

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

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ENVIR. APPEALS BOARD

In re:

GENERAL ELECTRIC COMPANY

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

EPA I.D. No. MAD002084093

**PETITION FOR REVIEW**

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**TABLE OF ATTACHMENTS**

Exhibit A – Petitioner’s Public Comment

Exhibit B – Letter dated January 31, 2011 from Three Massachusetts State Agencies to Susan Svirsky, EPA Rest of River Project Manager

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I. INTRODUCTION

C. Jeffrey Cook, whose home in Pittsfield, Massachusetts abuts the Housatonic River in Reach 5A and who hikes, bikes, and kayaks along the River and has done so for four decades (“Petitioner”), petitions for review of the conditions of the RCRA Corrective Action Permit (the “Reissued Permit”) issued to General Electric Company (“GE”) on October 20, 2016, by Bryan Olson, Director, Office of Site Remediation and Restoration, EPA New England (the “Region”). Terms with initial capital letters used but not defined herein shall have the meanings indicated in the Reissued Permit.

Petitioner is one of the founders of the Ward 4 River Watch (the “River Watch”), an informal group originally organized in 2011 of approximately 225 families living in Pittsfield and Lenox on both sides of Reach 5A of the River. While we have had several informational meetings for our members over the years and one brief meeting with several EPA staff, we have held off mobilizing the River Watch pending the resolution of the Reissued Permit. The River Watch neighborhoods and adjoining areas which will be adversely affected by the proposed remediation involve approximately 400 families whom we intend to now mobilize to address the

devastating impact of the proposed remediation on the River and Floodplain on our neighborhoods – an impact that the Region seems to have played down during this process.

What was projected to happen in 2012 has still not happened, which is the reason we have kept the River Watch on the sidelines. Now that it is clear that the EPA is proceeding with an approach that will be so damaging to the River and Floodplain and expose our families to three to five years of disruption of our lives and use of the River, we will be activating our membership and our neighbors. For now, I am bringing this Petition only in my name.

The Reissued Permit would authorize GE to perform correct action activities in accordance with the Consent Decree entered in *United States, et al. v. General Electric Company*, Case Nos. 99-30225, 99-30226 and 99-30227 (D. Mass. Oct. 27, 2000). Petitioner contends that certain of the findings of fact and conclusions of law upon which the Reissued Permit was granted are clearly erroneous, and that the Region's exercise of discretion on this important matter – which would permanently and detrimentally impact the precious Housatonic River ecosystem and the quality of life of the thousands of people who live and work adjacent to the river and use it for recreation – merits review by the Board.

## II. THRESHOLD PROCEDURAL REQUIREMENTS

Petitioner satisfies the threshold requirements for filing a petition for review under 40 C.F.R. part 124, in that Petitioner participated in the public comment period on the permit. *See* 40 C.F.R. § 124.19(a). Petitioner's comments are attached hereto as Exhibit A. Each position stated below was raised in Petitioner's comments. As Petitioner's comments are only six pages long, Petitioner respectfully requests that the Board deem the requirement of 40 C.F.R. § 124.19(a)(4)(ii) (specific citations to the administrative record) to be satisfied.

## III. STATEMENT OF COMPLIANCE WITH WORD LIMITATION

Petitioner hereby certifies that this Petition is in compliance with the word limitation set

forth in 40 C.F.R. § 124.19(c)(3).

#### IV. ARGUMENT

Petitioner challenges the following conditions of the Reissued Permit:

1. The Reissued Permit makes no mention of the findings and recommendations of three key Massachusetts environmental and conservation agencies (the “State Agencies”), which proposed that no bank or river excavation and stabilization work be performed out of concern for protection of the ecosystem and human health. *See Exhibit B* attached hereto.
2. The cleanup standard – based upon the EPA’s calculation of what it would take to reduce the risk of cancer to between 1 in 10,000 to 1 in 1,000,000 – is completely inappropriate when compared to the background risk of cancer in the general population, and there is essentially no consideration of the real health risks of excavating, removing, dewatering, and transporting contaminated material through the neighborhoods of southeast Pittsfield and northeast Lenox located along the River and Floodplain, except to say that will be handled by GE. EPA’s position also overlooks the fact that, despite decades of research, there is still no scientific evidence that PCBs cause cancer in humans. The Massachusetts Department of Health studies of the Pittsfield population show no increased incident of serious disease among the population, including former GE workers and residents of the Lakewood area of Pittsfield.
3. The exposure scenarios forming the basis of the performance standards used by the Region for exposure to PCBs in Floodplain soil are arbitrary and, in fact, patently ridiculous.
4. The Reissued Permit would impose different standards for contamination for different portions of the River without any justification for that distinction. It appears to be a political decision.
5. The Region has failed to consider the possible volatilization of PCBs in the remediation process, which would affect far more people in much more dangerous ways than the existing contamination.
6. The Region deliberately omitted from the maps presented to the public the staging areas and access roads which will be an absolute necessity for a cleanup of this magnitude. Suggesting that the location of those facilities is not yet known and will be determined only when GE’s plans for the remediation are completed is disingenuous, since there are only so many locations where it is feasible to locate the staging areas (which will dictate the location of the access roads), and almost all of those sites are located near existing neighborhoods or active farmland.
7. The Region disbursed approximately \$250,000 in Technical Assistance Grants to the Housatonic River Initiative (“HRI”) supposedly to give the public a voice in

