

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

_____)	
In the Matter of:)	
)	
GENERAL ELECTRIC COMPANY)	RCRA Appeal No. 16-03
Modification of RCRA Corrective Action)	
Permit No. MAD002084093)	
_____)	

**REGION 1'S RESPONSE TO PETITION OF
C. JEFFREY COOK FOR
REVIEW OF FINAL PERMIT MODIFICATION OF RCRA CORRECTIVE
ACTION PERMIT ISSUED BY EPA REGION 1**

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Attachment No.	AR/SEMS Number*	Title
Attachment 1	AR593921	2016 RCRA Corrective Action Final Permit Modification (Permit)
Attachment 2	AR9420, 38256, 38258	Excerpts from Consent Decree in <i>United States et al. v. General Electric Company</i> Civil Action No. 99-30225-MAP <i>et seq.</i> (October 27, 2000) (Consent Decree, Decree, or CD), including excerpts from Appendix E to the Decree and Annex 1 to Appendix E
Attachment 3	AR586286	Excerpts from EPA's Statement of Position in Support of the Intended Final Decision on the Modification to the Reissued RCRA Permit and Selection of CERCLA Response Action (February 29, 2016) (Region SOP)
Attachment 4	AR593922	Excerpts from EPA's Response to Comments on Draft Permit Modification and Statement of Basis for EPA's Proposed Remedial Action for the Housatonic River "Rest of River" (RTC)
Attachment 5	AR558621	Statement of Basis for EPA's Proposed Remedial Action for the Housatonic River "Rest of River," released June 2014 (Statement of Basis or Stmt/Basis)
Attachment 6	AR38267	Excerpts from Reissued RCRA Permit, Appendix G to the CD (Note: permit was reissued in October 2000 and again effective December 7, 2007) (CD-Permit)
Attachment 7	AR586286	Timeline for Opportunities for GE and the Public to Comment during Rest of River Process (Attachment A to EPA's SOP)
Attachment 8	AR472605, 580275	Excerpts from General Electric's Revised Corrective Measures Study Report, Housatonic River, Rest of River (October, 2010) (RCMS) (GE Response only)
Attachment 9	AR508662	Housatonic River Status Report: Potential Remediation Approaches to the GE-Pittsfield-Housatonic River Site "Rest of River" PCB Contamination, released May 2012 (Status Report)
Attachment 10	AR557091	Excerpts from Comparative Analysis of Remedial Alternatives for the GE-Pittsfield/Housatonic River Project Rest of River (May 2014) (CA or Comparative Analysis)
Attachment 11	AR593967	Excerpts from EPA's Final Decision in Dispute of EPA's Notification of Intended Final Decision on Rest of River Remedy (October 13, 2016) (Regional Counsel Decision)
Attachment 12	SEMS593981	2016 EPA Fact Sheet "EPA Releases Final Permit Modification for Cleanup of Housatonic River 'Rest of River'"
Attachment 13	AR593972	Commonwealth Concurrence, GE – Housatonic Rest of River Site Final Permit Modification (October 19, 2016)
Attachment 14	SEMS 29935	<i>United States et al. v. General Electric</i> , No. 99-30225, slip op. at 4 (D. Mass. Filed Oct. 27, 2000) (GE Response only)

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Attachment 15	SEMS596379	Response to EPA's Notice of Uncontested and Severable Permit Conditions, Letter from GE to EPA, December 21, 2016 (GE Response only)
Attachment 16	N/A	Complaint: <i>United States v. General Electric Company</i> (Municipalities Response only)
Attachment 17	AR518898	Excerpts from the Regional Response to the National Remedy Review Board Comments on the Site Information Package for the GE-Pittsfield/Housatonic River Project, Rest of River (August 3, 2012) (HRI Response only)

*Cross-references with AR numbers indicate the document numbers in EPA's Administrative Record for the October 2016 Final Modification of the Reissued RCRA Permit. SEMS numbers are for documents in the GE-Pittsfield/Housatonic River Site file, but not in the Rest of River Administrative Record.

GLOSSARY OF TERMS

$\mu\text{g}/\text{m}^3$	micrograms per cubic meter
ANPR	Advanced Notice of Proposed Rulemaking
AR or Record	Administrative Record
ARARs	Applicable or Relevant and Appropriate state and federal Requirements
Att.	Attachment to this Response
Board or EAB	Environmental Appeals Board
CA or Comparative Analysis	EPA's Comparative Analysis of Remedial Alternatives for the GE-Pittsfield/Housatonic River Project Rest of River
CCC	Citizens Coordinating Council
CD or Decree	Consent Decree in <i>United States et al. v. General Electric Company</i> Civil Action No. 99-30225-MAP et seq. (October 27, 2000)
CD-Permit	Reissued RCRA Permit (reissued by EPA in October 2000 and again effective December 7, 2007), incorporated into Consent Decree
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
C.F.R.	Code of Federal Regulations
CMS	Corrective Measures Study
CTE	central tendency exposure
Draft Permit	2014 RCRA Corrective Action Draft Permit Modification
E.A.D.	Environmental Appeals Decision
EPA	U.S. Environmental Protection Agency
ERA	Ecological Risk Assessment
FP	Floodplain
Fed. Reg.	Federal Register
GE	General Electric Company
HHRA	Human Health Risk Assessment
HI	Hazard Index
HRI	Housatonic River Initiative
IARC	International Agency for Research on Cancer
IMPG	Interim Media Protection Goals

GLOSSARY OF TERMS (CONTINUED)

mg/kg	milligram per kilogram (equivalent to parts per million)
Municipalities	Housatonic Rest of River Municipal Committee
NCP	National Contingency Plan
NPDES	National Pollutant Discharge Elimination System
OSWER	Office of Solid Waste and Emergency Response
PCB	polychlorinated biphenyl
Permit	2016 RCRA Corrective Action Final Permit Modification
Pet.	Petition
RCMS or Revised CMS	Revised CMS Report
RCRA	Resource Conservation and Recovery Act
Region	U.S. Environmental Protection Agency, Region 1
RFI	RCRA Facility Investigation
RTC	EPA's Response to Comments on Draft Permit Modification and Statement of Basis for EPA's Proposed Remedial Action for the Housatonic River "Rest of River"
SED	sediment
SEMS	Superfund Enterprise Management System
SOP	Statement of Position
States	Massachusetts and Connecticut
Status Report	EPA's "Potential Remediation Approaches to GE-Pittsfield – Housatonic River Site 'Rest of River' PCB Contamination," released May 2012
Stmnt/Basis	Statement of Basis for EPA's Proposed Remedial Action for the Housatonic River "Rest of River," released June 2014
SOW	Rest of River Statement of Work
TAG	Technical Assistance Grant
T/D	treatment and/or disposition
U.S.C.	United States Code
WHO	World Health Organization

