

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

In the matter of:)
Final Modification of RCRA) **United States, et al. v. General Electric Co.**
Corrective Action Permit) **Docket No MAD002084093**
GE-Pittsfield Housatonic River Site)
Rest-of-River, Massachusetts)

**Berkshire Environmental Action Team, Inc.'s
Notice of Appeal**

Dated: November 23, 2016



Jane Winn
Berkshire Environmental Action Team, Inc.
29 Highland Ave
Pittsfield, MA 01201-2413
jane@thebeatnews.org

Table of Contents - p2

Cover letter -p3

Compliance with word limitation -p4

Table of Authorities with references to the pages of the brief where they are cited -p5

Certification of Identical Paper Copy Requirement -p6

Certificate of service -p7

Appeal - p8



*Working with you to protect the
environment for wildlife*

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, NW
Mail Code 1103M
Washington, D.C. 20460-0001

Re: Final Modification of RCRA Corrective Action Permit, GE-Pittsfield/Housatonic River Site,
"Rest of River", U.S.EPA ID No. MAD002084093

Dear Sir/Madam Clerk:

Enclosed for filing is an Appeal of the above-referenced U.S. EPA Final
Modification of RCRA Corrective Action Permit to General Electric-Pittsfield for
remediation of the Housatonic River, Rest of River Site.

Please bring this to the attention of the Environmental Appeals Board.

Thank you for your assistance in this matter.

Sincerely,

Jane Winn
Executive Director



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Re: Final Modification of RCRA Corrective Action Permit, GE-Pittsfield/Housatonic River Site,
"Rest of River", U.S.EPA ID No. MAD002084093

Dear Sir/Madam Clerk:

I hereby certify that excluding The Table of Contents and other excluded pages this petition to the
Environmental Appeals Board is under 14,000 words.

Sincerely,

Jane Winn
Executive Director

Table of Authorities

p8 - Doc: 568097, Page: 3-7, Title: Letter Regarding Comments on Proposed Cleanup of PCBS from the Housatonic River, Author: Winn, Jane (BERKSHIRE ENVIRONMENTAL ACTION TEAM), Addressee: Tagliaferro, Dean (US EPA REGION 1).

p8 - Doc: 568478, Pages: 4, Title: Combined Non-Government Organization Public Comments on Proposed Remedial Action (RA), 08/18/2014 – 10/27/2014, Multiple Authors, Addressee: US EPA REGION 1.

p9 - EPA GE/Housatonic River website on harmful effects of PCBs (<https://www.epa.gov/ge-housatonic/understanding-pcb-risks-ge-pittsfieldhousatonic-river-site> accessed 2016-Nov-23)

p9 - Brown, S., and P. Veneman. 1998. Compensatory Wetland Mitigation in Massachusetts. Massachusetts Agricultural Experiment Station, University of Massachusetts, Amherst. Research Bulletin 746.

p10 - Doc: 450642, Pages: 2, Title: Comments on GE's Response to EPA's Interim Comments on Corrective Measures Study (CMS) Report, Author: Regan, Dennis (HOUSATONIC VALLEY ASSOCIATION (HVA)), Addressee: Murphy, James (US EPA REGION 1).

p10 - Doc: 568097, Page: 7, Title: Letter Regarding Comments on Proposed Cleanup of PCBS from the Housatonic River, Author: Winn, Jane (BERKSHIRE ENVIRONMENTAL ACTION TEAM), Addressee: Tagliaferro, Dean (US EPA REGION 1).

p10 - Doc: 260394, Pages: 2-3, Title: Public Comments to EPA Regarding GE's Corrective Measures Study (CMS) Proposal, Author: Winn, Jane (BERKSHIRE ENVIRONMENTAL ACTION TEAM), Addressee: Svirsky, Susan (US EPA REGION 1).

p11 - Doc: 260394, Pages: 2-3, Title: Public Comments to EPA Regarding GE's Corrective Measures Study (CMS) Proposal, Author: Winn, Jane (BERKSHIRE ENVIRONMENTAL ACTION TEAM), Addressee: Svirsky, Susan (US EPA REGION 1)

p11 - Doc: 287779, Pages: 6, Title: Public Comments on Corrective Measures Study (CMS) Report (with Email Transmittal Dated 5/21/2008), Multiple Authors, Addressee: Svirsky, Susan (US EPA REGION 1).

p11 - Doc: 568478, Pages: 140, Title: Combined Non-Government Organization Public Comments on Proposed Remedial Action (RA), Multiple Authors, Addressee: US EPA REGION 1. 08/18/2014 (HVA).

