



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

April 21, 2009

VIA FEDERAL EXPRESS AND ELECTRONIC FILING

U.S. Environmental Protection Agency
Eurika Durr, Clerk of the Board
Environmental Appeals Board
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Michael T. Carroll
Manager, Pittsfield Remediation Programs
Corporate Environmental Programs
General Electric Company
159 Plastics Avenue
Pittsfield, MA 01201

Brooks M. Smith
Hunton & Williams LLP
951 East Byrd Street
Richmond, Virginia 23219

Re: Notice of Withdrawal of Contested Conditions
General Electric Company-Pittsfield Facility
NPDES Permit No. MA0003891
Appeal No. NPDES 08-25

Dear Ms. Durr, Mr. Carroll and Mr. Smith:

Region 1 of the United States Environmental Protection Agency ("Region") reissued National Pollutant Discharge Elimination System Permit No. MA0003891 ("Permit") to the General Electric Company ("GE") on September 30, 2008. The Permit authorizes discharges from a 225-acre parcel of land adjacent to the Housatonic River in Pittsfield, Massachusetts ("Site") during dry weather and wet weather, subject to effluent limitations and monitoring conditions. GE timely petitioned the U.S. Environmental Protection Agency Environmental Appeals Board ("Board") for review of the Permit on November 3, 2008. The Region placed the uncontested and severable portions of the Permit into effect on January 1, 2009. *See* Attachment 1 (Notice of Uncontested and Severable Conditions, dated November 25, 2008) ("Notice"). In accordance with NPDES regulations, all other conditions of the Permit were stayed for the pendency of the appeal.

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Following receipt of GE's petition, the Board directed the Region to prepare a response that addresses GE's contentions and whether GE has satisfied the requirements for obtaining review. Subsequently, the parties jointly moved the Board to extend the deadline for the Region to file its response to GE's petition until April 23, 2009, to allow time for the parties to explore the viability of settlement. The parties have successfully settled their dispute. Under the settlement, GE will among other things eliminate within the term of the Permit dry weather flows from outfalls 005 (excluding 64G Groundwater Treatment Facility), 05A, 006, and 009 or, if this is not feasible, reduce the discharge to a level that does not have the reasonable potential to cause or contribute to an exceedance of applicable water quality standards. To implement the settlement, the Region has determined to withdraw the contested conditions and to propose modified conditions for public review and comment, and GE has determined to voluntarily withdraw its petition for review.

Federal regulations governing the NPDES permitting program give EPA regional offices an absolute right to withdraw portions or all of a permit at any time prior to the Board's rendering of a decision on a permit appeal. *See* 40 C.F.R. § 124.19(d); *In re Wash. Aqueduct Water Treatment Plant*, NPDES Appeal No. 03-07, slip op. at 2 (EAB, Dec. 15, 2003). This authority includes the discretion to withdraw portions of a permit without withdrawing the permit in its entirety. *See* 40 C.F.R. § 124.19(d) (Region may, after issuing a withdrawal notification, prepare a new draft permit "addressing the portions so withdrawn"); Amendments to Streamline the National Pollutant Discharge Elimination System Program Regulations: Round Two, 61 Fed. Reg. 65,268, 65,281 (Dec. 11, 1996) ("EPA therefore proposes to clarify that the Regional Administrator may withdraw and reissue any NPDES...permit (or a contested condition thereof) prior to a decision of the EAB to grant or deny review under § 124.19(c)."). Section 124.19(d) specifies further that, once the permit or portions thereof are withdrawn, the Regional Administrator must "prepare a new draft permit under § 124.6 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part."

The Board has not rendered a decision to grant or deny review of the Permit. The Region is therefore authorized to act under 40 C.F.R. § 124.19(d) and is hereby withdrawing the Contested Conditions. The term "Contested Conditions" shall have the same meaning as in the Notice, provided, however, that such term shall not include the conditions set forth in (1) Attachment C, BMP Plan Part A.1, BMP 1.C (Pipe cleaning and inspection to the extent applicable to portions of the collection system discharging to OWS 64X) and (2) Part I.D (PCB treatment capability study for the 64G treatment system).¹ With respect to each of the Contested Conditions, the corresponding term, if any, in: (1) GE's individual prior permit issued by EPA on September 30, 1988, as modified on May 21, 1992, or, as the case may be, (2) the multi-sector general permit, for which GE sought and obtained coverage on April 4, 2001, for storm water discharges associated with industrial activity not covered under the individual permit, shall remain in effect, until superseded by final and effective modified permit conditions.

