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ENVIR. APPEALS BOARD  
ALEXANDRA R. HASSELL

\*ALSO ADMITTED IN MAINE  
\*\*ALSO ADMITTED IN RHODE ISLAND

November 21, 2016

BY Federal Express

Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
WJC East Building, Room 3334  
Washington, D.C. 20004

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

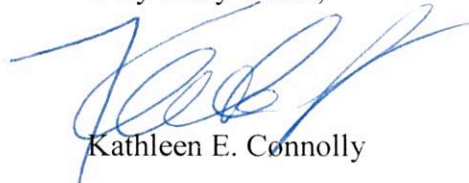
Dear Sir/Madam Clerk:

Enclosed for filing is a Notice of Interested Party Status of the Massachusetts Audubon Society ("Mass Audubon") with respect to the above-reference U.S. EPA Final Modification of RCRA Corrective Action Permit to General Electric-Pittsfield for remediation of the Housatonic River, "Rest of River" Site.

Kindly bring it to the attention of the Environmental Appeals Board.

Thank you for your assistance in this matter.

Very Truly Yours,



Kathleen E. Connolly

cc: 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 Office  
Mayor Linda Tyer, City of Pittsfield

LOUISON, COSTELLO, CONDON & PFAFF, LLP

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

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
ENVIRONMENTAL APPEALS BOARD

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ENVIR. APPEALS BOARD

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<b>In the Matter of:</b>	)	
	)	
<b>Final Modification of RCRA</b>	)	<b>EPA I.D. No. MAD002084093</b>
<b>Corrective Action Permit,</b>	)	
<b>GE-Pittsfield/Housatonic River Site,</b>	)	
<b>“Rest of River,” Pittsfield, MA</b>	)	
	)	

MASSACHUSETTS AUDUBON SOCIETY’S  
NOTICE OF STATUS AS INTERESTED PARTY

On October 24, 2016 the United States Environmental Protection Agency, Region 1 (“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 it caused to the River, its property and abutting Massachusetts Audubon Society (“Mass Audubon”) property. Pursuant to 40 C.F.R. §124.19(a)(4), anyone seeking a petition for review of an agency decision, including USEPA Final Permits under the Resource Conservation and Recovery Act (“RCRA”) must file an appeal within 30 days of its issuance. The appeal must identify contested permit conditions and other specific challenges to the permit decision. Petitioners must meet certain minimum threshold requirements, including that they participated in the comment period and thus have standing to seek review, that issues raised were raised in comment period and that the Petitioner identify the specific comment and response that warrants review. Mass Audubon participated in the public comment period and was among the recipients of the Final Permit on October 24, 2016.

(Attached hereto as **Exhibit A** is a true copy of the October 24, 2016, Electronic Mail notice of

said Final Permit Modification.) Mass Audubon has been closely engaged in the planning process for the cleanup of polychlorinated biphenyls (“PCBs”) from the River for many years as a landowner directly affected by GE’s PCB contamination that is the subject of the Final Permit.

Mass Audubon does not wish to appeal the Final Permit; however, Mass Audubon is aware that at least two other parties intend to appeal. In the event that appeals are filed, Mass Audubon has a vested interest in the proceedings given the location of Mass Audubon-owned property along the River. In conducting work under the Final Permit, GE will conduct work directly on Mass Audubon property. In addition, the remedial work on GE property and River property will have impacts on Mass Audubon property. GE will need to work with Mass Audubon to obtain easements and related agreements in order to enter Mass Audubon land and to conduct work affecting its land. Mass Audubon is a party aggrieved by the actions of GE and will continue to be affected by the corrective actions required by USEPA’s Final Permit. 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).

If a decision is reached which overturns the Final Permit or remands it to the Regional Administrator for further review Mass Audubon may be aggrieved and would at such time want to file a further appeal to federal court. Notwithstanding Mass Audubon’s belief that it would have standing to sue in federal court even if it did not participate in the EAB review (for which the only way to participate is to appeal or intervene in contesting the Final Permit, which Mass Audubon has no basis to do), in order to further preserve its rights to federal judicial review, Mass Audubon requests that it be recognized as an interested party in these proceedings.

