



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

APEX ENERGY (PA), LLC	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 16-759
PENN TOWNSHIP, <i>et al.</i>	:	

CONSENT JUDGMENT

AND NOW, this 16th day of December 2016, upon granting the parties' Joint Motion to approve the consent judgment (ECF Doc. No. 39) and for good cause shown including all parties agreeing to this Consent Judgment, it is **ORDERED JUDGMENT BY CONSENT IS ENTERED:**

1. The attached and incorporated December 8, 2016 Stipulation is **approved**;
2. Under Fed. R. Civ. P. 41(a)(2) and the accompanying Stipulation, upon immediate filed notice of the issuance of permits for the Beattie Central Pad-37, Draftina Central Pad-31 and White Central Pad-30, we will dismiss with prejudice all of Apex's claims, including claims for damages, related to the Beattie Central Pad-37, Draftina Central Pad-31 and White Central Pad-30;
3. We **dismiss with prejudice** Apex's claim for attorneys' fees and costs through the date of this Consent Judgment;
4. Each party shall bear its own attorneys' fees and costs incurred to this Consent Judgment;
5. Under Fed. R. Civ. P. 41(a)(2) and the accompanying Stipulation, we **dismiss without prejudice** all of Apex's remaining claims related to the applications for the Backus Pad, the Numis Pad, the Deutsch Pad and the Drakulic Pad;



6. Under *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 381 (1994), we expressly retain jurisdiction to enforce the Stipulation and this Consent Judgment. If a party believes its adversary materially breached obligations, it may move to enforce this Consent Judgment with the prevailing party possibly recovering its reasonable attorneys' fees and costs in prosecuting or defending an enforcement motion; and,

7. This Consent Judgment does not represent the Court's determination on the merits of the substantive claims or defenses, notwithstanding the accompanying Stipulation is fully enforceable as an agreement among parties without judicial findings. Except for the dismissal with prejudice of Apex's claims, this Order is not intended to have *res judicata* or collateral estoppel effect as to any claims or defenses Apex and Defendants have or might have raised before this Court.



KEARNEY, J.



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

APEX ENERGY (PA), LLC, a Delaware
limited liability company,

CIVIL DIVISION
NO. 16-cv-759
Judge Mark P. Kearney

Plaintiff,

v.

PENN TOWNSHIP, PENN TOWNSHIP
ZONING HEARING BOARD, PENN
TOWNSHIP BOARD OF
COMMISSIONERS,

Defendant's.

CONSENT JUDGMENT

1. Plaintiff Apex Energy (PA), LLC ("Apex"), is the owner of certain leasehold interests to develop oil and natural gas rights within the boundaries of Defendant Penn Township ("Township") and has filed seven (7) special exception applications to develop unconventional well-pads known respectively as the Beattie Central-37 Pad, the Draftina Central 31-Pad, the White Central-30 Pad, the Drakulic Pad, the Deutsch Pad, the Numis Pad, and the Backus Pad.

2. Apex filed this action under 42 U.S.C. § 1983 seeking relief against what it alleges to be an unconstitutional interpretation and enforcement of the Township's pending ordinance and has also sought damages, costs, and attorneys' fees. The Township denies any liability or unconstitutional or otherwise inappropriate conduct. All parties acknowledge the risk and potential negative consequences of further litigation in this Court.

3. For good cause shown, to resolve this action, all parties hereto have agreed to this Consent Judgment and have executed a separate *Stipulation for Entry of Consent Judgment* ("Stipulation"), a copy of which has been reviewed by the Court and is attached hereto as **Exhibit 1**.

4. Pursuant to the terms of the accompanying Stipulation and the agreement of the Parties, it is hereby **ORDERED, ADJUDGED, AND DECREED** that:

- (a) The Stipulation dated December 8, 2016, attached as Exhibit 1, is made a part of this Order, and is ratified and approved by the Court. The Parties and each of them are hereby enjoined to comply with their respective obligations under the Stipulation.



- (b) Pursuant to Fed. R. Civ. P. 41(a)(2) and the accompanying Stipulation, upon issuance of the Township permits for the Beattie Central Pad-37, Draftina Central Pad-31, and White Central Pad-30, the Court hereby dismisses, with prejudice, all of Apex's claims, including claims for damages, related to the Beattie Central Pad-37, Draftina Central Pad-31, and White Central Pad-30. The Court hereby also dismisses with prejudice Apex's claim for attorneys' fees and costs through the date of this Consent Judgment.
- (c) Each party shall bear its own attorneys' fees and costs incurred through the date of this Consent Judgment.
- (d) Pursuant to Fed. R. Civ. P. 41(a)(2) and the accompanying Stipulation, the Court dismisses, without prejudice, all of Apex's remaining claims related to the applications for the Backus Pad, the Numis Pad, the Deutsch Pad, and the Drakulic Pad.
- (e) Pursuant to *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 381 (1994), the Court expressly retains ancillary jurisdiction for the purpose of enforcing the accompanying Stipulation and this Consent Judgment.
- (f) The Court's disposition of this matter shall not be deemed a determination on the merits of the substantive claims or defenses asserted in this action, notwithstanding that the accompanying Stipulation is fully enforceable. Accordingly, except for the dismissal with prejudice of Apex's claims as set forth in Paragraph 4(b), this order shall have no res judicata or collateral estoppel effect in regard to any claims or defenses that Apex and Defendants have raised, or might have raised, in this action.
- (g) The Court further ORDERS that if any party believes its adversary has materially breached any of its obligations under the accompanying Stipulation, it may move the Court for enforcement of this Consent Judgment and the Stipulation. Upon making a determination, the Court may order whatever relief it deems appropriate that is not inconsistent with the terms of the Stipulation.
- (h) In the event of any action, motion or proceeding brought to enforce the terms of the accompanying Stipulation, the party prevailing therein, shall at the discretion of the Court, be entitled to recover its reasonable attorneys' fees and costs in prosecuting or defending such action, motion, or proceed.

