

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

**In re:** )  
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**GENERAL ELECTRIC COMPANY** ) **RCRA Appeal Nos. 16-01, 16-02, 16-03**  
 ) **16-04 and 16-05**  
**Permit No. MAD002084093** )  
 )

**BRIEF OF CITY OF PITTSFIELD, AMICUS CURIAE**

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## STATEMENT OF INTEREST OF AMICUS CURAE

On October 24, 2016 the United States Environmental Protection Agency, Region I (“USEPA”) issued a Final Modification of RCRA Corrective Action Permit (“Final Permit”) for the GE-Pittsfield/Housatonic River Site, “Rest of River” (“the River”), Permit No. MAD002084093. The Final Permit requires General Electric (“GE”) to remediate contamination to the River, its property, and abutting properties within the City of Pittsfield (“the City”). Five parties have filed appeals of the Final Permit.<sup>1</sup> On February 14, 2017 the City filed with the Environmental Appeals Board (“the Board”) a Notice of Status as an Interested Party pursuant to 40 C.F.R. § 124.19(e). The City’s interest in the issues raised by these appeal proceedings was set forth in that filing. The City now files this brief to participate as an *amicus curae* in these proceedings.

## INTRODUCTION AND BACKGROUND

The City has been an active participant in Housatonic River cleanup discussions for many years. The City was a signatory to the original Consent Decree entered October 27, 2000 and the City is represented on the Citizen’s Coordinating Committee. The City has been directly engaged in this process because remediating contaminants in the Housatonic River system is critically important for the City and the region.

The Final Permit will have a great impact on the City. Roughly twenty-five percent (25%) of the contaminated sediment to be removed pursuant to the Final Permit will take place in the City and the City will suffer negative socioeconomic impacts as a result of the corrective

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<sup>1</sup> The petitioners include GE; Housatonic River Initiative, Inc.; C. Jeffrey Cook; Housatonic Rest of River Municipal Committee; and Berkshire Environmental Action Team, Inc.

actions required by the Final Permit.<sup>2</sup> The corrective actions in the Final Permit require access and easements over City property and City streets.

## ARGUMENT

### I. The City Desires Municipal Involvement and Input in Areas Within and Outside the Zone of Cleanup

The City is concerned with local input, control, and permitting in areas outside the zone of cleanup, and the City desires to be informed and involved in all Rest of River cleanup activities conducted under the Final Permit. While project participants are obligated to involve the City in input and permitting outside the zone of cleanup, the City also desires to be engaged within the zone of cleanup. The Final Permit does not state that EPA, GE, and the States will actively engage, consult, and consider input from the City during design and/or implementation of cleanup activities. As stated above, pursuant to the Final Permit roughly twenty-five percent (25%) of the contaminated sediment to be removed will take place in the City and the City will suffer negative socioeconomic impacts as a result of the corrective actions required by the Final Permit.<sup>3</sup> The corrective actions require access and easements over City property and City streets. As such, the City desires direct municipal involvement throughout the life of the project to mitigate these direct and substantial impacts to the City, its residents, and its businesses.

The City desires to be actively engaged in the review of and comment on cleanup plans—including Statements of Work, Remedial Design Work Plans, Remedial Action Work Plans, and other associated plans. The City requests a reasonable opportunity to review and comment on all design and implementation plans for each stage of Rest of River cleanup including, but not

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<sup>2</sup> For a summary of socioeconomic impacts resulting from Rest of River cleanup, see Skeo Solutions, *Cleanup of the Housatonic "Rest of River": Socioeconomic Impact Study* (2012).

<sup>3</sup> *Id.*

limited to, locating temporary access roads, staging areas, dewatering and treatment facility areas and storage sites. To guarantee that the City and the public will be involved in all work going into the future, it is necessary for GE to work closely with the City on these plans.

Throughout the project life, the City desires to provide input and maintain control over permitting and other decisions regarding areas within and outside of the defined cleanup "Site." City staff have a record of working closely with EPA in the cleanup of the GE site and first two miles of the river, and the City would like to continue this practice in a meaningful and substantive way. Such continued consultation with local government officials and citizens during the Rest of River cleanup will help ensure the success of the corrective action program.

