

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL APPEALS BOARD**

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

**CITY OF PITTSFIELD’S
NOTICE OF STATUS AS INTERESTED PARTY**

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”) requiring General Electric (“GE”) to remediate contamination to the River, its property and abutting properties within the City of Pittsfield (“the City”). Pursuant to 40 C.F.R. §124.49(a)(4), anyone seeking a petition for review of an agency decision, including USEPA Final Permits under the Resource Conservation and Recover Act (“RCRA”) must file an appeal within 30 days of its issuance. The City has not filed, and does not desire to file, an appeal of the Final Permit, however five (5) parties have filed appeals of the Final Permit.¹ 40 C.F.R. §124.49(e) states “any interested person may file an amicus brief in any appeal pending before the Environmental Appeals Board under this section. The deadline for filing such brief is 15 days after the filing of the response brief.” Pursuant to the *Order Granting Request for Extension of Time for Response and Reply Briefs* dated January 24,

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

2017, the date for filing or responses is February 14, 2017. The City reserve its right to participate in the appeals by *amicus curiae*.

The City is an interested party. The City participated in the public comment period and was among the recipients of the Final Permit on October 24, 2016. A true and accurate copy of the City's comments to the draft Permit is attached as Exhibit A. The City was a signatory to the original Consent Degree entered October 27, 2000 (the "Consent Degree"). Roughly twenty-five percent (25%) of the contaminated sediment to be removed pursuant to the by the Final Permit 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. Finally the corrective actions require access and easements over City property and City streets.

40 CFR 21.30 provides that the EAB "shall adopt, modify, or set aside the findings of fact and conclusions of law or discretion" contained in the decision being reviewed (if EAB even accepts the request for review). EAB will give discretion to the particularized knowledge of the agency that issued the decision. See, e.g., In re Chempace Corp., 9 E.A.D. 119, 134 (EAB 2000). In the event a decision is reached which overturns or modifies the Final Permit or remands it to the Regional Administrator for further review, the City may be aggrieved and reserves its right to file a further appeal.

Given the City's standing as and interested party to participate *amicus curiae* and the prospect that it may be aggrieved party in the event of a modification, remand or setting aside of the Final Permit, the City requests that it be recognized as an interested party in these proceedings.

Respectfully submitted,

THE CITY OF PITTSFIELD,

By its attorneys



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Dated: February 14, 2017

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2017, true and correct copies of Connecticut's Response Brief and Attachments were served via U.S. Mail to:

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Exhibit A



OFFICE OF THE MAYOR
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October 27, 2014

Mr. Dean Tagliaferro
EPA New England, c/o Weston Solutions
10 Lyman Street, Suite 2
Pittsfield, MA 01201

Re: Comments regarding the Draft Modification to the Reissued RCRA Permit ("the Permit")

Dear Mr. Tagliaferro:

The City of Pittsfield is pleased to have the opportunity to comment on the Draft Modification to the Reissued RCRA Permit (the "Permit") for the cleanup of the Housatonic River. We appreciate the level of effort that EPA and its staff have dedicated to this modified draft permit and to the public participation process.

The City has been an active participant in Housatonic River cleanup discussions for many years. We are a signatory to the original Consent Decree and are represented on the Citizen's Coordinating Committee. We have been directly engaged in this process because remediating contaminants in the Housatonic River system is critically important for the City and the region. With regards to Rest of River, it has been documented that the City will suffer substantial negative socioeconomic impacts due to cleanup activities that will occur over a period of 5 years or more. We note that more than 25% of the contaminated sediments and soils to be removed under this Remedy are within the City of Pittsfield. We intend to help ensure that the selected Remedy 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. The City's positions on several aspects of the draft permit have been submitted in a joint letter as part of our alliance with the five Housatonic River municipalities to the south.

