreement") calls for the sale of only 1,000,000 gpd. The Village designated the Agreement as a Type II action under 6 NYCRR §617.5(b)(25) [purchase or sale of "furnishings, equipment or supplies, including surplus government property"]. However, § 617.5(b)(25) is not applicable to the Agreement as the regulations implicitly designate water uses falling below the listed threshold as an Unlisted action, for the following reasons.

Numerous listed Type I actions involve specific thresholds. 6 NYCRR §617.4(b)(2), (4), (5), (6), and (7). The regulations further provide that an Unlisted action not meeting the threshold requirement may be elevated to a Type I action under certain conditions. 6 NYCRR §617.4(b)(8) through (10). For instance, a Type I action is "any Unlisted action (unless the action is designated for the preservation of the facility or site) occurring wholly or partially within, or substantially

contiguous to any historic building, structure, facility, site or district" 6 NYCRR §617.4(b)(9). Thus, the regulations evince a scheme whereby activities that would otherwise be Type I activities, but for falling short of the threshold requirements, should be categorized as Unlisted actions for the very reason that under certain conditions, those same activities may become Type I actions. See Wertheim v. Albertson Water Dist., 207 A.D.2d 896 (2d Dept. 1994) (DEC's designation of a water filtration system using less than 2,000,000 gallons of water per day as an Unlisted action was rational and reasonable even where such use occurred wholly or partially within or substantially contiguous to any publicly owned or operated parkland - only a water use of 25% of 2,000,000 and so situated would be a Type I action).

In an analogous case, the Court of Appeals noted that the "DEC amended its regulations to clarify that the annexation of 100 or more contiguous acres constitutes a Type I action (see 6 NYCRR §§617.4 [b] [4]). In doing so, DEC implicitly determined that an annexation of less than 100 acres is an 'unlisted action' (see Cross Westchester Dev. Corp. v Town Bd. of Town of Greenburgh, 141 A.D.2d 796, 797, 529 N.Y.S.2d 870 [1988]; SEQR Handbook, at 105 [1992 ed])." City Council v. Town Bd., 3 N.Y.3d 508, 517-518 (2004). Accordingly, the court holds that the DEC has implicitly designated a water use of 1,000,000 gallons per

day as an Unlisted action and, therefore, the Village's designation of the action as Type II was arbitrary and capricious. Id.⁷

Even if the DEC had not defined the water use at issue here as an Unlisted action, the Village's interpretation of §617.5(c)(25) cannot be credited.⁸ The Department of

⁷ By designating a use of water in an amount below the Type I threshold as the Village did here, the Agreement was not able to be considered under 6 NYCRR §617.4(b)(10) which applies only to Unlisted actions and lowers the water use threshold to 500,000 gpd under certain conditions, which may be present here, as discussed below.

⁸ The entire record of the Village's Type II determination, as found in the Administrative Record, is contained in the Village's resolution of February 23, 2012, authorizing the Mayor to enter into the Surplus Water Sale Agreement. Administrative Record, Ex. 2. The resolution reads:

the Village has determined that based upon the findings made under the New York State Environmental Quality Review Act in another resolution enacted by the Village . . . and the Village's review of the appropriate documentation and information including but not limited to the negative declaration and Type II determination under SEQRA the village makes the following findings.

Administrative Record, Ex. 2. The February 23, 2012, resolution provides no reference to any specific SEQRA regulation to justify the Type II designation. Similarly, the other documents included in the Administrative Record make no citation to any regulation relied upon in reaching the Type II designation. The Verified Petition asserts that a Village resolution adopted on February 23, 2012 specifically cites 6 NYCRR §617.5(c)(25), although the Administrative Record in this matter contains no resolution with such a reference. Verified Petition ¶21. In any event, both parties agree that the Village relied upon 6 NYCRR §617.5(c)(25). As set forth above, however, water use of a 1,000,000 gallons per day is an Unlisted action and the Village

Conservation, the agency responsible for issuing the SEQRA rules and regulations, provides in its commentary that §617.5(c)(25) is applicable to personal property such as "interior furnishings; fire trucks; garbage and recycling hauling trucks; school busses; maintenance vehicles; construction equipment such as bulldozers, backhoes, dump trucks; police cars; computers, scanners, and related equipment; firearms, protective vests, communications equipment, fuel, tools and office supplies." The SEQR Handbook, p. 40 (3d ed. 2010). The SEQR Handbook explains: "[T]he simple purchase or sale of materials does not create an adverse environmental impact." By contrast, a significant daily withdrawal of water, representing roughly one fourth of the Village's total well capacity [Affidavit of Larry E. Smith, August 1, 2012, ¶6], is of an entirely different character than the simple purchase and sale of materials the DEC explains is the purpose of the §617.5(c)(25). In fact, water use in the volume at issue here is highly regulated in this state. On February 15, 2012, the Legislature expanded the DEC's authority over water withdrawals (agricultural withdrawals are exempt from the permit program) to include all withdrawals of water or 100,000 gallons per day.⁹ Such withdrawals will now require a DEC permit if they

should have recognized it as such.

⁹ In recognition of its sovereign duty to conserve and control its water resources for the benefit of all inhabitants of the state,

are not already regulated by the Delaware or Susquehanna River Basin Commissions. ECL §15-1501, et seq. Water withdrawals from the Corning Aquifer, at issue here, are regulated by the Susquehanna River Basin Commission ("SRBC"). ECL §21-1301. The SRBC purpose in regulating withdrawals is to "provide for the planning conservation, utilization, development, management, and control of the water resources of the basin" ECL §21-1301(1.3) (4). Accordingly, a large volume daily withdrawal of a resource vital to the well being of our state is not a mere surplus sale of Village property akin to selling a bus or fire engine no longer needed by the Village. "Given the circumstances

it is hereby declared to be the public policy of the state of New York that:

1. The regulation and control of the water resources of the state of New York be exercised only pursuant to the laws of this state;
2. The waters of the state be conserved and developed for all public beneficial uses;
3. Comprehensive planning be undertaken for the protection, conservation, equitable and wise use and development of the water resources of the state to the end that such water resources be not wasted and shall be adequate to meet the present and future needs for domestic, municipal, agricultural, commercial, industrial, power, recreational and other public, beneficial purposes

ECL §15-0105.

of this case, consideration should have been given to environmental concerns associated with the proposed action." Town of Bedford v. White, 204 A.D.2d 557, 559 (2d Dept. 1994) ("we agree that the DOT's classification of the proposed action as a Type II action was arbitrary and capricious" as the "action does not fit 'squarely' within" the Type II regulatory criteria).

Segmentation

"Segmentation means the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance." 6 NYCRR §617.2(ag). It cannot be controverted that the sale of the water, and the lease of the land for the Railroad to build and operate the transloading of the water, are intrinsically related.

The Surplus Water Sale Agreement provides that "SWEPI LP may purchase and take delivery of up to 1,000,000 gallons per day . . . from the filling/metering station and transloading facility to be constructed and located in the vicinity of 450 West Water Street" Administrative Record, Ex. 4, Surplus Water Sale Agreement, March 1, 2012, ¶1. The Lease provides, in the second whereas clause on page 1, that the Lease is "in connection with a certain bulk water sale contract, dated as of March 1, 2012[] by and between the Village and SWEPI LP SWEPI has arranged

to have the Lessee withdraw, load and transport such water via rail line from the Premises" Administrative Record, Ex. 3, Lease Agreement, March 1, 2012. As explained in the Agreements at issue, there would have been no reason to lease the land to the Railroad, to allow the Railroad to build the facility, but for the Surplus Water Sale Agreement. In fact, respondents do not argue that the two actions are unrelated. Respondents argue, rather, that it was not necessary to consider the Surplus Water Sale Agreement together with the transloading facility lease because, as a Type II action, the Surplus Water Sale Agreement was exempt from further SEQRA review. As found above, the Surplus Water Sale Agreement should not have been classified as a Type II action. The court finds, therefore, that the two projects were improperly segmented.

Moreover, petitioners' classification of the Surplus Water Agreement as a Type II action permitted it to avoid a possible "upgrade" from an Unlisted action to a Type I action had it been considered with the Lease. As noted, 6 NYCRR §617.4(b)(6)(ii) specifically defines a project or action that would use ground or surface water in excess of 2,000,000 gallons per day ["gpd"] as a Type I action.¹⁰ The threshold requirement is reduced from 2,000,000 gpd to 500,000 gpd, where the action occurs "wholly or

¹⁰ Petitioners view of §617.5(b)(25) creates an unwarranted exception to §617.4(b)(6)(ii) where the water use is labeled "excess."

partially within or substantially contiguous to any publically owned or operated parkland, recreation area or designated open space . . . ,” as may be the case here.

Here, Hogdmen Park is arguably substantially contiguous to the transloading facility where the water sold by the Village is loaded onto the trains. “[T]he Department of Environmental Conservation, the agency in charge of implementing SEQRA, has indicated that it interprets “substantially contiguous” to mean “in proximity to” or “near.” Lorberbaum v. Pearl, 182 A.D.2d 897, 900 (3d Dept. 1992) (citing a 1991 Draft SEQR Handbook for definition of substantially contiguous). DEC provides that “[t]he term “substantially contiguous” as used in both section 617.4(b)(9) and (10), is intended to cover situations where a proposed activity is not directly adjacent to a sensitive resource, but is in close enough proximity that it could potentially have an impact.” SEQR Handbook, p. 24 (3d ed. 2010); Matter of Jiles v. Flowers, 182 A.D.2d 762 (2d Dept. 1992) (“It is well settled that the construction given statutes and regulations by the agency responsible for their administration, if not irrational or unreasonable, should be upheld”).

The transloading facility is located at 350 West Water Street in Painted Post, New York and encompasses 11.4 acres of the former Ingersoll Rand Foundry property. Originally, the Ingersoll Rand Foundry property parcel was 57.4 acres, but in

1986 a 7.5 acre parcel was conveyed to the Village for use as a recreation park, now known as Hogmen [Hodgmen] Park."

Administrative Record, Ex. 10, p. 1, ¶2. Review of the site plans at Exhibit 8 of the Administrative Record appears to show the transloading facility in close proximity to Hodgmen Park. Respondents argue that the park and the transloading facility are separated by West Water Street, and therefore are not substantially contiguous. Nevertheless, this lower threshold (500,000 gpd threshold found in §617(4)(b)(10), were the SEQRA review of the two contracts not segmented, would necessarily have to be considered depending upon whether the Village finds the park to be substantially contiguous to the transloading facility in an unsegmented SEQRA review.

In sum, the Village Board acted arbitrarily and capriciously when it classified the Surplus Water Sale Agreement as a Type II action and failed to apply the criteria set out in the regulations to determine whether an EIS should issue,¹¹ and when it improperly segmented the SEQRA review of the Lease from the Surplus Water Sale Agreement. Lorberbaum v. Pearl, 182 A.D.2d 897; Houser v. Finnerman, 99 A.D.2d 926 (3d Dept. 1984). Accordingly, searching the record, summary judgment is granted to

¹¹ "Type I actions require the preparation of a "full" EAF whereas unlisted actions may use either the "full" or "short" EAF (6 NYCRR 617.6 [a] [2], [3])." City Council v. Town Bd., 3 N.Y.3d at 520.

petitioners as follows: The Village resolutions designating the Surplus Water Agreement as a Type II action is annulled. Similarly, the Negative Declaration as to the Lease Agreement must be annulled, as in reaching the decision as to a negative declaration, the Village Board improperly segmented its review of the Lease from the Surplus Water Sale Agreement.

Petitioners also seek the annulment of the Village approvals of the Surplus Water Sale agreement and the Lease. In considering this, the court is mindful that

The mandate that agencies implement SEQRA's procedural mechanisms to the "fullest extent possible" reflects the Legislature's view that the substance of SEQRA cannot be achieved without its procedure, and that departures from SEQRA's procedural mechanisms thwart the purposes of the statute. Thus it is clear that strict, not substantial, compliance is required.

Nor is strict compliance with SEQRA a meaningless hurdle. Rather, the requirement of strict compliance and attendant spectre of de novo environmental review insure that agencies will err on the side of meticulous care in their environmental review. Anything less than strict compliance, moreover, offers an incentive to cut corners and then cure defects only after protracted litigation, all at the ultimate expense of the environment.

King v. Saratoga County Bd. of Supervisors, 89 N.Y.2d 341, 347-348 (1996). The Court of Appeals in King v. Saratoga County Bd. of Supervisors reviewed three of its leading cases finding SEQRA violations. In each case, the Court found essentially that

there is no support in the statute for a "cure of a SEQRA violation" and that annulment of the underlying approvals was required. King v. Saratoga County Bd. of Supervisors, 89 N.Y.2d at 348. But in the King v. Saratoga County Bd. of Supervisors case, the court found an exception to annulment where the lead agency had "both procedurally and substantively . . . actually performed each of the required steps in the SEQRA review process." Such is not the case here where the Village short circuited the SEQRA process as to the Surplus Water Sale Agreement by an improper Type II designation and failed to consider the Surplus Water Sale Agreement when issuing its negative determination as to the Lease due to improper segmentation. Accordingly, the Village Board resolutions approving the Surplus Water Sale Agreement and Lease agreement of February 23, 2012, are annulled. King v. Saratoga County Bd. of Supervisors, 89 N.Y.2d at 348; see also N.Y. City Coalition to End Lead Poisoning, Inc. v. Vallone, 100 N.Y.2d 337, 348 (2003) ("Accordingly, where a lead agency has failed to comply with SEQRA's mandates, the negative declaration must be nullified (see e.g. Chinese Staff & Workers Assn. v. City of New York, 68 N.Y.2d 359, 368-369, 509 N.Y.S.2d 499, 502 N.E.2d 176 [1986])."

Petitioners are granted an injunction enjoining further water withdrawals pursuant to the Surplus Water Sale Agreement pending the Village respondent's compliance with SEQRA.

In so finding, it is not necessary to decide, and the court does not reach, the parties' arguments related to SRBC except to hold that compliance with SEQRA is not excused by the fact that the Susquehanna River Basin Commission must issue a permit for the subsequent water withdrawal.¹² Neither the Susquehanna River Basin Compact (ECL 21-1301) or its regulations (21 NYCRR §1806-8) provide for preemption of SEQRA. It is observed that, at oral argument of this matter, counsel for the Village emphatically stated that the Village did not contend that the SRBC compact or its regulations preempted SEQRA.

Nor does the court address whether compliance with SEQRA in this case means that the kind of comprehensive "cumulative impact study" proposed by petitioners is necessary. See generally, Matter of Long Island Pine Barrens Society, Inc. v. Planning Bd. Of the Town of Brookhaven, 80 N.Y.2d 500, 512-18 (1992); Matter of Saratoga Lake Protection and Improvement District v. Dept. of Public Works of City of Saratoga Springs, 46 A.D.3d 979, 986-87 (3d Dept. 2007); Long Island Pine Barrens Society, Inc. v. Town Bd. Of Town of East Hampton, 293 A.D.2d 616, 617 (2d Dept. 2002); Matter of North Fork Environ Mental Council, Inc. v. Janoski, 196 A.D.2d 590, 591 (2d Dept. 1993).

¹² "Traditional doctrine holds that a court should decide no more than necessary to resolve the dispute before it." Immuno AG v. Moor-Jankowski, 77 N.Y.2d 235, 261 (1991).

SO ORDERED.


KENNETH R. FISHER
JUSTICE SUPREME COURT

DATED: March 25, 2013
Rochester, New York

2013 APR - 8 P 2:52
STEBEN COUNTY
CLERK'S OFFICE

ORDER TO SHOW CAUSE, DATED JUNE 26, 2012 [41-42]

n/c

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

~~JUDGE BRADSTREET~~
JUDGE LATHAM

Petitioners,

ORDER TO SHOW CAUSE

For a Judgment Pursuant to Article 78 of the Civil Practice
Laws and Rules

Index No. 2012-0210 CV

-against-

RJI No. _____

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

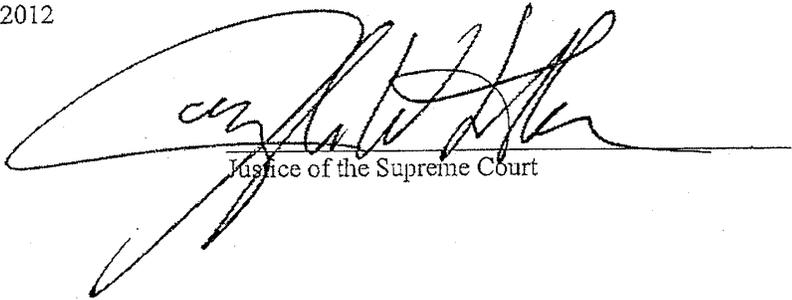
JUN 26 2012
2012 JUN 28 AM 11:15
CLERK OF THE SUPREME COURT
STEUBEN COUNTY

Upon reading the attorney's affidavit of Richard J. Lippes, Esq., one of the attorneys for
Petitioners herein, let the Respondents herein, or their attorneys, show cause at a special term of
this Court, at the courthouse located at 3 E. Pittsburg Sq., in the ^{Village} ~~Town~~ of Bath,
County of Steuben, State of New York on the 23rd day of July, 2012 at 1:30 p.m.
why a judgment shall not be made herein granting the relief sought in the Verified Petition, and
in particular grant a preliminary injunction enjoining all further work in furtherance of the
construction of the transloading facility in Painted Post, New York, which is referenced in the
~~Attached~~ ^{Attached} Petition.

Further, let personal service of this Order to Show Cause and supporting papers on the
Clerk of the Village of Painted Post serve as adequate service upon both the Village of Painted
Post and Painted Post Development, LLC, let personal service upon CT Corporation System, the
registered agent in New York for SWEPI, LP serve as adequate service upon SWEPI, LP, and let

personal service upon Myles Group LLC, the parent company of Wellsboro & Corning Railroad, LLC, serve as adequate service upon Wellsboro & Corning Railroad, LLC. Personal service on each of the respondents to be made on or before July 10, 2012.

DATED: Bath, New York
June ~~25~~ 2012



Justice of the Supreme Court

ENTER

VERIFIED PETITION, DATED JUNE 22, 2012 [43- 80]

nk

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

~~JUDGE BRADSTREET~~

JUDGE LATHAM

COPY

Petitioners,

VERIFIED PETITION

For a Judgment Pursuant to Article 78 of the Civil Practice
Laws and Rules

Index No. 2012-0810 W

-against-

RJI No.

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

2012 JUN 25 P 3:40
STEUBEN COUNTY
CLERK'S OFFICE
RECEIVED
OFFICE OF THE CLERK
STEUBEN COUNTY
AM 11:05

Petitioners, by their attorneys, RICHARD J. LIPPES & ASSOCIATES, Richard J.

Lippes, of counsel, and Rachel Treichler, respectfully allege as follows:

I. INTRODUCTION

1. This proceeding is brought pursuant to Article 78 of the Civil Practice Laws and Rules, seeking equitable relief to prevent the Respondents, and their agents and those acting in concert with them, from proceeding with activities intended to culminate in the construction of a new rail-loading facility in a residential area of the Village of Painted Post, New York, the transportation of water from the municipal water system by pipes and rail car from the rail-loading facility through the center of the Village to Wellsboro, Pennsylvania, and the distribution of the water transported to gas drilling sites in the Wellsboro area until such time as Respondents shall have fully complied with the New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8 (hereinafter cited as "SEQRA"), the New York State

Water Supply Law, Environmental Conservation Law, Article 15, Title 15 (hereinafter cited as “Water Supply Law”), the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. (hereinafter cited as “NEPA”), and all applicable requirements under the Interstate Commerce Commission Termination Act of 1995 and all other federal laws regulating railroads (hereinafter collectively cited as “ICCTA”).

II. PARTIES

2. Petitioner Sierra Club is a not-for-profit corporation organized under the laws of the State of California. It is the oldest and largest environmental organization in the country. The protection of water resources is a key aspect of the Sierra Club’s work. The Sierra Club, and its members, have long been concerned about both the quantity and quality of this country’s potable drinking water supplies, and have worked to educate the public to assure safe drinking water supplies for its members and the public, and have brought numerous lawsuits to protect those drinking water supplies under various federal, state and local laws. The Sierra Club has more than 600,000 members nationwide, including approximately 37,000 members in New York State, many of whom live in the Village of Painted Post and surrounding areas, and approximately 26,000 members in Pennsylvania, many of whom live in Wellsboro, Pennsylvania and surrounding areas.

Sierra Club members in the Painted Post and surrounding areas will be adversely affected by the actions complained of in this petition. Their drinking water supplies may be contaminated or diminished and they may be adversely affected by the increase in rail traffic, automobile traffic blockages, and the increased noise and air contamination that will be created in Painted Post by the water shipments from the rail loading facility and the receipt of empty railcars at the loading facility caused by the project complained of herein. Sierra Club members in Tioga

County, Pennsylvania and surrounding areas will also be adversely affected by the increase in rail traffic, automobile traffic blockages, and the increased noise and air contamination that will be created at the terminus of the rail line in Wellsboro, Pennsylvania by the receipt of the water shipments and the return of empty railcars. Moreover, Club members in Wellsboro and surrounding communities will be adversely affected by the many heavy tanker truck trips required to transport the water from the rail terminus to water impoundment facilities and subsequently to various gas well drilling and hydrofracking sites in surrounding areas.

3. Petitioner People for a Healthy Environment, Inc., is a New York State not-for-profit corporation, organized to advocate for the strengthening and effective enforcement of environmental and land use laws and regulations, and to assist communities, groups and individuals whose land, air, water, health, and quality of life may be subject to degradation by resource extraction activities. Aquifer protection is a key focus of People for a Healthy Environment activities. The membership of People for a Healthy Environment is centered in the Elmira, New York area, and the drinking water of those members may be adversely affected by the actions complained of in this Petition.

4. Petitioner Coalition to Protect New York is a coalition of local environmental groups in the Finger Lakes – Southern Tier area, and as such, is an unincorporated association. The members of Coalition to Protect New York work together to promote the health and vibrancy of our land and our resources, and to oppose the harms that will be caused by the hydrofracking and drilling of gas wells. The protection of water resources and water rights from the damaging effects of water withdrawals for hydraulic fracturing for gas drilling is a key focus of the work of the Coalition. Certain of the member organizations of the Coalition, and their

membership, obtain their drinking water from water supplies that may be adversely affected by the actions complained of in this Petition

5. Petitioner John Marvin is a long time resident of the Village of Painted Post. He resides with his wife at 240 Charles Street in the Village of Painted Post, New York, less than a block from the proposed rail loading facility, which is visible from his doorstep. The Marvins will be adversely affected by the significant rail traffic and the increased noise and air contamination caused by the project complained of in this Petition. The Marvins obtain their water from the Village water system and Mr. Marvin is concerned about adverse effects upon the quality and quantity of their drinking water resulting from the project. He is also concerned about the adverse effects the project may have upon his health and the health of his wife, who is in poor health. Mr. Marvin is the caretaker for his wife and is concerned about his ability to get her to a hospital in an emergency situation, due to the road blockages caused by increased railroad traffic and new automobile traffic patterns which will occur if the project goes forward.

6. Petitioners Therese Finneran and Michael Finneran are long time residents of the Village of Painted Post. Therese Finneran resides with her son Michael Finneran at 123 West Hill Terrace in the Village of Painted Post, New York. They obtain their water from the Village water system. The Finnerans are concerned about the adverse effects upon the quality and quantity of their drinking water resulting from the project complained of in this Petition, and are further concerned about the increased noise caused by the significant rail traffic created by the project. Mrs. Finneran is in her 80's and is in ill health requiring her to go to the hospital several times this year. The most direct route for her to travel to her doctors' office in the Town of Erwin requires that she cross railroad lines upon which the proposed water shipments will be made. The Finnerans are concerned that, to the extent that Mrs. Finneran is unable to cross the

railroad lines running through the Village in an emergency situation, due to the traffic blockages resulting from the increased railroad traffic and new automobile traffic patterns that will occur if the project goes forward, there may be serious adverse consequences to her health.

7. Petitioner Virginia Hauff is a long time resident of the Village of Painted Post. She resides at 116 Keefe Boulevard in the Village of Painted Post, New York and obtains her water from the Village Water System. Mrs. Hauff is in her 90's and is concerned about adverse effects upon the quality and quantity of her drinking water resulting from the project complained of in this Petition. She is also concerned about road blockages caused by the increased rail traffic and new automobile traffic patterns created by this project will cause and the increased noise and air contamination that will result from the operation of the project.

8. Petitioner Jean Wosinski is a long time resident of the City of Corning, and resides at 53 Houghton Circle, Corning, New York. Mrs. Wosinski obtains her water from the City of Corning municipal water system, which draws its water from the Corning aquifer, the same aquifer that serves the Village of Painted Post and that will be adversely affected by the actions complained of in this Complaint. Ms. Wosinski is a geologist. She who worked for nearly five years as a geologist in the USGS Water Resources Division – Groundwater Branch. She has attended many of the meetings held by the Village of Painted Post on the proposed water withdrawal project which is complained of herein, and objected to such project.

9. Respondent Village of Painted Post (hereinafter cited as “the Village”) is an incorporated village located in the Town of Erwin, Steuben County, New York at the confluence of the Cohocton River, the Tioga River and the Chemung River. The Village has the responsibility to assure that all actions taken by the Village Board of Trustees, are taken in accordance with the laws of the State of New York and the United States. More particularly, the

Village Board has the responsibility for assuring that prior to approving the sale of water from the Village water system and the leasing of Village land for the construction and operation of a water-loading facility in the Village, the Village has complied with all laws and regulations of the State of New York and the United States, including SEQRA and various permitting requirements of the State of New York and the United States.

10. Respondent SWEPI, LP (hereinafter cited as "SWEPI") is a gas drilling company with its headquarters in Houston, Texas. SWEPI filed as a foreign limited partnership in 2000 in the State of Texas, and is active in gas drilling in the Marcellus Shale formation in Pennsylvania. SWEPI has signed an agreement to purchase water from the Village of Painted Post and an agreement to ship it to Pennsylvania for use in high-volume hydrofracking for gas drilling. SWEPI is made a Respondent as a party necessary to effectuate the equitable relief requested herein.

11. Respondent Wellsboro and Corning Railroad, LLC (hereinafter cited as "WCOR") is a 35-mile short line railroad that operates between Corning, New York and Wellsboro, Pennsylvania. The rails line parallels U.S. Route 15 and Pennsylvania Route 287, following the Tioga River valley. WCOR is a Delaware limited liability company and a federally chartered railroad, headquartered in Exton, Pennsylvania. WCOR has agreed to carry the water at issue herein from the Village of Painted Post to Wellsboro, Pennsylvania, and has leased land from the Village on which to build a rail-loading facility to load the water. WCOR is made a Respondent as a party necessary to effectuate the equitable relief requested herein.

12. Respondent Painted Post Development, LLC (hereinafter cited as "PPD"), the sole member of which is the Village of Painted Post, is a limited liability development company. PPD is the lessor of the property upon which WCOR's water filling and metering stations and

railroad trans-loading facility in the Village of Painted Post will be located. PPD is made a Respondent as a party necessary to effectuate the equitable relief requested herein.

III. FACTS

13. Upon information and belief, on or about January 23, 2012, the Village sent notice to several potentially involved agencies of its intent to act as Lead Agency for a SEQRA review of a lease of land in the Village by PPD to WCOR for a railroad transloading facility.

14. Upon information and belief, the Board of Trustees of the Village (hereinafter cited as "the Village Board" or the "Board") adopted four resolutions on February 23, 2012.

15. One resolution adopted by the Village Board on February 23, 2012, was a resolution finding that the lease of land by PPD to WCOR for a rail loading facility was a Type I action under SEQRA. The resolution concluded that the lease would not have a significant adverse impact on the environment and adopted a negative declaration under SEQRA for the lease of land by PPD to WCOR.

16. The basis upon which the Board's determination to issue a negative declaration was made was set forth in part 1 and part 2 of an Environmental Assessment Form prepared by the Board of Trustees on February 23, 2012 (hereinafter cited as the "EAF"). Much of the information contained in the EAF was either not supplied, or was mistakenly supplied or supplied incorrectly. Therefore, as will be further explained in this Petition, the basis upon which the determination to issue a negative declaration was made does not comport with SEQRA regulations and was factually incorrect.

17. Moreover, the EAF and the negative declaration exclusively considered impacts to the Village and did not identify or take a hard look at any potential adverse environmental impacts outside the confines of the Village, including any potential significant adverse

environmental impacts that might occur in communities surrounding the Village whose drinking water supplies might be affected by substantially increased withdrawals from Village wells or any potential significant adverse environmental impacts that might occur at the railroad terminus in Wellsboro, Pennsylvania, and in the areas surrounding Wellsboro resulting from the water being transferred from the rail unloading facility to a large water impoundment by many heavy tanker trucks and subsequently transported by many heavy tanker trucks to gas well drilling and hydrofracking sites in the Wellsboro area.

18. The Board's resolution to issue a negative declaration asserted that the Village was "not subject to compliance with SEQRA, or any other state or local law, since the development, construction, operation and maintenance of a transloading facility by the railroad is being undertaken under the jurisdiction of the interstate Commerce Commission Termination Act of 1995, the Federal Railway Act of 1970 and other federal laws and regulations associated with the operation of rail facilities (collectively referred to as 'ICCTA'), and therefore, local and state laws, regulations and requirements are pre-empted under ICCTA." Nevertheless, in spite of this contention, the Village in fact attempted to comply with SEQRA through its purported environmental review and its adoption of a negative declaration.

19. In spite of the Village's contention that ICCTA pre-empts all state and local laws, the true fact is that ICCTA does not preempt the police powers which protect public health and safety, including direct environmental regulations enacted for the protection of public health and safety. As previously indicated, the proposed project may contaminate the public water supply and create harmful noise levels, and therefore, state laws passed to protect public health and safety, including SEQRA would not be pre-empted.

20. Even if such pre-emption does exist, on information and belief, WCOR must seek one or more permits from the Surface Transportation Board (hereinafter cited as “STB”) or the Federal Railroad Administration (hereinafter cited as “FRA”), which has not been done as far as Petitioners have been able to determine. Moreover, prior to the STB or FRA granting any such permits, STB or FRA would have to engage in an environmental review pursuant to the National Environmental Policy Act, 42 U.S.C. §4321 et seq., which has also not been done as far as Petitioners have been able to determine.

21. A second resolution adopted by the Village Board on February 23, 2012, was a resolution determining that the water sale agreement with SWEPI was a Type II action under SEQRA and consequently determining that no SEQRA review was required of the water sale agreement. The resolution cited 6 N.Y.C.R.R. 617.5(c)(25) as the provision pursuant to which the Type II exemption was claimed. Section 617.5(c)(25) provides that actions for “purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials” are not subject to review under SEQRA.

22. Notwithstanding the assertion by the Village Board that the water sale agreement falls within the exemption from SEQRA review contained in 6 N.Y.C.R.R. 617.5(c)(25), the true fact is that rights to withdraw water are incident to the ownership of land and are considered real property in New York. Actions involving sales of land and of rights appurtenant to land are not exempted from SEQRA review under Section 617.5(c)(25).

23. Moreover, by considering the water sale agreement separately from the lease to build a rail loading facility, the Village Board improperly segmented its SEQRA review of the proposed actions.

24. A third resolution adopted by the Village Board on February 23, 2012, was a resolution to enter into an agreement with SWEPI to sell water from the Village's water distribution system to SWEPI.

25. The fourth resolution adopted by the Village Board on February 23, 2012, was a resolution, on behalf of PPD, to enter into a lease between PPD and WCOR of approximately 11.8 acres of land located in the Village for the development, construction and operation by WCOR of a transloading facility whereby water from the Village's water distribution system would be loaded onto railroad cars for transport and distribution.

26. On March 1, 2012, the Mayor of the Village, Roswell Crozier, implemented the February 23, 2012, resolutions by signing two agreements on behalf of the Village.

27. One agreement signed by Mayor Crozier on March 1, 2012, was an agreement between the Village and SWEPI to sell 314,000,000 gallons of water from the Village water system in increments of up to 1,000,000 gallons per day. The agreement gives SWEPI an option to purchase an additional 500,000 gallons per day.

28. The second agreement signed by Mayor Crozier on March 1, 2012, was a lease agreement between PPD and WCOR (hereinafter cited as the "Lease Agreement"). The Lease Agreement leased 11.8 acres of land next to a residential housing area near the center of the village for the construction of water filling and metering stations and a rail-loading facility that would accommodate 42 railroad tank cars at a time.

29. The terms of the lease agreement make clear that the lease and the water sales agreement are two components of the same overall project. The lease states that it is entered into "in connection with a certain bulk water sale contract, dated as of March 1, 2012 (the 'Water Purchase Agreement'), by and between the Village and SWEPI LP ('SWEPI'), the Village will

sell a certain amount of surplus municipal water to SWEPI from its existing municipal water supply system at a filling/metering station to be constructed by the Lessee on a portion of the Premises and SWEPI has arranged to have the Lessee withdraw, load and transport such water via rail line from the Premises.”

30. While the Village passed a resolution to issue a negative declaration regarding the lease on February 23, 2012, the actual negative declaration was not prepared until March 9, 2012, and was not received by the New York State Department of Environmental Conservation (hereinafter cited as the “DEC”) until March 12, 2012.

Impacts from the Operations of the Rail Loading Facility in the Village

31. According to a diagram of the rail loading facility attached to the Lease Agreement, the rail loading facility will contain 42 loading stations that will be spaced approximately 55 feet apart.

32. The November 2011 Hunt Engineers report referenced in the EAF (hereinafter cited as “the Hunt Report”) states that, “Each railroad tanker, positioned at each station will be filled with approximately 23,100 gallons of water. The site is designed for 42 tanker cars and each cycle will fill all 42 tankers for a total of 970,000 gallons in approximately 16 hours. Once all 42 tanker cars are filled to capacity, the railroad will pull them off the new siding and replace them with empty tankers and the filling process will begin again.”

33. If 42 loaded railcars are being removed from the loading facility every 16 hours and replaced with 42 empty railcars, the total number of railcars entering and leaving the facility every 16 hours will be 84 cars.

34. The loaded rail cars will be heavy. The weight of one gallon of water is 8.345 pounds. The weight of a railcar loaded with 23,100 gallons of water would be 192,769.5 pounds. That is more than 96 tons of weight per car in addition to the weight of the car.

35. Moving cars loaded with more than 96 tons of weight on and off sidings can be expected to result in significant noise from coupling and uncoupling railcars, running the diesel engines required to move the railcars and from squealing wheels.

36. Upon information and belief, the Village did not conduct any studies of potential noise impacts resulting from the operations of rail loading facility on adjoining residential areas.

37. Upon information and belief, it may take more than one engine to move a train composed of 42 railcars loaded with water, and numerous locomotive engines may be required to move the rail cars required by the project.

38. The EPA website states that "Locomotive engines are significant contributors to air pollution in many of our nation's cities and ports. Although locomotive engines being produced today must meet relatively modest emission requirements set in 1997, they continue to emit large amounts of nitrogen oxides and particulate matter, both of which contribute to serious public health problems." See <http://www.epa.gov/oms/locomotives.htm>.

39. Upon information and belief, the Village did not consider potential air quality impacts resulting from the operations of numerous locomotive engines at rail loading facility and on the rail tracks passing through the Village on air quality in residential areas adjoining the rail loading facility, or upon the air quality of the village in making its determination of no adverse environmental impact by the project.

40. Railcars will enter and exit the loading facility by means of a rail line that passes through the center of the Village.

41. The land leased for the loading facility is located on the western side of the center of the village, bordered on two sides by residential areas, and adjacent to a public park. The rail loading facility is being constructed on the southern side of Chemung Street. An existing railroad line runs down Chemung Street. New spurs are being constructed in the rail loading facility.

42. A row of residential homes faces the proposed rail loading facility on the northern side of Chemung Street and another row of residential homes adjoins the proposed rail loading facility on the eastern side of the facility along Charles Street.

43. Trains running to and from the facility will run down the existing rail line on Chemung Street to and from the center of the village.

44. Chemung Street is one of the principal streets of the village, running east and west through the village.

45. The rail line runs along one side of the Village Square Shopping Center, the main village shopping area, two blocks from the rail loading facility. Chemung Street parallels Interstate 86/State Route 15. After passing the Village Square, the rail line crosses Hamilton Street, the main street of the village. Two blocks south of the intersection with Chemung Street, Hamilton Street intersects with the entrance and exit ramps to Interstate 86/State Route 15.

46. Lengthy trains of 42 tankers running down Chemung Street will take considerable time to move through the Village causing significant automobile traffic tie ups during the time it takes for a train to move through the village.

47. When trains are running on Chemung Street, automobile traffic down Chemung Street and all cross traffic is blocked, including traffic entering or exiting Interstate 86 on

Hamilton Street. Automobile traffic seeking to cross Interstate 86 and travel to the shopping and office areas located in south Hamilton Street in the Town of Erwin is also blocked.

48. Large amounts of stalled traffic will create significant air contamination from idling motors. Because of concerns about the air pollution produced by idling motors, the New York air quality regulations prohibit heavy-duty vehicles, including diesel trucks and buses, from idling for more than five minutes at a time. 6 NYCRR, Subpart 217-3.

49. The automobile traffic blockages caused by increased rail traffic down Chemung Street will result in new traffic patterns being developed as motorists seek to avoid traveling through the center of the Village.

50. Upon information and belief, the Village did not consider the air quality impacts of increased amounts of idled traffic caused by the project or whether new traffic patterns might result from the project and the impact of those new traffic patterns might have on overall traffic flow in the region.

51. After passing Hamilton Street, the rail line runs past the Dresser Rand facilities.

52. Upon information and belief, the noise and rail line congestion will have a negative impact on Dresser Rand's operations, and will impede Dresser Rand's own rail shipments in and out of the Village, which will be blocked during the time rail cars are being moved to effectuate the project.

Impacts from the Operations in Wellsboro, Pennsylvania and Surrounding Areas

53. The loaded railcars will travel south from the Village to a rail unloading facility in Wellsboro, Pennsylvania.

54. Upon information and belief, the configuration of the unloading facility in Wellsboro will be similar to the configuration of the loading facility in the Village, with 84 railcars moving in and out of the facility every 16 hours.

55. Upon information and belief, there is likely to be automobile traffic blockage, altered traffic patterns and increased noise and air contamination from the increased rail traffic in Wellsboro.

56. In addition, the Wellsboro area will experience significant heavy truck traffic to transport the water unloaded in Wellsboro to a water impoundment site and from the impoundment site to various gas well drilling sites for purposes of hydrofracking gas wells for gas extraction.

Impacts of the Projected Water Withdrawals

57. The water that will be loaded onto the railcars at the loading facility in the Village for shipment to Wellsboro will be withdrawn from the Village water system.

58. The Village water system was authorized by the New York State Water Commission in 1909. Expansions to the system were approved by the Commission and its successors in 1941, 1947, 1949, 1956, 1975 and 1978. There have been no further authorized expansions to the system for 34 years.

59. The Village water system currently serves approximately 1,842 residents through approximately 769 service connections according to the Village's 2011 Annual Drinking Water Quality Report. In addition to servicing residents of the Village of Painted Post, the system provides potable water to the Village of Riverside and to portions of the Town of Coming.

60. A 2002 study of water supplies in the Village and surrounding municipalities states that the Village water system has four wells, "Well No. 1, . . . , is an abandoned well. Well

No. 2 has an approximate capacity of 0.58 mgd and is used only as a standby source of water. Well No. 3, with a capacity of 0.73 mgd, and Well No. 4, with a capacity of 1.5 mgd, are the main sources of supply for the village's water system." Chemung Valley Water Study: Town of Erwin, the Town of Corning, the City of Corning, the Village of Painted Post and the Village of Riverside, New York, Stearns and Wheler, LLC and Leggette, Brashears & Graham, Inc., September 2002 (hereinafter referred to as the "Stearns Report"), p. 3-2. The Stearns Report states that, "Most of the Village of Painted Post's distribution system is approximately 100 years old." *Id.*

61. The Hunt Report cited above states that the wells currently being used by the Village water supply system are wells that were constructed in 1941, 1956 and 1975.

62. Upon information and belief, the Village is bringing back into service a previously abandoned well, Well #1, to supply water to the rail loading facility. The age and capacity of Well #1 are not described in the Stearns Report or the Hunt Report.

63. The Village is connecting Well #1 to the rail loading facility through a new system of pipes.

64. The wells supplying the Village water system draw on the Corning aquifer. The Corning aquifer is designated as a primary water supply aquifer by the New York State Department of Health and the New York State Department of Environmental Conservation. The Corning aquifer one of three primary aquifers on the Cohocton River and one of 18 primary aquifers in New York. See 1990 DEC Division of Water Technical and Operational Guidance Document, on Primary and Principle Aquifer Determinations, TOGS 2.1.3 (hereinafter cited as "TOGS 2.1.3").

65. The Corning aquifer is in the Chemung River Basin, which is part of the Susquehanna River Basin.

66. The village water supply is both a “public water supply well head area” and a “primary water supply aquifer area,” under TOGS 2.1.3 and is entitled to a high level of protection.

67. The proposed water demand for the project is 1,000 gallons per minute according to the Hunt Report. One thousand gallons per minute is equivalent to 1,440,000 gallons per day.

68. TOGS 2.1.3 states that 1000 gallons per minute is the maximum yield of a well in the Corning aquifer. *Id.*, Table 1.

69. The water use of the village in 2001 was 440,000 gallons per day average use and 580,000 gallons per day maximum use. Stearns Report, Table 2-1. Thus it appears that the projected withdrawals of 1,000,000 to 1,500,000 gallons of water per day from Well #1 are two to three times recent rates of withdrawals by the Village from Well #2, Well #3 and Well #4 combined.

70. In making its review of possible environmental impacts of the project, the Village did not consider whether increased pumping activities from Well #1 or from the other Village water supply wells could result in contamination of the Corning Aquifer under different aquifer recharge conditions.

71. In particular, the Village failed to consider whether increased pumping from Village wells could result in contamination known to be located on or adjacent to the rail-loading facility site entering and contaminating the Corning aquifer under various climatic conditions, including flooding of the site.

72. The deed under which PPD took title in 2005 to a parcel of approximately 50 acres of land in the Village that was the site of an Ingersoll-Rand foundry closed in 1985, part of which parcel is being leased to WCOR for construction of the water filling and rail-loading facility, contains deed restrictions providing that:

1. Notice and warning is hereby provided that polynuclear aromatic hydrocarbons ("PAHs"), which are semi-volatile organic compounds, are located in soils at and below the ground surface of the Premises. Notice and warning is hereby provided that such PAHs may pose a risk to humans in a scenario where future use of the Premises includes invasive activities at or below the surface of the Premises, and appropriate precautions should be taken.

2. No disturbance or excavation of surface or subsurface soils or other materials at or below the Premises shall be conducted without prior notification thereof to or consent by the DEC. Any disturbance or excavation of surface or subsurface soils or other materials at or below the Premises shall be conducted (i) consistent with the Remedial Work Plan and the Soil Fill Management Protocol attached thereto, . . . , or (ii) as otherwise permitted by the DEC.

3. The Grantee, its successors and assigns, shall prohibit the use of ground water underlying the Premises (unless the Grantee, or its successors and assigns, first obtains permission to do so from the DEC)

73. Even though the proposed project will not withdraw water from wells located on the former foundry site, significantly increased withdrawals from Well #1 which is located near the foundry site, may cause ground contamination at the site to be drawn into the Corning aquifer.

74. Significantly increased withdrawals from Well #1 may also cause contaminants located in surface water to be drawn into the Corning aquifer.

75. The Stearns Report notes that new models of groundwater flow in the Corning aquifer need to be developed "to simulate the core of depressions and velocity fields around the production wells with enough accuracy so that the model results can be used as input for particle tracking and/or solute transport programs." The Report states on page 64:

“Refinement of the model grid is necessary to simulate the core of depressions and velocity fields around the production wells with enough accuracy so that the model results can be used as input for particle tracking and/or solute transport programs. The use of a particle tracking and/or solute transport program is very important when trying to accurately map well capture zones in aquifers, such as the Corning aquifer, that have semi-confining layers that impact the horizontal and vertical flow field in the aquifer. . . . This analysis is essential to the identification of wellhead protection strategies and for the location of monitoring wells as early warning detectors of pollutants.”

76. The Stearns Report states on page 3-1 that groundwater supplies in all the communities in the study area, including the Village, “are fed primarily from river recharge, although some of the yield is contributed by upland precipitation and stream flow. The river recharge is important since it enables the sources to produce even during extended dry periods.”

77. A 1988 SRBC study of groundwater flow in the Corning aquifer determined that “under natural, non-pumping steady-state conditions, the [Corning] aquifers discharge to the major controlling rivers,” whereas, “[u]nder pumping conditions, induced infiltration from the Chemung and Cohocton Rivers enters the aquifer.” Groundwater Flow Model of the Corning, New York Area, Paula Ballaron, Susquehanna River Basin Commission, March 1988 (hereinafter cited as the “SRBC Report”).

78. The SRBC Report states that “Production wells of Corning Glass and Ingersoll-Rand, located in Gang Mills [a hamlet in the Town of Erwin] and Painted Post respectively, induce an estimated 90 percent of their discharge from adjacent reaches of the Cohocton River under average steady-state conditions. About 70 percent of total well discharges in Corning is diverted into the aquifer from river reaches in the vicinity of pumping wells.” *Id.*, p. 96.

79. The SRBC Report states that, “Associated with the high yield of surficial outwash aquifers in an inherent vulnerability to pollution from surface sources.” Thus, the study noted, “The quality of recharge must be protected to prevent degradation of ground-water quality.” *Id.*, p. 3.

80. The SRBC Report states that “Sand and gravel aquifer systems within the Chemung River basin have been used extensively for industrial and municipal supply. Ground-water withdrawals from the aquifer underlying the metropolitan Corning area totaled an estimated 10.2 Mgal/d in 1980. Although these aquifers are very productive, this heavy reliance on ground water has created depressed ground-water levels in the aquifers underlying the City of Corning and raises concern for the availability of the resource during an extreme drought.” *Id.*, p. 3.

81. “In addition,” the study states, “groundwater contamination has limited the supply of water that can be used without treatment. The City of Corning stopped using production well no. 6 in 1983 because volatile organic compounds were detected in the ground water . . .” *Id.*

82. Contamination of the Corning aquifer as a result of recharge from contaminated surface water was not considered by the Village in its environmental review of the project. If such contamination were to occur it would require that additional filtration systems be built by the Village and other municipal water systems drawing from the Corning aquifer at substantial costs to those municipalities. Similarly, local industries might find it necessary to build additional filtration systems to protect the quality of water used in their industrial processes.

83. Both the SRBC Report and the Stearns Report indicate that total daily withdrawals from the Corning aquifer at certain periods in past years have been greater than total current withdrawals. At no time in the past, however, have there been large-scale water exports from the Corning aquifer.

84. Previous large scale withdrawals by Ingersoll Rand and Corning Inc. were used primarily for cooling and were returned to the rivers above the aquifer after use. Thus these waters were available to recharge the aquifer.

85. Water withdrawn from the aquifer and exported to Pennsylvania for the purpose of high-volume hydrofracking of gas will not be returned to area rivers and thus will not be available to recharge the aquifer.

86. The consequences of large scale water exports upon the aquifer are unknown.

87. The importance of making withdrawals available for recharge is noted by the DEC in its 2011 revised Draft Supplemental Generic Environmental Impact Statement on the issue of hydrofracking in New York State (hereinafter cited as "RDSGEIS"). Section 6.1.1.6 of the RDSGEIS states that:

"[G]roundwater wells impact surface water flows by intercepting groundwater that otherwise would enter a stream. In fact, many New York headwater streams rely entirely on groundwater to provide flows in the hot summer months. It is therefore important to understand the hydrologic relationship between surface water, groundwater, and wetlands within a watershed to appropriately manage rates and quantities of water withdrawal."

"Deletion of both groundwater and surface water can occur when significant water withdrawals are transported out of the basin from which they originated. These transfers break the natural hydrologic site, since the transported water never makes its downstream nor returns to the original watershed to help recharge the aquifer. Without the natural flow regime, including seasonal high flows, stream channel and riparian habitats critical for maintaining the aquatic biota of the stream may be adversely impacted."

88. Section 6.1.1 of the RDSGEIS observes that, "Without proper controls on the rate, timing and location of [water withdrawals for hydraulic fracturing], modifications to groundwater levels, surface water levels, and stream flow could result in adverse impacts to aquatic ecosystems, down stream flow levels, drinking water assured yields, wetlands, and aquifers recharge"

89. Not only did the Village's environmental review neglect to consider cumulative, long term and secondary impacts of this project on the entire Corning aquifer, as required by SEQRA regulations, and on the aquifers downriver from the Corning aquifer, such as the aquifer under the City of Elmira, it also neglected to consider the cumulative effects on the aquifers of multiple municipal and other withdrawals for the consumptive use of gas drilling and hydrofracking.

90. It has been reported in the press that the Town of Erwin began selling 400,000 gallons of water per day to SWEPI in 2010 and that TerrAqua has a permit to withdraw over 500,000 gallons per day for hydrofracking, from the Tioga River in the Borough of Lawrenceville, Pennsylvania, upriver from Erwin and Painted Post. See discussion of Erwin water sales in "How much is Painted Post water worth?" Jeffery Smith, Corning Leader, April 30, 2012, page 1A, and discussion of TerrAqua water sales in "Lawrenceville, Pa. facility to recycle drilling wastewater," Derrick Ek, Corning Leader, Feb. 25, 2012. Also, according to media reports, the City of Corning and the Village of Bath are looking at the possibility of selling water to increase their municipal revenues. See "City Considers Selling Water: News of Painted Post Plan Has Corning Officials Interested," Jeffery Smith, Corning Leader, May 8, 2011, page 1A, and "Municipal water export: Whose water? Whose rights?" Steuben Courier Advocate, March 17, 2012.

91. Therefore, as can be seen, the Village failed to identify the full potential adverse environmental consequences of the cumulative impact of water withdrawals from the Corning Aquifer, and failed to take a hard look at its potential consequences.

Compliance with the Water Supply Law

92. Both the Village water system and the rail loading facility are transporting water through pipes to the railcars that will carry the water to Pennsylvania. Prior to transporting water to another state through pipes, a permit is required from the DEC pursuant to §15-1505.1 of the Water Supply Law. On information and belief, none of the Respondents have requested a permit from the DEC pursuant to this law in order to export water to another state, and therefore, Respondents are in violation of such law.

**IV. FIRST CAUSE OF ACTION:
RESPONDENT VILLAGE FAILED TO COMPLY WITH
THE STRICT PROCEDURAL MANDATES OF SEQRA**

**A. Respondent Village Violated SEQRA When It Failed to Consider
Even One of the Significant Adverse Environmental Impacts of
Water Transports from the Proposed Water Loading Facility**

93. The allegations contained in paragraph "1" through "92" inclusive are hereby realleged as more fully set forth herein.

94. As previously indicated, the Board of Trustees of the Village of Painted Post designated themselves as the "lead agency" to make SEQRA determinations. As lead agency, it is their responsibility to assure that all laws and regulations pursuant to SEQRA are carried out.

95. According to the regulations promulgated pursuant to SEQRA:

"The basic purpose of SEQRA is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional, and local government agencies at the earliest possible time. To accomplish this goal, SEQRA requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an Environmental Impact Statement."

6 N.Y. Codes, Rules and Regulations Part 617.1(c).

96. Further, the regulations indicate that:

“In adopting SEQRA, it was the legislature’s intention that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.”

6 NYCRR §617.1(b).

97. The SEQRA regulations require that a lead agency determine whether or not a proposed project is a “type I action”, which is an action that is more likely than not to require an environmental impact statement, or an “unlisted action.” As indicated in the regulations:

“The purpose of the list of type I actions in this section is to identify, for agencies, project sponsors and the public, those actions and projects that are more likely to require the preparation of an EIS than unlisted actions. All agencies are subject to this type I list. (1) This type I list is not exhaustive of those actions that an agency determines may have a significant adverse impact on the environment and requires the preparation of an EIS. However, the fact that an action or project has been listed as a type I action, carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS....”

6 N.Y.C.R.R. 617.4(a).

98. In the negative declaration promulgated by the Village on March 9, 2012, it is indicated that the proposed action is a Type I action, and therefore, according to the regulations, it is presumed that an Environmental Impact Statement will have to be drafted. Nevertheless, as previously indicated, and without rebutting the presumption contained in the regulations, the Village determined that there would be no adverse environmental consequences, and determined not to do an Environmental Impact Statement (hereinafter cited as “EIS”).

99. The regulations contained in 6 N.Y.C.R.R. 617.7 indicate that an environmental impact statement must be prepared if a proposed action “may include the potential for at least one significant adverse environmental impact.” 6 N.Y.C.R.R. 617.7(a)(1).

100. Conversely, to determine that an EIS will not be required for an action, "the lead agency must determine either that there will be no adverse environmental impacts or the identified adverse environmental impacts will not be significant." 6 N.Y.C.R.R. 617.7(a)(2).

101. In the instant action, it is apparent that there will be at least one significant adverse environmental impact, since there will be a significant increase in rail traffic through the center of the Village of Painted Post on a daily basis, significantly causing automobile traffic tie ups. Similarly, there will be a significant increase in truck traffic at the Pennsylvania end of the rail line to bring the millions of gallons of water to a central water impoundment site and from there to individual gas well drilling sites.

102. In order to determine whether or not an environmental impact statement needs to be drafted, the lead agency is required to have prepared an Environmental Assessment Form, which would indicate the potential adverse environmental consequences which may ensue. 6N.Y.C.R.R. 617.7(a)(2)(3).

103. In the instant action, as previously indicated, the Environmental Assessment Form prepared by the Village was inadequately prepared, and did not include any adverse environmental consequences which may ensue outside the confines of the Village of Painted Post.

104. In performing its environmental review responsibilities, the universally accepted requirement is that the lead agency:

- i. Identify the areas of environmental concern;
- ii. Take a hard look at the environmental issues identified; and
- iii. Give a reasoned elaboration for the decision that is made.

105. Since the Village ignored any adverse environmental consequences outside the confines of the Village, for this reason alone the Village failed to identify areas of environmental concern, and failed to take a hard look at the potential significant adverse environmental consequences that would ensue outside the Village's borders, including the effects on the entire Corning aquifer, and the cumulative, long term and secondary effects that will be caused by the project in Pennsylvania, including the significant increase in truck traffic, the effects of such truck traffic on the rural roads and highways within Pennsylvania, and the adverse effects of increased well drilling allowed by the use of the 1,000,000 to 1,500,000 gallons per day of water coming from the Village water system.

106. Moreover, as previously indicated, besides the failure of the Village to review the adverse environmental effects outside the confines of the municipal boundaries of the Village, even within the Village the determination by the Village was erroneous due to the many inaccuracies and inadequacies in the drafting of the EAF. For example:

a. In its responses to the EAF, the Village failed to recognize that the aquifer from which the water is being drawn and over which the rail facility is located is a primary aquifer as designated by the DEC.

b. In its responses to the EAF, the Village failed to acknowledge that the proposed actions would affect surface or groundwater quality or quantity, and responded "Not Applicable" to a statement on the form that the "Proposed Action would use water in excess of 20,000 gallons per day." This response contradicted its response in another section of the EAF that total anticipated water usage per day would equal "1x10⁶ gallons/day."

c. In its responses to the EAF, the Village indicated that the question of maximum vehicular trips generated per hour was not applicable, even though there will be approximately 84 rail cars every 16 hours (42 rail cars leaving the facility and 42 rail cars arriving to take their place at the loading docks) moving down one of the main streets of the Respondent Village, passing next to the Village's major shopping area and crossing the main street of the Village, which is the access route to interstate 86 and state Route 15.

d. In its responses to the EAF, the Village indicated that the project will produce no operating noise exceeding local ambient noise levels. However, the Village does not appear to have done any noise studies to justify this conclusion. Indeed, the railroading facility borders a residential area of the town, and individual homes face the train lines and the railroading facility. It is obvious that there will significant noise associated with moving in and out the 84 rail cars every 16 hours and the loading of 42 rail cars with water will certainly exceed the ambient noise level, particular at night when people are sleeping.

e. The Village also maintained in the EAF that the proposed action would not affect air quality and indicated that the proposed action would not allow an increase in the amount of land committed to industrial use or allow an increase in the density of industrial development within existing industrial areas.

f. In its responses to the EAF, the Village indicated that the proposed action is compatible with adjoining and surrounding land uses within one-quarter mile. In fact, as previously indicated, the adjoining land uses are residential, and the surrounding uses within one-quarter mile are a park, a small shopping center, offices and churches.

g. The Village also maintained in the EAF that the proposed action will not create a demand for any community provided services. In fact, the project is putting a significant demand on the Village water system. Up to 1,500,000 gallons per day may be pumped from the system, an abandoned well is being brought back into service, a number of new water mains are being installed, and a permit is being sought from the Department of Health for installation of back/flow prevention devices. The water sales agreement provides that the water sold will be processed through the Village water treatment plant. Fulfilling these demands will be impose significant costs on the Village.

h. The Village indicated in the EAF that the project does not involve any local, state or federal funding, in spite of the fact that the Village is leasing the land to WCOR for \$10.00 plus \$1.00 per year, obviously providing local funding to the railroad.

i. The Village also indicated in the EAF that no federal approvals are required, when in fact permits are required from the Surface Transportation Board and the Federal Railroad Administration.

j. In fact, in response to the questions in Part 2 of the EAF, the Village marked "No" or "Not applicable" as its response to every question in the twenty categories of questions contained in Part 2, except for the questions contained in Category 1, Will the Proposed Action result in a physical change to the project site? and to three out of nine questions in Category 19, Impact on Growth or Character of Community.

k. The Village failed to complete Part 3 of the EAF, Evaluation of the Importance of Impacts.

107. Given all of these inadequacies of the EAF, it is not surprising that the Village erroneously determined that there will be no adverse environmental consequences that will ensue from this project.

108. Petitioners further allege that by issuing a negative declaration and by signing a lease of the rail loading facility in advance of compliance with SEQRA, the Village failed to perform its duty, proceeded in excess of its jurisdiction, rendered an arbitrary and capricious decision, and abused its discretion. Petitioners contend that the Village is required to prepare a full environmental impact statement (EIS).

109. Because the Village has failed to identify areas of environmental concern, and failed to take a hard look at clear and obviously significant adverse effects, the Village is in violation of the requirements of SEQRA and the regulations promulgated pursuant thereto, and it is respectfully requested that the inadequate negative declaration issued by the Village be annulled, that the lease agreement between PPD and WCOR be annulled, that the Village be directed to complete a full EIS and that an injunction against any further activity concerning the

construction or operation of the rail loading facility be entered until such time as the Village has fully and completely complied with the requirements of SEQRA.

**B. Respondent Village Violated SEQRA When It Improperly Claimed
a Type II Exemption from SEQRA for Its Action in Entering into an Agreement
to Sell 314,000,000 Gallons of Water from the Village Water System**

110. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 109 as if fully set forth herein.

111. The Village violated SEQRA when it failed to classify the water sale agreement as a Type I action, and issued a determination that it was a Type II action, which is exempt from SEQRA review. A Type II action is “a routine and continuing agency administration that does not reorder priorities in a manner that may affect the environment.” 6 NYCRR 617.51 [20].

112. As described above, the resolution by the Village designating the water sale agreement as a Type II action relies upon 6 N.Y.C.R.R. 617.5(c)(25) as the provision pursuant to which the Type II exemption was claimed. This reliance is not appropriate. Section 617.5(c)(25) provides that actions for “purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials” are not subject to review under SEQRA.

113. Bulk water sales do not fall within the exemption provided in Section 617.5(c)(25). That section explicitly excludes actions involving the purchase or sale of land from the exemption contained in that section. Water rights are incident to the ownership of land and are considered real property in New York.

114. The Village does not have an ownership interest in the Corning aquifer. As an adjoining landowner and a permitted municipality, it has the right to withdraw water for its use and the use of its residents.

115. The designation by the Village of the pumping capacity of the Village water wells as “surplus water” has no basis in law or in fact.

116. The initial approval granted to the municipality of the Village of Painted Post in 1909 by the State Water Supply Commission to establish a municipal water system makes clear that the rights to withdraw water derive from the lands acquired by the Village to create the water supply system and that those rights are to be exercised in a manner that is “just and equitable to other municipalities and civil divisions of the State affected thereby and to the inhabitants thereof, particular consideration being given to their present and future necessities for sources of water supply.”