IT IS SO ORDERED.

Date: _____

Honorable Mark P. Kearney
United States District Court Judge



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

APEX ENERGY (PA), LLC, a Delaware
limited liability company,

Plaintiff,

v.

PENN TOWNSHIP, PENN TOWNSHIP
ZONING HEARING BOARD, PENN
TOWNSHIP BOARD OF
COMMISSIONERS,

Defendants.

CIVIL DIVISION
NO. 16-cv-759
Judge Mark P. Kearney

STIPULATION FOR ENTRY OF CONSENT JUDGMENT

This Stipulation for Entry of Consent Judgment ("Stipulation") is entered into by and between Apex Energy (PA), LLC ("Apex") and Penn Township, Penn Township Zoning Hearing Board ("ZHB"), and Penn Township Board of Commissioners ("Commissioners" and together with Penn Township and ZHB, the "Township"). Apex and the Township may be referred to as a "Party" or collectively as "Parties."

RECITALS

WHEREAS, on June 6, 2016, Apex filed the Complaint, subsequently amended, alleging that the Township violated Apex's rights under, *inter alia*, the Due Process and Equal Protection Clauses of the Fourteenth Amendment to, as well as the Contract Clause of, the United States Constitution, along with several state law-based claims;

WHEREAS, the Defendants have moved to dismiss the Complaint, as amended, and deny any liability;

WHEREAS, all parties acknowledge the risk and potential negative consequences of further litigation in this Court and wish to amicably resolve this action;

WHEREAS, the following allegations from the Complaint and subsequent



amendment are not disputed:

On November 5, 2014, Apex entered into a certain *Farmout Agreement* with Dominion Transmission, Inc. ("Dominion"), recorded with the Office of Recorder of Deeds in and for Westmoreland County ("Recorder of Deeds") at Instrument No. 201506110018699, under which Apex leases the rights to produce gas from the Marcellus shale formation along with associated surface rights in, *inter alia*, Penn Township, Westmoreland County;

As successor-in-interest to Dominion under the Farmout Agreement, Apex possesses the right to explore, develop, and produce natural gas from the Marcellus shale under the following leases:

- (a) The Clayton Lease recorded at Deed Book Volume 1025, Page 120 in the Recorder of Deeds and identified as JL000380 on Exhibit A-9 of the Farmout Agreement; the Kepple Lease recorded at Deed Book Volume 508, Page 86, with the Recorder of Deeds and identified as JL000377 on Exhibit A-9 of the Farmout Agreement; the Kozain Lease recorded at Deed Book Volume 1395, Page 118, with the Recorder of Deeds and identified as JL000501 on Exhibit A-11 of the Farmout Agreement; and the Klingensmith Lease recorded at Deed Book Volume 1382, Page 569, with the Recorder of Deeds and identified as JL000428 on Exhibit A-10 of the Farmout Agreement, (collectively, the leases shall be referred to as the "Beattie Central Pad-37 Leases");
- (b) The Draftina Lease recorded at Deed Book Volume 1686, Page 423, with the Recorder of Deeds and identified as JL000702 on Exhibit A-15 of the Farmout Agreement; and
- (c) The Beck Lease recorded at Deed Book Volume 586, Page 272, with the Recorder of Deeds and identified as JL000374 on Exhibit A-9 of the Farmout Agreement and the Geiger Lease recorded at Deed Book Volume 3249, Page 487, with the Recorder of Deeds and identified as JL000735 on Exhibit A-16 of the Farmout Agreement. Collectively, the leases shall be referred to as the "White Central Pad-30 Leases";

Apex is the successor-in-interest to that certain *Oil and Gas Lease*, as amended and ratified, by and between W.H. Holsinger, et ux., and Trafford Oil & Gas Company ("Holsinger Lease"), recorded with the Recorder of Deeds on April 3, 1932, at Deed Book Volume 793, Page 333, under which Apex possesses the right to "drilling and operating for oil,



gas and water," under ten (10) tax map parcels within Penn Township;

Apex is the successor-in-interest to that certain *Oil and Gas Lease*, as amended and ratified, by and between S.P. Whitehead, et ux., and Trafford Oil & Gas Company ("Whitehead Lease"), recorded with the Recorder of Deeds on June 26, 1922, at Deed Book Volume 793, Page 58, under which Apex possesses the right to drill and operate "for oil, gas and water," under a one hundred thirty-six (136)-acre tax map parcel within Penn Township;

Apex is the successor-in-interest to Dorso, LP of that certain *Oil and Gas Lease and Surface Site Agreement* with John Z. Drakulic and Mildred Drakulic Estate, John Jr., Executor of Estate ("Drakulic Lease"), recorded with the Recorder of Deeds on June 25, 2014 at Instrument 201406250019575, under which Apex possesses the right "to explore, develop, produce, and market oil and gas" from seven (7) tax map parcels within Penn Township;