I. INTRODUCTION

This appeal arises from EPA Region 1's October 2016 issuance of a Permit Modification ("Permit") (Attachment (Att.) 1) to General Electric Company ("GE") concerning a portion of the Housatonic River ("Rest of River") pursuant to a 2000 Consent Decree ("Consent Decree", "Decree", or "CD"). Att. 2. The Permit was issued pursuant to a process set forth in the Consent Decree that provides that the remedy for the Rest of River will be selected and reviewed as a RCRA permit and implemented as CERCLA cleanup.¹ Att. 2, CD ¶22.q (review of Permit Modification and remedy selection under RCRA), CD ¶22.z (remedy implementation under CERCLA). In selecting the remedy set forth in the Permit, EPA relied upon its scientific, technical and policy expertise, following a decade and a half of analysis, modeling, risk assessments, independent external peer review, and internal EPA reviews. To arrive at the appropriate level and method of cleanup for the Rest of River, including different components of the remedy, EPA first evaluated a large and complex Administrative Record ("Record" or "AR")² comprised primarily of scientific and technical material. The Region then exercised its scientific and policy discretion to select among the range of possible outcomes. This lengthy scientific analysis was informed by an extraordinary degree of public participation. EPA repeatedly sought the input and involvement of GE, the States of Massachusetts and Connecticut (collectively, "the States"), and the public.

¹ Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901 *et seq.*, and Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§9601 *et seq.*, respectively.

² The Record is comprised of information EPA considered or relied on for the Rest of River remedy evaluation, proposal and selection. These materials have been assigned AR numbers. The Record is a subset of the overall Site file for the GE-Pittsfield/Housatonic River Site, that also includes information related to the other response actions undertaken pursuant to the Decree, as well as compliance, enforcement, cost recovery and other Site-related information. These other materials have generally been assigned SEMS numbers.

C. Jeffrey Cook has petitioned the Board for review of the Permit. The Region responds herein to Mr. Cook's petition. Mr. Cook's petition is flawed for the following reasons. First, although his Petition turns on interpretations of record materials that are largely technical, Mr. Cook in significant measure simply expresses differences of opinion on inherently technical matters within EPA's expertise. While Mr. Cook may agree with alternative technical theories on various issues, simply articulating these preferences does not demonstrate error. Rather, determinations made on the record by EPA's experts, even in the face of other plausible options, deserve deference from the Board.

In almost every case, more data can be collected, models further calibrated to match real world conditions; the hope or anticipation that better science will materialize is always present, to some degree, in the context of science-based agency decisionmaking. . . . As in many science-based policymaking contexts [...] the EPA is required to exercise its judgment even in the face of some scientific uncertainty.

Upper Blackstone Water Pollution Abatement Dist. v. United States EPA, 690 F.3d 9, 23 (1st Cir. 2012), *cert. denied*, 133 S. Ct. 2382 (May 13, 2013).

Mr. Cook never justifies why the Region's exercise of discretion in selecting a cleanup based on the CD-Permit criteria was flawed. While Mr. Cook may have opted for a different approach, this difference of opinion does not constitute reviewable error or abuse of discretion.

Second, Mr. Cook has not plainly confronted EPA's responses, counter to the Board requirements at 40 C.F.R. 124.19(a)(4). Without substantively confronting EPA's considered responses to comments below, a petitioner cannot hope to garner review, particularly where, as here, the matters in dispute are inherently technical in nature and accordingly warrant deference by the Board to determinations made on the record by EPA's experts.

The Board should deny the Petition.

II. STATEMENT OF THE CASE

II.A Statutory and Regulatory Background

This case involves an unusual combination of EPA's authority under CERCLA and RCRA. In 1980, Congress enacted CERCLA in response to the serious environmental and health risks posed by industrial pollution. CERCLA was designed to promote the "timely cleanup of hazardous waste sites" and to ensure that the costs of such cleanup efforts were borne by those responsible for the contamination. *Burlington Northern and Santa Fe Ry. v. United States*, 556 U.S. 599 (2009). CERCLA is essentially a remedial statute designed by Congress to protect and preserve public health and the environment. "We are therefore obligated to construe its provisions liberally to avoid frustration of beneficial legislative purposes." *Dedham Water Co. v. Cumberland Farms Dairy*, 805 F.2d 1074, 1081 (1st Cir. 1986).

Enacted in 1976, RCRA empowers EPA "to regulate hazardous wastes from cradle to grave..." *City of Chicago v. EDF*, 511 U.S. 328, 331 (1994). As part of RCRA, Congress established a permitting program for facilities that treat, store or dispose of hazardous waste and directed EPA to implement the program. 42 U.S.C. §6925. In 1984, Congress amended RCRA, providing that any person seeking a RCRA permit must perform any "corrective action" necessary to clean up releases of hazardous wastes or hazardous constituents from any solid waste management unit at the facility. 42 U.S.C. §6924(u), (v).

The Board has jurisdiction to review the Permit as a RCRA permit modification. 40 C.F.R. Part 124.19; Section 7006 of RCRA, 42 U.S.C. §6976.

II.B Factual and Procedural Background

II.B.1 The Housatonic River and the “Rest of River” Contamination

The Housatonic River begins immediately north of Pittsfield, Massachusetts, and continues through Massachusetts and Connecticut to Long Island Sound. Att. 1, Permit, Figure 1. In Pittsfield, the River flows adjacent to the former GE facility, where GE used PCBs extensively from 1932-1977. Att. 3, EPA Statement of Position (SOP”) at 5. PCBs are classified as a known human and animal carcinogen, and have been linked to a number of other adverse health effects in humans and animals. EPA Response to Comment (“RTC”) Response 42 *et al.*, at 39-42, Response 85 *et al.*, at 43; Statement of Basis for EPA’s Proposed Remedial Action for the Housatonic River, “Rest of River” (“Statement of Basis” or “Stmt/Basis”), at 14-18. (Att. 4 and Att. 5, respectively). During this time, the Transformer Division manufactured and repaired transformers containing PCBs. Att. 3, SOP at 5. Significant amounts of PCBs and other hazardous substances were released to soil, groundwater, Silver Lake, the Housatonic River and were disposed of within and around the facility in landfills, former river oxbows, residential yards, and other locations, including migrating downstream. A former GE manager estimated that 1.5 million pounds of PCBs entered the river system. AR512751. GE itself estimated that between 111,000 and 576,000 pounds of PCBs remain in sediment and floodplain. AR260320, Tables 2-7, 2-8. In light of the foregoing, EPA concluded that PCBs have contaminated the riverbed, riverbanks, floodplain, fish, ducks, other biota, and their habitats, and have created unacceptable risks to human health and the environment.