Respectfully submitted,

Massachusetts Audubon Society,  
By Its Attorney

November 21, 2016



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# EXHIBIT A





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

**VIA ELECTRONIC MAIL**

October 24, 2016

Mr. Andrew T. Silfer, P.E.  
GE Project Coordinator  
General Electric Company  
159 Plastics Avenue  
Pittsfield, MA 01201

Commenters on Draft Modification of RCRA Corrective Action Permit  
GE-Pittsfield/Housatonic River Site, "Rest of River"

Re: Final Modification of RCRA Corrective Action Permit  
GE-Pittsfield/Housatonic River Site, "Rest of River"

Dear Mr. Silfer, and all Commenters:

With respect to the Rest of River portion of the GE-Pittsfield/Housatonic River Site, enclosed is the Final Permit Modification issued pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended (RCRA) (Final Permit Modification). The Final Permit Modification will become effective thirty days after this service of notice of this decision unless a timely petition for review is filed with EPA's Environmental Appeals Board (EAB) pursuant to 40 C.F.R. § 124.19. See 40 C.F.R. § 124.15 (issuance and effective date of permit). The Final Permit Modification is available at <https://semspub.epa.gov/src/document/01/593921>.

EPA received comments on the Draft Modification of the RCRA Permit (Draft Permit Modification) during the comment period from June 25, 2014 through October 27, 2014. Along with issuance of the Final Permit Modification, EPA has issued a response to comments received on the Draft Permit Modification. That response to comments document is available at <https://semspub.epa.gov/src/document/01/593922>. Also, see the following link for Statement of Basis for the Draft Permit Modification: <https://semspub.epa.gov/src/document/01/558621>. In addition, a fact sheet describing the Final Permit Modification is available at: <https://semspub.epa.gov/src/document/01/593981>

If a party wishes to appeal this Final Permit Modification to the EAB, please refer to the 40 C.F.R. Part 124 regulations and to materials on the website of the Environmental Appeals Board (<http://www.epa.gov/eab>) for information concerning procedural and substantive requirements applicable to permit appeals.



Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

SEMS DocID

593989

Should you have any questions concerning the Final Permit Modification, feel free to contact Dean Tagliaferro, EPA Project Manager, at 617-918-1282.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bryan Olson', with a long horizontal line extending to the right.

Bryan Olson, Director  
Office of Site Remediation and Restoration

Attached (to email recipients): Final Permit Modification, Response to Comments

Enclosed (to UPS recipients via next day air): CD with Final Permit Modification, Response to Comments and Statement of Basis for the Draft Permit Modification

cc:

Rod McLaren, GE  
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 Office  
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



GENERAL ELECTRIC COMPANY, PITTSFIELD, MASSACHUSETTS  
FINAL PERMIT MODIFICATION TO THE REISSUED RCRA PERMIT  
AND SELECTION OF CERCLA REMEDIAL ACTION AND OPERATION & MAINTENANCE FOR REST OF RIVER  
October 2016

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
EPA NEW ENGLAND

PERMIT UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)  
AS AMENDED (42 U.S.C. SECTION 6901 ET SEQ.)

General Electric Company  
159 Plastics Avenue  
Pittsfield, Massachusetts 01201  
EPA I.D. No. MAD002084093


The Permittee is required to conduct certain activities at areas affected by releases of hazardous waste and/or hazardous constituents from the General Electric Facility located in Pittsfield, Massachusetts, in accordance with Sections 3004(u), 3004(v), and 3005(c) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), as specified in the conditions set forth herein.

This Permit has been prepared for RCRA Corrective Action activities to be performed by General Electric pursuant to a final Consent Decree, United States, et al. v. General Electric Company (D. Mass.) ("Consent Decree"). The Consent Decree memorializes an agreement to address releases of Waste Materials, including hazardous substances, hazardous waste, and/or hazardous constituents from the General Electric Company's Facility in Pittsfield, Massachusetts, including, but not limited to, the releases of hazardous waste and/or hazardous constituents addressed in this Permit. This Permit, upon the Effective Date, shall replace the HSWA Permit previously issued to the Permittee, initially issued on February 8, 1991, modified effective January 3, 1994, reissued in October 2000 and reissued again, effective December 5, 2007. Upon the Effective Date of this Reissued Permit, the previously issued 2007 Permit hereby is revoked, and, pursuant to the Consent Decree, the Remedial Action set forth in the Permit shall be implemented pursuant to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Consent Decree.

Dated: \_\_\_\_\_

10/20/16

Signed: \_\_\_\_\_

  
Bryan Olson, Director,  
Office of Site Remediation and Restoration  
U.S. Environmental Protection Agency, EPA New England  
5 Post Office Square – Suite 100  
Boston, Massachusetts 02109-3912



SEMS Doc ID 593921