The City has municipal agencies and ordinances focused on areas affected by the Rest of River cleanup. Review of project plans by local boards and commissions and input where local approvals would typically be required would help mitigate negative impacts to effected neighborhoods and the City in general, and result in a more beneficial project outcome. The City requests that to the extent that any work is conducted off of the "Site," EPA ensure that GE's scheduling submissions and other documentation take into account the necessity of obtaining all necessary municipal permits, approvals and consents. As stated in the Housatonic Rest of River Municipal Committee's October 8, 2014 letter to Dean Tagliaferro at EPA New England, c/o Weston Solutions, with the City as a signatory, EPA has previously acknowledged in its approvals of RCRA responses that it is appropriate to require compliance with state and municipal laws. *See, e.g., North Haven Planning & Zoning Com. v. Upjohn Co.*, 921 F.2d 27, 27-28 (2d Cir. 1990) (per curiam) (sustaining municipal zoning board's jurisdiction over RCRA plan to remediate substantial hazardous sludge site: "Consistent with the view that the approval

was thus not intended to preempt local zoning regulations, EPA and DEP responded to public comments and questions by stating that if the Connecticut courts upheld a ruling that Upjohn's current plan would violate zoning regulations, Upjohn would have to submit to EPA and DEP a new plan for review and approval."); *see also* 40 C.F.R. § 258.56 (in assessing corrective measures, facility operator must address "State or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy").

The Board in *In re General Motors Automotive - North America* described Congress' recognition of the importance of local entities when it enacted RCRA:

Congress observed that responsibility for the collection and disposal of waste materials had historically been vested, and should continue to vest, in state, regional, and local agencies rather than in federal agencies. However, Congress found that the problems associated with disposing of the ever-increasing volume of waste had so intensified that the matter had become 'national in scope and in concern,' warranting, in its view, immediate and sustained federal action by means of financial and technical assistance to state and local entities, as well as federal leadership in the development and application of new waste reduction and disposal methods.<sup>4</sup>

EPA's *RCRA Orientation Manual* also highlights the importance of partnerships under RCRA corrective action programs. The manual states:

EPA believes a key to success for RCRA and for improving the corrective action program will be building new partnerships and coalitions with government agencies, businesses, interest groups, and the public. While EPA has made great strides in working in true partnership with the states, more remains to be done.<sup>5</sup>

In line with this goal, the City desires input and involvement from local government officials and citizens during the Rest of River cleanup.

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<sup>4</sup> *In re General Motors Automotive - North America*, 14 E.A.D. 1, 5 (EAB 2008).

<sup>5</sup> EPA, *RCRA Orientation Manual 2014* at I-6, available at: <https://www.epa.gov/sites/production/files/2015-07/documents/rom.pdf>.

**II. The City Requests Municipal Assistance from Qualified Environmental Consultants to Evaluate Project Impacts on the City**

The City requests municipal assistance from qualified environmental consultants to evaluate impacts of cleanup under the Final Permit on the City. The City intends to help ensure that the cleanup remedy specified in the Final Permit will be successfully implemented in a way that best works to meet the multiple needs of the local stakeholders and produce a result that is acceptable to the City. Therefore, as stated above, the City requests that it be given reasonable opportunity to review and comment on all design and implementation plans for cleanup in Reach 5A. Due to the complexity of the project, the City requests that in consultation with the City GE hire a qualified environmental consultant, approved by the City, to assist the City in reviewing and commenting on plans, statements of work, and other submittals during the cleanup, and to aid the City and its local boards in reviewing air and water quality monitoring and other data that is generated during construction.

**III. The City Requests that Additional Assurances Regarding Operation and Maintenance**

The City is concerned that the Final Permit does not appropriately define GE's responsibilities with regard to operation and maintenance. Section II.C of the Final Permit states that "Permittee shall implement an Operation and Maintenance (O&M) program upon completion of the Remedial Action for the Rest of River." The Final Permit is silent, however, as to the durational limit of the O&M program.

The Housatonic River is a dynamic, meandering system that will continue to change course and expose contaminated channel, bank, backwaters and floodplains in the future. This dynamic system has an ever-increasing risk of erosion and exposure due to an increase in the number and



intensity of severe storm events. The Final Permit will allow significant PCB contamination to remain behind after cleanup activities, most notably in Reach 5, and the City does not want it to be the burden of the City and its residents to monitor and manage those PCBs left behind.

Therefore, the City requests appropriate assurances that GE's operation and maintenance in not limited by duration of time.

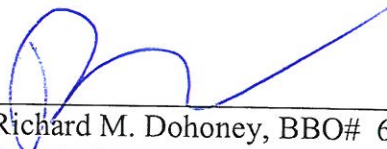
### **CONCLUSION**

For the foregoing reasons, the City requests that the Board direct Region I to amend the permit to (1) require that GE afford the City local involvement and input in areas within and outside the zone of cleanup; (2) require that GE provide the City with assistance from qualified environmental consultants to evaluate project impacts on the City; and, (3) require that GE's operation and maintenance responsibilities are not limited by duration of time.

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THE CITY OF PITTSFIELD,

By its attorneys



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STATEMENT OF COMPLIANCE WITH WORD LIMITATION

Pursuant to 40 C.F.R. § 124.19(d)(3), this amicus brief complies with the word limit set by the Board. According to the word count function in Microsoft Word, this brief contains 7,000 words or fewer.

## CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2017, true and correct copies of City of Pittsfield's Amicus Brief and Attachments were served via U.S. Mail to:

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