II.B.2 Decree and CD-Permit

In 2000, Plaintiffs the United States, States, and Defendant GE, entered into a Decree to address PCB contamination from the former GE facility in Pittsfield. The Decree provides for

investigation and cleanup of PCBs and other hazardous substances released from GE's former Pittsfield facility, which migrated to numerous areas in Pittsfield and the Housatonic River. The Permit is one component of the Decree.

The "Rest of River" is defined under the Decree to include approximately 125 miles of riverbed and banks, and the associated Floodplain and Backwaters. Att. 1, Permit, Figures 1 and 2.

Many of the areas requiring investigation and/or cleanup under the Decree incorporate Performance Standards and corrective measures for addressing PCBs and other hazardous substances. Att. 1, Permit. II. However, at the time of Decree entry, the Rest of River investigation was not complete. Therefore, the Decree included a RCRA permit to govern the Rest of River investigation, corrective measures alternatives analysis and remedy selection process. Att. 2, CD ¶¶22; Att. 6, Appendix G (the "CD-Permit"). The Decree also provides that, as part of this process, EPA would modify the CD-Permit to address the risks posed by GE's PCBs in the "Rest of River" through the Permit. Att. 2, CD ¶¶22.p. Following issuance of the Permit and resolution of any challenges to the Permit, GE was required to perform the Permit's selected Rest of River Remedial Action and operation and maintenance, pursuant to CERCLA and the Decree. Att. 2, CD ¶¶22.p.,z.

II.B.3 Rest of River Remedy Selection Process

The Decree established a process for selecting a cleanup for the Rest of River. This process, which spanned more than a decade, included efforts by EPA (beyond those called for by

the Decree) to solicit and respond to the views of the public, including Mr. Cook.³

Technical/scientific milestones included EPA's river modeling (AR258097), Human Health Risk Assessment ("HHRA") (AR219190) and Ecological Risk Assessment ("ERA") (AR215498), and five independent peer reviews of the modeling and risk assessments. After each peer review, EPA issued a Responsiveness Summary and revised document.⁴ This body of scientific evidence demonstrated unacceptable threats to human health and the environment in the Rest of River system. Att. 4, RTC 42, et al. at 39-42. Also, GE submitted its analysis of the nature and extent of Rest of River contamination (RCRA Facility Investigation, AR49294), its identification of preliminary cleanup standards (Interim Media Protection Goals, AR248143), and, in 2008 and 2010, two versions of a Corrective Measures Study to analyze different remediation alternatives. AR283374, 472605. GE's recommendation from its 2010 Revised Corrective Measures Study (RCMS) opted for the alternative with the second-least amount of PCB removal from Rest of River, with on-site disposal of the PCB-contaminated material. Att. 8, RCMS at 11-1 to 11-2 (AR580275).

Based on that work and public input, EPA in 2011 presented a potential remedy for review by two national EPA advisory review boards. AR487308. Following that review, EPA entered into technical discussions with the States. In May 2012, the EPA/States' discussions yielded a jointly-prepared Status Report of potential remediation approaches. Att. 9, Status

³ For more details on the specific public involvement steps afforded by EPA, see Att. 7, Timeline for Public Comments.

⁴ HHRA (AR204922, 219190), ERA (AR204922, 215498, 580279, 580280, 580281), Modeling (AR65093, 204991, 65093, 229322, 237323, 252993, 258098).

Report.^{5,6} Following the Status Report's issuance, at GE's request, EPA and GE entered into seventeen months of remedy discussions above and beyond the process opportunities afforded in the Decree. AR558617.

In May 2014, EPA proposed a Rest of River remedy for public comment. Draft Permit Modification ("Draft Permit"), AR558619. The rationale for the proposed remedy is documented in EPA's Comparative Analysis of Remedial Alternatives ("Comparative Analysis" or "CA") Att. 10, and the Statement of Basis, Att. 5.

EPA's remedy proposal followed its evaluation of a wide range of alternatives to address the unacceptable risks posed by GE's PCB contamination. Att. 5, Stmt/Basis; Att. 10, CA. The CD-Permit describes nine criteria for consideration. There are three threshold "General Standards" to be met: (1) Overall Protection of Human Health and the Environment ("Protectiveness"); (2) Control of Sources of Releases; and (3) Compliance with ARARs.⁷ And there are six additional "Selection Decision Factors" to be balanced against one another including: (1) Long-Term Reliability and Effectiveness; (2) Attainment of Interim Media Protection Goals;⁸ (3) Reduction of Toxicity, Mobility, or Volume of Wastes; (4) Short-Term Effectiveness; (5) Implementability; and (6) Cost. Att. 6, CD-Permit II.G. Pursuant to the

⁵ "Potential Remediation Approaches to the GE-Pittsfield-Housatonic River Site 'Rest of River' PCB Contamination" ("Status Report"), released May 2012, Att. 9 (AR508662).

⁶ Mr. Cook, in his petition, incorrectly suggests that Massachusetts' current position is identical to its 2011 comments. Massachusetts agreed on this Status Report, which includes significant changes from Massachusetts' 2011 position.

⁷ ARARs are Applicable or Relevant and Appropriate state and federal Requirements.

⁸ Interim Media Protection Goals, or "IMPGs", are media-specific protection goals to be used in the Corrective Measures Study as part of the evaluation of remedial alternatives.

CD-Permit, EPA evaluated all the alternatives against these criteria (referred to herein as “CD-Permit criteria” or “nine criteria”) and any other relevant information in the Record.

EPA conducted a multi-layered analysis of the remediation and disposal alternatives against the CD-Permit criteria. For remediation of PCB contamination in sediment and floodplain, EPA reviewed nine separate remediation alternatives (denoted as “SED/FP” alternatives). Att. 10, CA at 10 & Table 1, Combination Alternatives Matrix. Similarly, in evaluating alternatives for treatment/disposition of the excavated PCB-contaminated material, EPA evaluated five alternatives (denoted as “T/D” alternatives). Att. 10, CA at 59-78. Based on that comprehensive review, EPA proposed a remedy referenced in EPA’s Comparative Analysis collectively as “SED 9/FP 4 MOD” and “TD 1/TD 1/RR”, that was in its judgment best suited to meet the CD-Permit’s General Standards in consideration of the CD-Permit’s Selection Decision Factors, including a balancing of those factors against one another. Att. 10, CA at 59, 77.

