



HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE

October 8, 2014

Dean Tagliaferro
EPA New England, c/o Weston Solutions
10 Lyman Street, Suite 2
Pittsfield, MA 01201

Re: Comments regarding the Draft Modification to the Reissued RCRA Permit ("the Permit")

Dear Mr. Tagliaferro:

The Housatonic Rest of River Municipal Committee ("the Committee") is pleased to submit the following comments on the Draft Modification to the Reissued RCRA Permit (the "Permit") for the cleanup of the Housatonic Rest of River. The Committee is made up of representatives of six municipalities: Pittsfield, Lenox, Lee, Stockbridge, Great Barrington and Sheffield. Each municipality, as well as the Berkshire Regional Planning Commission ("BRPC"), also intends to submit separate comment letters regarding concerns specific to each municipality or to BRPC.

The six communities have been active participants in Housatonic River cleanup discussions for several years and, as you are aware, the City of Pittsfield is a signatory to the Consent Decree (CD). We have been directly engaged because the proposed Remedy will directly impact our local communities, economy, and environment. We intend to help ensure that the selected Remedy may be successfully implemented in a way that best works to meet the multiple needs of the stakeholders and produces a result that is acceptable to the Rest of River municipalities. It is within this framework that we submit the following comments.

In general, the Committee collectively has four main, overarching concerns regarding the Permit:

- There is no acknowledgement within the Statement of Basis or the Permit that the Rest of River municipalities will suffer socioeconomic impacts due to cleanup activities;
- There is no clearly stated process for municipal involvement and input;
- The Permit is not comprehensive enough in detail in some areas; and
- There is no express requirement that GE must maintain full responsibility in perpetuity to monitor, control and/or remove PCBs left behind after the cleanup is completed.

We appreciate the time and effort that EPA and its staff have dedicated to this modified permit and to the public participation process.

Socioeconomic Impacts and Damages

As the EPA is aware, the Rest of River municipalities will suffer substantial negative socioeconomic impacts due to cleanup activities that will occur over a period of 15 years or more. We expect and look forward to working directly with the permitting agencies and GE to identify beneficial opportunities to mitigate these direct and substantial impacts to our municipalities, residents and businesses. We request that the permit be revised to ensure that these impacts are minimized.

- The Permit recognizes on page 32 that GE must “[p]ay for all incremental costs associated with and attributable to the presence of PCBs . . . , including, but not limited to, activities related to dam maintenance or removal, flood management activities, road, infrastructure projects, and activities such as installation of canoe and boat launches, docks, etc., with respect to Reaches 5 through 16 in Rest of River, in any area regardless of whether it has been otherwise addressed by remedies prescribed by this Permit.” The Committee fully supports this requirement. However, EPA should make it clear that, under this language, all impacts to local infrastructure must be measured and towns fully compensated for any and all infrastructure that has suffered accelerated deterioration as a result of the remedy – e.g., because of truck traffic and heavy equipment associated with the remedy. The Committee also proposes (as stated in more detail below) that GE attempt to assess beforehand whether cleanup activities necessitate maintenance or improvement of road infrastructure to prevent damage before it occurs.
- The Quality of Life Compliance Plan should require GE to identify any local businesses that will be negatively and significantly affected by cleanup activities, with a qualitative evaluation of the extent of the impact and of alternatives to the activity causing the impact.
- This same Plan should specify a process by which such businesses shall receive compensation for economic losses from GE, through capitalization of a compensation fund administered by an independent third party, preferably locally based.
- EPA should require GE, in the Permit itself or in the Scopes of Work (SOW) to be issued under the Permit, to use local labor and materials to the greatest extent practicable in all design, construction, and post-construction activities, as EPA has required at other Region 1 CERCLA sites such as New Bedford.

Municipal Involvement and Input

A second major concern is that the municipalities should have a more clearly defined role going forward. Specifically, the Rest of River Municipal Governments request a reasonable opportunity to review and comment on all design and implementation plans for each stage of Rest of River cleanup.

- We are extremely concerned that the Permit does not state that EPA, GE and the States will actively engage, consult and consider input from the Rest of River municipalities during the design and/or implementation of cleanup activities. The Permit clearly directs the EPA to consult with the States, but there is no such direction to actively engage the municipalities or

the public in the review of and comment on Statements of Work, Remedial Design Work Plans, Remedial Action Work Plans or other associated plans. At a minimum the Permit should state that the Rest of River Municipal Governments be given a reasonable opportunity to review and comment on all design and implementation plans for each stage of Rest of River cleanup. This is vital to guarantee that the municipalities and the public will be involved in all work going into the future – years and decades from now and in perpetuity. EPA staff have a record of working closely with Pittsfield (which was a party to the CD) in the cleanup of the GE site and first two miles, and the municipalities have played a productive role so far. We want to ensure that this practice continues through the inevitable staff and management changes that may occur over the long life of this remedy, and we believe that the only way to guarantee this practice is to have it stated within the Permit. For example, there is a local desire to plan for increased access to the natural world along the river, and careful planning of access roads and staging areas could serve as future trails, canoe launches and other recreational amenities.

- We request that the numeric cleanup standards for the Floodplain Exposure Areas be set as minimum guidance standards rather than strict cleanup standards. This will allow the EPA to work with municipalities and other stakeholders to set revised standards if land uses change or user exposure times are found to have changed from the original designation, such as installing recreational amenities. We request that the Permit stipulate that municipal review and input be included as scopes of work for the individual Exposure Areas for floodplain remediation are being refined.
- The municipalities all agree that any temporary hazardous waste storage must be temporary and that we must be actively involved in the siting of all work areas, including locating temporary access roads, staging areas, dewatering and treatment facility areas, storage sites, etc. We request that EPA: 1) acknowledge that, prior to commencing certain work such as the temporary storage of hazardous waste to be transported out of state, GE will be required to comply with the Massachusetts Hazardous Waste Facility Siting Act, Mass. G.L. ch. 21D §§ 1-19, by, *inter alia*, submitting notices of intent as set forth in section 7 of this statute, obtaining siting agreements with host communities and providing compensation to communities as set forth in sections 12-15 of this statute; 2) list MGL ch. 21D as an ARAR in siting any temporary hazardous waste facilities needed for the cleanup; and 3) require GE to evaluate and comply with this statute in future submissions by GE such as its Scope of Work documentation. Our request is discussed in detail in Attachment A.
- We request that EPA acknowledge in the RCRA permit two additional, and important, aspects of state and local authority. First, to the extent that any work is conducted off of the “Site,” EPA should ensure that GE’s scheduling submissions and other documentation take into account the necessity of obtaining all necessary municipal approvals (for example relating to heavy truck traffic beyond the perimeter of the site). Second, even with respect to Work conducted entirely on the Site, the Work must comply with the substance of local permit laws. See, e.g., *Town of Fort Edward v. United States*, 2008 U.S. App. LEXIS 62, at *5 (2d Cir. 2008): “EPA is required to comply with the substance of state and local permit laws, and is

merely exempted from ‘the administrative processes’ of obtaining the necessary permits that ‘could otherwise delay implementation of a response action.’” (quoting 53 Fed. Reg. 51394, 51406).

- We support the inclusion of a Community Health and Safety component within the Quality of Life Compliance Plan. However, we believe that the development of a more comprehensive Community Involvement Plan (CIP) should be included in this section, outlining a process to ensure meaningful public input and involvement with EPA as it implements the Permit. We refer EPA Region 1 staff to the CIPs for the Hudson River Superfund Site. A process to keep all citizens informed of the status of the cleanup should, at a minimum include more frequent updates to the Citizen Coordinating Committee, municipal boards, periodic updates in local newspapers, access television and social media. We request that Section II.B.11.I(4) be revised to include public involvement, health and safety. As part of this request, we would like to see technical support for the local boards of health and volunteer fire/ambulance companies that may be required to respond to site conditions and potential health risks generated from cleanup activities. We respectfully suggest the section read as follows:

(4) Community Involvement, Health and Safety

- a) The Permittee shall develop a Community Involvement Plan (CIP), the purpose of which is to guarantee meaningful public input and involvement with the EPA and the Permittee during the implementation of the Permit (similar to the CIP developed as part of the Hudson River PCB Superfund Cleanup); the public involvement program shall at a minimum include regular community meetings at which the Permittee shall provide relevant updates on the progress of the cleanup and to which local permitting boards shall be specifically invited, and also include meeting directly with effected landowners;
- b) The Permittee shall maintain a website (similar to <http://www.hudsonredging.com/>) to provide community access to information such as data, technical reports, work plans, and project fact sheets, as well as updates on current and future project activities; and
- c) The Permittee shall provide technical assistance to local boards of health to aid them in reviewing, understanding and disseminating air quality data and other parameters related to human health at and near cleanup sites; and
- d) The Permittee shall identify the types of fires, accidents and other emergencies that may occur during cleanup activities and evaluate the capabilities of the local fire and ambulance companies to respond effectively to such emergencies. The Permittee shall provide any additional equipment or training that may be needed to meet all potential emergency situations described in the evaluation; and
- e) The Permittee shall establish a call center which shall be manned 24 hours per day, 7 days a week during any and all construction activity in order that local citizens and officials may be able to communicate directly with the Permittee regarding work activities.”

