

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

In re:

GENERAL ELECTRIC COMPANY

**Modification of RCRA Corrective Action
Permit No. MAD002084093**

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) **RCRA Appeal Nos. 16-01**
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**RESPONSE OF GENERAL ELECTRIC COMPANY
TO AMICUS CURIAE BRIEFS**

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Dated: April 17, 2017

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GLOSSARY OF TERMS

ACEC	Area of Critical Environmental Concern
ARAR	Applicable or Relevant and Appropriate Requirement
Aud.Am.Br.	Massachusetts Audubon Society's Amicus Curiae Brief (Mar. 24, 2017)
CD	Consent Decree in <i>United States et al. v. General Electric Company</i> , Civil Action No. 99-30225-MAP <i>et seq.</i> (Oct. 27, 2000)
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
Com.Am.Br.	Amicus Brief of the Housatonic Rest of River Municipal Committee and Others in Support of Off-Site Disposal (Mar. 27, 2017)
EPA	U.S. Environmental Protection Agency
EPA.Resp.	EPA Region 1's Response to General Electric Company's Petition for Review (Feb. 14, 2017)
G.B.Am.Br.	Brief of Amicus Curiae Green Berkshires, Inc. in Support of EPA Region I (Mar. 27, 2017)
GE	General Electric Company
GE.Pet.	Petition of General Electric Company for Review of Final Modification of RCRA Corrective Action Permit Issued by EPA Region 1 (Nov. 23, 2016)
GE.Reply-to-EPA	General Electric Company's Reply to EPA Region 1's Response to General Electric's Petition for Review (Mar. 24, 2017)
GE.Reply-to-MA	General Electric Company's Reply to the Commonwealth of Massachusetts' Response to General Electric's Petition for Review (Mar. 24, 2017)
GE.Resp.-to-Mun.Com.	Response of General Electric Company to Petition of the Housatonic Rest of River Municipal Committee (Feb. 14, 2017)
mg/kg	milligrams per kilogram (equivalent to parts per million)
O&M	Operation and maintenance
PCBs	Polychlorinated biphenyls
Pitts.Am.Br.	Brief of City of Pittsfield, Amicus Curiae (Mar. 27, 2017)
RCMS	Revised Corrective Measures Study (submitted by GE)

RCRA	Resource Conservation and Recovery Act
TSCA	Toxic Substances Control Act

INTRODUCTION

The petitioner General Electric Company (“GE”) submits this consolidated response to the four amicus curiae briefs filed in this review proceeding by the following: the Housatonic Rest of River Municipal Committee, joined by certain other associations (jointly the “Municipal Committee” or “Committee”) (“Com.Am.Br.”); Green Berkshires, Inc. (“Green Berkshires”) (“G.B.Am.Br.”); the City of Pittsfield (“Pittsfield”) (“Pitts.Am.Br.”); and the Massachusetts Audubon Society (“Audubon”) (“Aud.Am.Br.”). For the most part, these amicus briefs present arguments to which GE has already responded, but a small number of arguments, or variations on arguments, warrant a further response.¹

As shown below, the amici’s arguments do nothing to salvage the fundamental flaws GE has identified in EPA’s final permit modification (the “Modified Permit”) in GE’s Petition for Review (“GE.Pet.”).² The unavoidable fact is that the Modified Permit is inconsistent with the law and with the Consent Decree (“CD”), including the CD-Permit, which is both a contract and a judgment of the federal district court binding on all of the parties to the CD, including EPA. In addition, some amici affirmatively *challenge* certain aspects of the Modified Permit that none of the petitioners has objected to and, therefore, cannot be challenged in an amicus brief.

¹ Relevant provisions of key documents referenced herein were provided in attachments to prior submittals, as cited herein. This Response includes one new attachment, as listed in the above List of Attachments.

² Any arguments not discussed herein are addressed by GE’s Petition and/or its Replies to EPA’s and Massachusetts’ Responses, and GE incorporates those briefs herein.

I. RESPONSE TO MUNICIPAL COMMITTEE'S AMICUS BRIEF

The Municipal Committee's brief focuses exclusively on attempting to show that EPA correctly rejected on-site disposal in favor of the far more costly out-of-state disposal. Like the prior efforts by EPA and Massachusetts on this score, these arguments are unavailing.

A. ARARs Do Not Bar On-Site Disposal.

The Committee contends that ARARs disqualify two of the three sites identified by GE as potential on-site disposal locations (the Woods Pond and Forest Street Sites) and may bar disposal at the third (the Rising Pond Site).³ Com.Am.Br. at 8-12. These contentions are wrong.