The distinction between the threshold General Standards and the balancing Selection Decision Factors is an important consideration. The CD-Permit describes the process as determining which corrective measure or combination of corrective measures “is best suited to meet the *general standards* ... in consideration of the *decision factors*..., including a balancing of *those factors* against one another.” Att. 6, CD-Permit, II.G.3 (emphasis added). Accordingly, the Region’s evaluation of the three threshold criteria – Protectiveness, Control of Sources of Releases, and Compliance with ARARs – requires that those standards be met.⁹ In contrast,

⁹ See also, 1990 Proposed Subpart S (proposed 40 C.F.R. §264.525(a) cited at Corrective Action for Solid Waste Management Units (SWMUs) at Hazardous Waste Management Facilities, 55 Fed. Reg. 30798, 30823 (Jul. 27, 1990) specified that remedies must meet the threshold criteria); “Corrective Action for Releases from Solid Waste Management Units at Hazardous Waste Management Facilities Advanced Notice of Proposed Rulemaking” (“ANPR”), 61 Fed. Reg. 19432 (May 1, 1996) (AR593978).

EPA's consideration of the latter six Selection Decision Factors includes the balancing of those factors against one another. EPA's RCRA Corrective Action guidance includes a very similar structure, establishing a two-phase evaluation for remedy selection. "During the first phase, potential remedies are screened to see if they meet "threshold criteria; remedies which meet the threshold criteria are then evaluated using various "balancing criteria" to identify the remedy that provides the best relative combination of attributes." "Corrective Action for Releases from Solid Waste Management Units at Hazardous Waste Management Facilities Advanced Notice of Proposed Rulemaking" ("ANPR"), 61 Fed. Reg. 19432 (May 1, 1996) (AR593978). With respect to the Selection Decision Factors, or balancing factors, no one factor is preeminent among them. EPA has stated, any one of the balancing criteria might prove to be the most important at a particular site. ANPR at 19449 (AR593978).

CERCLA's National Contingency Plan (NCP) structure, while not identical, is similar.¹⁰ It has two threshold criteria (Protectiveness, and Compliance with ARARs) that relate to statutory requirements that each alternative must satisfy in order to be eligible for selection, and another set of "balancing criteria." "The Feasibility Study: Detailed Analysis of Remedial Action Alternatives", OSWER # 9355.3-011FS4 (March 1990).

¹⁰ While the Comparative Analysis was performed in accordance with RCRA, reference to general guidance under CERCLA can be instructive in light of the Agency's desire for parity between the programs. ANPR at 19439 (May 1, 1996) (AR593978): As a general philosophy, EPA believes that the RCRA and CERCLA remedial programs should operate consistently and result in similar environmental solutions when faced with similar circumstances. ANPR II.F.5 (AR593978). Referencing a 1990 RCRA proposal, EPA stated that one of the Agency's primary objectives was "to achieve substantial consistency with the policies and procedures of the Superfund remedial program. The logic behind that concept is that since both programs address cleanup of potential and actual releases, both programs should arrive at similar remedial solutions. EPA's position is that any procedural differences between RCRA and CERCLA should not substantively affect the outcome of remediation." ANPR III.B.1 (AR593978).

During the more-than-four-month public comment period, EPA received over 2,000 pages of comments from over 140 commenters, including from the States.¹¹ Following EPA's review of the comments, but prior to issuance of the Permit and the Response to Comments, the Decree required EPA to identify to GE EPA's Intended Final Decision, and allow GE the opportunity to contest the Intended Final Decision in informal and formal administrative dispute resolution. Att. 2, CD ¶22.o. For purposes of the Intended Final Decision (AR582991), and to address GE's and other comments on the remedy proposal, EPA made several modifications to the remedy. The Decree's dispute resolution process included an informal period administered by a neutral third-party mediator, followed by a formal dispute, including written SOPs by GE (AR586218, 587218) and EPA (AR586286).

That process concluded on October 13, 2016 with the decision by the Regional Counsel of EPA Region 1 that supported the EPA's decision-making process. The Regional Counsel provided that "[g]iven the scope and variability associated with a site of this size and complexity, EPA's development of a cleanup approach overall is entirely reasonable and is supported by the data and information in the administrative record." Att. 11, EPA Final Decision at 10. The Regional Counsel concluded, "...I find that overall EPA's reasoning, rationale and analysis are sound and adequately supported by the data and information it has carefully considered." *Id.* Later that month, the Region finalized its Permit to include the Region's selected remedy, and issued its Response to Comments. That remedy relies on a combination of cleanup approaches to address PCB contamination, reduce downstream transport of PCBs, reduce PCBs in fish tissue

¹¹ Public comments are categorized at AR565679, 567442, 568076, 568088, 568410, 568471, 568474, 568476 to 568479, and 579608 to 579621.

and allow for greater consumption of fish, and avoid, minimize or mitigate impacts to sensitive areas, species and habitats. Att. 12, 2016 EPA Fact Sheet.

II.B.4 Position of the States

The selected remedy reflects EPA's coordination with, and support from, both States. Both States worked with EPA in developing the remedial approach outlined in the 2012 Status Report, and those key principles remain integral components of the selected remedy. Connecticut's 2014 supportive comments on the remedy note that "when fully implemented [the remedy] will reduce the downstream migration of PCBs to Connecticut to an acceptable level." AR568089. In 2014, Massachusetts provided its written support of the proposed remedy. AR568093. In 2016, Massachusetts formally concurred with the remedy. Att. 13. Neither State challenges the Permit before the Board.

II.C Standard of Review

The Board's review of the Permit is governed by 40 C.F.R. Section 124.19. Therefore, it will deny review and not remand unless the Permit decision either is based on a clearly erroneous finding of fact or conclusion of law, or involves a matter of policy or exercise of discretion that warrants review. 40 C.F.R. 124.19(a)(4)(1)(A)-(B). *In re City of Taunton Dept. of Public Works*, NPDES Appeal No. 15-08, slip op. at 8 (EAB May 3, 2016), 17 E.A.D. ____, citing *inter alia*, *Sierra Club v. United States EPA*, 499 F.3d 653 (7th Cir. 2007), and Revisions to Procedural Rules Applicable in Permit Appeals, 78 Fed. Reg. 5281, 5282, 5284 (Jan. 25, 2013).