Requirements for the Rest of River Statement of Work

The Committee notes and supports the development of a series of plans as part of the overall framework for the cleanup process. We are concerned, however, that the list of requisite plans does not include any details as to what GE or the public should expect to be included in these plans.

- We are most concerned that the Permit does not provide the municipalities a reasonable opportunity to review and comment on the content of these plans, even though EPA has recognized that it is necessary for GE to work closely with the municipalities on these plans. As noted on pages 10-11 of the *Statement of Basis for EPA's Proposed Remedial Action for the Housatonic River Rest of River*: "To ensure careful coordination and enhanced safety for residents, GE will be required to work closely with EPA, and in consultation with the appropriate city and town officials, in development management strategies and plans to guide the cleanup work." However, it is imperative that local government officials and citizens be directly involved early in the development of the outline for these plans, as well as the review of such plans to ensure that they incorporate local knowledge of sites and are fully protective of municipal interests. Direct municipal involvement in the development of plans will help to ensure that local plans and needs are incorporated into mitigation and restoration efforts. As an example as stated previously, there is a local desire to plan for increased access to the natural environment along the river, and careful planning of access roads and staging areas could serve as future trails, canoe launches and other recreational amenities. There is also the desire to expand environmental educational opportunities, and the cleanup could offer a hands-on environmental educational experience where local schools and colleges can learn about the diverse habitats within the river corridor and about the science surrounding mitigation of contamination. The establishment of an environmental education/research facility should serve as a center to document pilot projects, innovative technologies and adaptive management approaches employed during the cleanup process. We again request that the Rest of River municipalities be given a reasonable opportunity to review and comment on the plans as they are developed.
- We request that the Permit discuss the requirements for the Operation & Maintenance Plan in more detail. This plan will be critical in containing remaining PCB contamination left behind after the completion of the cleanup. The Permit should also specify that GE be required to monitor areas already remediated and potentially develop new Statements of Work for such areas if they are negatively impacted by severe storm, as well as high water, events.
- We request that the EPA require GE to fund in perpetuity an environmental monitoring consultant whose work will be overseen by, and who will report directly to, the EPA.
- Massachusetts General Laws enable local governments to hire consultants to aid them in reviewing and conditioning projects within their jurisdictions, with the cost of the consultants borne by the applicants. These laws were designed to provide technical assistance to local boards faced with complex projects that could have long-term effects within their communities, while also reducing municipal financial hardship. Because the

Rest of River cleanup has extensive environmental and human health implications and spans across several municipal jurisdictions, we believe that the most comprehensive and efficient means to meet the intent of these Home Rule provisions would be to encourage GE to fund the hiring of consultants to serve local boards in reviewing and commenting on plans, statements of work and other submittals during the cleanup, and to aid such boards in reviewing air and water quality monitoring and other data that is generated during construction.

Hazardous Waste Facility

The Committee strongly supports EPA's requirement that all removed, contaminated sediment and floodplain soil be disposed of at an existing out-of-state hazardous waste landfill. We acknowledge the necessity of siting temporary ancillary facilities to dredge, handle and dewater PCB-contaminated sediments and contaminated floodplain soils, but we have concerns regarding the movement and temporary storage of PCB-contaminated materials within the area.

Specifically:

- We request that MGL Chapter 21D be added to the list of ARARs in the Permit and further that the Status of the law be deemed Applicable.
- We believe that the Permit should discuss in more detail how PCB-contaminated sediment and materials will be safely transported and stored.
- Attachment D of the Permit states: "Temporarily stockpiled TSCA-regulated material will be bermed and properly covered to capture runoff in accordance with the requirements of [40 CFR] S.761.65. Runoff shall be collected and disposed of, as appropriate, in accordance with S. 761.60 or S. 761.79(b)(1), or as otherwise approved by EPA." The Permit should include language to describe the process by which EPA would "otherwise" approve stockpiled TSCA-regulated materials within the region. This is especially an important issue within the Upper Housatonic ACEC (in which municipal and hazardous waste facilities are prohibited) and in residential areas which are proximate to the river and proposed cleanup areas. We also believe that the permit should define "temporary stockpiling" of PCBs. Any stockpiling or temporary storage of PCB-contaminated sediment, soils and water is undesirable, and we urge EPA to push GE to make the temporary stockpiling/storage period as short as practical.
- Use of any temporary disposal areas or treatment facilities required for the Housatonic site should be strictly and solely limited to contaminated sediment and soils resulting from GE's Rest of River cleanup, barring storage or treatment of hazardous waste from any other sources. We refer Region 1 to such a restriction that is in place for the Hudson River Superfund site's dewatering/sediment-processing facility located on the Champlain Canal in Fort Edward, NY.
- We restate our request that the Permit affirm that the municipalities be actively involved in the siting of all work areas, including locating access roads, staging areas, dewatering and treatment facility areas, storage sites, etc. and should be actively involved in the review and comment on operational plans for work areas.

Remaining PCB contamination

- We have before us a Permit that allows significant concentrations and volumes of PCB-contaminated sediment, soils and water to remain in the environment after completion of remediation activities, and which waives federal and state water quality requirements in the Massachusetts reaches of the river. In general, the municipalities are concerned about the exposure and reintroduction of PCBs into this dynamic river system during high flow and extreme storm conditions. EPA's own studies cite river sediment and bank as jointly redistributing more than 90% of PCBs back into the riverine system, most notably in Reach 5 of the river.
- The selected Remedy includes caps and other features that must be permanently monitored and maintained to remain effective. It is therefore imperative that the Permit state explicitly that GE is responsible for monitoring and maintenance of all remedy actions taken under the Permit *in perpetuity*. We note that EPA Region's 2 *Statement of Work (SOW) for Remedial Action and Operations, Maintenance and Monitoring* (December 2010) for GE's cleanup of the Hudson River explicitly requires GE to monitor and maintain the caps included in that remedy "in perpetuity." Attachment B offers relevant sections of this SOW.
- The Committee is also concerned about GE's responsibility for new discoveries of PCBs and/or of any other GE-related contamination. In recent years, EPA has said that the Pittsfield Economic Development Authority (PEDA) is responsible for responding to PCBs discovered in the stormwater system near the original GE Plant Area, even though these PCBs are attributable to an area GE was supposed to have cleaned up. EPA has so far taken no steps (e.g., under the reopener conditions in the CD) to hold GE responsible. The Committee respectfully requests a clarification from EPA as to why GE has not been held responsible for the additional contamination on the PEDA property. In addition, given this history, and given the likelihood of new discoveries of contamination in the large and complex Rest of River area, the Committee requests that the permit make clear that there is a real possibility that additional contamination will be discovered, and that GE will be responsible for responding to it. Specifically, the permit should state that, to the extent an additional response is necessary to protect human health or ensure compliance with applicable law, the remedy now being selected requires GE to respond to additional PCBs and/or other hazardous materials discovered during implementation of the remedy or in the course of operations and maintenance, in any area to which the draft permit modification applies or could be applied, unless GE can demonstrate that the PCBs/hazardous materials are not attributable to GE.
- The predicted impacts of climate change are cause for concern when considering the volume and spatial distribution of PCBs that will be left behind after the cleanup. We therefore ask that EPA insert language in the Remedy Plan that acknowledges the projected flooding increases due to climate change and requires GE engineering firms to incorporate these increases when they design their remediation activities. Data from USGS streamflow gauges across the northeast show a clear increase in flow since 1940. Some scientists predict that the recurrence period for extreme storm and flood events will be significantly reduced, with some projecting that the 10-year storm may more realistically have a recurrence interval of 6 years, a 25-year storm may have a recurrence interval of 14 years,

and the 100-year storm may have a recurrence interval of 49 years¹. Widespread severe storm events and resulting flooding in 2005, 2006, 2010, 2011, and 2014 in Massachusetts support the conclusion that recurrence times are being reduced. We note that severe storms this summer are causing GE to conduct repairs in Silver Lake, removing displaced armor stone, repairing a disturbed area of the cap isolation layer, and installing a new, stronger armoring system. If storm events can damage the conventional engineered infrastructure and cap at this stable urban pond, it causes us to wonder how the engineered solutions for erodible, unstable river banks will fare in the dynamic meanders throughout the Rest of River. These issues make it all the more critical that the EPA establish a rigorous and thorough program to monitor the movement of the river channel and establish strict mitigation protocols that can be activated quickly to minimize the amount of new PCB-contaminated soils being released into the water column for transport.