Rising Pond Site. There are no ARARs that would impede disposal at the Rising Pond Site. This site is not within the Upper Housatonic Area of Critical Environmental Concern ("ACEC") and would not impact any wetlands. The Committee does not say otherwise. It contends, rather, that there is somehow still, at this late date, a "significant question" whether this site would comply with the Massachusetts Endangered Species Act ("MESA"), ostensibly because it "includes priority habitat for the wood turtle" (a state-listed species) and "the operations area of the landfill would come right up against this habitat." Com.Am.Br. at 12. In fact, there is no legitimate question about this. As we have previously explained, the disposal facility at the Rising Pond Site would not include any priority habitat of the wood turtle and would avoid any impacts to that priority habitat. See GE.Pet. at 19-20. There is no evidence to the contrary. Thus, use of this site would comply with MESA.

³ To be clear, each of these sites has sufficient capacity to dispose of all of the sediments and soils that would be removed under EPA's remedy, so only one of these sites would be necessary. The boundaries of all of these sites were reconfigured after GE submitted the Revised Corrective Measures Study ("RCMS") to reflect the volume of sediment/soil that would require disposal under EPA's selected remedy.

Forest Street Site. There are likewise no ARARs that would bar disposal at the Forest Street Site. That site is also located outside the ACEC. The Committee contends, however, that this site would not meet what it says are two other ARARs: (1) the locational criterion in EPA's Toxic Substances Control Act ("TSCA") regulations that a PCB landfill "shall be located in an area of low to moderate relief to minimize erosion and to help prevent landslides or slumping," 40 C.F.R. § 761.75(b)(5); and (2) the state wetland regulations. Com.Am.Br. at 10-12. Those claims are erroneous.

The Committee's first contention is inconsistent with the record. EPA did not identify the locational criteria in Section 761.75(b) of its TSCA regulations as ARARs for a disposal facility at all. *See* EPA's Response to Comments at 245-250. Thus, Section 761.75(b)(5) is not an ARAR that would require waiver. Further, putting aside the fact that the alleged ARAR does not exist, any disposal facility at the Forest Street Site would have engineered measures in place, such as slope benching, berm buttressing, and intermittent erosion breaks, to provide equivalent protection against erosion, landslides, or slumping.

With respect to the wetlands regulations, the disposal facility at the Forest Street Site would require construction of an access road that would involve the crossing of a small stream in the southern portion of the site; and a part of the disposal facility would be located within the areas adjoining that stream, which are subject to the Massachusetts Wetlands Protection Act regulations, 310 CMR 10.00. However, the facility there would meet the substantive standards of these regulations, as provided in 310 CMR 10.53(3)(q) – *e.g.*, to minimize hydrological changes to resource areas, use best management practices to prevent erosion and siltation, provide flood storage compensation where necessary, avoid restricting flow, reestablish

disturbed wetland vegetation, etc., all “to the extent practicable.” Thus, the facility would comply with these regulations.

Woods Pond Site. Nothing the Committee says can rescue EPA’s equally unavailing arguments about the Woods Pond Site. In designating the ACEC in 2008, although the Commonwealth declined to exclude this site or any other industrial site from the ACEC, it noted that the ACEC designation would not “impede development or redevelopment” in general, and in particular did not mean that redevelopment of an existing industrial parcel “is in any way incompatible with the protection of the natural environment.” Attachment 1 to GE’s Reply to Region 1’s Response (“GE.Reply-to-EPA”) at 17-18. In addition, the Committee is incorrect in claiming that only “half of the site is now a sand and gravel operation with most of the rest upland forest and shrub swamp habitat.” Com.Am.Br. at 5. As shown in GE’s comments, over 90% of the facility at this site would be located within an already disturbed area that has been used for long-term sand and gravel operations and has no environmental value. GE Comments at 10 & Figure 2 (in Att. 7 to GE.Pet.).

Because a disposal facility at this site would have no adverse impact on the valuable resources of the ACEC – to the contrary, the post-use planting of the disposal facility area with grass would result in a clear *improvement* of the habitat compared to its current condition as an open sand and gravel pit – there is no justification for EPA to apply the ACEC prohibition to this site.

If a formal waiver is necessary, it would be fully justified under Section 121(d)(4) of CERCLA. Section 121(d)(4)(E) provides for waiver of a state requirement if the State has not consistently applied the requirement to other remedial actions. In this case, to be sure, the Commonwealth has not had the occasion to apply or not apply the ACEC prohibition to other

sites (for the simple reason that there are no other proposed hazardous waste landfills in Massachusetts). However, the chronology and context of the Commonwealth's amendment of the state hazardous waste regulations to add the ACEC prohibition indicate strongly that it was adopted in an effort to prevent on-site disposal *at this particular site*. See GE.Reply-to-EPA at 8-9. This meets the intent of Section 121(d)(4)(E).