EPA's intent in promulgating these regulations was that this review should be only sparingly exercised. *In re West Bay Exploration Co.*, UIC Appeal No. 15-03, slip op. at 5 (EAB

Jul. 26, 2016), 17 E.A.D. ____, citing Consolidated Permit Regulations, 45 Fed. Reg. 33290, 33412 (May 19, 1980), and *In re Beeland Group, LLC*, 14 E.A.D. 189, 195-96 (EAB 2008). Threshold procedural requirements such as timeliness, standing, issue preservation, and specificity must be met. *In re City of Taunton*, slip op. at 8, citing, *In re Indeck-Elwood, LLC* 13 E.A.D. 126, 143 (EAB 2006). A petitioner must demonstrate that any issues and arguments it raises on appeal have been preserved for Board review unless the issues or arguments were not reasonably ascertainable at the time. 40 C.F.R. 124.13, 19(a)(4)(ii); *In re City of Taunton*, slip op. at 6, citing, *In re City of Attleboro*, 14 E.A.D. 398, 405-06, 444 (EAB 2009); *In re City of Moscow*, 10 E.A.D. 135, 141, 149-50 (EAB 2001). The appeal must provide a citation to the comment and response and must explain why the Region's previous response to that comment is clearly erroneous or otherwise warrants review. 40 C.F.R. 124.19(a)(4)(ii); *In re City of Taunton*, slip op. at 7, citing, *inter alia*, *In re Teck Cominco Alaska, Inc.*, 11 E.A.D. 457, 494-95 (EAB 2004), *In re Westborough*, 10 E.A.D. 297, 305, 311-312 (EAB 2002). The Board consistently has denied review of petitions that merely cite, attach, incorporate or reiterate comments submitted on the draft permit. *In re City of Pittsfield*, NPDES Appeal No. 08-19, 11-13 (EAB Mar. 4, 2009).

Petitioner bears the burden of demonstrating review is warranted, even when petitioner is self-represented. *In re West Bay Exploration Co.*, slip op. at 5, citing, *In re New Eng. Plating Co.*, 9 E.A.D. 726, 730 n9 (EAB 2001), *In re Encogen Cogeneration Facility*, 8 E.A.D. 244, 249-250 n10 (EAB 1999). The Board generally tries to liberally construe the issues presented by a self-represented petitioner. Nonetheless, petitions need to provide sufficient specificity to apprise the Board of the issues being raised. *In re Sutter Power Plant*, 8 E.A.D. 680, 687-688 (EAB 1999); *In re Seneca Resources*, UIC Appeal Nos. 14-01, 14-02, 14-03, slip op. at 5 (EAB

May 29, 2014), 16 E.A.D. ____ (denying review of petition containing generalized concerns regarding impact on drinking water from injection wells due to lack of specificity). The Board also expects the petitions to articulate some supportable reasons or reasons as to why the permitting authority erred or why review is otherwise warranted. *In re Sutter Power Plant* at 688.

When evaluating a petition that claims a clear error, the Board examines the Administrative Record to determine whether the Region exercised its considered judgment. *In re City of Taunton*, slip op. at 8, citing *inter alia*, *In re Steel Dynamics, Inc.*, 9 E.A.D. 165, 191, 224-25 (EAB 2000). The Region must articulate with reasonable clarity the reasons supporting its conclusions and the significance of the crucial facts it relied upon when reaching its conclusion. *In re City of Taunton*, slip op. at 8, citing, *In re Shell Offshore, Inc.*, 13 E.A.D. 357, 386 (EAB 2007).

The board will uphold a permitting authority's reasonable exercise of discretion if that decision is cogently explained and supported in the record. *In re City of Taunton*, slip op. at 8, citing, *In re Guam Waterworks Auth.*, 15 E.A.D. 437, 443 n7 (EAB 2011); *In re Ash Grove Cement Co.*, 7 E.A.D. 387, 397 (EAB 1997). On matters that are fundamentally technical or scientific in nature, the Board will defer to the Region's technical expertise and experience, as long as the Region adequately explains its rationale and supports its reasoning in the AR. *In re City of Taunton*, slip op. at 8-9, citing, *inter alia*, *In re Dominion Energy Brayton Point, LLC*, 12 E.A.D. 490, 510, 560-62, 645-47, 668, 670-74 (EAB 2006).

III. ARGUMENT

Mr. Cook raises a variety of issues. However, there is no basis in the Record to overturn EPA's considered judgment that such proposals are not the best-suited alternatives under the CD-Permit criteria to address PCB contamination. In addition, several of Mr. Cook's claims should be rejected for not satisfying the Board's procedural requirements. These issues are addressed in more detail below.

III.A Petition Fails to Confront Region's Response to Comments

Procedurally, virtually all of the contentions in Mr. Cook's petition fail to satisfy the Board's requirement that the petition confront the Region's Response to Comments. 40 C.F.R. §124.19(a)(4)(ii). Standards for review provided in 40 C.F.R. §124.19(a)(4) are clear that the petitioner must provide a citation to the relevant comment and response and explain why the response to the comment was clearly erroneous or otherwise warrants review. Mr. Cook has not adhered to this review standard. Section II.C. above.

On all issues except one (the oversight of the Technical Assistance grantee), Mr. Cook's petition restates his 2014 comments, and does not acknowledge that the Region has responded to his comment in the Response to Comments.¹² As such, those arguments should be dismissed. See, in particular, Sections III.B-G below. *In re City of Taunton*, slip op. at 7, citing, *inter alia*, *In re Teck Cominco Alaska* at 494-95, *In re Westborough* at 305, 311-312.

¹² See Attachment C to the Response to Comments for a list of all commenters and Attachment D to the Response to Comments for commenters associated with Comments Att. 4, RTC 1 *et al.*, 4 *et al.*, 12 *et al.*

To the extent the Board substantively reviews Mr. Cook's claims, EPA further rebuts these claims as discussed in Sections III.B through III.G. below.

III.B Petitioner Misstates Massachusetts Position on Remedy

Initially Mr. Cook's reiteration of his 2014 comments regarding Massachusetts' position on the remedy does not confront the Response to Comments, and thus should be dismissed. Compare Pet. at 4 to Att. 4, RTC 80 *et al.* at 34. Contrary to Mr. Cook's assertions, Massachusetts is in full concurrence with the selected remedy, and has been since 2012. Att. 4, RTC 80 *et al.* at 34-35. As the Region explains in the Section II.B. above, EPA and the States had lengthy technical discussions in 2011-12 which led to the jointly-developed Status Report, which incorporates many of the same remediation details as the selected remedy, particularly with respect to the floodplain, Reach 5 sediment, and Reach 5 banks. Massachusetts' position has been publicly stated and reiterated for four years. To imply that the 2011 letter is a current position is mistaken.