Apex is the successor-in-interest to Dorso, LP of that certain *Oil and Gas Lease and Surface Site Agreement* with Melvin and Susan Deutsch ("Deutsch Lease"), recorded with the Recorder of Deeds on June 25, 2014 at Instrument 201406250019575, under which Apex possesses the right "to explore, develop, produce, and market oil and gas" from six (6) tax map parcels within Penn Township;

Under the Farmout Agreement, Beattie Central Pad-37 Leases, Draftina Central Pad-31 Lease, White Central Pad-30 Lease, the Holsinger Lease, the Whitehead Lease, the Deutsch Lease, and the Drakulic Lease, Apex has submitted seven applications to Penn Township for special exception permits to develop unconventional wells known respectively as the Beattie Central Pad-37, Draftina Central Pad-31, White Central Pad-30, Backus Pad, Numis Pad, Deutsch Pad, and Drakulic Pad;



Apex holds ESCGP-2 permits issued by the Pennsylvania Department of Environmental Protection ("DEP") for the development of the Draftina Central Pad-31, the White Central Pad-30, the Numis Pad, the Backus Pad, the Deutsch Pad, and the Drakulic Pad; holds drill permits for the Deutsch Pad and Drakulic Pad issued by the DEP; and has applied for ESCGP-2 and ESCGP-11 permits for Beattie Central Pad-37;

On or about June 27, 2014, representatives of Apex met with the staff of Penn Township and presented a drilling plan consisting of seven (7) proposed well-pad sites, including the proposed well-pad sites designated as the Deutsch Pad, the Drakulic Pad, the Numis Pad, and the Backus Pad;

At the time of the June 27, 2014 meeting and Apex's submission of the Act 14 notices, the existing Zoning Ordinance ("Original Ordinance"), enacted by the Commissioners pursuant to the MPC, permitted oil and gas drilling on all properties within the Township as a special exception subject to the following four (4) specific criteria: (1) the proposed oil and gas well could not be closer than one hundred (100) feet to an adjacent property line or public road or two hundred (200) feet to an existing dwelling, school, hospital, or similar residential uses or to any water source; (2) the applicant must submit its applications to and approvals from the Pennsylvania Department of Environmental Protection for the proposed well; (3) a suspension or revocation of a permit would constitute a suspension or revocation of the Township's zoning permit; and (4) a performance bond would have to be posted to use Township roads;

On October 20, 2014, the Board enacted Resolution No. 85/2014 under which the Commissioners proposed an "amended, revised, updated, codified, and recodified Zoning Ordinance and Zoning Map" ("Pending Ordinance") dated October 29, 2014, that was



published at <http://ecode360.com/documents/pub/PE1662/Legislation/> and available through a link on Penn Township's website: <http://www.penntwp.org>;

The pending ordinance, as originally published, was not noticed for public hearing;

On December 31, 2014, after discussions with the Township, Apex prepared and submitted applications for conditional use and land development plan for the Quest Central Pad-7, which were subsequently approved by the Township under the Pending Ordinance, as amended;

The Commissioners amended the proposed Pending Ordinance by approving Resolution 33/2015 on January 19, 2015;

Resolution 33/2015 added Section 190-641(D)(9) to the Pending Ordinance which provides that:

The applicant shall demonstrate that the drill site operations will not violate the citizens of Penn Township's right to clean air and pure water as set forth in Art. I Sec. 27 of the Pennsylvania Constitution (The Environment Rights Amendment). The applicant shall have the burden to demonstrate that its operations will not affect the health, safety, or welfare of the citizens of Penn Township or any other potentially affected land owner. The application submitted shall include reports from qualified Environmental individuals attesting that the proposed location will not negatively impact the Township residents' Environmental Rights, and, will include air modeling and hydrogeological studies as potential pathways that a spill or release of fluid may follow;

On June 6, 2016, the Township published the fifth "Penn Township Pending Ordinance" revision ("Fifth Revision") to the Township's website <http://www.penntwp.org>;

In August 2016 the Commissioners held public hearings on the Fifth Revision and voted to approve the "Fifth Revision" as the current Zoning Ordinance ("Current Ordinance") under Resolution 912-2016;



Resolution 912-2016 retained Section 190-641(D)(9) as Section 190-641(D);

The Current Ordinance does not expressly define the terms “Environmental,” “Environmental Rights,” and “qualified Environmental individuals;”

In the Fall of 2015, Apex submitted the applications for Special Exception to Permit the Use of the Beattie Central Pad-37, the Draftina Central Pad-31, the White Central Pad-30, the Numis Pad, the Backus Pad, the Deutsch Pad, and the Drakulic Pad (“Applications”) under the Leases;

Under the Applications, Apex sought to improve seven (7) sites zoned RR Rural Resource District and situated in the MEO District, with an access road, a well-pad, and differing numbers of unconventional oil and gas wells (the “Improvements”);

To permit the Improvements, Apex gathered and submitted evidence, including risk assessment reports from ERM, an industry expert, on air modeling and hydrogeological studies regarding potential pathways that a spill or release of fluid may follow;

On January 14, 2016, Apex consented in writing to an extension for the ZHB to hear the White Central Pad-30, Backus Pad, Numis Pad, Deutsch Pad, and Drakulic Pad granting that those Applications be heard on or before March 25, 2016;

The ZHB held and closed hearings on the Applications for the Beattie Central Pad-37 and the Draftina Central Pad-31, and the White Central Pad-30 with Apex’s written consent;

The ZHB commenced public hearings on the Backus Pad with Apex’s written consent which remain pending;

Apex presented evidence in support of its special exception under the Application for the Beattie Central Pad-37 at public hearings held January 14, 2016 and February