In addition, EPA itself has not consistently applied the prohibition even at this Site, since it has waived the ACEC prohibition for other components of its remedy – *i.e.*, dredging and temporary waste management. It has been pointed out that the latter activities are temporary while a disposal facility would be permanent, but this is a distinction without a difference here; in fact, the extensive dredging required by the Modified Permit, even if not “permanent,” will go on for a number of years and will have a much greater adverse impact on the ACEC resources than on-site disposal in an industrial quarry that will be restored with a grassland community.⁴

B. There Is No Support for the Committee's Claim that a Release from an On-Site Disposal Facility Would Have Worse Impacts Than a Release from an Out-of-State Facility.

The Committee argues that a release from an on-site disposal facility would have greater adverse consequences than a release from an out-of-state commercial disposal facility because the release could reach the Housatonic River. Com.Am.Br. at 15-17. There is nothing in the record to support this argument. To begin with, the risk of any release from a properly engineered and constructed disposal facility – on-site or out-of-state – is highly remote. PCB-containing material can be safely disposed of and managed in such a facility, even near a river,

⁴ The Committee also argues that this site is near a drinking water source and an aquifer – which makes it illegal under state law to site a PCB landfill there. Com.Am.Br. at 10. That is not so. The referenced restrictions come from the Massachusetts hazardous waste regulations and would not apply so long as the facility complies with EPA's TSCA regulations, as the on-site facility here would do. 310 CMR 30.501(3)(a).

indefinitely, particularly because PCBs bind to organic matter and are unlikely to move and because PCB disposal facilities, whether out-of-state or on-site, are created and managed in accordance with EPA-approved standards and are to subject to detailed Agency oversight. In approving an on-site disposal facility at the CD Site for non-Rest-of-River material, EPA noted in the CD that the material to be disposed of on-site “consist[s] of relatively low levels of PCB contaminated soils and/or sediments which are spread over a large area measuring hundreds of acres,” that “PCBs are relatively immobile due to their low solubility in water,” and that the use of on-site facilities for disposition of this material “will not pose an unreasonable risk of injury to health or the environment.” CD Appendix D at 38, 41 (in Att. 2 to GE.Pet.).⁵ The same applies to the Rest of River. Moreover, the Committee has presented no evidence regarding the effects of such a release from an out-of-state disposal facility. As a result, its assertion that a release from an on-site facility creates higher risk of harm has no support and is pure speculation.

The Committee also claims that none of the commercial disposal facility waivers cited by GE involved a waiver of multiple TSCA default criteria beyond the criterion of a 50-foot buffer between the landfill bottom and the water table. Com.Am.Br. at 16-17. However, GE has shown numerous instances in which EPA provided a waiver or risk-based approval for on-site disposal facilities that did not meet multiple TSCA default siting criteria, including those relating to soil permeability and prohibiting a hydraulic connection to surface water, as well as the 50-foot buffer. GE’s Reply in Dispute Resolution at Table 1 (in Att. 10 to GE.Pet).

⁵ The Committee suggests that the on-site disposal facilities authorized by the CD are unsafe, citing a 1996 letter from pediatricians in Pittsfield. Com.Am.Br. at 3. EPA’s response to that letter (copy attached as Attachment 1) concluded (at 2) that “[a]ll of the data collected to date indicate that operations at [these disposal facilities] are not causing unacceptable health risks.”

C. Local Zoning Restrictions Cannot Preclude On-Site Disposal.

The Committee notes that the “implementability” criterion for the Rest-of-River remedy selection includes consideration of “zoning restrictions.” It then goes on to argue that these restrictions apply to both on-site and off-site elements of a remedy and that thus EPA properly considered that the identified on-site disposal locations are in areas zoned for residential and/or conservation purposes. Com.Am.Br. at 17-19. While EPA’s Response to Comments discusses local zoning restrictions (at 260-261), there is no indication in its Comparative Analysis (at 74) or its Statement of Basis (at 38) that EPA considered local zoning in its comparison of alternatives.