P11 - Doc: 517777, Page: 1, Title: Railroad Problems go Beyond Flood, Author: Winn, Jane (BERKSHIRE ENVIRONMENTAL ACTION TEAM)



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Clerk of the Board
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Re: Final Modification of RCRA Corrective Action Permit, GE-Pittsfield/Housatonic River Site,
"Rest of River", U.S.EPA ID No. MAD002084093

Dear Sir/Madam Clerk:

I certify that the foregoing Notice of Appeal and Appeal Brief are identical copies of the
Notice of Appeal and Appeal Brief electronically filed in this case with the
Environmental Appeals Board on November 23, 2016.

Sincerely,

Jane Winn
Executive Director



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Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
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Mail Code 1103M
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Re: Final Modification of RCRA Corrective Action Permit, GE-Pittsfield/Housatonic River Site,
"Rest of River", U.S.EPA ID No. MAD002084093

I hereby certify that this appeal by Berkshire Environmental Action Team, Inc. was sent via email to the following people on November 23, 2016:

Bryan Olson, Director Office of Site Remediation and Restoration, U.S.EPA
Rod McLaren, General Electric Company
Michael Gorski, MassDEP
Betsy Harper, Massachusetts Attorney General's Office
Matthew Beaton, Massachusetts Executive Office of Energy and Environmental Affairs
Susan Peterson, CT DEEP
Lori DiBella, Connecticut Attorney General's
Mayor Linda Tyer, City of Pittsfield
Corydon Thurston, Pittsfield Economic Development Authority
Addie Fiske, U.S. Department of Justice
Mark Barash, U.S. Department of Interior
Tom Chapman, U.S. Fish and Wildlife Service
Ken Finkelstein, National Oceanic and Atmospheric Administration
Gary Clayton, Mass Audubon
E. Heidi Ricci, Mass Audubon
Becky Cushing, Mass Audubon
Tim Gray, Housatonic River Initiative
Benno Friedman, Housatonic River Initiative

Sincerely,

Jane Winn
Executive Director

On October 24, 2016 the United States Environmental Protection Agency, Region 1 (EPA), issued a Final Modification of RCRA Corrective Action Permit (Permit) for the GE-Pittsfield/Housatonic River Site, (Rest of River) requiring General Electric Company(GE) to remediate contamination that GE caused to the river and its watershed.

Berkshire Environmental Action Team, Inc. (BEAT) has been participating in the EPA led Citizen Coordinating Council meetings since 2003. In addition, BEAT's Executive Director, now in her late 50s, grew up on the banks of the Housatonic River main stem on a parcel between the Pomeroy Avenue and Holmes Road bridges in Pittsfield and thus has historical knowledge of the contamination as well. BEAT has submitted numerous comments and spoken at numerous meetings with the EPA on this site and on this Permit.

Contested Permit decisions:

- Section II. B. 3. Floodplain and Vernal Pools**
- Section II. B. 2. i. Engineered Caps**
- Section II. B. 2. 1. Additional Response Actions for Dams and Impoundments and Sediment, Riverbanks, and Backwaters in Reaches 10 through 16**

Supported Permit decisions:

- Section II. B. 5. Off-Site Disposal of Contaminated Sediment and Soil**

Section II. B. 3. - Floodplain and Vernal Pools

BEAT strongly opposes the EPA Permit decision on how to treat Floodplain Core Areas and Vernal Pools.

These issues were raised previously:

Doc: 568097, Page: 3-7, Title: Letter Regarding Comments on Proposed Cleanup of PCBs from the Housatonic River, Author: Winn, Jane (BERKSHIRE ENVIRONMENTAL ACTION TEAM), Addressee: Tagliaferro, Dean (US EPA REGION 1).

Doc: 568478, Pages: 4, Title: Combined Non-Government Organization Public Comments on Proposed Remedial Action (RA), 08/18/2014 – 10/27/2014, Multiple Authors, Addressee: US EPA REGION 1.