11, 2016; under the Application for the Draftina Central Pad-31 at public hearings held February 29, 2016, and March 10, 2016; and under the Application for the White Central Pad-30 at public hearings held April 14, 2014, May 12, 2016, and June 9, 2016;

For the Beattie Central Pad-37, Draftina Central Pad-31 and White Pad-30, Apex's evidence consists, *inter alia*, of the testimony of a Pennsylvania registered professional engineer who has testified to the minimization of environmental impacts based on the particular design features of each well-pad as well as the topography of each well-pad site; the chief operating officer of Apex, who has testified that Apex operates its construction, drilling, completion, and production of unconventional wells at or considerably better than the industry standards; and an environmental consultant who after reviewing site specific data has concluded the risks to the air or water sources posed by spills at each proposed well-pad would be either minor or remote;

In fact, Apex employs, *inter alia*, the following barriers, technologies, and policies to address environmental concerns: (1) multi-layered impermeable rig matting with berm containments system design to contain spills during drilling and completion covering the surface of the drill pad; (2) the sourcing of fresh water through Westmoreland Municipal Water Authority ("Authority") which eliminates approximately 2,500 truck trips per well; (3) the closed loop sand system which reduces noise and dust emissions; (4) video surveillance; (5) the deployment of a hundred thousand dollars (\$100,000) containment system that monitors pressures and spills; (6) Kevlar matting underneath all of the production facilities; and (7) a six string casing and cementing plan which protects groundwater. Apex asserts that those barriers, technologies, and policies are all above industry standards and the Township has no present basis to dispute that assertion;



On April 14, 2016, the ZHB denied Apex's Application for Beattie Central Pad-37 on the stated basis that Apex had allegedly failed to meet the performance standards under Section 190-641(D)(2) and failed to show that the project would not violate Section 190-641(D)(9) of the Pending Ordinance, which incorporates Article I, Section 27 of the Pennsylvania Constitution;

Subsequent to the denial of the Beattie Central Pad-37 Application for Special Exception, on May 26, 2016, the Commissioners issued a written Resolution 59/2016 denying Apex's application for preliminary land development plan for Beattie Central Pad-37;

On May 12, 2016, the ZHB denied Apex's Application for the Draftina Central Pad-31 on the stated basis that Apex failed to show that the project would not violate § 190-641(D)(9) of the Pending Ordinance, which incorporates Article I, Section 27 of the Pennsylvania Constitution;

Subsequent to the denial of the Draftina Central Pad-31 Application, on June 20, 2016, the Commissioners issued a written Resolution 58-2016 denying Apex's Application for preliminary land development plan for Draftina Central Pad-31;

On July 14, 2016, the ZHB denied Apex's Application for the White Central Pad-30 on the stated basis that Apex had failed to show that the project would not violate Section 190-641(D)(9) of the Pending Ordinance, which incorporates Article I, Section 27;

WHEREAS, Apex alleges that Original Ordinance should apply to its Applications because the Township failed to act timely and materially altered, modified, and changed the Pending Ordinance;

WHEREAS, the Commissioners and Township contest that the Original Ordinance should apply to the seven (7) applications;



WHEREAS, as to the Numis Pad, the Drakulic Pad, and the Deutsch Pad, on August 29, 2016 and September 5, 2016, Apex published notice asserting that deemed approvals had occurred under the MPC;

WHEREAS, the ZHB and the Township contest that the ZHB's conduct resulted in the deemed approvals of the Deutsch Pad, Drakulic Pad, and Numis Pad;

WHEREAS, Apex is willing to agree to additional conditions discussed herein to protect the health, safety, and welfare of the residents of Penn Township and to further address Article 1, Section 27; and

WHEREAS, for good and valuable consideration, and without admitting any liability or inappropriate conduct, the Parties desire to avoid the risks and costs associated with protracted litigation by fully comprising and settling their disagreements and disputes on the terms and conditions set forth herein.

PROVISIONS OF THE STIPULATION

1. Each of the recitals above is incorporated by reference as though fully set forth herein.
2. By entering into this Stipulation and the Consent Judgment, none of the Parties admit any allegations contained in this action, nor do any of the Parties admit liability for any purpose or admit any issues of law.
3. In consideration of the health, safety, and welfare of Penn Township residents and Article 1, Section 27 as codified in Sections 190-407, 190-635, 190-641, and 190-811 of the Current Ordinance, under the Consent Judgment, Apex will accept and comply with the following conditions which will be made applicable to the construction of the Beattie Central Pad-37, the Draftina Central Pad-31, and the White Central Pad-30 (each a "Pad"):