117. Petitioners allege that by issuing a Type II determination and by signing a water sale agreement in advance of compliance with SEQRA, the Village failed to perform its duty, proceeded in excess of its jurisdiction, rendered an arbitrary and capricious decision, and abused its discretion. Petitioners contend that the Village is required to prepare a full environmental impact statement (EIS).

118. Because the Village erroneously categorized the water sale agreement as a Type II action, the Village is in violation of the requirements of SEQRA and the regulations promulgated pursuant thereto, and it is respectfully requested that the improper Type II determination issued by the Village be annulled, that the water sale agreement between the Village and SWEPI be annulled, that the Village be directed to complete a full EIS and that an injunction against bulk water sales by the Village be entered until such time as the Village has fully and completely complied with the requirements of SEQRA.

**C. Respondent Village Violated SEQRA When It Impermissibly
Segmented its Review of the Water Sale Agreement and its
Review of the Lease Agreement for a Water Loading Facility**

119. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 119 as if fully set forth herein.

120. The Village violated SEQRA when it impermissibly segmented its review of its water sale agreement and its review of the lease agreement for a water loading facility.

121. SEQRA notes that “[a]ctions commonly consist of a set of activities or steps,” and specifies that “[t]he entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it.” 6 NYCRR 617.3.

122. SEQRA expressly provides that “[c]onsidering only a part or segment of an action is contrary to the intent of SEQRA.” SEQRA defines “segmentation” as “the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing determinations of significance” 6 N.Y.C.R.R. § 617.2(ag).

123. In addition, SEQRA provides that, “If a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance and any subsequent EIS the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible.” 6 N.Y.C.R.R. § 617.3(g)(1).

124. The connection between the lease agreement for construction of a water loading facility and the water sale agreement is manifest and is directly acknowledged in the Lease Agreement, which states that the lease states is entered into “in connection with a certain bulk water sale contract, dated as of March 1, 2012 (the ‘Water Purchase Agreement’), by and between the Village and SWEPI LP (‘SWEPI’), the Village will sell a certain amount of surplus

municipal water to SWEPI from its existing municipal water supply system at a filling/metering station to be constructed by the Lessee on a portion of the Premises and SWEPI has arranged to have the Lessee withdraw, load and transport such water via rail line from the Premises.”

125. Without a water loading facility, there would be no means for the Village or SWEPI to implement the water sale agreement.

126. As a result of Respondent’s failure to comply with the procedural prescripts of SEQRA, either individually or taken as a whole, its Negative Declaration, its Type II determination and any subsequent actions taken in reliance thereon was and will be arbitrary and capricious, affected by an error of law, and a violation of SEQRA and, therefore, must be declared null and void.

127. Because the Village erroneously conducted a segmented review of two aspects of the same project, and issued two separate determinations under SEQRA on the same day, the Village is in violation of the requirements of SEQRA and the regulations promulgated pursuant thereto, and it is respectfully requested that an injunction against bulk water sales by the Village and any further activities concerning the construction or operation of the water loading facility be entered until such time as the Village has fully and completely complied with the requirements of SEQRA.

**V. SECOND CAUSE OF ACTION:
VIOLATION OF WATER TRANSPORT PERMIT REQUIREMENTS**

128. The allegations contained in paragraph “1” through “127” inclusive are hereby realleged as more fully set forth herein.

129. Section 15-1505.1 of the Water Supply Law provides that “no person shall transport or carry through pipes, conduits, ditches or canals the waters of any fresh water lake, pond, brook, river, stream or creek in this state or any well, subsurface or percolating waters of

this state into any other state for use therein without first obtaining a permit from the Department [DEC] pursuant to this title.”

130. The proposed water withdrawal project will involve the transportation of water from Village water wells through pipes in the Village water system and through pipes in the rail loading facility to railcars that will carry the water into the state of Pennsylvania.

131. Because pipes are being utilized for the transport of water out of state, the plain wording of Section 15-1505.1 requires Respondents to obtain a permit from the DEC for such transports.

132. Upon information and belief, none of the Respondents have requested or obtained a permit from the DEC to transport water into the state of Pennsylvania.

133. The DEC has elucidated the intention of the legislature regarding transports of water for commercial, industrial, or oil or gas well development purposes outside of a public water supply system approved water service area concerning this section in its recently proposed amendments to 6 N.Y.C.R.R. §601.6. The proposed amendments provide that “except to the extent that is otherwise exclusively stated in this part, no person may take any of the following actions without having first obtained a water withdrawal permit: (f) for a public water supply system with a capacity equal to or greater than the threshold volume [100,000 gpd], to enter into a contract or other agreement for the bulk sale of water for a commercial, industrial, or oil or gas well development purpose outside of the public water supply system approved water service area.”

134. The proposed regulation is broader than Section 15-1505.1 and applies to all agreements for the bulk sale of water for commercial, industrial, or oil or gas well development purposes by certain public water systems outside of their approved water service areas.

135. Even though the new proposed regulations have not yet taken effect, the Village's bulk sale agreement falls within the requirements of Section 15-1505.1 and requires one or more of the Respondents to obtain a permit from the DEC for the transport of water to another state.

136. Since none of the Respondents has requested or obtained such a permit, an injunction against shipments of water from the Village water system to SWEPI should be entered until such time as the provisions of Section 15-1505.1 of the Water Supply Law concerning export of water to another state has been complied with.

VI. THIRD CAUSE OF ACTION:
FAILURE TO OBTAIN FEDERAL PERMITS AND
FEDERAL NEPA REVIEW

137. The allegations contained in paragraph "1" through "136" inclusive are hereby realleged as more fully set forth herein.

138. As previously observed, the Village in its negative declaration states that the Interstate Commerce Commission Termination Act of 1995, the Federal Railway Act of 1970 and other federal laws and regulations associated with the operation of rail facilities (collectively referred to as "ICCTA") preempt the application of local and state laws to the construction and operation of the rail loading facility.

139. Nevertheless, while claiming that these laws apply to the construction and operation of the facility, on information and belief, none of the Respondents have requested any permit from the Surface Transportation Board or the Federal Railway Administration even though permits are required for the installation of rail spurs and the construction and operation of rail loading facilities. In fact, the Village indicated in its EAF that no federal permits were required.

140. Moreover, prior to the STB or FRA granting any permit, an environmental review of the proposed action or actions must be conducted pursuant to the National Environmental Policy Act, 42 U.S.C. §4321 et seq., which has also not been done.

141. Therefore, since it is the intention of the Respondents to ignore the requirements of these laws, an injunction against operation of the rail loading facility should be issued until such time as ICCTA and NEPA are fully complied with.

WHEREFORE, Petitioners respectfully request that the Court enter an Order in this proceeding:

- (1) Annulling the Village's Type II determination for the water sale agreement;
- (2) Annulling the Village's negative declaration for the lease of the rail-loading facility site;
- (3) Annulling the Village's water sale agreement with SWEPI;
- (4) Annulling PPD's Lease to Respondent WCOR;
- (5) Requiring the Village to issue a Positive Declaration, and complete an EIS with respect to its plan as a whole and not merely segments thereof, pursuant to SEQRA;
- (6) Enjoining the Village from entering into an agreement to sell water and enjoining the Village and PPD from entering into a lease of Village land or land owned by PPD until Respondents have complied with all applicable federal and state laws; and
- (7) Imposing a preliminary injunction prohibiting Respondents from making shipments of water to SWEPI or working at the rail loading facility site until Respondents have complied with all applicable federal and state laws;
- (8) Allowing costs and disbursements; and

(9) Granting such other and further relief as the Court may deem just, proper and equitable.

The relief requested herein has not been previously requested from this or any other court.

DATED: Buffalo, New York
June 22, 2012

Respectfully submitted,



RACHEL TREICHLER, ESQ.
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Attorneys for Petitioners

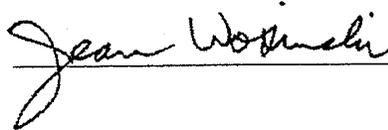
VERIFICATION

STATE OF NEW YORK)
COUNTY OF STEUBEN) SS.:

I, Jean Wosinski, being duly sworn, depose and state:

I am the Petitioner in the above-entitled action.

I have read the foregoing VERIFIED PETITION, and know the contents thereof, the same are true to my own knowledge, except as to those matters that are therein stated upon information and belief, and as to those matters, I believe them to be true.



STATE OF NEW YORK)
COUNTY OF STEUBEN) SS.:

On this 22nd day of June, 2012, before me, the undersigned, personally appeared Jean Wosinski, and personally known to me, or provided to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



(Notary Public)

RACHEL TREICHLER
Notary Public, State of New York
No. 021R5058999
Qualified in Steuben County
Commission expires 04/22/2014

AFFIDAVIT OF RACHEL TREICHLER, ESQ., SWORN TO ON JUNE 25, 2012 [81-82]

State of New York
Supreme Court County of Steuben

2012-0816 CV

In the Matter of the Application of The Sierra Club, People for a Healthy Environment, Inc, Coalition to Protect New York, John Marvin, Therese Tinneran, Michael Finneran, Virginia Hauff, and Jean Wosinski;

~~JUDGE BRADSTREET~~

JUDGE LATHAM

Petitioners,
For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

- against -

The Village of Painted Post; Painted Post Development, LLC; SWEPI, LP and The Wellsboro and Corning Railroad, LLC
Respondents.

STEBEN COUNTY CLERK'S OFFICE

2012 JUN 25 P 3:40

2012 JUN 28 AM 11:15

OFFICE OF THE CLERK
STEBEN COUNTY

State of New York)
County of Steuben) ss:

COPY

Rachel Treichler, Esq., being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the State of New York and I am a attorney for Petitioners herein, along with my co-counsel, Richard J. Lippes, and as such, I am fully familiar with the facts and circumstances of this proceeding.
2. This affidavit is respectfully submitted in support of an Order to Show Cause.

3. The underlying petition requests that a preliminary injunction be entered until such time as various laws and regulations of the State of New York and the United States be fully complied with. It seeks a preliminary injunction from the construction of a transloading facility in the Village of Painted Post, the withdrawal of up to 1,500,000 gallons of water per day from the Village of Painted Post municipal water system and the transportation of such water to Wellsboro, Pennsylvania, where it will be distributed to various gas drilling sites.

4. The reason Petitioners are proceeding by way of Order to Show Cause as opposed to a Notice of Petition, is the fact that construction of the transloading has started, and therefore, in order to effectuate the relief in the attached petition, it is necessary that this Court promptly hear argument concerning the merits of this proceeding.

WHEREFORE, Petitioners respectfully request that this Court grant the proposed Order to Show Cause.

Rachel Treichler

Rachel Treichler, Esq.
2988 Van Amburg Road
Hammondsport, NY 14840
Tel: 607-569-2114
attorneys for Petitioners

State of New York / Steuben County

Sworn to before me
June 25, 2012

Sue A. Cleland

Sue A. Cleland
Notary Public, State of New York
No. 04CL6040688, Steuben County
Commission Expires April 24, 2014

VERIFIED ANSWER AND OBJECTIONS IN POINT OF LAW OF PAINTED POST,
 PAINTED POST DEVELOPMENT, LLC AND SWEPI, LP, DATED AUGUST 3, 2012
 [83-108]

SUPREME COURT
 STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
 PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
 COALITION TO PROTECT NEW YORK; JOHN
 MARVIN; THERESE FINNERAN; MICHAEL
 FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

For a Judgment under Pursuant to Article 78
 of the Civil Practice Law and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
 DEVELOPMENT, LLC; SWEPI, LP; and the
 WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

VERIFIED ANSWER AND
 OBJECTIONS IN POINT OF
 LAW OF RESPONDENTS
 THE VILLAGE OF
 PAINTED POST, PAINTED
 POST DEVELOPMENT,
 LLC AND SWEPI, LP

Index No.: 2012-0810

Respondents, the Village of Painted Post, Painted Post Development, LLC, and SWEPI, LP
 (which may be collectively referred to as "Respondents" or may be referred to respectively as the
 "Village," "Painted Post Development" and/or "SWEPI"), by and through their attorneys, Harris
 Beach PLLC, for their Verified Answer to the Verified Petition ("Petition") state and allege as
 follows:

1. Admit those allegations in paragraph 1 of the Petition to the extent they allege that the
 proceeding is styled an Article 78 proceeding, and admit that certain relief is sought as set forth in
 the Petition, and admit as set forth more fully in the Administrative Record in this matter filed
 concurrently herewith and incorporated herein by reference in its entirety ("the Administrative
 Record") that Respondents undertook certain construction of equipment and improvements on land
 located in the Village of Painted Post, and deny the remainder of the allegations in paragraph 1,
 including denying any allegation that Respondents failed to fully comply with applicable law,
 including the New York State Environmental Quality Review Act (hereinafter "SEQRA") and the

other statutes identified to the extent same are applicable, and as to the balance of the allegations in paragraph 1, deny any attempt by Petitioners to characterize the nature of the construction undertaken by the Respondents, and refer the Court to the Administrative Record, which fully sets forth the nature and extent of any construction activities undertaken pursuant to the action at issue.

2. As to the allegations contained in paragraph 2 of the Petition, deny that the Sierra Club or Sierra Club members will be adversely affected, deny that drinking water supplies may be contaminated, deny the allegations regarding increases in traffic and each of the other allegations concerning other alleged adverse affects identified therein, including adverse affects concerning noise, air contamination and the like, and such allegations regarding the Village of Painted Post and Wellsboro, Pennsylvania, and deny the allegations regarding truck traffic, and deny knowledge or information sufficient to form a belief as to the truth and falsity of the allegations concerning the state of the incorporation of the Sierra Club, as well as allegations regarding its membership and activities its membership has allegedly been involved in, and deny knowledge and information sufficient to form a belief as to the truth or falsity of the allegation as to the number of members who claim to live in the Village of Painted Post or in Pennsylvania, and deny the remaining allegations contained therein.

3. As to the allegations contained in paragraph 3 of the Petition, deny that members of "People for a Healthy Environment" may be adversely affected as alleged therein, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the state of incorporation of the referenced organization, its goals and allegations regarding its focus, and deny the remaining allegations contained therein.

4. As to the allegations contained in paragraph 4 of the Petition, deny that the members as alleged may be adversely effected as identified therein, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning "Coalition to Protect

New York,” including denying knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to the groups purportedly represented by same, as well as the goals such organization or organizations seeks to promote or oppose, and deny the remaining allegations contained therein.

5. As to the allegations contained in paragraphs 5, 6, 7 and 8 of the Petition, deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the residence of the Petitioners identified, including John Marvin, Therese Finneran and Michael Finneran, Virginia Hauff, and Jean Wosinski, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to how long such persons have lived at the addresses identified, and deny the allegations contained in said paragraphs regarding alleged adverse affects, including alleged affects from rail traffic, increase noise and air contamination, as well as adverse affects to drinking water quality and any adverse affects on the health of the persons alleged therein, including their spouses and others, and deny that the referenced individuals will be adversely impacted by rail operations, including denying any alleged adverse impacts to health due to the rail operations, and deny adverse impacts from automobile traffic due to rail operations, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the educational background or employment background of Petitioner, Jean Wosinski, but admit that Ms. Wosinski attended more than one meeting, and deny knowledge or information sufficient to form a belief as to whether Ms. Wosinski “objected” to the actions at issue in this matter during any of the meetings or otherwise.

6. As to the allegations contained in paragraph 9 of the Petition, admit that the Village of Painted Post is an incorporated village located within Steuben County, New York, and as to the characterization of the location of the Village concerning various rivers and other topography, refer

the Court to available maps and other information regarding the area, and state that the Village undertakes its responsibilities as required under law and has done so at all times.

7. As to the allegations contained in paragraph 10 of the Petition, admit that SWEPI, LP is a limited partnership formed in the State of Delaware, and state that it conducts certain business concerning oil and gas exploration, and deny knowledge or information sufficient to form a belief as to why Petitioners made SWEPI a party herein, and as to the allegations regarding SWEPI's execution of an agreement to purchase certain surplus goods or services from the Village of Painted Post, refer the Court to the referenced purchase agreement which is submitted as part of the Administrative Record (and is hereinafter referred to as the "Surplus Agreement"), and admit that SWEPI was authorized to enter into the Surplus Agreement, admit the approval by the Susquehanna River Basin Commission concerning the sale of surplus water authorizes SWEPI to use such water for its business, as more fully set forth in the Surplus Agreement, and deny knowledge or information sufficient to form a believe as to the truth or falsity of the remaining allegations contained therein.

8. As to the allegations contained in paragraph 11 of the Petition, deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the length of the rail line referenced therein, and the location of same, but admit that Wellsboro & Corning Railroad, LLC (the "Railroad") is a federally chartered railroad, with an office located in Exton, Pennsylvania.

9. As to the allegations contained in paragraph 12 of the Petition, admit that Painted Post Development, LLC is a limited liability development company, and admit that the Village of Painted Post is its sole member, and as to allegations regarding Painted Post Development's relationship with the Railroad, refer the Court to a certain lease agreement executed by Painted Post Development and the Railroad (the "Lease"), which is submitted as part of the Administrative Record, for its true and

accurate contents, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained therein, including Petitioners' rationale for making Painted Post Development a party in this proceeding.

10. As to the allegations contained in paragraph 13 of the Petition, admit that as required under applicable law, the Village provided notice to applicable agencies and was installed as the lead agency, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained therein, and refer the Court to the Administrative Record, which sets forth in detail the actual record of the proceedings referenced therein, including notices sent, resolutions enacted, and other matters.

11. As to the allegations in paragraph 14 of the Petition, as more fully set forth in the Administrative Record, together with the Affidavits submitted herewith, the Board of Trustees on behalf of the Village of Painted Post, voted on and adopted certain resolutions on February 23, 2012, and such resolutions were filed in accordance with law, and deny the remaining allegations contained therein.

12. As to the allegations contained in paragraph 15 of the Petition, refer the Court to the resolutions at issue enacted by the Village for their true and accurate contents, including the nature of findings issued by the Village by the Board of Trustees on behalf of the Village (the Village and the Village Board of Trustees may be referred to hereinafter collectively as the "Village"), and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, including any attempt to characterize the resolutions adopted, including the negative declaration resolution adopted therein as such documents speak for themselves, which documents are submitted as part of the Administrative Record.

13. As the allegations contained in paragraph 16 of the Petition, deny that the Village's determination to issue a negative declaration as alleged was based solely upon the referenced

environmental assessment form ("EAF"), and deny that pertinent information contained in the EAF was mistaken or incorrect in any material manner, and deny that the Village failed to comply with applicable regulations including SEQRA, and deny the remaining allegations contained therein.

14. As to the allegations contained in paragraph 17 of the Petition, deny that the Village failed to undertake the requisite analysis, including taking a hard look at potential adverse environmental impacts as required under applicable law, deny that the Village was required to examine impacts concerning water supply and other matters concerning areas located in and around Wellsboro, Pennsylvania, and deny the remaining allegations contained therein.

15. As to the allegations contained in paragraph 18 of the Petition, deny that the Village exempted itself from any requirements under New York law, and refer the Court to the actual resolution itself and the underlying documents upon which it was based, which are submitted as part of the Administrative Record, for their true and accurate contents as such documents speak for themselves, and deny the remaining allegations contained therein.

16. As to the allegations contained in paragraph 19 of the Petition, deny the Petition's characterization of the Village's findings regarding the Interstate Commerce Clause Termination Act ("ICCTA"), deny the remaining allegations regarding alleged contamination concerns therein, and deny the remaining allegations contained in that paragraph.

17. As to the allegations contained in paragraph 20 of the Petition, as more fully set forth in the Affidavits submitted herewith, deny that the Railroad is required to obtain any permits or authorizations from the Surface Transportation Board or the Federal Railroad Administration, and deny that the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq. applies under any circumstances to the actions at issue, and deny the remaining allegations contained therein.

18. As to the allegations contained in paragraph 21 of the Petition, deny the allegations contained therein, and state that by enacting a resolution and considering the type of action

associated with the action at issue, the Village in fact undertook the required review, and as to the allegations concerning the contents of the regulations at issue, including 6 N.Y.C.R.R. 617.5(c)(25), refer the Court to the actual text of the regulation identified for its true and accurate contents, as such regulation speaks for itself, and deny the remaining allegations contained therein.

19. As to the allegations contained in paragraph 22 of the Petition, deny the allegation that the contract at issue concerned the ownership of land, and state that the contract at issue is the Surplus Agreement, which addresses the sale of certain surplus water under certain conditions, and refers the Court to the Surplus Agreement for its true and accurate contents, which is submitted as part of the Administrative Record, and deny the remaining allegations contained therein.

20. Deny the allegations contained contain in paragraph 23 of the Petition, and specifically deny that any segmentation occurred.

21. As to the allegations contained in paragraphs 24 and 25 of the Petition, admit that the Village Board of Trustees voted upon and approved on February 23, 2012 a resolution that was filed on that date concerning the Village's sale of certain surplus water, and admit a resolution was voted upon and approved by the Village Board of Trustees and was filed on February 23 concerning the Lease by Painted Post Development, and refer the Court to those documents, which are submitted as part of the Administrative Record, for their true and accurate contents, and deny the remaining allegations contained therein.

22. Deny the allegations in paragraph 26 of the Petition, and state as provided for in the applicable resolutions that the Mayor of the Village was authorized by such resolutions to execute various agreements, and further state that the resolutions at issue were fully implemented and approved and filed on February 23, 2012.

23. As to the allegations contained in paragraphs 27 and 28 of the Petition, admit that the Mayor of the Village executed an agreement between the Village and SWEPI, whereby the Village

under certain circumstances would sell surplus water to SWEPI, subject to the various provisions and caveats stated therein, including among other conditions that there is adequate surplus water to so supply SWEPI, and other conditions satisfied as more fully set forth in the Surplus Agreement, and refer the Court to the Surplus Agreement for its true and accurate contents, which is submitted as part of the Administrative Record, and as to the allegations contained in paragraph 28, admit that a lease was executed as between Painted Post Development and Railroad, and refer the Court to the provisions of Lease, which is submitted as part of the Administrative Record, for its true and accurate contents, and deny the remaining allegations contained therein, including any attempt to characterize the area where the project at issue was built, and further state that such area is specifically zoned industrial.

24. As to the allegations contained in paragraph 29 of the Petition, state that the circumstances surrounding the execution of the referenced documents, which are submitted as part of the Administrative Record, including the Surplus Agreement and the Lease, speak for themselves, and deny the allegations contained therein, including any characterization or selective quotation from the agreements at issue.

25. Deny the allegations contained in paragraph 30 of the Petition, and state that the Village resolution issuing a negative declaration was voted on, adopted and filed on February 23, 2012 in accordance with applicable law, and state that any additional notice provided to various agencies does not alter the fact that the negative declaration issued by the Village was issued and became effective on February 23, 2012.

26. As to the allegations contained in paragraph 31 of the Petition, admit that certain facilities and improvements have been constructed on the premises subject to the Lease (hereinafter the "Transloading Facility"), and refer the Court to the Lease for its true and accurate contents, which is submitted as part of the Administrative Record, and admit that the premises on which the

Transloading Facility is located will allow for the loading of 42 rail cars, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained therein.

27. As to the allegations contained in paragraph 32 of the Petition, refer the Court to the November 2011 Report prepared by Hunt Engineers, Architects and Land Surveyors, P.C., entitled Engineering Report for the Wellsboro & Corning Railroad, Painted Post Transloading Facility (the "Hunt Report") for its true and accurate contents, which is submitted as part of the Administrative Record, and state that the Hunt Report contains among other information, specifics concerning the equipment and facilities constructed on the premises on which the Transloading Facility is located, and deny the remaining allegations contained therein.

28. As to the allegations contained in paragraph 33 of the Petition, deny that there is any plan to remove 42 loaded rail cars every 16 hours, and deny the remaining allegations contained therein.

29. As to the allegations contained in paragraphs 34 and 35 of the Petition, deny knowledge or information sufficient to form a belief as to the truth or falsity of the calculations therein, including what Petitioners contend is the weight of a gallon of water or the weight of the rail cars, deny that significant noise will result from coupling or uncoupling of rail cars, and deny that diesel engines will be running such as to cause any significant noise impacts, and deny the remaining allegations contained therein.

30. Deny the allegations contained in paragraph 36 of the Petition, and state that the Village undertook an appropriate review of the project at issue, including the operations associated with the premises which is the subject of the Lease.

31. As to the allegations contained in paragraph 37 of the Petition, deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations therein as to the

number of engines it will take to move 42 rail cars, and deny the remaining allegations contained therein.

32. As to the allegations contained in paragraph 38 of the Petition, respectfully refers the Court to the actual text of the website identified, and deny knowledge or information sufficient to form a belief as to whether same is relevant in any fashion to the matters associated with the actions at issue.

33. As to the allegations contained in paragraph 39 of the Petition, state that the Village undertook appropriate consideration of operations associated with the actions at issue, and deny that the Village failed to take into account potential impacts from the operation of the Transloading Facility at the premises which is the subject of the Lease, and deny the remaining allegations contained therein.

34. As to the allegations contained in paragraphs 40 and 41 of the Petition, deny the characterization as to where rail cars will "enter and exit," deny the allegations as to what constitutes "the center of the Village," and deny knowledge or information sufficient to form a belief as to whether the premises subject to the Lease is located on the "Western side of the Center" of the Village, but admit that the Transloading Facility is located at 350 West Water Street, Painted Post, New York, and state that the premises subject to the Lease is located in an area specifically zoned for industrial uses, and the premises subject to the Lease is located on a pre-existing rail line which has been located in the Village for many decades, and deny that any "new spurs" are being constructed on the premises subject to the Lease, but state that a rail siding will be so constructed to accommodate certain loading operations, and deny the remaining allegations contained therein.

35. As to the allegations made in paragraphs 42, 43 and 44 of the Petition, deny Petitioners' characterization of Chemung Street, and state that it is one of several streets in the Village that run east and west and that the premises subject to the Lease is located on a site which is

zoned industrial, and deny that residential homes that are located in proximity to the premises subject to the Lease are “adjacent to it,” but admit that the location of the streets and the geographic layout of same speaks for itself, and admit that trains have been operating in the Village for many decades in the location at issue, and deny the remaining allegations contained therein.

36. As to the allegations contained in paragraph 45, 46, 47, 48, 49 and 50 of the Petition, deny the allegation regarding 42 cars as constituting a “lengthy train,” deny the allegation that such a train would take “considerable time” to move through the Village, deny any allegation of significant automobile traffic tie ups, deny that when trains do operate on Chemung Street that “all cross traffic is blocked,” and state that there are alternative routes available to persons located on Chemung Street if they were to desire to take an alternative route for any reason, including that they did not wish to cross over Chemung Street, or Chemung Street became difficult to cross for any reason, and deny that stalled traffic will create significant air contamination from idling motors, and refer the Court to the actual text of the regulation identified for its true and accurate contents, as such regulation speaks for itself, and deny that automobile traffic blockages will occur, deny that the Village’s environmental review failed to take into account impacts as required by application law, and deny the remaining allegations contained therein.

37. As to the allegations contained in paragraphs 51 and 52 of the Petition, refer the Court for the location of the rail line at issue, which has been in place in the Village of Painted Post for many decades, and which has served numerous industries, and deny as speculative and without basis that rail line congestion will occur and/or will negatively impact Dresser-Rand’s operations.

38. As to the allegations contained in paragraphs 53, 54, 55 and 56 of the Petition, deny each of the allegations therein, including that the nature of any facilities located outside of the Village of Painted Post are similar to the matters at issue including the equipment and improvements located on the premises subject to the Lease, deny that automobile traffic blockage will occur, deny

that traffic patterns will be altered or that noise impacts or air contamination will increase to any material degree, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations implying that there will be significantly increased heavy truck traffic concerning facilities to which surplus water may be taken, except admit that the routes that rail cars will travel from the Village will be in a generally southerly direction.

39. As to the allegations contained in paragraphs 57 and 58 of the Petition, admit that surplus water will be sold and admits pursuant to the agreements at issue and that such water will be transmitted to rail cars from facilities and equipment located on the premises subject to the Lease, and refer the Court to the agreements for their true and accurate contents, and admit that there have been facilities added to the Village of Painted Post water system between 1941 and 1980, and deny the characterization of the addition of such facilities as "expansions of the system," and deny the remaining allegations contained therein.

40. As to the allegations in paragraph 59 of the Petition, admit that the Village water system serves its residents through a number of connections, and refer the Court to the Village's 2000 Annual Drinking Water Quality Report for data concerning same, which speak for themselves, and admit that the Village water system provides water to residents of the Village of Riverside and the Town of Corning, and deny knowledge or information sufficient to form a belief as to the remaining allegations contained therein, including the characterization of the Village's water system.

41. As to the allegations contained in paragraph 60 of the Petition, refer the Court to the Water Study referenced therein for the full text of same, and deny that the capacities identified for the wells identified in paragraph 60 are accurate as of today, and deny knowledge and information sufficient to form a belief as to the truth and falsity of the remainder of the allegations contained therein.

42. As to the allegations contained in paragraphs 61, 62 and 63 of the Petition, deny that well number 1 is being brought back into service, and state that the Hunt Report speaks for itself, and refer the Court to the Hunt Report for its true and accurate contents, which is submitted as part of the Administrative Record, and deny the remaining allegations contained therein.

43. As to the allegations contained in paragraph 64 of the Petition, admit that the Village water system does draw certain water from the aquifer(s) identified, and admit that the New York State Department of Environmental Conservation ("NYSDEC") has identified the Corning aquifer as one of several "primary aquifers" associated with the Cohocton River, and among other so-called primary aquifers in the State of New York, and refer the Court to the actual text of the documents cited in paragraph 64, including to the "1990 DEC Division of Water, Technical and Operational Guidance" for their true and accurate contents, which documents speak for themselves, and deny the remaining allegations contained therein.

44. As to allegations contained in paragraphs 65 and 66 of the Petition, refer the Court to the regulations or guidance at issue concerning their application to the wells utilized by the Village water system, including any designation of such wells, and state that, upon information and belief, any such regulatory designations associated with such wells to the extent material were considered by the Susquehanna River Basin Commission in its authorization to allow the Village to withdraw surplus water, and admits as set forth previously, that one of the aquifers at issue is a primary water supply aquifer among several others in the State of New York, and deny the remaining allegations contained therein.

45. As to the allegations contained in paragraphs 67 and 68 of the Petition, state that the Hunt Report speaks for itself, refer the Court to the Hunt Report, which is submitted as part of the Administrative Record, for its true and accurate contents, and deny that the project at issue would require the pumping of 1.44 million gallons per day, but admit that the Hunt Report analyzed

projected demand based upon 1,000 gallons per minute, and refer the Court to the document referenced in paragraph 68 for its true and accurate contents, and deny the remaining allegations contained therein.

46. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs 69 and 70 of the Petition, including the allegations of the number of water users in the Village in 2001, and deny that the withdrawal associated with the project at issue is two to three times the rate of withdrawals by the Village from the wells identified, and deny that the Village failed to consider whether increased pumping activities at issue would result in adverse impacts, and deny that the water at issue will be drawn from well number 1.

47. As to the allegations contained in paragraphs 71 and 72 of the Petition, deny that the Village failed to consider appropriate impacts from the withdrawal of water at issue, and as to the allegations contained in paragraph 72, refer the Court to the document associated with the deed for the premises which is subject to the Lease, including the previously referenced management plan and other documents including the delisting documents, which documents are submitted as part of the Administrative Record, and deny the remaining allegations contained therein.

48. Deny the allegations contained in paragraphs 73, 74, 75 and 76 of the Petition, and refer the Court to the Hunt Report for its true and accurate contents, which report is submitted as part of the Administrative Record.

49. As to the allegations contained in paragraphs 77, 78, 79, 80 and 81 of the Petition, denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, including the allegations that seek to characterize such report based upon a selective quotation of it, as such report speaks for itself.

50. As to the allegations contained in paragraphs 82 and 83 of the Petition, deny that the Village failed to consider the impacts from the actions at issue, deny that contamination would occur

under the circumstances set forth therein, and deny that industries might find it necessary to incorporate additional filtration systems, and refer the Court to the reports referenced therein, as such reports speak for themselves, and deny the remaining allegations contained therein.

51. As to the allegations contained in paragraphs 84 and 85 of the Petition, deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to what large scale withdrawals were made by Ingersoll-Rand and Corning, Inc. and for what purposes such water was used, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to whether such water so withdrawn was available, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to whether water withdrawn as part of the actions at issue will not be returned to the aquifer at issue, and deny the remaining allegations contained therein.

52. As to the allegations contained in paragraphs 86, 87 and 88 of the Petition, deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 86, and regarding the allegations in paragraphs 87 and 88, deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the text of the Draft Supplemental Generic Environmental Impact Statement referenced therein, and refer the Court to such document for its true and accurate contents, and deny that such report is relevant in any manner to the actions at issue.

53. As to the allegations in paragraph 89 of the Petition, deny that the Village's environmental review failed to take into account impacts as required by applicable law, and deny the remaining allegations contained therein.

54. As to the allegations contained in paragraph 90 of the Petition, deny knowledge or information sufficient to form a belief as to the truth or falsity of allegations therein, including statements made in newspaper articles cited therein.

55. As to the allegations contained in paragraphs 91 and 92 of the Petition, deny that a permit is required from the DEC as referenced therein, and deny the remaining allegations contained therein.

56. As to the allegations contained in paragraph 93 of the Petition, repeat and re-allege each of the responses set forth above in this Answer to paragraphs 1 through 92 of the Petition as if more fully set forth herein.

57. As to the allegations contained in paragraphs 94, 95 and 96 of the Petition, respectfully refer the Court to the regulations at issue, including those regulations found under SEQRA which speak for themselves, and deny any attempt by Petitioners to characterize such regulatory requirements, but admit that the Board of Trustees on behalf of the Village undertook appropriate actions to make determinations as part of the resolutions at issue for the actions at issue, as more fully set forth in the Administrative Record.

58. As to the allegations contained in paragraph 97 of the Petition, refer the Court to the regulations at issue, including the regulations found under SEQRA, which speak for themselves, and deny Petitioners' attempt to characterize such regulatory requirements.

59. As to the allegations contained in paragraph 98 of the Petition, deny that the Village promulgated a negative declaration on March 9, 2012, as such negative declaration was voted upon, passed and filed in the Village Clerk's Office on February 23, 2012 and not March 9, 2012, and deny the remaining allegations contained therein.

60. As to the allegations contained in paragraphs 99 and 100 of the Petition, refer the Court to the regulations at issue, including the regulations found under SEQRA, which speak for themselves, and deny Petitioners' attempt to characterize such regulatory requirements.

61. Deny the allegations contained in paragraphs 101, 102 and 103 of the Petition.

62. As to the allegations of paragraph 104 of the Petition, refer the Court to the requirements under the SEQRA, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to what petitioner believes or contends is “universally accepted,” and admit that the Village undertook the requisite review it was required to under applicable law, and deny the remaining allegations contained therein.

63. As to the allegations contained in paragraphs 105 and 106 of the Petition, admit that due to a typographical error the words non-applicable was filled in for one of the questions identified, admit that the actual water usage was set forth in the EAF and specifically considered by the Village as more fully set forth in the resolutions adopted by the Village, refer the Court to the EAF and such resolutions, which are submitted as part of the Administrative Record, for their true and accurate contents, and state that in completing the EAF, the aquifer at issue was not identified as a primary aquifer, but because those issues were considered by Hunt and the Village and as such was made part of the Village’s negative declaration, and the failure to identify the aquifer at issue as a primary aquifer was not material under the circumstances, and state that as to the allegations regarding the vehicular trips generated per hour, the Village considered the use of rail traffic, but did not believe that “vehicular trips” under the EAF applies to rail traffic and, in any event, such rail traffic was considered, and while impacts from such rail operations were considered, analysis of impacts from same are also subject to pre-emption under the Interstate Commerce Clause Termination Act, and deny that the Village failed to consider operating noise as the resolutions at issue specifically identified such considerations, deny the allegations that the actions at issue will produce significant air quality impacts and deny that the Village failed to consider same, deny that area around the site is not suitable for the actions at issue as the site is zoned industrial, deny that the actions will create a demand for community provided services, as the only water to be sold as surplus water and the Village as well as the Susquehanna River Basin Commission has determined that such

water is in more than adequate supply, deny that the actions at issue required any funding, and deny that any federal approvals are required for the actions at issue, and admit that the Village completed such form, and refer the Court to the form for its true and accurate contents, any deny the remaining allegations contained therein.

64. Deny the allegations contained in paragraphs 107, 108 and 109 of the Petition.

65. As to the allegations contained in paragraph 110 of the Petition, repeat and re-allege each of the responses set forth above in this Answer to paragraphs 1 through 109 of the Petition as if more fully set forth herein.

66. As to the allegations contained in paragraphs 111 and 112 of the Petition, deny the allegations contained therein, and refer the Court to the regulations at issue, including those regulations promulgated under the SEQRA, which regulations speak for themselves.

67. As to the allegations contained in paragraphs 113 and 114 of the Petition, deny that the sale of surplus water is not a bulk sale, because such sale of surplus water is a bulk sale, and refer the Court to the regulations at issue, including those regulations promulgated under the SEQRA, which regulations speak for themselves, and deny that the Village has provided any ownership interest in the aquifer or wells at issue, and state that in accordance with the documents at issue the Village has merely agreed to provide certain surplus water under certain conditions pursuant to the agreement at issue, and deny the remaining allegations contained therein.

68. As to the allegations contained in paragraphs 115 and 116 of the Petition, deny that the Village has designated pumping capacity of Village wells as "surplus water," and refer the Court to the agreements at issue for their true and accurate contents, which are submitted as part of the Administrative Record, and deny the remaining allegations contained therein.

69. As to the allegations contained in paragraphs 117 and 118 of the Petition, refer the Court to documents at issue, including the State Water Supply Commission's establishment of the

water system in the Village, as well as the regulations at issue, which documents and regulations speak for themselves, and deny that the Village failed to undertake its duties as required, and deny the remaining allegations contained therein.

70. As to the allegations contained in paragraph 119 of the Petition, repeat and re-allege each of the responses set forth above in this Answer to paragraphs 1 through 118 of the Petition as if more fully set forth herein.

71. As to the allegations in paragraphs 120, 121, 122 and 123 of the Petition, deny that the Village segmented its review under applicable law, and deny the remaining allegations contained therein.

72. As to the allegations contained in paragraph 124 of the Petition, deny the characterization of Petitioners as to the Village's actions, refer the Court to the agreements identified therein for their true and accurate contents, which are submitted as part of the Administrative Record, and deny the remaining allegations contained therein.

73. As to the allegations contained in paragraphs 125, 126 and 127 of the Petition, deny that the Village will be unable to provide surplus water without the facility referenced, deny that the Village failed to comply with various requirements under applicable law including the SEQRA, deny that the Village segmented any review under the SEQRA and applicable law, and deny the remaining allegations contained therein.

74. As to the allegations contained in paragraph 128 of the Petition, repeat and re-allege each of the responses set forth above in this Answer to paragraphs 1 through 127 of the Petition as if more fully set forth herein.

75. As to the allegations contained in paragraphs 129, 130, 131 and 132 of the Petition, refer the Court to the regulations at issue for their true and accurate contents, deny that Respondents

were required to obtain a permit under the circumstances giving the clear provisions of the regulations and statutes at issue, and deny the remaining allegations contained therein.

76. As to the allegations contained in paragraphs 133, 134, 135 and 136 of the Petition, refer the Court to the text of proposed laws, amendments, and regulations for their true and accurate contents, and deny Petitioners' characterization of the proposed laws and regulations at issue, and deny the remaining allegations contained therein.

77. As to the allegations contained in paragraph 137 of the Petition, repeat and re-allege each of the responses set forth above in this Answer to paragraphs 1 through 136 of the Petition as if more fully set forth herein.

78. As to the allegations contained in paragraphs 138, 139, 140 and 141 of the Petition, deny the Petition's characterization of the Village's negative declaration, and refer the Court to such negative declaration for its true and accurate contents, which is submitted as part of the Administrative Record, deny that any permits or authorization is required from the Surface Transportation Board or the Federal Railroad Administration, and deny the remaining allegations contained therein.

79. Deny each and every allegation contained in the Petition not heretofore admitted, denied or otherwise controverted.

80. Deny that the Petitioners are entitled to any relief, including the relief sought as is set forth in the wherefore clause found in the Petition, including denying that Petitioners are entitled to any of the relief sought in subparts 1 through 9 of the Petition.

AS AND FOR A FIRST OBJECTION IN POINT OF LAW

81. Petitioners lack standing to maintain this proceeding both in their capacity as organizations and associations, as well as in their individual capacities because among other things, the organizations have not demonstrated that they have standing through individuals and those

organizations and/or associations are not otherwise entitled to maintain this action, and because the individual and organizational Petitioners herein have alleged no particularized injury or other injury as required under law, because none has suffered any harm distinct from the general public and no other distinct or separate injury or damages is alleged as required.

AS AND FOR A SECOND OBJECTION IN POINT OF LAW

82. Upon information and belief, Petitioners' claims are barred under applicable statutes of limitation and/or by the doctrine of laches because Petitioners failed and refused to initiate this action in a timely manner and/or otherwise failed to exercise their rights in a timely manner under the circumstances.

AS AND FOR A THIRD OBJECTION IN POINT OF LAW

83. The Petition should be dismissed in its entirety because the claims alleged therein fail to state any claim as a matter of law.

AS AND FOR A FOURTH OBJECTION IN POINT OF LAW

84. Petitioners, by and through their Petition, fail to state a cause of action upon which relief may be granted.

AS AND FOR A FIFTH OBJECTION IN POINT OF LAW

85. The actions undertaken by the Respondents, including the Village, were reasonable, in good faith, and such acts were not arbitrary, capricious or in excess of authority, nor were such actions taken in absence of substantial evidence.

AS AND FOR A SIXTH OBJECTION IN POINT OF LAW

86. The Administrative Record contains more than ample factual bases concerning the determinations made by the Village, and the Village conducted a proper and valid review of the project at issue in conformity with applicable standards and law. As such, the Petition should be dismissed in its entirety.

AS AND FOR A SEVENTH OBJECTION IN POINT OF LAW

87. The Village identified the areas of environmental concern associated with the project at issue, and took the requisite "hard look" and thereafter issued a reasonable elaboration for its determination that no significant adverse impacts would result from the actions at issue, including complying with each applicable law, rule and regulation including but not limited to those found under the SEQRA and as such, the determinations made by the Village as required including by virtue of the negative declaration which it issued on February 23, 2012 should be sustained in every respect.

AS AND FOR AN EIGHTH OBJECTION IN POINT OF LAW

88. Petitioners have failed to exercise and to exhaust their administrative remedies.

AS AND FOR A NINTH OBJECTION IN POINT OF LAW

89. Petitioners claims, including those purporting to be made under federal law, including but not limited to the National Environmental Policy Act of 1969 and other federal law, including federal statutory law cited in the Petition, may only be initiated and filed by an action undertaken in federal court, and may only be initiated after certain conditions and other prerequisites are met, including but not limited to exhaustion of administrative remedies, and because Petitioners have failed to satisfy such requirements and prerequisites each of the Petitioners' claims under federal law and otherwise must be dismissed in their entirety.

AS AND FOR A TENTH OBJECTION IN POINT OF LAW

90. Upon information and belief, some or all of Petitioners' claims regarding alleged violations of laws do not provide for the private right of action, and on that basis, the Petition should be dismissed in part or in whole.

AS AND FOR AN ELEVENTH OBJECTION IN POINT OF LAW

91. Each of the Petitioners' claims are barred by the doctrine of mootness, as construction of the project was substantially complete before the original return date for this proceeding, thereby mooting each of the claims made by Petitioners.

AS AND FOR A TWELFTH OBJECTION IN POINT OF LAW

92. Each of the claims asserted in the Petition are barred because Petitioners have failed to join parties necessary to adjudicate this matter, including indispensable parties.

AS AND FOR A THIRTEENTH OBJECTION IN POINT OF LAW

93. Petitioner alleges no breach of, or refusal to perform, a duty enjoined upon Respondents Painted Post Development and SWEPI, LP, no proceedings taken or about to be taken by the Respondents Painted Post Development and SWEPI, LP, and no determination made by the Respondents Painted Post Development and SWEPI, LP capable of review or of being raised under CPLR § 7803 or otherwise in accordance with Article 78 of the CPLR. Therefore, the Petition must be dismissed.

WHEREFORE, Respondents the Village of Painted Post, Painted Post Development, LLC and SWEPI, LP demand judgment dismissing the Petition, together with reasonable attorneys' fees and costs, and such other and further relief as this court deems just and proper.

Dated: August 3, 2012
Pittsford, New York

HARRIS BEACH PLLC



Joseph D. Picciotti, Esq.
John A. Mancuso, Esq.
*Attorneys for Respondents
The Village of Painted Post,
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and SWEPI, LP*
99 Garnsey Road
Pittsford, New York 14534
(585) 419-8800

To: Rachel Treichler, Esq.
Attorney for Petitioners
7988 Van Amburg Road
Hammondsport, NY 14840

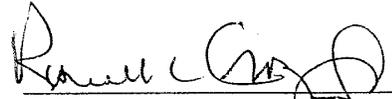
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John K. Fiorilla, Esq.
Capehart Scathard
Attorney for Respondent
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Suite 300S
8000 Midlantic Drive
Mount Laurel, NJ 08054

VERIFICATION

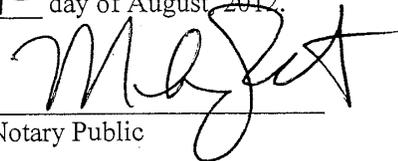
STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

ROSWELL CROZIER, being duly sworn, deposes and says he is the Mayor of the Village of Painted Post as well as being a member of the Board of Trustees of the Village of Painted Post ; that he has read the foregoing Verified Answer and Objections and Point of Law, and that as to the factual matters contained therein, he believes the same to be true based upon the knowledge of the deponent and except as to those matters stated upon information and belief, and that is to those matters, he believes them to be true based upon reasonable inquiry.



ROSWELL CROZIER

Sworn to before me this
15 day of August, 2012.



Notary Public

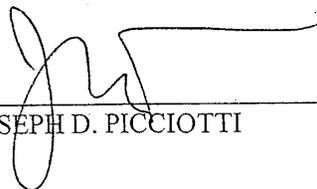
MUNESH PATEL
Notary Public, State of New York
No. 02PA6109397
Qualified in Ontario County
Commission Expires May 10, 2016

VERIFICATION

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

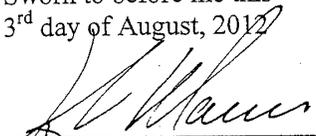
JOSEPH D. PICCIOTTI, being duly sworn, deposes and says: that he is an attorney for Respondent SWEPI, LP in this article 78 proceeding; that he has read the foregoing Verified Answer and Objections and Point of Law, and that as to the factual matters contained therein, he believes the same to be true based upon the knowledge of the deponent and except as to those matters stated upon information and belief, and that as to those matters, he believes them to be true based upon reasonable inquiry.

That the reason this verification is made by the deponent and not by Respondent SWEPI, LP is that SWEPI, LP does not now reside within the County of Monroe, where deponent resides and has his office; and the sources of deponent's information and the grounds of his belief as to all matters herein stated are the records of said defendant and the results of an investigation into this matter, conducted on behalf of said Respondent.



JOSEPH D. PICCIOTTI

Sworn to before me this
3rd day of August, 2012



Notary Public

JOHN A. MANCUSO
Notary Public, State of New York
Qualified in Monroe County
Commission Expires May 22, 2014

ADMINISTRATIVE RECORD OF PAINTED POST, PAINTED POST DEVELOPMENT, LLC
AND SWEPI, LP, DATED AUGUST 3, 2012 [109-110]

ADMINISTRATIVE RECORD: PERTINENT DOCUMENTS ASSOCIATED
WITH THE RESOLUTIONS ADOPTED BY THE VILLAGE OF PAINTED POST
ON FEBRUARY 23, 2012, AS WELL AS ADDITIONAL CORRESPONDENCE
AND OTHER DOCUMENTS ASSOCIATED WITH THE
TRANSLOADING FACILITY AND THE SURPLUS WATER CONTRACT

Exhibits

1. Resolution Negative Declaration – Village of Painted Post Lease by Painted Post Development, LLC.
2. Resolution of the Village of Painted Post For the Proposed Surplus Water Agreement.
3. Lease Agreement (Painted Post LLC and Wellsboro and Corning Railroad LLC).
4. Surplus Water Agreement (Village of Painted Post and SWEPI, LP).
5. Full Environmental Assessment Form including Parts I and II for the Transloading Facility Lease.
6. Pertinent Agency Correspondence: Cover Letters Sent to Agencies and Correspondence Received from Agencies Concerning SEQRA Review and Permit Issues.
7. Sketch Plan: Transloading Facility.
8. Engineering Drawings Dated January, 2012 for the Transloading Facility Site.
9. November 11, 2011 Hunt Report.
10. 2005 Bargain and Sale Deed for the Former Ingersoll Rand Site.
11. Notice to the New York State Department of Health and the New York State Department of Environmental Conservation under the Bargain and Sale Deed for the Former Ingersoll Rand Site.
12. Susquehanna River Basin Correspondence Concerning Authorization of the Withdrawal of Surplus Water by the Village of Painted Post.

CERTIFICATION OF ADMINISTRATIVE RECORD

Anne Names, as Clerk-Treasurer for the Village of Painted Post New York (the "Village"), hereby certifies that the foregoing documents constitute the Administrative Record for the matters concerning the Transloading Facility lease with the Wellsboro & Corning Railroad LLC and the sale of surplus water to SWEPI, LP by Painted Post Development LLC and the Village of Painted Post, respectively.

Dated: August 1, 2012

Anne Names
AnneNames

Sworn to before me this
1st day of August, 2012.

M Patel

Notary Public

MUNESH PATEL
Notary Public, State of New York
No. 02PA6109397
Qualified in Ontario County
Commission Expires May 10, 2016

**EXHIBIT 1 – RESOLUTION NEGATIVE DECLARATION – VILLAGE OF PAINTED POST
LEASE BY PAINTED POST DEVELOPMENT, LLC [111-116]**

Resend07-12-12; 10:22AM;

; 607-962-3208

58/ 64

**RESOLUTION
NEGATIVE DECLARATION – VILLAGE OF PAINTED POST
LEASE BY PAINTED POST DEVELOPMENT LLC**

A regular meeting of the Board of Trustees (the "Board") of the Village of Painted Post was duly convened on February 23, 2012 at 5:00 p.m. at 261 Steuben Street, Painted Post, New York 14870 and said meeting having been properly publicly noticed and held, and at which there was a quorum present and participating throughout.

The following resolution was duly offered and seconded, to wit:

WHEREAS, the Village of Painted Post, on behalf itself and as the sole member of Painted Post Development, LLC ("PPD") (the "Village"), has directed, by and through legal counsel for the Village, the completion and filing of Part I and Part II of a Full Environment Assessment Form ("Full EAF") prepared in accordance with the requirements under Article 8 of the New York Environmental Conservation Law and applicable regulations including 6 N.Y.C.R.R. 617.1 et seq. known collectively as the New York State Environmental Quality Review Act (referred to hereinafter sometimes as "SEQRA") concerning a proposed lease by PPD to the Wellsboro & Corning Railroad, LLC, a federally regulated railroad (the "Railroad"), of approximately 11.8 acres of a 50 acre parcel formally owned by Ingersoll-Rand Corporation ("IR" or "Ingersoll Rand") located in the vicinity of 450 West Water Street, Village of Painted Post, New York (the "Site") for the development and creation of a transloading facility (the "Facility") that will load surplus potable water from the Village's water distribution system to railroad tanker cars at the Site (the "Lease") for distribution by rail.

WHEREAS, the Site is proposed to be used for the construction and operation of the Facility by the Railroad, and development thereof it at the Site includes the design, planning, construction, equipping, operating and maintaining of a (i) filling/metering station and related improvements to be used for a filling/metering station on the Site; and (ii) a rail siding and related improvements on the Site, as well as related rail loading facilities to connect the existing rail line along Chemung Street to be used solely for the loading and transportation of surplus potable water from the Village's wells located away from the Site and through the Village's water distribution system; and (iii) the acquisition and installation in and around the Site of improvements including certain machinery, equipment and other items of tangible personal property appropriate for the operation of the transloading facility at the Site.

WHEREAS, as set forth in more detail below, the action associated with the leasing of the Site by PPD to the Railroad is being reviewed pursuant to SEQRA, but any activities to be conducted on the Site associated with the Lease, including the construction, development, and operation of the Site as a transloading facility by the Railroad is not subject to compliance with local zoning laws or regulation, nor is such construction, development and operation of the Facility subject to compliance with state law requirements including those under SEQRA, as the development, construction, operation and maintenance of the transloading facility by the Railroad is being undertaken under the jurisdiction of the Interstate Commerce Commission Termination Act of 1995, the Federal Railway Act of 1970 and other federal law and regulations associated with the operation of rail facilities (collectively referred to as "TCCTA"), and because

ICCTA applies to the development, construction, operation and maintenance of the Facility at the Site, local and state law as well as approvals associated with the construction and operation of the Facility at the Site are not required to be obtained and such laws, regulations and requirements are pre-empted under ICCTA.

WHEREAS, the Village's legal counsel directed the submission of the referenced Part I of the full EAF for the Lease, as well as a copy of a site plan and other information to various interested and involved agencies by correspondence dated January 23, 2012 notifying them of the Village's intent to act as lead agency for the SEQRA review to be undertaken of the Lease, and also informing such agencies that the construction and operation of the Site by the Railroad as a transloading facility are matters under the jurisdiction of ICCTA, and therefore exempt from SEQRA and review and local and state approvals.

WHEREAS, PPD has directed the proposed lessee for the Site to make application necessary to construct and operate the Facility including certain applications to the New York State Department of Environmental Conservation ("DEC") associated with stormwater controls and construction at the Site, as well as applications to the New York State Department of Health for the extension of certain service connections and piping on the Site in order to convey surplus potable water from Village wells located away from the Site through the Village water distribution system through lines located on the Site surface, as well as other applications and approvals as appropriate.

WHEREAS, none of the involved agencies including the DEC and DOH has objected to the Village as the lead agency for the SEQRA review of Lease within the 30-day period as required under SEQRA, and as such, pursuant to the applicable requirements, the Village has been installed as the lead agency for the SEQRA review of the Lease. The Village further hereby approves and confirms its desire to act as lead agency for the SEQRA review of the Lease, and confirms that it has been so installed in accordance with regulation.

WHEREAS, in accordance with the requirements of SEQRA, the Village has carefully considered and analyzed the relevant areas of impact and potential impact on the environment from the Lease as is set forth in more detail below by undertaking a review of the relevant conditions and relevant issues associated with the Lease, including by the Village considering and reviewing the completed Full EAF, including Parts I and II of it, and by reviewing additional information concerning the Lease as well as the site plan prepared by the engineer for the Railroad for the transloading facility, as well as considering the report dated November 11, 2011 prepared by Hunt Engineers, Architects and Land Surveyors, PC (the "November 2011 Hunt Report"), as well as considering the requirements for ongoing uses and operations of the former IR Foundry contained in the bargain and sale deed entitled "Former Ingersall-Rand Foundry Site, Steuben County, Painted Post, New York, dated August 1, 2005 (the "2005 Deed") and documents, plans and requirements under the 2005 Deed, including the installation and maintenance of certain institutional controls (i.e., fencing, installation of a cover over a portion of the property, restriction on the use of water derived from the site, etc.), as well as protocols for the handling and removal of certain soils on the Site and in the area of the Site, and other applicable documents, reports and matters for the Site.

WHEREAS, the Village has considered information from other involved agencies, including correspondence from the New York State Department of Environmental Conservation and correspondence, comments and input and other information from other involved and/or interested agencies;

NOW, THEREFORE, BE IT RESOLVED: Upon thorough review and due consideration of the Village of the Full Environmental Assessment Form, including reviewing the completed answers to Parts I and II of such form and reviewing applicable correspondence and input from interested and involved agencies, including correspondence from the New York State Department of Environmental Conservation and considering the requirements of the 2005 Deed for maintaining and operating land associated with the former foundry, as well as considering the November 2011 Hunt Report, the proposed site plan completed for the Site for construction and operation of the transloading facility, as well as considering the provisions of the Lease and other applicable documents as well as considering the fact that the construction, operation, and maintenance of the Site as a transloading facility by the Railroad is not subject to SEQRA review or other local zoning or other requirements the Village makes the following findings:

I. The Village has considered leasing of the Site pursuant to the parameters and criteria set forth in 6 N.Y.C.R.R. §§617.2(b) and 617.3(g) as proposed herein, including but not limited to considering each of the provisions of the Lease, including each of the schedules attached to it, and considering the actions related to the Lease, but also considering the fact that any actions associated with the construction, development, operation and maintenance of the transloading facility by the Railroad on the Site are subject to ICCTA pre-emption, and therefore such actions are not required to be reviewed under SEQRA.

II. The Village has previously classified its review of the Lease as a Type I action pursuant to 6 N.Y.C.R.R. §617.4.

III. The Village has carefully reviewed the Full Environmental Assessment Form including the responses provided in Parts I and II of same, as well as considering other pertinent documents previously referenced including the 2005 Deed, the November 2011 Hunt Report, as well as the site plan prepared by Hunt Engineers for operation of the Facility on the Site, and also on file with the Village and considering the criteria in 6 N.Y.C.R.R. §617.7(c), including but not limited to considering whether the Lease contemplates substantial adverse changes in various pertinent environmental media including to air, to ground or surface water, as well as changes to quantity or quality of traffic as well as considering changes to noise levels, and from odors, and the Village has considered the comments and input received by involved and interested agencies, as well as the comments and concerns of the public and other information provided to the Village.

Based upon the foregoing, the Village through its Board of Trustees has thoroughly reviewed the potential relevant area of environmental concern and finds the Lease will not result in any potentially significant adverse impact on the environment for the following reasons:

- A. *Transportation.* The Lease will not result in any significant additional vehicular traffic associated with the Site or associated with the construction, development or operation of the transloading facility on it. Moreover, as detailed previously, while ICCTA preemption applies so that an evaluation of any potential impacts on transportation including from any additional traffic is not required to be performed under SEQRA; nevertheless, the transloading facility proposed for the Site including its development, construction and operation is not anticipated to result in any significant additional vehicular traffic, as the operations at the Site will be loading of train cars with surplus potable water. Indeed, as set forth in detail in Part I and Part II of the EAF, there is no anticipated material increase in vehicular traffic, including truck traffic associated with operation of the transloading facility. Some additional traffic will be generated during construction of the Facility, but as construction is only expected to last for less than five (5) months, any such impacts will be short term and are not anticipated to be significant.
- B. *Community and Neighborhood Character and Land Use.* The Lease Site is located in an area zoned for industrial use under the Village Code which classifications that apply to the Site including several allowable uses consistent or specifically authorized by the development and operation of the transloading facility, including warehousing and other industrial uses; as such the Facility is consistent with such zoning for the area of the Site. In addition, it is believed that the operation of the transloading facility at the Site is not inconsistent with any adopted master plan or similar plan for the area associated with the Site.
- C. *Noise and Odor.* The Lease is not expected to result in any significant increase in noise or odors. Further, the operation of the transloading facility, while not subject to SEQRA review pursuant to ICCTA pre-emption, is also not expected to result in any significant increases in noise or odor as the operation of the Facility will be undertaken in such a manner that no significant adverse noise and/or odor impacts are anticipated as water will simply be loaded automatically onto train cars and the train cars will be moved into and out of a rail siding associated with the lease Site. As indicated, any impacts associated with construction would be short term and are not expected to be significant.
- D. *Public Health.* As set forth in more detail in the EAF, the Lease Site is located on land previously operated by Ingersoll Rand as a Foundry and for other operations. The Lease Site including a larger parcel of land on which it is located has been the subject of numerous investigations and remedial actions to address contamination, and the area encompassing the area including the Site was formerly listed as an inactive hazardous waste site by the State of New York. Pursuant to numerous investigations and remedial actions including removal actions, soil cleanup, etc. and other remedial actions, the New York State Department of Environmental Conservation (hereinafter referred to as "the DEC" or "the Department") has de-listed the Site or removed it from the inactive hazardous waste site list, as the Department has determined that required investigation and remediation of contamination associated with the former Ingersoll Rand Foundry and associated operations area has been completed to the Department's satisfaction.