We believe it is critically important to our rare species, threatened species, endangered species, and species of special concern that the long-term damage of PCBs be eliminated. We have watched as the Massachusetts Natural Heritage and Endangered Species Program (Heritage) has allowed proponents of large projects to move endangered species rather than avoid them - most recently at the Expansion of the Pittsfield Municipal Airport. Whenever a large corporation, or in this case, the Airport Commission, finds a rare species to be in its way, Heritage allows the species to be moved. When the large corporation, in this case GE, wants the species NOT to be moved, Heritage capitulates to that request.

In this case, the continued PCB contamination will continue to harm our most threatened species for decades to come unless the EAB requires these Core Areas to be carefully remediated.

While the EPA points to studies that show that remediation seldom works, those same studies make very clear that the reason most remediation fails is because of lack of oversight. (Brown and Veneman, 1998¹) EPA and concerned citizens have provided careful oversight on the first two miles of the Housatonic River.

For vernal pools the case is even more clear. From the EPA GE/Housatonic River website on harmful effects of PCBs (<https://www.epa.gov/ge-housatonic/understanding-pcb-risks-ge-pittsfieldhousatonic-river-site> accessed 2016-Nov-23)

Amphibians

Harmful effects can include damage to the reproductive organs of adults as well as decreased viability of offspring and life-threatening deformities in larvae. A number of reproductive effects such as deformed gonads (see pictures on page 5), impaired development, altered sex ratio, and larval deformities were observed in frogs and frog larvae exposed to PCBs from the Housatonic River floodplain vernal pools and backwaters.

PCBs are a threat to these animals.

GE, under the supervision of EPA, has very successfully remediated a vernal pool in the first two-mile stretch of the Housatonic River floodplain. This remediation showed exactly how this kind of remediation should be done. Careful measurements of the microtopography were made, numerous “before” photographs were taken, and the work was carefully done to recreate a pool that matched the “before” pool except that it no longer contains PCBs.

BEAT learned several lessons from this example.

1. The remediation can be done very carefully using small equipment. There is no reason that large trees have to be removed. Soil can be carefully excavated and replaced with clean organic soils without having to do the tremendous damage that GE constantly threatens.
2. When this work is carefully done at a time of year that the vernal pool amphibians are not present, the pool can function the very next season! Care must be taken to ensure that equipment is not harming the upland habitat that these amphibians are using the rest of the year. In the case of the remediated vernal pool, all species that were present before the remediation were back the following season – including fairy shrimp. The wood frogs, spotted salamanders, and fairy shrimp – all obligate vernal pool species – are thriving. We would like EPA to require a study to determine if the higher-than-average number of physical anomalies seen in amphibians breeding in vernal pools containing PCBs has decreased in this pool. To our knowledge this study has not been done.

Thus we have a very clear example of how vernal pools can be very successfully remediated, done by the very same organizations that would be doing this on the Rest of the River. We believe this makes the case of why the EAB should require GE to continue to remediate the vernal pools in the floodplain of the Rest of the River.

Additionally, at the last Citizens Coordinating Council meeting, BEAT asked EPA if activated carbon

¹ Brown, S., and P. Veneman. 1998. Compensatory Wetland Mitigation in Massachusetts. Massachusetts Agricultural Experiment Station, University of Massachusetts, Amherst. Research Bulletin 746.

has EVER been used in vernal pools before. The answer was that activated carbon has been used to sequester PCBs in wetlands, but not, as far as they knew in vernal pools. This is critical! If activated carbon changes the pH when it is applied, this could be devastating to the vernal pool amphibians. Many amphibians are exquisitely sensitive to changes in pH.

BEAT is extremely concerned that the EPA has chosen a “remedy” for vernal pools that is untested and will not get rid of the contamination, rather than using a proven remedy that they have successfully used on the Housatonic River floodplain.

Please change the requirements for both the floodplain and especially the vernal pools to protect the state-listed species and the vernal pool amphibians whether or not they are state-listed (some are, others are not).

Section II. B. 2. I. - Engineered Caps

BEAT strongly opposes the EPA Permit decision on to use Engineered Caps in the river. We believe contaminated sediment should be removed, not capped.

These issues were raised previously:

Doc: 450642, Pages: 2, Title: Comments on GE’s Response to EPA’s Interim Comments on Corrective Measures Study (CMS) Report, Author: Regan, Dennis (HOUSATONIC VALLEY ASSOCIATION (HVA)), Addressee: Murphy, James (US EPA REGION 1).