- We appreciate and agree with the strategy that the agencies are calling for “soft” armoring along sections of the river where remediation will occur or erosion is expected. It is inevitable that the river will continue to move laterally and will cut new channels, and in doing so will expose new soils, much of which is contaminated on some level. Because of these known dynamics, we request that the Permit proactively requires GE to sample bank and floodplain areas where lateral movement of the river channel is most likely to occur and create action plans to monitor, mitigate and quickly capture PCBs that are exposed during high flow events. The areas where the river is most likely to leave its meandering path and cut a new channel should be the focus of such planning efforts. Examples of areas for focus would be the specific meanders within Reach 5 that were discussed in our meeting of February 27, 2014 with EPA staff. Other areas undoubtedly exist along the full length of Rest of River, and town officials look forward to working with EPA to identify other areas which may require similar attention.
- Due to the amount of PCB contamination left behind and the vast areas to be capped and armored, we request that the EPA set specific performance standards and monitoring points all along the length of river where remediation will take place to ensure long-term encapsulation of PCBs. At a minimum, standards must be set for visual and water quality monitoring to ensure that once installed, the caps and armoring are functioning as designed. Precipitation or flow data thresholds should be set to trigger requisite monitoring and to document the structural integrity of caps and armoring.
- Given the changing patterns of the river channel and banks over time, the permit should require a comprehensive review of the areas which may be at risk on a relatively frequent basis, such as every 3 years, with requirements to address newly identified at-risk areas on a timely basis.

¹ We ask that EPA refer to new guidelines recommended by NOAA: NOAA Fisheries Services (FS-2011-01), 2011. *Flood Frequency Estimates for New England River Restoration Projects: Considering Climate Change in Project Design*. Of particular note is the study done by NOAA staffer Mathias J. Collins: Collins, M.J. 2009. “Evidence for Changing Flood Risk in New England Since the Late 20th Century,” *Journal of the Amer. Water Resources Association*, 45:279-290. We ask also that EPA refer to *Proceedings of the 2nd Joint Federal Interagency Conference (9th Federal Interagency Sedimentation Conference and 4th Federal Interagency Hydrologic Modeling Conference)*, June 27-July 1, 2010 Las Vegas, Nevada.

- We are concerned that a proper balance be reached in Core Areas. The remediation pilot project conducted on a vernal pool in Pittsfield indicates that the post-construction functionality of this pool had returned within a breeding season or two after construction. This would indicate that these areas have proven to be resilient and can recover in a relatively short period of time. We ask that cleanup standards in the core areas be revisited to ensure that the long term PCB removal goals have not been unduly compromised based on short term impacts to the core areas.
- Where feasible, we urge the EPA to require in the Permit that GE investigate methods to collect individual plants and animals from local populations of particularly vulnerable species, hold them during cleanup activities, and then re-establish them once construction has ended.
- The Permit should outline a framework for setting long-term Performance Standards once cleanup activities have been completed. These Standards would reflect post-construction conditions and incorporate lessons learned throughout the process.

GE Responsibility In Perpetuity

It is clear to GE and the public that GE is responsible for cleanup of the Rest of River. We are concerned that there is no language in the Permit stating that GE is responsible for maintaining the performance standards or remediating contamination in perpetuity. EPA Region 2 has permanently placed responsibility on GE for monitoring and maintaining the integrity of its final remedy in the Hudson River Superfund site, regardless of the cause of any failures. We request that such language be inserted in the Permit.² See Attachment B. Although we recognize that this language is inserted into a Scope of Work, we believe **strongly** that the premise of permanent responsibility be explicitly stated within the Permit, as well as be included in future Operation & Maintenance Plans. Borrowing language from Region 2's permit document, we suggest insertion of the following language into Section I, General Permit Conditions:

Duty to Comply with Monitoring, Operation and Maintenance

The Permittee shall conduct a Monitoring, Operation and Maintenance Program to ensure full and proper function of all approved remedial actions including but not limited to Woods Pond and Rising Pond dams, all caps and armoring, and all other remedies. This Program shall commence with EPA approval of remedial actions and engineered remedies and shall continue in perpetuity.

There are several reasons for our request for permanent responsibility:

- The river is a dynamic, meandering system that will continue to change course and expose contaminated channel, bank, backwaters, floodplain, etc.
- This dynamic system has an ever-increasing risk of erosion and exposure due to an increase in the number and intensity of severe storm events.
- A change in the federal political landscape could reduce EPA's authority.

² See *Attachment E to Statement of Work Hudson River PCBs Site, Operation, Maintenance and Monitoring Scope of Phase 2 of the Remedial Action, Dec. 2010*; Sec. 3. Cap Monitoring and Maintenance.

- There is a current line of thought by many people in the region that GE will retain a strong American presence for decades to come. We do not agree with this line of thought. GE could be purchased and/or dissolved, go bankrupt or move all operations offshore, leaving the government with no responsible party to turn to for future remediation.
- The Permit allows significant PCB contamination to remain behind after cleanup activities, essentially passing along a lingering legacy of PCB contamination to our children and grandchildren. It will be the burden of future generations to monitor and manage those PCBs left behind, and it is imperative that the financial burden remains squarely on the shoulder of GE and any of its successors.

Human Health and Safety

- The Permit under Sec. 1.B Duty to Mitigate, requires that GE prevent “significant adverse impacts on human health.” The term “significant” should be more clearly defined to include specific performance standards for soil, air quality and water quality for each reach of the river. Performance standards should also be set for air quality levels for volatilization of PCBs and emissions from truck traffic and construction equipment.
- We are unclear as to the role that the Massachusetts Department of Public Health and the local Boards of Health will play during the cleanup process. We note that the majority of local boards of health staff do not have the capacity and/or expertise to review the technologies being utilized nor the volumes of data that they generate to monitor conditions at and near cleanup sites. They will need support from professionals familiar with such monitoring programs to help them understand site conditions and potential health risks generated from cleanup activities. We therefore request that GE be required to fund a public health coordinator to serve the local boards of health during cleanup activities.
- To ensure that the ARARs listed in the Permit are protective of human health, we request that the EPA consult with the Massachusetts and Connecticut Departments of Health to ensure that all relevant statutes and regulations have been included in the final Permit.
- We ask that EPA direct GE to identify the types of fires, accidents and other emergencies that may occur during cleanup activities and to provide an independent evaluation of the capabilities of the local fire and ambulance companies to respond effectively to such emergencies. EPA should require GE to provide any additional equipment or training that may be needed to meet all potential emergency situations described in the evaluation.

Transportation Issues

- The Committee takes this opportunity to once again state our support for EPA’s direction to investigate the feasibility of transporting PCB-contaminated materials out of the cleanup area via the rail system.

- As EPA is aware, the municipalities are greatly concerned about the impact that heavy truck traffic generated during the cleanup will have on transportation infrastructure that was not designed to accommodate such high volumes or weight. The municipalities request that EPA define each cleanup site to include all local road infrastructure that will likely be damaged from cleanup-related truck traffic. The BRPC has provided EPA project staff with a transportation impact assessment methodology (Attachment C), and we request that it be utilized as specific cleanup plans are developed in each reach to help determine and assess costs for bringing an infrastructure component up to specification prior to its use and/or repairing damage done by increased and heavier truck traffic. EPA should clarify that the costs of preparing infrastructure to withstand future cleanup operations is to be determined by EPA in consultation with the affected municipality, and these costs are to be paid by GE.
- We specifically request that the “Road use...” section of the Quality of Life Compliance Plan (Sec. II.B.11.I.(3)) be expanded to state that GE must identify the truck routes and require a road, bridge and culvert assessment of all possible routes to determine pre-construction conditions. A baseline study of the current condition of transportation infrastructure for routes used during the cleanup must be conducted by GE. Any damage done to the infrastructure due to heavy truck traffic must be restored, at a minimum, to pre-construction condition. The assessment should be conducted in close coordination with each municipality. Also as part of this section, GE should be required to include a traffic management plan in the SOW, which should (like the rest of the SOW) be subject to a reasonable opportunity for review and comment by the affected municipality(ies) which maintains necessary access. GE should be required to adhere to the municipality(ies) requirement to maintain traffic and to promptly correct immediate deficiencies in traffic operations or roadway conditions as the municipal officials find necessary. The municipalities should have the ability to restrict use of roads during portions of the year when they are most susceptible to damage, particularly the “spring thaw” period.
- We request the Permit to include language requiring GE to establish a written procedure for infrastructure review and remediation of any damaged infrastructure within a timely manner, consistent with state or local mandated engineering and construction standards, no longer than one to two construction seasons. We also request that in no circumstances should the infrastructure remediation be done to a standard lower than the infrastructure’s previous surface or condition.
- It is imperative the impacted municipalities not be left to pay for infrastructure damage caused by cleanup activities. Damage caused to discrete sections of road caused by the stress of heavy trucks and equipment may not be immediately apparent, but instead may manifest itself a few years after construction activities are complete. We request that an escrow account be established with the Berkshire County Rest of River municipalities, using GE funds, in the event that such funds are needed in the future by any of the Rest of River municipalities to cover the cost of repairing infrastructure damaged by transportation linked to PCB cleanup activities.

Backwaters

- The cove/pond areas located along Columbia/Greylock/Bradley Streets in Lee, and tested by EPA for PCBs in 2012, must be added to the definition of “Backwaters” in the Definitions section of the Permit (p. 4) and on all maps being referenced by the Permit. Six of the 10 samples met cleanup thresholds, and additional sampling is needed to accurately show PCB concentrations and distribution. Although EPA staff has repeatedly reassured town officials that these areas are being considered by the EPA as Backwaters and will be cleaned up to meet the Performance Standards of the Permit, the Permit does not specifically speak to these areas. These areas are not shown on any maps being referenced by the Permit, including Figs. 3-17 of the CMS, Fig. 4 of the Permit, nor EPA’s Proposed Cleanup Plan Reach 7/8 Sediment and Floodplain Combination Alternative 9 map. For reference to these cove/pond areas see Attachment D.