- (a) Apex will construct and maintain during the construction, drilling, and completion stages of development industry standard physical barriers (commonly referred to as "sound walls") on all sides of each Pad which will provide for the absorption and mitigation of sound, light and airborne materials, if present, emanating from the drilling, completion and on-site pipeline connection of natural gas wells. Such barriers will be assembled and constructed on the Pad following construction and vegetation of the Pad, and will remain in place during the mobilization, drilling, completion, and demobilization activities taking place on each Pad. Following commencement of gas production, the barriers may be removed by Apex. In the event that Apex engages in separate and non-consecutive drilling, completions or turn-to-sales activity, Apex may disassemble such barriers between each activity, but must reassemble the barriers prior to the commencement of each activity or operation;
- (b) Apex agrees to participate in and pay for third party noise monitoring during the construction, drilling, and completion stages of development. Thirty (30) days prior to the commencement of construction of a Pad, Apex and the Township shall select an industry accepted noise specialist from a list of five (5) qualified industry experts developed by Apex. The selected noise specialist shall take baseline measurements for each Pad. During construction, drilling, and completion of each pad, the noise specialist shall conduct active monitoring at the property line nearest Apex's limit of disturbance once every three (3) days. The Township may contact the noise specialist and direct the noise specialist as to the specific time for the active monitoring in each three day interval. The results of the monitoring shall be available upon the Township's request. The noise specialist shall notify Apex and the Township if the monitoring shows results attributable to Apex's oil and gas operations above any applicable performance standard. The parties agree that the temporary movement of vehicles to and from the site shall not be included in the noise monitoring. Apex shall also maintain a log of on site monitoring conducted for OSHA purposes and shall notify the Township of any reading beyond the sound barriers showing Apex's operations above 90 decibels for a period in excess of two (2) hours;
- (c) To the extent permitted by Pennsylvania laws and regulations as defined by the DEP, Apex will plant and vegetate each Pad in consultation with Penn Township to provide for the visual enhancement of the Pad in concert with surrounding vegetation and topography;
- (d) Apex will establish and maintain a 24-hour emergency hotline telephone number to be used by the Township representatives, employees, contractors, and volunteer fire companies to contact Apex employees and contractors directly in the event of an emergency. In addition, Apex will provide two (2) separate direct cellular telephone contacts of Apex's Chief Operating Officer and Senior Drilling Engineer that may also be contacted in the event of an emergency. Except with the express written consent of Apex, no telephone or cellular telephone numbers provided under this provision shall be made publicly available for the use of any other private person or party;



- (e) Apex will participate with or agree to the monitoring of air quality emissions and particulate content during drilling and completion activities. Apex will agree to pay for third-party monitoring and testing from a mutually acceptable expert with experience in this industry. The expert shall take baseline readings at each Pad. The expert shall engage in active monitoring twice a week on the first Pad. For all subsequent pads, Apex and the Township may agree to limit testing to once a week. Testing locations shall be established on relevant parcel or leasehold boundaries but in all events the only location that will be used for air monitoring located within Apex's established limit of disturbance shall be situated at the access road entrance. No other air monitoring equipment will be located within Apex's limit of disturbance including but not limited to the Pad or associated stormwater or erosion and sedimentation control facilities. Apex will notify the Township if any monitoring for OSHA emissions requirements at the site exceed OSHA's standards. In the event that a DEP reportable spill or any spill that is reported to the DEP by Apex occurs at a Pad-Site, the Township may require immediate air monitoring until the spill is abated or remediated. Other than in emergency situations, Apex will not flare or incinerate natural gas at the Pad during completion or flowback operations, and Apex will comply with all state and federal regulations applicable to emissions relating to its operations on the Pad;
- (f) Apex will mitigate the direction or deflection of light sources off the Pad, including but not limited to use of low-glare lighting sources, light shields, and low vertical profile lighting equipment. Upon request by the Township, Apex will meet with the Township to take steps to further mitigate specific instances of complaints regarding Apex light sources. In all circumstances, Apex will have the right to take any and all steps to ensure that work surfaces will be properly lit to provide for a safe workspace for Apex workers and contractors; and
- (g) Apex will take all necessary steps to ensure that no trucks or construction vehicles will be staged or queued on any public roads within the Township. Apex will consult with the local School District at each Pad to coordinate and minimize truck traffic during regularly scheduled school bus stops. Apex will follow the requirements of the Diesel-Powered Motor Vehicle Idling Act of 2008 to minimize unnecessary vehicle idling on the Pad. Apex will inspect to ensure that all vehicles utilized on the Pad will maintain all required certifications and permits applicable to such vehicles.

4. Under the Consent Judgment, the Township shall issue the special exception permits for the Beattie Central Pad-37, the Draftina Central Pad-31, and the White Central Pad-30 based on Apex's Applications and the record developed at the ZHB as supplemented by terms of Paragraph 3 of this Stipulation as well as the preliminary land development plan approval for the Beattie Central Pad-37 and the Draftina Central Pad-31. The



Township will issue all required permits, approvals, authorizations and licenses necessary to construct, establish, develop, drill, complete, turn-to-sales, and operate the unconventional wells at the Beattie Central Pad-37, White Central Pad-30, Draftina Central Pad-31, Drakulic, Deutsch, Numis and Backus well pads (each, a "Pad") including but not limited to all preliminary or final land development plan approvals provided that the plans meet the objective criteria of the Township existing Subdivision and Land Development Ordinance and the Stormwater Ordinance, associated well pads, roadway access and occupancy permits, on-site operating facilities, pipelines, seismic testing, access roads, temporary sewer and trailer permits. The Township's approvals will issue regardless of the status of any third-party permits related to such facilities, pipelines, testing, or permits. The Township will consent, as part of the proposed settlement, to issue such permit, approvals and other authorizations upon receipt of written request by Apex provided that such request will include industry standard information demonstrating Apex's good faith compliance with Township requirements for supporting documentation, as required. Apex will execute any necessary complementary agreements with Penn Township such as roadway maintenance agreements, bonds, or insurance.

5. Upon issuance of the special exception permits for the Beattie Central Pad-37, the Draftina Central Pad-31, and the White Central Pad-30 as well as the preliminary land development plan approvals for the Beattie Central Pad-37 and the Draftina Central Pad-31, Apex stipulates that all of Apex's claims, including claims for damages, related to the Beattie Central Pad-37, Draftina Central Pad-31, and White Central Pad-30 shall be dismissed with prejudice. Apex also stipulates that, upon issuance of these permits, its claims for attorney's fees and costs through the date of this Stipulation and Consent Judgment, shall be dismissed with prejudice.