III.C Risk Assessments, Cleanup Standards, and Exposure Assumptions Are Appropriate and Should Receive Deference

Initially, Mr. Cook's reiteration of his 2014 comments regarding PCB risks do not confront the Response to Comments, and thus should be dismissed. For example:

- Argument IV.2, "cleanup standard," Pet. at 4, compare to Att. 4, RTC Comment and Response 82 at 46;
- Argument IV.2. "Massachusetts DPH studies," Pet. at 4, compare to Att. 4, RTC Comments 86, 88 at 42, and EPA Response 85 *et al.*, at 43;
- Argument IV.2, "evidence of PCBs causing cancer," Pet. at 4, compare to Att. 4, RTC Response 85 *et al.*, at 43;

- Argument IV.3, “PCB exposure in floodplain soils,” Pet. at 4, compare to Att. 4, RTC Comment 84 and RTC Response 84 et al., at 49-51.

However, to the extent the Board reviews the claims substantively, contrary to Mr. Cook’s assertions, the cleanup standards and exposure scenarios developed for Rest of River were scientifically derived, subject to multiple layers of peer review, and developed in reflection of site-specific circumstances. Moreover, as demonstrated immediately below, the Region has thoroughly explained its position in the Record, including the Response to Comments. As such, the Region’s judgments deserve deference.

As discussed in RTC 82 at 46 (Att. 4), the NCP directs EPA to select remedies that result in human cancer risks that fall within the risk range of 1 in 1,000,000 (expressed as 1×10^{-6}) to 1 in 10,000 (1×10^{-4}) and that do not pose unacceptable non-cancer risks. Where the cumulative risk to an individual exceeds this range, i.e., greater than 10^{-4} , action is generally warranted, and EPA’s “point of departure” for remedy selection is at the more stringent, or protective, (i.e., 10^{-6}) end of the risk range. EPA followed this guidance when selecting Performance Standards in the Permit.

As noted in RTC 85 *et al.* at 43 (Att. 4), EPA’s guidance recommends action to protect human health and the environment when risks exceed certain levels, as opposed to taking action only when health effects in a given population are confirmed. As stated in the Response to Comments:

In addition, note that recently the World Health Organization (“WHO”) officially reclassified PCBs in general as a known human carcinogen as opposed to a probable human carcinogen. In 2012, the WHO International Agency for Research on Cancer (IARC), changed the carcinogenicity category of PCB-126, one of the 209 different PCB molecules, from Group 2A – Probably Carcinogenic to Humans, to Group 1 – Carcinogenic to Humans. And in 2013, IARC changed

the category for PCBs in general and all dioxin-like PCB congeners to Group 1 – Carcinogenic to Humans. Polychlorinated biphenyls and polybrominated biphenyls/IARC Working Group on the Evaluation of Carcinogenic Risks to Humans (2013: Lyon, France), as published in IARC Monographs on The Evaluation of Carcinogenic Risks to Humans, Volume 107. 2015.

Att. 4, RTC 85 *et al.* at 43.

Regarding his assertions on the exposure assumptions, given the similarity of Mr. Cook's argument (Pet. IV.3, at 4) to his 2014 Comments, the RTC Response 84 *et al.* at 50-51 (Att. 4) remains appropriate.

The Region's technical judgments based on information in the Record are well-justified and entitled to deference, and should be upheld.

III.D River Performance Standards Are Well-Supported Technical Judgments

Initially, Mr. Cook again failed to confront the Response to Comments on river sediment and riverbank remediation. The Region explained in detail in the Response to Comments the rationale for the cleanup levels in Reach 5A sediment and 5B sediment, respectively. Att. 4, RTC 55 *et al.*, at 144-145. Mr. Cook's Argument IV.4 does not confront that Response to Comments and should be dismissed per 40 C.F.R. §124.19(a)(4)(ii). With respect to the riverbanks, Mr. Cook's Argument IV.4 similarly does not confront RTC 55 *et al.* at 144, or Response 79 *et al.* at 145 (Att. 4) and should be dismissed per 40 C.F.R. § 124.19(a)(4)(ii); Section II.C above.

To the extent the Board decides to substantively review these issues, the Region's selection is well justified by the Record. With regard to sediment, as discussed in the RTC Section II.B. at 8-27 (Att. 4), and the Comparative Analysis, Section 2 at 9-59 (Att. 10), the

Performance Standards for sediment in Reaches 5A through 5C were based on an evaluation of all of the remedy selection criteria. The selected remedy is the remedy best suited to meet the CD-Permit's General Standards in consideration of the CD-Permit's Selection Decision Factors, including a balancing of those factors against one another. Among the CD-Permit General Standards to be met are the Control of Sources of Releases and Overall Protection of Human Health and the Environment, and one of the CD-Permit Selection Decision Factors is Short-term Effectiveness of the remedy.

Also, the selected remedy includes significant risk reduction and reduction of downstream transport of PCBs while also minimizing the area of excavation footprint within Reach 5B. Because Reach 5B sediment has significantly lower surficial sediment concentrations than in Reaches 5A, 5C, the Backwaters and Woods Pond, the selected remedy specifies only the removal of sediment with PCB concentrations greater than or equal to 50 mg/kg and, subsequent to excavation and backfill of those sediments, placement of an amendment such as activated carbon and/or other comparable amendment to reduce the bioavailability of the remaining PCBs in the sediment bed. Att. 10, CA at 2-4, 7-8. To evaluate remedy performance, modeling was conducted on the various remediation alternatives, and this modeling showed that although other alternatives, such as Combination 6 (SED 9 MOD in the CA), achieved greater fish tissue reductions, the selected remedy achieves several fish tissue IMPGs, including the HI of 1 for the CTE individual using the probabilistic risk model. Att. 10, CA at 13 and Attachment 10. The selected remedy also significantly reduces the downstream transport of PCBs (89% compared to initial conditions), although several other alternatives achieve slightly greater reduction in downstream transport of PCBs. Att. 5, Stmt/Basis at 29 and Table 3. The selected remedy

results in a significant area of the sediment and riverbanks that will not be disturbed. As a result, partly due to limited sediment removal in Reach 5B, EPA concluded in its Statement of Basis:

Combination 9 [the proposed sediment/floodplain remedy], which includes more excavation than most alternatives, but also provides the most measures and procedures to preserve and protect the river's sensitive ecosystem, including its array of state-listed species, provides the best balance in terms of reducing residual risk and minimizing long-term ecological impacts.