New PCB findings

- The Permit does not describe how PCB contamination discovered during or after completion of the cleanup will be addressed and mitigated. This is especially important for areas that may be outside of the delineated Rest of River area. For example, the Lee cove/ponds and Yokun Brook are outside the mapped Combination Alternative 9 areas displayed in the EPA’s Proposed Cleanup Plan Reach 7/8, and only a portion of the Lee cove/ponds are located within mapped Exposure Area 71. Yet we know that the Lee coves have high PCB concentrations that will require remediation. No tests have been conducted for tributaries west of the railroad such as Yokun Brook, but it is not unreasonable to think that flood events could force waters to back up or flow upstream from the Housatonic River through railroad culverts and up into tributary channels. The Permit should outline a framework that requires GE to investigate, assess and remediate new discoveries of PCB contamination in the Rest of River during or after cleanup activities have been completed.

Woods Pond

- Figure 6 of the Permit indicates that cleanup activities in Woods Pond (Reach 6) will be implemented in two phases, namely that cleanup on the pond will occur in Years 1-3 and that a cap will be placed in Years 8-10. Cleanup of river and floodplain upstream of the pond, in Reaches 5A-5C and in Backwaters, will be conducted in Years 1-8. We are concerned that Woods Pond will be re-contaminated in the intervening Years 4-8 as cleanup activities dislodge and resuspend PCBs upstream. Section II.B.1.f(1) describes sediment removal and capping requirements, and Section II.B.1.f(2) describes post-construction long-term monitoring. However, the Permit does not require GE to re-evaluate the PCB concentrations in the pond before the cap is placed. The Permit should expressly state that GE, in consultation with the EPA, will re-test and evaluate PCB concentrations throughout the pond before any capping activities are begun.

Impoundments

- We appreciate that the issue of dam impoundments has risen to the forefront and that these are discussed in the Permit. However, we are concerned that the wording of the Permit does not convey the tight timelines or short windows of opportunity that may develop in the event that a dam must be repaired or where funding has been located for removal. GE must be required to make progress at the speed an improvement or redevelopment opportunity requires, not at a pace which could forestall opportunities that are presented. We therefore request that the wording in Section II.B.1.g.(2) be strengthened by adding the word “prompt” in front of “good-faith” in the second sentence to ensure a prompt response by GE when circumstances require such action. Specific cleanup plans should be developed for each impoundment in the very near term (years 1-2), with a requirement that the work being initiated and completed in an expedited fashion (within 1 year of notification that work is required to respond to an improvement or redevelopment opportunity) as needed to take advantage of opportunities which are not yet known.
- We restate our request to update the Permit so that it expressly acknowledges and documents the PCB contamination recorded in August 2012 in the coves/ponds adjacent to the river at along Columbia Street in Lee.

Residential Properties

- A Quality of Life Compliance Plan should identify all impacts that may be experienced by property owners and/or residents within the vicinity of cleanup activities, as well as impacts that might be experienced by the general population from loss of recreational use of the river and the work site. This plan should be developed in cooperation with the impacted municipality and should include nuisance conditions (noise, light standards, etc), traffic impacts, health impacts (dust, airborne or waterborne PCBs, etc) and hours of operation. GE should be required to identify any residential properties that will experience a significant drop in value as a result of cleanup activities.
- We support the Permit’s requirement that GE offer compensation for Environmental Restrictions and Easements that may be placed on private property as part of the cleanup. GE should also be required to compensate property owners impacted by a loss of quality of life during cleanup and for access to their property required to accomplish cleanup.

Adaptive Management Approach

- We fully support an active and innovative adaptive management approach throughout the lifetime of the Rest of River cleanup. Once again we request a reasonable opportunity for review and comment by the municipalities so that the Rest of River municipal governments can actively participate in the design and implementation of the mitigation process. We appreciate that the Permit requires GE to utilize adaptive management, and we urge EPA to challenge GE to meet the adaptive management approach for every reach of the river. We restate our request that the EPA establish frequent periodic reevaluations to incorporate the

latest innovative technological approaches or learn from failures at this or other sites, including in areas which may have been remediated already. Given the length of time this cleanup will take, there will be new information available about innovative approaches, about failures at sites, and as climate change impacts become better understood which will require reevaluation of the approach as outlined in the permit.

- The Permit should include a more detailed timeline for the 15+ years that the cleanup is expected to occur, including a set of milestones for work completed. Such milestones will allow the EPA and the public to see reasonable progress being made throughout the overall timeline.

Downstream Transport of PCBs during Construction

- All of the Housatonic Rest of River municipalities are concerned about the likelihood of PCB transport during cleanup construction activities. We urge EPA to amend the Permit to state clearly that GE must conduct new baseline sampling at sites along the entire length of the river in Massachusetts, from the Confluence to Reach 9, to mirror the original sampling taken over a decade ago. This baseline should be established immediately prior to the beginning of any type of cleanup activities within the river channels, banks, floodplains, oxbows or impoundments, and should continue throughout the life of the cleanup. The Permit should also state that monitoring be in place whenever an activity likely to disturb PCBs occurs. The results of the sampling should be presented to each municipal government and to the Citizens Coordinating Committee. Prior to commencement of cleanup activities within each reach of the river, mitigation plans should be drafted, shared and understood by all parties, including GE, the agencies, municipalities and stakeholder groups, which clearly state what actions will be quickly undertaken to capture PCBs should they become exposed or enter the river system during those cleanup activities
- The Onyx Mill in Lee needs high water quality, run-of-the-river flows for its manufacturing processes. This facility is the last working paper mill in the Town of Lee and employs approximately 150 people, so it is critical that this company not experience an interruption due to sediment transport, PCB contamination or low water flow conditions. The Permit must include more specific language and water quality standards to protect water quality and that guarantees adequate flow for manufacturing. We suggest that this language or similar language be added to Section .II.B.10.c. “(4) Permittee shall reimburse entities which experience financial losses due to a degradation to water quality or quantity due to corrective measures and/or construction within Reaches 5-16.”
- The Glendale Hydro-electric Facility requires adequate flows, within the confines of its current FERC license, to operate. The Remedy Plan must set specific language and standards that guarantees adequate flow in order to not disrupt the hydro-electric plant’s normal operations.
- We are concerned that water quality levels may be degraded during cleanup activities, which could impact the function and ability of our municipal and industrial wastewater treatment plants to meet their discharge permit requirements. We request that EPA and DEP work

together to set standards that require GE to meet certain water quality standards during cleanup. Should GE be unable to meet these standards, we request that the agencies work cooperatively with municipal and industrial permit holders to help them continue to operate within the confines of broad environmental compliance, recognizing that the impacts of the PCB cleanup are entirely outside of the local operators' control. Similar to the Permit section on Water Withdrawals and Uses (Sec. II.B.10.c.) there should be requirements regarding waste and stormwater discharges and uses.

- In addition, the Permit should specify that any fines or penalties of any sort levied due to the impact of cleanup activities on such facilities is the financial responsibility of GE, not the impacted municipality or business.

Archeological Concerns

We support the Permit's requirement to develop a Cultural Resources Plan. As we have stated previously, we believe that any cleanup activity that disturbs soil within the Rest of River has the potential to unearth discoveries of Native American culture. This is most likely to occur in the broad floodplain areas along the river channel, but could occur anywhere in the river corridor. Although it is our understanding that a Cultural Resources Plan will likely need to conform to federal requirements, EPA should explain in more detail what operating procedures will be required of contractors to protect archeological sites and/or artifacts that are found during the cleanup process and to notify appropriate agencies (local, state and federal) as well as the Stockbridge-Munsee Tribe when archaeological sites and/or artifacts are found.

Invasive Species Control

We are aware that invasive plant species thrive throughout the Rest of River corridor, yet the Permit addresses this serious ecological issue only by listing an Invasive Species Control Plan as one of many that GE must develop as part of its SOW. Successful invasive species control will undoubtedly involve a long-term commitment. We thus request that the Invasive Species Control Plan establish standards for the long-term, post-construction control of invasive species, likely on the order of decades rather than years. This plan and all activities associated with it must also cover appropriate safeguards for all equipment and worker footwear, clothing, etc. as well as any activity in contact with the river or which will flush or put water back into the river.

Thank you for your consideration of our comments. We look forward to working directly and closely with EPA, EOEEA, and GE staff as the cleanup proceeds through the public review process, and further into the design and implementation processes.