6. Apex agrees that it will not establish or request a permit to establish an in-ground impoundment of any type within the Township from the Township, Pennsylvania or federal agencies or authorities at any time following execution of this Stipulation. This provision applies regardless of the contents of such impoundments, regardless as to whether such impoundment may include freshwater, produced, or brine water.

7. Apex agrees that it will not establish or request a permit to establish a conventional disposal injection well within the Township from the Township, Pennsylvania or federal agencies or authorities at any time following execution of this Stipulation.

8. Apex will consent to having the Applications for the Backus, Deutsch, Drakulic, and Numis Pads heard before the ZHB.

9. Penn Township and the Commissioners stipulate and concur that in conjunction with the materials submitted with its Applications, as to the Applications for the Backus, Deutsch, Drakulic, and Numis Pads (each, a "Pad"), Apex will be considered to have satisfied all requirements to protect the health, safety, and welfare of Penn Township residents and Article I, Section 27 as codified in Sections 190-407 and 190-635, 190-641, and 190-811 of the Current Ordinance if Apex presents the following evidence or accepts the following conditions:

- (a) Providing all third-party permits to Penn Township prior to the construction and drilling of the wells;
- (b) Providing a study including air modeling and hydrogeological studies regarding potential pathways that a spill or release of fluid may flow similar to the study accepted on the Quest Central Pad-7 and submitted with the applications for the Beattie Central Pad-37, Drafiina Central Pad-31, and White Central Pad-30;



- (c) Constructing and maintaining industry standard physical barriers (commonly referred to as "sound walls") on all sides of each Pad which will provide for the absorption and mitigation of sound, light and airborne materials, if present, emanating from the drilling, completion and on-site pipeline connection of natural gas wells. Such barriers will be assembled and constructed on the Pad following construction and vegetation of the Pad, and will remain in place during the mobilization, drilling, completion, and demobilization activities taking place on each Pad. Following commencement of gas production, the barriers may be removed by Apex. In the event that Apex engages in separate and non-consecutive drilling, completions or turn-to-sales activity, Apex may disassemble such barriers between each activity, but must reassemble the barriers prior to the commencement of each activity or operation;
- (d) Participating in and paying for third party noise monitoring during the construction, drilling, and completion stages of development. Thirty (30) days prior to the commencement of construction of a Pad, Apex and the Township shall select an industry accepted noise specialist from a list of five (5) qualified industry experts developed by Apex. The selected noise specialist shall take baseline measurements for each Pad. During construction, drilling, and completion of each pad, the noise specialist shall conduct active monitoring at the property line nearest Apex's limit of disturbance once every three (3) days. The Township may contact the noise specialist and direct the noise specialist as to the specific time for the active monitoring in each three day interval. The results of the monitoring shall be available upon the Township's request. The noise specialist shall notify Apex and the Township if the monitoring shows results attributable to Apex's oil and gas operations above any applicable performance standard. The parties agree that the temporary movement of vehicles to and from the site shall not be included in the noise monitoring. Apex shall also maintain a log of on site monitoring conducted for OSHA purposes and shall notify the Township of any reading beyond the sound barriers showing Apex's operations above 90 decibels for a period in excess of two (2) hours;
- (e) Providing a site plan or testimony of a Pennsylvania Registered Professional Engineer certifying that the Pad will meet all setback requirements of the Current Ordinance. To the extent a Protected Structure exists within 600 feet of a well bore, Apex may provide evidence of a waiver or consent of the owner to the oil and gas operation development;
- (f) To the extent permitted by Pennsylvania laws and regulations as defined by the DEP, planting and vegetating each Pad in consultation with Penn Township to provide for the visual enhancement of the Pad in concert with surrounding vegetation and topography;
- (g) Establishing and maintaining a 24-hour emergency hotline telephone number to be used by the Township representatives, employees, contractors, and volunteer fire companies to contact Apex employees and contractors directly in the event of an emergency. In addition, Apex will provide two (2) separate direct cellular



telephone contacts of Apex's Chief Operating Officer and Senior Drilling Engineer that may also be contacted in the event of an emergency. Except with the express written consent of Apex, no telephone or cellular telephone numbers provide under this provision shall be made publicly available for the use of any other private person or party;