the remediation process. Those funds were used to pay Tim Gray for his time organizing presentations featuring “scientific findings” about the dangers of PCBs and paying the costs of environmental scientists who incompetently or deliberately in their reports and public presentations distorted the all important distinction between the findings of “associated with” and “caused by”. The Region’s staff stood by while the population the EPA is charged with protecting was misinformed and scared by the “findings”. At the same time, HRI never made an effort to (a) talk with the River Watch or any of the other families living on both side of Reach 5A of the River and Floodplain or (b) have the funded studies address our concerns. HRI ignores our existence, because fair consideration of concerns would really impede the results HRI is trying to achieve. What is most disappointing is that the Region made no effort to have the studies orchestrated by HRI address the concerns of the population most at risk during the proposed remediation. Moreover, the Reissued Permit completely overlooks our very real concerns.

The Region should have accepted the findings and recommendations of the three State Agencies. In their 2011 letter to the Rest of River Project Manager, the State Agencies explained their finding that “none of the current combinations of alternatives achieve the remediation goals without causing irreparable harm to this unique, diverse and vital ecosystem.” Exh. B at 1. The State Agencies recommended remediating a total of 57 acres of Floodplain, performing no bank or river excavation and stabilization, excavating the heavily contaminated Woods Pond (which alone would eliminate up to 25% of the PCBs in the entire Rest of River area), and using signage and other non-invasive means to limit human exposure to PCBs.

The cleanup standard in the Reissued Permit is based upon the EPA’s calculation of what it would take to reduce the risk of cancer from 1 in 10,000 to 1 in 1,000,000 (which is way out of proportion to the commonly understood background cancer risk in the general population of 1 in 2.5-2.6). The unreasonably high standard has the effect of causing more harm to this unique ecosystem than would be involved in the use of a more reasonable standard. To the extent that PCBs can be shown to cause human health risk, there is no provision in the Reissued Permit to balance the cleanup against the increased risk caused by the required remediation.

The exposure scenarios forming the basis of the EPA's performance standards for exposure to PCBs in floodplain soil are unsupportable. From Table 1 of the Reissued Permit, it appears that the Region based its threshold of 5 mg/kg (5 parts per million) on the assumptions that (a) young children would come into contact with floodplain soil for recreational reasons an average of 90 days per year, and (b) marathon canoeists (!!) would do so an average of 150 days per year. In the experience of the Petitioner – an avid outdoorsman and grandparent of eight children – these and the other assumptions in Table 1 are grossly in excess of the actual recreational use of the River and Floodplain, based upon his personal use and observation of the River and Floodplain adjoining the residential neighborhood in which his home is located. These unsupportable assumptions undermine the stated basis for the cleanup standards.

At the same time the deletion of the Staging Areas and resulting Access Roads from the proposed maps puts off until it is too late the consideration of the very detrimental impacts of the proposed remediation on the families living on both sides of the River and Floodplain.

Moreover, there is no justification stated for the distinction drawn by the Region between the cleanup threshold of 5 mg/kg (5 parts per million) for a riverbank in Reach 5A and the threshold of 50 mg/kg (50 parts per million) for Reach 5B, which also involves residential neighborhoods, and the other Reaches.

Table 1 claims (again without any disclosed basis) that recreational uses by young children are likely to be limited to exposure areas 10 (where Petitioner lives), 70, and 87. The Region's assumption is not borne out by actual use. These flawed and uninvestigated assumptions form the entire rationale for the intrusive cleanup that conflicts with the State Agencies' recommendations.

While there have been assertions that the PCBs in the River and Floodplain are

volatizing, the Region has overseen regular measurements of the air over the River and Floodplain, the Allendale School and Hill 78 and there have been no detectable levels of PCBs in the air at any of those locations and none is expected. That will not be true once the remediation work begins. The volatilization of PCBs that is likely to result from the proposed remediation will present a much greater health risk than anything that now exists. When asked about this risk at a public meeting, representative of the Region described it as "GE's problem" to prevent. Unfortunately, there is no proven way of preventing soil-bound PCBs from becoming volatilized in the process of excavating, removing, dewatering and transporting them.

#### V. CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that the Board vacate the Reissued Permit and remand it to the Region for issuance of a permit that is consistent with the 2011 recommendations of the State Agencies and protective of the neighborhoods in direct proximity to the River and Floodplain.

  
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