As documented in the 2005 Deed (together with attachments) as well as documented in the November 2011 Hunt Report, the Department has determined that the investigation and remediation of the land formerly encompassing the Ingersall Rand Foundry and other operations on portion of which the transloading facility is proposed to be operated, has been appropriately remediated and investigated, and as such has been delisted as the investigation and remediation of that property has resulted in it achieving a Class C certification under the applicable New York regulations, with the Department specifically finding that "the primary contaminants of concern at the site [former Foundry parcel] included PCBs and PAHs. PCB contaminated soil and structures have been remediated...No environmental problems associated with the disposal of hazardous waste remain at this site." Further, the 2005 Deed requires that certain institutional controls and other measures be implemented including but not limited to implementation of a soil fill management protocol and as detailed in the November 2011 Hunt Report and as set forth in the proposed Lease, the transloading facility at the Site will be operated in accordance with the 2005 Deed's requirements and in accordance with other requirements imposed by the New York State Department of Environmental Conservation as well as required by additional permits and authorizations sought and obtained for the Site by Hunt Engineers on behalf of the Site Lessee, including a permit issued under the New York State Pollutant Discharge Elimination System Program ("SPDES") whereby a Storm Water Pollution Prevention Plan ("SWPPP") has been developed and will be implemented and further detailed below, as well as the implementation of permanent stormwater measures on the Site have been designed and will be constructed as part of the Facility on the Site.

E. Stormwater. As detailed in the documents reviewed by the Village herein, no significant adverse impacts to stormwater are anticipated, as the Site is the subject of a permit issued under the SPDES permit program administered by the Department, including measures that will be implemented during construction. Further, the Site which has been the subject of investigations and remedial actions is the subject of a soil fill management plan that provides conditions on the excavation and handling of soils and which will be implemented as part of the conditions under the Lease, including maintaining measures for the construction and development of the Site to control stormwater runoff including the implementation of a SWPPP. Further, as discussed, previously in this resolution, the transloading facility will be operated in accordance with DEC requirements for the retention of stormwater.

F. Endangered Species. As detailed in the correspondence to the New York State Department of Environmental Conservation, a survey was undertaken to determine whether endangered or threatened plant or animal species were located on the Site. Based upon the DEC review of these matters, the development of the Site and the Lease will not adversely impact such species.

NOW THEREFORE BE IT FURTHER RESOLVED AS FOLLOWS:

IV. The Village has considered the Lease pursuant to the parameters and criteria set forth in 6 N.Y.C.R.R. §§617.2(b) and 617.3(g) and based on the foregoing the Village finds that

the Lease will not have a significant adverse impact on the environment and hereby adopts a negative declaration for the lease by PPD to the Wellsboro & Corning Railroad, LLC.

V. This resolution has been prepared in accordance with Article 8 of the New York Environmental Conservation Law and associated regulations under the New York State Environmental Quality Review Act by the Village of Painted Post with its offices at 261 Steuben Street, Painted Post, New York.

VI. The requirements of SEQRA concerning the lease have been satisfied.

VII. The resolution will take effect immediately.

Said matter having been put to a vote, the following votes were recorded:

	<i>Yea</i>	<i>Nea</i>	<i>Abstain</i>	<i>Absent</i>
Roswell Crozier, Jr.	[X]	[]	[]	[]
William Scheidweiler	[]	[]	[]	[X]
Richard Lewis	[X]	[]	[]	[]
Richard Thorne	[X]	[]	[]	[]
Ralph Foster	[X]	[]	[]	[]

The resolution was thereupon duly adopted.

Certification

I, the undersigned, being the Clerk of the Village of Painted Post hereby certified that the foregoing is a complete and accurate copy of a resolution duly enacted by the Village of Painted Post at a regular meeting thereof held on the 23rd day of February, 2012, duly called, publicly noticed and publicly held at which a quorum was present and participating thereat throughout and that said resolution has not be rescinded, modified or amended in any respect.

DATED: February 23, 2012

Anne Names
Anne Names, Clerk of the Village of Painted Post, New York

**EXHIBIT 2 – RESOLUTION OF THE VILLAGE OF PAINTED POST FOR THE PROPOSED
WATER SURPLUS AGREEMENT [117-119]**

**RESOLUTION OF
THE VILLAGE OF PAINTED POST FOR THE PROPOSED
SURPLUS WATER SUPPLY AGREEMENT**

A regular meeting of the Board of Trustees (the "Board") of the Village of Painted Post was duly convened on February 23, 2012 at 5:00 p.m. at 261 Steuben Street, Painted Post, New York 14870 and said meeting having been properly publicly noticed and held, and at which there was a quorum present and participating throughout.

The following resolution was duly offered and seconded, to wit:

WHEREAS, it has been proposed that the Village of Painted Post (the "Village") sell certain surplus potable water from the Village water supply to SWEPI LP, ("SWEPI") having an address of 200 Dairy Ashford Street, Houston, Texas 77079, as the Village desires to sell such surplus water in accordance with the proposed contract referenced herein, and the Village has the authority to sell such surplus water, and the Village water supply has capacity to sell surplus water as proposed without adversely impacting the water supply to persons currently receiving it from the Village supply;

WHEREAS, the Village has considered its capacity to supply potable water to current users of the Village water supply system and future users and based upon among other documents and information the report be prepared by Hunt Engineers, Architects and Land Surveyors P.C. dated November 11, 2011 including Hunt's analysis of the Village's water supply system and the capacity of the Village water supply system to provide to surplus potable water as proposed in the proposed surplus water sale agreement, without adversely impacting the customers of the Village water supply system, including without adversely impacting water pressure and ability to supply such customers;

WHEREAS, the Village has made application to and received permission from the Susquehanna River Basin Commission ("SRBC") to withdraw additional water in an amount of 1,000,000 gallons per day ("gpd") which would be available for sale as surplus potable water in addition to the water that the Village is already withdrawing in order to supply current customers of the Village water supply system;

WHEREAS, in accordance with the proposed surplus water supply agreement presented at this meeting, the Village has provided protections so as to ensure that the sale of surplus potable water shall not adversely impact customers of the Village water supply, including provisions that authorize the Village to restrict the supply of water to SWEPI in the event of a drought restriction emergency or unforeseen operational problem or other so-called *force majeure* event as set forth in more detail in the proposed water sale agreement;

WHEREAS, the Village has considered that the water to be supplied under the surplus contract shall be supplied from Village wells distributed to the Village water supply system and withdrawn from a facility located at the former Ingersoll Rand Fondry Site and in particular at an 11.8 acre portion as more fully set forth in the resolution concerning the approval of the lease to utilize the Site as a transloading facility. The Village finds that supplying the surplus water as

proposed in the surplus water sale agreement presented at this meeting is appropriate and is consistent with the zoning for the area where the Site is located, and the sale of such surplus water in the manner proposed at the Site which is to load such water on rail cars for distribution away from the Site is also not inconsistent with long range plans for the Village, and the Village has determined that based upon the findings made under the New York State Environmental Quality Review Act in another resolution enacted by the Village, and based other findings that it has made herein concerning the approval of the lease for operation of the Site as a transloading facility, that sale of surplus potable water as proposed is appropriate and in the interests of the Village;

NOW, THEREFORE BE IT RESOLVED, that upon due consideration by the Village of the proposed lease for the transloading facility to be constructed and operated at a portion of the former Ingersoll Rand property known as the Site, as well as the Village's consideration of the form of the surplus water sale agreement presented at this meeting, including the proposed amounts to be paid by SWEPI for the surplus water, and the Village's review of appropriate documentation and information including but not limited to the negative declaration and Type II determination under SEQR the Village makes the following findings:

- (i) The form and substance of the Surplus Water Sale Agreement (in substantially the form presented to at this meeting and/or in such form as is approved by the Mayor upon and with the advice of counsel to the Village) are hereby approved.
- (ii) The Mayor is hereby authorized, on behalf of the Village, to negotiate, execute and deliver the Surplus Water Sale Agreement and any related documents with such changes, variations, omissions and insertions as the Mayor shall approve upon and with the advice of counsel to the Village pending the execution of the Lease Agreement and pending the receipt by the Village of \$230,000.00 from SWEPI, L.P. as consideration under the Surplus Water Sale Agreement which is hereby designated to be used, on behalf of Painted Post Development, LLC, together with other available monies of the Village for the satisfaction by the Village of a certain Mortgage and payoff of a certain Note (\$230,000.00 outstanding principal plus all accrued interest) on behalf of Painted Post Development, LLC, of which the Village is the sole member, associated with the former Ingersoll Rand Foundry. The execution of the Surplus Water Sale Agreement and related documents by the Mayor shall constitute conclusive evidence of such approval. The Mayor is further hereby authorized, on behalf of the Village, to designate any additional authorized representatives of the Village.
- (i) The Mayor is hereby authorized and directed for and in the name and on behalf of the Village to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the Mayor, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Village with all of the terms, covenants and provisions of the documents executed for and on behalf of the Village.

- (iii) Due to the complex nature of this transaction, the Village hereby authorizes its Mayor to approve, execute and deliver such further agreements, documents and certificates as the Village may be advised by counsel to the Village or Transaction Counsel to be necessary or desirable to effectuate the foregoing, such approval to be conclusively evidenced by the execution of any such agreements, documents or certificates by the Mayor.
- (iv) The resolution will take effect immediately.

Said matter having been put to a vote, the following votes were recorded:

	<i>Yea</i>	<i>Nea</i>	<i>Abstain</i>	<i>Absent</i>
Roswell Crozier, Jr.	[X]	[]	[]	[]
William Scheidweiler	[]	[]	[]	[X]
Richard Lewis	[X]	[]	[]	[]
Richard Thorne	[X]	[]	[]	[]
Ralph Foster	[X]	[]	[]	[]

The resolution was thereupon duly adopted.

Certification

I, the undersigned, being the Clerk of the Village of Painted Post hereby certified that the foregoing is a complete and accurate copy of a resolution duly enacted by the Village of Painted Post at a regular meeting thereof held on the 23rd day of February, 2012, duly called, publicly noticed and publicly held at which a quorum was present and participating thereat throughout and that said resolution has not be rescinded, modified or amended in any respect.

DATED: February 23, 2012

Anne Names
 Anne Names, Clerk of the Village
 of Painted Post, New York

EXHIBIT 3 – LEASE AGREEMENT (PAINTED POST LLC AND WELLSBORO & CORNING RAILROAD, LLC) [120- 140]

07-12-12:10:14AM:

;807-962-3208

23/ 84

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter the "Lease") is made as of March 1, 2012, by and between **PAINTED POST DEVELOPMENT, LLC**, a New York limited liability company, having an address at 261 Steuben Street, Painted Post, New York 14870 (the "Lessor") and **WELLSBORO & CORNING RAILROAD, LLC**, a Delaware limited liability company and federally chartered railroad, having an address at 256 Eagleview Boulevard - PMB 261, Exton, Pennsylvania 19341, on behalf of itself and its affiliates and subsidiaries (collectively, the "Lessee").

WITNESSETH:

WHEREAS, the Village of Painted Post, Steuben County, New York (the "Village") is the sole member of the Lessor, and pursuant to that certain Bargain and Sale Deed, recorded in the Steuben County Clerk's Office on December 1, 2005 at Liber 1988, Page 10 (the "2005 Deed"), the Lessor became the owner of certain real property containing approximately forty-nine (49) acres with certain improvements thereon and located in the vicinity of 450 West Water Street in the Village of Painted Post, Steuben County, New York (the "Premises") all subject to the terms, restrictions and covenants set forth in the 2005 Deed, which 2005 Deed is incorporated herein by reference and subject to any conditions, rights, easements, privileges, covenants or restrictions, of record; and

WHEREAS, in connection with a certain bulk water sale contract, dated as of March 1, 2012 (the "Water Purchase Agreement"), by and between the Village and SWEPI LP ("SWEPI"), the Village will sell a certain amount of surplus municipal water to SWEPI from its existing municipal water supply system at a filling/metering station to be constructed by the Lessee on a portion of the Premises and SWEPI has arranged to have the Lessee withdraw, load and transport such water via rail line from the Premises; and

WHEREAS, the parties desire to enter into this Lease for purposes of allowing the Lessee to undertake a certain project (collectively, the "Project") consisting of: (A) the acquisition by the Lessee of a leasehold interest in the Leased Premises (as defined herein); (B) the design, planning, construction, equipping, operating and maintaining of a (i) filling/metering station on the Leased Premises and related improvements to be used for a filling/metering station (collectively, the "Filling Station Facility Improvements") and (ii) a rail siding on the Leased Premises and related improvements, including related rail loading facilities, to connect to the exiting rail line along Chemung Street adjacent to the Leased Premises to be used solely for the loading and transportation of water from the Leased Premises (collectively the "Rail Siding Facility Improvements, and together with the Filling Station Facility Improvements, the "Improvements") and (C) the acquisition and installation in and around the Improvements of certain machinery, equipment and other items of tangible personal property (collectively, the "Equipment", and collectively with the Leased Premises and the Improvements, the "Facility").

NOW, THEREFORE, the parties hereto, in consideration of Ten Dollars (\$10.00), the terms and conditions herein contained, and other good and valuable consideration, the receipt and sufficiently of which are hereby acknowledged, do agree as follows:

ARTICLE 1
REPRESENTATIONS AND COVENANTS

Section 1.1. The Lessor makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Lessor is a limited liability company duly organized and validly existing under the laws of the State of New York and has the authority to enter into this Lease and has duly authorized the execution and delivery of this Lease.

(b) The Lessor has title to the Leased Premises.

(c) Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Lease will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Lessor is a party or by which it is bound (including the 2005 Deed), or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Lessor under the terms of any such instrument or agreement.

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Lessor, threatened against or affecting the Lessor, to which the Lessor is a party, and in which an adverse result would in any way diminish or adversely impact on the Lessor's ability to fulfill its obligations under this Lease.

(e) THE LESSOR MAKES NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE LESSEE'S PURPOSES OR NEEDS IN CONNECTION WITH THE PROJECT.

(f) The Lessor makes no representation regarding the existence of any defects or dangerous conditions existing on or with respect to the Facility.

Section 1.2. The Lessee makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Lessee is a federally chartered railroad and a limited liability company duly organized and validly existing under the laws of the State of Delaware and is authorized to do business in the State of New York, and has the authority to enter into this Lease and has duly authorized the execution and delivery of this Lease.

(b) Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Lease will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Lessee is a party or by which it is bound,

or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Lessee under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Lessee shall defend, indemnify and hold the Lessor harmless from any liability or expenses resulting from any failure by the Lessee to comply with the provisions of this subsection.

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Lessee, threatened against or affecting the Lessee, to which the Lessee is a party, and in which an adverse result would in any way diminish or adversely impact on the Lessee's ability to fulfill its obligations under this Lease.

(e) The Lessee covenants that the Facility will comply in all respects with all applicable environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Lessee will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility and (iv) that no underground storage tanks will be located on the Facility. The Lessee, upon receiving any information or notice contrary to the representations contained in this Section, shall immediately notify the Lessor in writing with full details regarding the same. The Lessee hereby releases the Lessor from liability with respect to, and agrees to defend, indemnify, and hold harmless the Lessor, its directors, members, officers, employees, agents, representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related to any violation or breach of the covenants or the representations contained in this Section. The Lessee shall at reasonable times, upon reasonable prior notice, allow the Lessor and its officers, employees, agents, representatives, contractors and subcontractors reasonable access to the Leased Premises for the purposes of ascertaining site conditions, including, but not limited to, subsurface conditions. Lessee hereby agrees that at all times during which it is operating the Project to comply with, and ensure compliance by its affiliates, subsidiaries, contractors, subcontractors, subtenants or sublessees with, the provisions hereof.

(f) The Lessee has provided to the Lessor a certificate or certificates of insurance containing all of the insurance provision requirements hereunder. If the insurance is canceled for any reason whatsoever, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to any mortgagee, loss payee or additional insured until at least thirty (30) days after receipt by such party of written notice by the insurer of such cancellation, lapse, expiration, reduction or change.

(g) The Lessee agrees that the Facility resulting from the conveyance hereunder will be sufficient and suitable for the purposes intended by this Lease and agrees that Lessor has made no representations or statements as to the fitness or suitability of the Facility for Lessee's intended use in connection with the Project. The Lessee accepts the Leased Premises in its "As Is" condition "with all faults" subject to the terms, restrictions and covenants set forth in the 2005 Deed which is incorporated herein by reference and subject to any conditions, rights, easements, privileges, covenants or restrictions, of record. The Lessee acknowledges and agrees that the restrictions and covenants contained in the 2005 Deed are binding upon and enforceable against the Lessee, its successors and assigns, and shall run with the Leased Premises, and are forever enforceable by the New York State Department of Environmental Conservation ("DEC") and agrees and covenants to conform and observe such covenants and restrictions. The Lessee, for itself, its successors and assigns, and any and all users or occupiers of the Leased Premises, (i) covenants that it will not undertake or allow any activity on or use of the Leased Premises that would violate the use restrictions and covenants contained in the 2005 Deed and (ii) will indemnify, defend and hold harmless the Lessor, its successors and assigns for breach of the aforementioned covenant.

(h) The Lessor acknowledges the following notice provided under the 2005 Deed: Notice and warning is provided that polynuclear aromatic hydrocarbons ("PAHs"), which are semi-volatile organic compounds, are located in soils at and below the ground surface of the Premises. Notice and warning is provided that such PAHs may pose a risk to humans in a scenario where future use of the Premises includes invasive activities at or below the surface of the Premises, and appropriate precautions should be taken.

(i) The Lessee hereby agrees to pay the fees and costs of local counsel to the Lessor and/or the fees and costs of transaction counsel incurred in connection with the Project, and any and all fees, costs and expenses incurred in connection with the Project, including recording fees and taxes and any other fees or expenses due hereunder.

ARTICLE 2

DESCRIPTION AND USE

Section 2.1. The Lessor hereby leases to the Lessee and the Lessee hereby accepts from the Lessor a portion of the Premises constituting approximately 11.8 acres of real property with certain improvements thereon and subject to any conditions, rights, easements, privileges, covenants or restrictions, of record, as more particularly described on Exhibit A annexed hereto (the "Leased Premises") and made a part hereof.

Section 2.2. This Lease is made subject to any conditions, rights, easements, privileges, covenants or restrictions, of record and subject to the terms, restrictions and covenants set forth in the 2005 Deed, and in particular:

(a) the Lessor and Lessee hereby acknowledge and agree that pursuant to the 2005 Deed, no disturbance or excavation of surface or subsurface soils or other materials at or below the Leased Premises shall be conducted without prior notification thereof to or consent by the DEC;

(b) the Lessee hereby acknowledges and agrees that pursuant to the 2005 Deed, any disturbance or excavation of surface or subsurface soils or other materials at or below the Leased Premises shall be conducted (i) consistent with the Remedial Work Plan and the Soil Fill Management Protocol attached thereto, all as more particularly described in SCHEDULE "D" attached to the 2005 Deed and made a part hereof and as may the same may be amended by and between DEC and the Lessor from time to time, or (ii) as otherwise permitted by the DEC;

(c) the Lessee hereby acknowledges and agrees that pursuant to the 2005 Deed, it shall prohibit the use of ground water underlying the Premises (unless as otherwise permitted in accordance with the 2005 Deed), provided such prohibition shall be strictly limited to ground water withdrawn from within the boundaries of the Premises and

(d) the Lessee hereby acknowledges and agrees that pursuant to the 2005 Deed, it shall notify the Lessor in writing sixty (60) days, but not more than one hundred and twenty (120) days, prior to the onset of construction activities as related to the Project, unless as otherwise directed by the Lessor; provided further, that the Lessee, prior to the onset of construction activities, hereby acknowledges and agrees to submit an application for building permit (or other acceptable form of notice) for purposes of notification regarding the commencement of construction activities as related to the Project and as related to any offsite construction activities located off the Leased Premises.

(e) the Lessee hereby acknowledges and agrees to conduct the annual inspections and reporting pursuant to and in accordance with SCHEDULE "D" attached to the 2005 Deed (the form of environmental inspection form is attached hereto as Exhibit D and made a part hereof).

(f) the parties hereto agree to obtain environmental insurance, effective upon execution of this Lease and effective through the initial Term of this Lease, for the benefit of the Lessee, the Lessor, the Village and Ingersoll-Rand Corporation in a form, coverage, content and a carrier acceptable to Ingersoll-Rand Corporation in its sole reasonable discretion (the "Environmental Insurance"), and the parties hereto further agree that (i) the upfront premium for said Environmental Insurance shall be paid in full as follows, 1/3 by the Lessee and 2/3 by the Village and (ii) any deductibles associated with the Environmental Insurance shall be paid for by the Lessee.

Section 2.3. The Lessee agrees to use the Facility solely in connection with the Project and in accordance with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility including all applicable state and federal railroad safety standards, and the Lessee hereby covenants not to use the Facility for any other purpose without the prior written consent of the Lessor. The Lessee shall defend, indemnify and hold the Lessor harmless from any liability or expenses resulting from any failure by the Lessee to comply with the provisions of this Section.

ARTICLE 3 TERM

Section 3.1. The term of this Lease shall commence on the date hereof (the "Lease Date") and shall terminate on the fifth (5th) anniversary of the date hereof (the "Term") unless sooner terminated in accordance with the terms and provisions contained in this Lease. Prior to the expiration of this Lease, the Lessee shall have the right to request, in writing, an extension of this Lease and any such extension by the Lessor shall be evidenced in writing and signed by each of the parties hereto.

ARTICLE 4
LEASE RENT, FEES AND EXPENSES

Section 4.1. The Lessee shall pay the Lessor rent in the sum of one (\$1.00) dollar per year in each year during the Term of this Lease. It is understood and agreed that the terms and conditions of this Lease including, but not limited to, the Lessee's obligation to undertake the Project, are part of the consideration for the lease of the Leased Premises.

Section 4.2. It is understood and agreed by the parties hereto that none of the costs, fees and/or expenses incurred in connection with the undertaking of the Project and the performance of Lessee's obligations hereunder shall be an obligation of the Lessor; and the Lessor shall incur no liability whatsoever, financial or otherwise, therefor, and it being understood and agreed to by the parties hereto that such cost, fees and/or expenses shall be solely borne by the Lessee.

Section 4.3. In addition to the payments of rent pursuant to Section 4.1 hereof, throughout the Term of this Lease, the Lessee shall pay to the Lessor as additional rent, within thirty (30) days of the receipt of demand therefor, an amount equal to the sum of the reasonable costs, fees and expenses of the Lessor and the members thereof incurred (i) in connection with the Project and (ii) in connection with the carrying out of the Lessor's duties and obligations under this Lease.

Section 4.4. [Reserved].

Section 4.5. The Lessee agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public or private debts. In the event the Lessee shall fail to timely make any payment required hereunder, the Lessee shall pay the same together with interest from the date said payment is due at the rate of six percent (6%) per annum.

ARTICLE 5
REMEDIES TO BE PURSUED AGAINST CONTRACTORS AND SUBCONTRACTORS
AND THEIR SURETIES

Section 5.1. In the event of a default by any contractor or any other person or subcontractor under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Lessee at its sole cost and expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Lessor, as appropriate, against the

contractor, subcontractor or manufacturer or supplier or other person so in default and against such surety for the performance of such contract. The Lessee may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which the Lessee deems reasonably necessary, and in such events the Lessor, at the Lessee's expense, hereby agrees to cooperate fully with the Lessee and to take all action necessary to effect the substitution of the Lessee for the Lessor (including but not limited to reasonable attorneys' fees) in any such action or proceeding.

ARTICLE 6

CONSTRUCTION OF IMPROVEMENTS FOR THE PROJECT

Section 6.1. The Lessee, in compliance with the provisions hereof, and in accordance with the plans and specifications as approved by the Lessor and attached hereto as **Exhibit B** and made a part hereof (the "Plans and Specifications"), shall, at no expense to the Lessor, complete the Project in accordance with the provisions hereof. Notwithstanding anything herein to the contrary, the Lessor and/or the Village shall have the exclusive right to approve, inspect, change or modify any water metering equipment relating to the filling and metering of water at the Facility.

Section 6.2. The undertaking of the Project shall comply with the 2005 Deed and all applicable laws, ordinances, regulations or orders of any Federal, State, Municipal or other public authority affecting the same, including applicable Federal, Municipal, County and State building codes and all requirements of the New York Board of Fire Underwriters or other similar body having jurisdiction hereof.

(a) No material changes in the Plans and Specifications may be made without the prior written consent of the Lessor.

Section 6.3. The Lessee, at its sole cost and expense, shall apply for all permits and approvals as may be required in connection with the Project by any and all governmental authorities having jurisdiction thereof.

Section 6.4. The Lessee shall complete the Project with due diligence and substantially in accordance with the Plans and Specifications in a good, careful, proper and workmanlike manner in accordance with all applicable provisions of law. Title to the Improvements and to all Equipment utilized in connection with the construction and operation of the Improvements shall be vested in the Lessee immediately, provided, however, that any water metering equipment utilized in connection with the construction and operation of the Filling Station Facility Improvements shall be vested in the Lessor. Notwithstanding the foregoing, all of the Lessee's right, title and interest in and to the Facility shall revert to the Lessor upon the termination of this Lease.

Section 6.5. At all times during the Term of this Lease, the Lessor (and/or the Village or their respective designees) may, from time to time, inspect the Facility. In the event that during such inspection, the Lessor (and/or the Village or their respective designees) reasonably determines that the construction and operation of the Facility is not being performed

substantially in accordance with the Plans and Specifications, then the Lessor shall give prompt written notice to the Lessee, specifying in detail the particular deficiency, omission, or other respect, and the Lessee shall remedy the deficiency within a commercially reasonable time. In the event the Lessee disputes the Lessor's objection that the construction is not being performed in accordance with the Plans and Specifications, then the Lessee may respond in writing within five (5) business days setting forth with specificity the reason or reasons why it believes the construction conforms to the Plans and Specifications. Within a reasonable time thereafter the Lessor, after such reasonable consultation and review as it may deem appropriate, shall advise the Lessee in writing as to whether the Lessor's original objection shall be withdrawn, upheld or modified.

ARTICLE 7 **LIENS**

Section 7.1. Lessee will not create or permit to be created, and will, at its sole cost and expense, discharge within thirty (30) days after notice of the filing thereof, any lien, encumbrance or charge upon the Facility.

ARTICLE 8 **OPERATIONS AND COMPLIANCE WITH LAWS**

Section 8.1. The Lessee agrees that it will, throughout the term of this Lease, promptly comply in all material respects with all applicable statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all applicable federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. The Lessee, in compliance with the provisions hereof, and in accordance with the Stormwater Control Facility Maintenance Requirements as prepared by the Lessee's engineers, Hunt Engineers, Architects, & Land Surveyors, PC, and attached hereto as Exhibit C and made a part hereof, shall, at no expense to the Lessor, complete, operate and maintain the Project in accordance with the provisions hereof and Exhibit C in order to satisfy the DEC's Stormwater Pollution Prevention Plan ("SWPPP") requirements.

Section 8.2. Notwithstanding the provisions of section 8.1 hereof, the Lessee may in good faith contest the validity of the applicability of any requirement of the nature referred to in such section 8.1 hereof. In such event, the Lessee may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom. The Lessee will endeavor to give notice of the foregoing to the Lessor but failure to do so shall not be a breach of this Lease.

ARTICLE 9
MAINTENANCE AND ALTERATIONS

Section 9.1. Lessee shall keep all areas of the Facility clean and in good order and shall make all required repairs, at no cost to the Lessor, except as may be provided in any separate written agreement signed by the parties hereto. In the event Lessee fails to commence to so maintain, clean or repair any portion of the Facility within a period of thirty (30) days after written notice from the Lessor requesting such work, or in the event Lessee fails to diligently continue to completion any such work, the Lessor may, at its sole option and at the sole cost and expense of the Lessee, and in addition to any other remedies available to it, enter the Facility and perform the required maintenance, cleaning or repairs.

ARTICLE 10
NONRECOURSE TO LESSOR

Section 10.1. The obligations and agreements of the Lessor contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Lessor, and not of any member, officer, agent or employee of the Lessor in his/her individual capacity, and the members, officers, agents and employees of the Lessor shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

Section 10.2. The obligations and agreements of the Lessor contained hereby shall not constitute or give rise to an obligation of the Village and the Village shall not be liable hereon or thereon and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Village, but rather shall constitute limited obligations of the Lessor, payable solely from the revenues of the Lessor derived from the sale or other disposition of the Facility.

Section 10.3. No order or decree of specific performance with respect to any of the obligations of the Lessor hereunder shall be sought or enforced against the Lessor unless (i) the party seeking such order or decree shall first have requested the Lessor in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Lessor shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Lessor refuses to comply with such request and the Lessor's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall place, in an account with the Lessor, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Lessor refuses to comply with such request and the Lessor's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Lessor and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

ARTICLE 11
ASSIGNMENT; SUBLEASING

Section 11.1. Except as otherwise acknowledged or provided herein, the Lessee shall not assign, sublet, subcontract or otherwise dispose of this Lease, or any right, duty or interest herein, without the prior written consent of the Lessor, nor shall this Lease be transferred by operation of law, it being the purpose and spirit of this instrument to grant the rights under this Lease solely to the Lessee named herein. No subcontracting, subletting or other such disposition of this Lease (other than an assignment approved by the Lessor), either with or without such consent of the Lessor, shall serve to relieve the Lessee of its obligations hereunder.

Section 11.2. The Lessor may from time to time grant licenses, leases, easements, rights of way and other permits to use the Facility for any purpose that does not unreasonably interfere with the Lessee's use of the Facility for the purposes stated hereunder. The parties hereto agree that the Lessor will receive and be the sole owner of any and all monies paid by any person for use of the Facility pursuant to any such lease, easements, licenses or other agreement, unless the parties hereto agree in writing to a different arrangement. The Lessor may convey all or a portion of its interest in the Premises to such other party as it may choose so long as such conveyance does not unreasonably interfere with the Lessee's use of the Facility for the purposes stated hereunder.

ARTICLE 12
INSURANCE, DAMAGE, DESTRUCTION

Section 12.1. At all times throughout the Term of this Lease, including, without limitation, during any period of construction of the Facility, the Lessee shall maintain or cause to be maintained the following insurance:

(a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Lessee; or as an alternative to the foregoing the Lessee may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well, provided a periodic appraisal is performed and provided to the Lessor.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance which the Lessor or the Lessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Lessee who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law (including the contractual liability assumed by the Lessee under Article 13) and arising from personal injury and death or damage to the property of others caused by accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Lessee by any applicable workers'

compensation law; and a blanket excess liability policy in the amount not less than \$3,000,000, protecting the Lessee against any loss or liability or damage for personal injury or property damage.

(d) [Reserved].

(e) Prior to completion of the construction of the Facility, any contractor or subcontractor constructing the Facility shall be required to carry worker's compensation and general liability insurance with limits reasonably acceptable to the Lessor and containing coverages for premises operations, owner's protective, contractor's protective, contractual liability, personal injury liability, broad form property damage, explosion hazard, collapse hazard and underground property damage hazard and coverage for all owned, non-owned and hired vehicles with non-ownership protection for the contractor's or subcontractor's employees.

THE LESSOR DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR IN LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE LESSEE'S BUSINESS OR INTERESTS.

Section 12.2. The following additional provisions respecting insurance shall apply:

(a) All insurance required hereunder shall name the Lessor and the Village as additional insureds. If Lessee elects to self-insure: At the Lessee's election, exercised from time to time, the Lessee may self insure with respect to the insurance required by Sections 12.1(b) and (c). Except to the extent the Lessee elects from time to time to self-insure, as provided in the preceding sentence, all insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Lessee and authorized to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Lessee is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Lessee and the Lessor as their respective interests may appear, and (ii) at least thirty (30) days written notice of the cancellation thereof to the Lessee, the Lessor and the Village.

(b) All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Lessor on or before the commencement of the Term of this Lease. Prior to expiration of the policy evidenced by said certificates, the Lessee shall furnish the Lessor and the Village evidence that the policy has been renewed or replaced or is no longer required by this Lease. Within one hundred twenty (120) days after the end of each of its fiscal years, the Lessee shall file with the Lessor and the Village a certificate of the Lessee to the effect that the insurance it maintains with respect to the Project complies with the provisions of this Article 12 and that duplicate copies of all policies or certificates thereof have been filed with the Lessor and are in full force and effect.

Section 12.3. The net proceeds of the insurance carried pursuant to the provisions hereof shall be applied as follows:

(a) the net proceeds of the insurance required by Section 12.1(a) hereof shall be applied as provided in Section 12.4 hereof, and

(b) the net proceeds of the insurance required by Section 12.1(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid, provided that the Lessee, at the Lessee's option, may defend any such claim.

Section 12.4. If the Facility shall be damaged or destroyed (in whole or in part) at any time during the term of this Lease:

(a) the Lessor shall have no obligation to replace, repair, rebuild or restore the Facility;

(b) there shall be no abatement or reduction in the amounts payable by the Lessee under this Lease; and

(c) except as otherwise provided in Section 12.5 hereof, the Lessee shall promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Lessee and may use insurance proceeds for all such purposes.

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 12.4, whether or not requiring the expenditure of the Lessee's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

Section 12.5. The Lessee shall not be obligated to replace, repair, rebuild or restore the Facility if the Lessee shall exercise its option to terminate this Lease. In such event, the net proceeds of the insurance shall be applied to replace, repair, rebuild or restore the Facility

Section 12.6. If the Lessee fails (i) to pay any tax, assessment or other governmental charge required to be paid by Section 16.5 hereof or (ii) to maintain any insurance required to be maintained by Section 12.1 hereof, the Lessor may pay such tax, assessment or other governmental charge or the premium for such insurance. The Lessee shall reimburse the Lessor for any amount so paid together with interest thereon from the date of payment at six percent (6%) per annum.

ARTICLE 13 HOLD HARMLESS PROVISION

Section 13.1. Notwithstanding any other provision contained herein or within any other agreement by and among the parties hereto, the Lessee hereby releases the Lessor and the Village from, agrees that the Lessor and the Village shall not be liable for, and agrees to indemnify, defend and hold the Lessor and the Village and their respective officers, members, directors, agents and employees, and their respective successors, assigns or personal representatives, harmless from and against any and all actions, claims, losses and expenses arising from or pertaining to the Lessee's obligations hereunder or the construction, equipping

and leasing of the Facility or arising by reason of or in connection with the Lessee's occupation or the use thereof or the Lessee's presence on, in or about the Facility, including, without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The provisions of this paragraph shall survive termination of this Lease.

ARTICLE 14 **BANKRUPTCY**

Section 14.1. If at any time during the Term of this Lease, any petition in bankruptcy shall be filed by or against the Lessee or if the Lessee shall be adjudicated a bankrupt; or if a Receiver shall be appointed to take possession of the Lessee's property; or if the Lessee shall make any assignment for the benefit of creditors, this Lease shall, at the option of the Lessor, immediately cease, terminate and expire. Nothing hereunder shall relieve the Lessee from any liability incurred under this Lease, and the Lessee covenants and agrees to yield and deliver to the Lessor possession of the Facility promptly and in good condition, reasonable wear and tear excepted, on the date of the cessation of this Lease, whether such cessation be by termination, expiration or otherwise.

ARTICLE 15 **TERMINATION**

Section 15.1. In the event that the Lessee defaults in the performance of any material term, condition or covenant herein contained, the Lessor, at its option and in addition to any other remedy it might have, may terminate this Lease upon forty-five (45) days' written notice to Lessee. The Lessee shall have the forty-five (45) day notice period to cure such default (hereinafter the "Lessee Cure Period"). If such default remains uncured at the end of the Lessee Cure Period, the Lessor, at its sole option, may extend the Lessee Cure Period. Upon the expiration of the Lessee Cure Period (as may have been extended), absent further extension, termination becomes effective.

Section 15.2. In the event that the Lessor defaults in the performance of any material term, condition or covenant herein contained, the Lessee, at its option and in addition to any other remedy it might have, may terminate this Lease upon forty-five (45) days' written notice to Lessor. The Lessor shall have the forty-five (45) day notice period to cure such default (hereinafter the "Lessor Cure Period"). If such default remains uncured at the end of Lessor Cure Period, the Lessee, at its sole option, may extend the Lessor Cure Period. Upon the expiration of the Lessor Cure Period (as may have been extended), absent further extension, termination becomes effective.

Section 15.3. The Lessee shall have the option at any time to terminate this Lease upon filing with the Lessor a certificate signed by an authorized representative of the Lessee stating the Lessee's intention to do so pursuant to this Section together with payment in full of any amounts owed to the Lessor hereunder.

Section 15.4. The Lessor shall have the option at any time to terminate this Lease upon filing with the Lessee a certificate signed by an authorized representative of the Lessor stating the Lessor's intention to do so pursuant to this Section and to demand payment in full of any amounts owed to the Lessor hereunder.

Section 15.5. In the event of termination, Lessee agrees to peaceably surrender the Facility to Lessor. Upon such surrender, the Lessor (or its designee or any subsequent lessee including, but not limited to, SWEPI LP or their designee) may re-enter and reoccupy the Facility and use any property of the Lessee located at the Facility on the date of termination in order to operate the activities on the Facility.

Section 15.6. No holding over by Lessee after the termination or expiration of this Lease shall operate to extend or renew this Lease for any further term whatsoever. In addition to any other remedy available to the Lessor, any holding over by Lessee without the written consent of the Lessor shall make Lessee liable to the Lessor for all damages incurred directly or indirectly as a result thereof.

Section 15.7. Upon termination of this Lease, the Lessee shall immediately initiate action to obtain from the Surface Transportation Board or other applicable regulatory body, at Lessee's sole cost and expense, any required approval to abandon, discontinue or transfer operating authority with respect to the Facility.

ARTICLE 16 MISCELLANEOUS PROVISIONS

Section 16.1. No Joint Venture Created. The parties hereto mutually agree that by entering into this Lease the parties hereto are not entering into a joint venture.

Section 16.2. Force Majeure. Neither the Lessor nor the Lessee, as the case may be, shall be deemed in breach hereof if it is prevented from performing any of the obligations hereunder by reason of acts of God, acts of the public enemy, acts of superior governmental authority, strikes or labor disputes, floods, riots, rebellion, sabotage, or any similar other circumstances not within its reasonable control.

Section 16.3. Inspection. The Lessor, its agent or delegate, or the Village, its agent or delegate, shall be entitled to enter the Facility for the purposes of inspecting, observing and monitoring any aspect of the Lessee's operations, provided such activities do not unreasonably interfere with the Lessee's operations. The Lessee shall also permit inspection of same by any federal, state, Lessor or municipal officer having jurisdiction. Any and all violations issued as a result of such inspection shall be promptly remedied at no cost to the Lessor.

Section 16.4. Condemnation. In the event that the Facility, or such a substantial part thereof so as to render impossible or unreasonable the operation of the Facility, be taken by eminent domain, this Lease shall terminate on the date upon which title vests in the condemnor, and neither party shall have any liability to the other on account of such termination except with respect those provisions which survive hereunder. In the event of any other taking, this Lease

shall continue in full force and effect. Any payments or proceeds made in connection with any taking of the Facility shall belong and be paid to the Lessor.

Section 16.5. **Taxes, Assessments and Utility Charges.** The Lessee agrees to pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other property installed or brought by the Lessee therein or thereon, including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the income or revenues of the Lessor from the Facility, (ii) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility, and (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; *provided*, that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated under this Lease to pay only such installments as are required to be paid during the Lease Term. The Lessee, at its own expense and in its own name and on behalf or in the name and on behalf of the Lessor but with notice to the Lessor, may in good faith contest any such taxes, assessments and other charges. In the event of any such contest, the Lessee may, with prior written notice to the Lessor, permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Lessor reasonably requests payment prior to settlement.

Section 16.6. **Utility and Sewer Lines.** The Lessor reserves the right to lay, erect, construct, use, operate and maintain utility and sewer lines in, through, under and across the Facility provided that such activity does not unreasonably interfere with the operation of the Project. The Lessor will notify the Lessee of any such proposed activity and coordinate such activity with the Lessee in order to minimize any interference with the operations of the Project.

Section 16.7. **Risk of Operation.** The Lessee assumes all risks in the undertaking and operation of the Project.

Section 16.8. **Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the Lessor and the Lessee, and their respective successors and assigns.

Section 16.9. **Severability.** In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 16.10. **Amendments, Changes and Modifications.** This Lease may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

Section 16.11. **Execution of Counterparts.** This Lease may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Section 16.12. Applicable Law. This Lease shall be governed, construed and enforced in accordance with the laws of the State of New York for contracts to be wholly performed therein.

Section 16.13. Recording and Filing. This Lease (or a memorandum thereof) shall be recorded or filed, as the case may be, in the Office of the Clerk of Steuben County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

Section 16.14. Survival of Obligations. All indemnities hereunder shall survive any termination or expiration of this Lease.

Section 16.15. Ambiguity. In the event of any ambiguity in any of the terms of this Lease, any such ambiguity shall not be construed for or against any party hereto based on which party was the author of the term in question.

Section 16.16. Remedies Cumulative. The failure of either party to insist, in any one or more instances, upon strict performance of any term or condition herein contained by the other party shall not be deemed a waiver or relinquishment for the future of such term or condition, but the same shall remain in full force and effect. Acceptance by the Lessor of payment of any fee due hereunder with knowledge of a breach of any term or condition hereof shall not be deemed a waiver of any such breach, and no waiver by the Lessor of any provision hereof shall be implied.

Section 16.17. Consents, Approvals, Acceptance, and Satisfaction. Any consent, approval or evidence of satisfaction required hereunder by the Lessor, the Lessee or any other party shall not be unreasonably withheld, conditioned or delayed, except where any such consent, approval or satisfaction is specifically stated to be at the sole discretion or sole option of such party.

Section 16.18. Notices. All notices of any nature referred to in this Lease shall be in writing and delivered by hand or sent registered or certified mail, return receipt requested, postage pre-paid addressed as follows:

To the Lessor: Painted Post Development, LLC
c/o Village of Painted Post
261 Steuben Street
Painted Post, New York 14870
Attn: Mayor

With a Copy to: Yorio & Roche
145 West High Street
Painted Post, New York 14870
Attn: Ronald Yorio, Esq.

And to: Harris Beach PLLC
99 Garnsey Road

Resend07-12-12:10:22AM:

:607-962-3208

39/ 64

Pittsford, New York 14534
Attn: Munesh Patel, Esq.

To the Lessee: Wellsboro & Corning Railroad, LLC
256 Eagleview Boulevard - PMB 261
Exton, Pennsylvania 19341
Attn: Thomas Myles

With a copy to: MacElree Harvey, Ltd.
17 West Miner Street
West Chester, Pennsylvania 19382
Attn: Brian L. Nagle, Esq.

[SIGNATURE PAGE FOLLOWS]

[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

PAINTED POST DEVELOPMENT, LLC

By: Village of Painted Post, its Sole Member

By: Roswell Crozier, Jr.
Roswell Crozier, Jr., Mayor

WELLSBORO & CORNING RAILROAD, LLC

By: _____
A. Thomas Myles, Member

Resend07-12-12:10:22AM;

:607-962-3208

41/ 64

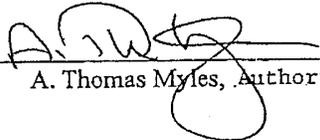
IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

PAINTED POST DEVELOPMENT, LLC

By: Village of Painted Post, its Sole Member

By: _____
Roswell Crozier, Jr., Mayor

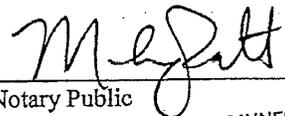
WELLSBORO & CORNING RAILROAD, LLC

By:  _____
A. Thomas Myles, Authorized Person

[ACKNOWLEDGEMENT PAGE TO LEASE AGREEMENT]

STATE OF NEW YORK)
COUNTY OF STEUBEN) SS:

On the 23 day of Feb in the year 2012, before me, the undersigned, personally appeared Roswell Crozier, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

MUNESH PATEL
Notary Public, State of New York
No. 02PA6109397
Qualified in Monroe County 12
Commission Expires 5/10/2012

COMMONWEALTH OF PENNSYLVANIA)
County of _____)

ss.:

On the _____ day of _____ in the year 2012, before me, the undersigned, personally appeared A. Thomas Myles, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before me the undersigned in _____, Pennsylvania.

[Address]

[ACKNOWLEDGEMENT PAGE TO LEASE AGREEMENT]

STATE OF NEW YORK)
COUNTY OF STEUBEN) SS:

On the ___ day of _____ in the year 2012, before me, the undersigned, personally appeared Roswell Crozier, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

COMMONWEALTH OF PENNSYLVANIA)

County of Chester) SS.:

On the 9th day of March in the year 2012, before me, the undersigned, personally appeared A. Thomas Myles, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before me the undersigned in West Chester
17 W. Miner St., Pennsylvania.
[Address]

Carol A. Gettz
COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Carol A. Gettz, Notary Public
West Chester Boro, Chester County
My Commission Expires March 12, 2014
Member, Pennsylvania Association of Notaries

**EXHIBIT 4 – SURPLUS WATER AGREEMENT (VILLAGE OF PAINTED POST AND
SWEPI, LP) [141-147]**

07-12-12:11:06Am,

:60/-962-3208

2/ 8

SURPLUS WATER SALE AGREEMENT

THIS SURPLUS WATER SALE AGREEMENT (hereinafter the "Agreement") is made as of March 1, 2012, by and between the **VILLAGE OF PAINTED POST, STEUBEN COUNTY, NEW YORK**, having an address at 261 Steuben Street, Painted Post, New York 14870 (the "Seller" or "Village") and **SWEPI LP**, having an address at 200 N. Dairy Ashford Street, Houston, Texas 77079 (the "Purchaser" or "SWEPI LP").

WITNESSETH:

WHEREAS, the Village currently has the capacity in its water system and within its Susquehanna River Basin Commission ("SRBC") permitted capacity to supply surplus water in the amount of 1,000,000 gallons per day (gpd) beyond the needs of the current water users within its municipal boundaries (the "Seller System Surplus Capacity") and the Village has the right to sell such surplus water;

WHEREAS, SWEPI LP desires to purchase surplus water from the Seller in accordance with the terms and conditions contained herein.

NOW, THEREFORE, the parties hereto, in consideration of the payment upon the execution hereof of Two Hundred and Thirty Thousand Dollars (\$230,000.00) by SWEPI LP to the Village, the terms and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do agree as follows:

1. SWEPI LP may purchase and take delivery of up to 1,000,000 gallons per day (the "SWEPI LP Allocation") of the Seller System Surplus Capacity from the filling/metering station and transloading facility to be constructed and located in the vicinity of 450 West Water Street in the Village of Painted Post, Steuben County, New York (the "Delivery Point"). This Agreement shall be subject at all times to the availability of the Seller System Surplus Capacity. In addition, the Seller shall not be required to supply SWEPI LP with such water in the event of a drought restriction, emergency, unforeseen operational problem requiring the suspension of surplus water sales, a refusal of Seller's water supplier to renew Seller's supply agreement, restriction on the sale of surplus water by the SRBC or other applicable governmental agency, or in the event of "force majeure" beyond the control of the parties ("force majeure" shall include, but is not limited, to (i) an act of God; (ii) an act of war, rebellion, civil commotion, sabotage, acts of terrorism or damage resulting there from; (iii) a fire, flood, explosion, accident; (iv) a riot, strike, labor dispute or (v) a federal or state law, or a rule regulation or order of any public body or official exerting or purporting to exercise authority or control concerning the operations covered hereby).
2. It is understood and agreed that the Seller makes no guarantee as to the pressure, quantity, or continuity of service and shall not be held liable for loss or damage from a deficiency or failure in the supply of water, whether caused by shutting off the water in case of accident, or for alterations, extensions, connections or repairs, or for any cause whatever. In the event of an emergency or other necessity, the Seller shall have the right

to shut off or reduce the flow of water for such periods as is reasonably necessary. The Seller shall restore service and make water available as soon as it can reasonably do so.

3. Seller agrees to sell, and SWEPI LP agrees to take delivery of and/or purchase 314,000,000 gallons from the Seller System Surplus Capacity over the term of this Agreement (the "Gross SWEPI LP Commitment"); provided, however, that upon execution of this Agreement, SWEPI LP shall pay the Seller \$154,840.00 as an advance purchase for the first 14,000,000 gallons of water (the "SWEPI LP Prepayment of Commitment") at the price set forth in Section 7 below and which SWEPI LP Prepayment of Commitment shall be credited towards the first 14,000,000 gallons delivered and invoiced hereunder and credited against the Gross SWEPI Commitment (the Gross SWEPI LP Commitment less the SWEPI LP Prepayment of Commitment equals 300,000,000 gallons over the term of this Agreement which shall be the net Gross SWEPI LP Commitment and shall hereafter be referred to as the "SWEPI LP Commitment"). The SWEPI LP Commitment to "take or pay" for this water will commence once all required permits for the Delivery Point are obtained and the facilities necessary to load the water at the Delivery Point are in place and available for use (the "Commencement Date").
4. The water delivered by Seller to SWEPI LP hereunder shall be surplus municipal water which has been treated at Seller's municipal water treatment plant, and the Seller makes no representation or warranty, either express or implied, as to the condition or quality of the surplus water delivered by Seller to SWEPI LP hereunder, or that it is or will be suitable for SWEPI LP's purposes or needs.
5. In the event that Seller acquires an additional 500,000 gpd surplus water capacity in the future beyond the current Seller System Surplus Capacity (in such case the Seller System Surplus Capacity as defined herein shall be increased by 500,000 gpd), Seller shall promptly notify SWEPI LP of the availability of such additional 500,000 gpd surplus water capacity, and SWEPI LP shall have a first right of refusal to acquire such additional 500,000 gpd surplus water capacity under the terms set forth herein (the "Additional SWEPI LP Allocation"). SWEPI LP shall reply in writing to Seller as to whether or not it so elects to exercise this first right of refusal within thirty (30) days of receiving notification from Seller. Any election by SWEPI LP to exercise its right of refusal and take the Additional SWEPI LP Allocation shall be subject to (i) an increase to the SWEPI LP Commitment by such amount as shall be agreed to by the parties hereto and evidenced by a written amendment of the parties hereto to account for the Additional SWEPI LP Allocation and (ii) any modifications to the Delivery Point (subject to any governmental approvals) to accommodate delivery of the Additional SWEPI LP Allocation. Subject to the foregoing and upon any such election, the SWEPI LP Allocation shall be increased by the Additional SWEPI LP Allocation.
6. SWEPI LP will schedule its daily water loadings a minimum of three (3) working days in advance by (i) telephone to the Village Superintendent of Public Works at 607-962-8724 and (ii) e-mail confirmation to the Village Superintendent of Public Works at ppdpw@stny.ir.com. Any portion of the SWEPI LP Allocation not so scheduled by

SWEPI LP for delivery on a given day may be sold by Seller to other purchasers on such day at such prices as may be established by the Seller. Either party shall have the right to test the meter for accuracy upon fifteen (15) days' notice to the other party. The non-testing party shall have the right to witness the meter test. If the meter is found to be inaccurate by more than 1%, the meter shall be recalibrated by the party furnishing the meter.

7. SWEPI LP agrees to pay \$0.01106 per gallon for any water provided from the SWEPI LP Allocation, billed on a monthly basis, net thirty (30) days. This price will be honored for a period of five years (5) from the Commencement Date.
8. Notwithstanding any other provision contained herein, in the event that, at the end of the term of this Agreement, the actual total quantity of water taken by SWEPI LP in excess of the first 14,000,000 gallons during the term of this Agreement (collectively, the "Delivered Water") shall be less than the SWEPI LP Commitment, then SWEPI LP hereby guarantees to Seller the payment of a fee (the "Take or Pay Fee") equal to:

(SWEPI LP Commitment - Delivered Water) x \$0.01106

In the event there are any Non-Qualifying Days (as defined below) over the term of this Agreement, the Take or Pay Fee shall be reduced by the Non-Qualifying Day deduction (the "Non-Qualifying Day Deduction") which shall be equal to:

(Non-Qualifying Days x 164,384 gpd) x \$0.01106

"Non-Qualifying Days" shall mean, collectively, any day during the term of this Agreement whereby the loading or taking of the water from the Delivery Point is prohibited or enjoined by a court or governmental agency having competent jurisdiction, or is rendered impossible by an event of force majeure, or in the event that Seller's system cannot provide water at a rate equal to 164,384 gpd (i.e. the SWEPI LP Commitment divided by 5 divided by 365) over a twelve hour period during any day during this Agreement. The Take or Pay Fee (less any Non-Qualifying Day Deduction) shall be due within 30 days from the end of the term of this Agreement upon receipt of an invoice which is correct, proper, and prepared in accordance with the terms herein.

9. Seller shall bill SWEPI LP on a monthly basis. Payment shall be due 30 days from receipt of an invoice which is correct, proper, and prepared in accordance with the terms herein. Each invoice shall include the following data:
 - a. Shell's contract number and/or purchase order number
 - b. The quantity of water sold and the dates of service (including the number of Non-Qualifying Days, if any)
 - c. The amounts and dates of any penalties for not taking the minimum water quantity
 - d. Invoice number and date
 - e. Requestor's name & phone number
 - f. The payment address

g. The invoice payment terms

Invoices shall be sent by email to: HOU-IC-POBox301440@shell.com.

10. This Agreement shall be contingent upon Painted Post Development, LLC negotiating and executing a lease (the "Transloading Facility Lease") of the Delivery Point site with Wellsboro & Corning Railroad, LLC or an affiliate (the "Railroad") which will allow the Railroad to construct a railcar siding and loading facility at said site, and upon the Railroad obtaining necessary railroad rights of way, rail interchange agreements, approvals from governmental entities regulating the construction and operation of rail lines, and any other agreements and permits necessary for the Railroad to deliver the water to SWEPI LP in Pennsylvania.
11. Seller shall obtain any permits and approvals required for Seller to deliver the water to the Railroad at the Delivery Point, including but not limited to any required approvals from the Ingersoll-Rand Company, the New York State Department of Environmental Conservation and the SRBC, provided, however, that SWEPI LP shall reimburse Seller for the cost of such permits and approvals and SWEPI LP agrees to assist the Seller in connection with obtaining any permits or approvals, if any, required by SRBC in connection with the Agreement.
12. SWEPI LP and/or its contractors including, but not limited to, the Railroad shall be responsible for obtaining any and all requisite permits and for meeting any and all rules, regulations, and permit requirements and all costs of such permits required to transport the water from the Delivery Point to SWEPI LP's facilities and to use the water at such facilities.
13. Notwithstanding any other provision contained herein or within any other agreement by and among the parties hereto, SWEPI LP hereby releases the Village from, agrees that the Village shall not be liable for, and agrees to indemnify, defend and hold the Village and their respective officers, members, directors, agents and employees, and their respective successors, assigns or personal representatives, harmless from and against any and all actions, claims, losses and expenses (including reasonable attorney fees and expenses) arising out of SWEPI LP's actions with respect to its purchase of water hereunder, including, without limiting the generality of the foregoing, arising out of transportation, use and disposal of the water purchased hereunder and used in SWEPI LP's oil and gas extraction activities and all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Village, or any of their respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that, such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the indemnified party to the extent that such an indemnity would be prohibited by law. The provisions of this paragraph shall survive termination of this Agreement.

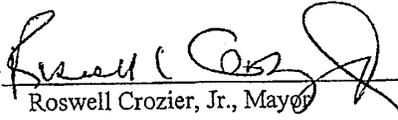
14. The term of this Agreement shall commence on the Commencement Date, and shall extend for a period of five (5) years thereafter. Prior to the expiration of the term of this Agreement, SWEPI LP shall have the right to request an extension of this Agreement and thereafter the parties hereto shall endeavor in good faith to renegotiate the terms hereof.
15. SWEPI LP shall have the right to request the Seller to exercise its rights under the Transloading Facility Lease to allow for the assignment and assumption by SWEPI LP, or its designee, of the rights and obligations of the Lessee (as defined in the Transloading Facility Lease) under the Transloading Facility Lease.
16. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York.
17. No party may assign its rights or obligations under this Agreement, unless the written consent of the other party hereto is obtained.
18. This Agreement may be amended or modified only in writing and executed by the parties hereto.
19. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any party may effect the execution and delivery of this Agreement by signing the same and sending a copy thereof to other party or their respective attorney by facsimile transmission. Such facsimile document, including the signatures thereon, shall be treated in all respects as an original instrument bearing an original signature. Any party sending an executed copy by facsimile transmission in the foregoing manner shall also send the original thereof to other party or their respective attorney within five (5) days thereafter, but failure to do so shall not invalidate or otherwise affect the legality or enforceability of the facsimile document.
20. Each party hereby represents and warrants to the other that its respective signatures set forth below have been and are on the date of this Agreement duly authorized by all necessary and appropriate action to execute this Agreement.

[SIGNATURE PAGE FOLLOWS]

[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Surplus Water Sale Agreement as of the day and year first above written.

VILLAGE OF PAINTED POST

By: 
Roswell Crozier, Jr., Mayor

SWEPI LP

By: _____
Bobby Davis, Category Manager

IN WITNESS WHEREOF, the parties hereto have executed this Surplus Water Sale Agreement as of the day and year first above written.

VILLAGE OF PAINTED POST

By: _____
Roswell Crozier, Jr., Mayor

SWEPI LP

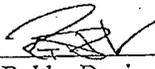
By:  _____ 15 March 2012
Bobby Davis, Category Manager



EXHIBIT 5 – FULL ENVIRONMENTAL ASSESSMENT FORM INCLUDING PARTS 1 AND 2 FOR THE TRANSLOADING FACILITY LEASE [148-168]

07-12-12; 10:14AM:

: 607-962-3208

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617.20 Appendix A State Environmental Quality Review FULL ENVIRONMENTAL ASSESSMENT FORM

Purpose: The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to fit a project or action.

Full EAF Components: The full EAF is comprised of three parts:

- Part 1: Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
Part 2: Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
Part 3: If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

.THIS AREA FOR LEAD AGENCY USE ONLY

DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions

Identify the Portions of EAF completed for this project: [X] Part 1 [X] Part 2 [] Part 3
Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- [X] A. The project will not result in any large and important impact(s) and, therefore, is one which will not have a significant impact on the environment, therefore a negative declaration will be prepared.
[] B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore a CONDITIONED negative declaration will be prepared.*
[] C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore a positive declaration will be prepared.

*A Conditioned Negative Declaration is only valid for Unlisted Actions

Lease Agreement for Transloading Facility Site
Name of Action

Village of Painted Post
Name of Lead Agency

Print or Type Name of Responsible Officer in Lead Agency
Roswell Crozier, Jr.
Signature of Responsible Officer in Lead Agency

Title of Responsible Officer
Mayor Village of Painted Post
Signature of Preparer (if different from responsible officer)

February 23, 2012
Date

PART 1--PROJECT INFORMATION
Prepared by Project Sponsor

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

Name of Action Approval of lease agreement between Painted Post Development, LLC and The Wellsboro & Corning RR

Location of Action (include Street Address, Municipality and County)

350 West Water St, Painted Post, NY Steuben County

Name of Applicant/Sponsor Village of Painted Post on behalf of PPD LLC

Address _____

City / PO Painted Post State NY Zip Code 148

Business Telephone 607 962-4605

Name of Owner (if different) _____

Address _____

City / PO _____ State _____ Zip Code _____

Business Telephone _____

Description of Action:

Approve the lease of 11.8 acres of the 50 acre parcel formerly owned by Ingersoll Rand located at 350 West Water Street Painted Post, NY. The current 50 plus or minus acres is owned by the Painted Post Development, LLC and 11.8 acres are proposed to be leased by agreement to the Wellsboro & Corning Railroad.

Additional actions that are being taken but local and state approvals, of the below listed actions, are not being requested because of the Interstate Commerce Clause Termination Act (ICCTA) preemption applies.

Development of the 11.8 acre leased parcel for creation of a transloading facility that will load approximately 1 million gallons of potable water from the Village of Painted Post's water distribution system onto railroad tanker cars. Construction will include, but not limited to, installation of approximately 3,000-feet of 8-inch water line, storm drainage, 6,000 feet of new rail, 3,000 feet of 6-foot high chain link fencing, gravel or asphalt driveway, lighting, concrete sidewalk, and landscaping features.

Please Complete Each Question--Indicate N.A. if not applicable

A. SITE DESCRIPTION

Physical setting of overall project, both developed and undeveloped areas.