In any case, to the extent that local zoning ordinances would preclude a particular on-site component of a remedy, they are preempted under CERCLA, as held by the cases cited in GE’s petition (at 22) – *i.e.*, *United States v. City & County of Denver*, 100 F.3d 1509 (10th Cir. 1996), and *Town of Acton v. W.R. Grace & Co.-Conn.*, No. 13-12376-DPW, 2014 WL 7721850 (D. Mass. Sept. 22, 2014). The Committee tries to avoid the implications of such preemption by arguing that just because EPA “can override zoning laws in *implementing* the remedy does not mean that zoning must be irrelevant to *selecting* a remedy....” Com.Am.Br. at 18 (emphasis by Committee). It contends further that the remedy-selection criteria in the CD-Permit reflect a negotiated site-specific set of criteria, which do not limit “zoning restrictions” to those applicable to off-site actions. *Id.* Even under those criteria, however, local zoning cannot be allowed to dictate the selection of a remedy; otherwise, a local community could essentially veto EPA’s selection of any component of an on-site remedy that the community does not like by enacting a zoning ordinance prohibiting that component. That would be inconsistent with EPA’s role of

selecting the most appropriate remedy considering all the applicable remedy-selection factors and with the above-cited preemption cases.⁶

D. EPA's Reliance on State and Local Opposition to On-Site Disposal Conflicts with the Remedy-Selection Criteria in the CD-Permit.

Finally, the Committee reiterates EPA's arguments that the Agency's reliance on state and local opposition to on-site disposal was appropriate and consistent with the CD. Com.Am.Br. at 19-22. GE has responded to these arguments in its Reply to EPA (at 6-11). The one new claim made by the Committee is that the risks and delay of litigation would be greater if EPA chose on-site disposal than if it chose out-of-state disposal given the Committee's view, like all advocates, that its legal positions and those of the other parties opposing on-site disposal are stronger than GE's. Com.Am.Br. at 20. We will resist the invitation to inject our views for those of the EAB on the likelihood of success of the various parties' positions; regardless, this is a frivolous argument that carries no weight here.

II. RESPONSE TO GREEN BERKSHIRES' AMICUS BRIEF

The amicus brief of Green Berkshires makes one substantive argument – that state regulations prohibiting the siting of a disposal facility in an ACEC are ARARs and that EPA should not waive those ARARs to allow a disposal facility at the Woods Pond Site. This argument pertains only to one of the three sites identified by GE as potential disposal sites – the Woods Pond Site. The other two sites identified by GE are not within the ACEC and thus not

⁶ In any event, even if EPA could consider local zoning restrictions for on-site remedy components, that is only one sub-criterion and would not change the overall conclusion, based on an objective evaluation of all the criteria, that the selection of a disposal alternative that is far more costly, yet equally protective and effective cannot be justified.

affected by Green Berkshires' argument. As to the Woods Pond Site, Green Berkshires' contentions fail for the same reasons given in Section I.A above.⁷

III. RESPONSE TO CITY OF PITTSFIELD'S AMICUS BRIEF

Pittsfield's amicus brief raises three challenges to the Modified Permit: (1) that the Modified Permit fails to require that EPA, GE, and the States actively engage, consult with, and consider input from the City during the design and/or implementation of cleanup activities, Pitts.Am.Br. at 2-4; (2) that EPA has failed to require GE to hire a qualified environmental consultant, approved by the City, to assist the City in reviewing and commenting on project submittals and reviewing the data generated, *id.* at 5; and (3) that the Modified Permit fails to require that GE's responsibilities for operation and maintenance ("O&M") not be limited by duration of time, *id.* at 5-6.

The first two of these arguments constitute new challenges to the Modified Permit that were not raised by any of the petitioners. An amicus brief is not the appropriate vehicle to raise such new challenges. To the extent that Pittsfield wished to contest those particular aspects or omissions in the Modified Permit, it was required by regulation to file a petition for review by this Board within 30 days after the Region served notice of the final permit modification

⁷ In addition to the points in Section I.A, Green Berkshires contends that the regulations containing the ACEC prohibition include not only the state hazardous waste regulations, but also the state site assignment regulations for solid waste facilities, and that GE erred in saying that the latter regulations would not apply here. G.B.Am.Br. at 12-13. Green Berkshires concedes that the latter regulations would apply only to wastes that do not contain PCBs at or above 50 mg/kg and are not commingled with such wastes, but claims those regulations could apply to any such wastes at this site. *Id.* In fact, however, since much of the sediments and soils to be removed in the Rest of River contain PCBs at or above 50 mg/kg or are commingled with such waste, the disposal facility that GE would construct at one of the on-site locations would be a *hazardous* waste disposal facility, not a *solid* waste disposal facility, even though some of the material to be disposed of there would not meet the criteria for hazardous waste. As such, the site assignment regulations for solid waste facilities would not apply. See 310 CMR 16.01(4)(a).

decision. 40 C.F.R. § 124.19(a). It cannot avoid that requirement by styling its challenge an amicus brief and filing it months after its petition would have been due. Moreover, the case law in federal courts indicates that the courts will ordinarily not entertain arguments made by an amicus that have not been raised by either party. *See, e.g., United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56, 60 n.2 (1981); *Narragansett Indian Tribe v. National Indian Gaming Comm’n*, 158 F.3d 1335, 1338 (D.C. Cir. 1998); *Eldred v. Reno*, 239 F.3d 372, 378 (D.C. Cir. 2001); *Resident Council of Allen Parkway Village v. U.S. Dept of Housing & Urban Development*, 980 F.2d 1043, 1049 (5th Cir. 1993). Accordingly, the Board should not consider the new arguments raised by Pittsfield.