¹ These latter two conditions were not directly contested by GE but were deemed contested, and therefore stayed, because of their inseparability from other conditions in the Permit that were contested by GE. *See* Notice at 2. These formerly inseparable conditions of the Permit shall become fully effective enforceable obligations on May 1, 2009, in the case of Attachment C, BMP Plan Part A.1, BMP 1.C, and September 1, 2009, in the case of Part I.D (PCB treatment capability study for the 64G treatment system).

Consistent with 40 C.F.R. § 124.19(d), the Region will issue a public notice of proposed revised permit conditions in a draft permit modification within the next two weeks. The rationale for the proposed conditions will be set forth in a Fact Sheet that will accompany the draft permit modification. The Region will provide a public comment period on the proposed modification and may schedule a public hearing.

If you have any questions regarding this correspondence, please do not hesitate to contact Samir Bukhari, the Region's legal counsel in this matter, at 617-918-1095.

Sincerely,



Ira W. Leighton
Acting Regional Administrator

cc:

Roderic McClaren, GE
Brooks M. Smith, Hunton & Williams LLP
Roger Janson, EPA
Brian Pitt, EPA
Denny Dart, EPA
Ann Williams, EPA
Samir Bukhari, EPA
Tim Conway, EPA
Dean Tagliaferro, EPA
Jane Rothchild, MassDEP
Paul Hogan, MassDEP

Attachment 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

November 25, 2008

VIA OVERNIGHT MAIL AND ELECTRONIC SUBMISSION

Ms. Eureka Durr
Clerk of the Board
U.S. EPA Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Michael T. Carroll
Manager, Pittsfield Remediation Programs
Corporate Environmental Programs
General Electric Company
159 Plastics Avenue
Pittsfield, MA 01201

**Re: G.E.-Pittsfield Facility
Notice of Uncontested and Severable Conditions
NPDES Appeal No. 08-25
NPDES Permit No. MA0003891**

Dear Ms. Durr and Mr. Carroll:

The General Electric Company ("GE") timely petitioned the U.S. Environmental Protection Agency Environmental Appeals Board for review of NPDES Permit No. MA0003891 ("Permit") on November 3, 2008. The Permit was issued by the New England Regional Office of the U.S. Environmental Protection Agency ("Region") on September 30, 2008. The draft permit was issued on December 22, 2004 ("Draft Permit").

Pursuant to 40 C.F.R. § 124.19, GE contests the following Permit provisions:

Part	Contested Limitation or Condition
Part I.A.1	-PCB limitation and/or conditions applicable to the 64G treatment system
Part I.A.3	-Sampling conditions applicable to dry weather discharges from Outfall 005 -Monthly average dry weather PCB limitation of 0.014 ug/l on Outfall 005 -Lack of authorization to discharge fire