1. Present Land Use: Urban Industrial Commercial Residential (suburban) Rural (non-farm)
 Forest Agriculture Other Open section of property that is presently undeveloped

2. Total acreage of project area: 11.84 acres.

APPROXIMATE ACREAGE	PRESENTLY	AFTER COMPLETION
Meadow or Brushland (Non-agricultural)	<u>.75</u> acres	<u>.3</u> acres
Forested	<u>0</u> acres	<u>0</u> acres
Agricultural (Includes orchards, cropland, pasture, etc.)	<u>0</u> acres	<u>0</u> acres
Wetland (Freshwater or tidal as per Articles 24,25 of ECL)	<u>0</u> acres	<u>0</u> acres
Water Surface Area	<u>0</u> acres	<u>0</u> acres
Unvegetated (Rock, earth or fill)	<u>5</u> acres	<u>1.5</u> acres
Roads, buildings and other paved surfaces	<u>1.4</u> acres	<u>1.4</u> acres
Other (Indicate type) _____	<u>NA</u> acres	<u>NA</u> acres

3. What is predominant soil type(s) on project site? _____

- a. Soil drainage: Well drained _____% of site Moderately well drained 75% of site.
 Poorly drained _____% of site

b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? NA acres (see 1 NYCRR 370).

4. Are there bedrock outcroppings on project site? Yes No

a. What is depth to bedrock NA (in feet)

5. Approximate percentage of proposed project site with slopes:

- 0-10% _____% 10- 15% _____% 15% or greater _____%

6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places? Yes No

7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks? Yes No

8. What is the depth of the water table? 12 (in feet)

9. Is site located over a primary, principal, or sole source aquifer? Yes No

10. Do hunting, fishing or shell fishing opportunities presently exist in the project area? Yes No

11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? Yes No

According to:

NY Natural Heritage and DEC interactive mapping. See attached Mapping.

Identify each species:

[Empty text box for identifying species]

12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations?)

Yes No

Describe:

[Empty text box for describing land forms]

13. Is the project site presently used by the community or neighborhood as an open space or recreation area?

Yes No

If yes, explain:

[Empty text box for explaining use]

14. Does the present site include scenic views known to be important to the community? Yes No

[Empty text box for scenic views]

15. Streams within or contiguous to project area:

NA

a. Name of Stream and name of River to which it is tributary

[Empty text box for stream name]

16. Lakes, ponds, wetland areas within or contiguous to project area:

NA

b. Size (in acres):

[Empty text box for size]

- 17. Is the site served by existing public utilities? Yes No
 - a. If YES, does sufficient capacity exist to allow connection? Yes No
 - b. If YES, will improvements be necessary to allow connection? Yes No
- 18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? Yes No
- 19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? Yes No
- 20. Has the site ever been used for the disposal of solid or hazardous wastes? Yes No

B. Project Description

- 1. Physical dimensions and scale of project (fill in dimensions as appropriate).
 - a. Total contiguous acreage owned or controlled by project sponsor: 50 acres.
 - b. Project acreage to be developed: 11.8 acres initially; 11.8 acres ultimately.
 - c. Project acreage to remain undeveloped: 38.2 acres.
 - d. Length of project, in miles: NA (if appropriate)
 - e. If the project is an expansion, indicate percent of expansion proposed. NA %
 - f. Number of off-street parking spaces existing NA; proposed NA
 - g. Maximum vehicular trips generated per hour: NA (upon completion of project)?
 - h. If residential: Number and type of housing units:

	One Family	Two Family	Multiple Family	Condominium
Initially	_____	_____	_____	_____
Ultimately	_____	_____	_____	_____
 - i. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; _____ length.
 - j. Linear feet of frontage along a public thoroughfare project will occupy is? _____ ft.
- 2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? 0 tons/cubic yards.
- 3. Will disturbed areas be reclaimed Yes No N/A
 - a. If yes, for what intended purpose is the site being reclaimed?

Transloading. Loading of fresh water from the Villages's water piping to railroad tanker cars.
 - b. Will topsoil be stockpiled for reclamation? Yes No
 - c. Will upper subsoil be stockpiled for reclamation? Yes No
- 4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? .5 acres.

5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?

Yes No

6. If single phase project: Anticipated period of construction: 3 months, (including demolition)

7. If multi-phased:

a. Total number of phases anticipated _____ (number)

b. Anticipated date of commencement phase 1: _____ month _____ year, (including demolition)

c. Approximate completion date of final phase: _____ month _____ year.

d. Is phase 1 functionally dependent on subsequent phases? Yes No

8. Will blasting occur during construction? Yes No

9. Number of jobs generated: during construction 30 ; after project is complete 5

10. Number of jobs eliminated by this project 0

11. Will project require relocation of any projects or facilities? Yes No

If yes, explain:

[Empty rectangular box for explanation]

12. Is surface liquid waste disposal involved? Yes No

a. If yes, indicate type of waste (sewage, industrial, etc) and amount _____

b. Name of water body into which effluent will be discharged _____

13. Is subsurface liquid waste disposal involved? Yes No Type _____

14. Will surface area of an existing water body increase or decrease by proposal? Yes No

If yes, explain:

[Empty rectangular box for explanation]

15. Is project or any portion of project located in a 100 year flood plain? Yes No

16. Will the project generate solid waste? Yes No

a. If yes, what is the amount per month? _____ tons

b. If yes, will an existing solid waste facility be used? Yes No

c. If yes, give name _____ ; location _____

d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? Yes No

e. If yes, explain:

[Empty rectangular box for explanation]

17. Will the project involve the disposal of solid waste? Yes No

a. If yes, what is the anticipated rate of disposal? _____ tons/month.

b. If yes, what is the anticipated site life? _____ years.

18. Will project use herbicides or pesticides? Yes No

19. Will project routinely produce odors (more than one hour per day)? Yes No

20. Will project produce operating noise exceeding the local ambient noise levels? Yes No

21. Will project result in an increase in energy use? Yes No

If yes, indicate type(s)

Electronic controls will consume a small amount of electric during the loading process.

22. If water supply is from wells, indicate pumping capacity NA gallons/minute.

23. Total anticipated water usage per day 1x10^6 gallons/day.

24. Does project involve Local, State or Federal funding? Yes No

If yes, explain:

[Empty rectangular box for explanation]

25. Approvals Required:

	Type	Submittal Date
City, Town, Village Board Interstate Commerce Clause Termination Act preemption applies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
City, Town, Village Planning Board	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Lease agreement
City, Town Zoning Board	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
City, County Health Department	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Extension of water mains 1/27/12
Other Local Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Other Regional Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
State Agencies	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEC SWPPP 12/14/2011 DOH Back-flow prevention 1/27/12
Federal Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

C. Zoning and Planning Information

1. Does proposed action involve a planning or zoning decision? Yes No

If Yes, indicate decision required:

- Zoning amendment
- Zoning variance
- New/revision of master plan
- Subdivision
- Site plan
- Special use permit
- Resource management plan
- Other

2. What is the zoning classification(s) of the site?

Industrial

3. What is the maximum potential development of the site if developed as permitted by the present zoning?

N/A

4. What is the proposed zoning of the site?

Industrial

5. What is the maximum potential development of the site if developed as permitted by the proposed zoning?

N/A

6. Is the proposed action consistent with the recommended uses in adopted local land use plans? Yes No

7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action?

Industrial

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile? Yes No

9. If the proposed action is the subdivision of land, how many lots are proposed? NA

a. What is the minimum lot size proposed? _____

10. Will proposed action require any authorization(s) for the formation of sewer or water districts? Yes No

[Empty rectangular box for response to question 10]

11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)? Yes No

a. If yes, is existing capacity sufficient to handle projected demand? Yes No

[Empty rectangular box for response to question 11a]

12. Will the proposed action result in the generation of traffic significantly above present levels? Yes No

a. If yes, is the existing road network adequate to handle the additional traffic. Yes No

[Empty rectangular box for response to question 12a]

D. Informational Details

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

E. Verification

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name _____ Date _____

Signature _____

Title _____

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.

PART 2 - PROJECT IMPACTS AND THEIR MAGNITUDE
Responsibility of Lead Agency

General Information (Read Carefully)

In completing the form the reviewer should be guided by the question: Have my responses and determinations been reasonable? The reviewer is not expected to be an expert environmental analyst. The Examples provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3. The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question. The number of examples per question does not indicate the importance of each question. In identifying impacts, consider long term, short term and cumulative effects.

Instructions (Read carefully)

- a. Answer each of the 20 questions in PART 2. Answer Yes if there will be any impact.
- b. Maybe answers should be considered as Yes answers.
- c. If answering Yes to a question then check the appropriate box(column 1 or 2)to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
- d. Identifying that an impact will be potentially large (column 2) does not mean that it is also necessarily significant. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- e. If reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- f. If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the Yes box in column 3. A No response indicates that such a reduction is not possible. This must be explained in Part 3.

1 Small to Moderate Impact
2 Potential Large Impact
3 Can Impact Be Mitigated by Project Change

Impact on Land

1. Will the Proposed Action result in a physical change to the project site?

NO YES

Examples that would apply to column 2.

Any construction on slopes of 15% or greater, (15 foot rise per 100 foot of length); or where the general slopes in the project area exceed 10%.

Construction on land where the depth to the water table is less than 3 feet.

Construction of paved parking area for 1,000 or more vehicles.

Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface.

Construction that will continue for more than 1 year or involve more than one phase or stage.

Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year.

Handwritten 'Not Applicable' with a large scribble over the response grid for the 'Impact on Land' section. The grid has 6 rows and 3 columns. The first column has 'X' marks in all rows. The second and third columns have empty boxes. A large scribble covers the entire grid area.

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	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change	
Construction or expansion of a sanitary landfill.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Construction in a designated floodway.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

[Empty rectangular box for notes]

2. Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological formations, etc.)

NO YES

	1	2	3	
Specific land forms:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

[Empty rectangular box for notes]

Impact on Water

3. Will Proposed Action affect any water body designated as protected? (Under Articles 15, 24, 25 of the Environmental Conservation Law, ECL)

NO YES

Examples that would apply to column 2

Developable area of site contains a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Dredging more than 100 cubic yards of material from channel of a protected stream.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Extension of utility distribution facilities through a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Construction in a designated freshwater or tidal wetland.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

[Empty rectangular box for notes]

4. Will Proposed Action affect any non-protected existing or new body of water?

NO YES

Examples that would apply to column 2

A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Construction of a body of water that exceeds 10 acres of surface area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

[Empty rectangular box for notes]

Not Applicable

Not Applicable

Not Applicable

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change	
5. Will Proposed Action affect surface or groundwater quality or quantity? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES				
Examples that would apply to column 2				
Proposed Action will require a discharge permit.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Proposed Action requires use of a source of water that does not have approval to serve proposed (project) action.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Proposed Action requires water supply from wells with greater than 45 gallons per minute pumping capacity.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Construction or operation causing any contamination of a water supply system.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Proposed Action will adversely affect groundwater.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Liquid effluent will be conveyed off the site to facilities which presently do not exist or have inadequate capacity.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Proposed Action would use water in excess of 20,000 gallons per day.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Proposed Action will likely cause siltation or other discharge into an existing body of water to the extent that there will be an obvious visual contrast to natural conditions.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Proposed Action will require the storage of petroleum or chemical products greater than 1,100 gallons.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Proposed Action will allow residential uses in areas without water and/or sewer services.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Proposed Action locates commercial and/or industrial uses which may require new or expansion of existing waste treatment and/or storage facilities.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Not applicable

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1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

6. Will Proposed Action alter drainage flow or patterns, or surface water runoff?

NO YES

Examples that would apply to column 2

Proposed Action would change flood water flows

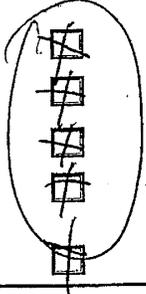
Proposed Action may cause substantial erosion.

Proposed Action is incompatible with existing drainage patterns.

Proposed Action will allow development in a designated floodway.

Other impacts:

[Empty rectangular box for other impacts]



<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

NOT APPLICABLE

IMPACT ON AIR

7. Will Proposed Action affect air quality?

NO YES

Examples that would apply to column 2

Proposed Action will induce 1,000 or more vehicle trips in any given hour.

Proposed Action will result in the incineration of more than 1 ton of refuse per hour.

Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hour.

Proposed Action will allow an increase in the amount of land committed to industrial use.

Proposed Action will allow an increase in the density of industrial development within existing industrial areas.

Other impacts:

[Empty rectangular box for other impacts]

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

NOT APPLICABLE

IMPACT ON PLANTS AND ANIMALS

8. Will Proposed Action affect any threatened or endangered species?

NO YES

Examples that would apply to column 2

Reduction of one or more species listed on the New York or Federal list, using the site, over or near the site, or found on the site.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
--------------------------	--------------------------	------------------------------	--

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change	
Removal of any portion of a critical or significant wildlife habitat.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Application of pesticide or herbicide more than twice a year, other than for agricultural purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Not applicable

9. Will Proposed Action substantially affect non-threatened or non-endangered species?
 NO YES

Examples that would apply to column 2

Proposed Action would substantially interfere with any resident or migratory fish, shellfish or wildlife species.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Proposed Action requires the removal of more than 10 acres of mature forest (over 100 years of age) or other locally important vegetation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Not applicable

IMPACT ON AGRICULTURAL LAND RESOURCES

10. Will Proposed Action affect agricultural land resources?
 NO YES

Examples that would apply to column 2

The Proposed Action would sever, cross or limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Construction activity would excavate or compact the soil profile of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
The Proposed Action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Not applicable

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
The Proposed Action would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Not Applicable

IMPACT ON AESTHETIC RESOURCES

11. Will Proposed Action affect aesthetic resources? (If necessary, use the Visual EAF Addendum in Section 617.20, Appendix B.)
 NO YES

Examples that would apply to column 2

Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Proposed land uses, or project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Project components that will result in the elimination or significant screening of scenic views known to be important to the area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Not Applicable

IMPACT ON HISTORIC AND ARCHAEOLOGICAL RESOURCES

12. Will Proposed Action impact any site or structure of historic, prehistoric or paleontological importance?
 NO YES

Examples that would apply to column 2

Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or National Register of historic places.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Any impact to an archaeological site or fossil bed located within the project site.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Proposed Action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Not Applicable

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

IMPACT ON OPEN SPACE AND RECREATION

13. Will proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities?
 NO YES

Examples that would apply to column 2

The permanent foreclosure of a future recreational opportunity.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
A major reduction of an open space important to the community.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

IMPACT ON CRITICAL ENVIRONMENTAL AREAS

14. Will Proposed Action impact the exceptional or unique characteristics of a critical environmental area (CEA) established pursuant to subdivision 6NYCRR 617.14(g)?
 NO YES

List the environmental characteristics that caused the designation of the CEA.

The site has been subject of an environmental investigation and remediation under the NYDEC oversight, and the site was de-listed as it was determined that the clean up was completed to NYDEC satisfaction.

Examples that would apply to column 2

Proposed Action to locate within the CEA?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Proposed Action will result in a reduction in the quantity of the resource?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Proposed Action will result in a reduction in the quality of the resource?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Proposed Action will impact the use, function or enjoyment of the resource?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

IMPACT ON TRANSPORTATION

15. Will there be an effect to existing transportation systems?

NO YES

Examples that would apply to column 2

Alteration of present patterns of movement of people and/or goods.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Proposed Action will result in major traffic problems.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Other impacts:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Not Applicable

IMPACT ON ENERGY

16. Will Proposed Action affect the community's sources of fuel or energy supply?

NO YES

Examples that would apply to column 2

Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Other impacts:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Not Applicable

NOISE AND ODOR IMPACT

17. Will there be objectionable odors, noise, or vibration as a result of the Proposed Action?

NO YES

Examples that would apply to column 2

Blasting within 1,500 feet of a hospital, school or other sensitive facility.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Odors will occur routinely (more than one hour per day).

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Proposed Action will remove natural barriers that would act as a noise screen.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
--------------------------	--------------------------	------------------------------	--

Other impacts:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
--------------------------	--------------------------	------------------------------	--

Not Applicable

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

IMPACT ON PUBLIC HEALTH

18. Will Proposed Action affect public health and safety?
 NO YES

Proposed Action may cause a risk of explosion or release of hazardous substances (i.e. oil, pesticides, chemicals, radiation, etc.) in the event of accident or upset conditions, or there may be a chronic low level discharge or emission.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Proposed Action may result in the burial of "hazardous wastes" in any form (i.e. toxic, poisonous, highly reactive, radioactive, irritating, infectious, etc.)

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Storage facilities for one million or more gallons of liquefied natural gas or other flammable liquids.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Proposed Action may result in the excavation or other disturbance within 2,000 feet of a site used for the disposal of solid or hazardous waste.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
--------------------------	--------------------------	------------------------------	--

Other impacts:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Not Applicable

IMPACT ON GROWTH AND CHARACTER OF COMMUNITY OR NEIGHBORHOOD

19. Will Proposed Action affect the character of the existing community?
 NO YES

Examples that would apply to column 2:

The permanent population of the city, town or village in which the project is located is likely to grow by more than 5%.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
--------------------------	--------------------------	------------------------------	--

The municipal budget for capital expenditures or operating services will increase by more than 5% per year as a result of this project.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
--------------------------	--------------------------	------------------------------	--

Proposed Action will conflict with officially adopted plans or goals.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
--------------------------	--------------------------	------------------------------	--

Proposed Action will cause a change in the density of land use.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
--------------------------	--------------------------	------------------------------	--

Proposed Action will replace or eliminate existing facilities, structures or areas of historic importance to the community.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Development will create a demand for additional community services (e.g. schools, police and fire, etc.)

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Not Applicable

07-12-12; 10:14AM;

; 607-962-3208

21 / 64

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
Proposed Action will set an important precedent for future projects.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Proposed Action will create or eliminate employment.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Other impacts:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Handwritten notes: "ok" and "10/21/12" with arrows pointing to the 'No' checkboxes in the 'Can Impact Be Mitigated' column.

20. Is there, or is there likely to be, public controversy related to potential adverse environment impacts?

NO YES

If Any Action in Part 2 Is Identified as a Potential Large Impact or If you Cannot Determine the Magnitude of Impact, Proceed to Part 3

Part 3 - EVALUATION OF THE IMPORTANCE OF IMPACTS

Responsibility of Lead Agency

Part 3 must be prepared if one or more impact(s) is considered to be potentially large, even if the impact(s) may be mitigated.

Instructions (If you need more space, attach additional sheets)

Discuss the following for each impact identified in Column 2 of Part 2:

1. Briefly describe the impact.
2. Describe (if applicable) how the impact could be mitigated or reduced to a small to moderate impact by project change(s).
3. Based on the information available, decide if it is reasonable to conclude that this impact is important.

To answer the question of importance, consider:

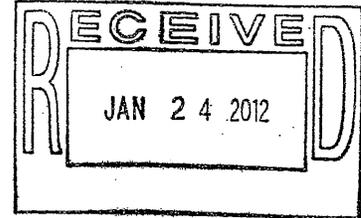
- ! The probability of the impact occurring
- ! The duration of the impact
- ! Its irreversibility, including permanently lost resources of value
- ! Whether the impact can or will be controlled
- ! The regional consequence of the impact
- ! Its potential divergence from local needs and goals
- ! Whether known objections to the project relate to this impact.

EXHIBIT 6 – PERTINENT AGENCY CORRESPONDENCE: COVER LETTERS SENT TO AGENCIES AND CORRESPONDENCE RECEIVED FROM AGENCIES CONCERNING SEQRA REVIEW AND PERMIT ISSUES [169-186]



January 23, 2012

Toni Cioffi
 NYDEC
 Division of Water
 Bureau of Water Permits, 4th Floor
 625 Broadway
 Albany, NY 12233-3505



Re: New York State Environmental Quality Review
Notice of Intent to Act as Lead Agency
Project: Lease by Painted Post Development, LLC to the
Wellsboro and Corning Railroad of a Portion of the Former
Ingersoll Rand site located at 350 West Water Street, Painted Post, NY 14870

Dear Ms. Cioffi:

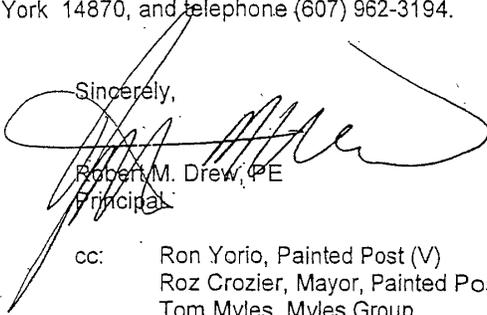
This notice letter is being transmitted on behalf of the Village of Painted Post (the "Village") concerning a proposed lease by Painted Post Development, LLC ("PPD") (of which the Village is the sole member) of a portion of the site on which the former Ingersoll Rand facility (the "Site") is located. Your agency has been identified as a potentially interested party.

Part I of the Full Environmental Assessment has been prepared and is provided as Attachment A. A location map and site plan drawing are provided in Attachment B. Based on a review of 6 NYCRR Part 617.4, the Village has determined that the proposed project is a Type I Action under the New York State Environmental Quality Review Act ("SEQRA") involving more than one agency thus requiring coordinated agency review. Please be advised that the Site is to be constructed and operated as a transloading facility by the Wellsboro & Corning Railroad, a federally-regulated railroad.

Under applicable law, including but not limited to the Interstate Commerce Commission Termination Act of 1995 and the Federal Railway Act of 1970 (collectively referred to as "ICCTA"); local and state approvals associated with the construction and operation of the Site are preempted under ICCTA, and therefore such approvals are not required. As such, the SEQRA review associated with the above-referenced action will be limited to the lease by PPD, to Wellsboro and Corning Railroad, in light of the fact that the Village is the sole member of PPD. It should be further noted that while preemption applies to local and state law concerning the construction and operation of the transloading facility on the Site, nevertheless, PPD as well as Wellsboro and Corning Railroad are seeking input from various agencies as well as from the Village Planning Board during the process to ensure that to the extent possible, the Site and its operations comply with local zoning, etc.

If you have any questions concerning this matter, including the Village's intent to act as lead agency here, please contact Ron Yorio, the Village of Painted Post attorney, at the offices of Yorio & Roche, 145 West High Street, Painted Post, New York 14870, and telephone (607) 962-3194.

Sincerely,



Robert M. Drew, PE
Principal

cc: Ron Yorio, Painted Post (V)
Roz Crozier, Mayor, Painted Post (V)
Tom Myles, Myles Group
Joe Picciotti, Harris Beach PLLC

HUNT

January 23, 2012

Michael J. Montysko, PE
 Chief Design Section
 NYSDOH
 Bureau of Water Supply Protection.
 547 River Street
 Troy, NY 12180

Re: New York State Environmental Quality Review
 Notice of Intent to Act as Lead Agency
 Project: Lease by Painted Post Development, LLC to the
 Wellsboro and Corning Railroad of a Portion of the Former
 Ingersoll Rand site located at 350 West Water Street, Painted Post NY 14870

Dear Mr. Montysko:

This notice letter is being transmitted on behalf of the Village of Painted Post (the "Village") concerning a proposed lease by Painted Post Development, LLC ("PPD") (of which the Village is a sole member) of a portion of the site on which the former Ingersoll Rand facility (the "Site") is located.

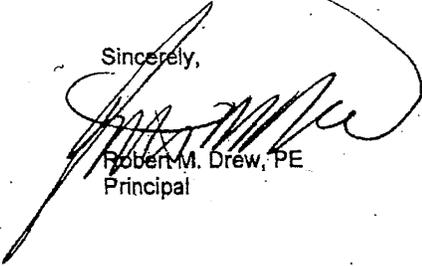
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Please be advised that the Site is to be constructed and operated as a transloading facility by the Wellsboro & Corning Railroad, a federally-regulated railroad. Under applicable law, including but not limited to the Interstate Commerce Commission Termination Act of 1995 and the Federal Railway Act of 1970 (collectively referred to as "ICCTA"), local and state approvals associated with the construction and operation of the Site are preempted under ICCTA, and therefore such approvals are not required. As such, SEQRA review associated with the above-referenced action will be limited to the lease by PPD to Wellsboro and Corning Railroad, in light of the fact that the Village is a sole member of PPD. It should be further noted that while preemption applies to local and state law concerning the construction and operation of the transloading facility on the Site, nevertheless, PPD as well as Wellsboro and Corning Railroad are seeking input from various agencies as well as from the Village Planning Board during the process to ensure that to the extent possible, the Site and its operations comply with local zoning, etc.

Your agency has been identified as a potentially involved agency and if it has no objections to the Village acting as lead agency herein, please execute the enclosed consent to lead agency as soon as practicable and if possible within one week of the date of this letter and send to me the executed consent form by placing it in the enclosed addressed, prepaid envelope.

If you have any questions concerning this matter, including the Village's intent to act as lead agency here, please contact Ron Yorio, the Village of Painted Post Attorney, at the offices of Yorio & Roche, 145 West High Street, Painted Post, New York 14870, telephone (607) 962-3194.

Sincerely,



Robert M. Drew, PE
Principal

The _____ consents to the Village of Painted Post as the lead agency for the action referenced in the _____, 2012 Lead Agency Notice for Lease by Painted Post Development, LLC to the Wellsboro and Coming Railroad of a portion of the Former Ingersoll Rand site.

By:

Title:

HUNT

January 23, 2012

Michael J. Montysko, PE
 Chief Design Section
 NYSDOH
 Bureau of Water Supply Protection
 547 River Street
 Troy, NY 12180

*(v) Painted Post,
 Steuben Co.*

Re: New York State Environmental Quality Review
Notice of Intent to Act as Lead Agency
Project: Lease by Painted Post Development, LLC to the
Wellsboro and Corning Railroad of a Portion of the Former
Ingersoll Rand site located at 350 West Water Street, Painted Post NY 14870

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This notice letter is being transmitted on behalf of the Village of Painted Post (the "Village") concerning a proposed lease by Painted Post Development, LLC ("PPD") (of which the Village is a sole member) of a portion of the site on which the former Ingersoll Rand facility (the "Site") is located.

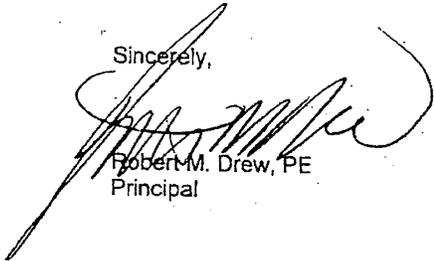
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Sincerely,



Robert M. Drew, PE
Principal

The NYS DOH consents to the Village of Painted Post as the lead agency for the action referenced in the attached, 2012 Lead Agency Notice for Lease by Painted Post Development, LLC to the Wellsboro and Corning Railroad of a portion of the Former Ingersoll Rand site.

Christopher J. Gu 1/25/12
By:

Title: Public Health Engineer II



January 23, 2012

Board of Trustees of the Village of Painted Post
 Attn. Anne Names, Clerk of the Village
 261 Steuben Street
 Painted Post NY 14870

Re: New York State Environmental Quality Review
Notice of Intent to Act as Lead Agency
Project: Lease by Painted Post Development, LLC to the
Wellsboro and Corning Railroad of a Portion of the Former
Ingersoll Rand site located at 350 West Water Street, Painted Post NY 14870

Dear Board of Trustees of the Village of Painted Post:

This notice letter is being transmitted on behalf of the Village of Painted Post (the "Village") concerning a proposed lease by Painted Post Development, LLC ("PPD") (of which the Village is a sole member) of a portion of the site on which the former Ingersoll Rand facility (the "Site") is located.

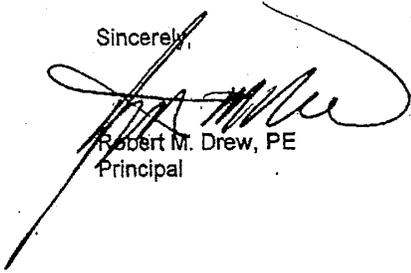
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Sincerely,



Robert M. Drew, PE
Principal

The _____ consents to the Village of Painted Post as the lead agency for the action referenced in the _____, 2012 Lead Agency Notice for Lease by Painted Post Development, LLC to the Wellsboro and Corning Railroad of a portion of the Former Ingersoll Rand site.

By:

Title:



January 23, 2012

Tom Klaseus
 NYSDOH
 107 Broadway
 Hornell, NY 14843

Re: New York State Environmental Quality Review
Notice of Intent to Act as Lead Agency
Project: Lease by Painted Post Development, LLC to the
Wellsboro and Corning Railroad of a Portion of the Former
Ingersoll Rand site located at 350 West Water Street, Painted Post NY 14870

Dear Mr. Klaseus:

This notice letter is being transmitted on behalf of the Village of Painted Post (the "Village") concerning a proposed lease by Painted Post Development, LLC ("PPD") (of which the Village is a sole member) of a portion of the site on which the former Ingersoll Rand facility (the "Site") is located.

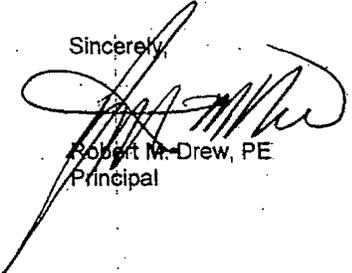
Part I of the Full Environmental Assessment has been prepared and is provided herein. A location map and site plan drawing are also provided. Based on a review of 6 NYCRR Part 617.4, the Village has determined that the proposed project is a Type I Action under the New York State Environmental Quality Review Act ("SEQRA") involving more than one agency thus requiring coordinated agency review.

Please be advised that the Site is to be constructed and operated as a transloading facility by the Wellsboro & Corning Railroad, a federally-regulated railroad. Under applicable law, including but not limited to the Interstate Commerce Commission Termination Act of 1995 and the Federal Railway Act of 1970 (collectively referred to as "ICCTA"), local and state approvals associated with the construction and operation of the Site are preempted under ICCTA, and therefore such approvals are not required. As such, SEQRA review associated with the above-referenced action will be limited to the lease by PPD to Wellsboro and Corning Railroad, in light of the fact that the Village is a sole member of PPD. It should be further noted that while preemption applies to local and state law concerning the construction and operation of the transloading facility on the Site, nevertheless, PPD as well as Wellsboro and Corning Railroad are seeking input from various agencies as well as from the Village Planning Board during the process to ensure that to the extent possible, the Site and its operations comply with local zoning, etc.

Your agency has been identified as a potentially involved agency and if it has no objections to the Village acting as lead agency herein, please execute the enclosed consent to lead agency as soon as practicable and if possible within one week of the date of this letter and send to me the executed consent form by placing it in the enclosed addressed, prepaid envelope.

If you have any questions concerning this matter, including the Village's intent to act as lead agency here, please contact Ron Yorio, the Village of Painted Post Attorney, at the offices of Yorio & Roche, 145 West High Street, Painted Post, New York 14870, telephone (607) 962-3194.

Sincerely,



Robert M. Drew, PE
Principal

The _____ consents to the Village of Painted Post as the lead agency for the action referenced in the _____, 2012 Lead Agency Notice for Lease by Painted Post Development, LLC to the Wellsboro and Corning Railroad of a portion of the Former Ingersoll Rand site.

By:

Title:

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Division of Fish, Wildlife & Marine Resources
 625 Broadway, 5th Floor, Albany, New York 12233-4757
 Phone: (518) 402-8935 • Fax: (518) 402-8925
 Website: www.dec.ny.gov



Joe Martens
Commissioner

December 5, 2011

Christina L Brush
 Hunt Engineers
 Airport Corporate Park
 100 Hunt Center
 Horseheads, NY 14845-1019

Dear Ms. Brush:

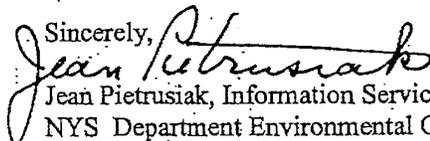
In response to your recent request, we have reviewed the New York Natural Heritage Program database with respect to an Environmental Assessment for the proposed Re-development of portion of Old Ingersoll Rand Foundry Site, Project # 1889-010, area as indicated on the map you provided, located in the Village of Painted Post, Steuben County.

Enclosed is a report of rare or state-listed animals and plants, significant natural communities, and other significant habitats, which our databases indicate occur, or may occur, on your site or in the immediate vicinity of your site. For most sites, comprehensive field surveys have not been conducted; the enclosed report only includes records from our databases. We cannot provide a definitive statement as to the presence or absence of all rare or state-listed species or significant natural communities. This information should not be substituted for on-site surveys that may be required for environmental impact assessment.

The enclosed report may be included in documents that will be available to the public. However, any enclosed maps displaying locations of rare species are considered sensitive information, and are intended only for the internal use of the recipient; they should not be included in any document that will be made available to the public, without permission from the New York Natural Heritage Program.

The presence of the plants and animals identified in the enclosed report may result in this project requiring additional review or permit conditions. For further guidance, and for information regarding other permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), please contact the appropriate NYS DEC Regional Office, Division of Environmental Permits, as listed at www.dec.ny.gov/about/39381.html.

Our databases are continually growing as records are added and updated. If this proposed project is still under development one year from now, we recommend that you contact us again so that we may update this response with the most current information.

Sincerely,

 Jean Pietrusiak, Information Services
 NYS Department Environmental Conservation

Enc.

cc: Region 8

1175

Natural Heritage Report on Rare Species

NY Natural Heritage Program, NYS DEC, 625 Broadway, 5th Floor, Albany, NY 12233-4757 (518) 402-8935



-The information in this report includes only records entered into the NY Natural Heritage databases as of the date of the report. This report is not a definitive statement on the presence or absence of all rare species or significant natural communities at or in the vicinity of this site.
-Refer to the User's Guide for explanations of codes, ranks and fields.
-We do not provide maps for species most vulnerable to disturbance.

Natural Heritage Report on Rare Species and Ecological Communities



REPTILES

Crotalus horridus Office Use
Timber Rattlesnake NY Legal Status: Threatened NYS Rank: S3 - Vulnerable 2398
hibernaculum Federal Listing: Global Rank: G4 - Apparently secure ESU
County: Steuben
Town: Corning - Town, Erwin
Location: Documented within 1.5 miles of project site. Animals can move 1.5 miles or more from documented locations. For information on the population at this location and management considerations, please contact the NYS DEC Regional Wildlife Manager for the Region where the project is located.

Crotalus horridus Office Use
Timber Rattlesnake NY Legal Status: Threatened NYS Rank: S3 - Vulnerable 10572
gestating/birthing are Federal Listing: Global Rank: G4 - Apparently secure ESU
County: Steuben
Town: Erwin
Location: Documented within 1.5 miles of project site. Animals can move 1.5 miles or more from documented locations. For information on the population at this location and management considerations, please contact the NYS DEC Regional Wildlife Manager for the Region where the project is located.

2 Records Processed

More detailed information about many of the rare and listed animals in New York, including biology, identification, habitat, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.acris.nynhp.org, from NatureServe Explorer at http://www.natureserve.org/explorer, and from NYSDEC at http://www.dec.ny.gov/animals/7494.html.

RECEIVED
NOV 28 2011

Natural Heritage Report on Rare Species and Ecological Communities

NY Natural Heritage Program, NYS DEC, 625 Broadway, 5th Floor,
Albany, NY 12233-4757
(518) 402-8935



~The information in this report includes only records entered into the NY Natural Heritage databases as of the date of the report. This report is not a definitive statement on the presence or absence of all rare species or significant natural communities at or in the vicinity of this site.
~Refer to the User's Guide for explanations of codes, ranks and fields.
~Location maps for certain species and communities may not be provided 1) if the species is vulnerable to disturbance, 2) if the location and/or extent is not precisely known, 3) if the location and/or extent is too large to display, and/or 4) if the animal is listed as Endangered or Threatened by New York State.

Natural Heritage Report on Rare Species and Ecological Communities



VASCULAR PLANTS

Hydrangea arborescens

Wild Hydrangea NY Legal Status: Endangered

NYS Rank: S2 - Imperiled

Office Use
7556

Federal Listing:

Global Rank: G5 - Secure

Last Report: 2002-07-22

EO Rank: Good or Fair

County: Steuben

Town: Erwin

Location: Painted Post Smiths Hollow

General Quality and Habitat: There are 54 plants in a disturbed habitat. A small ravine that flows SSW. The creek appears to be intermittent, but had a good size flow during the survey. The creek is at most a few meters wide with moderate to steep slopes on the sides of the ravine. The creek disappears into a large drain just above a residential area. The plants occur along the creek just up from this drain. The whole ravine is forested with a full canopy. The soils on the slopes have a high clay content with small rocks. The plants occur in small patches, distributed evenly throughout, on both sides of the ravine never more than a few meters up from the creek. Dominant trees in the canopy are *Acer saccharum*, *Quercus rubra*, *Fraxinus americana*, and *Pinus strobus*. Other trees present include *Ulmus americana*, *Tsuga canadensis*.

1 Records Processed

More detailed information about many of the rare and listed animals and plants in New York, including biology, identification, habitat, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.acris.nynhp.org, from NatureServe Explorer at <http://www.natureserve.org/explorer>, from NYSDEC at <http://www.dec.ny.gov/animals/7494.html> (for animals), and from USDA's Plants Database at <http://plants.usda.gov/index.html> (for plants).

More detailed information about many of the natural community types in New York, including identification, dominant and characteristic vegetation, distribution, conservation, and management, is available online in Natural Heritage's Conservation Guides at www.acris.nynhp.org. For descriptions of all community types, go to <http://www.dec.ny.gov/animals/29384.html> and click on Draft Ecological Communities of New York State.

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

March 5, 2012

Seth Gentile
Wellsboro Corning RR
256 Eagleview Blvd. PMB 261
Exton, PA. 19341

Re: Log #19096
Painted Post Transloading Site
150 West Water Street
Painted Post, Steuben County

Dear Mr. Gentile:

The plans and specifications for the above referenced backflow prevention project have been reviewed and approved by this office subject to the following Conditions of Approval:

- A. THAT the proposed works be constructed in complete conformity with the plans and specifications approved this day or approved amendments thereto.
- B. THAT any connection made prior to the approved backflow prevention device(s) shall render this approval void.
- C. THAT within 45 days of installation, the following steps must be taken: (1) The approved device(s) must be tested by a NYSDOH certified backflow prevention device tester; (2) The completed installation must be certified by the design engineer, architect or water supplier; and (3) The form DOH 1013 "Report on Test and Maintenance of Backflow Prevention Device" must be completed and returned to the water supplier. You can find this form at <http://www.nyhealth.gov/environmental/water/drinking/cross/doh1013.pdf>.
- D. THAT a NYSDOH certified backflow prevention device tester test the approved backflow prevention device(s) at least annually and report the results to the water supplier.

A copy of the approved plans and specifications is being retained in our files, and the remaining copies are being sent to the local health department, the water supplier and your engineer. If you have any questions, please contact this office at (518) 402-7676.

Sincerely,



Michael J. Montysko, P.E.
Chief, Design Section
Bureau of Water Supply Protection

MJM/ssm

cc: Hornell District Office
Hunt Engineers, Attn. Robert M. Drew, P.E.
Village of Painted Post, Attn. Mr. Smith

EXHIBIT 7 – SKETCH PLAN: TRANSLOADING FACILITY

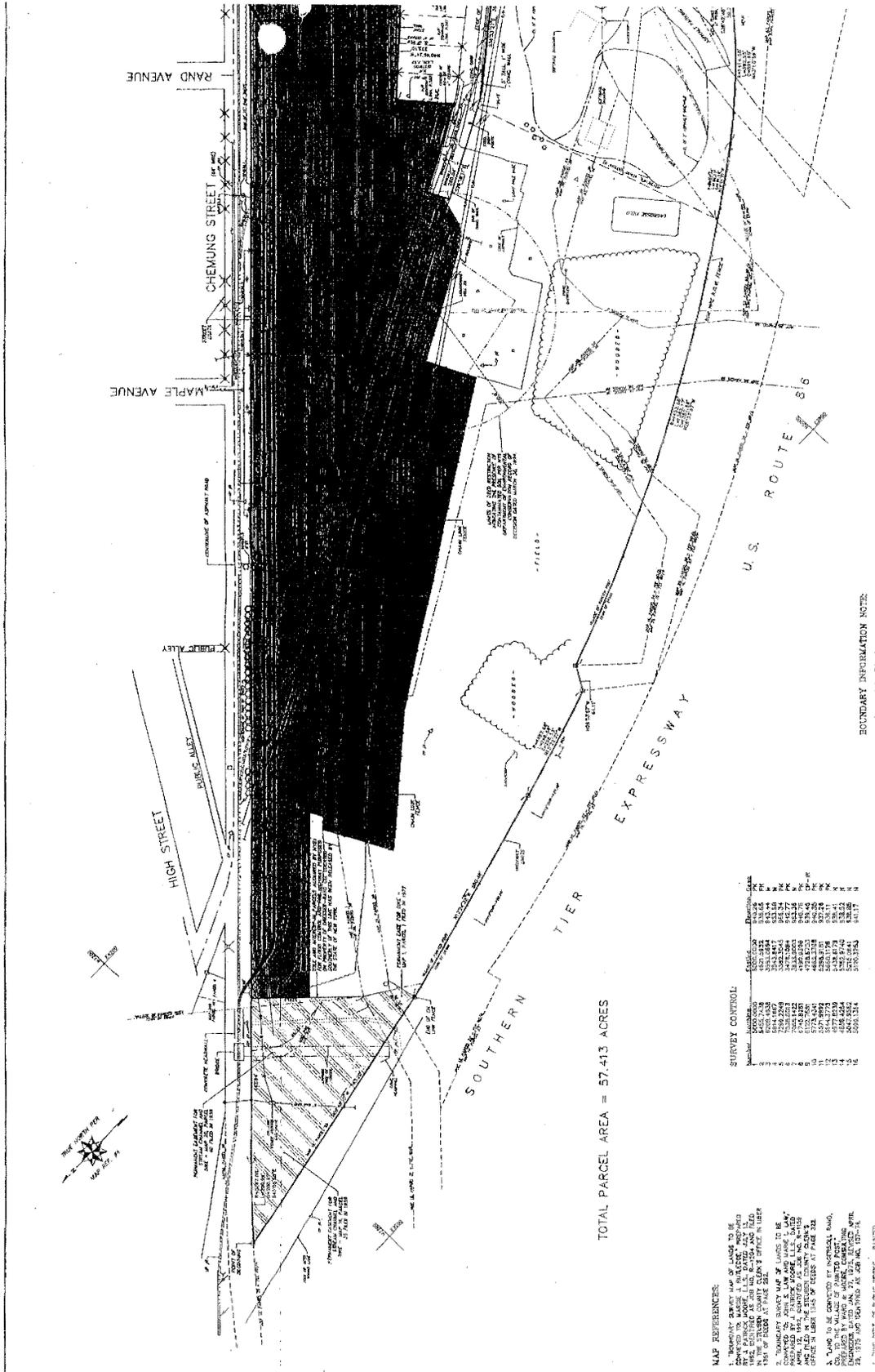
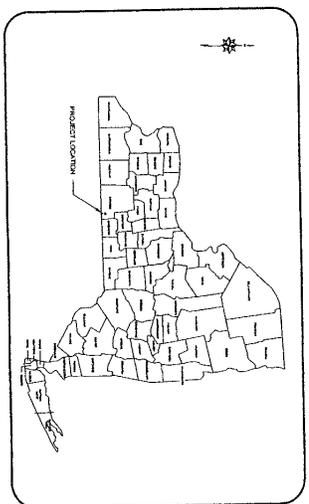


EXHIBIT 8 – ENGINEERING DRAWINGS DATED JANUARY, 2012 FOR THE
TRANSLOADING FACILITY SITE [188-211]

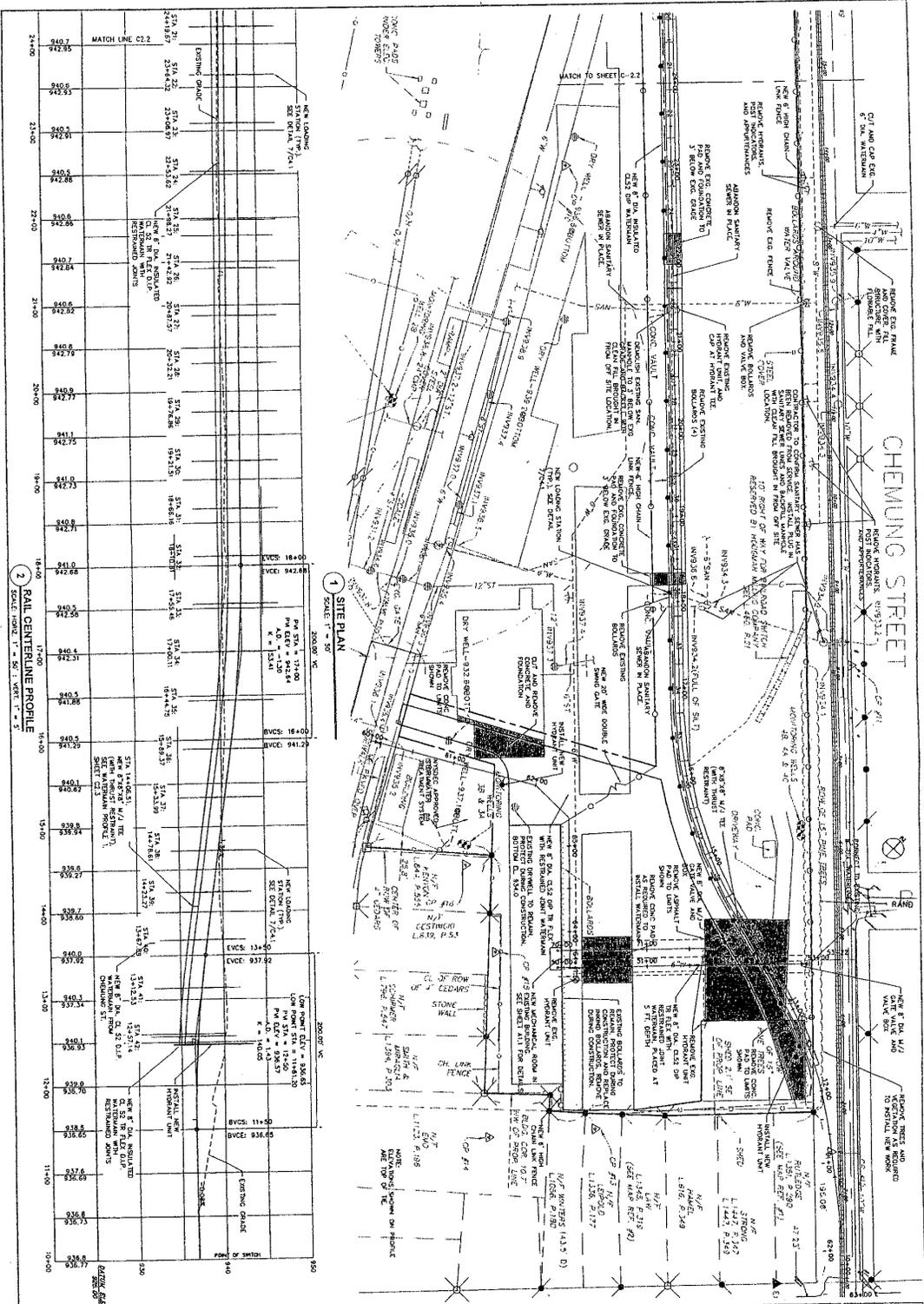
ENGINEERING DRAWINGS
FOR
PAINTED POST TRANSLOADING SITE
FOR
WELLSBORO CORNING RAILROAD
VILLAGE OF PAINTED POST
STUBEN COUNTY, NEW YORK



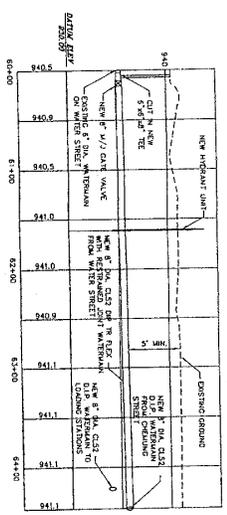
HUNT NO. 1889-010
JANUARY 24, 2012

HUNT
ENGINEERS • ARCHITECTS • SURVEYORS
MEMBER NATIONAL BOARD OF SURVEYING AND MAPPING
MEMBER AMERICAN SOCIETY OF CIVIL ENGINEERS

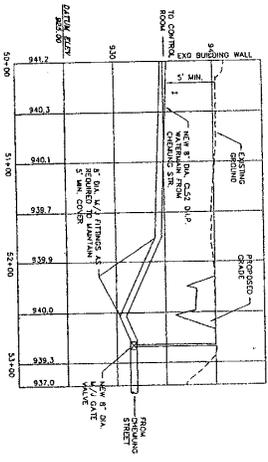
507 348-1000
244 358-1800



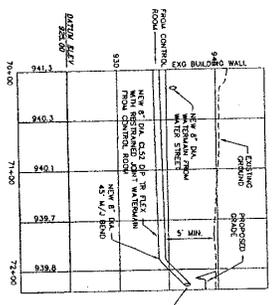
<p>C2.1</p> <p>PROJECT NO. 1881-05</p>	<p>WATERMAIN PLAN AND PROFILE</p> <p>PAINTED POST TRANSLOADING SITE</p> <p>VILLAGE OF PAINTED POST</p>	<p>HUNT</p> <p>ENGINEERS • ARCHITECTS • SURVEYORS</p> <p>REPORT CORPORATE PARK, 101 HUNT CENTER, HUNTSVILLE, AL 35894</p> <p>707-266-1000 707-266-1001 FAX: 707-266-1002</p>	<p>DATE: 01/24/12</p> <p>DESIGNER: [REDACTED]</p> <p>CHECKED: [REDACTED]</p> <p>DATE: 01/24/12</p> <p>REVIEWED FOR CONSTRUCTION: [REDACTED]</p>
	<p>NEW YORK</p>		<p>DATE: 01/24/12</p> <p>DESIGNER: [REDACTED]</p> <p>CHECKED: [REDACTED]</p> <p>DATE: 01/24/12</p> <p>REVIEWED FOR CONSTRUCTION: [REDACTED]</p>



3 WATERMAIN PROFILE FROM WATER STREET
SCALE: HORIZ. 1" = 50' VERT. 1" = 5'

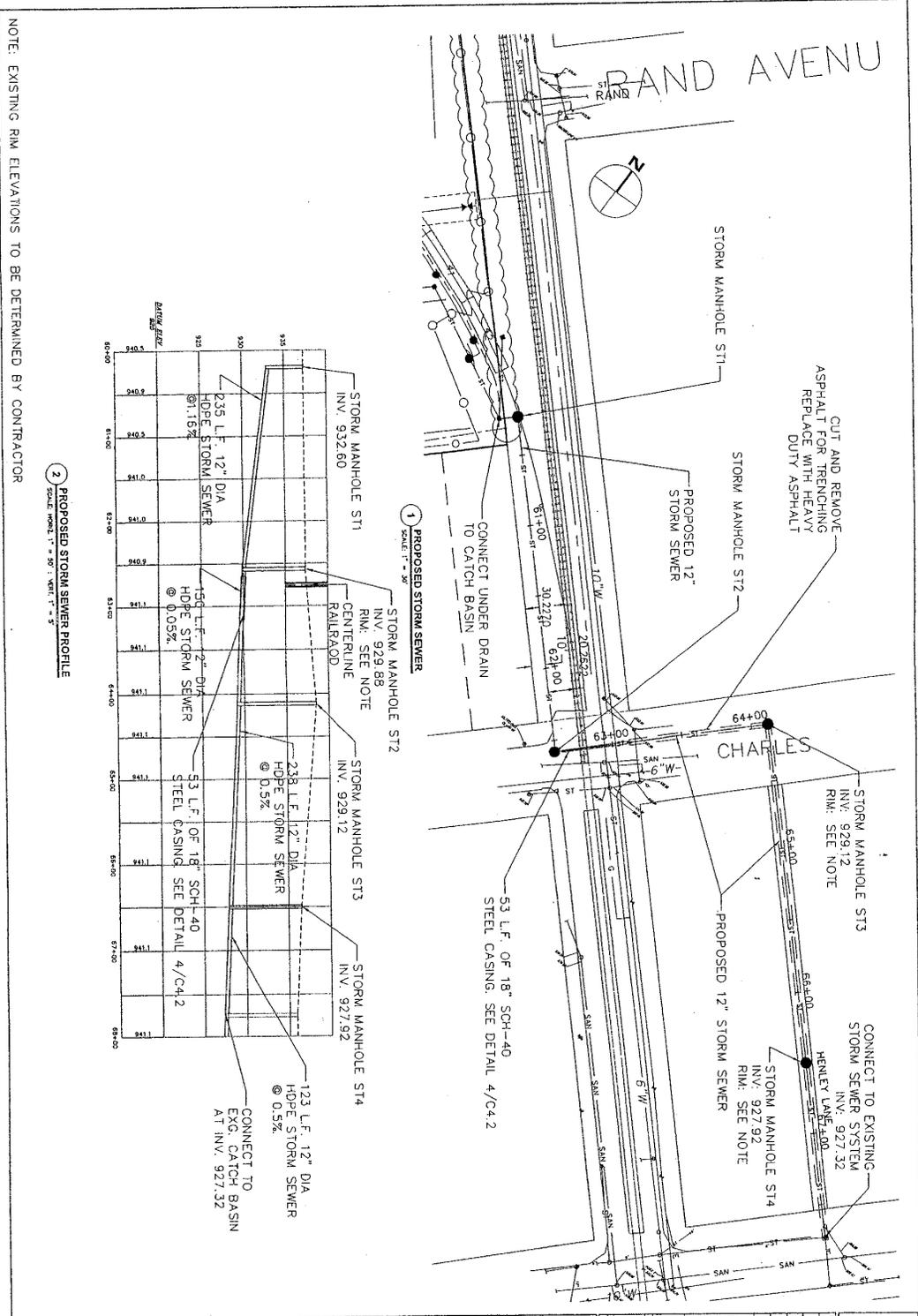


2 WATERMAIN PROFILE FROM CHEMUNG STREET TO CONTROL ROOM
SCALE: HORIZ. 1" = 50' VERT. 1" = 5'



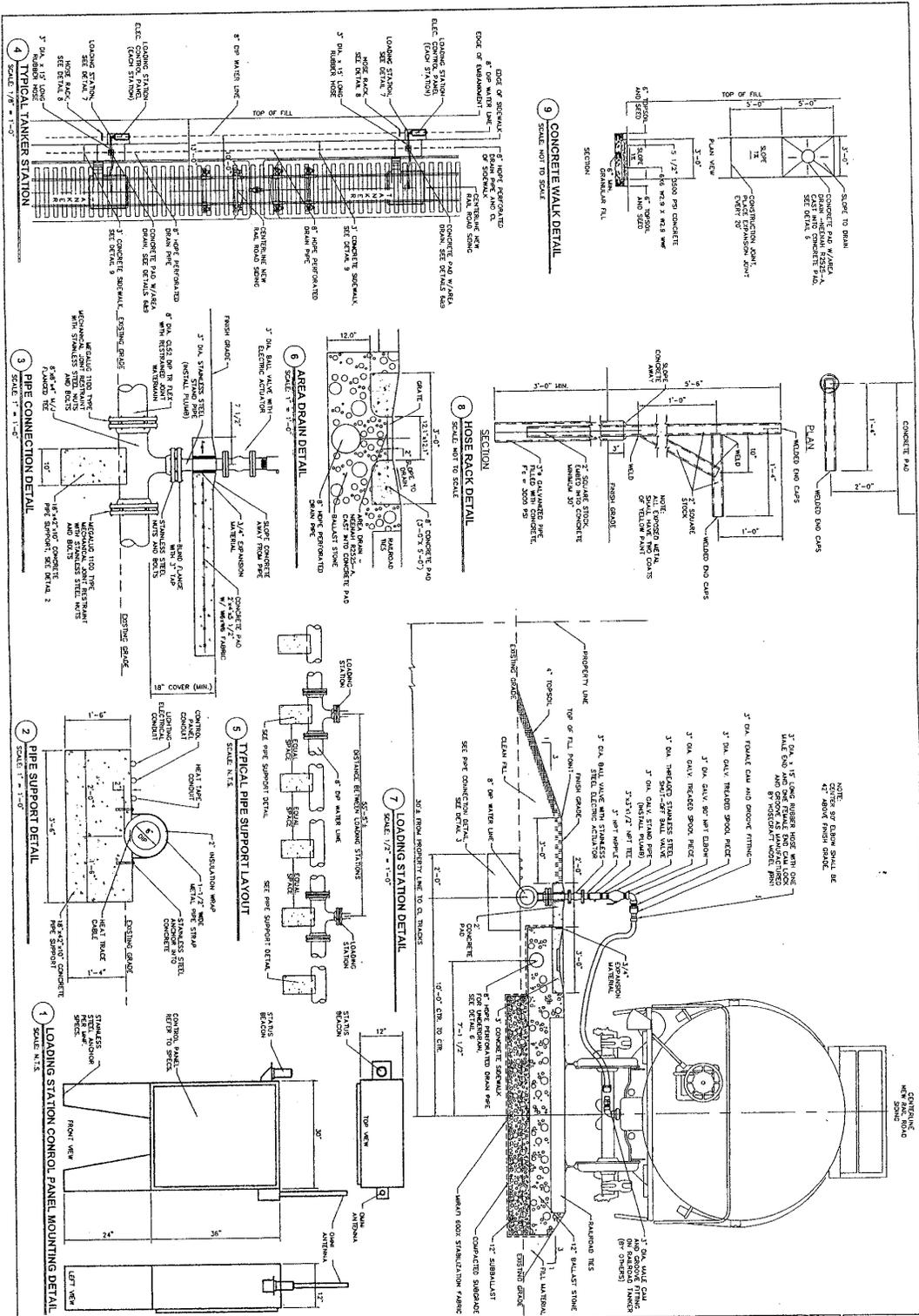
1 WATERMAIN PROFILE FROM CONTROL ROOM TO LOADING STATION WATERMAIN
SCALE: HORIZ. 1" = 50' VERT. 1" = 5'

<p>C2.3</p> <p>PROJECT NO. 1001-010</p>	<p>WATERMAIN PROFILES</p> <p>PAINTED POST TRANSLOADING SITE</p> <p>FOR WELLSBORO-CORNING RAILROAD</p> <p>VILLAGE OF PAINTED POST NEW YORK</p>	<p>HUNT</p> <p>ENGINEERS • ARCHITECTS • SURVEYORS</p> <p>REPORT CORPORATE PARK, 100 HUNT CENTER, HORSENEARSS, N.Y. 14465</p> <p>607-338-1000 716-355-1800</p>	<p>DATE: 02/24/12</p> <p>DESCR. OF REVISION: REVISION FOR PRODUCTION</p> <p>BY: JPM</p> <p>DATE: NOVEMBER 04, 2011</p> <p>DESIGNED BY: JPM</p> <p>CHECKED BY: JPM</p> <p>DATE: NOVEMBER 04, 2011</p>	<p>DRAWN BY: JPM</p> <p>SCALE: AS SHOWN</p> <p>DATE: NOVEMBER 04, 2011</p>
	<p>PROJECT NO. 1001-010</p>			

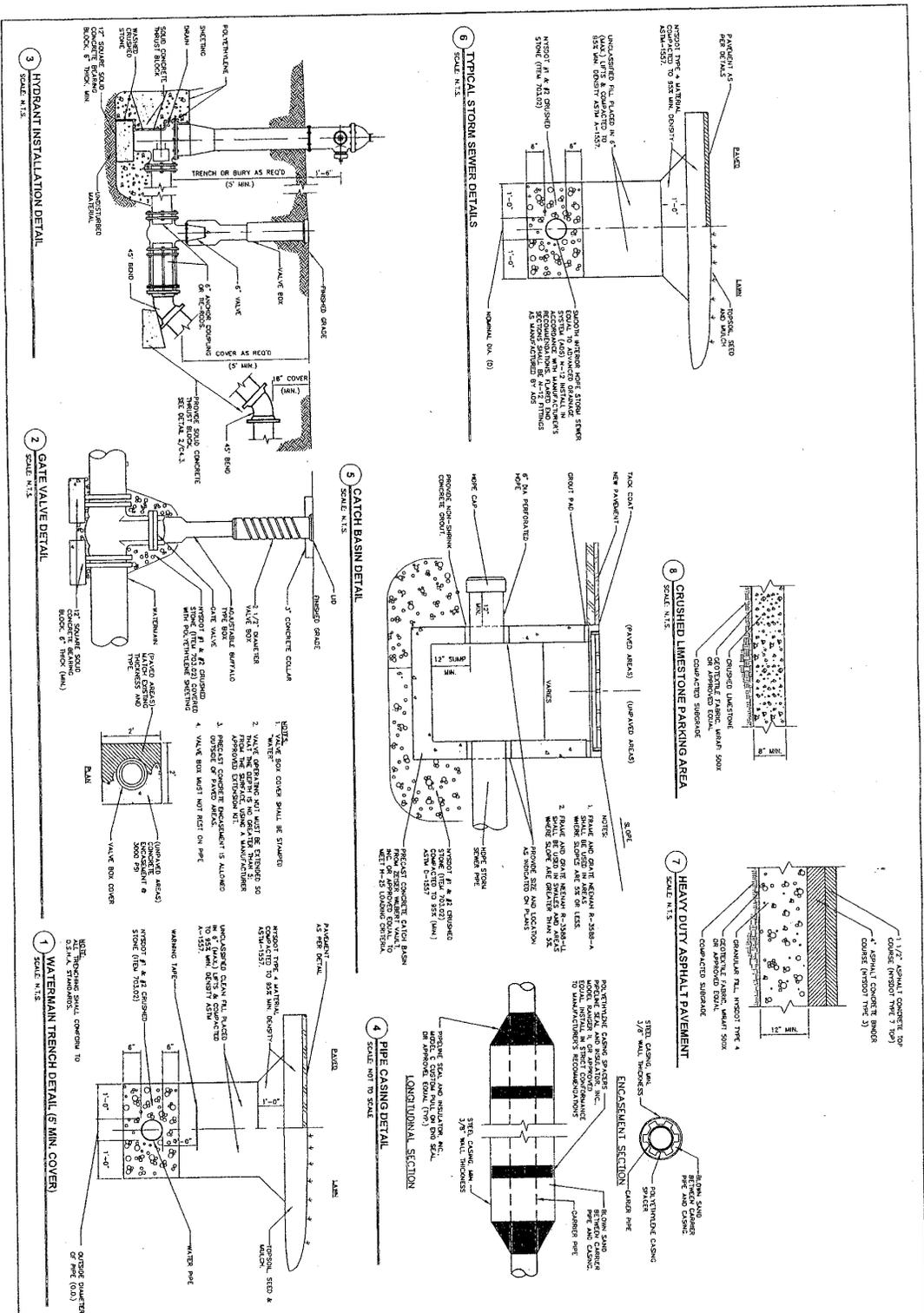


<p>C3.3</p> <p>PROPOSED STORM SEWER PAINTED POST TRANSLOADING SITE FOR WELLSBORO-CORNING RAILROAD VILLAGE OF PAINTED POST NEW YORK</p>	<p>HUNT</p> <p>ENGINEERS - ARCHITECTS - SURVEYORS</p> <p>607-338-1000 607-338-1800</p> <p>REPORT CONFORMS WITH THE NYS ENGINEERING LAW</p>	<p>DATE: 01/24/12</p> <p>DESIGN OF REVISION: REVISED FOR CONSTRUCTION</p>	<p>BY: [Signature]</p> <p>CHK: [Signature]</p> <p>SCALE: AS SHOWN</p> <p>DATE: 01/24/12</p>
		<p>PROJECT NO: 1000-010</p>	<p>DATE: 01/24/12</p> <p>DESIGN OF REVISION: REVISED FOR CONSTRUCTION</p>

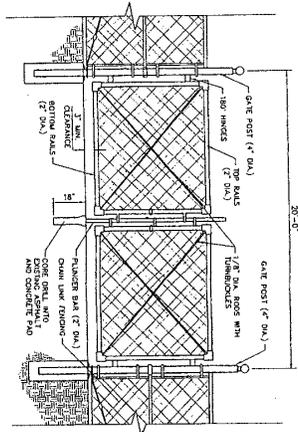
NOTE: EXISTING RIM ELEVATIONS TO BE DETERMINED BY CONTRACTOR



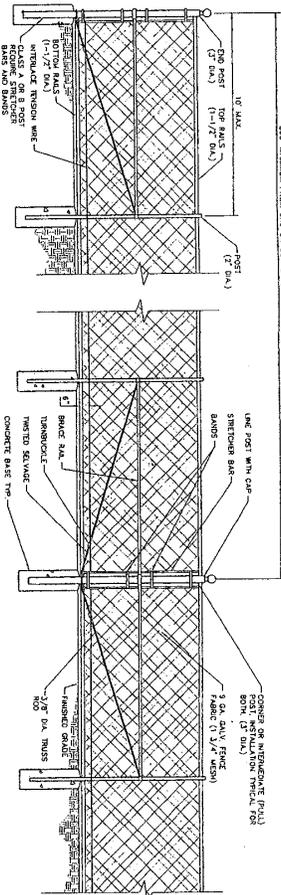
<p>LOADING STATION DETAILS</p> <p>PAINTED POST TRANSLOADING SITE FOR WELLSBORO-CORNING RAILROAD</p> <p>VILLAGE OF PAINTED POST NEW YORK</p>	<p>HUNT</p> <p>ENGINEERS • ARCHITECTS • SURVEYORS</p> <p>100 HUNT CENTER, HUNTSVILLE, AL 35894</p>	<p>DATE: 12/12/10</p> <p>DESCR. OF REVISION: CONSTRUCTION</p>
		<p>SCALE: 1/8" = 1'-0"</p>



<p>DETAILS PAINTED POST TRANSLOADING SITE FOR WELLSBORO-CORNING RAILROAD VILLAGE OF PAINTED POST NEW YORK</p>		<p>HUNT ENGINEERS - ARCHITECTS - SURVEYORS HUNT CORP. CENTER, HUNTSVILLE, ALA. 35894 807-336-1000 FAX: 807-336-1000 WWW.HUNT-ENR.COM</p>
<p>PROJECT NO. C42 DATE: 01/24/12 SCALE: N.T.S.</p>	<p>DESIGNER: [Name] CHECKER: [Name] DATE: 01/24/12</p>	<p>REVISIONS: NO. 1: [Description] NO. 2: [Description]</p>

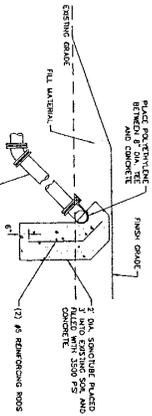


4 SWING GATE DETAIL
SCALE N.T.S.



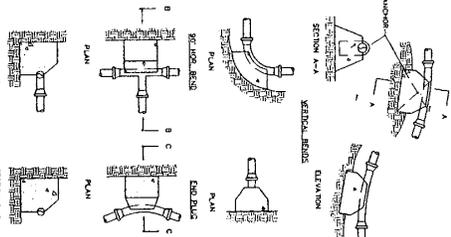
3 CHAIN LINK FENCE DETAILS
SCALE N.T.S.