Pittsfield’s third argument appears to be in support of the Municipal Committee’s argument in its petition that the Modified Permit should have required GE to maintain the remedy “in perpetuity.” That contention is answered in GE’s Response to the Petition of the Municipal Committee (“GE.Resp.-to-Mun.Com”) at 12-13, with additional discussion in Section IV.B below.

IV. RESPONSE TO MASSACHUSETTS AUDUBON’S AMICUS BRIEF

Massachusetts Audubon’s brief makes five arguments – three in support of EPA and two challenging the Modified Permit.

A. Audubon’s Arguments Supporting the Modified Permit Do Not Bolster the Contested Provisions.

Audubon’s arguments in support of EPA have been addressed elsewhere. Specifically, its argument that out-of-state disposal better meets the Rest-of-River remedy-selection criteria than on-site disposal has been answered in Section I of this Response, as well as GE.Pet. at 9-25 and GE.Reply-to-EPA at 5-16; its argument in support of EPA’s deep dredging remedy for

Woods Pond has been addressed in GE.Pet at 25-30 and GE.Reply-to-EPA at 23-24;⁸ and its arguments on the MESA requirements are addressed in GE.Pet. at 53-54 and GE.Reply-to-MA at 13-15.

B. There Is No Basis for the Claim that the Modified Permit Must Require GE to Maintain the Remedy “in Perpetuity.”

Audubon challenges the Modified Permit for not requiring GE to conduct O&M activities for the remedy “in perpetuity.” Aud.Am.Br. at 13-15. This argument appears to be in support of the similar challenge made by the Municipal Committee in its petition. GE has responded to that challenge in its response to the Municipal Committee’s petition. GE.Resp.-to-Mun.Com. at 12-13.

Audubon asserts further that “without this language in the Final Permit there will be nothing to stop GE from halting the remediation process before the river is clean.” Aud.Am.Br. at 14. That assertion is incorrect and misleading. Under Paragraph 89 of the CD (in Att. 1 to GE.Resp.-to-Mun.Com.), EPA may not issue a Certification of Completion of the Work until all phases of the Work, including all O&M, have been “fully performed” in accordance with the CD. There is no end date for such O&M. Further, under the Modified Permit, GE must continue

⁸ As with EPA’s arguments, Audubon’s substantive contentions in support of deep dredging are based on the speculation that one day the Woods Pond cap or dam may fail. Aud.Am.Br. at 8-9. Audubon asserts that “it’s a virtual certainty ... that the river will experience a major flood while a substantial PCB mass remains in the area.” *Id.* at 9. Although Audubon’s citations do not appear to address that issue, EPA did recognize that there may be a major flood by including such a flood in its model. *See EPA’s Final Model Documentation Report (2006), A.R.258097*, at ES-21, ES-22. But the occurrence of such a flood does not mean that the cap or the dam will fail. As discussed in GE’s Reply, the cap at Woods Pond is required to be designed to withstand large flood events, and the risk of a dam breach will be negated by GE’s ownership of the dam. *See GE.Reply-to-EPA* at 24. Indeed, while the model included a major flood, it did not include a cap or dam failure scenario. This suggests that EPA did not regard this as a significant risk, because if it had, it should have required GE to model that scenario, so the impacts could be scientifically evaluated. *See id.*

fish monitoring until the long-term fish goals, which would allow unrestricted fish consumption from the river, have been achieved. Modified Permit Section II.B.1.b.(1)(b).

By contrast, Audubon's request to include language requiring O&M in perpetuity would render Paragraph 89 of the CD superfluous, because EPA would never be able to issue a Certification of Completion of the Work. It is a basic principle of contract interpretation that an agreement should not be read in a manner that would nullify provisions or render them meaningless or superfluous. *E.g.*, *Corley v. United States*, 556 U.S. 303, 314 (2009); *Summit Packaging Sys. v. Kenyon & Kenyon*, 273 F.3d 9, 12 (1st Cir. 2001). Thus, the language sought by Audubon would contravene the CD, which contemplated that, *at some point*, GE would receive a Certification of Completion of the Work.