Respectfully Submitted,



Daniel L. Bianchi, Mayor
City of Pittsfield



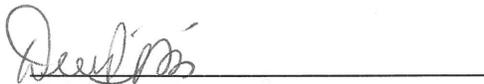
Channing Gibson, Chairman
Lenox Board of Selectmen



David Consolati, Chairman
Lee Board of Selectmen



Stephen A. Shatz, Chairman
Stockbridge Board of Selectmen



Deborah Phillips, Chair
Great Barrington Board of Selectmen



David A. Smith, Jr., Chairman
Sheffield Board of Selectmen

CC: The Honorable Elizabeth Warren, U.S. Senator
The Honorable Edward Markey, U.S. Senator
The Honorable Richard Neal, U.S. House of Representatives
Ms. Gina McCarthy, Administrator, U.S. Environmental Protection Agency
The Honorable Deval Patrick, Governor
The Honorable Benjamin B. Downing, State Senator
The Honorable Patricia Farley-Bouvier, State Representative, 3rd Berkshire
The Honorable Smitty Pignatelli, State Representative, 4th Berkshire
Ms. Maeve Vallely Bartlett, Secretary, Executive Office of Energy & Environmental Affairs
Dr. David Cash, Commissioner, Department of Environmental Protection
Ms. Mary Griffin, Commissioner, Department of Fish & Game

ATTACHMENT A

Mass. General Laws and Hazardous Waste Siting

The Committee requests that EPA: 1) acknowledge that, prior to commencing certain work such as the temporary storage of hazardous waste to be transported out of state, GE will be required to comply with the Massachusetts Hazardous Waste Facility Siting Act, Mass. G.L. ch. 21D §§ 1-19, by, *inter alia*, submitting notices of intent as set forth in section 7 of this statute, obtaining siting agreements with host communities and providing compensation to communities as set forth in sections 12-15 of this statute; 2) list MGL ch. 21D as an ARAR in siting any temporary hazardous waste facilities needed for the cleanup; and 3) require GE to evaluate and comply with this statute in future submissions by GE such as its Scope of Work documentation.

As EPA is aware, RCRA expressly preserves state law. See 42 U.S.C. § 6929 (“Nothing in this title shall be construed to prohibit any State or political subdivision thereof from imposing any requirements, including those for site selection, which are more stringent than those imposed by such regulations.”); *Blue Circle Cement v. Bd. of County Comm’rs*, 27 F.3d 1499, 1504 (10th Cir. 1994) (“Congress explicitly intended not to foreclose state and local oversight of hazardous waste management more strict than federal requirements.”). EPA has previously acknowledged in its approvals of RCRA responses that it is appropriate to require compliance with state and municipal laws. See, e.g., *North Haven Planning & Zoning Com. v. Upjohn Co.*, 921 F.2d 27, 27-28 (2d Cir. 1990) (per curiam) (sustaining municipal zoning board’s jurisdiction over RCRA plan to remediate substantial hazardous sludge site: “Consistent with the view that the approval was thus not intended to preempt local zoning regulations, EPA and DEP responded to public comments and questions by stating that if the Connecticut courts upheld a ruling that Upjohn’s current plan would violate zoning regulations, Upjohn would have to submit to EPA and DEP a new plan for review and approval.”); see also 40 C.F.R. § 258.56 (in assessing corrective measures, facility operator must address “State or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy”). In short, State and municipal jurisdiction is not preempted by the RCRA corrective action scheme that has actually been used to issue the remedy (and that will govern challenges to the remedy and to any further work required by EPA). For these reasons, EPA should acknowledge in the Permit the applicability of Chapter 21D and as it implements the remedy going forward.

We note that the requirements of Chapter 21D, including the bilateral siting agreement required by section 12, are quite different from the “permits” preempted by CERCLA section 121(e), 42 U.S.C. § 9621(e). CERCLA itself expressly preserves other state law. See 42 USC § 9614(a) (“Nothing in this chapter shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State.”); *id.* § 9652(d) (“Nothing in this chapter shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants.”). We further notes that while Chapter 21D may be applicable under CERCLA itself as an “Applicable or Relevant and Appropriate Requirement” (“ARAR”), see 42 U.S.C. § 9621(d)(2)(A); Consent Decree ¶ 8(a), it also is independently applicable even if it is not an ARAR. See *United States v. Colorado*, 990 F.2d 1565, 1581 (10th Cir. 1993) (“Contrary to the United States’ claim, permitting state involvement in hazardous waste cleanup outside of CERCLA’s ARAR’s process, based on independent state authority, does not render the ARAR’s process irrelevant.”).

ATTACHMENT B

Attachment E to Statement of Work Hudson River PCBs Site, Operation, Maintenance and Monitoring Scope of Phase 2 of the Remedial Action, Dec. 2010
Section 3. Cap Monitoring and Maintenance.

**Appendix B to the Consent Decree
Hudson River PCBs Site**

**Statement of Work (SOW) for Remedial Action
and
Operations, Maintenance and Monitoring**

December 2010

3. Cap Monitoring and Maintenance

3.1 Program Objectives

3.1.1 Backfill

Under the Residuals Performance Standard (Revised Engineering Performance Standards For Phase 2 Dredging, USEPA 2010a), backfill, as opposed to an engineered cap, shall be placed in a dredge area when the appropriate numerical residuals standard (average surface Tri+ PCB concentration in the 1-acre subunit or 5-acre CU is less than or equal to 1 mg/kg), as set forth by USEPA (2010a), has been met, subject to the requirements of the EPA-approved Phase 2 Final Design, which may identify certain areas where backfill will not be installed (*e.g.*, navigation channel) when the requirements of the Residuals Performance Standard have been met. Since, in such cases, the numerical residuals standard has been achieved, monitoring of backfill shall consist of verifying that backfill has been installed in accordance with the design specifications (*i.e.*, use of materials with acceptable physical and chemical characteristics placed to the design elevations). Such backfill monitoring shall be specified in the Phase 2 Final Design documents and Phase 2 Construction Quality Assurance Plan (Phase 2 CQAP) and will not be part of the OM&M program. No long-term monitoring of the backfill for containment purposes shall be required. However, the habitat monitoring and maintenance activities shall include monitoring of backfill as necessary and appropriate for purposes of the habitat replacement/reconstruction program, as discussed further in Section 4.

3.1.2 Engineered Caps

GE shall conduct monitoring and maintenance shall be conducted for engineered caps. The monitoring and maintenance objectives consist of the following:

- determine whether the physical integrity of individual cap layers/components has been maintained through the use of sediment cores and other means;
- determine whether the chemical isolation effectiveness of the cap component for chemical isolation has been maintained;
- determine whether there is a need for additional protective measures and institutional controls (*e.g.*, additional controls for caps in the navigational channel, notifications to boaters regarding actions in capped areas, *etc.*); and
- determine whether the physical integrity and chemical isolation effectiveness of cap layers/components installed in known fish spawning areas (*e.g.*, West Griffin Island Area) are maintained through monitoring with response thresholds at a spatial scale appropriate for the extent and depth of cap placed within the spawning ground and the nature of the potential disturbance (*e.g.*, an area less than 4,000 sf or an area less than 20% of the cap).

Several types of engineered caps are being designed for use in Phase 2. Definitions for these types of engineered caps are provided in the Critical Phase 2 Design Elements.

The OM&M program for engineered caps shall commence with EPA approval of the cap installation in a given CU and shall continue in perpetuity. In practice, this program shall be implemented by GE on an annual basis – *i.e.*, the caps which are installed in a given season will be monitored and maintained as a group.

3.2 OM&M Program

As part of construction, upon satisfactory completion of cap installation (as specified in the Phase 2 CQAP), record drawings (plans and cross-sections) will be developed. These drawings will verify that the engineering specifications for the cap (as specified in the Phase 2 *Final Design Report*) have been achieved in the field. This verification will include a bathymetric survey to document cap elevations after placement. Following construction, GE shall implement a tiered monitoring program for each cap type, using a similar framework (described below) to that recommended by the U.S. Army Corps of Engineers - Waterways Experiment Station in *Guidance for Subaqueous Dredged Material Capping* (USACE-WES 1998), and by USEPA in *Guidance for In-Situ Subaqueous Capping of Contaminated Sediments* (USEPA 1998). This framework is set out below.

The first tier of monitoring shall be to determine whether the caps remain in place over time. Bathymetric surveys shall be used as the primary means to evaluate the integrity of the cap. A bathymetric survey shall be performed one year following placement of the cap. This bathymetric survey shall be referred to as the “Year 1 Survey” and shall be performed for all areas that are capped during the prior dredging season, regardless of size of the capped area. The Year 1 Survey may be used as the baseline for subsequent cap measurements to account for any consolidation and associated settlement, the majority of which would be expected to take place within the first year following placement of the cap. If the Year 1 Survey does not indicate that any settlement has occurred since the cap was installed, the record drawings of the cap shall be used as the baseline for subsequent cap measurement. However, if the Year 1 Survey shows areas of suspected cap loss, compared to the record drawings of the cap, such data shall be confirmed through visual investigation (underwater camera, diver, side-scan sonar where appropriate, *etc.*). If it is confirmed that those areas have lost more than three inches of thickness over 4,000 square feet (sf), or 20% of the cap area, whichever is less, of a contiguously capped area, the cap shall be repaired by GE as necessary.