- NOTE: CONTRACTOR SHALL SUBMIT DETAILS OF PROPOSED FENCE TO OWNER FOR APPROVAL, PRIOR TO CONSTRUCTION.
1. THE CONCRETE BASES SHALL BE A MINIMUM OF 12" DIA. X 3'-0" DEPTH WITH THE POST EMBEDDED 2'-0" FOR FENCES 6" HIGH OR LESS AND 12" DIA. X 3'-0" DEPTH WITH THE POST EMBEDDED 3'-0" FOR FENCES OVER 6" HIGH.
 2. THE TOP AND BOTTOM OF FENCE FABRIC SHALL HAVE TWISTED ENDS.



2 THRUST BLOCK DETAIL FOR PIPE PLACED IN FILL AREA (5' MIN. COVER)
SCALE N.T.S.

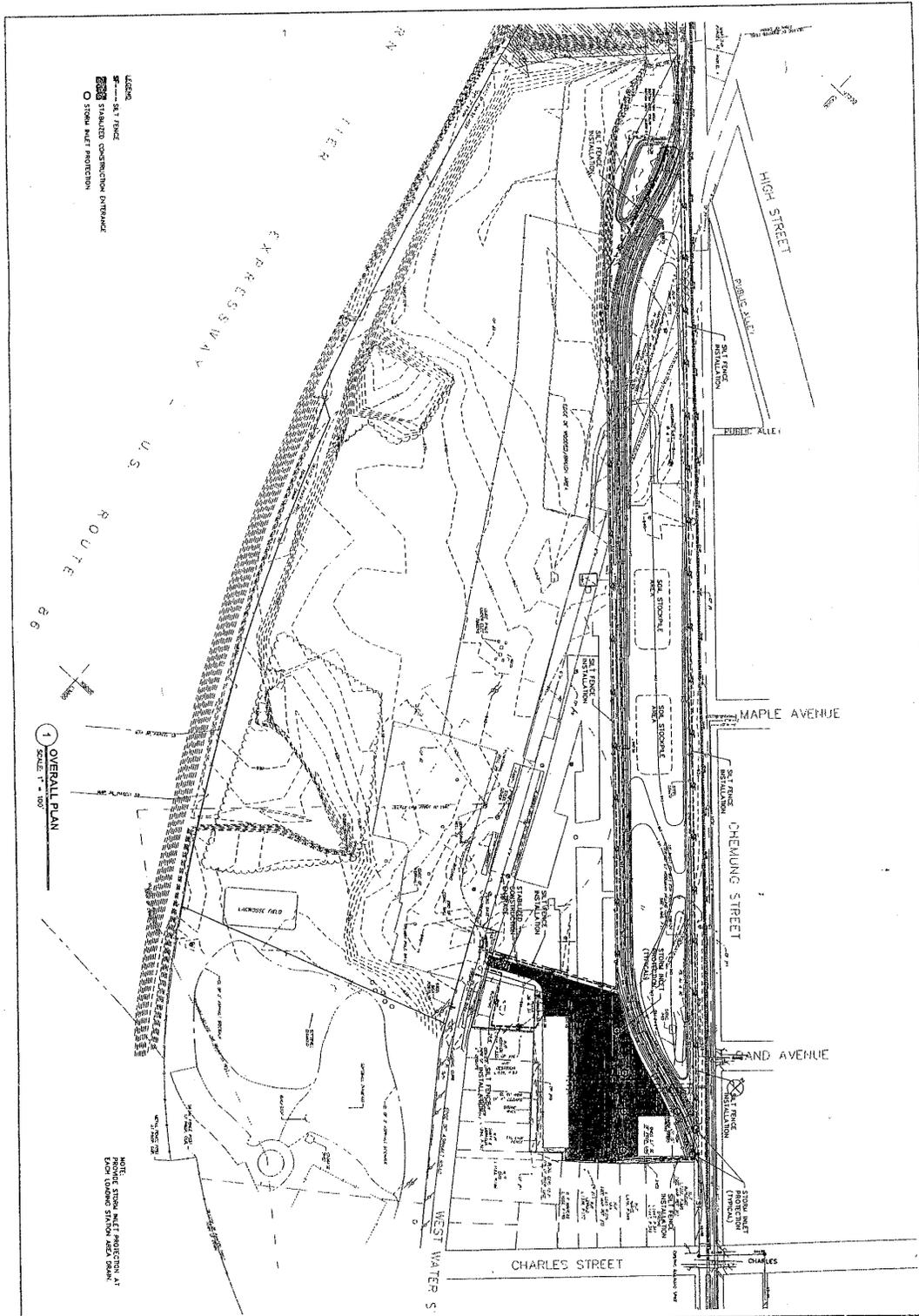
1 THRUST BLOCK DETAIL (5' MIN. COVER)
SCALE N.T.S.



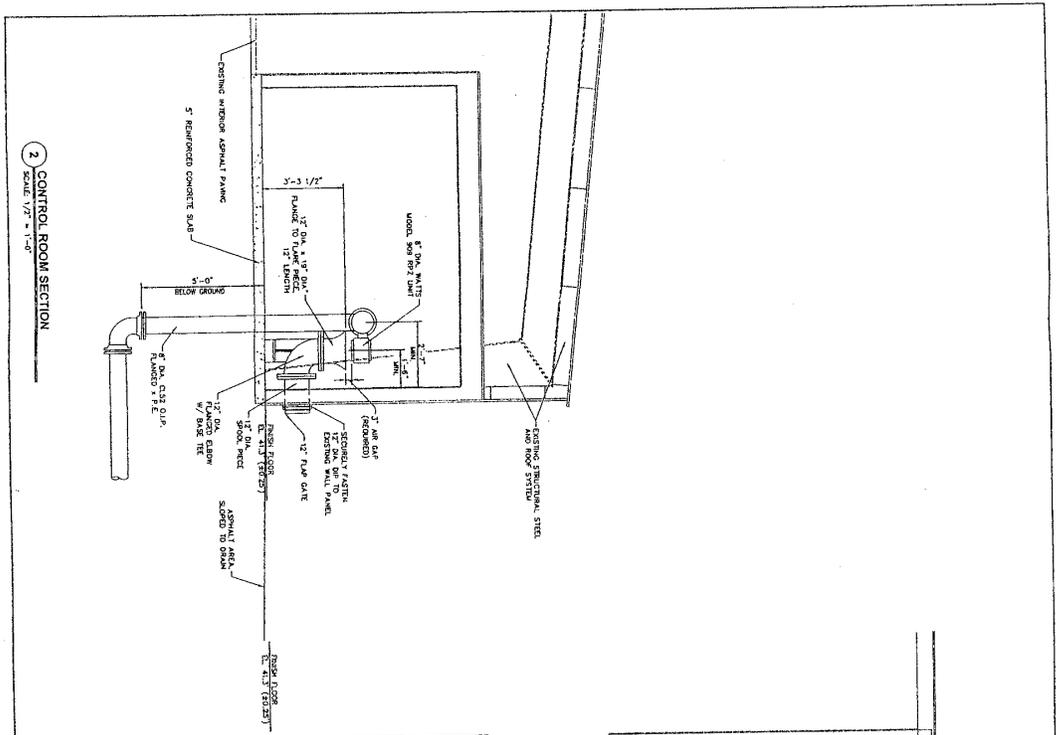
PIPE DIA.	MIN. THRUST BLOCK AREA - S.F.
6"	1.00
8"	1.50
10"	2.00
12"	2.50
14"	3.00
16"	3.50
18"	4.00
20"	4.50
22"	5.00
24"	5.50
26"	6.00
28"	6.50
30"	7.00
32"	7.50
34"	8.00
36"	8.50
38"	9.00
40"	9.50
42"	10.00
44"	10.50
46"	11.00
48"	11.50
50"	12.00
52"	12.50
54"	13.00
56"	13.50
58"	14.00
60"	14.50
62"	15.00
64"	15.50
66"	16.00
68"	16.50
70"	17.00
72"	17.50
74"	18.00
76"	18.50
78"	19.00
80"	19.50
82"	20.00
84"	20.50
86"	21.00
88"	21.50
90"	22.00
92"	22.50
94"	23.00
96"	23.50
98"	24.00
100"	24.50

- MINIMUM THRUST BLOCK AREA FOR PIPE, BRIDGE AND PILES SHALL BE DETERMINED BY THE FOLLOWING TABLE:
- MINIMUM THRUST BLOCK AREA - S.F.
1. CONCRETE SHALL BE USED.
2. ALL THRUST BLOCKS SHALL BE RIGIDLY CONNECTED TO EACH OTHER AND TO THE FOUNDATION.
3. CONCRETE MIN. COMPRESSIVE STRENGTH SHALL BE 4000 PSI AT 28 DAYS.
4. THE CONTRACTOR SHOULD ALWAYS CONSULT WITH THE ENGINEER PRIOR TO CONSTRUCTION.
5. ALL BRIDGE AND TOWER STEEL AND ALL STRUCTURES SHALL BE ANCHORED TO THE THRUST BLOCKS.

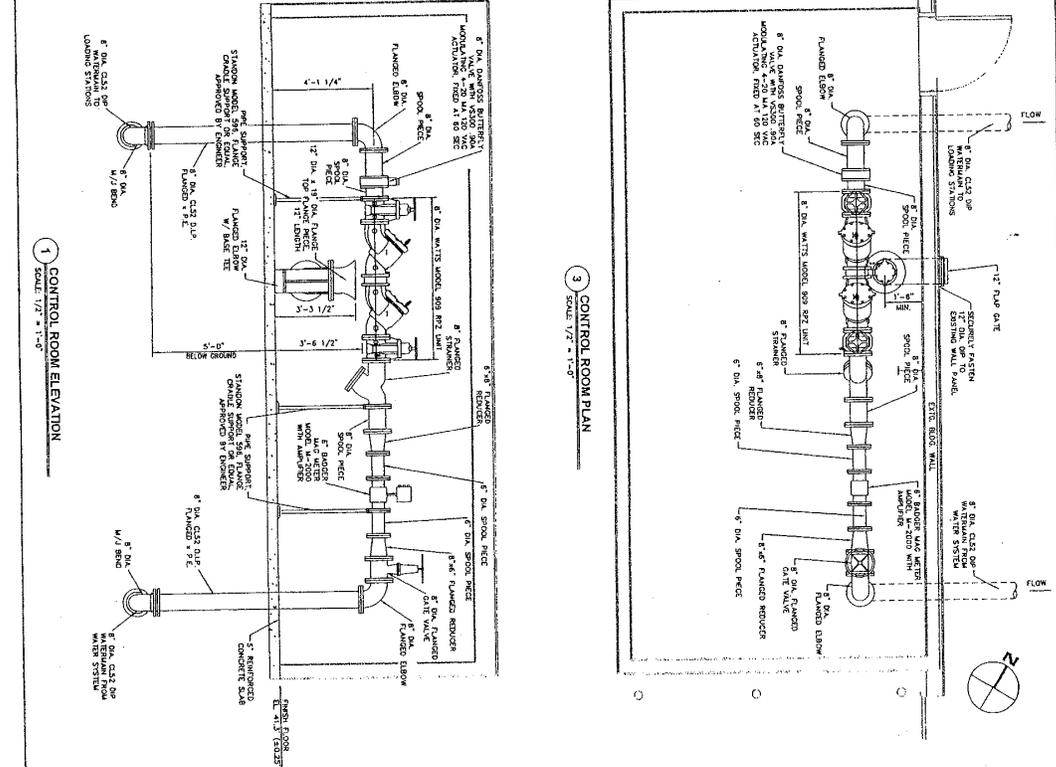
<p>PROJECT NO. 100-010</p> <p>C4.3</p>	<p>DATE: 10/24/12</p> <p>DESIGNER: [Name]</p> <p>CHECKER: [Name]</p> <p>CONTRACTOR: [Name]</p>	<p>SCALE: N.T.S.</p> <p>DATE: 10/24/12</p> <p>DESIGNER: [Name]</p> <p>CHECKER: [Name]</p> <p>CONTRACTOR: [Name]</p>	<p>DATE: 10/24/12</p> <p>DESIGNER: [Name]</p> <p>CHECKER: [Name]</p> <p>CONTRACTOR: [Name]</p>
	<p>DETAILS</p> <p>PAINTED POST TRANSLOADING SITE</p> <p>FOR WELLSBORO-CORNING RAILROAD</p> <p>VILLAGE OF PAINTED POST</p> <p>NEW YORK</p>	<p>HUNT</p> <p>ENGINEERS - ARCHITECTS - SURVEYORS</p> <p>1000 WEST 100TH STREET, SUITE 200</p> <p>ROSELAND, N.J. 07068</p> <p>TEL: 201-992-8800</p> <p>FAX: 201-992-8801</p> <p>WWW.HUNTGROUP.COM</p>	<p>DATE: 10/24/12</p> <p>DESIGNER: [Name]</p> <p>CHECKER: [Name]</p> <p>CONTRACTOR: [Name]</p>



C5.1 PROJECT NO. 10000000	EROSION & SEDIMENT CONTROL PLAN PAINTED POST TRANSLOADING SITE FOR WELLSBORO-CORNING RAILROAD VILLAGE OF PAINTED POST NEW YORK	HUNT ENGINEERS - ARCHITECTS - SURVEYORS 480 WEST CORPORATE PARK, 100 HUNT CENTER, HORSENEARCH, N.Y. 10889 914-353-1000 FAX 914-353-1000	DATE: 01/24/12 DESIGNED BY: RENESE CHECKED BY: RENESE CONSTRUCTION	DRAWING NO.: SHEET NO.: DATE: NOVEMBER 04, 2011 SCALE: AS SHOWN	PROJECT NO.: SHEET NO.: DATE:
	PROJECT NO.: SHEET NO.: DATE:		PROJECT NO.: SHEET NO.: DATE:	PROJECT NO.: SHEET NO.: DATE:	PROJECT NO.: SHEET NO.: DATE:

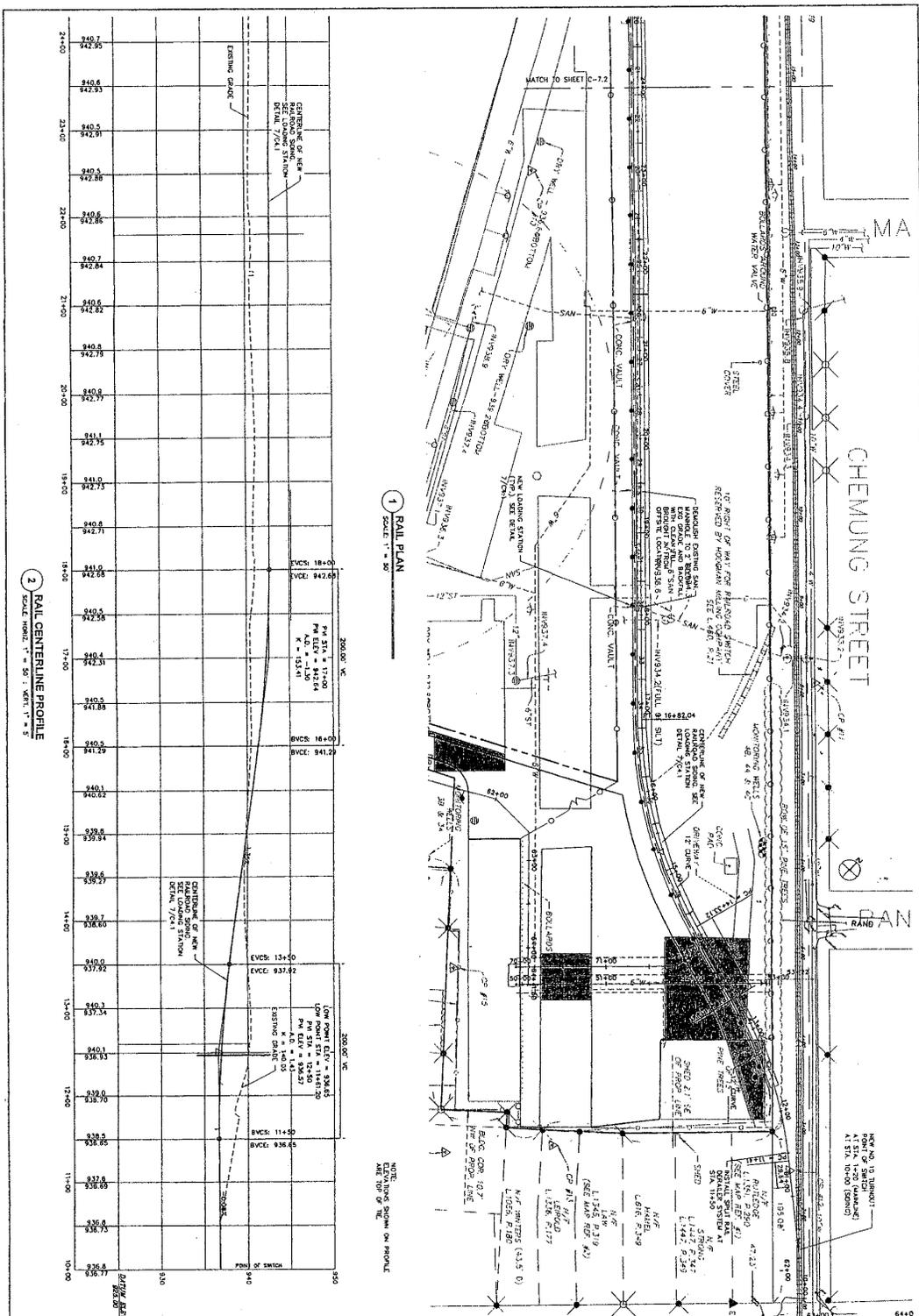


2 CONTROL ROOM SECTION
SCALE 1/2" = 1'-0"

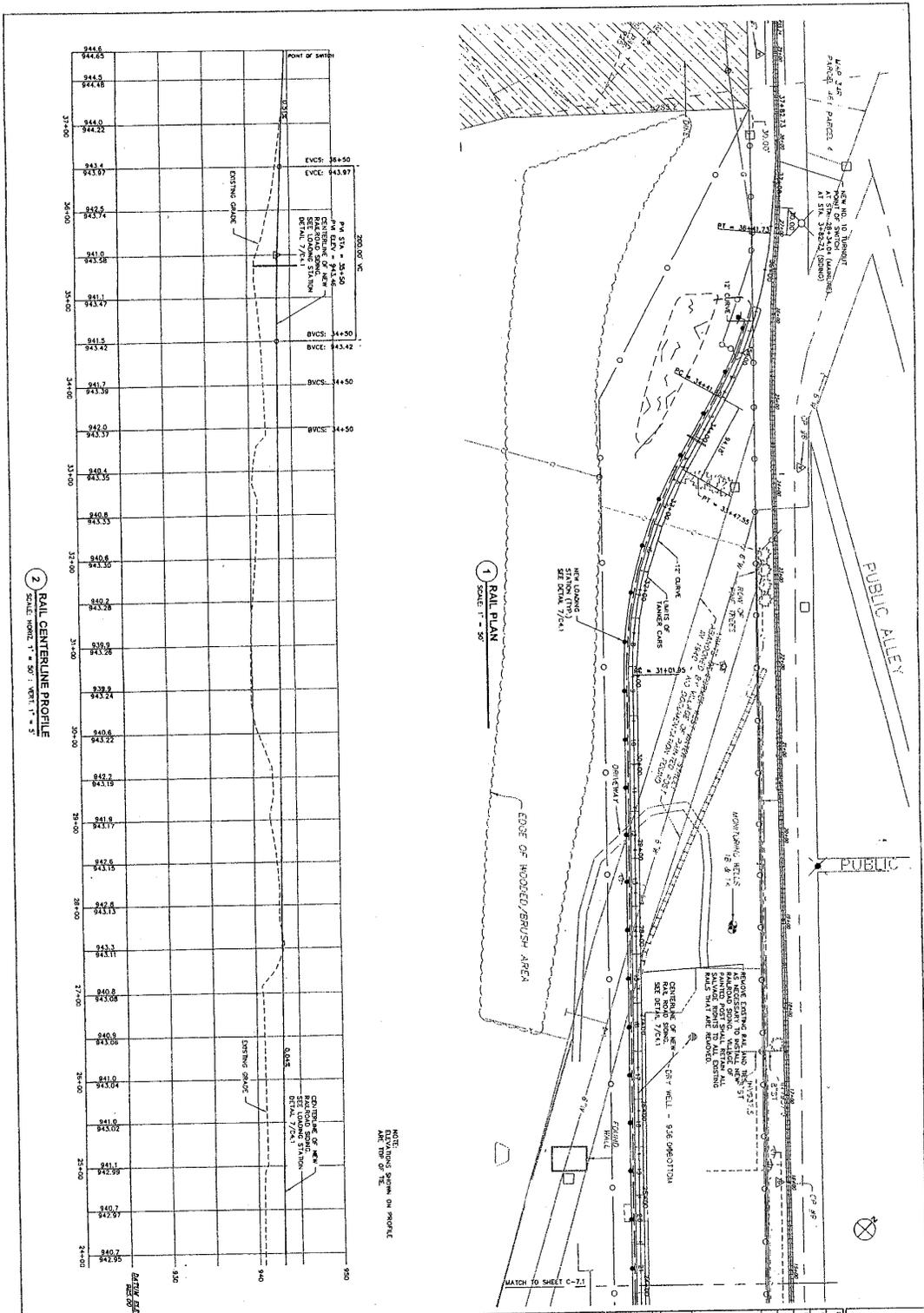


3 CONTROL ROOM PLAN
SCALE 1/2" = 1'-0"

<p>PROJECT NO. 100-7010</p> <p>C6.1</p>	<p>CONTROL ROOM & RPZ DETAILS</p> <p>PAINTED POST TRANSLOADING SITE</p> <p>FOR WELLSBORO-CORNING RAILROAD</p> <p>VILLAGE OF PAINTED POST</p>	<p>HUNT</p> <p>ENGINEERS • ARCHITECTS • SURVEYORS</p> <p>801. 348-1800 800. 368-1800 FAX: 368-1800</p> <p>100 HUNT CENTER, HORSENEARS, NY, 14645</p>	<p>DATE: 01/24/12</p> <p>DESIGN OF REVISION:</p> <p>REVISED FOR CONSTRUCTION</p>
	<p>DRAWN BY: [Name]</p> <p>CHECKED BY: [Name]</p> <p>DATE: [Date]</p> <p>SCALE: [Scale]</p> <p>PROJECT NO.: [Project No.]</p>	<p>PROJECT NO.: [Project No.]</p> <p>DATE: [Date]</p> <p>SCALE: [Scale]</p> <p>PROJECT NO.: [Project No.]</p>	<p>PROJECT NO.: [Project No.]</p> <p>DATE: [Date]</p> <p>SCALE: [Scale]</p> <p>PROJECT NO.: [Project No.]</p>



<p>C7.1</p>	<p>RAIL PLAN AND CENTERLINE PROFILE</p> <p>PAINTED POST TRANSLOADING SITE FOR WELLSBORO-CORNING RAILROAD</p> <p>VILLAGE OF PAINTED POST NEW YORK</p>	<p>HUNT</p> <p>ENGINEERS • ARCHITECTS • SURVEYORS</p> <p>AMPORT CORPORATE PARK, 100 HUNT CENTER, HONEOHEARS, N.Y. 14845</p> <p>607-358-1000</p>	<p>DATE: 07/25/12</p> <p>DESIGNER: [Name]</p> <p>CONSTRUCTION: [Name]</p>
	<p>PROJECT NO. 1889-012</p>		<p>SCALE: 1" = 50'</p> <p>DATE: 07/25/12</p> <p>DESIGNER: [Name]</p> <p>CONSTRUCTION: [Name]</p>



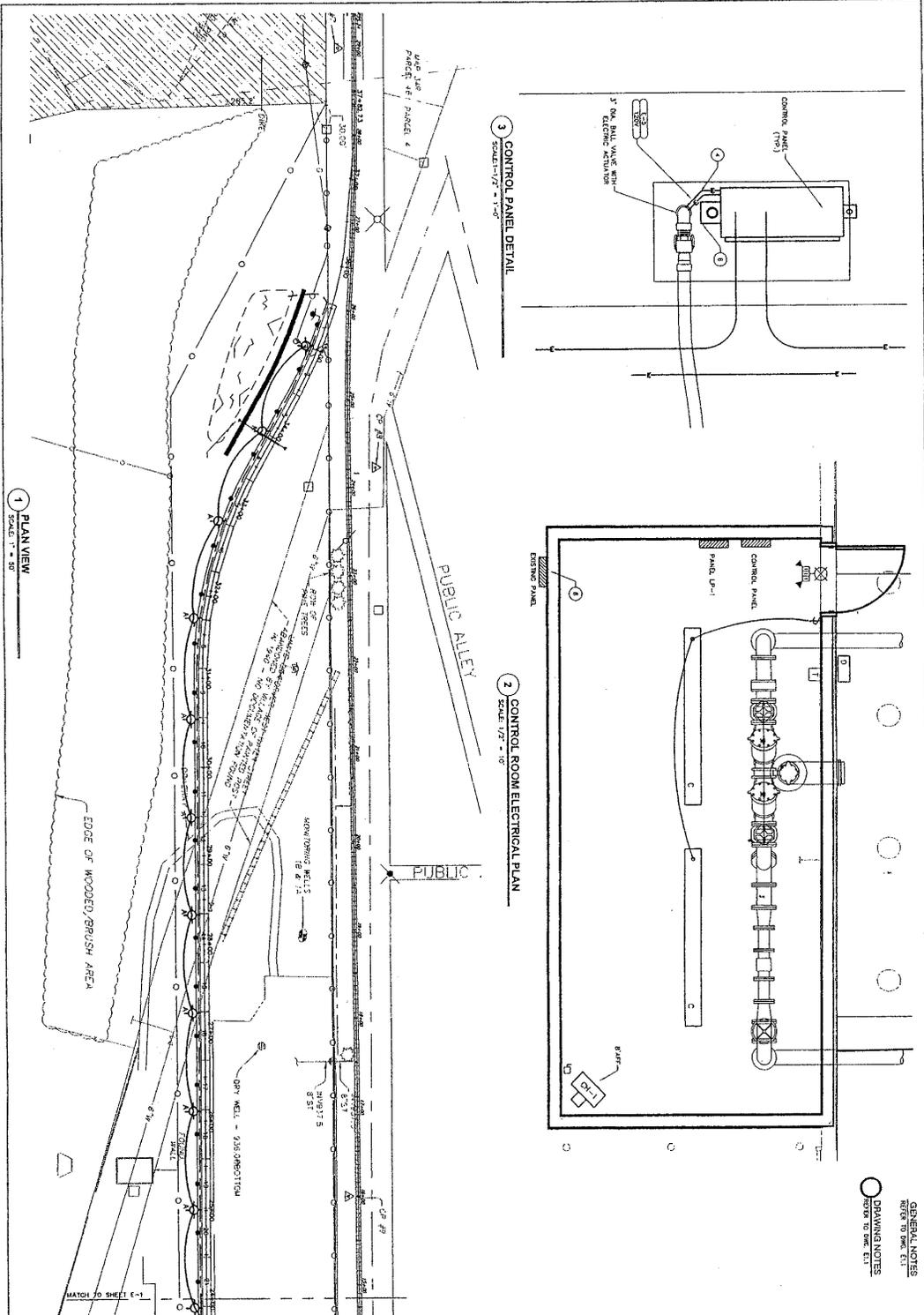
2 RAIL CENTERLINE PROFILE
 SCALE: HORIZ. 1" = 50' VERT. 1" = 5'

1 RAIL PLAN
 SCALE: 1" = 50'

RAIL PLAN AND CENTERLINE PROFILE
PAINTED POST TRANSLOADING SITE
FOR WELLSBORO-CORNING RAILROAD
 VILLAGE OF PAINTED POST
 NEW YORK

HUNT
 ENGINEERS • ARCHITECTS • SURVEYORS
 807-338-1000
 FAX: 800-818-8000
 4800T CORPORATE PARK, 100 HUNT CENTER, HORNELL, N.Y. 14845

DATE	07/24/10	DESIGN OF RECORD
REVISION	REVISED FOR CONSTRUCTION	
PROJECT NO.	1849-010	
SHEET NO.	2	
TOTAL SHEETS	2	
DATE PLOTTED	08/04/10	
SCALE	1" = 50'	



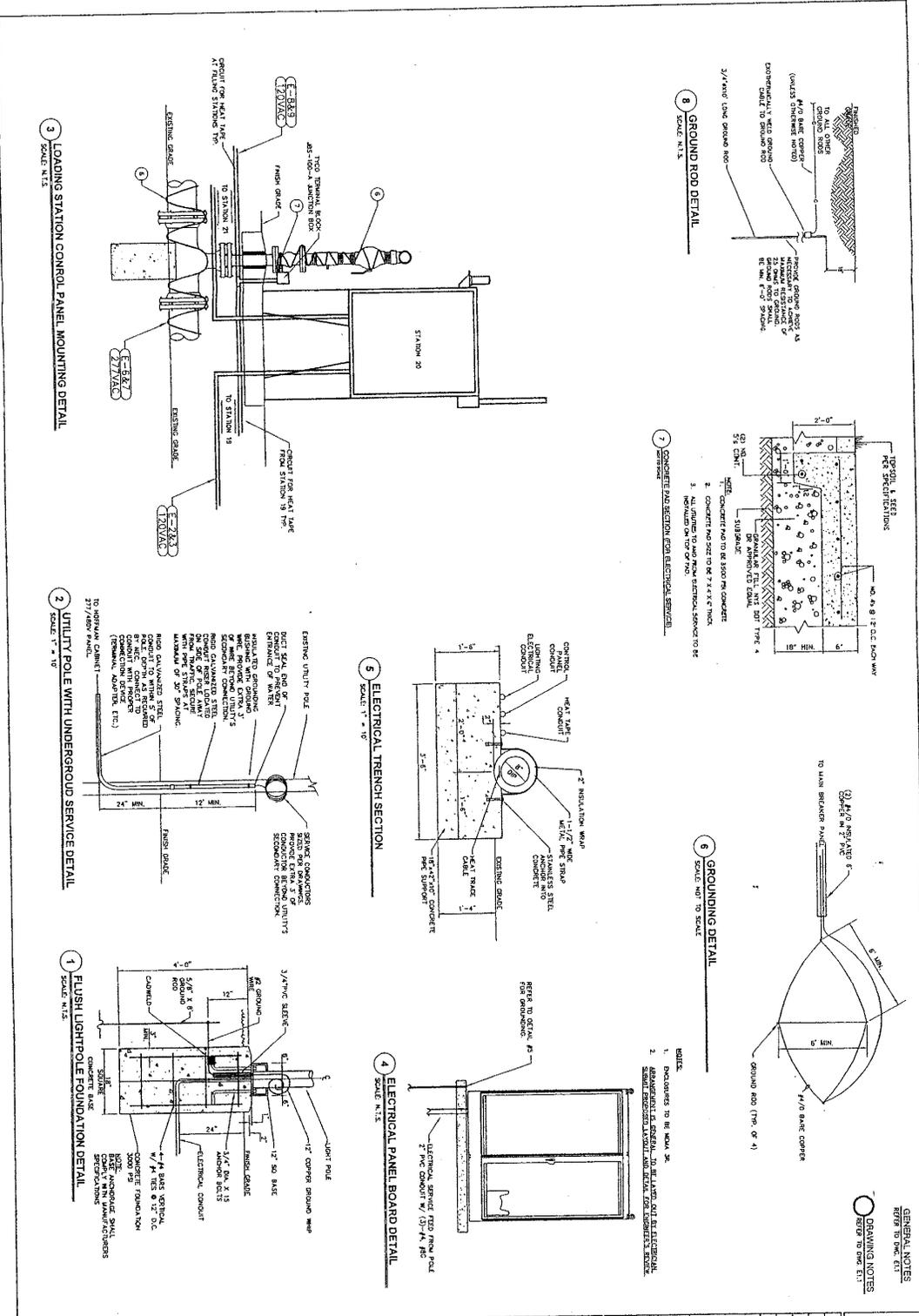
1 PLAN VIEW
SCALE: 1" = 50'

3 CONTROL PANEL DETAIL
SCALE: 1/2" = 1'-0"

2 CONTROL ROOM ELECTRICAL PLAN
SCALE: 1/2" = 1'-0"

GENERAL NOTES
REFER TO DRAW. E-11
DRAWING NOTES
REFER TO DRAW. E-11

<p>PROJECT NO. 1859-010</p> <p>E1.2</p>	<p>ELECTRICAL POWER & LIGHTING PLAN</p> <p>PAINTED POST TRANSLOADING SITE</p> <p>FOR WELLSBORO-CORNING RAILROAD</p> <p>VILLAGE OF PAINTED POST NEW YORK</p>	<p>HUNT</p> <p>ENGINEERS - ARCHITECTS - SURVEYORS</p> <p>PROJECT OFFICE: 224 N. 9TH STREET, SUITE 200, NEW YORK, N.Y. 10011</p> <p>607-358-1000 607-358-1800</p>	<p>DATE: 01/24/10</p> <p>DESCR. OF REVISION: REVISED FOR CONSTRUCTION</p>	<p>BY: [Signature]</p> <p>DATE: 01/24/10</p>	<p>SCALE: AS SHOWN ON SHEET</p>	<p>PROJECT NO. 1859-010</p>
	<p>PRODUCT NO. 1859-010</p>	<p>DATE: 01/24/10</p> <p>SCALE: AS SHOWN ON SHEET</p>	<p>PROJECT NO. 1859-010</p>			



3. LOADING STATION CONTROL PANEL MOUNTING DETAIL
SCALE: N.T.S.

2. UTILITY POLE WITH UNDERGROUND SERVICE DETAIL
SCALE: 1/4" = 1'-0"

1. FLUSH LIGHTPOLE FOUNDATION DETAIL
SCALE: 1/4" = 1'-0"

5. ELECTRICAL TRENCH SECTION
SCALE: 1/4" = 1'-0"

4. ELECTRICAL PANEL BOARD DETAIL
SCALE: N.T.S.

8. GROUND ROD DETAIL
SCALE: N.T.S.

7. CONCRETE PAD SECTION FROM ELECTRICAL SERVICES
SCALE: N.T.S.

6. GROUNDING DETAIL
SCALE: 1/4" = 1'-0"

GENERAL NOTES
REFER TO DWG. E-11
DRAWING NOTES
REFER TO DWG. E-11

NOTES:
1. DIMENSIONS TO BE AS SHOWN.
2. DIMENSIONS TO BE AS SHOWN.
3. DIMENSIONS TO BE AS SHOWN.
4. DIMENSIONS TO BE AS SHOWN.

PROJECT NO. 1881-250	E3.2	ELECTRICAL DETAILS		HUNT ENGINEERS - ARCHITECTS - SURVEYORS HUNTSVILLE CORPORATE PARK, 100 HUNT CENTER, HUNTSVILLE, ALA. 35894 256-888-1000 256-888-1001 FAX: 256-888-1002	DATE: 01/24/12	DESIGN OF REVISION:	BY: PAK	SCALE: AS SHOWN	PROJECT NO.: 1881-250
		PAINTED POST TRANSLOADING SITE FOR WELLSBORO-CORNING RAILROAD VILLAGE OF PAINTED POST NEW YORK			DATE: 01/24/12	DESIGN OF REVISION:	BY: PAK	SCALE: AS SHOWN	PROJECT NO.: 1881-250



DRAFT Engineering Report

for the

**Wellsboro & Corning Railroad
Painted Post Transloading Facility**

**Village of Painted Post
Steuben County, New York**

Prepared by:
Hunt Engineers, Architects & Land Surveyors, P.C.
Airport Corporate Park
100 Hunt Center
Horseheads, NY 14845

Revised November 11, 2011

HUNT 1889-010



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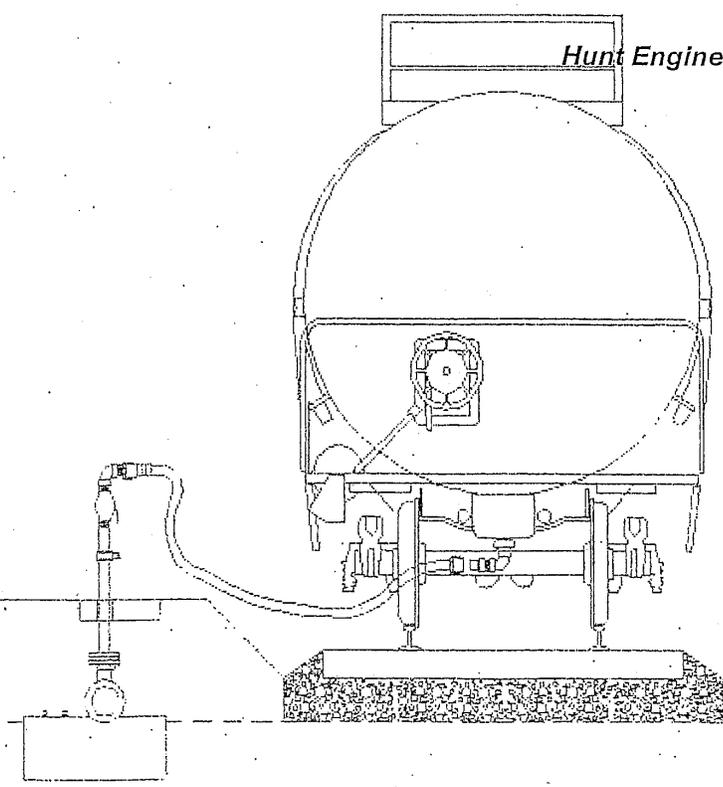


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I. INTRODUCTION

The Wellsboro & Corning Railroad is proposing to install a transloading facility at the former Ingersoll Rand Foundry located at 350 West Water Street, Painted Post, NY. The facility will be operated 24-hours-a-day by the Wellsboro Corning Railroad. The project will be constructed so as to provide an automated water loading system that will withdraw potable water from the Painted Post municipal water piping that is currently located on the project site. A new rail siding will be constructed within this proposed project area, and tanker cars will be parked on the siding while the loading process is being completed.

2. SITE HISTORY

The project will be located at 350 West Water Street in Painted Post, New York, and will encompass a portion of the former Ingersoll Rand (IR) Foundry property. In 1848 the site housed a machine shop and foundry that was owned by Weston Engine Company, which was a subsidiary of Rand Drill Company. In 1905 Rand merged with Ingersoll Sergeant Drill Company to become Ingersoll Rand, and the foundry was owned and operated by IR until 1986 when IR merged with Dresser Industries to become Dresser-Rand Company. The foundry produced gray iron castings for air compressors until it closed in 1986. The original parcel was 57.4 acres, and in 1986 a 7.5-acre parcel was conveyed to the Village of Painted Post for the use as a recreation park that is now known as Hogmen Park.

After the foundry was idled in late 1985, an environmental evaluation and cleanup was conducted by IR on the foundry site under the supervision of the New York State Department of Environmental Conservation (DEC) pursuant to an administrative order whereby an interim remedial measure was completed that included removal of contaminated soils, demolition and removal of contaminated walls and flooring, and removal of other contaminated metal components.

As the result of IR's initial remedial actions and evaluation, the DEC listed a portion of the IR Property on the State's Registry of Inactive Hazardous Waste Disposal Sites (the "disposal site"). In March 1994, DEC issued a Record of Decision (the ROD) which prescribed certain cleanup measures, as well as groundwater monitoring. The ROD also required the implementation of institutional controls restricting the use of groundwater withdrawn directly from the IR Property, directing the placement of a deed restriction on the IR Property, essentially requiring that any future uses be limited to commercial or similar uses. The ROD also required the construction of certain fencing and other security measures.

Thereafter, the ROD was implemented and the prescribed monitoring revealed contaminate levels below applicable groundwater standards. Further, the deed restrictions required by the ROD were also implemented by IR in January of 2001. By determination dated September 25, 2003, DEC de-listed disposal site with DEC finding that: "the contamination identified at the [disposal] site has been properly remediated." In so de-listing the disposal site the DEC found that: "No environmental problems associated with the disposal of hazardous waste remain at the site." A copy of the DEC's listing for the disposal site is available at the DEC website at www.dec.ny.gov. A summary of the pertinent investigations and remedial actions that have taken place at the old IR foundry site has been provided in the Soil Fill Management section of this report.

Following de-listing of the disposal site, additional investigations and remedial measures were completed on portions of the IR Property. As detailed below, the IR property was

subject to a condemnation proceeding in or about 2004 and pursuant to the settlement of that condemnation proceeding, the institutional controls implemented pursuant to the delisting of the disposal site were supplanted by updated institutional controls including a soil fill management plan (SFMP) which was implemented as part of the deed to the IR Property that was filed in 2005 as part of the condemnation settlement. In 2008, the DEC denied PPD's application to have the IR property included within the DEC's Brownfield Program, as DEC concluded that the work completed as part of the ROD and DEC's delisting of the disposal site precluded it from being considered as a candidate for clean up under that program. A copy of the DEC denial letter has been provided in Appendix A.

3. SOIL FILL MANAGEMENT PLAN

After the closing of the foundry in 1986 there were numerous environmental investigations and remedial actions taken on the 47-acre IR site. The following information was obtained from the *Remedial Work Plan* that was developed for the Painted Post Development, LLC by Malcolm Pirnie in August 2005.

December 1985 - As part of the site closure, IR contracted Capsule Environmental Engineers, Inc. (CEE) to identify areas on site that may contain PCBs. As a result of CEE's investigation they prepared a cleanup specification for removal of underground storage tanks, equipment cleaning, removal of spent raw materials, and removal of wastes generated during the cleanup process.

June 25, 1986 to August 12, 1988 - Allwash of Syracuse was awarded the initial PCB cleanup contract and completed the work in two "divisions." Division I activities included further evaluation of contaminated areas and the characterization of waste materials for subsequent disposal. Division II activities included the cleaning and removal of numerous underground storage tanks containing products including, Linocure A.W., Linoil 742, kerosene, gasoline, and diesel fuel. Also completed during Division II was the cleaning and removal of contaminated machinery, equipment and the excavation of contaminated soil. Soil contaminants included PCBs, oil and grease, and lead.

January 1992 - Law Environmental of Albany, New York prepared (for CEE on behalf of IR) an Interim Stratigraphy Report for a Phase I Groundwater Quality Assessment. Two soil borings were drilled and sampled to the depth of 82 feet to determine subsurface conditions and finalize monitoring well construction details for the subsequent groundwater quality assessment.

September 1992 - Wenck Associates, Inc. of Maple Plain Minnesota (for CEE on behalf of IR) completed a Groundwater Quality Assessment. The purpose of the GQA was to satisfy requirements of Section VII of an Order on Consent between IR and the NYSDEC that was signed on October 2, 1987. Section VII addresses the question of whether or not past practices on site have led to impacts to groundwater. As part of this GWA, 13 groundwater monitoring wells were installed at seven locations. Some of the wells were installed in groups of two or more with each grouped well monitoring one of three unique water-production depths. Some wells monitored the 80-foot depth and were designated as "A" wells, others monitored the water table and were designated "B" wells. At well location 4, a third well was installed to monitor above an aquitard of limited extent at the 35-foot depth. The geology of the overburden was characterized, as were the chemical characterizations of the soil and groundwater flow and quality. The effects of pumping nearby municipal supply wells were also mapped to show a local effect at the site. Samples of fill material at well number MW-2 contained elevated PAHs (up to 11 PPM total PAHs) and the presence of toluene. At MW-

4A, soils and groundwater samples contained constituents of a petroleum product and benzene was present in the groundwater from well MW-4B at a concentration above the NYSDEC groundwater standard. Recommendations of the GQA report included confirmation sampling and further evaluation of the elevated PAHs at the MW-2B location.

February 9, 1993 - At the request of the DEC, CEE completed a subsurface investigation on behalf of IR, in response to a citizen allegation regarding the disposition of drums at the site. A soil trenching and sampling program was performed. Four trenches were excavated. Two drums were encountered, sampled, and removed. One of the two drums contained ash-like material and was suspected to have been used for trash burning. Excavated material primarily consisted of black and tan sands with treated wood and miscellaneous debris. Treated wood included small bits to full size railroad ties. The report concluded that no material found in the trenches would indicate that IR improperly disposed of hazardous materials in drums through burial on site and recommended no further subsurface investigation.

1993 Quarterly Groundwater Monitoring - Quarterly groundwater quality monitoring was performed beginning in the second quarter of 1993. References to this monitoring data (see 2/25/94 FS report described below) indicate that sample results since beginning the quarterly monitoring through the subsequent two years resulted in no exceedances of NYS groundwater standards or Federal MCLs.

August 2, 1993 - Per the recommendations made in the September 1992 Groundwater Quality Assessment Report, CEE, on behalf of IR, prepared a report titled "Report of the Subsurface Evaluation of MW-2B-Additional Groundwater Quality Assessment Investigation." CEE drilled eight soil borings at and around well MW-2B to further delineate the area of elevated PAHs. One boring was placed adjacent to well MW-2B, four borings were placed around the center boring at a distance of 40 feet, and two were placed at a distance of 75 feet. Where conditions allowed, samples were collected at the three-foot depth and directly below the fill, which ranged in thickness between six and 13 feet. All samples were analyzed for semivolatile organic compounds. All samples from the three-foot depth contained PAHs with a maximum of 25 PPM. Samples of the native soils beneath the fill contained no significant PAHs. Stated conclusions of the report were that significant levels of PAHs are not vertically migrating and impacting the natural soils at the site and that previous groundwater sampling data for wells MW-2A and MW-2B indicate that PAHs have not impacted the groundwater at this well location. Additional evaluation of the PAHs was not deemed warranted.

February 25, 1994 - CEE, on behalf of IR, prepared a Focused Feasibility Study (FFS) for the site in February 1994. As part of the FFS, a risk assessment was performed that focused on the presence of TCA in one of the nearby municipal supply wells (Well #4). The risk assessment concluded that the groundwater beneath the site is in compliance with state and federal MCLs and that groundwater beneath the site is unlikely to pose any health concerns to the community. The FS recommended the following:

- Limited groundwater monitoring at the site,
- Fencing of the site to limit access, and,
- A deed restriction to notify future property owners of the presence of contaminants in the vicinity of MW-2B.

August 25, 1994 - In accordance with a Record of Decision (ROD) signed in March 1994, CEE, on behalf of IR, submitted a Sampling and Analysis Plan for

long-term monitoring of site groundwater quality. The SAP outlined plans for the sampling of six on-site and two near off-site monitoring wells for VOCs five times over a period of three calendar years (1994, 1995, and 1996).

September 9, 1997 - CEE, on behalf of IR, prepared a 1997 Annual Ground Water Monitoring Report. Presumably the long-term groundwater monitoring was performed uninterrupted since beginning in 1994. The report presents results of VOC analysis of the eight wells specified in the 1994 SAP. The report documents very low concentrations (less than 1 ug/l) of several VOCs with only 1,1,1 - TCA present above 1 ug/l ranging up to 6 ug/l.

May 2004 - Malcolm Pirnie performed a supplemental environmental investigation on behalf of the Painted Post Development, LLC in April 2004 in support of a due-diligence effort for property acquisition. Soil borings were conducted to delineate and characterize the extent of polycyclic aromatic hydrocarbons (PAHs) within the deed restricted radius of monitoring well MW-2B. Samples of the soil and overburden material were also collected as part of a preconstruction geotechnical study. Results of the investigation confirmed that fill material does contain elevated concentrations of PAHs that exceed the DEC TAGM soil clean-up objectives. The fill material also contained elevated nickel, magnesium, and zinc at concentrations that exceeded typical background soil concentrations. The soil sample analytical results from this investigation were summarized in the RI Work Plan.

September 2004 - Malcolm Pirnie conducted RI sampling in September and October 2004. This sampling included drilling and sampling of 14 soil borings. From these borings, seven surface soil, 17 subsurface soil/fill, and three groundwater samples were collected. All samples from the RI sampling event were analyzed for Volatile Organic Compounds (VOCs), Semivolatile Organic Compounds (SVOCs), Polychlorinated biphenyls (PCBs), pesticides, TAL metals, cyanide, and pH. Tables 2-1A, 2-2, and 2-3 provide a summary of the analytical results of the RI. See Appendix E.

November 2004 - On November 12, 2004 as part of a pre-construction supplemental characterization study, five surface soil samples (0-2" depth) were collected to further delineate the lateral extent of elevated PCB concentrations detected at a single point sampled during the RI. The five samples were collected in a circular pattern approximately 100 feet from soil boring SB-EN-02 and analyzed for PCBs. Table 2-1 B provides a summary of analytical results of the surface soil samples collected for PCBs.

4. WATER SYSTEM

The Village has numerous water lines within the 11.8-acres that will be leased to the Wellsboro Corning Railroad and access for maintenance will be retained by the Village. Currently there is an 8-inch water line that supplies water to the old fire protection system within an existing building located on the 11.8-acre site. The Village currently uses the building for salt storage and the fire system has not been functional for a number of years. It is proposed that the existing fire system be removed from the building and the 8-inch supply line be used to supply water for the transloading operation. The existing salt storage building will be used to house the reduced pressure zone assembly valves that are required by the New York Department of Health and the Village of Painted Post. A new interior room will be constructed with a separate man door. Heat and electric service will be provided.

HUNT has the hydraulic water model for the entire Village water system. The hydraulic model is a computer software program that provides HUNT with the ability to build an electronic model of an existing or proposed water distribution system for a small or large community. The model typically consists of junction points and pipes. The junction points are normally shown as dots and are labeled with an individual number. The points are used to indicate buildings, hydrants or other types of water users. The program allows the user to place information about the location and type of water demand placed at each junction point. The lines between the junction points represent pipes. The model allows the engineer to define the type of pipe and other information that the program uses to calculate the flow within each pipe at points within in the network of pipes. The junction points and pipes are placed over a scale map of the Village's water distribution system so as to provide an accurate model of the existing water distribution network.

To begin the analysis of this development within the Village's existing water system and its ability to provide the proposed demand of 1000 gpm the computer model was run using the existing system under normal demands as a baseline. A demand of 1000 gpm was then placed on junction point 232, which is the point that this proposed project will connect to the Village's existing water system. The results from the model have indicated that a flow of 1000 gpm at the transloading site junction point 232 would not produce any adverse low pressures within the Village's water system. The Village has a normal working pressure range between 80 and 90 psi, and these pressures are well above the Ten States Minimum Standard of 30psi. The data provided from the baseline run was compared to the run with the additional 1000 gpm load and the difference in pressures was analyzed to determine the effect on the Village's water system. The model indicated that the average pressure, at each point, was reduced by an average of 0.2 psi. The maximum pressure deduction occurred at junction J 148 when the pressure was reduced 4.31 psi. (98.34 psi to 94.03 psi) Junction 148 is a fire hydrant located at the intersection of Keefe Boulevard and Fairview Extension.

The new water distribution piping within the transloading system will be supplied water through a new 8-inch ductile iron pipe (DIP) placed along the new rail siding with factory interlocking constrained joints. The 8-inch pipe will distribute water to 42 loading stations that will be spaced approximately 55-feet apart along the 2,400 lineal feet of new 8-inch water line. Each railroad tanker, positioned at each station, has a 3-inch connection that will be used to fill each tanker with approximately 23,100 gallons of water. The site was designed for 42 tanker cars and each cycle will fill all forty two (42) tankers for a total of 970,000 gallons in approximately 16 hours.

Each loading station will have a 3-inch electronic actuating ball valve that will be controlled by an overall Supervisory Control and Data Acquisition (SCADA) system that will sense when each loading station is connected to the tanker and when the tanker is filled to capacity. A worker operating the stations initiates the filling process by connecting the flexible hose from the vertical fill pipe to the 3-inch tanker connection and indicating the connection is complete on the control panel. The SCADA controls will open a maximum of three stations at one time and close each ball valve as the tankers reach capacity. The process of opening and closing of the ball valves is completely automated and the process can start anywhere along the 42 stations. Workers will disconnect the 3-inch hoses from each tanker and place them on the provided hanging rack. Once all 42 tanker cars are filled to capacity the railroad will pull them off the new siding and replace them with empty tankers and the filling process will begin again.

The SCADA system will instantaneously monitor the rates and volumes of the filling process and provide all necessary records for reporting withdrawal volumes to the DEC and Susquehanna River Basin Commission. The Village may have access to the SCADA system to monitor flows and volumes for their own record keeping. In addition the Village will have access to the RPZ valve room that will be located in the Village's

existing salt storage building. The RPZ room will have an electronic meter that will provide totalized volume data and flow rates of the water withdrawn from the Village's water system.

Due to the potential environmental impacts the excavation has been kept to a minimum for this site design. Normally water piping is placed in the ground with a minimum ground cover of 5-feet to remain below the normal frost level. The new water distribution piping, installed parallel to the new rail siding, will be placed on top of the existing ground. A cover of approximately 18 inches of offsite soil will be placed over the new pipes. The water pipe will be protected from freezing by the installation of an electrical heat trace cable placed around the water piping system.

6. STORMWATER

The SFMP indicates that the current DEC stormwater regulations for mitigating increased runoff rates and water quality requirements are to be followed according to any normal project that is greater than one acre of disturbance. Due to the nature of this site, Redevelopment Criteria following the Chapter 9 of the New York State Stormwater Management Design Manual, (NYSSMDM) will need to be applied to provide Runoff Reduction Volume and/or Water Quality Treatment. This site is broken into two main drainage areas; one that drains to the east and one that drains to the west. Redevelopment Criteria will be applied to the drainage area that drains to the east. This drainage area encompasses most of the existing foundry site. The development of this site will result in a significant decrease in impervious area because of the amount of earth fill that will be placed over the existing concrete pads that remain from the old foundry building. The placement of fill over the impervious surfaces will increase the ability of the site to infiltrate stormwater thus decrease runoff. Therefore, following redevelopment criteria from the NYSDEC Stormwater Management Design Manual additional water quality or quantity controls will not be required in this drainage area. The drainage area that flows to the west primarily consists of meadow and wooded areas. This portion of the site allows for the implementation of the standard practices for new development as outlined by the NYSDEC Stormwater Management Design Manual. Runoff Reduction and Water Quality for this area will be provided through a vegetated swales and a bioretention area. In addition to providing water quality, the bioretention area has been sized to contain the one-year storm to allow the channel protection volume to infiltrate through the bottom of the bioretention area. There are no water quantity increases created by the development of this section of the site. The proposed stormwater practices for this development have been designed according to the DEC standard specifications. Infiltration testing will be performed for the bioretention practice. The results of this testing will be used to complete the bioretention sizing calculations.