- (h) Apex will participate with or agree to the monitoring of air quality emissions and particulate content during drilling and completion activities. Apex will agree to pay for third-party monitoring and testing from a mutually acceptable expert with experience in this industry. The expert shall take baseline readings at each Pad. The expert shall engage in active monitoring twice a week on the first Pad. For all subsequent pads, Apex and the Township may agree to limit testing to once a week. Testing locations shall be established on relevant parcel or leasehold boundaries but in all events the only location that will be used for air monitoring located within Apex's established limit of disturbance shall be situated at the access road entrance. No other air monitoring equipment will be located within Apex's limit of disturbance including but not limited to the Pad or associated stormwater or erosion and sedimentation control facilities. Apex will notify the Township if any monitoring for OSHA emissions requirements at the site exceed OSHA's standards. In the event that a DEP reportable spill or any spill that is reported to the DEP by Apex occurs at a Pad-Site, the Township may require immediate air monitoring until the spill is abated or remediated. Other than in emergency situations, Apex will not flare or incinerate natural gas at the Pad during completion or flowback operations, and Apex will comply with all state and federal regulations applicable to emissions relating to its operations on the Pad. This condition shall conclusive establish compliance with 190-407.G(9) and also show compliance with § 190-641(D);
- (i) In conjunction with the aforementioned physical barriers, mitigating the direction or deflection of light sources off the Pad, including but not limited to use of low-glare lighting sources, light shields, and low vertical profile lighting equipment. Upon request by the Township, Apex will meet with the Township to take steps to further mitigate specific instances of complaints regarding Apex light sources. In all circumstances, Apex will have the right to take any and all steps to ensure that work surfaces will be properly lit to provide for a safe workspace for Apex workers and contractors; and
- (j) Ensuring that no trucks or construction vehicles will be staged or queued on any public roads within the Township. Apex will consult with the local School District at each Pad to coordinate and minimize truck traffic during regularly scheduled school bus stops. Apex will follow the requirements of the Diesel-Powered Motor Vehicle Idling Act of 2008 to minimize unnecessary vehicle idling on the Pad. Apex will inspect to ensure that all vehicles utilized on the Pad will maintain all required certifications and permits applicable to such vehicles.



In adjudicating the Applications for the Backus, Deutsch, Drakulic, and Numis Pads, the ZHB agrees to apply the above stipulation and concurrence by Penn Township and the Commissioners as to what evidence and conditions satisfy the Current Ordinance provision(s) regarding health, safety, and welfare of Penn Township residents as well as Article I, Section 27 as codified in Sections 190-407 and 190-635, 190-641, and 190-811 of the Current Ordinance.

10. For the Applications for the Backus Pad, Numis Pad, Deutsch Pad, and Drakulic Pad, Apex shall be permitted to assert and preserve its legal position before the ZHB regarding the application of the Current Ordinance and the constitutionality of Section 190-641(D) as applied by the ZHB. Apex acknowledges and understands that the ZHB may apply the Current Ordinance (but not the Pending Ordinance) to future proceedings. If Apex receives the permits for the Backus, Numis, Deutsch, and Drakulic Well-Pads, Apex shall not challenge the applicability or constitutionality of the Current Ordinance in those proceedings or on appeal.

11. Upon issuance of the permits for Beattie Central Pad-37, Draftina Central Pad-31, and White Central Pad-30 and the preliminary land development plan approvals for the Beattie Central Pad-37 and Draftina Central Pad-31, Apex shall file a Praecipe to Discontinue the land use appeals challenging the denial of the special exception applications for the Beattie Central Pad-37, Draftina Central Pad-31, and White Central Pad-30 as well as the denials of the preliminary land development plan approvals for the Beattie Central Pad-37 and Draftina Central Pad-31.

12. Upon issuance of the permits for the Beattie Central Pad-37, Draftina Central Pad-31, and White Central Pad-30 and the preliminary land development plan approvals for the Beattie Central Pad-37 and Draftina Central Pad-31, Apex shall enter into a consent order



with the Township and ZHB seeking remand of the applications for the Numis Pad, Deutsch Pad, and Drakulic Pad for proceedings before the ZHB consistent with the Consent Judgment and this Stipulation. If for some reason remand is not granted, the terms of this Stipulation and Consent judgment will apply with equal force before the Westmoreland County Court of Common Pleas or assigned trial court.

13. Proceedings before the ZHB on the Applications for the Backus Pad, Numis Pad, Deutsch Pad and Drakulic Pad consistent with the Consent Judgment and Stipulation shall be completed on or before February 1, 2017 and written decisions shall issue no later than forty-five (45) days after completion of the public hearing for each Pad.

14. Penn Township shall enter its appearance in the proceedings before the ZHB and affirmatively request the issuance of the permits for the Backus, Deutsch, Drakulic, and Numis Well-Pads subject to the conditions of Paragraph 9.

15. Apex agrees to dismiss, without prejudice, all its claims set forth in the action related to the applications for the Numis Pad, the Backus Pad, the Deutsch Pad, and the Drakulic Pad ("Potential Claims"). The Township agrees the running of any statute of limitation and any other statute, law, rule, contractual limitation, and principle of law or equity of similar effect that might otherwise foreclose or limit any or all rights, claims, causes of action, counterclaims, cross claims, and defenses arising out of or related to the Potential Claims are hereby tolled by this Stipulation and Consent Judgment to and including May 31, 2017 ("Termination Period"). The Township hereby agrees that neither it nor any of its boards, elected commissioners, appointed board members, or employees will assert, plead, raise by defense or avoidance, or otherwise rely, directly or indirectly, at any future time in any action or



proceeding, on any passage of time during the period from the Consent Judgment through the Termination Date ("Tolling Period") in defending against any claims relating to the Potential Claims.

16. Apex agrees to hold harmless, indemnify and provide a defense for the Township and/or ZHB from any legal action in which the validity of this Stipulation or Consent Judgment is challenged, or involving a direct or implied challenge to the propriety of entering into or involving a challenge to the provisions of this Stipulation or Consent Judgment or challenging the issuance of the permits based on their issuance pursuant to the terms of this Stipulation and Consent Judgment ("Challenge"). This provision is not intended to and does not cover an appeal from a ZHB decision or a challenge to the Current Ordinance that does not implicate this Stipulation or Consent Judgment. The Township and ZHB shall consent and provide waivers to counsel of Apex's choosing. Specifically, Township and ZHB hereby provide their informed consent under Pennsylvania Rules of Professional Conduct Rule 1.7 to being represented by Reed Smith LLP in connection with any such Challenge including while Reed Smith continues to represent Apex in this action and in connection with any current or future proceeding before the ZHB pertaining to the Pads at issue in this action. Township and ZHB agree not to seek the disqualification of Reed Smith in connection with this action or any current or future proceeding before the ZHB pertaining to the wells at issue in this action. Township and ZHB have had the opportunity to consult with independent counsel in connection with the granting of this consent and waiver, and agreement not to seek disqualification.