During public information sessions held in Pittsfield on August 28 and September 4, 2014, residents expressed frustration over the lack of specificity in the Permit that would help them gauge the true impacts to their properties and neighborhoods. Though the lack of project specificity in the draft permit has made it difficult to assess many of these inevitable negative impacts, we expect and resolve to work directly with the permitting agencies and GE to

identify beneficial opportunities to mitigate these direct and substantial impacts to, in particular effected neighborhoods, and our City in general. As such, the City requests that it be given reasonable opportunity to review and comment on all design and implementation plans for cleanup in Reach 5A. We believe that project transparency can be achieved in two ways: through a process whereby GE submits relevant plans and information to all local boards and commissions for review and input where local approvals would typically be required; and through the development of a community involvement plan whose purpose will be to guarantee meaningful public input and involvement with the EPA, particularly for impacted neighborhoods. City staff have a record of working closely with EPA in the cleanup of the GE site and first two miles of river, and we will be insistent that this practice continues in a meaningful and substantive way.

The draft Permit allows significant amounts of PCB contamination to remain in the river channel, bank, backwater and floodplain soils throughout much of the Rest of River area, most notably Reach 5. The City is concerned about the exposure and reintroduction of PCBs into this dynamic river system during high flows and extreme storm conditions. This issue makes it all the more critical that the EPA establish a rigorous and thorough program to monitor the movement of the river channel in Reach 5A and establish strict mitigation protocols that can be activated quickly to minimize the amount of new PCB-contaminated soils being released into the river system.

We also request that the numeric cleanup standards for the Floodplain Exposure Areas be set as minimum guidance standards rather than strict cleanup standards. This will allow the EPA to work with municipalities and other stakeholders to set revised standards if land uses change or user exposure times are found to have changed from the original designation. We request that the Permit stipulate that municipal review and input be included as scopes of work for the individual Exposure Areas for floodplain remediation are being refined. In addition, we are concerned that a proper balance be reached in core areas. We ask that cleanup standards in the core areas be revisited to insure that the long term PCB removal goals have not been unduly compromised based on short term impacts to the core areas.

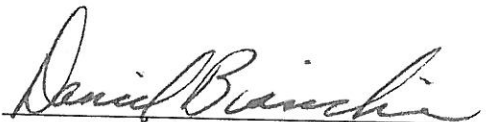
We fully support an active and innovative adaptive management approach throughout the lifetime of the Rest of River cleanup. We appreciate that the Permit requires GE to utilize adaptive management, and we urge EPA to challenge GE to meet the adaptive management approach for every reach of the river.

Due to the complexity of the project, the City requests that the Permit require the hiring of a qualified environmental consultant 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.

Finally, there is a real possibility that additional contamination will be discovered during the project life, within and outside of the defined clean up 'site'. The Permit should outline a framework that requires GE to investigate, assess and remediate these discoveries of PCB contamination in the Rest of River during or after this phase of cleanup activities have been completed and, additionally, that GE be responsible for responding to it.

Thank you for your consideration of our comments. We look forward to working directly and closely with EPA, MA EOEEA, and GE staff as the cleanup proceeds through the public review process, and further into the design and implementation processes.

Respectfully Submitted,



Daniel L. Bianchi, Mayor
City of Pittsfield

cc: The Honorable Elizabeth Warren, U.S. Senate
The Honorable Edward Markey, U. S. Senate
The Honorable Richard Neal, U.S. House of Representatives
The Honorable Benjamin B. Downing, State Senator
The Honorable Tricia Farley-Bouvier, State Representative, 3rd Berkshire
The Honorable Smitty Pignatelli, State Representative, 4th Berkshire
Mr. Curt Spaulding, Administrator EPA New England Region
Ms. Maeve Valley Bartlett, Secretary, Exec. Office of Energy & Environmental Affairs
Mr. Matthew Pawa, Esq., Pawa Law Group
Ms. Melissa Mazzeo, Pittsfield City Council President
Mr. Christopher Connell, Ward 4 City Councilor