C. Audubon's Request that the Modified Permit Be Amended to Add a Formal Process for It to Comment on Future Submittals Is Untimely.

Audubon's final argument is that the Modified Permit should be amended to add a formal process of review and comment by Audubon and others on all submittals under the Modified Permit. Aud.Am.Br. at 16-18. This argument is a new challenge to the Modified Permit that was not raised by any of the petitioners. As such, this challenge should not be considered by the Board for the same reasons given in Section III. An amicus brief is not a proper vehicle for raising such new challenges. If Audubon had wished to contest the Modified Permit on this basis, it was required to timely file a petition for review.

CONCLUSION

For the foregoing reasons and those set forth in GE's Petition and Reply, the Board should reject the arguments made by the amici and grant the relief requested in GE's Petition.

STATEMENT OF COMPLIANCE WITH WORD LIMITATION

In accordance with 40 C.F.R § 124.19(d)(1)(iv), undersigned counsel certifies that the foregoing Response of General Electric Company to Amicus Curiae Briefs contains 3,905 words, as counted by a word processing system, including headings, footnotes, quotations, and citations in the count, but not including the cover, Table of Contents, Table of Authorities, Table of Attachments, Glossary of Terms, Statement of Compliance with Word Limitation, signatories, or Attachment; and thus this Petition is below the 7,000-word limitation approved by this Board's order dated February 17, 2017.

Respectfully submitted,

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Dated: April 17, 2017

ATTACHMENT

Attachment 1

Letter from EPA to Mayor James Ruberto, City of Pittsfield, Re:
EPA's Response to March 7, 2006 and March 14, 2006 Letters
from Pittsfield Pediatricians Concerning the On-Plant
Consolidation Areas (OPCAs) at the GE-Pittsfield/Housatonic
River Site, Pittsfield, Massachusetts (Mar. 23, 2006)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ONE CONGRESS STREET, SUITE 1100
BOSTON, MA 02114-2023

March 23, 2006

Mayor James Ruberto
City Hall
70 Allen Street
Pittsfield, MA 01201

Via Electronic and U.S. Mail

Re: EPA's Response to March 7, 2006 and March 14, 2006 Letters from Pittsfield
Pediatricians Concerning the On-Plant Consolidation Areas (OPCAs) at the GE-
Pittsfield/Housatonic River Site, Pittsfield, Massachusetts

Dear Mayor Ruberto:

As you requested, this letter provides EPA's response to concerns raised by several local pediatricians in two letters (dated March 7, 2006 and March 14, 2006) sent to you regarding the continued operation of the two on-plant consolidation areas (OPCAs), referred to as Hill 78 and Building 71, located on the General Electric (GE) plant property near Allendale School. Before responding to the specific concerns that were raised, it is important to put the current issue in the context of the larger Consent Decree that governs EPA's work at this site.

EPA takes very seriously its mission to protect human health and the environment and our goal has remained constant: to work step-by-step with the community through the long-term process of addressing dozens of complicated areas at this site to mitigate the threat posed by PCB contamination. Consolidation of wastes, followed by capping is consistent with EPA's practices at many other historical waste sites throughout New England and across the nation, and the construction, operation, and closure of these OPCAs are an integral part of the cleanup agreement embodied in a Consent Decree (CD) entered in U.S. District Court on October 27, 2000. EPA's goal is to install final protective caps on both OPCAs as soon as possible, a goal that I believe we all share.

Hill 78 is a historical land disposal area that pre-dates the cleanup prescribed by the CD; in fact, records indicate that land disposal began over 50 years ago, prior to the construction of the Allendale School. In 1999, soils were excavated from the Allendale schoolyard and consolidated at the area now known as the Hill 78 OPCA. In 2000, GE began to consolidate soil, sediment, and building demolition debris from the first ½ mile reach of the Housatonic River as well as other areas of the site at the Building 71 OPCA, and continued to consolidate material at the Hill 78 OPCA. In addition, a limited amount of sediment and bank soils from EPA's cleanup in the 1½ mile reach of the River have also been consolidated at the OPCAs.

While both of the OPCAs comply with all applicable regulations and are operated in a safe, controlled manner, it is important to recognize that there is a distinction between what is allowed in the unlined Hill 78 OPCA and what is allowed in the lined Building 71 OPCA. Only relatively low level wastes are allowed in the Hill 78 OPCA. The CD specifically prohibits the consolidation of hazardous wastes regulated under the Resource Conservation and Recovery Act (RCRA) or materials containing greater than an average of 50 parts per million of PCBs regulated under the Toxic Substances Control Act (TSCA) in the Hill 78 OPCA. In contrast, the CD permits both RCRA and TSCA materials to be placed in the lined Building 71 OPCA. Liquids, intact drums, asbestos, capacitors, or other PCB-containing equipment are not permitted in either OPCA.