Att. 5, Stmt/Basis at 31.

Regarding riverbanks, the Region provided further rationale in the Response to Comments regarding cleanup criteria for riverbanks in Reaches 5A, 5B, and 5C. Att. 4, RTC Response 55 *et al.* at 144. Furthermore, as discussed in RTC Response 79 *et al.* at 145 (Att. 4), the primary rationale for remediation of riverbanks is to prevent PCB-contaminated bank material from eroding into the river. EPA selected a 5 mg/kg erodible bank standard for Reach 5A because it best balances the objective of minimizing erosion of PCB contaminated banks and subsequent redistribution of the PCBs with the desire to maintain the dynamic nature of Rest of River. Att. 10, CA at 1, 30. For Reach 5B the PCB concentrations are lower (median PCB concentration in the upper 0-6 inches is 3.3 mg/kg) and minimizing disturbance of the habitat in that Reach is paramount. RTC 55 *et al.* 145-145. As EPA detailed in the Statement of Basis at 24 and the Response to Comments:

Based on a rationale similar to that discussed above for river sediment, less bank removal in Reach 5B was incorporated into [the] remedy as part of EPA's evaluation of the Permit criteria, including balancing the remediation of unacceptable risks posed by PCBs with minimizing the amount of bank excavation to preserve the dynamic character and related biodiversity and habitats of the river.

Att. 4, RTC 55 *et al.* at 145.

The Region's technical judgments based on information in the Record are well-justified and entitled to deference, and should be upheld.

III.E The Record Demonstrates Sufficient Consideration of Volatilization

Mr. Cook argues that EPA has failed to consider the possibility of PCB volatilization during remediation, and that the risk of PCB volatilization presents a greater health risk than the status quo.

Again, Mr. Cook did not confront the Region's Response to Comments regarding volatilization, and as such, his argument should be denied. 40 C.F.R. § 124.19(a)(4)(ii). Compare RTC Comment and Response 58 *et al.* (Att. 4), with Pet. IV.5, at 4. To the extent the Board substantively reviews this issue, the Region's approach, which includes requiring GE to submit an air monitoring plan with health-based action levels, is well-supported by the Record. The Region's response to a similar comment by Mr. Cook and other commenters in its Response to Comments remains valid. Specifically:

[s]ampling conducted by GE at Woods Pond [Reach 6 of Rest of River] and Fred Garner Park [immediately upstream of Rest of River] in 1995 detected average PCB concentrations in the air of 0.0055 $\mu\text{g}/\text{m}^3$ and 0.0033 $\mu\text{g}/\text{m}^3$ respectively (GE's RFI Report). In 2000, EPA collected air samples at the former DeVos Farm [Reach 5B] property and at October Mountain Road [Reach 5C] and did not detect the presence of PCBs in air. (2005 HHRA). While the 1 ½ Mile Reach Removal was being conducted, a notification level was set at 0.05 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and an action level was set at 0.1 $\mu\text{g}/\text{m}^3$ based on 24-hour average for PCB concentrations in air. Monthly air monitoring performed between 2002 and 2006 indicated that there were no exceedances of the action level and one sample that exceeded the notification level. The 1 ½ Mile Reach was in an area with higher average PCB concentrations than Rest of River and therefore, EPA expects similar or lower PCB concentrations in air. For Rest of River air monitoring, EPA anticipates that GE will be required to use engineering controls and best management practices and to propose an air monitoring plan with health based action levels. While there may be an increase in airborne PCB concentrations in areas close to the remediation for a short period

of time, EPA anticipates that GE will be expected to meet action levels for airborne PCBs, and if these levels are exceeded, will be required to initiate additional evaluations and engineering controls.

Att. 4, RTC 58 *et al.* at 339. See also Att. 4, RTC 98 *et al.* at 38.

For these reasons, the Board should reject Mr. Cook's arguments regarding volatilization.

III.F It Is Premature to Identify Staging Areas in the Permit

Mr. Cook claims that the Region deliberately omitted from the presentation to the public the locations of the staging areas and access roads necessary to implement the remedy and that this results in it being too late to consider the detrimental impacts to the families living close to the Rest of River work area. Pet. at 4 and 6. Mr. Cook included a similar comment on the 2014 Draft Permit.

Again, Mr. Cook did not confront the Region's Response to Comments regarding the staging areas, RTC 89 at 330 (Att. 4), and as such, his argument should be denied. 40 C.F.R. §124.19(a)(4)(ii). To the extent the Board substantively reviews this issue, the Region was justified in delaying decision-making on access roads and staging areas until the design/implementation stage of the Permit. As the Region previously responded:

EPA has not made determinations on any specific access roads or staging areas. The location of access roads and staging areas will be determined during the remedial design process following issuance of the Final Permit Modification, and completion of any petitions for review of the Final Permit Modification. GE's Revised CMS, which is in the Administrative Record for the Rest of River, did include estimates of potential access roads and staging areas, but for purposes of comparison of different alternatives and to estimate costs and project durations not for purposes making a definitive determination of where access roads and staging areas will be located. As discussed in Section VIII of this Response to Comments, EPA plans to have significant community and stakeholder involvement during the process of EPA's review of GE remedial design submittals dealing with access roads and staging areas.

Att. 4, RTC 89 at 330.

The Region is not withholding any decisions made on access roads or staging areas. As discussed in RTC 89 at 330 (Att. 4), “[t]he location of access roads and staging areas will be determined during the remedial design process following issuance of the [Permit], and completion of any petitions for review of the [Permit].” This approach is consistent with the NCP and CERCLA guidance for developing information to select a remedy (NCP Section 300.430(f)(5)(i); EPA, “A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents,” 6-42 (July 1999). Furthermore, as discussed in RTC 2.a. at 329 (Att. 4), EPA plans to have significant community and stakeholder involvement during EPA’s review of GE remedial design submittals dealing with access roads and staging areas.

The Region’s technical judgments based on information in the Record are well-justified and entitled to deference, and should be upheld.