Storm drains will be placed in the sidewalk near each loading station to catch any water released from the flexible hoses and rainwater collection on the sidewalk. Stormwater will be allowed to sheet flow across grassed areas whenever possible to provide onsite water quality.

7. SUMMARY

The proposed transloading facility will be operated by the Corning & Wellsboro Railroad. The Wellsboro & Corning Railroad is a 38-mile short line that runs from Corning, New York to Wellsboro, Pennsylvania. WCOR makes interchange with the Norfolk Southern Railroad and The Canadian Pacific Railroad at Gang Mills New York. In addition to products for agriculture and manufacturing, WCOR handles various commodities used to support the burgeoning market surrounding the Marcellus Shale exploration.

The construction of a new railroad siding and water loading facilities have been designed to minimize disturbance to the existing site as much as possible. The majority of the construction at this site will be performed by filling on top of the existing ground with clean fill and new grassed areas in addition to a small amount of asphalt placed over existing impervious surfaces. The proposed design is primarily redevelopment in nature and will result in a decrease in impervious area from 5.17 acres to 2.89 acres within the disturbed area.

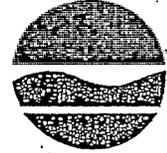
The design of the Painted Post transloading facility takes into consideration the potential environmental issues with this site, and has limited the earth disturbance to a minimum and has followed the soil fill management plan that was developed by Malcolm Pirnie for the Painted Post Development LLC. The Village's water system will be virtually unaffected by the additional 1000gpm withdrawal of the loading facility.

Final permitting for the water withdrawal and development of the site are ongoing and construction of the site is expected to begin near the end of 2011 or the beginning of 2012 if all permitting and approvals have been obtained.

APPENDIX A

**New York Department of Environmental Conservation
Letter of Denial**

New York State Department of Environmental Conservation
 Division of Environmental Remediation, 12th Floor
 625 Broadway, Albany, New York 12233-7011
 Phone: (518) 402-9706 • FAX: (518) 402-9020
 Website: www.dec.ny.gov



Alexander B. Grannis
 Commissioner

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

JUN 26 2008

Painted Post Development, LLC
 c/o Jack E. Benjamin, Manager
 5 East Market Street
 Suite 301
 Corning, New York 14830

RE: 450 West Water Street, Painted Post, NY
 Former Ingersoll-Rand Foundry Site
 Brownfield Cleanup Program Application
 Index No B8-0665-04-06
 Site #C851012

Dear Mr. Benjamin:

The New York State Department of Environmental Conservation (Department) has reviewed the application of Painted Post Development, LLC, dated May 12, 2004, for participation in the Brownfield Cleanup Program with respect to property known as the Ingersoll-Rand Foundry Site, located at 450 West Water Street, Painted Post, New York. The property subject to the application originally consisted of approximately 57.41 acres. However, approximately 7.453 acres has since been conveyed to the Village of Painted Post for park purposes and is no longer included in the application. The property now subject to the application is a parcel, consisting of approximately 48.772 acres, formerly owned and occupied by Ingersoll Rand Corporation and subsequently conveyed by Ingersoll Rand to Painted Post Development, LLC by deed recorded in the Steuben County Clerk's Office in Book 1988 of Deeds at page 10 on December 1, 2005. The applicant's redevelopment plan to construct a 600,000 square foot distribution center was rejected by the local Planning Board based upon concerns expressed by nearby residents. Despite lack of a specific project, the applicant proceeded with the Brownfield Cleanup Program Application with the intent of marketing the site to a developer.

The Department has determined, based upon the remedial history of the site and information provided as part of the application, that the property does not meet the definition of "Brownfield site" as defined in Section 27-1405.2 of the Environmental Conservation Law ("ECL"). The Department must therefore deny the application pursuant to ECL 27-1407.8(a).

2.

In making this determination, the Department considered whether there is confirmed evidence of contamination on the property, or a reasonable basis to believe that contamination may be present on the site, and whether such contamination or potential presence of contamination may complicate the reuse or redevelopment of the property.

Prior to closing in 1985, the Ingersoll-Rand Foundry site was a gray iron foundry that produced castings for air compressors. Facility closure activities included removal of stored hazardous and non-hazardous waste materials and appropriate off-site disposal. In 1986, elevated levels of PCBs were identified at several locations in and around the buildings. In 1987, the site was listed as a Class 2 site in the NYS Registry of Inactive Hazardous Waste Disposal Sites. From 1987 to 1989 remedial measures were conducted under a DEC consent order. These activities included excavation and removal of PCB-contaminated soil, demolition and removal of contaminated walls and concrete floor, and removal of structural metal components. A groundwater assessment was also completed and PCBs were not detected. In 1994, a Record of Decision (ROD) was issued that provided for deed restrictions to minimize exposure to subsurface soils containing elevated polycyclic aromatic hydrocarbons (PAHs). The ROD also provided for reclassification of the site from a Class 2 to a Class 4 and limited groundwater monitoring. The site was delisted on September 23, 2003 after several years of monitoring indicated that there was no on-site groundwater contaminant source.

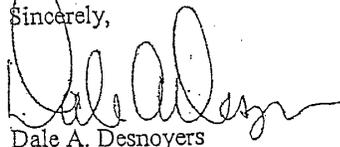
The previous work performed under the above referenced consent order has addressed all PCB sources. Additionally, groundwater has not been impacted by the site, and, as the result of five (5) years of groundwater monitoring, both on and off site, it has also determined that the site is not the source of low level 1,1,1-trichloroethane detected in the area. The deed restrictions required by the ROD have been imposed to minimize exposures to subsurface soils containing elevated PAHs.

In 2004, an additional investigation of the site failed to identify a source area or consequential amounts of contamination. The low levels of PAHs and PCBs detected in soils on site are addressable in a site management plan.

In summary, as a result of prior remedial activities and the data generated from previous investigations, there is no contaminant source area and no amount of contamination present on this site to provide a reasonable basis to believe that contamination or the potential presence of contamination may complicate the reuse or redevelopment of the site.

This denial constitutes the Department's final determination on the application.

Sincerely,



Dale A. Desnoyers

Director

Division of Environmental Remediation

cc: ~~Munesh Patel, Esq. (Harris Beach PLLC)~~

- S. Ervolina
- R. Knizek
- B. Putzig
- T. Schneider
- D. Christian
- J. Charles
- J. Hausbeck
- E. Armater

APPENDIX B

Baseline Hydraulic Water Model Results

Junctions (Base)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)

Junctions (Base)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J-3	0	1,130.00	1,144.08	6.09
J54	0	1,130.00	1,144.08	6.09
J-133	0.1	1,080.00	1,144.07	27.71
J-137	0.1	1,060.00	1,144.07	36.36
J-32	0.1	1,060.00	1,144.08	36.36
J46	0	1,060.00	1,144.08	36.36
J52	0	1,060.00	1,144.08	36.36
J50	0	1,050.00	1,144.08	40.68
J-4	0	1,040.00	1,144.08	45.01
J-7	0	1,040.00	1,144.08	45.01
J44	0	1,040.00	1,144.08	45.01
J-135	0.1	1,025.00	1,144.07	51.49
J-136	0.1	1,025.00	1,144.07	51.49
J72	0.1	1,025.00	1,144.07	51.49
J70	0.1	1,020.00	1,144.07	53.65
J-152	0.12	1,222.00	1,347.22	54.15
J-33	0.1	1,017.50	1,144.08	54.74
J-134	0.1	1,015.00	1,144.07	55.82
J-31	0.1	1,015.00	1,144.08	55.82
J-144	0.1	1,013.00	1,144.07	56.68
J-153	0.1	1,215.00	1,347.16	57.15
J-128	0.1	1,010.00	1,144.07	57.98
J-127	0.1	995	1,144.07	64.46
J-14	0.1	995	1,144.08	64.47
J-29	0.1	995	1,144.08	64.47
J100	0	995	1,144.08	64.47
J48	0	995	1,144.08	64.47
J-30	0.1	993	1,144.07	65.33
J-150	0.1	1,195.00	1,347.29	65.85
J-131	0.1	985	1,144.07	68.79

Junctions (Base)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J-132	0.1	985	1,144.07	68.79
J-139	0.1	985	1,144.07	68.79
J-140	0.1	985	1,144.07	68.79
J-141	0.1	985	1,144.07	68.79
J-143	0.1	985	1,144.07	68.79
J56	0	980	1,144.08	70.95
J-138	0.1	975	1,144.07	73.11
J-142	0.1	975	1,144.07	73.11
J-120	0.1	970	1,144.07	75.28
J-23	0.1	969.5	1,144.08	75.49
J40	0.1	969	1,144.07	75.71
J-126	0	967	1,144.07	76.57
J-118	0.1	965	1,144.07	77.44
J-119	0.1	965	1,144.07	77.44
J-121	0.1	962	1,144.07	78.73
J-22	0	959.5	1,144.08	79.82
J-122	0.1	955	1,144.07	81.76
J-158	0	951	1,144.08	83.49
J-117	0.1	950	1,144.07	83.92
J-123	0.1	950	1,144.07	83.92
J-124	0.1	950	1,144.07	83.92
J-125	0.1	950	1,144.07	83.92
J-11	0	950	1,144.08	83.93
J-12	0	950	1,144.08	83.93
J-157	0	950	1,144.08	83.93
J-8	0	950	1,144.08	83.93

Junctions (Base)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J200	0.04	949.5	1,144.07	84.14
J-88	0.11	948.5	1,144.07	84.57
J202	0.01	947.5	1,144.07	85
J204	0.04	947	1,144.07	85.22
J-116	0.1	946	1,144.07	85.65
J-44	0.08	945	1,144.08	86.09
J-37	0.08	944.5	1,144.08	86.3
J-60	0.08	944.5	1,144.08	86.3
J-61	0.08	944.5	1,144.08	86.3
J-161	0	944	1,144.08	86.52
J-21	0.08	944	1,144.08	86.52
J-40	0.08	944	1,144.08	86.52
J-45	0.08	944	1,144.08	86.52
J-59	0.08	944	1,144.08	86.52
J184	0.04	944	1,144.07	86.52
J42	0.08	944	1,144.08	86.52
J-39	0	943	1,144.08	86.95
J-41	0.08	943	1,144.08	86.95
J-42	0	943	1,144.08	86.95
J-43	0.08	943	1,144.08	86.95
J-47	0.08	943	1,144.08	86.95
J-48	0.08	943	1,144.08	86.95
J126	0.04	943	1,144.07	86.95
J226	0.04	943	1,144.07	86.95
J246	0	943	1,144.08	86.95
J249	0	943	1,144.08	86.95
J251	0	943	1,144.08	86.95
J-63	0.08	942.5	1,144.08	87.17
J-65	0.08	942.5	1,144.08	87.17
J238	0	942.5	1,144.08	87.17
J242	0	942.5	1,144.08	87.17
J-115	0.1	942	1,144.07	87.38
J-156	0	942	1,144.08	87.38
J-72	0	942	1,144.07	87.38
J-73	0	942	1,144.07	87.38
J-79	0	942	1,144.07	87.38
J-81	2.56	942	1,144.07	87.38
J14	0	942	1,144.07	87.38

Junctions (Base)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J16	0	942	1,144.07	87.38
J18	0.08	942	1,144.07	87.38
J-159	0	942	1,144.08	87.39
J-160	0	942	1,144.08	87.39
J-162	0	942	1,144.08	87.39
J-149	0.1	1,145.00	1,347.40	87.52
J-130	0	941.5	1,144.07	87.6
J-71	0	941.5	1,144.07	87.6
J142	0.04	941	1,144.07	87.81
J-20	0.08	941	1,144.08	87.82
J-49	0.08	941	1,144.07	87.82
J-50	0.08	941	1,144.07	87.82
J-69	0.08	941	1,144.07	87.82
J-70	0.08	941	1,144.07	87.82
J236	0	941	1,144.07	87.82
J240	0	941	1,144.07	87.82
J82	0.08	941	1,144.08	87.82
J92	0.08	941	1,144.07	87.82
J94	0.08	941	1,144.07	87.82
J-113	0.1	940.5	1,144.07	88.03
J-106	0.1	940	1,144.07	88.25
J-129	0.1	940	1,144.07	88.25
J-164	0	940	1,144.07	88.25
J-165	0.08	940	1,144.07	88.25
J-166	0.08	940	1,144.08	88.25
J-167	0.08	940	1,144.07	88.25
J-57	0.08	940	1,144.07	88.25
J-64	0.08	940	1,144.07	88.25
J-80	2.56	940	1,144.07	88.25
J162	0.01	940	1,144.07	88.25
J218	0.04	940	1,144.07	88.25
J232	0	940	1,144.07	88.25

Junctions (Base)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J234	0	940	1,144.07	88.25
J84	0.08	940	1,144.07	88.25
J86	0.08	940	1,144.07	88.25
J-111	0.1	939.5	1,144.07	88.46
J-51	0.08	939.5	1,144.07	88.46
J-52	0.08	939.5	1,144.07	88.46
J-53	0.08	939.5	1,144.07	88.46
J-107	0.1	939	1,144.07	88.68
J-54	0.08	939	1,144.07	88.68
J-55	0.08	939	1,144.07	88.68
J-74	0.08	939	1,144.07	88.68
J128	0.04	939	1,144.07	88.68
J150	0.04	939	1,144.07	88.68
J174	0.04	939	1,144.07	88.68
J176	0.43	939	1,144.07	88.68
J180	0.04	939	1,144.07	88.68
J182	0.04	939	1,144.07	88.68
J-109	0.1	938.5	1,144.07	88.89
J-108	0.1	938.5	1,144.07	88.9
J-110	0.1	938.5	1,144.07	88.9
J64	0.1	938	1,144.02	89.09
J-100	0.26	938	1,144.07	89.11
J-104	0.1	938	1,144.07	89.11
J-105	0.1	938	1,144.07	89.11
J-114	0.1	938	1,144.07	89.11
J-62	0.08	938	1,144.08	89.11
J-67	0.08	938	1,144.07	89.11
J-77	0	938	1,144.07	89.11
J-89	2.56	938	1,144.07	89.11
J-90	2.56	938	1,144.06	89.11
J-98	0.1	938	1,144.07	89.11
J-99	0.04	938	1,144.07	89.11
J108	0	938	1,144.07	89.11
J196	0.04	938	1,144.07	89.11

Junctions (Base)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J198	0.04	938	1,144.07	89.11
J20	0.19	938	1,144.07	89.11
J216	0.01	938	1,144.07	89.11
J22	0.08	938	1,144.07	89.11
J24	0.19	938	1,144.07	89.11
J26	0.08	938	1,144.07	89.11
J-101	0.1	937.5	1,144.07	89.33
J-75	0.08	937.5	1,144.07	89.33
J-76	0.08	937.5	1,144.07	89.33
J-78	0	937.5	1,144.07	89.33
J-91	0.1	937.5	1,144.07	89.33
J-92	0.1	937.5	1,144.07	89.33
J74	0.1	937.5	1,144.07	89.33
J-95	0.1	937	1,144.07	89.54
J-96	0.1	937	1,144.07	89.54
J-97	0	937	1,144.07	89.54
J118	0.04	937	1,144.07	89.54
J12	0.1	937	1,144.07	89.54
J120	0.01	937	1,144.07	89.54
J124	0.04	937	1,144.07	89.54
J134	0.01	937	1,144.07	89.54
J136	0.04	937	1,144.07	89.54
J138	0.04	937	1,144.07	89.54
J146	0.04	937	1,144.07	89.54
J148	0.04	937	1,144.07	89.54
J152	0.04	937	1,144.07	89.54
J156	0.04	937	1,144.07	89.54
J158	0.04	937	1,144.07	89.54
J164	0.04	937	1,144.07	89.54
J222	0.04	937	1,144.07	89.54
J224	0.01	937	1,144.07	89.54
J228	0.04	937	1,144.07	89.54
J30	0	937	1,144.07	89.55
J102	0	936.75	1,144.07	89.65
J-84	0.11	936.5	1,144.07	89.76
J-85	0	936.5	1,144.07	89.76
J104	0	936.5	1,144.07	89.76
J106	0	936.5	1,144.07	89.76
J10	0.1	936	1,144.07	89.97
J194	0.01	936	1,144.07	89.97

Junctions (Base)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J-102	0.1	936	1,144.07	89.98
J-103	0.1	936	1,144.07	89.98
J-68	0.08	936	1,144.07	89.98
J-86	0.08	936	1,144.07	89.98
J-87	0	936	1,144.07	89.98
J140	0.04	936	1,144.07	89.98
J190	0.23	936	1,144.07	89.98
J28	0.08	936	1,144.07	89.98
J32	0.08	936	1,144.07	89.98
J34	0.08	936	1,144.07	89.98
J36	0.08	936	1,144.07	89.98
J38	0.08	936	1,144.07	89.98
J76	0	936	1,144.07	89.98
J-82	2.56	935.5	1,144.07	90.19
J-93	0.1	935	1,144.07	90.41
J-94	0.1	935	1,144.07	90.41
J208	0.01	935	1,144.07	90.41
J210	0.01	935	1,144.07	90.41
J214	0.01	935	1,144.07	90.41
J-83	0.11	934	1,144.07	90.84
J170	0.04	934	1,144.07	90.84
J186	0.04	934	1,144.07	90.84
J132	0.04	933	1,144.07	91.27
J192	0.01	933	1,144.07	91.27
J206	0.01	932	1,144.07	91.7
J212	0.01	932	1,144.07	91.7
J166	0.01	930	1,144.07	92.57
J168	0.01	930	1,144.07	92.57
J90	0	1,130.00	1,347.45	94.03
J-148	0.1	1,120.00	1,347.40	98.34
J-151	0.1	1,116.00	1,347.25	100
J-145	0.1	1,070.00	1,347.40	119.96
J-147	0.1	1,025.00	1,347.40	139.42
J-146	0.1	1,020.00	1,347.40	141.58
J68	0.1	1,013.00	1,347.40	144.61

Junctions (Base)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J230	0	0	1,144.07	494.74
J244	0	0	1,144.08	494.74

APPENDIX C

Hydraulic Water Model with 1000gpm Load

Junction (with 1000 gpm)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)

Junction (with 1000 gpm)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J-3	0	1,130.00	1,144.03	6.07
J54	0	1,130.00	1,144.04	6.07
J-133	0.1	1,080.00	1,143.94	27.65
J-137	0.1	1,060.00	1,143.94	36.3
J-32	0.1	1,060.00	1,144.02	36.34
J46	0	1,060.00	1,144.03	36.34
J52	0	1,060.00	1,144.03	36.34
J50	0	1,050.00	1,144.03	40.66
J-4	0	1,040.00	1,144.03	44.98
J-7	0	1,040.00	1,144.03	44.98
J44	0	1,040.00	1,144.02	44.98
J-135	0.1	1,025.00	1,143.94	51.44
J-136	0.1	1,025.00	1,143.94	51.44
J72	0.1	1,025.00	1,143.94	51.44
J70	0.1	1,020.00	1,143.95	53.6
J-152	0.12	1,222.00	1,347.21	54.15
J-33	0.1	1,017.50	1,144.02	54.71
J-134	0.1	1,015.00	1,143.94	55.76
J-31	0.1	1,015.00	1,144.02	55.79
J-144	0.1	1,013.00	1,143.95	56.63
J-153	0.1	1,215.00	1,347.16	57.15
J-128	0.1	1,010.00	1,143.94	57.92
J-127	0.1	995	1,143.94	64.41
J-14	0.1	995	1,144.03	64.44
J-29	0.1	995	1,144.02	64.44
J100	0	995	1,144.01	64.44
J48	0	995.00	1,144.02	64.44
J-30	0.1	993.00	1,144.02	65.3
J-150	0.1	1,195.00	1,347.29	65.85
J-131	0.1	985	1,143.95	68.73

Junction (with 1000 gpm)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J-132	0.1	985	1,143.95	68.73
J-139	0.1	985	1,143.94	68.73
J-140	0.1	985	1,143.94	68.73
J-141	0.1	985	1,143.94	68.73
J-143	0.1	985	1,143.95	68.73
J56	0	980.00	1,144.02	70.93
J-138	0.1	975.00	1,143.94	73.06
J-142	0.1	975	1,143.94	73.06
J-120	0.1	970	1,143.94	75.22
J-23	0.1	969.5	1,144.03	75.47
J40	0.1	969	1,143.92	75.64
J-126	0	967	1,143.92	76.51
J-118	0.1	965	1,143.94	77.38
J-119	0.1	965	1,143.94	77.38
J-121	0.1	962	1,143.92	78.67
J-22	0	959.5	1,144.00	79.78
J-122	0.1	955	1,143.92	81.7
J-158	0	951	1,144.02	83.47
J-117	0.1	950	1,143.92	83.86
J-123	0.1	950	1,143.92	83.86
J-124	0.1	950	1,143.92	83.86
J-125	0.1	950	1,143.92	83.86
J-11	0	950	1,144.02	83.9
J-12	0	950	1,144.02	83.9
J-157	0	950	1,144.02	83.9
J-8	0	950	1,144.02	83.9

Junction (with 1000 gpm)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J200	0.04	949.5	1,143.91	84.07
J-88	0.11	948.5	1,143.91	84.5
J202	0.01	947.5	1,143.91	84.93
J204	0.04	947	1,143.91	85.15
J-116	0.1	946	1,143.93	85.59
J-44	0.08	945	1,143.91	86.01
J-37	0.08	944.50	1,143.99	86.26
J-60	0.08	944.5	1,144.00	86.27
J-61	0.08	944.5	1,143.99	86.27
J-40	0.08	944.00	1,143.92	86.45
J-45	0.08	944	1,143.91	86.45
J184	0.04	944	1,143.91	86.45
J-59	0.08	944	1,143.98	86.48
J42	0.08	944	1,143.98	86.48
J-161	0	944	1,144.02	86.49
J-21	0.08	944	1,144.00	86.49
J-41	0.08	943	1,143.92	86.88
J-43	0.08	943	1,143.91	86.88
J-47	0.08	943	1,143.91	86.88
J-48	0.08	943	1,143.91	86.88
J126	0.04	943	1,143.91	86.88
J226	0.04	943	1,143.91	86.88
J246	0	943	1,143.96	86.9
J-39	0	943	1,143.98	86.91
J-42	0	943	1,143.98	86.91
J249	0	943	1,143.98	86.91
J251	0	943	1,143.98	86.91
J-63	0.08	942.5	1,143.96	87.12
J-65	0.08	942.5	1,143.96	87.12
J238	0	942.5	1,143.98	87.13
J242	0	942.5	1,143.98	87.13
J-72	0	942	1,143.91	87.31
J-73	0	942	1,143.91	87.31
J-79	0	942	1,143.91	87.31
J-81	2.56	942	1,143.91	87.31
J14	0	942	1,143.91	87.31
J16	0	942	1,143.91	87.31
J18	0.08	942	1,143.91	87.31
J-	0.1	942	1,143.93	87.32

June 2018 (with 1000 gpm)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
115				
J-156	0	942.00	1,143.98	87.34
J-159	0	942	1,144.02	87.36
J-160	0	942	1,144.02	87.36
J-162	0	942	1,144.02	87.36
J-149	0.1	1,145.00	1,347.40	87.52
J-71	0	941.5	1,143.91	87.53
J-130	0	941.5	1,143.93	87.54
J240	0	941	1,143.84	87.71
J-49	0.08	941	1,143.88	87.73
J236	0	941	1,143.87	87.73
J-50	0.08	941	1,143.89	87.74
J-69	0.08	941	1,143.89	87.74
J-70	0.08	941.00	1,143.91	87.74
J92	0.08	941.00	1,143.91	87.74
J94	0.08	941	1,143.91	87.74
J142	0.04	941	1,143.91	87.75
J82	0.08	941	1,143.96	87.77
J-20	0.08	941	1,144.00	87.78
J94	0.08	941	1,144.07	87.82
J-113	0.1	940.5	1,143.93	87.97
J232	100	940	1,143.80	88.13
J234	0	940	1,143.80	88.13
J86	0.08	940	1,143.81	88.14
J-167	0.08	940	1,143.90	88.17
J84	0.08	940	1,143.90	88.17
J-106	0.1	940	1,143.92	88.18
J-57	0.08	940	1,143.92	88.18
J-64	0.08	940	1,143.92	88.18
J-80	2.56	940	1,143.91	88.18
J162	0.01	940	1,143.91	88.18
J218	0.04	940	1,143.91	88.18
J-129	0.1	940.00	1,143.93	88.19

Junction (with 1000 gpm)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J-164	0	940	1,143.93	88.19
J-165	0.08	940	1,143.94	88.19
J-166	0.08	940	1,143.97	88.21
J-51	0.08	939.5	1,143.91	88.39
J-52	0.08	939.5	1,143.91	88.39
J-53	0.08	939.5	1,143.91	88.39
J-111	0.1	939.5	1,143.92	88.4
J-107	0.1	939	1,143.92	88.61
J-54	0.08	939	1,143.91	88.61
J-55	0.08	939	1,143.91	88.61
J-74	0.08	939	1,143.91	88.61
J128	0.04	939	1,143.91	88.61
J150	0.04	939	1,143.91	88.61
J174	0.04	939	1,143.91	88.61
J176	0.43	939	1,143.91	88.61
J180	0.04	939	1,143.91	88.61
J182	0.04	939	1,143.91	88.61
J-108	0.1	938.5	1,143.92	88.83
J-109	0.1	938.5	1,143.91	88.83
J-110	0.1	938.5	1,143.92	88.83
J64	0.1	938	1,143.87	89.02
J-100	0.26	938	1,143.91	89.04
J-104	0.1	938	1,143.91	89.04
J-67	0.08	938	1,143.91	89.04
J-77	0	938	1,143.91	89.04
J-89	2.56	938	1,143.91	89.04
J-90	2.56	938	1,143.91	89.04
J-98	0.1	938	1,143.91	89.04
J-99	0.04	938	1,143.91	89.04
J108	0	938	1,143.91	89.04
J196	0.04	938	1,143.91	89.04
J198	0.04	938	1,143.91	89.04
J20	0.19	938	1,143.91	89.04

Junction (with 1000 gpm)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J216	0.01	938	1,143.91	89.04
J22	0.08	938	1,143.91	89.04
J24	0.19	938	1,143.91	89.04
J26	0.08	938	1,143.91	89.04
J-105	0.1	938	1,143.92	89.05
J-114	0.1	938	1,143.92	89.05
J-62	0.08	938	1,143.96	89.06
J-101	0.1	937.5	1,143.91	89.26
J-75	0.08	937.5	1,143.91	89.26
J-76	0.08	937.5	1,143.91	89.26
J-78	0	937.5	1,143.91	89.26
J-91	0.1	937.5	1,143.91	89.26
J-92	0.1	937.5	1,143.91	89.26
J74	0.1	937.50	1,143.91	89.26
J-95	0.1	937	1,143.91	89.47
J-96	0.1	937	1,143.91	89.47
J-97	0	937	1,143.91	89.47
J118	0.04	937	1,143.91	89.47
J12	0.1	937	1,143.91	89.47
J124	0.04	937	1,143.91	89.47
J134	0.01	937	1,143.91	89.47
J136	0.04	937	1,143.91	89.47
J138	0.04	937	1,143.91	89.47
J146	0.04	937	1,143.91	89.47
J148	0.04	937	1,143.91	89.47
J152	0.04	937	1,143.91	89.47
J156	0.04	937	1,143.91	89.47
J158	0.04	937	1,143.91	89.47
J164	0.04	937	1,143.91	89.47
J222	0.04	937	1,143.91	89.47
J224	0.01	937	1,143.91	89.47
J228	0.04	937	1,143.91	89.47
J120	0.01	937	1,143.91	89.48
J30	0	937	1,143.92	89.48
J102	0	936.75	1,143.92	89.59
J-84	0.11	936.5	1,143.92	89.69
J-85	0	936.5	1,143.92	89.69
J104	0	936.5	1,143.92	89.69

Junction (with 1000 gpm)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J106	0	936.5	1,143.92	89.69
J-102	0.1	936	1,143.91	89.91
J-103	0.1	936	1,143.91	89.91
J-68	0.08	936	1,143.92	89.91
J-86	0.08	936	1,143.92	89.91
J-87	0	936	1,143.92	89.91
J10	0.1	936	1,143.91	89.91
J140	0.04	936	1,143.91	89.91
J190	0.23	936	1,143.91	89.91
J194	0.01	936	1,143.91	89.91
J28	0.08	936	1,143.92	89.91
J32	0.08	936	1,143.92	89.91
J34	0.08	936	1,143.92	89.91
J36	0.08	936	1,143.92	89.91
J38	0.08	936	1,143.92	89.91
J76	0	936	1,143.92	89.91
J-82	2.56	935.5	1,143.91	90.12
J-93	0.1	935	1,143.91	90.34
J-94	0.1	935	1,143.91	90.34
J208	0.01	935	1,143.91	90.34
J210	0.01	935	1,143.91	90.34
J214	0.01	935	1,143.91	90.34
J-83	0.11	934	1,143.91	90.77
J170	0.04	934	1,143.91	90.77
J186	0.04	934	1,143.91	90.77
J132	0.04	933	1,143.91	91.2
J192	0.01	933	1,143.91	91.2
J206	0.01	932	1,143.91	91.64
J212	0.01	932	1,143.91	91.64
J166	0.01	930	1,143.91	92.5
J168	0.01	930	1,143.91	92.5
J90	0	1,130.00	1,347.45	94.03
J-148	0.1	1,120.00	1,347.40	98.33
J-151	0.1	1,116.00	1,347.24	100
J-145	0.1	1,070.00	1,347.40	119.96
J-147	0.1	1,025.00	1,347.40	139.42

Junction (with 1000 gpm)				
ID	Demand (gpm)	Elevation (ft)	Head (ft)	Pressure (psi)
J-146	0.1	1,020.00	1,347.40	141.58
J68	0.1	1,013.00	1,347.40	144.6
J230	0	0	1,143.92	494.67
J244	0	0	1,143.98	494.69

APPENDIX D

**Differences in Pressures between Baseline and
Proposed 1000gpm loading**

Junction	Base Pressure (psi)	1000 gpm pressure (psi)	Difference in pressures
J-3	6.09	6.07	0.02
J54	6.09	6.07	0.02
J-133	27.71	27.65	0.06
J-137	36.36	36.3	0.06
J-32	36.36	36.34	0.02
J46	36.36	36.34	0.02
J52	36.36	36.34	0.02
J50	40.68	40.66	0.02
J-4	45.01	44.98	0.03
J-7	45.01	44.98	0.03
J44	45.01	44.98	0.03
J-135	51.49	51.44	0.05
J-136	51.49	51.44	0.05
J72	51.49	51.44	0.05
J70	53.65	53.6	0.05
J-152	54.15	54.15	0
J-33	54.74	54.71	0.03
J-134	55.82	55.76	0.06
J-31	55.82	55.79	0.03
J-144	56.68	56.63	0.05
J-153	57.15	57.15	0
J-128	57.98	57.92	0.06
J-127	64.46	64.41	0.05
J-14	64.47	64.44	0.03
J-29	64.47	64.44	0.03
J100	64.47	64.44	0.03
J48	64.47	64.44	0.03
J-30	65.33	65.3	0.03
J-150	65.85	65.85	0
J-131	68.79	68.73	0.06
J-132	68.79	68.73	0.06
J-139	68.79	68.73	0.06
J-140	68.79	68.73	0.06
J-141	68.79	68.73	0.06
J-143	68.79	68.73	0.06
J56	70.95	70.93	0.02
J-138	73.11	73.06	0.05
J-142	73.11	73.06	0.05
J-120	75.28	75.22	0.06
J-23	75.49	75.47	0.02
J40	75.71	75.64	0.07
J-126	76.57	76.51	0.06
J-118	77.44	77.38	0.06
J-119	77.44	77.38	0.06
J-121	78.73	78.67	0.06

J-22	79.82	79.78	0.04
J-122	81.76	81.7	0.06
J-158	83.49	83.47	0.02
J-117	83.92	83.86	0.06
J-123	83.92	83.86	0.06
J-124	83.92	83.86	0.06
J-125	83.92	83.86	0.06
J-11	83.93	83.9	0.03
J-12	83.93	83.9	0.03
J-157	83.93	83.9	0.03
J-8	83.93	83.9	0.03
J200	84.14	84.07	0.07
J-88	84.57	84.5	0.07
J202	85	84.93	0.07
J204	85.22	85.15	0.07
J-116	85.65	85.59	0.06
J-44	86.09	86.01	0.08
J-37	86.3	86.26	0.04
J-60	86.3	86.27	0.03
J-61	86.3	86.27	0.03
J-161	86.52	86.45	0.07
J-21	86.52	86.45	0.07
J-40	86.52	86.45	0.07
J-45	86.52	86.48	0.04
J-59	86.52	86.48	0.04
J184	86.52	86.49	0.03
J42	86.52	86.49	0.03
J-39	86.95	86.88	0.07
J-41	86.95	86.88	0.07
J-42	86.95	86.88	0.07
J-43	86.95	86.88	0.07
J-47	86.95	86.88	0.07
J-48	86.95	86.88	0.07
J126	86.95	86.9	0.05
J226	86.95	86.91	0.04
J246	86.95	86.91	0.04
J249	86.95	86.91	0.04
J251	86.95	86.91	0.04
J-63	87.17	87.12	0.05
J-65	87.17	87.12	0.05
J238	87.17	87.13	0.04
J242	87.17	87.13	0.04
J-115	87.38	87.31	0.07
J-156	87.38	87.31	0.07
J-72	87.38	87.31	0.07
J-73	87.38	87.31	0.07
J-79	87.38	87.31	0.07

J-81	87.38	87.31	0.07
J14	87.38	87.31	0.07
J16	87.38	87.32	0.06
J18	87.38	87.34	0.04
J-159	87.39	87.36	0.03
J-160	87.39	87.36	0.03
J-162	87.39	87.36	0.03
J-149	87.52	87.52	0
J-130	87.6	87.53	0.07
J-71	87.6	87.54	0.06
J142	87.81	87.71	0.1
J-20	87.82	87.73	0.09
J-49	87.82	87.73	0.09
J-50	87.82	87.74	0.08
J-69	87.82	87.74	0.08
J-70	87.82	87.74	0.08
J236	87.82	87.74	0.08
J240	87.82	87.74	0.08
J82	87.82	87.75	0.07
J92	87.82	87.77	0.05
J94	87.82	87.78	0.04
J-113	88.03	87.82	0.21
J-106	88.25	87.97	0.28
J-129	88.25	88.13	0.12
J-164	88.25	88.13	0.12
J-165	88.25	88.14	0.11
J-166	88.25	88.17	0.08
J-167	88.25	88.17	0.08
J-57	88.25	88.18	0.07
J-64	88.25	88.18	0.07
J-80	88.25	88.18	0.07
J162	88.25	88.18	0.07
J218	88.25	88.18	0.07
J232	88.25	88.18	0.07
J234	88.25	88.19	0.06
J84	88.25	88.19	0.06
J86	88.25	88.19	0.06
J-111	88.46	88.21	0.25
J-51	88.46	88.39	0.07
J-52	88.46	88.39	0.07
J-53	88.46	88.39	0.07
J-107	88.68	88.4	0.28
J-54	88.68	88.61	0.07
J-55	88.68	88.61	0.07
J-74	88.68	88.61	0.07
J128	88.68	88.61	0.07
J150	88.68	88.61	0.07

J174	88.68	88.61	0.07
J176	88.68	88.61	0.07
J180	88.68	88.61	0.07
J182	88.68	88.61	0.07
J-109	88.89	88.61	0.28
J-108	88.9	88.83	0.07
J-110	88.9	88.83	0.07
J64	89.09	88.83	0.26
J-100	89.11	89.02	0.09
J-104	89.11	89.04	0.07
J-105	89.11	89.04	0.07
J-114	89.11	89.04	0.07
J-62	89.11	89.04	0.07
J-67	89.11	89.04	0.07
J-77	89.11	89.04	0.07
J-89	89.11	89.04	0.07
J-90	89.11	89.04	0.07
J-98	89.11	89.04	0.07
J-99	89.11	89.04	0.07
J108	89.11	89.04	0.07
J196	89.11	89.04	0.07
J198	89.11	89.04	0.07
J20	89.11	89.04	0.07
J216	89.11	89.04	0.07
J22	89.11	89.04	0.07
J24	89.11	89.05	0.06
J26	89.11	89.05	0.06
J-101	89.33	89.06	0.27
J-75	89.33	89.26	0.07
J-76	89.33	89.26	0.07
J-78	89.33	89.26	0.07
J-91	89.33	89.26	0.07
J-92	89.33	89.26	0.07
J74	89.33	89.26	0.07
J-95	89.54	89.26	0.28
J-96	89.54	89.47	0.07
J-97	89.54	89.47	0.07
J118	89.54	89.47	0.07
J12	89.54	89.47	0.07
J120	89.54	89.47	0.07
J124	89.54	89.47	0.07
J134	89.54	89.47	0.07
J136	89.54	89.47	0.07
J138	89.54	89.47	0.07
J146	89.54	89.47	0.07
J148	89.54	89.47	0.07
J152	89.54	89.47	0.07

J156	89.54	89.47	0.07
J158	89.54	89.47	0.07
J164	89.54	89.47	0.07
J222	89.54	89.47	0.07
J224	89.54	89.47	0.07
J228	89.54	89.47	0.07
J30	89.55	89.48	0.07
J102	89.65	89.48	0.17
J-84	89.76	89.59	0.17
J-85	89.76	89.69	0.07
J104	89.76	89.69	0.07
J106	89.76	89.69	0.07
J10	89.97	89.69	0.28
J194	89.97	89.91	0.06
J-102	89.98	89.91	0.07
J-103	89.98	89.91	0.07
J-68	89.98	89.91	0.07
J-86	89.98	89.91	0.07
J-87	89.98	89.91	0.07
J140	89.98	89.91	0.07
J190	89.98	89.91	0.07
J28	89.98	89.91	0.07
J32	89.98	89.91	0.07
J34	89.98	89.91	0.07
J36	89.98	89.91	0.07
J38	89.98	89.91	0.07
J76	89.98	89.91	0.07
J-82	90.19	89.91	0.28
J-93	90.41	90.12	0.29
J-94	90.41	90.34	0.07
J208	90.41	90.34	0.07
J210	90.41	90.34	0.07
J214	90.41	90.34	0.07
J-83	90.84	90.34	0.5
J170	90.84	90.77	0.07
J186	90.84	90.77	0.07
J132	91.27	90.77	0.5
J192	91.27	91.2	0.07
J206	91.7	91.2	0.5
J212	91.7	91.64	0.06
J166	92.57	91.64	0.93
J168	92.57	92.5	0.07
J90	94.03	92.5	1.53
J-148	98.34	94.03	4.31
J-151	100	98.33	1.67

APPENDIX E

Tables 2-1A, 2-2A

TABLE 2-1A
 SUMMARY OF ANALYTICAL RESULTS - WESTERN PERIMETER BUREAU SOIL
 REMEDIAL INVESTIGATION REPORT
 FORMER INGERSOLL-RAND FOUNDRY SITE
 PAINTED POST, NEW YORK

Sample Location Sampling Depth (bgs) Collection Date	NYSDEC TAGM 4046 ⁽¹⁾	Urban Background Concentrations ⁽²⁾	MW-8B 0-2" 10/1/2004	MW-9B 0-2" 9/30/2004	MW-10B 0-2" 9/29/2004	SB-EN-01 0-2" 9/30/2004	SB-EN-02 0-2" 9/30/2004	SB-EN-03 0-2" 10/1/2004	SB-EN-04 0-2" 10/1/2004
Percent Solids	NA	NA	78.7	96.6	82.3	90.7	75.2	83	79.4
pH	NA	NA	6.08	6.5	6.39	6.87	6.81	7.11	6.03
Aluminum	SB	33000	10,600	1,740	10,300	4,210	9,250	4,740	11,700
Antimony	SB	N/A	6.5 J		6.2	1.4 J	3.5 J	3.3	6.8
Arsenic	7.5 or SB	3-12	128	9.9 J	138	49.2	114	56.2	141
Barium	300 or SB	15-600	200-41 J ⁽³⁾		0.33 J		0.1 J	0.04 J	0.38 J
Beryllium	0.16 or SB	0-1.75	0.27 J	0.5 J	0.55 J	0.49 J		0.59 J	0.56 J
Cadmium	1 or SB	0.1-1	1,490	232 J	2,820	2,500	3,910	1,650	1,400
Calcium	SB	130-35,000	48,112	3	13.5	19.1	22.3	19.3	15.6
Chromium	10 or SB	1.5-40	8.3 J	7 J	7.8 J	6.9 J	7.9 J	5 J	8.7 J
Cobalt	30 or SB	2.5-60	14.9 J	3.2 J	16.3	25.8		29.6	14.8
Copper	25 or SB	1-50	19,600	2,620	18,600	14,000	19,700	13,300	20,900
Iron	2000 or SB	2,000-550,000	22.4 J	136 J	25.9 J	117 J	365 J	57.9 J	25.1 J
Lead	400 ⁽⁴⁾	200-500	2,910	286 BF	2,820 J	1,090 J	1,660 J	1,530 J	2,980 J
Magnesium	SB	100-5,000	558	38.3	608	388	618	312	626
Manganese	SB	50-5,000	0.04 B	0.01 J	0.04 J	0.04 J		0.05 J	0.05 J
Mercury	0.1	0.001-0.2	19.7 ⁽⁵⁾	5 J	18.6	16.1	24.8	21.9	21.1
Nickel	13 or SB	0.5-25	1,150 J	158 J	1,150 J	927 J	935 J	588 J	1,050 J
Potassium	SB	8,500-43,000	50.7 J	33.5 J	88.9 J	79.7 J	118 J	93.6 J	89.6 J
Sodium	SB	6,000-8,000	15.9	3.3 J	16	8.8 J	16.4	8.5 J	16.8
Vanadium	150 or SB	1-300		9.5 J		48.6 J			
Zinc	20 or SB	9-50							
All Pesticides	NA	NA				370	2400	130	
Total Pesticides	10	NA				370		130	
Atrochlor 1260	NA	NA							
Total PCBs	1000	NA							

Notes: See Page 3

Created by: BIP Date: 4/18/2004
 Checked by: SC Date: 4/19/2004

TABLE 2-1A
 SUMMARY OF ANALYTICAL RESULTS - WESTERN PERIMETER SURFACE SOIL
 REMEDIAL INVESTIGATION REPORT
 FORMER INGERSOLL-RAND FOUNDRY SITE
 PAINTED POST, NEW YORK

MALCOLM
 PIERCE

Sample Location Sampling Depth (bgr)	NYSDEC TAGM 4046 ⁽¹⁾	Urban Background Concentrations ⁽²⁾	MW-SB 0-2" 10/4/2004	MW-9B 0-2" 9/30/2004	MW-10B 0-2" 9/29/2004	SB-EN-01 0-2" 9/30/2004	SB-EN-02 0-2" 9/30/2004	SB-EN-03 0-2" 10/1/2004	SB-EN-04 0-2" 10/1/2004
Collection Date						95 J	150 J	59 J	
2-Methylnaphthalene	36,400	NA				130 J			
Acenaphthylene	41,000	NA				92 J			
Acenaphthylene	50,000	NA							
Anthracene	224	169-59,000	120 J						
Benzo(a)anthracene	61	165-220	48 J			830		780	480
Benzo(b)pyrene	1100	15,000-62,000	230 J	60 J		1,000	5,500	680	380 J
Benzo(b)fluoranthene	50,000	900-47,000	220 J	66 J		610		550	330 J
Benzo(g,h,i)perylene	1100	300-26,000	170 J	52 J		100 J	150 J	51 J	66 J
Benzo(k)fluoranthene	50,000	NA	140 J	140 J					380 J
Bis(2-ethylhexyl)phthalate	400	251-640	180 J	48 J					
Chrysene	14	NA				130 J	2,800	480	320 J
Dibenz(a,h)anthracene	8100	NA	140 J	49 J		690		590	320 J
Di-n-butylphthalate	50,000	200-166,000	180 J	51 J		730	2,500	74 J	
Fluoranthene	3200	8,000-61,000	180 J			100 J	980 J	210 J	84 J
Indeno(1,2,3-cd)pyrene	13,000	NA				460	2,500	520	280 J
Naphthalene	50,000	NA	150 J	40 J		940	6,495	1,073	604
Phenanthrene	50,000	145-147,000	304	60		1,748	39,030	6,025	3,400
Pyrene	NA	NA	1,637	591		9,527			
Total BaP Equivalent ⁽³⁾	500,000 ⁽⁴⁾	NA		4 J					
Total SVOCs		NA		2 J					
Acetone	200	NA		3 J					
Cyclohexane	NA	NA							
Methyl Acetate	100	NA							
Methylene chloride	10,000	NA		5					
Total VOCs		NA		4					

Notes: See Page 3

Created by: BIF Date: 4/18/2004
 Checked by: SC Date: 4/19/2004

TABLE 2-1A
 SUMMARY OF ANALYTICAL RESULTS - WESTERN PERIMETER SURFACE SOIL
 REMEDIAL INVESTIGATION REPORT
 FORMER INGERSOLL-RAND FOUNDRY SITE
 PAINTED POST, NEW YORK

Notes:
 Only those analytes detected at a minimum of one location are shown.
 Blank spots indicates analyte was not detected.
 Shaded concentrations exceed TAGM values for Pests/PCBs, SVOCs, and YOCs.
 Shaded TAL Inorganic Analytes exceed upper range of Eastern USA Background Concentrations and TAGM values.
 Shaded TAL Inorganic Analytes exceed upper range of Eastern USA Background Range for PAHs.
 Bz/Flu/Idc SVOC results exceed upper limit of Urban Soils Background Soil Cleanup Objectives, Dec. 2000.
 (1) New York State Dept. of Environmental Conservation TAGM 4046, Recommended Soil Cleanup Objectives, Dec. 2000.
 (2) TAL Inorganic Analytes from Eastern USA Background is shown in New York State Dept. of Environmental Conservation TAGM 4046, Dec. 2000.
 (3) SVOCs background from Background Soil Concentrations of Poly Aromatic Hydrocarbons (PAHs), Urban Soils (U.S. and other), Toxicological Profile for PAHs, US Dept. of Health and Human Services, August 1995.
 (4) USEPA Region 3 Soil Screening Level.
 (5) Total BAP equivalent - Benzo (a) pyrene equivalent is calculated by multiplying the following individual PAH concentrations by their multiplier (†) and summing the results.
 Benzo (a) pyrene (1.00); Dibenz (a,h) anthracene (1.00); Benzo (k) fluoranthene (0.10); Benzo (e) fluoranthene (0.10); Benzo (b) fluoranthene (0.01);
 Chrysene (0.01).
 *** - The Soil Cleanup Objective refers to the sum of these compounds.
 D - Indicates result from subsequent run at 5x dilution.
 J - Indicates and estimated value.

APPENDIX F

Table 2-1B

TABLE 2-1B
 SUMMARY OF ANALYTICAL RESULTS - SB-EN-02 SURFACE SOIL SAMPLES
 FORMER INGERSOLL-RAND FOUNDRY SITE
 PAINTED POST, NEW YORK

Sample Location Sampling Depth (ft. bgs) Collection Date	Proposed Site Specific Action Level (SSAL)	PFSS-01 11/16/2004	PFSS-02 11/16/2004	PFSS-03 11/16/2004	PFSS-04 1/16/2004	PFSS-DUP (PFSS-04) 11/16/2004	PFSS-05 11/16/2004
		85.7	73.1	80.6	43	44.9	87.6
Percent Solids (%)	NA	7.09	7.24	7.46	7.18	7.11	6.94
pH (s.u.)	NA						
Arochlor-1260	NA	98		72	7700	4500	730
Total PCBs (Surface - 1.0')	1,000	98		72			730

Notes:
 Samples collected at the surface, at evenly spaced intervals on a 100 ft. radius around soil boring SB-EN-02.
 Only those analytes detected at a minimum of one location are shown.
 Blank space indicates analyte was not detected.
 Shaded concentrations exceed Site Specific Action Levels (SSALS).

EXHIBIT 10 – 2005 BARGAIN AND SALE DEED FOR THE FORMER INGERSOLL RAND
SITE [256-323]

BARGAIN AND SALE DEED
FORMER INGERSOLL-RAND FOUNDRY SITE
STEUBEN COUNTY
PAINTED POST, NEW YORK

THIS INDENTURE, made as of the 1st day of August 2005, by and between **INGERSOLL-RAND COMPANY**, a New Jersey corporation, having an address at 155 Chestnut Ridge Road, Montvale, New Jersey 07645 (the "Grantor") and **PAINTED POST DEVELOPMENT, LLC**, a New York limited liability company, having an address at 5 East Market Street, Suite 301, Corning, New York 14830 (the "Grantee"), and acknowledged by the **VILLAGE OF PAINTED POST, STEUBEN COUNTY, NEW YORK** (the "Village") and the **NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION** (the "DEC").

WITNESSETH, that Grantor is the owner of certain real property containing approximately forty-nine (49) acres with certain improvements thereon and located in the vicinity of 450 West Water Street in the Village of Painted Post, Steuben County, New York (the "Foundry Premises" or the "Premises"), as more particularly set forth and described in SCHEDULE "A" attached hereto and made a part hereof, and including a portion of the Premises indicating the presence of contaminated soil within the three-hundred foot (300 ft.) radius of monitoring well 2B (the "MW-2B Area") as depicted on Schedule A attached to the Declaration (as defined below);

WITNESSETH, that the history of prior environmental investigations and remediation conducted at the Premises is described more fully in SCHEDULE C attached hereto and made a part hereof;

WITNESSETH, that part of the selected remedial actions selected by the DEC, in the form of an institutional control, required the Grantor to record a deed restriction on the MW-2B Area identifying the presence of contaminated soil and to minimize the potential for future human exposure to certain environmental conditions by restricting certain uses and activities at the Premises and pursuant thereto the Grantor recorded a Declaration of Conditions, Covenants and Restrictions on the Premises in the Steuben County Clerk's Office on January 10, 2001 at Liber 1697, Page 312 (the "Declaration");

WITNESSETH, that the Grantor has released the Premises from the Declaration pursuant to that certain Release of Property From Declaration of Conditions, Covenants and Restrictions, dated as of August 1, 2005 and to be recorded in the Steuben County Clerk's Office (the "Release") and the DEC acknowledges such Release;

WITNESSETH, that Grantor, in consideration of One And More Dollars lawful money of the United States, the use restrictions contained herein and other good and valuable consideration paid by Grantee, does hereby grant and release unto Grantee, its successors and assigns forever, the Premises;

TOGETHER with the appurtenances and all the estate and rights of Grantor in and to the Premises;

SUBJECT TO all matters of public record, including, but not limited to, all covenants, easements, rights of entry, liens, encumbrances and restrictions of record affecting the Premises and subject to all laws, statutes, ordinances, codes, rules and regulations;

BEING a portion of the parcel conveyed to Grantor by deed recorded on July 26, 2000 at the Steuben County Clerk's Office in Liber 1667 of Deeds at Page 312;

TO HAVE AND TO HOLD the Premises herein granted unto Grantee, its heirs, successors and assigns forever subject to the terms, restrictions and covenants set forth herein and all matters of public record, including, but not limited to all covenants, easements, rights of way, liens, encumbrances and restrictions of record affecting the Premises and subject to all laws, statutes, ordinances, codes, rules and regulations;

AND Grantor and Grantee covenant and agree as follows:

A. Restrictions on Use

FIRST, that in order to protect human health and the environment the Department of Environmental Conservation has required that the uses of the Premises be restricted to industrial uses and/or restricted commercial uses, excluding uses for child care, day care or health care. The Village, in order to promote community objectives, has required the use of the Premises be further restricted to the following uses currently authorized in an "Industrial District" under Section 280.18, entitled "USE REGULATIONS - SCHEDULE OF USES TABLE", of the Village of Painted Post Zoning Law ("the Village Zoning Law"): commercial vehicle; low-profile business; offices-general; offices - one practicing professional in existing building; offices - more than one practicing professional; planned commercial districts (consistent with the restrictions contained herein); retail business or service not otherwise specially mentioned under the Village Zoning law (consistent with the restrictions contained herein); wholesale business or service not otherwise specifically mentioned under the Village Zoning Law; manufacture, fabrication, extraction, assembly warehousing and other handling of material; research laboratories; storage facility indoor; trucking/wholesale warehouse terminals (with approval by a majority of the Village of Painted Post Planning Board); accessory use/building/structure on same or separate lot; communication tower (new or co-location on existing tower) public utility or transportation use - office; public utility or transportation use - repairs, service or storage; satellite dish; and mixed use (more than one of the above permitted uses); provided, however, the following uses, otherwise authorized in an "Industrial District" under the Village Zoning Law, shall be prohibited hereunder: automobile repair garage; bowling alley; car washing station; convenience/mini-markets (with or without gas); day-care center; drive-in movie; equipment rental or sales yard; gasoline filling station; grocery store; laundry or dry cleaning plant; newsrack; newspaper offices and printing shops; restaurant; roadside stand; storage yards for equipment; theater or concert hall; veterinary office, animal hospital or kennels; contractors yard and equipment; storage facility, outdoor; nursing or convalescent home; agricultural use for

crops; agricultural use for manufacture; cemetery; church or other places of worship; club, membership; crematory; cultural facilities (library, art gallery, museum, etc.); golf course or country club; hospital or sanitarium; institutional or philanthropic use; and/or private, public or parochial school. All other uses including, but not limited to, day care center, adult entertainment uses and all uses under the category "Residential Uses" in the "SCHEDULE OF USES TABLE" contained in the Village of Painted Post Zoning Law are strictly prohibited. A copy of the current version of Section 280.18 of the Village of Painted Post Zoning Law along with a copy of the relevant definitions from the Village of Painted Post Zoning Law are attached hereto as SCHEDULE "B" and incorporated herein.

B. Restrictions and Conditions on Activities

SECOND, that certain Notices are given and required to be given before the undertaking of certain physical activities consistent with the uses of the Premises in order to prevent or mitigate exposure of individuals and/or the public from residual contamination as follows:

1. Notice and warning is hereby provided that polynuclear aromatic hydrocarbons ("PAHs"), which are semi-volatile organic compounds, are located in soils at and below the ground surface of the Premises. Notice and warning is hereby provided that such PAHs may pose a risk to humans in a scenario where future use of the Premises includes invasive activities at or below the surface of the Premises, and appropriate precautions should be taken.

2. No disturbance or excavation of surface or subsurface soils or other materials at or below the Premises shall be conducted without prior notification thereof to or consent by the DEC. Any disturbance or excavation of surface or subsurface soils or other materials at or below the Premises shall be conducted (i) consistent with the Remedial Work Plan and the Soil Fill Management Protocol attached thereto, all as more particularly described in SCHEDULE "D" attached hereto and made a part hereof and as may the same may be amended by and between DEC and the Grantee from time to time, or (ii) as otherwise permitted by the DEC.

3. The Grantee, its successors and assigns, shall prohibit the use of ground water underlying the Premises (unless the Grantee, or its successors and assigns, first obtains permission to do so from the DEC), but such responsibility to prohibit such use shall be strictly limited to ground water withdrawn from within the boundaries of the Premises, and the Grantee, its successors and assigns, shall only be responsible to prohibit such use for those individuals that have title to the Premises, or to those individuals that have a legally enforceable leasehold interest in the Premises.

THIRD, that the Grantee is contemplating the acquisition, construction, installation, equipping and operation of a large-scale warehousing and distribution facility of approximately 400,000 square feet at the Premises (the "Development Project") and

(A) Grantee, its successors and assigns, shall notify Grantor in writing sixty (60) days, but not more than one hundred and twenty (120) days, prior to the onset of construction activities as related to the Development Project or Alternate Project (as defined below). Upon receipt of such

written notice, Grantor shall seek to secure environmental insurance for the benefit of Grantor and as related to the Property, in a form, coverage, content (as outlined in Exhibit I to the Transfer Agreement (as defined below)) and a carrier acceptable to Grantor in its sole reasonable discretion, with Grantee named as an additional insured (the "Environmental Insurance"). Grantee, its successors and assigns, shall be solely responsible for the cost and expense of such Environmental Insurance, and any and all such cost and expense in an amount in excess of \$70,000 and arising out of the Development Project, Alternate Project or changes in insurance market conditions, shall be deemed part of and added to the consideration for the conveyance of the Premises pursuant to that certain Settlement and Real Property Transfer Agreement, dated as of August 1, 2005 (the "Transfer Agreement"), by and between the Grantor, Grantee and the Village, and shall be paid to Grantor promptly upon submission by Grantor to Grantee, its successors and assigns, of an invoice pertaining to such Environmental Insurance;

(B) notwithstanding anything contained herein to the contrary, (a) the Grantee, its successors and assigns, shall provide to Grantor (i) reasonable written notice of its intention or desire to pursue a commercial redevelopment project other than the Development Project (such commercial redevelopment project other than the Development Project hereinafter referred to as the "Alternate Project") and (ii) drawings, layouts, plans and other relevant information (collectively, the "Concept Plan") detailing the Alternate Project and (b) the Grantor shall (i) have a reasonable opportunity to review the Concept Plan and may request other reasonable and relevant information in connection with the Alternate Project, (ii) determine whether the Alternate Project is consistent with the uses permitted herein, (iii) have the right to approve the Alternate Project, which approval shall not be unreasonably withheld, delayed or conditioned and (iv) seek to secure the Environmental Insurance at the sole cost and expense of Grantee, its successors and assigns as provided in the foregoing paragraph and

(C) in the event Grantor exercises such right to secure the Environmental Insurance and such Environmental Insurance is unable to be secured, Grantor may withhold any approval of the Alternate Project as provided in the foregoing paragraph.

C. Enforcement

FOURTH, the restrictions and covenants contained herein are binding on the Grantee, its successors and assigns, and shall run with the Premises, and are forever enforceable by the DEC (the "Beneficiary"). Said restrictions and covenants herein shall bind all owners, lessees, users and occupiers of the Premises or any part thereof, and their respective successors and assigns, as well all parties claiming by, through, or under them or any of them. All of the parties referred to in the immediately preceding sentence agree and covenant, for themselves and for their respective successors and assigns, to conform and observe said covenants and restrictions.

1. As it may be impossible to measure monetarily the damages which may accrue to the Beneficiary by reason of a violation of the provisions hereof, the Beneficiary shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof. The failure of the Beneficiary to enforce any provision hereof shall in no event be construed as a waiver of the right of the Beneficiary to

enforce any provision of this Deed as to the same or similar violation occurring prior to or subsequent to any such failure to enforce. No liability shall attach to the Grantor or any parent, subsidiary or other affiliate of Grantor, or any officer, director, shareholder, employee, member, manager, partner, agent, committee or committee member of any of them, (excepting, however, Grantee, its successors and assigns, and any subsequent owner, lessee, user or occupier of the Premises, or any part thereof, in breach hereof) or to the Beneficiary for failure to enforce the provisions hereof. If the Beneficiary successfully brings an action to extinguish a breach or otherwise enforce the provisions hereof, the costs of such action, including legal fees, shall become a binding, obligation of the owner, lessee, user and/or occupier of the Premises; or any part thereof, in breach hereof. Neither Grantee (its successors and assigns) nor any subsequent owner, lessee, user or occupier of the Premises, or any part thereof, may circumvent the remedies provided for herein or be relieved of their obligations and/or liabilities hereunder by conveying, transferring, or leasing the Premises, or any part thereof, or by assigning any rights or obligations hereunder.

2. The restrictions and covenants contained herein shall be inserted by Grantee, its successors and assigns, and any and all future owners of the Premises, in any deed, lease, easement, right of way or other legal instrument by which Grantee, its successors and assigns, and any and all future owners of the Premises, divests itself of either the fee simple title or any other lesser estate in the Premises or any portion thereof. Notwithstanding this provision, failure to include the restrictions and covenants contained herein in subsequent conveyances does not abrogate the status of such restrictions and covenants as binding upon the parties, their successors and assigns.

3. Grantee, for itself, its successors and assigns, and any and all future owners, lessees, users or occupiers of the Premises or any portion thereof, (i) covenants that it will not undertake or allow any activity on or use of the Premises that would violate the use restrictions and covenants contained herein and (ii) will indemnify, defend and hold harmless the Grantor, its successors and assigns for breach of the aforementioned covenant.