Subsequent bathymetric surveys shall be performed five and ten years after construction of the cap and continued thereafter at 10-year intervals in perpetuity. In addition, if a flood event with a magnitude at or exceeding the design recurrence interval for the cap (*i.e.*, a 100-year recurrence interval for engineered cap) occurs, the cap shall be inspected through a bathymetric survey and collection of sediment cores as soon as practical after the event. If such an event occurs in the same year in which routine periodic monitoring of the cap is scheduled, the event-based monitoring shall replace the routine monitoring survey for that year. Following the completion of dredging, the routine 10-year interval monitoring events shall be consolidated so that they are performed in perpetuity for all cap areas at intervals of 10 years after installation of the last cap installed by GE as part of the RA.

Based on the results of each of the surveys, including those conducted at 10-year intervals in perpetuity as set forth above, sediment elevations from the current monitoring event shall be compared to those shown on the record drawings and/or the Year 1 Survey, as appropriate, and to the prior monitoring event using an “elevation difference” plot. The goal will be to determine whether there is a measurable loss in cap

material elevation since the cap was installed and between monitoring events. This shall be defined as a measurable loss of greater than three inches in cap thickness over a contiguous 4,000 sf area or 20% of the cap area, whichever is less, considering both the accuracy of the measurement technique and the nature of the cap surface (*e.g.*, irregular rock surface). If a measurable loss in elevation is observed, a second tier of monitoring shall be conducted, including visual investigation (underwater camera, diver, side-scan sonar where appropriate, *etc.*) of the cap area, followed by confirmatory physical investigations to ascertain whether there is a significant loss of cap material (defined as greater than three inches in thickness over a contiguous 4,000 sf area or 20% of the cap area, whichever is less).

If the investigation confirms that there is significant cap loss, those sections of the cap shall be repaired as needed. This obligation to make needed repairs shall continue in perpetuity, in conjunction with the perpetual obligation to conduct surveys as set forth above. A survey shall follow the cap repair to confirm that the repair was performed satisfactorily and shall be used as the new “baseline” survey. Following cap repair, results from the monitoring event survey shall be compared to the post-cap repair survey, and the same cap loss metrics identified above shall be used to assess cap integrity. If a cap is placed over a contiguous area that is less than a half-acre in size, it shall be considered individually for the above evaluation purposes. If a significant cap loss of a particular cap type is identified during any monitoring event, all caps of the same type (or lesser) that were installed in similar physical settings but not monitored in that event will be reviewed to determine if there is more widespread damage.

3.2.1 Elevation Surveys/Hydrographic Surveys

Multi-beam hydrographic surveys shall be the preferred method of survey. Such surveys shall be conducted using USACE Hydrographic Survey standards (USACE 2002). Transect spacing will be varied with water depth to allow for sufficient coverage of the capped area being surveyed (estimated coverage is approximately 3.4 times water depth for each boat pass). In many instances, multi-beam surveys can produce vertical accuracy of approximately three inches, although performance at any given site under unknown conditions cannot be guaranteed. In near-shore areas, or areas where water depths do not allow for multi-beam hydrographic surveys, topographic survey shall be employed. Both survey methods were utilized by GE during the 2009 Phase 1 dredging, but GE did not explain how the two data sets and the associated errors were combined. For Phase 2, GE will be required to demonstrate how multi-beam hydrographic survey and topographic survey data are combined with analyses of the error associated with each data set.

3.2.2 Visual Investigations

If a measurable loss in cap elevation is observed based on comparison of the current bathymetric survey to the elevation of the cap as shown on the record drawings and/or the Year 1 Survey, as appropriate, and elevations previously measured, then visual investigations shall be conducted by underwater camera, diver(s), or other techniques to confirm the condition of the cap. A visual notation of the thickness and physical description of the materials shall be used to determine the thickness of the cap, including isolation layer and armor (if any). If the investigation shows significant loss of the cap armor material (*i.e.*, > 3 inches in thickness over a contiguous 4,000 sf area, 20% of the cap area, whichever is less), cores of the cap isolation layer shall be retrieved for visual evaluation of any potential loss in isolation layer thickness.

3.2.3 Chemical Isolation Layer Effectiveness Monitoring

The effectiveness of the Phase 2 caps with respect to chemical isolation will be monitored based on a limited coring program in “sentinel areas.” This effort will provide field data verifying the basic design assumptions for the cap (*i.e.*, whether diffusion or advection are the only significant drivers for contaminant migration upward into and through the cap at certain reaches) and a verification of the effectiveness of the cap to control chemical migration. Such monitoring of the chemical isolation layer in caps is similar to the planned long-term operation, monitoring and maintenance activities at other sediment sites like the Fox River and Lake Onondaga. Data on long term effectiveness will also allow for a determination whether any observed surface contamination is due to recontamination or from chemical migration through the caps.

The sentinel areas considered for the monitoring should be based on areas with the higher range of PCBs underlying the cap and other critical conditions that may exist in certain reaches of the river (*e.g.*, high groundwater upwelling rates). EPA will select up to six sentinel areas for chemical isolation monitoring and provide GE with the boundaries of the capped areas selected for this monitoring. The selection will be made following completion of the Phase 2 dredging work, or five years after Phase 2 dredging begins, whichever occurs first.

Chemical isolation monitoring shall be carried out by GE. The initial chemical isolation monitoring effort shall occur in the 10th year following construction of the first sentinel cap area among those selected for monitoring or as soon as practical after a flood event with a magnitude at or exceeding the design recurrence interval for the cap, whichever is earlier. Monitoring of all sentinel cap areas will be conducted in the same year. Subsequent efforts will be conducted at 10-year intervals or as soon as practical after flood events with a magnitude at or exceeding the design recurrence interval for the cap, whichever is earlier, and this chemical isolation layer monitoring may be terminated after 30 years, or at EPA’s discretion, a time interval in which the monitoring results are determined by EPA to confirm design predictions.

Each monitoring effort will consist of a minimum of 20 cores per sentinel area. Cores shall be taken through the caps and a minimum of 2 feet into the underlying sediments, to native clay, or to bedrock, whichever is less. Cores shall be segmented for analysis based on visual inspection. A minimum of two core segments shall be taken from within the chemical isolation layer of the cap, one in the upper 3 inches of the isolation layer, and one from 3 inches to 6 inches above the bottom of the chemical isolation layer. These core segments, plus one from the upper portion of the underlying sediments will be analyzed for PCBs. Results of the analysis will be compared to prior baseline information collected at the completion of cap construction. The results will be reported to EPA within 15 days of sample collection.

3.3 Reporting

Data collected in conjunction with the cap monitoring shall be included in GE’s monthly reports under the RA CD. If repairs are necessary based on the monitoring, GE shall submit a letter report to EPA, within two weeks of determining the need for such cap repairs, setting forth the proposed scope and schedule for such repairs. The objective will be to complete the repairs in the same year that monitoring is performed (*i.e.*, before the canal closes in early November, if possible). In addition, GE shall provide annual cap OM&M summary reports to EPA that document the prior year’s OM&M activities. The

annual reports shall include data collected from the cap OM&M field activities (including bathymetric survey results, critical field observations, and other analyses conducted) and any repair actions undertaken. The annual reports shall be submitted by April 1 of the year following the monitoring and maintenance activities described.

ATTACHMENT C

Rest of River Cleanup Transportation Impact Assessment Scope of Work

BERKSHIRE REGIONAL PLANNING COMMISSION
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201
TELEPHONE (413) 442-1521 · FAX (413) 442-1523
Massachusetts Relay Service: TTY: 771 or 1-800-439-2370
www.berkshireplanning.org

SHEILA IRVIN, Chair
KYLE HANLON, Vice-Chair
MARIE RAFTERY, Clerk
CHARLES P. OGDEN, Treasurer

NATHANIEL W. KARNS, A.I.C.P.
Executive Director

REST OF RIVER CLEAN-UP TRANSPORTATION IMPACT ASSESSMENT SCOPE OF WORK

Background

The Rest of River remediation is going to negatively impact Berkshire roads because the process involves transporting heavy equipment and moving massive amounts of soil and materials, both of which intensify damage to road surfaces and bases, bridges, and culverts. The Rest-of-River remediation activities will probably last 15 or more years. Based on the existing condition of the transportation infrastructure and the sheer amount of wear and tear projected from the construction, transportation infrastructure improvements will be needed prior to, during, and at the conclusion of remediation activities. General Electric (GE) shall ensure Berkshire roads utilized by the remediation activities are in adequate condition and safe to travel during construction and in a good state of repair at the conclusion of Rest-of-River remediation activities.

In advance of the Rest-of-River remediation activities, GE shall conduct an assessment of the existing condition of all roads, bridges and culverts that may be used as haul routes during construction. Additionally, haul routes should be reviewed and approved, including operations/activity schedules, as a means to offset the damage from additional heavy truck traffic. As part of this effort, in each municipality, GE will develop recommendations to alleviate operational impacts, mitigate congestion and delay, and insure safety. Each haul route assessment shall outline the required road improvements and upgrades that must occur prior to the start of Rest-of-River remediation activities. GE shall propose how it will coordinate with MassDOT and impacted municipalities to monitor and report the condition of haul route roads and associated transportation infrastructure. All financial costs for all required improvements to the transportation infrastructure, both before, during and after Rest-of-River remediation activities (including warranty repair work), and the cost associated with implementation, monitoring and management of the haul routes shall be borne by GE.