III.G Region’s Public Involvement Steps Have Been Appropriate

Contrary to Mr. Cook’s characterization, the Region has worked hard, for many years, to consider the views of persons affected by the PCB contamination like Mr. Cook. The Response to Comments addressed his concerns directly and Mr. Cook has not explained why the Region’s responses were clearly erroneous or otherwise warrant review. Att. 4, RTC at 336-352. Accordingly, this argument should be denied consistent with 40 C.F.R. 124.19(a)(4)(ii).

To the extent the Board decides to review this issue substantively, the Region has provided numerous opportunities for Mr. Cook and affected residents to provide input to the

Region during the remedy selection/Permit process. See Att. 7, Timeline for Public Comments. Moreover, for nearly twenty years, the Region has held periodic Citizens Coordinating Council (CCC) meetings where Rest of River was often discussed. The 2011 Mini-Workshops/Charrette process, in which Mr. Cook participated, included an extraordinary level of effort by EPA to inform and hear from citizens on potential remediation options. Att. 7, Timeline for Public Comments. In addition, public meetings and a public hearing were held on the Draft Permit and a formal comment period was conducted. Mr. Cook and approximately 50 other residents in the vicinity of the Rest of River area provided formal comments on the Draft Permit. The Region considered and responded directly to these comments; specifically see Att. 4, RTCs for Section II.E, 32-38 (including Response 1 *et al.*), and Section IX, 336-352 (including Response 4 *et al.* and 12 *et al.*).

Moreover, the following is RTC 4 *et al.* at 336-337, shows that EPA modified the language from the Draft Permit to address comments received by Mr. Cook and other affected residents:

EPA acknowledges that there will be traffic impact on local roads. For example, in its Comparative Analysis, EPA estimated that approximately 11,200 dump truck trips per year (or approximately 50 to 60 trucks per day) will be required to remove contaminated material and to bring in clean material. Any potential truck routes (including to a rail facility) identified in documents prepared to evaluate the feasibility of various remediate alternatives are preliminary and non-binding. To minimize the impacts to the community and to allow for community input, the Final Permit Modification includes revisions from the Draft Permit Modification that require GE to submit a Quality of Life Plan to EPA for approval that includes the following components:

[A plan for] Road use, including restrictions on transport of waste material through residential areas and methods to minimize or mitigate transportation related impacts to neighborhoods, infrastructure and the general public.

Permit at II.H.11.c. [Modified Section]

Coordination with affected residents or land owners at or near areas impacted by remediation.

Permit at II.H.11.d. [Entirely new section]

EPA modified the description of this plan in the Permit in response to these comments by adding in the clause “and methods to minimize and/or mitigate transportation related impacts to neighborhoods, infrastructure and the general public” to emphasize the necessity for GE to satisfactorily address the issue of truck traffic.

EPA will solicit input on this plan from local governments, neighbors and other interested stakeholders. This plan also requires that GE evaluate methods to further reduce the impact on neighborhoods including the use of construction of temporary roads on utility right-of-ways and other locations in the floodplain, and the potential transport of material via other means, such as by river, or in a slurry through pipelines.

Att. 4, RTC 4 *et al.* at 336-337.

The type of trucks to be used for carrying away contaminated material removed from the Rest of River will be determined during the Rest of River SOW process and in Remedial Design documents. However, note that in GE's RCMS, GE assumed 10-wheel dump trucks with a capacity of 10 cubic yards or 16 tons for the transport of clean fill and the transport of contaminated material to temporary staging areas. For the transport of contaminated material to off-site disposal facilities, if applicable (i.e., for material not transported by rail), GE assumed tractor trailers that would carry 20 tons of material.

The Region's technical judgments based on information in the Record are well-justified and entitled to deference, and should be upheld.

In addition, EPA considered the potential short-term effects to the community among the nine CD-Permit criteria, as discussed in Section 2.8 of the Comparative Analysis (Att. 10 at 52-55), and concluded that the remedy is best suited to meet the Permit criteria, including a balancing of the Selection Decision Factors (which include short-term impacts to the community). With respect to the Technical Assistance Grant (“TAG”) recipient, initially, the implementation of the TAG is beyond the scope of the Permit, and thus is beyond the scope of the Board’s review. The EAB does not have authority to rule on matters that are outside the permit process. *In re Federated Oil & Gas of Traverse City*, 6 E.A.D. 722, 725-26 (EAB 1997) (Board has no authority to review contractual obligations and rights under private lease agreement as they are not permit conditions); *see also, In re Tondu Energy Co.*, 9 E.A.D. 710, 715-716, n.10 (EAB 2001) (the permit appeals process is not the appropriate venue to challenge Agency regulations).

Beyond that, Mr. Cook does not provide any support for disputing the Region’s grant management pursuant to the TAG requirements. The Region does not typically actively manage the interactions between a TAG recipient and other stakeholders, but at this site, the CCC has, since 1998, served the function of sharing information and updates. Att. 7, Timeline for Public Comments. The CCC meetings are open to the public, and include a diverse membership including representatives from the business community, environmental groups, local government, EPA, the States, GE and the Schaghticoke tribe. Both Mr. Cook and HRI have been members of the CCC since 1998. Moreover, the HRI technical support pursuant to the TAG grant has been with Environmental Stewardship Concepts, Inc., an experienced environmental consultant. *See* RTC Comments 191-274. Accordingly, there is no basis in the Record for remanding the Permit related to the TAG grant.

IV. CONCLUSION

For all the foregoing reasons, the Petition for Review Submitted by C. Jeffrey Cook should be denied.

STATEMENT OF COMPLIANCE WITH WORD LIMITATION

I hereby certify that the Region's Response to the Petition for Review in the matter of General Electric Co., RCRA Appeal No. 16-03, contains less than 14,000 words in accordance with 40 C.F.R. § 124.19(d)(3).

Respectfully submitted,

Dated: February 14, 2017

(s) Timothy M. Conway
Timothy M. Conway

REQUEST FOR ORAL ARGUMENT

In accordance with 40 C.F.R. § 124.19(h), EPA Region 1 requests oral argument in this matter.

Dated: February 14, 2017

(s) Timothy M. Conway
Timothy M. Conway

CERTIFICATE OF SERVICE

I, Timothy M. Conway, hereby certify that true and correct copies of EPA Region 1's Response were served via the EPA's E-Filing System (February 14, 2017) and Federal Express on February 15, 2017:

Via the EPA's E-Filing System and Federal Express to:

Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
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Via Federal Express to:

For General Electric (per discussion with GE counsel, Region providing GE counsel with hard-copy of Attachments and certified Administrative Record index for Response to GE Petition, but not for other four responses):

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