4. Grantor and Grantee agree and understand that the Grantee, by its acceptance of this Deed, agrees that, as part of the consideration for this Deed, the Grantee covenants and agrees for itself, its successors and assigns, forever, that this Deed is made and accepted upon each of the restrictions and covenants contained herein which restrictions and covenants shall be binding upon and enforceable against the Grantee, its successors and assigns, and any and all future owners, lessees, users and occupiers of the Premises or any part thereof, in perpetuity; and the covenants and restrictions set forth herein are a binding servitude on the Premises herein conveyed.

D. Modification and Termination

FIFTH, any modification or termination of the provisions hereof affecting any part of the Premises shall require the written consent of the DEC which consent shall not be unreasonably withheld, conditioned or delayed. Any modification or termination of the provisions hereof shall not become effective until the instrument evidencing such modification or termination has been

duly recorded in the Steuben County Clerk's Office.

1. Neither the provisions hereof nor any modification thereof shall be interpreted as permitting any action or thing prohibited by the applicable laws, ordinances, rules or regulations of any governmental authority having jurisdiction over the part of the Premises affected or by specific restrictions imposed by any other instrument relating to the Premises or to such part of the Premises.

2. No change of conditions or circumstances shall operate to amend the provisions hereof, and the provisions hereof may be modified or terminated only in the manner provided herein. The determination by any court of competent jurisdiction that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

SIXTH, that Grantor covenants that Grantor has not done or suffered anything whereby the Premises have been encumbered in any way whatsoever and that Grantor, in compliance with Section 13 of the Lien Law, will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of any improvement and will apply the same first to the payment of any cost of any improvement before using any part of the total of the same for any other purpose.

SEVENTH, Grantee accepts the Premises in its "As Is" condition "with all faults" pursuant to the terms of the Transfer Agreement, the terms of which are incorporated herein by reference.

EIGHTH, any and all references herein to Grantee, and/or Grantee's successors and assigns, shall be deemed to include, and the covenants and restrictions herein shall be binding upon, any and all (i) owners, grantees, transferees, lessees, sublesses, users and occupiers of the Premises or any portion thereof, (ii) licensees, invitees, contractors, easement holders, mineral rights holders, employees, guests and other parties who may enter the Premises (or any portion thereof) or may have right to enter the Premises (or any portion thereof) and (iii) all parties claiming by, through or under any of the aforementioned parties referred to in this paragraph Eighth.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Grantor has executed this Deed the day and year first above written.

INGERSOLL-RAND COMPANY

By: Barbara A. Sanford
 Name: Barbara A. Sanford
 Title: Secretary

Agreed to and Accepted
 this ____ day of August, 2005 by:

PAINTED POST DEVELOPMENT, LLC

By: _____
 Jack E. Benjamin, Manager

NEW YORK STATE DEPARTMENT
 OF ENVIRONMENTAL CONSERVATION

By: _____
 David A. Munro, Assistant Attorney General
 New York State Department of Law, Environmental Protection Bureau
 on behalf of New York State Department of Environmental Conservation

VILLAGE OF PAINTED POST

By: _____
 Edward A. Franklin, Jr., Mayor

PLEASE RECORD AND RETURN TO:

John A. Pappano, Esq.
 Phillips Lytle LLP
 3400 HSBC Center
 Buffalo, New York 14203
 Tel. (716) 847-5404

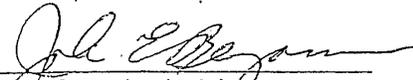
IN WITNESS WHEREOF, Grantor has executed this Deed the day and year first above written.

INGERSOLL-RAND COMPANY

By: _____
Name: _____
Title: _____

Agreed to and Accepted
this 29th day of August, 2005 by:

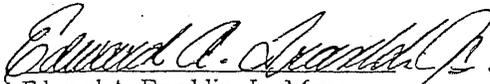
PAINTED POST DEVELOPMENT, LLC

By: 
Jack E. Benjamin, Manager

NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

By: _____
David A. Munro, Assistant Attorney General
New York State Department of Law, Environmental Protection Bureau
on behalf of New York State Department of Environmental Conservation

VILLAGE OF PAINTED POST

By: 
Edward A. Franklin, Jr., Mayor

PLEASE RECORD AND RETURN TO:

John A. Pappano, Esq.
Phillips Lytle LLP
3400 HSBC Center
Buffalo, New York 14203
Tel. (716) 847-5404

IN WITNESS WHEREOF, Grantor has executed this Deed the day and year first above written.

INGERSOLL-RAND COMPANY

By: _____
Name: _____
Title: _____

Agreed to and Accepted
this 29th day of August, 2005 by:

PAINTED POST DEVELOPMENT, LLC

By: _____
Jack E. Benjamin, Manager

NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

By: David A. Munro
David A. Munro, Assistant Attorney General
New York State Department of Law, Environmental Protection Bureau
on behalf of New York State Department of Environmental Conservation

VILLAGE OF PAINTED POST

By: _____
Edward A. Franklin, Jr., Mayor

PLEASE RECORD AND RETURN TO:

John A. Pappano, Esq.
Phillips Lytle LLP
3400 HSBC Center
Buffalo, New York 14203
Tel. (716) 847-5404

STATE OF _____)

STATE OF New Jersey
COUNTY OF Bergen ss.:

On the 12th day of October in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Barbara A. Santoro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Meryl J. Miller
Notary Public
MERYL J. MILLER
Notary Public of New Jersey
My Commission Expires Jan. 19, 2006

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

On the ___ day of _____ in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Jack E. Benjamin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF _____) ss.:

On the ___ day of _____ in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared David A. Munro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF _____)
COUNTY OF _____) ss.:

On the ____ day of _____ in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

On the 29th day of August in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Jack E. Benjamin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

MUNESH PATEL
Notary Public, State of New York
No. 02PA6109397
Qualified in Monroe County
Commission Expires 05/10/2008

Munesh Patel
Notary Public

STATE OF NEW YORK)
COUNTY OF _____) ss.:

On the ____ day of _____ in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared David A. Munro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

COUNTY OF _____) ss.:

On the ____ day of _____ in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

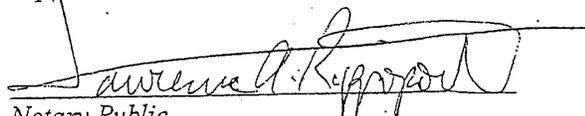
STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

On the ____ day of _____ in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Jack E. Benjamin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On the 17th day of OCTOBER in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared David A. Munro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



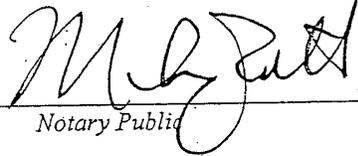
Notary Public

LAWRENCE A. RAPPOPORT
Notary Public, State of New York
Qualified in Albany County
No. 4513713
~~My Commission Expires March 30, 2008~~
DECEMBER 31, 2005

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

On the 29th day of August in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Edward A. Franklin, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

MUNESH PATEL
Notary Public, State of New York
No. 02PA6109397
Qualified in Monroe County
Commission Expires 05/10/2008

"A"

SCHEDULE A
DESCRIPTION OF PREMISES
(Ingersoll-Rand Foundry Parcel)

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Erwin and Village of Painted Post, Steuben County, New York and being more particularly bounded and described as follows:

Beginning at a concrete highway monument on the easterly highway limit of Interstate Route 86-State Route 17 at its intersection with the southwesterly limit of Chemung Street; thence in a southeasterly direction along the last mentioned limit of Chemung Street, following a curve to the right having a radius of 3787.00 feet, an arc length of 200.99 feet and producing a chord of S 45° 05' 58" E, 200.97 feet to a point of tangency; thence S 43° 25' 14" E, continuing along said southwesterly limit of Chemung Street, passing through a concrete monument at a distance of 443.94 feet, a total distance of 2956.69 feet to an iron pin set, said iron pin being the northeasterly corner of lands now or formerly owned by "Rutledge" (L. 1351, P. 290) and located 195.00 feet northwesterly, as measured along said Chemung Street from its intersection with the northwesterly limit of Charles street; thence in a southwesterly direction along said lands of "Rutledge" and lands now or formerly owned by "Strong", "Hamel", "Law", "Leipold" and "Winters", as more fully shown on the subject map of which this description is written and stated at the end, the following three (3) courses and distances:

1) S 46° 15' 27" W, a distance of 173.87 feet to an iron pin found;

2) S 49° 16' 15" W, a distance of 93.54 feet to an iron pin found;

3) S 51° 02' 10" W, a distance of 42.46 feet to an iron pin found on a line of lands now or formerly owned by "Emo" (L. 1123, P. 196); thence along said lands of "Emo" the next two (2) courses and distances:

1) N 39° 46' 19" W, a distance of 18.00 feet to an iron pin found;

2) S 49° 11' 20" W, a distance of 77.08 feet to an iron pin found on a line of lands now or formerly owned by "Smith & Miraglia" (L. 1394, P. 303); thence N 40° 46' 24" W, along said "Smith & Miraglia" lands and lands now or formerly owned by "Schirmer" (L. 796, P. 547), "Gestwicki" (L. 839, P. 53) and "Kenyon" lands (L. 844, P. 555) a distance of 275.10 feet to an iron pin found; thence S 51° 23' 30" W, along the northwesterly line of "Kenyon", a distance of 147.07 feet to a concrete monument on the northeasterly limit of West Water Street; thence N 26° 18' 11" W, along said West Water Street, a distance of 229.05 feet to a point, said point determined to be in line with the "Foundry Gate" which is reportedly where the public ownership of West Water Street terminates per documentation on file with the Village of Painted Post Offices; thence S 63° 41' 49" W, along the terminus of West Water Street as stated, a distance of 60.00 feet to a point on the southwesterly limit of said West Water Street; thence S 26° 18' 11" E, along said West Water Street, a distance of 239.61 feet to a point; thence S 71° 20' 18" W, through lands now or formerly owned by Ingersoll-Rand Company (L. 1667, P. 312), a distance of 673.87' to a point on the first above mentioned highway limit of Interstate Route 86-State Route 17; thence along said highway limit the following four (4) courses and distances:

1) Along a curve to the right having a radius of 4453.66 feet, an arc length of 1167.00 feet and producing a chord of N 25° 18' 15" W, a distance of 1163.67 feet to a concrete highway monument;

2) N 16° 12' 50" W, a distance of 343.28 feet to a point;

3) N 13° 16' 12" W, a distance of 1262.34 feet to a point;

4) thence N 09° 48' 10" W, continuing along said highway limits, a distance of 59.59 feet to the point or place of beginning, containing 48.772 acres of land, more or less.

"B"

SCHEDULE B
VILLAGE ZONING LAW SECTION 280.18 AND DEFINITIONS

Attached hereto

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PLANNED DISTRICT - One or more commercial, residential or industrial uses proposed as a unit, in conformance with Article VI.

§ 280.15 NAMES OF ZONING DISTRICTS

B. The following floating zones shall be applicable anywhere that the stated conditions and criteria are met:

- APOD - Aquifer Protection Overlay District
- FPPD - Flood Plain Protection District
- PRD - Planned Residential District
- PCD - Planned Commercial District
- PDD - Planned Development District

M. Planned Development District (PDD) Intent: See Article VI.

§ 280.18 USE REGULATIONS - SCHEDULE OF USES TABLE

The following use regulations apply to the principal and accessory uses as listed in the Schedule of Uses Table.

SCHEDULE OF USES TABLE

Abbreviations:

- P - Permitted
- SP - Site Plan Approval Required
- SU - Special Use Permit Required
- Blank - Not Permitted

- LDR - Low density residential
- MDR - Medium density residential
- UCR - Urban Center residential
- UC - Urban Center
- B - Business
- I - Industrial
- PD - Planned District

BUSINESS USES	LDR	MDR	UCR	UC	B	I	PD
Arcade					SU		
Automobile repair garage					SP	SP	
Automobile sales area					SU	SU	
Bar or night club					SP		
Bowling alley					SP	SP	
Car washing station						SU	
Commercial vehicle					P	P	SP

Convenience/Mini-market w/ gas					SU	SU	
Convenience/Mini-market w/o gas			SP	SP	SP	SP	SP
Day care center	SU						
Day care, family home	SU	SU	SU	SU	SU		SU
Drive-in movie						SP	
Equipment rental or sales yard					SU	P	
Funeral home		SU	SU	SU	SU		SU
Gasoline filling station					SU	SU	
Grocery store			SP	SP	SP	SP	
Home occupation - Off-site	P	P	P	P	P		SP
Home occupation - On-site	SU	SU	SU	SU	SP		SU
Laundry or dry cleaning plant					SU	SU	
Newstrack	SU						
Low-profile business				SU	SP	SP	SP
Mixed use	SU						
Newspaper offices and printing shops					SU	SU	
Offices - general				SU	SP	SP	SP
Offices - one practicing professional in existing building	SU	SU	SU	SU	SP	SP	SP
Offices - more than one practicing professional				SP	SP	SP	SP
Personal service establishments				SU	SU		SU
Planned commercial districts					SP	SP	SP
Restaurant					SP	SP	SU
Retail business or service, not otherwise specifically mentioned herein					SP	SP	
Riding academy							
Roadside stand with peddler's license					P	P	
School conducted for profit					SU		
Self-service laundry					SU		
Storage yards for equipment					SP	SP	
Theater or concert hall					SP	SP	
Veterinarian office, animal hospital or kennels					SP	SP	
Wholesale business or service, not otherwise specifically mentioned herein					SP	SP	SU

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INDUSTRIAL USES	LDR	MDR	UCR	UC	B	F	PD
Contractors yard and equipment						SP	
Manufacture, fabrication, extraction, assembly, warehousing and other handling of material						SP	SP
Mining							
Mixed use	SU	SU	SU	SU	SU	SU	SU
Research laboratories						SP	SP
Storage facility, indoor						SP	SU
Storage facility, outdoor						SU	SU
Trucking, wholesale warehouse terminals						SP	SU
RESIDENTIAL USES	LDR	MDR	UCR	UC	B	F	PD
Mixed use	SU	SU	SU	SU	SU	SU	SU
Housing, Non-Transient							
Dwelling, one-unit, detached includes Residential Designed Manufactured Home, Modular Home, Sectional Home	P	P	P	P			SP
Cluster Development	SP	SP	SP	SP			SP
Dwelling, one-unit, attached	P	P	P	P			SP
Dwelling, two-unit	P	P	P	P			SP
Dwelling, multi-unit			SU	SU			SP
Group home	SP	SP	SP	SP			SP
Manufactured home park							
Manufactured home, substandard							
Planned Residential District	SP	SP	SP	SP			SP
Rooming house			SU	SU			SU
Shared housing	P	P	P	P			SP
Standard Designed Manufactured Home ("single-wide")			SU				
Housing, Transient							
Bed & Breakfast	SU	SU	SU				SU
Hotel						SP	SU
Motel						SP	SU
Nursing or convalescent home		SP	SP	SP		SP	SP
Vacation Resort							

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GENERAL USES	LDR	MDR	UCR	UC	P	P	PD
Accessory use/building/structure on the same lot	P	P	P	P	P	P	SP
Accessory use/building/structure on a separate lot	SU	SU	SU	SU	SU	SU	SU
Agriculture, for crops					SU	SP	
Agriculture, manufacture						SU	SU
Agriculture, nursery					SP		
Animals, raising or keeping of							
Cemetery		SP	SP	SP	SP	SP	SP
Church or other place of worship		SP	SP	SP	SP	SP	SP
Club, membership					SU	SU	
Communication Tower (ncw)						SP	SP
Communication Tower (co-location on existing tower)	SU	SU	SU	SU	SU	SP	SP
Crematory					SP	SP	SP
Cultural facilities (library, art gallery, museum, etc.)		SP	SP	SP	SP	SP	SP
Golf course or country club		SP	SP	SP	SP	SP	SP
Hospital or sanitarium		SP	SP	SP	SP	SP	SP
Institutional or philanthropic use		SP	SP	SP	SP	SP	SP
Nursery school		SU	SU	SU	SU		SU
Private, public or parochial school		SU	SU	SU	SU	SU	SU
Public utility or transportation use							
a) office					P	P	SP
b) repair, service and storage					SU	P	SP
Satellite dish (<3' in diameter ground-mounted installations)		P	P	P	P	P	SP
Satellite dish (>3' in diameter and/or roof-mounted installations)		SU	SU	SU	P	P	SU

VILLAGE OF PAINTED POST
280.28 Density Control Schedule* (Area bulk Schedule)

ARTICLE II
INTERPRETATION AND DEFINITIONS

§ 280.7 INTERPRETATION AND APPLICATION

- A. **LEGISLATIVE INTENT.** In their interpretation and application, the provisions of this Zoning Law shall be held to be minimum requirements adopted to achieve the intent of this Law as set forth in Article I.
- B. **ANNULMENT OF PREVIOUS ORDINANCES.** This Zoning Law shall annul and supercede any previously adopted zoning laws and ordinances of the Village of Painted Post.
- C. **NON-INTERFERENCE AND PRECEDENCE.** Except as noted in Section 280.7B of this Law, this Zoning Law shall not interfere with, abrogate, annul, or repeal any ordinance or any rule, regulation, or permit previously or hereafter enacted, adopted, or issued pursuant to law; provided that, unless specifically excepted, where this Zoning Law imposes greater restrictions its provisions shall control.
- D. **SEPARATE VALIDITY.** If any section, subsection, paragraph, clause, or other provisions of this Law shall be held to be invalid, the invalidity of such section, subsection, paragraph, clause, or other provision shall not affect any of the other provisions of this Law.
- E. The following rules of construction of language shall apply to the text of this Law.
1. Words used in the present tense include the future tense.
 2. Words used in the singular include the plural, and words used in the plural include the singular.
 3. The word "lot" includes the word "plot" or "parcel."
 4. The word "person" includes an individual, firm or corporation.
 5. The word "shall" is always mandatory; the word "may" is always permissive.
 6. The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied."
 7. A "building" or "structure" includes any part thereof.
 8. The phrases, "to erect," "to construct," and "to build" a building, all have the same meaning and includes to excavate for a building and to relocate a building by moving it from one location to another.

§ 280.8 DEFINITIONS

The words or phrases as used in this Law are defined as follows:

ACCESSORY BUILDING: See "BUILDING, ACCESSORY."

ACCESSORY USE: See "USE, ACCESSORY."

AGRICULTURE, FOR CROPS: Any parcel of land used commercially for the raising of fruits, vegetables and the like, but not for the raising or keeping of animals.

AGRICULTURE, MANUFACTURE: Any parcel of land used for the processing of crops and livestock, such as a cheese factory, tannery, food processing, and the like.

AGRICULTURE, NURSERY: A wholesale or retail business which sells primarily trees, shrubs, plants and other landscaping materials and may sell related lawn and garden supplies and ornaments as an accessory use.

ANIMALS, RAISING OR KEEPING OF: Any parcel of land used for the raising of animals for commercial purposes, including livestock, horses, poultry, dairy cattle, bees, fur-bearing animals, and other such farm animals, OR for the raising and keeping of wild animals including poisonous animals, skunks, pigeons, fox, mink, birds and the like, BUT excluding pets and kennels.

ALTERATION: As applied to a building or structure, a change or rearrangement in the structural parts or existing facilities of such building or structure, or any enlargement thereof, whether by extension on any side or by any increase in height, or the moving of such building or structure from one location to another.

ANTENNA: A system of electrical conductors that transmit or receive telephone, television or radio frequency waves. Such devices shall include cellular, paging and personal communication services(PCS) and satellite dishes.

AQUIFER: An underground water bearing volume of permeable rock, sand or gravel.

AQUIFER PROTECTION OVERLAY DISTRICTS: Those areas as defined below which contribute water to the Village of Painted Post public and community water supply.

APOD #1: WELL HEAD PROTECTION AREA: The land area immediately around a well which contributes water to the public and community wells as shown on the Aquifer Protection Overlay District Map. For all community wells and existing public wells, this area is defined as a circle centered on the well with a two hundred (200) foot radius. For new public wells, water at the outermost boundary of the Wellhead Protection Area will reach the wells within a minimum of one-hundred (100) days.

APOD #2: AQUIFER RECHARGE AREA: The remaining aquifer area outside APOD #1 Wellhead Protection Area which contributes water to the Village of Painted Post public wells or other municipal wells.

APOD#3: WATERSHED TRIBUTARY AREA: The upland watershed which contributes water to APOD #2 Aquifer Recharge Areas as shown on the Aquifer Protection Overlay District Map.

ARCADE: A business offering one or more mechanical, electrical or electronic machine(s) or device(s) used or designed to be operated for entertainment or as a game, and either activated by the insertion of a coin, or for the operation or use of which a charge is made.

AREA, BUILDING: The total of covered areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of terraces, and uncovered steps.

ATTIC: That space in a building which is immediately below and wholly or partly within the roof framing. An attic with a finished floor shall be counted as a half story in determining the permissible number of stories. (Also see "STORY, HALF").

AUTOMOBILE SALES AREA: A premises, including open areas other than a street or road and showrooms enclosed within a building, used for the storage, display or sale of new or used automobiles, trucks and cargo trailers.

AZIMUTH: The angular distance between true south and the point on the horizon directly below the sun. Values to the east of south (in the morning) shall be negative. Values to the west of south (in the afternoon) shall be positive.

BASEMENT: A story partly below finished grade, but having at least one-half of its height measured from floor to ceiling, but no less than four feet, above average finished grade. A basement shall be counted as one story determining the height of a building in stories. (Also see "CELLAR").

BUILDING: Any structure which is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing or enclosure of persons, animals or chattel. A building includes attached deck(s) and porch(es).

BUILDING, ACCESSORY: A building detached from and subordinate to a principal building and used for purposes customarily incidental to those of the principal building. For example, a garage for one or two cars is permitted wherever residences (the principal use) are allowed.

BUILDING, DETACHED: A building surrounded by open space on the same lot.

BUILDING, PRINCIPAL: A building in which is conducted the main or principal use of the lot on which said building is situated.

BUILDING, SEMI-DETACHED: A building attached by a party wall to another building normally of the same type on another lot, but having one side yard.

BUILDING GROUP: A group of two or more principal buildings and any buildings accessory thereto, occupying a lot in one ownership and having any yard in common.

BUILDING HEIGHT: The vertical distance measured from the average finished grade to the highest point of such building or structure.

BUILDING LINE: The rear line of the required front yard setback.

BUILDING, PRINCIPAL: A building in which is conducted the main or principal use of the lot on which said building is situated.

BUILDING, SEMI-DETACHED: A building attached by a party wall to another building normally of the same type on another lot, but having one side yard. See "HOUSING, NON-TRANSIENT."

BULK: A term used to describe size, volume, area, and shape of buildings and structures. Included in such description is the physical relationship of exterior walls or a building or structure's location to lot lines, other buildings and structures or other walls of the same building. All open spaces required in connection with a building, other structure or tract of land are also included in this term.

BULK, NONCONFORMING: That part of a building, other structure or tract of land which was lawfully existing prior to the adoption or amendment of this chapter but which does not conform to one (1) or more of the applicable building regulations of this Zoning Law by reason of such adoption or amendment.

CARRIER: A provider of communications service.

CELLAR: Any space in a building the structural ceiling level of which is less than four feet above average finished grade where such grade meets the exterior walls of the building. A cellar shall not be counted in determining the permissible number of stories. A cellar shall not be occupied as a dwelling unit. (Also see "BASEMENT").

CLUB, MEMBERSHIP: An organization catering exclusively to members and their guests, or premises and buildings for social, educational, recreational or athletic purposes, which are not conducted primarily for gain, providing there are not conducted any vending stands, merchandising or commercial activities except as required generally for the purposes of such club.

CO-LOCATION: The use of a communications tower by more than one carrier.

COMMERCIAL VEHICLE: A vehicle of more than one and one half ton capacity used for the transportation of persons or goods primarily for gain; or a vehicle of any capacity carrying any sign or lettering of a commercial nature exceeding one square foot in area.

COMMUNICATIONS TOWER: A structure on which transmitting and/or receiving antennae are located. This includes but is not limited to freestanding towers, guyed towers, monopoles, and similar structures.

- A. **FREESTANDING COMMUNICATIONS TOWER** - Freestanding lattice tower onto which antennas are affixed.
- B. **GUYED TOWER** - Lattice tower supported by wire anchors.
- C. **MONOPOLE** - A single pole of variable cross section onto which antennas are affixed.

COMMUNITY POLE: A sign owned and maintained by the Village Board or by a group of business owners as approved by the Village Planning Board and which sign contains several directional signs for the purpose of directing persons to business and community establishments within the Village. Includes "monument sign."

CONTIGUOUS PARCEL: A tract of land under the control of the applicant or his agent that is not divided by any natural or manmade barriers such as existing roads, highways, railroad tracks, areas with slopes greater than thirty-five (35%), and rivers, and that is not totally bisected by any other water bodies.

CONTRACTOR'S YARD: Any space, whether inside or outside a building, used for the storage or keeping of construction equipment, machinery, or vehicles, or parts thereof, which are in active use by a construction contractor.

COVERAGE: That lot area or percentage of lot area covered by buildings or structures, including accessory buildings and structures, but not including detached solar collectors used by solar energy systems.

DAY CARE CENTER: A facility duly permitted by the New York State Office of Children and Family Services or successor for the care of three (3) or more persons away from their homes for more than three (3) but less than twenty-four (24) hours each day with or without compensation. This definition includes "children's day care center" and "adult day care center." A DAY CARE CENTER is also a facility providing day care services under an operating certificate issued by the NYS Department of Mental Health or successor. This does not include "family day care," "nursery school," or "day camp" as defined by the New York State Sanitary Code, a school program operated for the primary purpose of religious education, or a facility operated by a public school district.

DAY CARE, FAMILY HOME: A one family dwelling in which day care is provided for persons in accordance with NYS Office of Children and Family Services or successor definitions and regulations.

DISTRIBUTOR: The person, entity or agent or representative thereof responsible for placing and maintaining a newsrack in a public right-of-way including, without limitation, the grassed or paved curb area and sidewalks.

DRIVE-IN MOVIE: An open lot or part thereof, which appurtenant facilities devoted primarily to the showing of moving pictures, on a paid admission basis, to patrons seated in automobiles or on outdoor seats.

DWELLING, ONE-FAMILY: See "HOUSING, NON-TRANSIENT."

DWELLING, TWO-FAMILY: See "HOUSING, NON-TRANSIENT."

DWELLING, MULTI-FAMILY: See "HOUSING, NON-TRANSIENT."

DWELLING GROUP: See "HOUSING, NON-TRANSIENT."

DWELLING UNIT: One or more rooms connected together consisting of a, separate, independent housekeeping establishment for owner occupancy, rental or lease, that contains independent cooking, sanitary and sleeping facilities for one family. This shall include sectional, modular and standard designed manufactured home units, and residential designed manufactured home units provided they meet the standards of this law and the New York State Building and Fire Prevention Code. It shall not include motel, hotel or lodging establishments for transient occupancy, substandard mobile homes or trailers.

EASEMENT: A vested or acquired right to use land other than as a tenant for a specific purpose, such right being held by someone other than the owner who holds title to the land.

FAMILY: Any single person or group of persons who live together in a one dwelling unit and maintain a common household.

FINISHED GRADE: The elevation at which the finished surface of the surrounding lot intersects the walls or supports of a building or other structure. If the line of intersection is not reasonably horizontal, the finished grade - in computing height of buildings and other structures or for other purposes - shall be the average elevation of all finished grade elevations around the periphery of the building, except that this average shall not exceed one-half (½) of the floor-to-ceiling height.

FLOOR AREA: The aggregate sum of the gross horizontal areas of the several floors of the building or buildings, measured from the exterior walls or from the centerlines of walls separating the buildings as defined by the NYS Fire Protection and Building Code.

GARAGE, SERVICE AND REPAIR: An enclosed building for the indoor repair of motor vehicles including painting and the sale of parts and accessories. A junkyard or auto salvage yard is not to be construed as a garage.

GASOLINE FILLING STATION: An area of land, including structures thereon, or any building or part thereof, with pumps and storage tanks that is used primarily for the storage and retail sale of gasoline or any other motor vehicle fuel and for other uses accessory thereto. The sale of lubricants, motor vehicle accessories, washing (which does not require mechanical equipment), or otherwise servicing motor vehicles, are permitted accessory uses.

GRAVEL PIT: See "MINING."

HAZARDOUS SUBSTANCES: All substances defined in 6NYCRR Part 597 and all hazardous wastes as defined in 6NYCRR Part 371.

HOME OCCUPATION: A business use conducted as an accessory use which is clearly incidental to or secondary to the residential use of a dwelling unit and does not change the character thereof, and is carried on wholly within the enclosed walls of a dwelling unit or accessory building by the occupant(s) of such dwelling unit, and in which not more than one (1) person not residing in such dwelling unit is employed on site. Home Occupations are either "off site" or "on site."

HOME OCCUPATION, OFF SITE SERVICE: A home occupation in which the owner meets customers off premises or electronically and, thus, does not generate additional traffic. A distributorship whose primary function is the processing of orders for merchandise and which does not involve retail sales or a high volume of stock and merchandise on the premises may be deemed an off site home occupation, provided such use meets the intent and all standards of this section.

HOME OCCUPATION, ON SITE SERVICE: A home occupation in which the owner meets customers on premises or receiving a high volume of stock and merchandise and, thus, the business generates additional traffic.

HOSPITAL: A building containing beds for four or more patients, and used for the diagnosis, treatment, or other care of ailments, and shall be deemed to be limited to places for the diagnosis, treatment, or care of human ailments.

HOTEL: See "HOUSING, TRANSIENT."

HOUSE TRAILER: See "MOBILE HOME, SUBSTANDARD."

HOUSING, NON-TRANSIENT: A building designed or used principally as the permanent living quarters for one or more families. Such housing is also known as a "residence" but shall not be deemed to include a motel, or hotel or other accommodations used for transient occupancy and shall include the following:

- A. DWELLING, ONE-UNIT DETACHED - A building containing one (1) dwelling unit only on one lot.
- B. DWELLING, ONE-UNIT ATTACHED - A building containing two (2) dwelling units on separate lots. This includes "zero-lot line" one unit homes.
- C. DWELLING, TWO-UNIT - A building containing two (2) dwelling units on one lot. This includes "duplex."
- D. DWELLING, MULTI-UNIT - A building or series of buildings comprising three (3) or more dwelling units with shared entrances and other essential facilities and services on one lot.
- E. DWELLING GROUP - A group of three (3) or more, but not over ten (10), attached one - or two-unit dwellings with common walls between.
- F. GROUP HOME - A one unit dwelling in which resides a group of mentally and/or physically challenged persons, not related by blood, marriage or adoption who maintain a common household as governed by state law. "Group home" includes "community residence."
- G. ROOMING HOUSE - A one unit dwelling containing a common kitchen and dining facility, in which at least three (3) sleeping rooms are offered for rent, with or without meals. A "lodging house" and "boarding house" shall be deemed a "rooming house."
- H. SHARED HOUSING - A one unit dwelling in which persons not related by blood, marriage or adoption live together and maintain a common household.
- I. TOWNHOUSE - A building consisting of three or more attached one unit dwellings each having separate entrances and common vertical walls on separate lots.

HOUSING, TRANSIENT - Any buildings that serve as principle lodging or residence for more than one transient individual that occupies the such building briefly and temporarily. Such housing shall include the following:

- A. BED & BREAKFAST - A one unit dwelling in which sleeping rooms are provided by the owner for compensation, for the accommodation of 15 or fewer transient guests and the entire service is included in one stated price. A "tourist home" shall be deemed a "bed & breakfast."
- B. HOTEL - A building, or any part thereof, which contains living and sleeping accommodations for more than fifteen (15) transient occupancy for compensation, has a common exterior entrance or entrances and which may contain one (1) or more dining rooms.

- C. MOTEL - A building or group of buildings not over two stories in height containing individual living and sleeping accommodations for hire, each of which is provided with a separate exterior entrance and a parking space and is offered for rental and use principally by motor vehicle travelers. The term "motel" includes but is not limited to "auto court," "motor hotel," "motor court," "motor inn," "motor lodge," "tourist court," "tourist cabin" or "roadside hotel."
- D. VACATION RESORT - Any area of land on which are located two or more cabins, cottages or group of buildings, containing living and sleeping accommodations hired out for compensation, which has a public lobby serving the guests, and may contain one or more dining rooms and recreation facilities of a design and character suitable for seasonal or temporary living purposes, regardless of whether such structures or other accommodations actually are occupied seasonably or otherwise.

JUNK YARD: An area of land with or without buildings used for or occupied by the storage, keeping, or abandonment of junk, including scrap metals or other scraps, used or salvaged building materials, or the mantling, dismantling, demolition, or abandonment of automobiles or other vehicles or machinery or parts thereof. This includes "auto salvage yard," "dump," "auto junkyard," and "solid waste disposal facility."

KENNEL: Any place at which there are kept four or more dogs or cats more than four months of age or any number of such animals that are kept for the primary purpose of sale or for the boarding, care or breeding for which a fee is charged or paid.

LANDFILL, SANITARY: A designated area, where solid waste may be placed for disposal, under the direction and supervision of a designated person; which area is located and operated in compliance with the requirements of the State.

LOT: A contiguous parcel of land considered as a unit, devoted to a specific use or occupied by a building or group of buildings that are united by a common interest, use or ownership, and the customary accessories and open spaces belonging to the same. A lot shall abut and be accessible from a public or private street.

LOT, CORNER: A lot situated at the junction of and adjacent to two or more intersecting streets when the interior angle of intersection does not exceed 135 degrees.

LOT COVERAGE: See "COVERAGE."

LOT, DEPTH OF: The mean distance from the lot frontage to its rear line.

LOT LINE, FRONT: A lot line which is coincident with the right-of-way line of a public street or which is measured twenty (20) feet from the edge of the road surface of a private road.

LOT LINES: The lines bounding a lot as defined herein.

LOT, THROUGH: A lot which faces on two streets at opposite ends of the lot and which is not a corner lot.

LOT WIDTH - The width along the building line.

LOW-PROFILE BUSINESS: A small business which is compatible with a residential area in the following respects:

- A. Is carried on by the proprietor and not more than three (3) paid employees.
- B. Has no more than three (3) clients or customers at one time, usually by appointment.
- C. Does not operate during the nighttime hours 10:00 p.m. to 8:00 a.m.
- D. Does not create undue traffic or parking problems.
- E. Does not require more frequent trash or garbage collection than residences in the same district.
- F. Does not create excessive noise, dirt, odor or electrical interference.

MANUFACTURED HOME, RESIDENTIAL DESIGNED: A single family dwelling built according to the Federal Manufactured Housing Construction and Safety Standards (24 CFR 3280) HUD Code, which meets or exceeds the following criteria. This includes the term "double-wide."

- A. The manufactured home has a minimum width over twenty (20) feet (multi-section)
- B. The manufactured home has a minimum of nine hundred (900) square feet of enclosed living area.
- C. The pitch of the roof has a minimum nominal 3/12 pitch; and has a type of shingle commonly used in standard residential construction.
- D. The exterior siding consists of vinyl or aluminum lap siding, wood, masonite, or other materials similar to the exterior siding commonly used in standard residential construction.
- E. All towing devices, wheels, axles, and hitches must be removed.
- F. The front of the dwelling is parallel to the street.
- G. Permanent landing and steps with handrails are required at each exterior doorway. The structure must include steps which lead to the ground level.

MANUFACTURED HOME, STANDARD DESIGNED: A single family dwelling built according to the Federal Manufactured Housing Construction and Safety Standards (24 CFR 3280) HUD Code, which does not meet the criteria of a Residential Designed Manufactured Home. This includes the term "single-wide."

MOBILE HOME, SUBSTANDARD: A single family dwelling that is wholly, or in part, fabricated in an off-site manufacturing facility for installation or assembly at the building site, designed to be a permanent residence, and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Standards Act of June 15, 1976.

MANUFACTURED/MOBILE HOME PARK: A contiguous parcel of land, which is planned and improved specifically for such a purpose, on which two (2) or more manufactured/mobile homes (with or without the wheels and axles in place) are located. Such a park consists entirely of manufactured/mobile homes, each located on a site leased or rented to its occupants who either own, rent, or lease the living unit as a permanent residence.

MINING: Excavation of earth materials for commercial purposes such as gravel pits, rock quarrying, stripping of topsoil, subsoil removal and/or the removal of such materials for sale other than what may be required in the erection of buildings on site.

MIXED USE: A building or a lot used for more than one permitted principal use.

MODULAR HOME: A dwelling unit constructed off-site, consisting of two or more segments and designed to be permanently anchored to a foundation, to become a fixed part of the real estate and which meets all State requirements. This includes the term "sectional home."

MOTEL: See "HOUSING, TRANSIENT".

NEWSRACK: Any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display and distribution or sale of newspapers or other news or informational periodicals. This includes "honor box," "newspaper box," or "real estate box."

NON-CONFORMING BULK: See "BULK, NONCONFORMING."

NONCONFORMING USE: See "USE, NONCONFORMING."

NURSERY SCHOOL: A non-public school organized for the purpose of providing regular daytime care or instruction for three or more children less than seven years of age for less than three hours per day, (two sessions may be held daily), as registered and certified by the NYS Education Department. This includes "day nursery" or "kindergarten" but does not include "day care center."

NURSING OR CONVALESCENT HOME: A building where persons are lodged and furnished with meals and long-term or permanent nursing care as defined by the NYS Department of Social Services or successor. This definition includes "assisted care living units," "health care services facility," and "home for the aged" but does not include "hospital," or "halfway home."

PARKING SPACE: An off-street space available for the parking of one motor vehicle exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street or alley.

PERSONAL SERVICE ESTABLISHMENTS: Establishments which provide services to an individual consumer for compensation including but not limited to barber shops, beauty shops, shoe repair shops and other uses of a similar nature.

PETROLEUM BULK STORAGE REGULATIONS: New York State's standards and regulations of petroleum administered by the New York State Department of Environmental Conservation as defined in 6NYCRR Parts 611 through 614.

PLANNED RESIDENTIAL DISTRICT - A form of residential development characterized by a unified site design and providing density increases, a mix of building types and common open space. It permits the calculation of densities over the entire parcel and involves additional requirements as set forth in Article V.

PREMISES: A lot together with all the buildings and uses thereon.

PROFESSIONAL OFFICE: An office operation involving the practice of or associated with medicine, dentistry, law, architecture, engineering and similar fields.

RESIDENCE: A building, or any part of a building, which contains living and sleeping accommodations for permanent occupancy. "Residence," therefore, includes all non-transient housing. However, "residence" shall not include the following:

- A. Transient housing, such as hotels, and motels.
- B. That part of a mixed use which is used for any non-residential uses.

RIDING ACADEMY: Any establishment where horses are kept for riding, driving or stabling for compensation.

RIGHT-OF-WAY: The property under ownership or easement normally used for the movement of vehicles, including but not restricted to the pavement area.

ROADSIDE STAND: A light structure with a roof, either attached to the ground or movable, used for the sale of local produce on a seasonal basis.

SATELLITE DISH: An antenna capable of receiving communications from space. Includes "satellite dish."

SETBACK: The required distance in feet between any building and any lot line of the lot on which it is located.

SIGN: Any structure or part thereof, or any device attached to a structure or painted or represented on a structure which shall display or include any lettering, wording, model, drawing, picture, banner, flag, insignia, device, marking, or representation used as, or which is in the nature of, an announcement, direction or advertisement. A "sign" includes a billboard, but does not include the flag or insignia of any nation or of any governmental agency or of any political, educational, charitable, philanthropic, civic, professional, religious or similar organizations, campaign, drive, movement, or event which is temporary in nature.

This definition shall not include official notices issued by a court or public body or officer, or directional, warning or information signs or structures required by or authorized by law or by federal, state, county, town or Village authority.

SIGN, BUSINESS: A "sign" which directs attention to a business or profession conducted on the premises. A "For Sale" sign or a "To Let" sign relating to the property on which it is displayed shall be deemed a "business sign."

SIGN, DIRECTIONAL: A "sign" which directs attention to a business, commodity, service or entertainment conducted, sold, or offered elsewhere than on the premises.

SIGN, DIRECTLY ILLUMINATED: A sign which incorporates any artificial lighting as an inherent part or feature or which depends for its illumination on transparent or translucent material or electricity or radio activated or gaseous material or substance.

SIGN, FLASHING: An illuminated sign on which the artificial lighting is not maintained stationary or constant in intensity and color at all times while in use.

SIGN, INDIRECTLY ILLUMINATED: A sign illuminated with an artificial light which is separated from or is not an intrinsic part of the sign itself.

SIGN, REPRESENTATIONAL: Any three-dimensional sign which is built so as to physically represent the object advertised.

SIGN AREA: The area within the shortest lines that can be drawn around the outside perimeter of a sign including all decorations and lights, but excluding the supports if they are not used for advertising purposes. All faces of the sign shall be counted in computing the area.

SIGN TEMPORARY: A sign which directs attention to a special activity or entertainment to be conducted for a limited time only.

SINGLE OWNERSHIP: Possession of land under single or unified control, whether by sole, joint, common or other ownership or by a lease having a term of not less than thirty years, regardless of any division of such land into parcels for the purpose of financing.

SOLAR COLLECTOR: A device, or combination of devices, structure, or part of a device or structure that transforms direct solar energy into thermal, chemical or electrical energy, that contributes significantly to a structure's energy supply, and components for containing and supporting such device.

SOLAR COLLECTOR, DETACHED: A solar collector, as defined herein, physically detached from the structure for which solar energy is to be supplied.

SPECIAL USE PERMIT: The authorization of a particular land use which is permitted in the Village of Painted Post Zoning Law, subject to requirements as described in Article XII to assure that the proposed use is in harmony with the Zoning Law and will not adversely affect the neighborhood if such requirements are met.

STORAGE FACILITY, INDOOR: A building or grouping of buildings designed and constructed for the common, long-term and/or seasonal interior storage of individual or business property by persons other than the property owner. The wholesale storage and/or transfer of goods by commercial enterprises is not included in this definition. See also "TRUCKING TERMINAL" and "WAREHOUSE."

STORAGE FACILITY, OUTDOOR: A lot designed for and/or used for the common, long-term and/or seasonal outdoor storage of individual or business property by persons other than the property owner.

STORAGE YARDS FOR EQUIPMENT: A lot designed for and/or used for the long-term and/or seasonal outdoor storage of business property by the property owner.

STORY: That part of a building comprised between a floor and the floor or roof next above it. (See "ATTIC", "BASEMENT", and "CELLAR").

STORY, HALF: That portion of a building situated above a full story and having a least two opposite exterior walls meeting a sloping roof at a level not higher above the floor than a distance equal to one-half the floor-to-ceiling height of the story below.

STREET, DEAD-END - A street or portion of a street with only one vehicular access.

STREET, PRIVATE - A road, serving not more than two residential lots, built to Village specifications and that remains in the ownership of and is maintained by the developer or development association and is not dedicated to the Village. This includes "private road."

STREET, PUBLIC - A right-of-way for vehicular traffic, whether designated as a road, highway, thoroughfare, parkway, street, avenue, boulevard, lane, place, alley, or however otherwise designated, that is built to Village specifications and dedicated to the Village for maintenance, but not including a private street. This includes "road."

STREET WIDTH: The width of the right-of-way or the distance between property lines on opposite sides of a street.

STRUCTURE: A static construction of building materials, including buildings, stadiums, platforms, towers, sheds, display stands, storage bins, signs, reviewing stands, gasoline pumps, mobile dwellings (whether mobile or stationary at the time), and the like.

STRUCTURE, ACCESSORY - A structure detached from and subordinate to a principal building on the same lot used for purposes customarily incidental to those of the principal building. Accessory structures include but are not limited to, portable, demountable or permanent detached enclosures, shade structures, carports, garages, and storage sheds. Accessory structures are non-habitable, have no sewer or water utilities and exceed 120 sq. ft.

SWIMMING POOL: An artificial pool of water having a depth at any point of more than eighteen (18) inches and a surface area of greater than one hundred (100) square feet, designed or intended for the purpose of bathing or swimming and including all appurtenant equipment.

TOWN HOUSE: See, "HOUSING, NON-TRANSIENT."

TRAILER, HOUSE: See, "MOBILE HOME, SUBSTANDARD."

TRAILER - A structure that is:

- A. Intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle), and

- B. is designed for temporary use as sleeping quarters, but does not satisfy one or more of the definition criteria of a manufactured home as defined in this law. This includes "travel trailer" and "camper."

USE: This term is employed in referring to:

- A. The purpose for which any buildings, other structures or land may be arranged, designed, intended, maintained, or conducted.
- B. Any occupation, business activity, or operation conducted in a building or other structure, or on land.

USE, ACCESSORY : A use customarily incidental and subordinate to the principal use or building. Accessory uses may occur as an open land use, as a separate building(s) or within the principal building. An accessory use does not have any greater impact on the environment than the principal use.

USE, NONCONFORMING: . Any use of a building, other structure or tract of land which was lawfully existing prior to the adoption or amendment of this chapter but which does not conform to the use regulations for the district in which such use is located by reason of such adoption or amendment.

USE, PRINCIPAL - The main or primary permitted use of the lot or structure.

VACATION RESORT: See "HOUSING, TRANSIENT."

VARIANCE, AREA: The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

VARIANCE, USE: The authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

VETERINARY HOSPITAL: A building for the treatment of animal illness including kennels or other similar facilities for boarding animals.

WAREHOUSE : A structure or premises, for storing of goods, wares, and merchandise, whether for the owner or for others, prior to shipment to final retail sale operation, whether it is in public or private ownership and use.

WAY: A thoroughfare, however designated, permanently established for passage of persons or vehicles.

YARD, FRONT: A yard extending along the full length of the front lot line between the side lot lines, not including any land within the right-of-way of public or private streets.

YARD, REAR: A yard extending along the full-length of the rear lot line, between the side lot lines, not including any land within the right-of-way of public or private streets.

YARD, REQUIRED: That portion of the open area of a lot extending open and unobstructed from the ground upward, along a lot line for a depth or width as specified by the bulk regulations of the district in which the lot is located. No part of such yard shall be included as part of a yard or other open space similarly required for buildings on another lot.

YARD, SIDE: A yard situated between the building and the side line of a lot and extending from the front yard rear line (or from the front lot line, if there is no required front yard) to the rear yard front line (or rear lot line).

- Section 280.9 (Reserved)
- Section 280.10 (Reserved)
- Section 280.11 (Reserved)
- Section 280.12 (Reserved)
- Section 280.13 (Reserved)

"C"

SCHEDULE C

HISTORICAL INVESTIGATIONS AND REMEDIAL ACTIONS

The Premises consist of approximately forty-nine (49) acres of land upon which there existed a 287,000+/- square foot foundry. The Foundry operated from approximately 1920 through December 1985, and produced gray iron castings principally for Ingersoll-Rand Company's ("I-R") compressor plant located at a separate site in Painted Post, New York. The operations consisted of pattern construction, sand mold lines, melt furnaces, castings, shakeout, casting, clearing and pattern and casting storage. After the foundry was idled in December 1985, an environmental evaluation and cleanup was conducted by I-R as part of its facility closure activity. In addition, pursuant to an Order on Consent with the DEC, I-R has performed further investigation and remediation activities at the Premises.

Documentary information with respect to the environmental investigations and cleanup that have taken place at the Premises, and any areas of the Premises that may have been impacted by releases of hazardous wastes, substances or constituents, can currently be obtained from documents submitted to DEC at its Albany, New York office (currently at 625 Broadway, Albany, New York 12233), and its Region 8 office at Avon, New York (currently at 6274 East Avon-Lima Road, Avon, New York 14414). Further information with respect to past activities at the Premises, including the use of foundry sand as backfill throughout wide portions of the MW-2B Area of the Premises, current activities, previous environmental investigations, information and investigations concerning the foundry sand at the Premises, groundwater quality, soil contamination, areas of possible environmental concern, topography, geology, hydrogeology, human health and environmental impacts can be obtained from the documentary information and other documents submitted to the DEC at the above-identified locations.

Such documentary information includes, but is not limited to, DEC's Record of Decision, dated March 1994 ("ROD") entitled "Ingersoll-Rand Foundry Inactive Hazardous Waste Site; Site Number 8-51-012, Village of Painted Post, Steuben County, New York". That ROD, in part, summarizes environmental sampling data which identified polynuclear aromatic hydrocarbons ("PAHs") near the MW-2B Area. Soil samples collected from within the fill material in this area confirmed that the PAHs in the fill were stationary and not migrating. The PAHs in the fill material appear to be petroleum based, and are commonly found in creosote, coal tar, and heavy oil-type products. The PAHs have been detected in an approximately three hundred (300) foot radial area surrounding the MW-2B Area, at a depth of approximately three (3) to six (6) feet below ground surface. Subsequent environmental investigations, as identified below, have detected PAHs in other areas of the Premises.

The DEC has determined that the PAHs at the Premises may pose a risk to humans in a scenario where future use includes invasive activities at the Premises. To address this concern, as part of the DEC's selected remedy under the ROD, a restriction was placed on the Premises indicating the presence of in-place soils contaminated by PAHs. The declarations by I-R in the Declaration satisfied and the restrictions, covenants and notices contained in this Deed are intended to satisfy the elements of the ROD's selected remedy and minimize the potential for

future human exposure.

In April, 2004, the Grantee, as part of its due diligence investigation in connection with acquisition of the Premises, performed supplemental environmental investigations. Soil borings were installed to delineate and characterize the extent of PAHs within the MW-2B Area. Samples of the soil fill material were also collected as part of a pre-construction geotechnical study. Results of the investigations indicated that fill material contained elevated concentrations of PAHs that exceed the NYSDEC TAGM soil clean-up objectives. The fill material also contained elevated nickel, magnesium and zinc at concentrations that exceeded typical background soils concentrations. Documentary and further information with respect to such environmental investigation can be obtained from DEC's Region 8 office in Avon, New York.

In June 2004 through November 2004, Grantee caused to be conducted additional environmental investigations at the Premises, including a remedial investigation in connection with Grantee's application to DEC in regard to the DEC's Brownfield Cleanup Program. The remedial investigation included surface and subsurface soil/fill sampling and groundwater sampling at the Premises. Documentation and further information with respect to such investigations can be obtained from DEC's Region 8 Office in Avon, New York. The deed restrictions which are a part hereof are intended to supplant the above referenced restriction and contemplates a certain level of development at the Premises, in concert with a remedial action plan and related soil management plan, all of which is in connection with the DEC's Brownfield Cleanup Program and consents and approvals related thereto.

W.D.

SCHEDULE D - REMEDIAL WORK PLAN

Attached hereto

**MALCOLM
PIRNIE**

Soil/Fill Management Protocols

APPENDIX**A**

The objective of this Soil/Fill Management Plan (SFMP) is to set guidelines for management of soil material during any activities, which would breach the cover system. The SFMP is a portion of the overall remedy, which addresses disturbance/use of any residually contaminated soil fill left on the Site, after other elements of the remedy have been implemented. This SFMP addresses environmental concerns related to soil/fill management. This SFMP is not intended to serve as a design document for construction activities related to redevelopment activities. It is the developer's responsibility to prepare a design that incorporates the requirements for cover and soil management as set forth in this SFMP.

A.1 Excavation and Handling of On-Site Soil/Fill

No excavation, grading or disturbance of the final vegetated soil cover or existing subgrade soil/fill shall be initiated prior to a minimum of three working days notification to the NYSDEC Region 8, Division of Environmental Remediation. A Professional Engineer with remedial investigation experience, representing the subject property owner or developer will oversee soil/fill excavations or disturbances. The excavation activities will be conducted in accordance with the protocols detailed herein.

All on-site soil/fill will be presumed to contain metals and PAHs and will be handled in accordance with the provisions of this SFMP. Although a number of environmental investigations have been conducted at the Site to characterize the nature and extent of contamination, the nature of investigations does not allow for a 100 percent complete or accurate characterization. It is possible that some quantity of unsuspected contamination may be encountered during redevelopment activities. Therefore, as a safeguard for unknown or

unsuspected contamination presence, during excavation, all soil/fill will be visually inspected for staining and will be field screened for the presence of volatile organic compounds (VOCs). A photoionization detector (PID) will be used to check for VOCs. Visual observation will be sufficient to identify stained soils. Stained soil is soil that is discolored, tinted, dyed, unnaturally mottled, or contains a sheen. Attachment II contains a Standard Operating Procedure for Soil Screening. Excavated soil/fill that is visibly stained or produces elevated PID readings (i.e., sustained 10 PPM or greater) will be considered potentially contaminated and stockpiled separately on-site for further assessment. The potentially contaminated soil/fill will be stockpiled (in maximum 100 cubic yard piles) on polyethylene sheeting and then sampled to determine its ultimate disposition; viz., reuse or off-site disposal. The stockpiled potentially contaminated soil/fill will also be completely covered using polyethylene sheeting to reduce particle runoff and entrain dust. Sampling and analysis will be completed in accordance with the protocols delineated in Section A.2. Soil/fill containing one or more constituents in excess of the site-specific action levels (SSALs) shown in Table A-1 will be transported off-site to a permitted waste management facility. Soil/fill awaiting analytical results or awaiting transportation will be stored continuously on-site under polyethylene sheeting.

Any soil/fill with a pH higher than 12.5 is considered hazardous and therefore must be properly disposed off-site. Additionally, any soil/fill with a pH greater than 9.0 but less than 12.5 may be reused on-site but only to fill in areas below grade. This soil/fill may not be used as backfill in utility trenches or to create berms or other above grade mounds. This soil/fill must also be covered with clean material in accordance with Section 3.2 of the Remedial Work Plan.

If buried drums or underground storage tanks are encountered during soil excavation activities, excavation will cease and the NYSDEC will be immediately notified. All drums and/or underground storage tanks encountered will be evaluated and the Owner will submit a removal plan for NYSDEC approval. Appropriately trained personnel will excavate all of the drums and/or underground storage tanks while following all applicable federal, state, and local regulations. Removed drums and underground storage tanks will be properly characterized and disposed off-site. The soil/fill surrounding the buried drums or underground storage tanks will be considered as potentially contaminated and will be stockpiled and characterized.

MALCOLM
PIRNIE

TABLE A-1
SITE SPECIFIC ACTION LEVELS
SOIL/FILL HANDLING PLAN
FORMER INGERSOLL-RAND FOUNDRY SITE
PAINTED POST, NEW YORK

Sample Location Sampling Depth (ft. bgs) Collection D	NYSDEC TAGM 4046 ⁽¹⁾	Eastern USA Background Concentrations ⁽²⁾	Maximum Concentration Detected ⁽³⁾	Average Concentration Detected	Frequency of Detections	Proposed Site Specific Action Level (SSAL)
TAL Inorganic Analytes (mg/kg)						
Arsenic	7.5 or SB	3 - 12	14.50	5.25	30 / 31	50 ⁽⁴⁾
Cadmium	1 or SB	0.1 - 1	2.80	0.59	31 / 31	20 ⁽⁴⁾
Chromium	10 or SB	1.5 - 40	554	48.3	31 / 31	500 ⁽⁴⁾
Copper	25 or SB	1 - 50	327	43.2	31 / 31	200
Mercury	0.1	0.001 - 0.2	0.33	0.06	26 / 31	1.0 ⁽⁴⁾
Nickel	13 or SB	0.5 - 25	164	26.2	31 / 31	100
Total Cyanide	NA	NA	1.67	0.08	1 / 22	50 ⁽⁴⁾
Zinc	20 or SB	9 - 50	216	76.1	31 / 31	500
Pest/PCBs (ng/kg)						
Total Pesticides	10	NA	0.0	0	0 / 22	10,000 ⁽⁴⁾
Total PCBs (Surface - 1.0')	1,000	NA	2,400	413	3 / 7	1,000 ⁽⁴⁾
Total PCBs (Subsurface > 1.0')	10,000	NA	480	91	4 / 15	10,000 ⁽⁴⁾
Semi-Volatile Organic Compounds - SVOCs (mg/kg)						
Total SVOCs	500,000	NA	143,700	25,969	51 / 54	500,000 ⁽⁴⁾
Volatile Organic Compounds - VOCs (mg/kg)						
Total VOCs	10,000	NA	19.5	4.1	15 / 22	10,000 ⁽⁴⁾

Notes:

- (1) New York State Dept. of Environmental Conservation TAGM 4046, Recommended Soil Cleanup Objectives, Dec. 2000.
(2) TAL Inorganic Analytes from Eastern USA Background as shown in New York State Dept. of Environmental Conservation TAGM 4046, Dec. 2000.
(3) Maximum concentration detected during the subsurface investigation (MPI, April 2004) and the remedial investigation (MPI, October 2004).
(4) Site Specific Action Levels for Hanna Furnace former Railroad Yard Area (Subparcel 1), Soil Fill Handling Plan, as prepared by Malcolm Pirnie, February 2002. Action levels were negotiated and approved by NYSDEC.
NA - Not Available.
ND - Not Detected

All excavations or disturbances must be backfilled as soon as the work allows. Backfilled excavations must be covered with suitable cover material defined in Section 4.2 of the Remedial Action Work Plan) within ten working days of backfilling or as otherwise approved by the NYSDEC.

If no evidence of additional contamination is encountered through the screening during excavation activities, the excavated soil fill will be stockpiled as appropriate on site. No special provisions for separate handling are required other than the characterization defined in Section A.2.

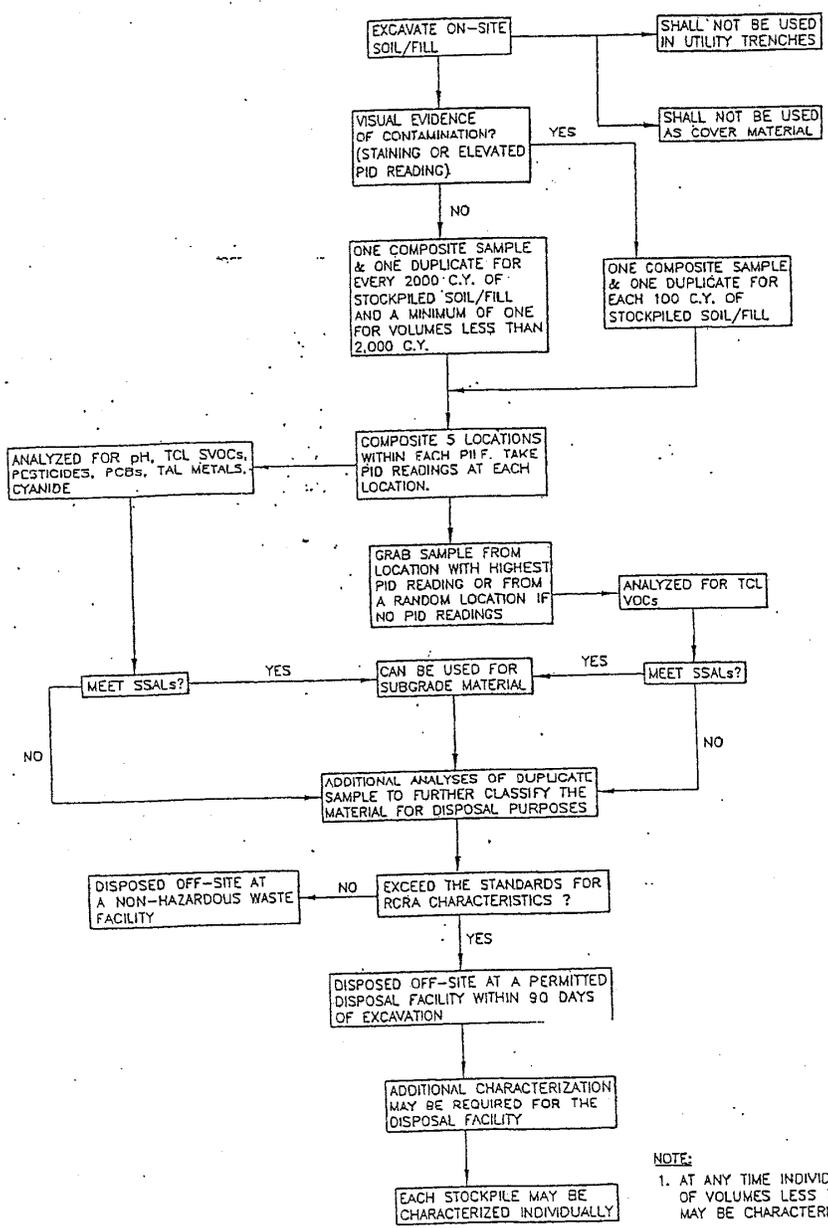
Excavated or disturbed backfill may be used as subgrade, excavation backfill or berm construction following characterization performed in accordance with Section A.2 if it meets the SSAL's presented in Table A-1.