I would like to turn now to the concerns raised in the letters to you from the local pediatricians.

With respect to the request that the consolidation of wastes stop and the capping of the landfills commence, I must emphasize that the continued operation of the OPCAs is a critical element of the overall site cleanup. Any interruptions to these continued operations would likely require EPA and GE to suspend all other soil and sediment remediation as well as building demolition projects. Such delays would also postpone completing the placement of soil, sediment, and building debris and final capping at the OPCAs, necessary steps in their ultimate closure.

Combined, the OPCAs are at about 75% capacity, and final capping is essentially complete on about half of the Building 71 OPCA. We anticipate that the Building 71 OPCA will reach its full capacity this year and that the final cap will be completed in 2007. Based on GE's current schedule, the Hill 78 OPCA is estimated to reach its full capacity in 2008, with its final cap completed by 2009. However, it is important to note that as sections of each OPCA reach capacity, as guided by height limitations specified in the CD, final caps have, and will continue to be, installed to ensure that consolidated materials are permanently covered as soon as possible. The final capping of these facilities will eliminate the potential for on-site exposure and off-site contaminant migration. In the meantime, dust and vapor control measures and daily covering of materials while the OPCAs are in use are required to minimize any potential for on-site exposure and off-site migration of contaminants.

As for the issue of environmental safety at the school, we are committed to conducting the operations at the OPCAs in a safe and protective manner. Based on our assessment of potential health effects associated with exposure to ambient air near the OPCAs and ongoing air monitoring data, we believe ambient air levels are protective of the health of both children and adults at the Allendale School and surrounding area. In addition, EPA has lowered the ambient air action level, increased our ambient air monitoring effort, and reviewed the potential for adverse health effects for both children and adults. Extensive monitoring of PCBs in air has been conducted by EPA and GE. The Massachusetts Department of Public Health (DPH) also conducted indoor and outdoor air sampling at the school in December 2005. All of the data collected to date indicate that operations at the OPCAs are not causing unacceptable health risks.

Seven years of PCB air monitoring around the OPCAs (1999 - 2005), confirm that there have been no exceedences of either the notification level (0.05 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$))

or action level (0.1 ug/m^3). In order to address recent concerns about the possible air impacts further away from the OPCAs, but closer to the school, EPA installed, and is collecting air samples from two additional monitoring stations located in the Allendale schoolyard. To date, these data show that PCB levels in air do not exceed the health-protective benchmarks. EPA will continue to monitor PCB levels in air and require that GE minimize dust and volatilization as part of daily operations.

EPA believes the established PCB action level provides adequate protection of children and adults at the school and also includes an added margin of safety. EPA's Region 9 Preliminary Remediation Goal (PRG) for PCBs in ambient air is 0.0034 ug/m^3 . Although this level is characterized by the pediatricians as the "...threshold for excessive risk" in EPA's Rest of River risk assessment, this characterization is not completely accurate. The PRG (developed by EPA Region 9 and used throughout the country as a risk screening tool) represents an air concentration associated with a conservative screening level incremental cancer risk of 10^{-6} (1 in 1,000,000) assuming exposure for 24 hours per day, 350 days per year for 30 years. (Note that this screening level is for incremental cancer risks only and has no relevance to the potential adverse non-cancer health effects referred to by the pediatricians. The corresponding EPA Region 9 PRG for adverse non-cancer health effects is 0.073 ug/m^3 .) Using EPA's Superfund risk range of 10^{-4} to 10^{-6} (1 in 10,000 to 1 in 1,000,000), EPA has calculated a range of concentrations of PCBs in ambient air that correspond to these risk levels. These numbers were calculated using accepted standard EPA risk assessment assumptions and toxicity values that correspond to the estimated 10 year operation at the OPCAs (1999 – 2009). For a 10 year exposure scenario (1/3 the 30 year exposure duration used in the PRG), the concentrations correlating to this acceptable risk range are 0.01 ug/m^3 (1×10^{-6}) to 1.0 ug/m^3 (1×10^{-4}). Calculations of conservative risk-based concentrations for PCB in air based on potential adverse non-cancer effects yielded values ranging from 0.04 ug/m^3 to 0.1 ug/m^3 , based on a Hazard Index of 1, depending on the method used. The assessment of these site-specific action and notification levels account for exposure to both adults and children. As a further precaution, we have cut the action level in half (from 0.1 ug/m^3 to 0.05 ug/m^3) and GE is now implementing this change. As noted earlier, there has never been an exceedence of the 0.05 ug/m^3 level at any location around the OPCAs or at the school.