The scope of work below details the elements to be addressed in the Transportation Impact Assessment.

Transportation Impact Assessment Scope of Work

It is anticipated that there will be multiple excavation and dredging sites, at least one location for processing spoils (dewatering, then temporarily stockpiling the dry material), and potentially a terminal for transferring materials from trucks to train cars for transportation to permanent hazardous waste disposal sites. Different phases of Rest-of-River remediation activities will require the movement of construction equipment and materials. The large scale and dynamic scope of these unprecedented Rest-of-River remediation activities necessitate that specific aspects of each phase are likely to change. BRPC anticipates that over time significant changes in approach to each task and scheduling alterations will almost certainly occur. Therefore, BRPC and the Rest-of-River municipalities propose a detailed protocol to protect public infrastructure from damage and to properly manage the operational and safety issues which transportation impacts create.

Once the remediation sites and de-watering processing site(s) are agreed upon, GE shall determine the existing conditions of the roadways and transportation infrastructure necessary for remediation, processing, and permanent disposal of materials produced from the Rest-of-River remediation activities. GE will then estimate how many loaded truck trips, and the type, weight and turn-radii of the vehicles necessary to transport the materials that will travel each route in order to estimate the damage/degradation Berkshire roads will receive. GE's analysis shall also include an engineering cost estimate for all work to maintain adequate and safe use of the roadway(s) (and associated bridge/culvert structures) during Rest-of-River remediation activities and for all work to bring each route to a good state of repair at the conclusion of the Rest-of-River remediation activities. Due to the extended period of time involved in the remediation activities and the numerous discrete sites and areas which potentially will be impacted, a separate analysis will be needed for each area and potentially for each period of time that clean-up activities will occur impacting any specific area.

The existing conditions and proposed infrastructure improvements shall be documented in a Transportation Impact Assessment and Corrective Measures Study/Proposal and distributed to the affected municipality(ies), and MassDOT for staff-level review for each proposed route and site used in Rest-of-River remediation activities. GE shall provide adequate funds for each of the municipalities to retain independent Professional Engineering services to review the information provided by GE. Such funds and independent review shall be provided utilizing the process established in M.G.L. Chapter 44, Section 53G.

Following this review, each route's Transportation Impact Assessment and the Corrective Measures Study/Proposal will be submitted to the Chief Executive Official for each pertinent municipality. Transportation Impact Assessment and the Corrective Measures Study/Proposal shall be certified by a Professional Engineer licensed in Massachusetts. The municipality may hold a public hearing. The Mayor or Select Board shall have final approval of any agreement, permit or license needed to protect the public interest. They may, during the review process, require that additional information be provided and that the Assessment and Study/Proposal be modified.

The following information, at a minimum, shall be presented for review and decision to the appropriate municipality and/or MassDOT (as described above) in the Transportation Impact Assessment:

1. Pavement Condition:

GE should provide information that determines what repairs are needed for the road on each haul route, and when they should be fixed in order to preserve the municipality's assets, and how to maintain traffic for the travelling public. The repair estimate methodology should be clearly and concisely presented along with a construction timeline for how GE will complete necessary repairs to the roads before, during, and after the Rest-of-River remediation activities. Solely at the municipality's discretion, GE shall provide adequate funds for the municipality to retain an independent Professional Engineer to review the information provided by GE and to monitor impacts during Rest-of-River remediation activities, utilizing the process established in M.G.L. Chapter 44, Section 53G. This assessment of existing pavement should include acquiring pavement cores from the existing roadways and performing a structural analysis by a Professional Engineer to ensure that the existing pavement can adequately support the anticipated additional loading caused by Rest-of-River remediation activities.

2. Bridges:

MassDOT regularly inspects all bridges with spans of twenty (20') feet or greater (municipally owned and State owned) every two years and issues condition reports to the municipalities for their locally owned structures. Weight restrictions on all bridges are set by MassDOT and are legally enforceable. Proposed haul routes may need to be altered to avoid bridge structures with weight restrictions or GE may be required to make necessary repairs, in a manner acceptable to the bridge owner (the municipality or MassDOT) to those bridges with restrictions which it intends to use.

In addition, Massachusetts General Laws, Chapter 85, Section 35 requires that, before construction or alteration, all municipally implemented bridge projects undergo a structural design adequacy review and approval by MassDOT. These "Chapter 85 Reviews" are required to ensure that the bridge has been properly designed in accordance with the AASHTO Bridge Design Code and that the structure will be safe for the anticipated design loading.

GE and each bridge owner will agree on a process to monitor bridges on haul routes for damage during the Rest-of-River remediation activities and GE shall make repairs to bridges during remediation activities if the bridge owner determines, at its sole discretion, that repairs are needed due to GE's remediation activities. After the Rest-of-River remediation activities, GE shall provide an assessment of each bridge structure's condition and the affected owner, in consultation with the District Bridge Inspection Engineer, shall review each post Rest-of-River remediation inspection and

determine what repairs are needed and how GE will complete those repairs. Needed repairs are solely GE's responsibility, with all design and work subject to review and approval by the bridge owner.

Solely at the municipality's discretion, GE shall provide adequate funds for the municipality to retain an independent Professional Engineer to review the information provided by GE and to monitor impacts before, during and after Rest-of-River remediation activities, utilizing the process established in M.G.L. Chapter 44, Section 53G.

3. Culverts:

Minor bridges and culverts that span less than 20 feet are not regularly inspected by MassDOT. If it is determined that a proposed haul route must use one of these structures, and the municipality wants to determine its structural condition, a Professional Engineer should be retained by GE to perform a condition assessment and submit a copy of the report to the municipality and MassDOT. Proposed haul routes may need to be altered to avoid culvert and bridge structures which are determined to be structurally inadequate or GE may be required to make necessary repairs, in a manner acceptable to the culvert or bridge owner (the municipality or MassDOT and solely at the discretion of the bridge owner), to those culverts or bridges which it intends to use.

GE and each municipality will agree on a process to monitor minor bridges and culverts on haul routes for damage during Rest-of-River remediation activities and GE shall make repairs to minor bridges and culverts during remediation activities if the bridge owner determines, at its sole discretion, that repairs are needed due to GE's remediation activities. After Rest-of-River remediation activities affecting a structure are complete, GE shall provide an assessment of the minor bridge or culvert structure's condition to the pertinent municipality for review. The municipality can require repairs or replacement for any culvert damaged and such repair/replacement is solely the responsibility of GE, subject to approval by the municipality.

Solely at the municipality's discretion, GE shall provide adequate funds for the municipality to retain an independent Professional Engineer to review the information provided by GE and to monitor impacts before, during and after Rest-of-River remediation activities, utilizing the process established in M.G.L. Chapter 44, Section 53G.

4. Monitoring:

GE shall propose how it will monitor and provide status updates to each municipality for each haul route used during Rest-of-River remediation activities to ensure that repairs, improvements, and GE's construction traffic are consistent with the proposed route and schedule. Such proposal may be modified at the municipality's discretion during the course of remediation activities if issues arise which were not foreseen or

impacts are found to be greater than anticipated or which are unacceptable to the community. Solely at the municipality's discretion, GE shall provide adequate funds for the municipality to retain an independent Professional Engineer to review the information provided by GE and to monitor impacts during Rest-of-River remediation activities, utilizing the process established in M.G.L. Chapter 44, Section 53G.

5. Traffic Operations during Rest-of-River Remediation Activities:

GE shall provide a Traffic Management Plan for each stage of Rest-of-River remediation activities, which is subject to municipal review and approval. The plan shall be adequate to maintain existing public use of public roadways. GE shall be responsible for reimbursing any municipal costs incurred to monitor or implement any portion of the Traffic Management Plan.

6. Permitting:

A permit is required from MassDOT for Overweight and/or Over Dimensional Loads to travel on State-owned highways. Relevant information on overweight and over-dimensional loads may be found at the following link:

<http://www.mhd.state.ma.us/default.asp?pgid=TruckIndex&sid=level2>

If GE or its agent(s) need to conduct operations within the State Highway Layout, then a "Permit to Access State Highway" is required from MassDOT. Relevant information regarding performing work within state owned highways may be found at the following link:

http://www.mhd.state.ma.us/default.asp?pgid=content/access_permit&sid=about

Municipalities may have permitting requirements for use of locally-owned roadways, for driveway access, and for traffic operations. It is solely the responsibility of GE to identify and obtain any permits necessary from local authorities.

It is solely the responsibility of GE to obtain any permits necessary to repair damage to the transportation system before, during, and after Rest-of-River remediation activities. GE shall ascertain and present what permits may be necessary to the owner of the pertinent infrastructure. GE shall be responsible for reimbursing municipal costs to review, obtain, comment upon or issue required permits. Solely at the municipality's discretion, GE shall provide adequate funds for the municipality to retain an independent Professional Engineer to review the information provided by GE and to inspect required repair/replacement activities, utilizing the process established in M.G.L. Chapter 44, Section 53G.