17. The Parties' respective attorneys of record are authorized to enter into both this Stipulation and a stipulated Consent Judgment in this action.



18. Each party shall bear its own attorneys' fees and costs incurred through the date of the Consent Judgment including attorneys' fees and costs associated with drafting and entering this Stipulation.

19. This Stipulation shall be governed by the laws of the Commonwealth of Pennsylvania and of the United States, and shall be subject to the jurisdiction of the Courts of the United States. Any legal proceeding with respect to any aspect of this Stipulation or the Consent Judgment shall be initiated in the Court in conformity with the rules and procedures applicable thereto. The Parties stipulate and agree that the Court shall have continuing ancillary jurisdiction to enforce the terms of this Stipulation and the Consent Judgment, including but not limited to the terms of Paragraphs 3, 4, and 9. If a party moves to enforce any provision of this Stipulation or the Consent Judgment, the prevailing party may petition the Court and the Court may award the costs and expense of the enforcement action including attorneys' fees. No party shall take a position in any subsequent proceeding upon the applications or permits inconsistent with the Stipulation and each party acknowledges the legality of this Stipulation.

20. This Agreement shall be binding upon each Party and its successors and permitted assigns.

21. This Agreement shall not be assignable by either Party without the prior written consent of the other Party.

22. Wherever possible, each provision of this Stipulation shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Stipulation shall be prohibited by or invalid under applicable law, such provisions shall be



ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Stipulation.

23. Any notice or other communication hereunder must be given in writing and (a) delivered in person, or (b) transmitted by facsimile, e-mail or other telecommunications mechanism provided that any notice so given is also mailed or sent as provided in clause (c) or (d), or (c) mailed by certified or registered mail, postage prepaid, receipt requested, or (d) sent by reputable overnight courier, to the address below or to such other address or to such other party as a Party shall have last designated by notice pursuant to this Section 23 to the other Parties.

If to Apex, addressed to:

Chris Hess
Apex Energy, LLC
6041 Wallace Rd. Extension, Suite 100,
Wexford, Pennsylvania 15090
Email: chess@apexenergylc.com

With a copy to:

Reed Smith, LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, Pennsylvania 15222
Email: jwilhelm@reedsmith.com
Attn: Jeffrey G. Wilhelm, Esq.

If to Township, addressed to:

Michael T. Korns Esq (Penn Twp. Solicitor)
Avolio Law Group LLC
117 North Main Street
Greensburg, Pennsylvania 15601
mkorns@mtklegal.com

With a copy to:

David Berardinelli
DeForest Koscelnik Yokitis & Berardinelli
Koppers Building, 30th Floor



436 Seventh Avenue
Pittsburgh, Pennsylvania 15219
berardinelli@deforestlawfirm.com

If to the Zoning Hearing Board, addressed to:

John Sweeney, Esq. (Penn Twp. Zoning Hearing Board Solicitor)
116 North Main Street
Greensburg, Pennsylvania 15601
jksweeney@hotmail.com

With a copy to:

David Berardinelli
DeForest Koscelnik Yokitis & Berardinelli
Koppers Building, 30th Floor
436 Seventh Avenue
Pittsburgh, Pennsylvania 15219
berardinelli@deforestlawfirm.com

24. This Stipulation may be executed by the Parties hereto in separate counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A set of counterparts executed by all of the Parties hereto shall be provided to Apex and the Township.

25. This Stipulation embodies the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written negotiations, agreements and understandings of the Parties with respect to the subject matter hereof.

26. The Parties acknowledge in drafting this Stipulation each of the Parties was represented by counsel, the Stipulation was explained to each of the parties, and the Stipulation is a joint effort of the Parties to reach resolution.

27. This Stipulation may not be altered, amended or modified, except by a writing duly executed by both Parties and approved by the Court.



Dated:

Apex Energy (PA), LLC, a Pennsylvania Limited Liability Company

By: [Signature]

Name: CHRISTOPHER J. HESS

Title: GENERAL COUNSEL / VP - LEGAL

Dated: December 5, 2012

Penn Township and Penn Township Board of Commissioners

By: [Signature]

Name: Edward J. Soltis

Title: Mayor

Dated:

Penn Township Zoning Hearing Board

By: [Signature]

Name: Mark Hensler

Title: Board Member Acting Chairman

Approved to Form and Content:

REED SMITH LLP

DEFOREST KOSCELENIK YOKITIS & BERARDINELLI

By: [Signature]
Jeffrey G. Wilhelm (Pa. I.D. No. 209135)
Reed Smith Centre, 12th Floor
225 Fifth Avenue
Pittsburgh, PA 15222
Tel: 412.288.3006
Fax: 412.288.3063
jwilhelm@reedsmith.com

By: [Signature]
David Berardinelli (Pa. I.D. No. 79204)
Koppers Building, 30th Floor
436 Seventh Avenue
Pittsburgh, PA 15219
Telephone: 412.227.3135
Facsimile: 412.227.3130
berardinelli@deforestlawfirm.com

Attorneys for Plaintiff

Counsel for Defendants