A.2 Soil/Fill Sampling and Analysis Protocol

A soil/fill characterization flow chart is provided as Figure A-1. As stated in Section A.1, all excavated soil/fill that exhibits evidence of additional contamination through screening (staining or elevated PID measurements) will be stockpiled separately and sampled and classified for reuse or disposal. One composite soil sample will be collected for each 100 cubic yards of soil.

The composite sample will be collected in the manner described in the Standard Operating Procedures (SOPs) included in Attachment II, from five locations within each stockpile. PID measurements will be recorded for each of the five composite sample locations, and one grab sample and one duplicate sample will be collected from the location with the highest PID measurement of the five composite locations. The composite sample will be analyzed by a NYSDOH ELAP-certified laboratory for Target Compound List (TCL) semivolatile organic compounds (SVOCs), pesticides, and polychlorinated biphenyls (PCBs), and the metals arsenic, barium, cadmium, chromium, lead, mercury, selenium and silver plus cyanide using current NYSDEC Analytical Services Protocols (ASP). Additionally, pH will be analyzed using SW-846 Method 9045. The grab sample will be analyzed for TCL volatile organic compounds (VOCs).

FIGURE A-1
SOIL/FILL CHARACTERIZATION FLOW CHART



NOTE:
1. AT ANY TIME INDIVIDUAL STOCKPILES OF VOLUMES LESS THAN THOSE STATED MAY BE CHARACTERIZED INDIVIDUALLY.

Excavated soil/fill that exhibits no evidence of additional contamination (staining or elevated PID measurements) will also require characterization prior to use as subgrade or backfill at the site. Characterization samples will be collected and analyzed at a frequency of not less than one sample for 2000 cubic yards of soil/fill, and a minimum of one sample will be collected for volumes less than 2000 cubic yards. The characterization samples will be collected in accordance with the protocols described above; the sampling efforts shall consist of discrete samples for VOCs and composite samples collected from five locations for the remaining analytes.

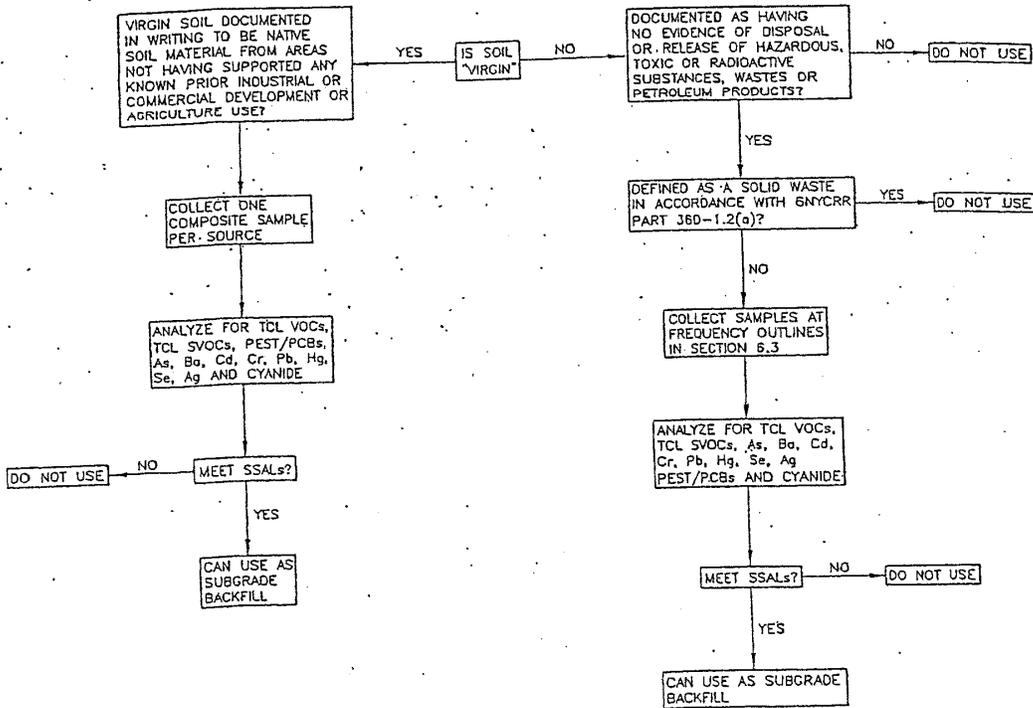
Any soil/fill that has been characterized and found to meet the SSALs may be reused as subgrade, excavation subgrade backfill, or for berm construction. If the analysis of the soil/fill samples reveals unacceptably high levels of any analytes (i.e., greater than one or more SSAL), additional analyses will be necessary to further classify the material for hazardous characteristics for disposal purposes. At a minimum, the duplicate sample will be analyzed using the Toxicity Characteristic Leaching Procedure (TCLP) for the particular analytes that were detected at concentrations exceeding the SSALs. The duplicate sample may also be analyzed for RCRA Characteristics including reactivity, corrosivity, and ignitability. If the analytical results indicate that concentrations exceed the standards for either TCLP or RCRA Characteristic analysis, the material will be considered a hazardous waste and must be properly disposed off-site at a permitted disposal facility within 90 days of excavation. Additional characterization sampling for off-site disposal may be required by the disposal facility. To potentially reduce off-site disposal requirements/costs, the owner or site developer may also choose to characterize each stockpile individually.

A.3 Subgrade Material

Subgrade material used to backfill excavations or placed to increase site grades or elevation shall meet the following criteria (see Figure A-2):

- Excavated on-site soil/fill shall either exhibit no evidence of contamination (staining and/or elevated PID measurements) or, if evidence of contamination is present,

FIGURE A-2
SUBGRADE MATERIAL FLOW CHART



NOTE:
1. AT ANY TIME INDIVIDUAL STOCKPILES OF VOLUMES LESS THAN THOSE STATED MAY BE CHARACTERIZED INDIVIDUALLY.

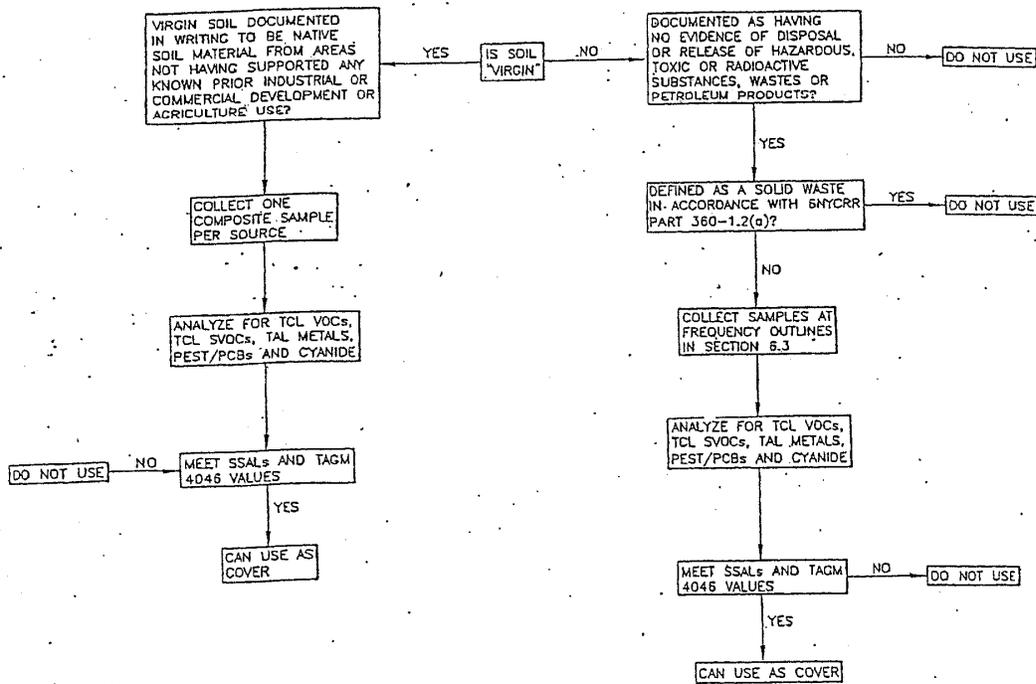
analytical results of the soil/fill indicate that the contaminants are present at concentrations below the SSALs.

- Off-site borrow soils will be documented as having originated from locations having no evidence of disposal or release of hazardous, toxic or radioactive substances, wastes or petroleum products.
- Off-site soils intended for use as site backfill cannot otherwise be defined as a solid waste in accordance with 6NYCRR Part 360-1.2(a).
- If the contractor designates a source as "virgin" soil, it shall be further documented in writing to be native soil material from areas not having supported any known prior industrial or commercial development or agricultural use.
- Virgin soils should be subject to collection of one representative composite sample per source. The sample should be analyzed for TCL VOCs, SVOCs, pesticides, PCBs, and the metals arsenic, barium, cadmium, chromium, lead, mercury, selenium and silver plus cyanide. The soil will be acceptable for use as backfill provided that all parameters meet the SSALs.
- Non-virgin source area soils will be tested via collection of one composite sample per 500 cubic yards of material from each source area. If more than 1,000 cubic yards of soil are borrowed from a given off-site non-virgin soil source area and both samples of the first 1,000 cubic yards meet the SSALs, the sample collection frequency will be reduced to one composite for every 2,500 cubic yards of additional soils from the same source, up to 5,000 cubic yards. For borrow sources greater than 5,000 cubic yards, sampling frequency may be reduced to one sample per 5,000 cubic yards, provided all earlier samples met the SSALs.

A.4 Final Cover

Surface coverage over the entire redeveloped parcel or subparcels will be required by the developer or owner as a pre-condition of occupancy. The purpose of the surface cover is to eliminate the potential for human contact with fill material. Surface coverage will consist of

FIGURE A-3
FINAL COVER MATERIAL FLOW CHART



NOTE:
1. AT ANY TIME INDIVIDUAL STOCKPILES OF VOLUMES LESS THAN THOSE STATED MAY BE CHARACTERIZED INDIVIDUALLY.

documented clean soil with vegetative cover, asphalt or concrete paving, or buildings with concrete floors.

The cover soil material shall meet the following criteria (see Figure A-3):

- Excavated on-site soil/fill shall not be used as cover material.
- Off-site borrow soils will be documented as having originated from locations having no evidence of disposal or release of hazardous, toxic or radioactive substances, wastes or petroleum products.
- Off-site soils intended for use as site cover cannot otherwise be defined as a solid waste in accordance with 6NYCRR Part 360-1.2(a).
- If the contractor designates a source as "virgin" soil, it shall be further documented in writing to be native soil material from areas not having supported any known prior industrial or commercial development or agricultural use.
- Virgin soils should be subject to collection of one representative composite sample per source. The sample should be analyzed for TCL VOCs, SVOCs, pesticides, PCBs, and TAL metals plus cyanide. The soil will be acceptable for use as cover material provided that all parameters meet the NYSDEC recommended soil cleanup objectives included in TAGM 4046.
- Non-virgin source area soils will be tested via collection of one composite sample per 500 cubic yards of material from each source area. If more than 1,000 cubic yards of soil are borrowed from a given off-site non-virgin soil source area and both samples of the first 1,000 cubic yards meet the TAGM 4046 criteria, the sample collection frequency will be reduced to one composite for every 2,500 cubic yards of additional soils from the same source, up to 5,000 cubic yards. For borrow sources greater than 5,000 cubic yards, sampling frequency may be reduced to one sample per 5,000 cubic yards, provided all earlier samples met the TAGM 4046 criteria.
- To reduce the potential for disturbance of the soil cover material, berms or mounds composed of clean soil will be constructed in areas in which trees and shrubs will be planted.

A.5 Erosion Controls

A.5.1 General Guidelines

When site development or remedial actions require the disturbance of more than five acres of land, federal and state laws¹ require that the project obtain coverage under the NYSDEC SPDES General Permit for Storm Water Discharges from Construction Activities that are classified as "Associated with Industrial Activity", Permit #GP-93-06 (Construction Storm Water General Permit). Requirements for coverage under the Construction Storm Water General Permit include the submittal of a Notice of Intent form and the development of a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP must fulfill all permit requirements and must be prepared in accordance with "Chapter Four: the Storm Water Management and Erosion Control Plan" in Reducing Impacts of Storm Water Runoff from New Development, NYSDEC, 1992. This Storm Water Management and Erosion Control Plan, in accordance with permit requirements, will provide the following information:

- A background discussion of the scope of the construction project.
- A statement of the storm water management objectives.
- An evaluation of post-development runoff conditions.
- A description of proposed storm water control measures.

¹ The Federal Water Pollution Control Act (as amended, 33 U.S.C. 1251 et. Seq.) and the New York State Environmental Conservation Law: Article 17, Titles 7 and 8 and Article 70.

- A description of the type and frequency of maintenance activities required to support the control measure.

The SWPPP will address issues such as erosion prevention, sedimentation control, hydraulic loading, pollutant loading, ecological protection, physical site characteristics that impact design, and site management planning. The SWPPP will also include a contingency plan to be implemented in the event of heavy rain events. All descriptions of proposed features and structures at the site will include a description of structure placement, supporting engineering data and calculations, construction scheduling, and references to established detailed design criteria. The SWPPP will conform to all requirements as established by applicable regulatory agencies.

Proven soil conservation practices will be incorporated in the construction and development plans to mitigate soil erosion damage, off-site sediment migration, and water pollution from erosion. These practices combine vegetative and structural measures. Many of these measures will be permanent in nature and become part of the completed construction project (design features such as drainage channels and grading). Other measures will be temporary and serve only during the construction stage. The contractor will remove temporary measures at the completion of construction. The selection of erosion and sediment control measures will be based on several general principles, including:

- The minimization of erosion through project design (maximum slopes, phased construction, etc.).
- The incorporation of temporary and permanent erosion control measures.
- The removal of sediment from sediment-laden storm water before it leaves the site.

The generic erosion and surface water control plan included in Attachment III details typical methods of erosion control that must be followed during site redevelopment activities. As described in Attachment III, a specific erosion and surface water control plan must be created prior to implementation of redevelopment activities. The use of appropriate temporary erosion control measures such as silt fencing and/or hay bales will be required around all soil/fill

stockpiles and unvegetated soil surfaces during redevelopment activities. These methods are described below, and Attachment IV includes details for various erosion control measures that might be used during site redevelopment activities. Stockpiles shall be graded and compacted as necessary for positive surface water runoff and dust control. Stockpiles of soil/fill will be placed a minimum of fifty feet from the boundaries.

A.5.2 Temporary and Permanent Erosion Control Measures

A.5.2.1 Temporary Measures

Temporary erosion and sedimentation control measures and facilities will be employed during active construction stages. Prior to any construction activity, temporary erosion and sediment control measures shall be installed and maintained until they are no longer needed, or until such time that permanent erosion control measures are installed and effective. Additional sediment control measures may also be necessary. Structural measures, as described below, will be designed and installed to provide the required sediment and erosion control. The following temporary measures will be incorporated into construction activities:

- Silt fencing.
- Straw bales.
- Temporary vegetation/mulching.

A.5.2.1.1 Silt Fencing

Regrading and capping activities may result in sheet flow to various areas of the site; therefore, silt fencing will be used as the primary sediment control measure. Prior to extensive clearing, grading, excavation, and placement of cover soils, silt fences will be installed along all construction perimeter areas to prevent sedimentation in low areas and drainage areas. The location and orientation of silt fencing to be used during redevelopment operations will be field determined. There may be breaks and overlaps in the silt fencing to allow construction vehicles access to the construction areas.

Intermediate silt fencing will be used upslope of perimeter areas where phased construction activities are occurring. This measure will effectively lower sheet flow velocities and reduce sediment loads to perimeter fencing. In addition, silt fencing around soil stockpiles will be employed.

As sediment collects along the silt fences, they will be cleaned to maintain desired roval performance and prevent structural failure of the fence. Removed sediment will be disposed on-site as general fill in a designated area. The perimeter silt fences will remain in place until construction activities in the area are completed and vegetative cover or other erosion control measures are adequately established. Silt fences will be provided and installed in accordance with the details presented in Attachment IV.

A.5.2.1.2 Straw Bales

Straw bales will be used to intercept sediment-laden runoff from storm water channels as needed during various phases of construction. Additional straw bale dikes may be necessary in some areas during some phases of construction.

Use of straw bales will be limited to swales and/or diversion ditches where the anticipated flow velocity will not be greater than 5 feet per second (fps). Where flows may eventually exceed 5 fps along a swale or diversion ditch, an intermediate straw bale barrier will be installed upgradient of the final bale barrier. The intermediate bale barrier will effectively reduce flow velocities and sediment load to the final barrier.

As with the silt fencing, sediment will be removed to maintain performance and prevent overtopping or failure of the straw bale barrier. Removed sediment will be disposed of on-site as general fill in a designated area. Sediment laden straw bales that have lost their structural integrity and/or effectiveness will be disposed of off-site as a solid waste. Straw bale barriers will remain in place until construction activities contributing sediment to the barrier are complete and vegetative cover or other erosion control measures are adequately established. Straw bales will be provided and installed in accordance with the details presented in Attachment IV.

A.5.2.1.3 Temporary Vegetation and Mulching

As a result of phased construction and split construction schedule, portions of the site may be left in intermediate/incomplete conditions. Intermediate areas may include rough graded areas awaiting finer grading or areas awaiting topsoil placement. Intermediate areas where activities will not resume for a period in excess of two weeks shall be seeded with a quick germinating variety of grass or covered with a layer of straw mulch.

The temporary cover will act to stabilize the soil and reduce erosion. As construction progresses, areas containing temporary vegetation or straw mulch can be covered without removal of the temporary vegetation or mulch.

A.5.2.2 Permanent Control Measures

Permanent erosion control measures and facilities will be incorporated during cover construction and during site redevelopment for long-term erosion protection. Permanent measures and facilities will be installed as early as possible during construction phases. Parking and building systems associated with redevelopment shall not include dry wells or other subsurface injections/disposal piping or facilities.

A.5.2.2.1 Design Features

The remedial construction activities will involve the installation of cover system including asphalt, concrete, or clean fill over the entire site. Permanent erosion control measures incorporate a combination of design features to limit overall erosion and sediment problems to practical design limits, and the placement of permanent facilities during site restoration for long-term erosion protection. The soil cover system will be designed based on the following criteria:

- Maximum slope of 33% (3H: 1V) to limit erosion.
- Minimize the potential contact with, and migration of, waste fill.
- Provide a medium for the growth of vegetation to control erosion.

Design features incorporated into the construction plans to control erosion will include limiting steep slopes, routing runoff to surface water collection channels, limiting flow velocities in the collection channels to the extent practical, and lining collection channels, where appropriate. In areas where flow will be concentrated (i.e; collection channels) the channel slopes and configuration will be designed to maintain channel stability.

A.5.2.2.2 Construction Features

Any final slopes greater than 25 percent will be reinforced or have a demarcation layer under the clean cover to indicate if erosion has extended into the subgrade. Following the placement of final cover soils over regraded areas, a revegetation program will be implemented to establish permanent vegetation. Vegetation serves to reduce erosion, enhance evapotranspiration, and improve runoff water quality. The areas to be grassed will be seeded in stages as construction is completed with 70 lbs./acre of seed conforming to the mix included in 3.2.1 of the Remedial Work Plan. In addition to the above seed mixture, mulch, mulch blankets, or synthetic fabric will be placed to prevent erosion during turf establishment. Mulch will be placed on all slopes less than 15% and a mulch blanket on all slopes greater than 15%. Synthetic erosion control fabric will be placed in drainage ditches and swales. As an aid to turf establishment, seeded areas will be fertilized with a starter fertilizer.

A.6 Dust Controls

The surface of unvegetated or disturbed soil/fill areas will be wetted at all times with water or other dust suppressive agents to control dust during construction. There shall be no visible dust generated during redevelopment activities. Any subgrade material left exposed during extended interim periods (greater than 90 days) prior to placement of final cover shall be covered with a temporary cover system (i.e., tarps, spray type cover system, etc.) or planted with vegetation to control fugitive dust to the extent practicable. Particulate monitoring will be performed along the downwind occupied perimeter of parcels during subgrade excavation, grading, and handling activities in accordance with the Community Air Monitoring Plan further detailed in Section 4.2.

Dust suppression techniques will be employed at the site in accordance with NYSDEC TAGM 4031 (Fugitive Dust Suppression and Particulate Monitoring Program at Inactive Hazardous Waste Sites). This TAGM describes guidance for dust monitoring, and includes a list of effective dust suppression techniques. Dust monitoring is more fully described in Section A.12.2 (Community Air Monitoring Program). As per TAGM 4031, dust suppression techniques that may be used at the site include applying water on roadways, wetting equipment, spraying water on buckets during excavation and dumping, hauling materials in properly covered or watertight containers, covering excavated areas and material after excavation activity ceases, establishing vegetative cover immediately after placement of cover soil, and reducing the excavation size and/or number of excavations.

A.7 Construction Water Management

Pumping of water (i.e., groundwater and/or storm water that has accumulated in an excavation) from excavations, if necessary, will be done in such a manner as to prevent the migration of particulates, soil/fill, or unsolidified concrete materials, and to prevent damage to the existing subgrade. Water pumped from excavations will be managed properly in accordance with all applicable regulations so as to prevent endangerment of public health, property, or any portion of the construction.

The groundwater in excavations will be field screened for VOCs and observed for any noticeable sheens. Water in the excavations will not be discharged to the ground surface if:

- Staining or PID measurements above background are observed in the excavation, or
- A sheen is present on the water surface.

If any of these conditions exist, the water pumped from the excavations will be containerized and analyzed in accordance with the Surface Water and Groundwater quality Standards set forth in 6 NYCRR Part 703.5 and the local sewer authority discharge permit. If the water meets the surface water and groundwater quality standards, it may be discharged to the ground surface. If the water does not meet the surface water and groundwater quality standards, it may

be discharged to the local sewer authority under a discharge permit. If the water quality is such that the local sewer authority discharge permit requirements will be exceeded, or the local sewer authority will not approve the discharge to a sewer, it will be transported off-site for proper disposal or treated on-site via a treatment system that has been approved by NYSDEC.

Runoff from surface discharges shall be controlled. No discharges shall enter a surface water body without proper permits.

A.8 Fencing And Access Control

Access to soil/fill on the site must be controlled until final cover is placed to prevent direct contact with subgrade materials. To better control site access, obvious access points will be gated. All gates and existing fencing will be posted with "No Trespassing" signs. The majority of the site will be covered with clean fill or vegetated via hydroseeding to limit dust generation.

A.9 Property Use Limitations

The use of the property will be restricted through verbiage in the Brownfield Cleanup Agreement, to which this Remedial Action Work Plan will be attached.

A.10 Notification and Reporting Requirements

The following minimum notification and reporting requirements shall be followed by the property owner prior to and following site development, as appropriate:

- The NYSDEC and NYSDOH will be notified that subgrade activities are being initiated a minimum of five working days in advance of construction.
- A construction certification report stamped by a New York State licensed Professional Engineer, will be prepared and submitted to the NYSDEC and NYSDOH within 90 days after development of each parcel or subparcel. At a minimum, the report will include:

- An area map showing the parcel or subparcel that was developed and the property's tax map number.
- A topographic map of the developed property showing actual building locations and dimensions, roads, parking areas, utility locations, berms, fences, property lines, sidewalks, green areas, contours and other pertinent improvements and features. The topographic map will be stamped by a New York State licensed surveyor.
- Plans showing areas and depth of fill removal.
- Description of erosion control measures.
- A text narrative describing the excavation activities performed, health and safety monitoring performed (both site specified and Community Air Monitoring), quantities and locations of soil/fill excavated, disposal locations for the soil/fill, soil sampling locations and results, a description of any problems encountered, location and acceptability test results for backfill sources, and other pertinent information necessary to document that the site activities were carried out properly.
- Plans showing before and after survey elevations on a 100-foot grid system to document the thickness of the clean soil cover system.
- A certification that all work was performed in conformance with the SFMP.

A.11 Quality Assurance and Quality Control (QA/QC)

A.11.1 Analytical Methods

All site soil/fill characterization samples collected during site redevelopment activities will be analyzed using EPA-approved analytical methods using the most recent edition of the EPA's "Test Methods for Evaluating Solid Waste" (SW-846). Methods for Chemical Analysis of Water and Wastes "(EPA 600/4-79-020), Standard Methods for Examination of Waste and Wastewater" (prepared and published jointly by the American Public Health Association, American Waterworks Association and Water Pollution Control Federation).

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A.11.2 Laboratory

The laboratory proposed to perform the analyses will be certified through the New York State Department of Health Environmental Laboratory Approval Program (ELAP) to perform Contract Laboratory Program (CLP) analysis and Solid Waste and Hazardous Waste Analytical testing on all media to be sampled during this investigation. The laboratory will maintain this certification for the duration of the project.

A.11.3 Data Submittal

The laboratory will perform the analysis of samples in accordance with the most recent (year 2000) NYSDEC Analytical Services Protocol (ASP). Analytical data will be submitted in complete ASP Category B data packs including documentation of laboratory QA/QC procedures that will provide legally defensible data in a court of law. If requested, the Category B data packs will be submitted to the NYSDEC.

Procedures for chain of custody, laboratory instrumentation calibration, laboratory analyses, reporting of data, internal quality control, and corrective actions shall be followed as per SW-846 and as per the laboratory's Quality Assurance Plan. Where appropriate, trip blanks, field blanks, field duplicates, and matrix spike, matrix spike duplicate shall be performed at a rate of 10% and will be used to assess the quality of the data. The laboratory's in-house QA/QC limits will be utilized whenever they are more stringent than those suggested by the EPA methods.

A.11.4 Data Usability Summary Reports

After receipt of analytical results, the data package will be sent to a qualified, third party, data validation specialist for evaluation. A Data Usability Summary Report (DUSR) will be prepared. The DUSR will provide a determination of whether or not the data meets the project specific criteria for data quality and data use.

A.12 Health and Safety Procedures for Intrusive or Maintenance Activities

A.12.1 Construction Personnel Protection

Contractors engaged in subsurface (invasive) construction or maintenance activities (e.g., foundation and utility workers) will be required to implement appropriate health and safety procedures. These procedures will involve, at a minimum, donning adequate personal protective equipment, performing appropriate air monitoring, and implementing other engineering controls as necessary to mitigate potential ingestion, inhalation and contact with residual constituents in the soils. A site-specific, activity-specific health and safety plan must be prepared by the contractor prior to on-site construction activities. Recommended health and safety procedures include the following:

- While conducting invasive work at the site, the Contractor shall provide working conditions on each operation that shall be as safe and healthful as the nature of that operation permits. The Contractor shall comply with all New York State Department of Labor regulations and published recommendations and regulations promulgated under the Federal Occupational Safety and Health Act of 1970 and the Construction Safety Act of 1969, as amended, and with laws, rules, and regulations of other authorities having jurisdiction. Compliance with governmental requirements is mandated by law and considered only a minimum level of safety performance. The Contractor shall insure that all work is performed in accordance with recognized safe work practices.
- The Contractor shall be responsible for the safety of the Contractor's employees, the public and all other persons at or about the site of the work. The Contractor shall be solely responsible for the adequacy and safety of all construction methods, materials, equipment and the safe prosecution of the work.
- The Contractor shall have a written health and safety plan (HASP) prepared, signed and sealed by a safety professional; a safety professional and/or a trained safety representative(s) active on the job whenever the work is in progress; an effective and documented safety training program; and a safety work method check list system.

- The Contractor shall stop work whenever a work procedure or a condition at a work site is deemed unsafe by the safety professional or his trained safety representative(s).
- The Contractor shall employ a properly qualified safety professional whose duties shall be to initiate, review and implement measures for the protection of health and prevention of accidents. The Contractor shall also employ safety representative(s) whose duties, working under the direct supervision of the safety professional, shall include the implementation the safety program for the work at the site.
- Recognition as a safety professional shall be based on a minimum of certification by the Board of Certified Safety Professionals as a Certified Safety Professional and 5 years of professional safety management experience in the types of construction and conditions expected to be encountered on the site.
- The safety representative(s) who will work under the direction of the safety professional will have appropriate qualifications. The required qualifications shall include a minimum of: five years of relevant construction experience, two years of which were exclusively in construction safety management; successful completion of a 30-hour OSHA Construction Safety and Health training course; 40-hour training as per 29 CFR 1926.65, Hazardous Waste Operations and Emergency Response; and, if confined space entry is required, training as per 29 CFR 1910.146, Permit-Required Confined Spaces.
- The safety professional shall visit and audit all work areas as often as necessary but at least once each week and shall be available for consultation whenever necessary.
- The safety representative(s) must be at the job site full-time (a minimum of 8 hours per working day) whenever intrusive work is in progress. When multiple shift work is in progress more than one safety representative may be required.
- The safety professional and his safety representative(s) shall be responsible for ensuring Contractor compliance with governing laws, rules and regulations as well as of good safety practice.
- The safety staff shall maintain and keep available safety records, up-to-date copies of all pertinent safety rules and regulations, Material Safety Data Sheets, and the Contractors' site specific health and safety plans (HASPs) and the site emergency response plan with emergency and telephone contacts for supportive actions.

- The responsible safety professional shall sign and seal the Contractor's written site-specific HASP and the Plan shall be available to workers on site. The Contractor shall provide copies of the HASP to the Contractors' insurer, if required.
- The HASP will identify and define the following: the hazards anticipated for each major invasive task; the engineering, administrative and/or personal protective equipment control measures that will be implemented; the surveillance methods, and schedules of both walk through surveys and in-depth safety audits to be performed on site; medical monitoring and screening methods; the Contractors' pre-start-up and continuous safety-training program; emergency response equipment, notification, training and procedures; and include copies of safety inspection check-off sheets, specific to the work methods and crews performing work at the various job locations, to be used on a regular basis in evaluating the site and work methods.
- The safety professional and/or his trained safety representative(s) shall as a minimum:
 - Schedule and conduct safety meetings and safety training programs as required by law, the health and safety plan, and good safety practice. A specific schedule of dates of these meetings and an outline of materials to be covered shall be provided with the health and safety plan. All employees shall be instructed on the recognition of hazards, observance of precautions, of the contents of the health and safety plan and the use of protective and emergency equipment.
 - Determine that operators of specific equipment are qualified by training and/or experience before they are allowed to operate such equipment.
 - Develop and implement emergency response procedures. Post the name, address and hours of the nearest medical doctor, name and address of nearby clinics and hospitals, and the telephone numbers of the appropriate ambulance service, fire, and the police department.
 - Post all appropriate notices regarding safety and health regulations at locations that afford maximum exposure to all personnel at the job site.
 - Post appropriate instructions and warning signs in regard to all hazardous areas or conditions that cannot be eliminated. Identification of these areas shall be based on

experience, on site surveillance, and severity of hazard. Such signs shall not be used in place of appropriate workplace controls.

- Ascertain by personal inspection that all safety rules and regulations are enforced. Make inspections at least once a shift to ensure that all machines, tools and equipment are in a safe operating condition; and that all work areas are free of hazards. Take necessary and timely corrective actions to eliminate all unsafe acts and/or conditions, and submit to the Engineer each day a copy of his findings on the inspection check list report forms established in the health and safety plan.
- Provide safety training and orientation to authorized visitors to ensure their safety while occupying the job site.
- Perform all related tasks necessary to achieve the highest degree of safety that the nature of the work permits.
- The Contractor shall have proper safety and rescue equipment, adequately maintained and readily available, for foreseeable contingencies. This equipment may include such applicable items as: proper fire extinguishers, first aid supplies, safety ropes and harnesses, stretchers, water safety devices, oxygen breathing apparatus, resuscitators, gas detectors, oxygen deficiency indicators, combustible gas detectors, etc. This equipment should be kept in protected areas and checked at scheduled intervals. A log shall be maintained indicating who checked the equipment, when it was checked, and that it was acceptable. This equipment log shall be updated monthly and be submitted with the monthly report. Equipment that requires calibration shall have copies of dated calibration certificates on site. Substitute safety and rescue equipment must be provided while primary equipment is being serviced or calibrated.
- All personnel employed by the Contractor or his subcontractors or any visitors whenever entering the job site, shall be required to wear appropriate personal protection equipment required for that area. The Contractor may remove from the site any person who fails to comply with this or any other safety requirement.
- Because water with elevated pH may act as a skin irritant, care must be taken to inhibit dermal contact when handling any groundwater at the site. Actions to inhibit

contact with groundwater may include the use of latex or other waterproof gloves by on-site workers.

A.12.2 Community Air Monitoring Program

Ambient air monitoring will be conducted by the Professional Engineer monitoring the work on a real-time basis during all subsurface construction activities using a minimum of a photoionization detector and a dust meter. Battery charge level for each instrument will be checked at the beginning and end of each day. The instruments will be calibrated at a frequency recommended by the manufacturer. All air monitoring readings will be recorded in a logbook and will be available for review by the NYSDEC and New York State Department of Health (NYSDOH).

Baseline conditions will be measured at proposed intrusive activity locations prior to commencement of operations. Air quality within the work zone will be monitored in accordance with the site-specific health and safety plan created by the site developer or contractor. In addition to monitoring the work area for worker health and safety, volatile organic compounds will be monitored at the downwind perimeter of the work area every hour. If downwind perimeter organic vapor levels exceed five parts per million (ppm) above the upwind work area perimeter concentrations, the Vapor Emission Response Plan will be implemented.

As described in Section A.6, appropriate dust suppression techniques will be employed at all times during site redevelopment activities. Using a dust meter, particulates will be continuously monitored immediately downwind in the work area and integrated over a period not to exceed 15 minutes. If the downwind particulate level is more than 150 ug/m^3 , then upwind (background) levels must be measured immediately. If the downwind levels are more than 100 ug/m^3 above background, additional dust suppression measures must be taken.

A.12.1.1 Vapor Emission Response Plan

If the downwind area perimeter air concentrations of organic vapors exceed the upwind work area perimeter concentration by 5 ppm but less than 25 ppm, the following actions will be taken:

- Every 30 minutes monitor the perimeter work area location.
- Every 30 minutes monitor the organic vapor concentration 200 feet downwind of the work area perimeter or half the distance to the nearest receptor, whichever is less. If this reading exceeds the perimeter work area upwind organic vapor concentration by 5 ppm, all work must halt and monitoring increased to every 15 minutes. If, at any time, this reading exceeds the perimeter work area upwind concentration by 10 ppm, the Major Vapor Emissions Response Plan will be initiated.
- If organic vapor levels 200 feet downwind of the perimeter work area or half the distance to the nearest downwind receptor, whichever is less, exceeds by 5 ppm the work area perimeter upwind concentration persistently, then air quality monitoring must be performed within 20 feet of the nearest downwind receptor (20-foot zone). If the readings in the 20-foot zone exceed the perimeter work area upwind concentration by 5 ppm for more than 30 minutes, then the Major Vapor Emissions Response Plan will be implemented.
- Work activities can resume only after the downwind 200-foot reading and the 20-foot zone reading are less than 5 ppm above the perimeter work area upwind concentration. In addition, the downwind perimeter work area concentration must be less than 25 ppm above the perimeter work area upwind concentration.

A.12.2.2 Major Vapor Emission Response Plan

If the downwind work area perimeter organic vapor concentration exceeds the upwind work area perimeter concentration by more than 25 ppm, then the Major Vapor Emission Response Plan will be activated. Upon activation, the following activities will be undertaken:

1. All work will halt.
2. All Emergency Response Contacts as listed in the Health and Safety Plan will be contacted.

3. The NYSDEC, NYSDOH, and the Steuben County Health Department will be notified and advised of the situation.
4. The local police and fire department authorities will immediately be contacted by the Safety Officer and advised of the situation.
5. Frequent air monitoring will be conducted at 30-minute intervals within the 20-Foot Zone. If two successive readings below action levels are measured, air monitoring may be halted or modified by the Safety Officer and work may resume

EXHIBIT 11 – NOTICE TO NYSDEC AND NYSDOH UNDER THE BARGAIN AND SALE
DEED FOR THE FORMER INGERSOLL RAND SITE [324- 327]

HARRIS BEACH ^{PLC}
ATTORNEYS AT LAW

99 GARNSEY ROAD
PITTSFORD, NY 14534
(585) 419-8800

JOSEPH D. PICCIOTTI

DIRECT: (585) 419-8629
FAX: (585) 419-8815
JPICCIOTTI@HARRISBEACH.COM

March 22, 2012

Via Federal Express

Bart Putzig
Hazardous Waste Remediation Bureau
New York State Department of Environmental Conservation
Region 8
6274 East Avon-Lima Road
Avon, New York 14414-9519

Geoffrey Laccetti
New York State Department of Health
Bureau of Environmental Exposure Investigation
Flanigan Square
547 River Street
Troy, NY 12180

Re: Notice of Excavation on the Former Ingersoll-Rand Foundry Site, Village of Painted Post, Steuben County, New York
DEC ID Site No.: 851012 Classification C ("the contamination identified at the Site has been properly remediated" in accord New York State Department of Environmental Conservation and the site was de-listed on 9/25/03)

Dear Messrs. Putzig and Laccetti:

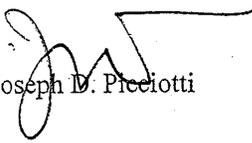
In accord with the August 1, 2005 bargain and sale deed (the "Deed") filed for the referenced site, please treat this letter and its enclosures as the notice required to be given to the New York State Department of Environmental Conservation ("DEC") by the referenced site owner that construction activity, including excavation on the site will be undertaken pursuant to the enclosed. Further, in accord with the soil fill management plan for the site as provided for in the Deed, please also treat this letter and enclosures as fulfilling the five (5) day notice requirement under such plan to notify DEC and the New York State Department of Health concerning the intent by the facility operator to initiate excavation activities on the referenced site.

Yesterday I spoke to Mr. Putzig at DEC and at the time my understanding was that construction activities that involved excavation would likely not begin until the beginning of April, but I am told that excavation may begin as soon as the middle of next week or March 28, 2012.

HARRIS BEACH ^{PLLC}
ATTORNEYS AT LAW

Please call me in accordance with the enclosed if you have any questions.

Sincerely,



Joseph D. Picciotti

JDP:nac
Enclosures

Jim Charles, Esq DEC counsel
Timothy Schneider DEC Region 8
Bob Drew Hunt Architects, Engineers and Land Surveyors, P.C.

Notice Pursuant to the August 1, 2005 Bargain and Sale Deed for the Former Ingersoll- Rand Foundry Site: Excavation and Construction Pursuant to the Development and Operation of the proposed Transloading Facility

- I. **Site Name:** Transloading Facility on a Former Ingersoll-Rand Foundry Site (the "Site")
- II. **DEC Site ID No.** 851012 Classification C (Identified contamination at the site deemed to have been remediated in accordance with the applicable requirements and de-listed as of 9/25/03)

II. Contact Information of Person Submitting Notification:

Name: Joseph D. Picciotti, Esq, on behalf of the Site Owner Painted Post Development, LLC and the Village of Painted Post as member of Painted Post Development LLC

Address1: 99 Garnsey Road

Address2: Pittsford, New York 14534

Phone: (585) 419-8800 E-mail: jpicciotti@harrisbeach.com

III. Notification:

As required by the bargain and sale deed for the former Ingersoll-Rand Foundry Site, Steuben County, Painted Post, New York dated August 1, 2005 (the "Deed") (attached to the compendium of exhibits supplied herewith as Exhibit "A" is a copy of the Deed and pertinent attachments to it), this notification is provided pursuant to the Deed under section B subpart 2 requiring notification to the New York State Department of Environmental Conservation ("DEC") in the event of any planned excavation of surface or subsurface soils on the Site. In addition, pursuant to the soil fill management plan and protocol attached and made part of the Deed, please also treat this as notification to DEC and the New York State Department of Health that excavation of surface and subsurface soil associated with the project below may begin at the Site as soon as March 28, 2012.

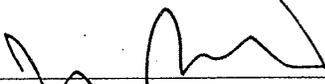
This further provides notice that as described in more detail below a facility (referred to hereafter as the "Transloading Facility," or "Facility") shall be constructed and operated on a portion of the Site. The operation of the Transloading Facility as described below is one of authorized uses prescribed under the Deed (see section A of the Deed), as the Facility constitutes an industrial use under the Village of Painted Post Zoning Law's classification for the Site, as it will be used to operate a whole sale business and warehousing including the sale of surplus municipal water. In addition, attached as Exhibit "B" to the compendium is the notice issued under the New York State Environmental Quality Review Act of the filing of a negative declaration for

the operation of the Facility on a portion of the Site under a lease agreement with the facility operator.

IV. Description:

As set forth previously, a portion of the Site shall be developed and operated as the proposed Transloading Facility which will include the construction and operation of the following: (i) a filling/metering station and related improvements to be used for filling/metering of railroad cars with surplus water from the Village of Painted Post's Water Distribution System; (ii) the construction and operation of a rail siding on a portion of the Site and related improvements, including rail loading facilities to connect to the existing rail line along Chemung Street adjacent to the Site, and (iii) the acquisition and installation in and around the Site of certain machinery and equipment and other items of tangible property to be used to sell surplus municipal water, with such water to be drawn from Village water wells not located on the Site. See attached to the compendium as Exhibit "C" a copy of the engineering report for the Transloading Facility provided as part of the November 2011 draft Engineering Report issued by Hunt, Architects, Engineers & Land Surveyors, P.C. Moreover, see Exhibit "D" attached to the compendium submitted herewith, a site plan for the Facility.

In addition, in accordance with the Deed, the development, construction and operation of the Transloading Facility shall be undertaken in accordance with the soil fill management plan and shall be undertaken in accordance with other required stormwater control measures which shall be implemented by the Facility operator pursuant to the lease for the Facility to be constructed at the Site, see Exhibit "E" to the compendium (copies of pertinent portions of the lease). Further, attached as Exhibit "F" to the compendium is a copy of pertinent portions of the Environmental Impairment Liability Insurance Policy binder issued for the Site.

Name: 

Joseph D. Picciotti
On behalf of Painted Post Development, LLC and the Village of Painted Post as the member of Painted Post Development

Dated: March 22, 2012
Pittsford, NY

**EXHIBIT 12 – SUSQUEHANNA RIVER BASIN CORRESPONDENCE CONCERNING
AUTHORIZATION FOR THE WITHDRAWAL OF SURPLUS WATER BY THE VILLAGE OF
PAINTED POST [328-334]**

From: Miller, Glenda [<mailto:gmillersrbc.net>]
Sent: Friday, April 15, 2011 2:51 PM
To: Larry Smith
Subject: RE: SRBC approval for Shell

Larry Smith:

Shell is approved to use the Village of Painted Post for the 0.5000 mgd amount.

Regards,
Glenda

Glenda Miller

Supervisor - Approval By Rule Program
Susquehanna River Basin Commission

From: Larry Smith [<mailto:ppdpw@stny.rr.com>]
Sent: Friday, April 15, 2011 2:44 PM
To: Miller, Glenda
Subject: Re: SRBC approval for Shell

Glenda:

Sorry about that.

Larry Smith, Supt of Public Works for the Village of Painted Post.

Glenda Miller

Supervisor - Approval By Rule Program
Susquehanna River Basin Commission

From: Larry Smith [<mailto:ppdpw@stny.rr.com>]

Sent: Friday, April 15, 2011 9:59 AM

To: Miller, Glenda

Subject: SRBC approval for Shell

Glenda:

Just wanted to confirm that Shell has been approved to withdraw up to .50 MGD from the Village of Painted Post Water System. I received an email from them saying they have been approved.

Thank You

Larry Smith, Supt. of Public Works

From: Larry Smith [mailto:ppdpw@stny.rr.com]
Sent: Thursday, February 03, 2011 1:20 PM
To: Ballaron, Paula
Subject: Re: SRBC Approval for the Village of Painted Post

Paula:

Thank you for all your assistance during this permit process.
 Larry

----- Original Message -----

From: Ballaron, Paula
To: twreed@yahoo.com
Cc: Zampogna, Damian ; ppdpw@stny.rr.com
Sent: Thursday, February 03, 2011 12:42 PM
Subject: SRBC Approval for the Village of Painted Post

Dear Congressman Reed,

The Commission approved the bulk purchase of up to 0.500 million gallons per day by Triana Energy, LLC, from the Village of Painted Post (NYS5001222), as indicated in the attached email. I have copied Larry Smith, Superintendent of Public Works of the Village so he is aware of the approval.

Under the Commission's Approval by Rule regulations, natural gas companies request approval to purchase water from a public water supplier. In the case of the Village of Painted Post where SRBC does not currently regulate the public water supply system, SRBC staff coordinates with NYSDEC in its review of the request to purchase bulk water. In the review, SRBC establishes that:

- There is sufficient excess capacity to support the requested bulk sale;
- There is an agreement in place between the natural gas company and the public water supplier;
- The public water supply system is in compliance with its permits (reporting meets requirements, allocated quantities not exceeded, water loss in the system is within acceptable range, etc.);
- The water for the bulk sale will come from the existing system and not require a modification under state regulations;
- The connection for the bulk sale will be fully metered and quantities monitored; and
- The request is administratively complete and otherwise acceptable.

The approval issued by SRBC does not insure that water will be available for purchase every day; the agreement between the gas company and the public water supplier dictates availability.

If you have additional questions about the approval, please feel free to contact me.

Paula Ballaron, P.G.
 Manager, Policy Implementation & Outreach
 Susquehanna River Basin Commission

From: Miller, Glenda <gmiller@srbc.net>
Sent: Monday, January 03, 2011 2:04 PM
To: Rachelle King
Cc: Beauduy, Tom; Richenderfer, Jim; suweaver@state.pa.us; johamilton@state.pa.us; rgilius@state.pa.us; mhartle@state.pa.us; cdeluca@state.pa.us; dagustini@state.pa.us; djostenski@state.pa.us; jbućzynski@state.pa.us; jamekline@state.pa.us; mdholt@gw.dec.state.ny.us; pbfreeha@gw.dec.state.ny.us; lacollar@gw.dec.state.ny.us; kfsanfor@gw.dec.state.ny.us; kplynch@gw.dec.state.ny.us
Subject: Triana Energy, LLC - Approved Source Application For The Use of Water Obtained From The Village of Painted Post - PWS #NY5001222

Effective January 3, 2010, and pursuant to 18 CFR Section 806.22(f)(12)(ii), the Susquehanna River Basin Commission (Commission) hereby approves the source application filed by Triana Energy, LLC (hereinafter "project sponsor"), for the use of water obtained from the Village of Painted Post (PWS #NY5001222), located in Painted Post, Steuben County, New York.

As a result of this approval, and pursuant to 18 CFR Section 806.22(f)(11), the project sponsor may utilize this source for natural gas development at any drilling pad site for which it has an effective Approval by Rule issued by the Commission, subject to any approval or authorization required by the Commission's (host) member state to utilize such source.

The project sponsor may obtain water from this source in an amount not to exceed the amount established in the commitment letter submitted as part of its approval. The project sponsor may only increase the committed amount with proper notification to and prior approval from the Commission.

The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from this source.

The project sponsor shall demonstrate to the Commission annually, by means of a commitment letter or other documentation acceptable to the Commission, that all sources approved under 18 CFR §806.22(f)(12)(ii) intend to continue to supply water to the project sponsor. The project sponsor shall notify the Commission, in writing, within two (2) weeks of any termination of source water agreements. The project sponsor may increase the committed amount with proper notification to and approval from Commission staff prior to any consumptive water use.

If you have any questions regarding the approval, please feel free to contact me at extension 227 or Eric Roof at extension 209.

Thank you,
 Glenda Miller

Glenda Miller

Supervisor - Approval By Rule Program
 Susquehanna River Basin Commission
 1721 North Front Street
 Harrisburg, PA 17102

717-238-0425 Ext. 227
Fax: 717-909-0468
www.srbc.net

From: Larry Smith [<mailto:ppdpw@stny.rr.com>]

Sent: Wednesday, March 07, 2012 1:14 PM

To: 'Miller, Glenda'

Cc: Richmond, Andrew SEPCO-UAO/Y/E; mpatel@HarrisBeach.com; Wright, Stephen A SEPCO-UAS/E/USON; ryorio@stny.rr.com; 'Rachelle King'

Subject: Village of Painted Post Reallocation of Water

Dear Glenda:

As discussed in our phone conversations this morning, attached for your use is a copy of the letter addressing the reallocation of the .50 MGD approved withdrawal from Triana Energy to the approved withdrawal of .50 MGD to SWEPI LP for a total withdrawal of 1.0 MDG.

Based on our conversation no other additional documents are required for this reallocation.

I am also mailing out a hard copy to you today.

If you have any questions please contact me as soon as possible.

Thank You.

Larry Smith, Supt. Of Public Works

NOTICE OF MOTION OF RESPONDENTS THE VILLAGE OF PAINTED POST, PAINTED
POST DEVELOPMENT, LLC AND SWEPI, LP, DATED AUGUST 3, 2012 [335- 337]

STATE OF NEW YORK
SUPREME COURT COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

For a Judgment under Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

NOTICE OF MOTION
OF RESPONDENTS
THE VILLAGE OF
PAINTED POST,
PAINTED POST
DEVELOPMENT, LLC
AND SWEPI, LP

Index No. 2012-0810

Motion by:

Respondents the Village of Painted Post (the
"Village"), Painted Post Development, LLC and
SWEPI, LP (collectively, the "Moving
Respondents").

Date, Time and Place of Hearing:

August 20, 2012, at 9:30 a.m., at the Steuben
County Supreme Court, 3 East Pulteney Square,
Bath, New York 14810.

Supporting Papers:

Verified Answer and Objections in Point of Law,
dated August 3, 2012, the Affidavit of Roswell
Crozier, together with the exhibits attached
thereto, sworn to August 1, 2012, the Affidavit of
Larry E. Smith, together with the exhibits attached
thereto, sworn to August 1, 2012, the Affidavit of
Robert Drew, together with attached exhibits,
sworn to on August 1, 2012, the Affidavit of
William Myles, sworn to on August 2, 2012, the
Affidavit of Anne Names, sworn to on August 1,
2012, the Affidavit of William Gough, sworn to
on August 1, 2012, the accompanying
Memorandum of Law, dated August 3, 2012, and

the Administrative Record on behalf of the Village.

Grounds:

1. The Objections set forth in the District's Verified Answer and Objections in Point of Law;
2. CPLR §§ 7803 and 7804(f) in that the action may not be maintained with respect to the movant under Article 78 of the CPLR;
3. CPLR § 3211(a)(3) in that Petitioner lacks standing to maintain this proceeding;
4. CPLR § 3211(a)(7) in that the action may not be maintained with respect to the movant for failure to state a cause of action; and
5. CPLR § 3212 for summary judgment for the reasons set forth in the documents submitted herewith in that the Village's determination — if any — was not arbitrary and capricious, an abuse of discretion or taken without substantial evidence.

Relief Requested:

1. An Order dismissing the Verified Petition in its entirety with prejudice and/or an Order granting summary judgment to the Moving Respondents in all respects and dismissing with prejudice Petitioner's Verified Petition dated June 22, 2012; and
2. Such other and further relief as this Court may deem just and proper, together with the costs and disbursements of this action.

Responding Papers:

Pursuant to CPLR § 2214(b), all answering papers, including cross-motions, if any, must be served upon the undersigned at least seven (7) days prior to the return date of this motion, and all reply papers, if any, will be served at least one (1) day prior to the return date of this motion.

Dated: August 3, 2012

HARRIS BEACH PLLC

By: 

Joseph D. Picciotti

John A. Mancuso

Attorneys for Respondents

The Village of Painted Post,

Painted Post Development, LLC and

Swepi, LP

99 Garnsey Road

Pittsford, New York 14534

Telephone: 585-419-8800

To: Rachel Treichler, Esq.
Attorney for Petitioners
7988 Van Amburg Road
Hammondsport, NY 14840

Richard J. Lippes, Esq.
Richard J. Lippes & Associates
Attorneys for Petitioners
1109 Delaware Avenue
Buffalo, NJ 14209

John K. Fiorilla, Esq.
Capehart Scathard
Attorney for Respondent
Wellsboro & Corning Railroad, LLC
Suite 300S
8000 Midlantic Drive
Mount Laurel, NJ 08054

AFFIDAVIT OF ROSWELL CROZIER, SWORN TO ON AUGUST 1, 2012 [338- 343]

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

For a Judgment under Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

AFFIDAVIT IN SUPPORT OF
RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT,
AND IN OPPOSITION TO
THE PETITION

Index No.: 2012-0810

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

ROSWELL CROZIER, JR., being duly sworn deposes and says:

1. I am the Mayor of the Village of Painted Post ("the Village") and a member of the Board of Trustees for the Village (the "Village Board") (sometimes the Village Board and the Village will be collectively referred to as "the Village"). The statements made in this affidavit are based upon my personal knowledge, including based upon my review of pertinent documents including those identified herein concerning the facility that has been completed and actions taken which are being challenged by a Verified Petition filed in this matter and served on the Village on or about July 6, 2012 (the "Petition"). This affidavit is submitted in support of Respondents' motion to dismiss and/or for summary judgment, and in opposition to the Petition.

A. The Site of the Transloading Facility is Zoned for Industrial Use and the Operation of the Transloading Facility is Consistent with Uses in the Village.

2. I have been Mayor of the Village of Painted Post since 2010, and prior to that time I served as Mayor from 1996-2002. I was a member of the Village Board of Trustees from approximately 1994-1996. I am fully familiar with the Village of Painted Post as I have lived in the Village for more than 45 years. The Petition notes all kinds of concerns about the facility which has been built to facilitate the sale of surplus water (the "Transloading Facility"), ranging from alleged concerns about the location of the site where surplus water will be loaded onto train cars because it is allegedly close to houses, to concerns about the operation of the train that will be used to transport such water, and alleged concerns that withdrawing such water will impact the Village wells and/or aquifers.

3. I cannot understand the basis for any of the above referenced concerns, as the location for the operation whereby surplus water will be withdrawn is a site that has been zoned industrial for decades, and the site will use a rail line that has been operational in the Village for at least as long as industrial operations have taken place at the referenced site. In fact, I believe the rail line which will be used here for the Transloading Facility was operational prior to the time that any of the Petitioners who actually live in the Village moved into their homes. Similarly, concerns about impacts to water and aquifers are misplaced given the approvals granted by the Susquehanna River Basin Commission, the approvals granted by state agencies, and the extensive review the Village Board which did not identify any issues of significant concern.

4. It should be noted that the sale of surplus water will provide a needed source of revenue to the Village which is a small municipality which has lost tax base, including from the loss of industry and jobs over the past 20 years. The sale of surplus water will allow the Village to generate funds that will be used for needed capital improvement projects, including for upgrades and repairs to the Village's water system as also discussed in the affidavit of Larry E. Smith,

Superintendent of the Department of Public Works. Further, we hope to use funds generated from the sale of surplus water to hold the line on tax increases, if not potentially lower taxes to Village residents. I would also note that no federal funding was sought or received for any portion of the Transloading Facility or other matters with which the Petitioners are making claims in this proceeding.

B. The Village's Review of Potential Impacts from the Transloading Facility Met Applicable Requirements.

5. As background, as fully set forth in the other documents submitted on behalf of the Village in this matter in support of the motion, in reviewing the proposed lease of a portion of the former Ingersoll-Rand site at 350 West Water Street (the "Transloading Facility Site") for the operation of the Transloading Facility by the Wellsboro & Corning Railroad, LLC (the "Railroad"), the Village through the Village Board carefully considered impacts arising from the operation of the Transloading Facility to be constructed.

6. In this regard, the Village Board with the assistance of Village staff, including Mr. Smith, as well as the assistance of other professionals including Hunt Engineers, Architects and Land Surveyors, P.C. ("Hunt"), carefully reviewed each of the aspects of the proposed lease with the Railroad (the "Lease") as well as the withdrawal of water proposed pursuant to the operation of the Transloading Facility. Moreover, in reviewing potential impacts from the Lease, as well as the sale of surplus water, the Village Board reviewed impacts from the construction and operation of the Transloading Facility before it issued a resolution authorizing the Village to move forward with the Lease. The Village also carefully reviewed the issues associated with the sale of surplus water to analyze whether it was in the Village's best interests to move forward with it, and after reviewing the pertinent issues, the Village Board issued a resolution authorizing the Village to execute a contract for the sale of such water.

7. The Village's exhaustive review in this regard included, but was not limited to, reviewing and analyzing the report of Hunt dated November 11, 2011 ("the Hunt Report"), as well as considering information and other documentation associated with the Full Environmental Assessment form completed for the project, including parts 1 and 2 of it. Correspondence received from the New York State Department of Environmental Conservation and the New York State Department of Health associated with various permits and authorizations for the operation of the Transloading Facility was also reviewed. The Village also considered the requirements concerning operations at the Site including those set forth in the Bargain and Sale deed entitled "former Ingorsoll Rand Foundary site, Steuben County, Painted Post, New York" dated August 1, 2005.

8. The Village's review of the potential impacts associated with the operation of the Transloading Facility culminated in the consideration and approval of a resolution adopting a negative declaration which was approved and filed on February 23, 2012 (the "Negative Declaration"), a copy of which is attached as Exhibit "A" and which is part of the Administrative Record in this matter. As set forth in detail in the Negative Declaration, the Village carefully considered each aspect of the operation of the Transloading Facility, including the withdrawal of water associated with such operation. After careful consideration each of the reports, documents and analyses as more fully referenced in the Negative Declaration, the Village determined that the construction and operation of the such facility, including the withdrawal of water associated with its operation, the use of a train to transport the surplus water and other operations would not result in any significant negative impact.

C. The Village's Review of the Sale of Surplus Water Met Applicable Requirements

9. In addition to voting on and approving the Negative Declaration on February 23, 2012, the Village Board also enacted a resolution authorizing it to enter into a contract for the sale of surplus water under specific conditions to SWEPI, LP ("SWEPI"). In reviewing appropriate regulations with Village staff as well as professionals assisting it, the Village through the Village

Board determined that the contract for the sale of water where it would be limited to surplus water that was available under certain conditions qualified as a so-called Type II action under the New York State Quality Review Act. That being said, as set forth in the Negative Declaration for the Transloading Facility, the Village Board carefully considered each of the impacts associated with the withdrawal of water, including but not limited to potential impacts to the Village Water System and it also considered the fact that the proposed withdrawal had been approved by the Susquehanna River Basin Commission. In fact, as set forth in the resolution associated with adoption of the resolution authorizing the Village to enter into a contract of sale of surplus water to SWEPI, the Village set out the bases for its approval of the same, which included its review of the Hunt Report which evaluated the impact of the sale of surplus water on the Village Water System and its users.

10. Further, in enacting the resolution authorizing the Village to enter into the sale of surplus water, the Village Board specifically incorporated by reference the findings made in the Negative Declaration resolution for the Transloading Facility into the resolution approving the surplus water agreement. Attached as Exhibit "B" is the Village resolution approving the sale of surplus water, which is also submitted as part of the Administrative Record.

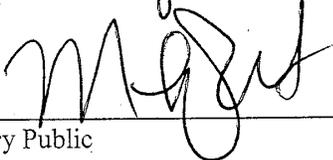
11. As discussed above, the Susquehanna River Basin Commission (SRBC) is the body which authorizes withdrawals from the Village Water Supply System. As noted in the Administrative Record and the other documents submitted on behalf of the Village in this matter, SRBC has determined that the Village has more than adequate water to provide surplus water to SWEPI under the contract's conditions, and that the sale of such water would not adversely impact the Village Water System, its users, or the aquifer at issue. The Village through the Board of Trustees in enacting the resolution authorizing the execution of the contract for the sale of surplus water specifically considered SRBC's approval of such withdrawals.

WHEREFORE, it is respectfully requested that this Court grant Respondents' motion and dismiss the Petition in its entirety, together with such other and further relief as this Court shall deem just and proper.



ROSWELL CROZIER, JR

Sworn to before me this
15 day of August, 2012.



Notary Public

MUNESH PATEL
Notary Public, State of New York
No. 02PA6109397
Qualified in Ontario County
Commission Expires May 10, 2014

EXHIBIT A –
NEGATIVE DECLARATION, FILED FEBRUARY 23, 2012
(REPRODUCED HEREIN AT PP. 111-116)

EXHIBIT B –
RESOLUTION APPROVING SALE OF SURPLUS WATER,
FILED FEBRUARY 23, 2012
(REPRODUCED HEREIN AT PP. 117-119)