7. Other Existing Conditions:

GE shall provide adequate information for a comprehensive review of each haul route in each municipality used during Rest-of-River remediation activities. The information should include, but is not limited to, the following:

- a. Traffic: Traffic counts and forecasted number of additional vehicles (trips, weight, and number of axles) used for each construction location.
- b. Turning Radii: Diagrams of each intersection and overlay turning templates for the vehicles used in the construction. It is important that the turning radii are adequate for increased truck traffic to ensure the safety and function of the routes for all road users. The municipality will review the information, decide what improvements are needed, and approve how GE will complete the upgrades.
- c. Road Surface: Paved roads are preferred for haul routes, but any gravel roads that are necessary for the haul routes should be identified. GE shall ascertain what the remaining service life is for each road used for the haul route and propose how to extend that remaining service life so it is at least the same after Rest-of-River remediation activities.
- d. Safety: GE shall assess the three most recent years of crashes on each haul route and present improvements that will increase safety. The municipality shall review and approve the design and implementation of the improvements.
- e. Road & Shoulder Width: GE shall present improvements that improve each proposed haul route based upon applicable design criteria and surrounding context for lane width, shoulder width, turning radii, and all other geometrics, as agreed upon with the owner of the roadway.
- f. Congestion and delay: GE shall perform a level of service analysis for roadways and intersections that will be impacted by the movement of equipment and materials. Recommendations shall be incorporated into haul route proposals for the purpose of alleviating congestion and delay.
- g. Route Signage: GE shall provide a plan to demarcate the haul routes so the contractors and general public know when and how it is used for construction during the remediation. The municipality shall review and approve the design and implementation of the route signage.

Content of Final Transportation Impact Assessment and the Corrective Measures Study/Proposal:

Each proposed haul route will be presented to the community/municipality (ies) in the form of a final report that includes the Transportation Impact Assessment and a Corrective Measures Study/Proposal. This report identifies the proposed haul routes, the required improvements to transportation improvements (both initial and final), the basis for the selection of a route(s)/segment(s), and cost estimates for roadway rehabilitation at the conclusion of the project so that the road is in a state of repair acceptable to the owner of the infrastructure. Once approved by the Municipality's Select Board, Pittsfield City Council, and/or MassDOT, this Corrective Measures Study/Proposal document shall serve as a legally binding commitment to insure that the roads which comprise the haul routes are in a continual state of good repair. At a minimum, the Corrective Measures Study/Proposal document shall consist of the following elements:

1. Statement of the purpose and need for the haul route;
2. Summarize stakeholders' input;
3. Present existing conditions and explain the importance of each data factor presented for the municipality to review the route;
4. Explain what additional traffic the haul route will generate, state when the haul route will be used, and describe the vehicles performing the hauling;
5. The basis on which the route and segments were selected;
6. Monetize the estimated repairs in consultation with municipalities and MassDOT;
7. Provide a schedule for improvements and construction traffic (the spring thaw period when roads are at their most vulnerable should be specifically excluded);
8. A mechanism for GE to remain financially responsible for the repairs such as the placement of funds in an amount and form acceptable to the municipality's Chief Executive Official for the improvement and repair of the haul routes prior to using each haul route during the Rest-of-River remediation activities. At the conclusion of the Rest-of-River remediation activities impacting a specific area or set of roadways, each Town's Select Board, the Mayor of the City of Pittsfield, and/or MassDOT shall discharge the financial responsibility for road repairs when it is determined that all roads and structures used in haul routes are in a state of good repair; and
9. A warranty statement that GE will provide a 5 (five) year warranty on the repairs/improvements made to all haul roads to insure a continued state of good repair. The warranty period shall begin at the date of discharge of the financial responsibility for road repairs by the Select Board, the Mayor of the City of Pittsfield, and/or MassDOT. The appropriate financial mechanism and the amount of funds to cover the warranty repairs will be determined by the municipality's Chief Executive Official.

ATTACHMENT D

Documentation Regarding Lee Coves/ponds



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

RECEIVED

AUG 10 2012

TOWN ADMINISTRATOR

August 8, 2012

Robert Nason
Town Administrator
32 Main Street
Lee, Massachusetts 01238

RE: Sampling of Ponds Adjacent to the Housatonic River

In response to your request for EPA to sample the three ponds adjacent to the Housatonic River at Bradley and Greylock Street in Lee, EPA conducted sampling on April 24, 2012. The analytical results are attached.

As you know, EPA is in the process of making a cleanup proposal for the Rest of River. Therefore I am unable to say at this time what, if any, action would be required in the ponds.

If you have any questions, please contact me at 617.918.1434.

Sincerely,

A handwritten signature in cursive script that reads "Susan C. Svirsky".

Susan Svirsky
Project Manager
Rest of River

Attachment

cc: Mike Gorski, MassDEP
Jane Rothchild, MassDEP
John Ziegler, MassDEP
Eva Tor, MassDEP
Holly Inglis, EPA
Rose Howell, EPA
Dean Tagliaferro, EPA
Chris Ferry, ASRC
Linda Palmieri, Weston Solutions
Public Information Repositories



Weston Solutions, Inc.
10 Lyman Street, Suite 2
Pittsfield, Massachusetts 01201
413-442-4224 • Fax 413-442-4447

MEMORANDUM

To: Scott Campbell - Weston
From: Izabela Zapisek - Weston
CC: Linda Palmieri - Weston
Susan Svirsky - USEPA

Date: August 8, 2012

Subject: Rest of River (Task Order No. 2) – Sample results for pond sediment collected by USEPA at the coves at Bradley and Greylock Street in Lee, MA.
DCN: HR-080812-AAASE

This memorandum summarizes polychlorinated biphenyl (PCB) sample results for pond sediment collected by the United States Environmental Protection Agency (USEPA) at three coves located at Bradley and Greylock Streets in Lee, MA. These samples were collected in response to a request from Robert L. Nason, Town Administrator for the Town of Lee, MA. This memo contains a general description of the samples collected, a summary table of the PCB analytical sample results, a figure displaying the sample locations and photo documentation of the sampling. These sample results have been incorporated into the project database.

The sediment sampling was conducted by USEPA on April, 24, 2012. Ten sediment samples were collected (including 1 duplicate sample) at 9 locations (see attached sampling location figure). All samples were collected from 0 to 2 foot depth interval with the exception of samples "Pond 2-3" and "Pond 3-3". Sediment from locations "Pond 2-3" and "Pond 3-3" was collected from 0 to 20 inch interval due to refusal at deeper depths.

All samples were analyzed by the USEPA Office of Environmental Measurement and Evaluation (OEME) in North Chelmsford, MA. Sample preparation and PCB analysis was completed following the USEPA Region 1 Standard Operation Procedure (SOP), PESTSOIL3.SOP. This SOP is based on EPA SW-846 Method 8082. Data were reviewed in accordance with the internal verification procedures described in the USEPA New England OEME Chemistry Quality control Plan.

See attached Table 1 for the sample result summary.

Table 1
Pond Sediment Sampling Results
Coves at Bradley and Greylock Street, Lee MA
April 2012

GE-Pittsfield/Housatonic River Project-Rest of River
Pittsfield, MA

(Results are presented in mg/kg)

| Sample ID | Date Collected | Aroclor 1016, 1221, 1232, & 1248 | Aroclor 1242 | Aroclor 1254 | Aroclor 1260 | Total PCBs |
|--------------|----------------|-------------------------------------|--------------|--------------|--------------|------------|
| Pond 1-1 | 24-Apr-12 | ND(0.18) | ND(0.18) | 0.41 | 0.55 | 0.96 |
| Pond 1-2 | 24-Apr-12 | ND(0.19) | ND(0.19) | 0.45 | 0.75 | 1.2 |
| Pond 1-3 | 24-Apr-12 | ND(0.19) | ND(0.19) | 0.58 | 1.3 | 1.88 |
| Pond 1-3 dup | 24-Apr-12 | ND(0.19) | 1.4 | 0.69 | 1.5 | 3.59 |
| Pond 2-1 | 24-Apr-12 | ND(0.20) | 0.28 J | 2.4 | 2.9 | 5.58 J |
| Pond 2-2 | 24-Apr-12 | ND(0.19) | ND(0.19) | 0.43 | 0.54 | 0.97 |
| Pond 2-3 | 24-Apr-12 | ND(0.19) | ND(0.19) | ND(0.19) | 0.23 J | 0.23 J |
| Pond 3-1 | 24-Apr-12 | ND(0.20) | ND(0.20) | ND(0.20) | 0.25 | 0.25 |
| Pond 3-2 | 24-Apr-12 | ND(0.19) | ND(0.19) | ND(0.19) | 0.25 | 0.25 |
| Pond 3-3 | 24-Apr-12 | ND(0.20) | ND(0.20) | ND(0.20) | 0.21 | 0.21 |

Notes:

ND(0.18) - Analyte was not detected. The value in parentheses is the associated detection limit.

J - Estimated value because the confirmation value exceeded 35% difference and is less than 100%. The lower value is reported.

EPA Pond Sample Locations April 2012

pond1-1

pond1-2

pond1-3

pond2-1

pond2-3

pond2-2

pond3-1

pond3-2

pond3-3

50 0 50 100 150

Scale in Feet