Regarding the concerns raised as to the adequacy of the monitoring at the school, and the assertion that EPA's sampling protocols are outdated, EPA, while sharing the interest in the health and well being of the schoolchildren which prompts the concern, firmly believes that the monitoring at the school has been, and continues to be, appropriate. Typically, when valid, scientific data from the outer perimeter of a cleanup project do not indicate a problem, as is the case here, EPA would not extend monitoring and sampling beyond that perimeter. However, given the amount of community concern for the Allendale schoolchildren, EPA did elect to extend the monitoring and sampling beyond the outer perimeter of the OPCAs. As expected, we did not find any contamination at the school above levels of concern. Samples collected by EPA, the Massachusetts Department of Environmental Protection (DEP) or DPH included soil and frequent air samples from the schoolyard, soil from inaccessible crawl spaces located beneath the school, and air and wipe (dust) samples from inside the school. In addition to these samples, EPA also directed GE to significantly increase air monitoring frequency around the OPCAs.

All agencies involved in these data collection efforts have used scientifically valid sampling, analysis, and evaluation procedures and protocols that are well documented and are publicly available. As you know, DPH has convened a group to develop a protocol for follow-up indoor environmental testing at the Allendale School. While we will monitor the progress of this effort carefully, we remain confident that our current analytical methods are more than adequate.

Based on our review of the studies referenced in the March 14, 2006 letter, these studies pertain to epidemiological studies designed to generate or test hypotheses, but do not provide any dose-response information that can assist us in evaluating potential health effects. EPA maintains a database of peer-reviewed toxicity values called the Integrated Risk Information System (IRIS) which is the Agency's official source of human health toxicity values used in risk assessments at Superfund sites across the nation. The PCB toxicity values for both cancer and non-cancer effects were published in IRIS in 1996. We acknowledge that new studies continue to be published. IRIS is periodically updated by EPA's Office of Research and Development to incorporate the results of new studies after sufficient peer-review and consensus is reached within the scientific community.

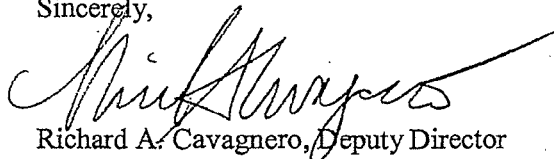
While we share the pediatricians' concerns about the specific vulnerabilities of children, we do not believe that there are a "variety of interpretations" of the data by government agencies as has been alleged. Rather, all government agencies (EPA, DEP, DPH and the Agency for Toxic Substances and Disease Registry (ATSDR)) that have reviewed the data have concluded that the operations of the OPCAs do not pose an unacceptable health threat and that the cleanup levels for school property soils and the notice and action levels for ambient air consider exposures specific to a child. We have reviewed these levels and continue to believe they are health protective levels. ATSDR reviewed and concurred with our air notification and action levels, and has not seen any evidence to suggest that re-evaluation of these levels is necessary.

And finally, references to a 2003 ATSDR Health Assessment report regarding Hill 78 prepared by DPH in cooperation with ATSDR, erroneously imply that site conditions have changed and therefore may pose a public health risk. There have been *no* significant changes in the physical characteristics of the site that were not anticipated by the construction and operation of the OPCAs that began in 1999, well before the 2003 Health Assessment was published. The use of trucks to place contaminated materials within the OPCAs was the original planned approach for this cleanup. Further, the CD and supporting documents legally limit site use through the use of Environmental Restrictions and Easements; for example, the land could not be converted to residential use. The CD also spells out GE's long-term maintenance requirements that are necessary to ensure that performance standards continue to be met over time.

In closing, we have and will continue to take all community concerns seriously as we move forward with this significant cleanup that will make Pittsfield a safer and healthier place to live and work. As we have discussed, EPA has committed substantial resources to the cleanup of the GE Pittsfield / Housatonic River project, as evidenced by the \$85 million cleanup of the 1 ½ mile reach of the River, which is nearing completion. We look forward to continuing our cooperative relationship in moving this entire project forward.

If you have any further questions, feel free to contact me or Dean Tagliaferro, EPA's team leader for the project.

Sincerely,



Richard A. Cavagnero, Deputy Director
Office of Site Remediation and Restoration

cc:

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April, 2017, I served one copy of the foregoing

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/s/ James R. Bieke

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