

PUBLIC NOTICE OF PROPOSED SETTLEMENT - DELAWARE RIVER ASH SPILL  
NATURAL RESOURCE DAMAGES

BETWEEN THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
THE PENNSYLVANIA FISH AND BOAT COMMISSION, TALEN GENERATION, LLC  
AND MARTINS CREEK, LLC

LOWER MOUNT BETHEL TOWNSHIP, NORTHAMPTON COUNTY

Pursuant to Section 1113 of the Pennsylvania Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, No. 108, 35 P.S. §§ 6020.101 - 6020.1305 ("HSCA"), 35 P.S. § 6020.1113, the Pennsylvania Department of Environmental Protection ("Department") hereby publishes Notice of a Proposed Settlement with Talen Generation, LLC, formerly known as PPL Generation, LLC, and Martins Creek, LLC, formerly known as PPL Martins Creek, LLC ("Settlors") of claims for natural resource damages associated with the ash spill from Ash Basin No. 4 at the PPL Martins Creek Steam Electric Station that began on August 23, 2005.

Settlors owned and operated the Martins Creek Steam Electric Station located in Lower Mount Bethel Township, Northampton County, PA ("Facility"). The Facility consisted, in part, of two coal fired electric generating units ("Units 1 and 2"), which were decommissioned on September 15, 2007. Ash from the coal combustion was mixed with water and piped to large open outdoor impoundments for settling. Water was then discharged from the impoundments to the Delaware River pursuant to a National Pollution Discharge Elimination System ("NPDES") permit from the Department.

On August 23, 2005, a wooden stop log in the discharge structure of Ash Basin No. 4 failed, causing an unpermitted and uncontrolled discharge of fly ash slurry from the Basin. Most of the fly ash slurry discharged directly into the Delaware River. Large amounts of fly ash slurry also ran across DePues Ferry Road, onto adjacent fields and into the Oughoughton Creek

The Department filed a lawsuit against the Settlors on November 18, 2005 as a result of the spill in which it asserted claims for, among other things, natural resource damages. Most of that lawsuit, with the exception of the Department's claims for natural resource damages, was resolved on May 20, 2008 through a Consent Decree between the Department, Settlors and a group of citizen intervenors. Notice of the proposed settlement was published in the Pennsylvania Bulletin on March 3, 2007 (*See* 37 Pa.B. 1050).

Following the entry of the Consent Decree, the Department, working in conjunction with members of a Natural Resource Damage Assessment Team ("NRDA Team"), currently comprised of the Pennsylvania Department of Environmental Protection, the New Jersey Department of Environmental Protection, the Pennsylvania Fish and Boat Commission ("PFBC") and the Delaware River Basin Commission acting as a consultant to the NRDA Team, prepared a report entitled, PPL Martins Creek Natural Resource Damage Assessment – Environmental Assessment and Restoration Plan ("NRDA Report"). The NRDA Report concluded that natural

resource damages resulted from the spill and cleanup process. It further concluded that dam removal and mussel restoration projects would provide sufficient compensation to the public for those damages.

The Department, along with the NRDA Team, are now proposing a settlement with the Settlers to resolve outstanding claims for natural resource damages through a Consent Order and Agreement ("CO&A"). The total settlement amount for Natural Resource Damages will be \$1,325,200.00. The proposed CO&A requires the following:

a. Within twenty (20) calendar days after Settlers' receipt of an executed CO&A from the Department and PFBC, Settlers shall pay to the DRBC the sum of \$902,150.00, which, in addition to the payment in paragraph b below, shall constitute the "Settlement Payment". The Settlement Payment shall be in full and complete settlement of claims against the Settlers for compensation for any damages to, and restoration of, the lost value of, injury to, or destruction of Natural Resources, as that term is defined in Section 103 of HSCA, 35 P.S. § 6020.103, and natural resource services. The Settlement Payment includes PPL's cash contribution toward dam removal projects in Pennsylvania. It also includes 15% for dam removal contingency fees, and \$50,000.00 for DRBC's administration fees. The Settlement Payment will be administered in accordance with a Letter Agreement between the Department, PFBC and DRBC. Any leftover funds remaining after implementation of the dam removal projects will be allocated based on the consensus of the PADEP and the PFBC.

b. Within twenty (20) calendar days after the Settlers' receipt of the executed CO&A from the Department, PPL shall also pay to the DRBC a separate sum of \$50,000.00 for a mussel restoration project(s). DRBC shall submit the details of a mussel restoration project(s) to the NRDA Team for approval. Once a mussel restoration project(s) is agreed upon by the NRDA Team members, the DRBC will implement the project(s). Any leftover funds remaining after implementation of the mussel restoration projects will be distributed based on the consensus of the NRDA Team members. DRBC will provide progress and general accounting reports to the NRDA Team on a quarterly basis within the first week of each calendar quarter. The progress and general accounting reports will be reviewed by the NRDA Team members.

The Settlers will also pay a separate fee of \$373,050.00 to the NJDEP for the benefit of New Jersey based restoration projects pursuant to a separate agreement with that agency.

Persons wishing to comment on the NRDA Report and proposed settlement are invited to submit comments to the Department's Northeast Regional Office within 60 days from the date of this public notice. Comments received within this 60-day period will be considered in the final determination regarding the proposed settlement. The Department may propose changes or choose not to agree to the proposed settlement if the comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or not in the public interest. After the public comment period, the Department shall file a response to significant written comments received or indicate that no such comments were received.

Commenters should include their name, address and a concise statement to inform the Regional Office of the exact basis of any comment, and the relevant facts upon which it is based. Comments may be submitted in writing to Colleen Connolly, Pennsylvania Department of Environmental Protection, 2 Public Square, Wilkes-Barre, PA 18701-1915. TDD users may contact the Department through the Pennsylvania Relay Services at 800-645-5984.

Copies of the NRDA Report and the proposed CO&A are available for review and copying at the following locations by contacting the telephone numbers below:

PA Dept. of Environmental Protection  
Northeast Regional Office  
2 Public Square  
Wilkes-Barre, PA 18711-0790  
(570) 826-2511

PA Dept. of Environmental Protection  
Bethlehem District Office  
4530 Bath Pike  
Bethlehem, PA 18017  
(610) 861-2070

Copies are also available on the Department's website by taking the following steps:

- go to the Department's website at, <http://www.depweb.state.pa.us>;
- click on "regional resources" in the left hand column;
- click on the Northeast Regional Office;
- click on "Community Information" in the upper right hand corner; and
- click on the PPL NRDA Report and PPL NRDA Consent Order and Agreement links.