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	<p>suppression system water from Outfall 005 during dry weather</p>
Part I.A.5	<ul style="list-style-type: none"> -Wet weather flow proportioned composite samples for TSS and PCB discharges from Outfall 05A -Dry weather discharge prohibition on Outfall 05A -Lack of authorization to discharge fire suppression system from Outfall 05A during dry weather
Part I.A.6	<ul style="list-style-type: none"> -Wet weather flow proportioned composite samples for TSS and PCB discharges from Outfall 05B
Part I.A.7	<ul style="list-style-type: none"> -Sampling conditions applicable to dry weather discharges from Outfall 006 -Monthly average dry weather PCB limitation of 0.014 ug/l on Outfall 006 - Lack of authorization to discharge fire suppression system water from Outfall 006 during dry weather
Part I.A.8	<ul style="list-style-type: none"> -Wet weather flow proportioned composite samples for TSS and PCB discharges from Outfall 006 -Monthly average wet weather PCB limitation of 0.065 ug/l on Outfall 006
Part I.A.9	<ul style="list-style-type: none"> -Wet weather flow proportioned composite samples for TSS and PCB discharges from Outfalls 06A -End of pipe flow meter on Outfall SR05
Part I.A.11	<ul style="list-style-type: none"> -Sampling conditions applicable to dry weather discharges from Outfall 009 -End of pipe flow meter on Outfall 009 -Monthly average dry weather PCB limitation of 0.014 ug/l on Outfall 009 - Lack of authorization to discharge fire suppression system water from Outfall 009 during dry weather
Part I.A.13	<ul style="list-style-type: none"> -Authorization of discharges from Outfalls YD6, YD7, YD8, YD9 and YD14 - Lack of authorization to discharge fire suppression system water from Outfalls YD10, YD11

	and YD12 during dry weather
Part I.E	-Ambient monitoring plan
Part I.F	-Permit re-opener
Attachment C, BMP Plan Part A.1, BMP 1.A	-BMPs applicable to Drainage Basin 007

GE also contests the increase in monitoring frequencies at all outfalls, as set forth in Part I.A.1 through I.A.12 of the Permit. Finally, the Region has determined that the following two additional conditions are not severable from the contested conditions set forth above:

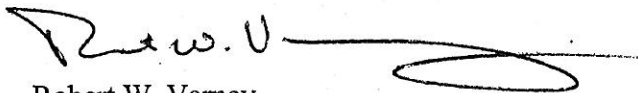
Attachment C, BMP Plan Part A.1, BMP 1.C	-Pipe cleaning and inspection to the extent applicable to portions of the collection system discharging to OWS 64X ¹
Part I.D	-PCB treatment capability study for the 64G treatment system

Collectively, the foregoing contested and inseverable conditions are referred to as the "Contested Conditions." All other conditions of the Permit are referred to as the "Uncontested Conditions."

I hereby notify you of my determination that the Contested Conditions are stayed during the pendency of this appeal and until final agency action under 40 C.F.R. § 124.19(f). With respect to each of the Contested Conditions, the corresponding term, if any, in: (1) GE's individual prior permit issued by EPA on September 30, 1988, as modified on May 21, 1992, or, as the case may be, (2) the multi-sector general permit, for which GE sought and obtained coverage on April 4, 2001, for storm water discharges associated with industrial activity not covered under the individual permit, shall remain in effect. The Uncontested Conditions of the Permit shall become fully effective enforceable obligations on January 1, 2009.

If you have any questions regarding this notice, please feel free to contact Samir Bukhari, the Region's legal counsel in this matter, at 617-918-1095, or Brian Pitt, in our Office of Ecosystem Protection, at 617-918-1875.

Sincerely,



Robert W. Varney
Regional Administrator

cc:

¹ This inseverability determination is preliminary. It may be amended at a later date based on additional information or analysis discussed with GE. Any such amended determination will follow the notice requirements of 40 C.F.R. § 124.60(b).

Roderic McClaren, GE (via electronic mail)
Brooks M. Smith, Hunton & Williams LLP (via electronic mail)
Roger Janson, EPA
Brian Pitt, EPA
Mike Fedak, EPA
Ann Williams, EPA
Samir Bukhari, EPA
Ron Fein, EPA
Tim Conway, EPA
Dean Tagliaferro, EPA
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Betsey Wingfield, Connecticut Department of Environmental Protection
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Lynn Fowler, Housatonic River Commission
Carol Lee Rawn, Conservation Law Foundation
Jane Winn, Berkshire Environmental Action Team
Tim Gray, Housatonic River Initiative / Housatonic River Keeper
Judy Herkimer, Housatonic Action League
Tom Hickey, Pittsfield Economic Development Authority
Andrew Major, U.S. Fish and Wildlife Service
E. Heidi Ricci, Mass Audubon Society
Dennis Regan, Housatonic Valley Association
Nathaniel Karns, Berkshire Regional Planning Commission