

Attachment 8:

**EPA Notice of Uncontested and Severable Permit Conditions-Revised (January 9, 2017),
Docket Document # 20, EAB Docket # 16-01.**

United States Environmental Protection Agency
EPA New England
5 Post Office Square, Suite 100
Boston, MA 02109-3912

VIA ELECTRONIC FILING AND CERTIFIED MAIL

January 9, 2017

Mr. Andrew Silber, P.E
GE Project Coordinator
General Electric Company
Corporate Environmental Programs
319 Great Oaks Boulevard
Albany, NY 12203

**RE: General Electric Company, Pittsfield Massachusetts
RCRA Corrective Active Permit Number MA D002084093; Appeal Nos. 16-01
through 16-05
Notice of Uncontested and Severable Permit Conditions-Revised Notice**

On December 13, 2016, in accordance with 40 C.F.R. § 124.16 and Paragraphs 22.q. and 22.x of the Consent Decree entered October 27, 2000 in U.S. et al., v. General Electric Company (“Decree”), Region I of the United States Environmental Protection Agency (“EPA”) provided General Electric (“GE”) notice of uncontested and severable Permit conditions in connection with RCRA Corrective Active Permit Number MA D002084093 (the “Permit”).

EPA signed the Permit on October 20, 2016 and transmitted the Permit to General Electric (“GE”) and commenters to the draft Permit on October 24, 2016. Five entities timely petitioned EPA’s Environmental Appeals Board (“EAB”) for review of the Permit: GE, the Housatonic River Initiative (“HRI”), C. Jeffrey Cook, the Housatonic Rest of River Municipal Committee (“Municipal Committee”), and Berkshire Environmental Action Team, Inc. (“BEAT”).

Copies of the December 13, 2016 Notice of Uncontested and Severable Permit Conditions letter were also sent to the four other petitioners and the clerk of the EAB. The December 13, 2016 notice informed recipients that EPA would consider any additional information and analysis to demonstrate that the uncontested conditions are in fact inseverable, if such information was provided within 14 days. GE sent a letter to EPA dated December 21, 2016, agreeing with some of the uncontested and severable conditions, and questioning several others. No other petitioners provided a response to EPA.

EPA, after discussing the issue with GE, has revised the list of contested, and uncontested and severable conditions, as follows:

Summary of contested conditions (revised from December 13):

II.B.1.a and II.B.1.b
II.B.2.a. through g
II.B.2.j.(1)(a) and (c) and II.B.2.j.(2)(b) and (2)(e) (and the references in (2)(d).i to those requirements)
II.B.2.k
II.B.2.l. (1)(a) and (2)(a) (and the references to (2)(b).i to (2)(a))
II.B.3
II.B.5
II.B.6.b.(1) and II.B.6.b.(2)(b) and (c)
II.B.6.c.
Table 1
Attachment C-16: MESA/Conservation Net Benefit Plan requirement

These conditions are collectively referred to as the “Contested Conditions.”

Uncontested permit conditions that are “inseverable” from contested conditions are also stayed. See 40 C.F.R. § 124.16(a)(2)(i). To the extent conditions of the permit are stayed, existing permit holders must comply with the conditions of the existing permit that correspond to the stayed conditions. See 40 C.F.R. § 124.16(c)(2). Uncontested permit conditions that are severable and are not stayed become enforceable conditions of the permit. See 40 C.F.R. §§ 124.16(a)(2)(i) and (ii).

EPA is notifying you that the effect of the Contested Conditions is to stay the requirements of the Contested Conditions pending final agency action. See 40 C.F.R. §§ 124.16(a)(1) and 124.19(l).

Furthermore, after a review of GE’s December 21, 2016 letter and further discussions with GE, EPA has determined that the following Permit conditions are uncontested and severable, and accordingly will become fully effective and enforceable thirty (30) days from receipt of the December 13, 2016 notice. GE has concurred in the set of uncontested and severable conditions. These conditions consist of the following:

- I.A.1 through 3.
- I.B.1 through 14.
- II.A.
- II.B.2.h. and i.
- II.B.2.j.(1)(b) and (2)(a), (2)(c), and (2)(d) (except as noted above for (2)(d).i)
- II.B.2.l.(1)(b) and (2)(b) [except as noted above for (2)(b).i] and (2)(c)
- II.B.4
- II.B.6.a.
- II.B.6.b.(2)(a)
- II.B.7

- II.C. and II.D.
- II.E. (except for MESA/Conservation Net Benefit Plan requirement)
- II.F. and II.G.
- II.H.
 - 1.c
 - 2 (limited to GE's project organizational structure, roles, responsibilities, and lines of communication among GE, EPA, and state and local entities)
 - 3 (Floodplain Investigation Work Plan—including subsequent sampling)
 - 4 (Floodplain Pre-Design Investigations Summary Reports)
 - 9
 - 16
 - 19 (for 6.a and 6.b.(2)(a))
 - 20 (for Woods Pond and Rising Pond dams)
- II.I. (The portions of Paragraph 1 related to the effective date for uncontested and severable conditions (e.g., “. . . design and implement the Rest of River Remedial Action or a portion thereof . . .”).)
- II.J. through II.N

All other permit conditions not identified as contested or as uncontested and severable are uncontested but inseverable.

Per 40 C.F.R. §§ 124.16(a)(2)(i) and (ii), the severable and uncontested portions of the permit become effective 30 days from receipt of the December 13, 2016 notice (the “Effective Date”). In accordance with the Decree, Sections I.A and II.I of the Permit and with the terms of this notification, GE is required to submit within 7 days of the Effective Date (i.e., January 12, 2017) a schedule for the submission of the relevant components of the Rest of River Statement of Work (“SOW”). This schedule will be submitted for EPA’s review and approval. Per Section II.I of the Permit, the schedule for the submittal of the relevant components of the SOW shall be no sooner than 90 days and no later than 120 days from the Effective Date of the Permit.

If GE disagrees with these revised determinations, GE should contact EPA within three business days.

If you have any questions regarding this notice, please contact Tim Conway of the Office of Environmental Stewardship at (617) 918-1705.

Sincerely,



Bryan Olson, Director
Office of Site Remediation and Restoration

CERTIFICATE OF SERVICE

I, Timothy M. Conway, hereby certify that on January 9, 2017, true and correct copies of EPA Region 1's Notice of Uncontested and Severable Permit Conditions were served:

Via the EPA's E-Filing System and Overnight Mail to:

Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
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Washington, D.C. 20460-0001

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(s) Timothy M. Conway
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