

Attachment 6:

**EPA Notice of Uncontested and Severable Permit Conditions (December 13, 2016),
Docket Document # 15, 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

December 13, 2016

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

Ms. Eureka Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, N.W.
Mail Code 1103M
Washington, D.C. 20460-0001

**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**

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") is providing 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"). Each entity's contested provisions are described below.

General Electric, Appeal No. 16-01

GE clearly delineated its contested Permit provisions as follows:¹

II.B.1.a and II.B.1.b

II.B.2.a. though g

II.B.2.j.(1)(a) and (c) and II.B.2.j.(2)(b) and (2)(e)

II.B.2.k

II.B.3

II.B.5

II.B.6.b.(1) and II.B.6.b.(2)(b) and (c)

II.B.6.c

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HRI, Appeal No. 16-02

HRI did not clearly identify contested permit sections as required by 40 C.F.R. § 124.19(a)(4). However, based on a review of the petition, EPA concludes HRI contests the following permit conditions.

II.B.2.a. though g

II.B.3

II.B.5

C. Jeffrey Cook, Appeal No. 16-03

Mr. Cook did not clearly identify contested permit sections as required by 40 C.F.R. § 124.19(a)(4). However, based on a review of the petition, EPA concludes Mr. Cook contests the following permit conditions:

II.B.2.a. though g

II.B.3.a

Table 1

Housatonic Rest of River Municipal Committee, Appeal No. 16-04

The Municipal Committee requested two additional permit requirements that would not preclude any Permit actions from proceeding. The Municipal Committee did not contest any existing permit requirements.

¹ See pages 8 and 9 of GE's petition.

Berkshire Environmental Action Team, Inc., Appeal No. 16-05

BEAT contests the following permit conditions:²

II.B.2.a. and II.B.2.c. through g. (Although BEAT listed II.B.2.i (Performance Standards and Corrective Measures for Engineered Caps) as a contested provision, it appears that BEAT is not challenging the Performance Standards for Engineered Caps, rather BEAT is contesting the use of Engineered Capping called for in Permit Sections II.B.2.a. and II.B.2.c. through g.)

II.B.3

In addition, BEAT is requesting additional actions be required behind dams in Connecticut, which would not preclude the Permit actions from proceeding. BEAT cites contesting section II.B.2.l; however, a reading of the petition indicates that BEAT is not contesting existing Permit conditions; rather BEAT requests additional actions be taken behind dams in Reaches 10-16 of the River. Specifically, BEAT is requesting that the permit “. . .require GE to thoroughly test behind all the dams in the Rest of River, and GE should be required to remove contaminated sediment where found, not just if and when a dam might be removed or undergo a major repair.”

Summary of contested conditions for all five petitioners:

II.B.1.a and II.B.1.b

II.B.2.a. though g

II.B.2.j.(1)(a) and (c) and II.B.2.j.(2)(b) and (2)(e)

II.B.2.k

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.”

When EPA is notified that a petition to review has been filed, EPA is to issue a notification identifying which permit conditions are stayed as a result of the appeal and which permit conditions will go into effect. See 40 C.F.R. § 124.16(a)(2)(i) and (ii). While a permit appeal is pending, the contested permit conditions are stayed. See 40 C.F.R. § 124.16(a)(2)(i).

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

² See page 1 of BEAT’s petition.

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, EPA has determined that the remaining Permit conditions are uncontested and severable, and accordingly will become fully effective and enforceable thirty (30) days from receipt of this notice. These provisions consist of the following:

- I.A.1 through 3.
- I.B.1 through 14.
- II.A.
- II.B.1.c.
- II.B.2.h. and i.
- II.B.2.j.(1)(b) and (2)(a), (2)(c), and (2)(d)
- II.B.2.l
- II.B.4
- II.B.6.a.
- II.B.6.b.(2)(a)
- II.B.7
- II.C. through G
- II.H.
 - 1.b
 - 1.c
 - 1.e
 - 2
 - 3 (Floodplain Investigation Work Plan)
 - 8 (Contractor(s) Health and Safety Plan(s))
 - 9
 - 12
 - 15
 - 16
 - 19 (for 6.a and 6.b.(2)(a))
 - 20 (for Woods Pond and Rising Pond dams)
- II.I. through N

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 this 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. 30 days from receipt of this notice) 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.

Although EPA has concluded that the uncontested portions of the Permit are severable, EPA will consider any additional information and analysis to demonstrate that uncontested conditions are in fact inseverable. This information must be received within (14) days of receipt of this notice. Upon consideration of that submission, EPA will in writing either reaffirm this determination, or issue a revised determination if warranted, prior to the date that the uncontested conditions are scheduled to become effective.

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

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

CERTIFICATE OF SERVICE

I, Timothy M. Conway, hereby certify that on December 13, 2016, 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:

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(s) Timothy M. Conway
Timothy M. Conway