Doc: 568097, Page: 7, Title: Letter Regarding Comments on Proposed Cleanup of PCBs from the Housatonic River, Author: Winn, Jane (BERKSHIRE ENVIRONMENTAL ACTION TEAM), Addressee: Tagliaferro, Dean (US EPA REGION 1). “BEAT would also like to suggest that capping in a moving river is inappropriate. Contaminated riverbed sediments should be removed. Any cap that can withstand the rigors of a moving river is an inappropriate substrate for the invertebrate life living in the river.”

Doc: 260394, Pages: 2-3, Title: Public Comments to EPA Regarding GE’s Corrective Measures Study (CMS) Proposal, Author: Winn, Jane (BERKSHIRE ENVIRONMENTAL ACTION TEAM), Addressee: Svirsky, Susan (US EPA REGION 1).

BEAT and many other environmental organizations hold river cleanups to remove trash from the Housatonic River. We are always amazed at what huge objects are thrown into the river – including refrigerators, water heaters, 6-foot diameter tires, stoves, couches, shopping carts, and more. We are also amazed at the power of the water to move these objects downstream each year, sometimes burying them so that almost nothing appears above the sediment, and the next year uncovering them once again. We also witness locations that are usually 6 inches to two feet deep, but when a tree falls across the river, the water scours below the trunk sometimes 4 to 5 feet deep. This creates a very scary situation for removing trash caught by these trees.

Large objects being tumbled downstream and the scour below trees that fall - any cap that could withstand these insults would be totally inappropriate for supporting the wildlife, including benthic invertebrates, that should thrive in our river.

The type of cap proposed, in our opinion based on years of work in this river, would fail and continue to send PCBs farther downstream to Connecticut and on into the sound.

Please, require GE to remove all PCB laden sediment in the riverbed rather than capping our river.

Section II. B. 2. 1. Additional Response Actions for Dams and Impoundments and Sediment, Riverbanks, and Backwaters in Reaches 10 through 16

Doc: 260394, Pages: 2-3, Title: Public Comments to EPA Regarding GE's Corrective Measures Study (CMS) Proposal, Author: Winn, Jane (BERKSHIRE ENVIRONMENTAL ACTION TEAM), Addressee: Svirsky, Susan (US EPA REGION 1) "Dams - There should be thorough testing behind all the dams to determine the extent and level of PCBs behind each. Again, cover up should not be an option."

BEAT feels strongly that the Permit should require GE to thoroughly test behind all the dams in the Rest of the River, and GE should be required to remove contaminated sediment when found, not just if and when the dam might be removed or undergo major repair.

Supported Permit decisions:

Section II. B. 5. - Off-Site Disposal of Contaminated Sediment and Soil

This issue was raised previously:

Doc: 287779, Pages: 6, Title: Public Comments on Corrective Measures Study (CMS) Report (with Email Transmittal Dated 5/21/2008), Multiple Authors, Addressee: Svirsky, Susan (US EPA REGION 1) . "If the EPA mandates dredging, lined, upland landfills should be utilized only as purely temporary measures."

Doc: 568478, Pages: 140, Title: Combined Non-Government Organization Public Comments on Proposed Remedial Action (RA), Multiple Authors, Addressee: US EPA REGION 1. 08/18/2014 (HVA), "If the EPA mandates dredging, lined, upland landfills should be utilized only as purely temporary measures."

Doc: 517777, Page: 1, Title: Railroad Problems go Beyond Flood, Author: Winn, Jane (BERKSHIRE ENVIRONMENTAL ACTION TEAM)

BEAT supports EPA's decision to require GE to dispose of contaminated sediment and soil at an already licensed toxic waste facility. Ordering that the disposal of all contaminated sediment and soil, as well as other waste, will be off-site and that the use of rail will be maximized to transport the material. We believe that by consolidating this contamination in as few locations as possible, and considering them temporary disposal sites, the EPA will be able to have these sites remediated as the appropriate technology is developed. It is critical to make sure that these sites are carefully monitored. The fewer such sites, the easier they are to track and remediate.

We also support the suggestion that use of rail for transport would be the best option, but with the caution that the rail must be improved prior to use. Housatonic Railroad has a poor accident record, even for a Class 3 railroad.