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October 30, 2014

VIA HAND DELIVERY

October 30, 2014

Ms. Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
WJC East Building, Room 3334
Washington, DC 20004

RE: General Electric Aviation Petition for Review
NPDES Permit No. MA0003905

Dear Ms. Durr:

Please find enclosed one original and two copies of the Petition for Review of the General Electric Aviation NPDES Permit issued by Region 1 and accompanying Exhibits and Certificate of Service.

Thank you for your assistance with this matter.

Sincerely,

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Enclosures

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

In re:	
General Electric Aviation	NPDES Appeal No. 14-_____
NPDES Permit No. MA0003905	

PETITION FOR REVIEW OF THE GENERAL ELECTRIC AVIATION NPDES PERMIT ISSUED BY REGION I

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October 30, 2014

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER RESOURCES

INTRODUCTION

General Electric Aviation ("GE"), through its undersigned representative, respectfully submits this petition for review of the final National Pollutant Discharge Elimination System ("NPDES") Permit No. MA0003905 (the "Permit," attached hereto as Exhibit 1), issued on September 30, 2014 by the U.S. Environmental Protection Agency, Region 1 (the "Region"). This petition is timely filed within thirty (30) days of service of the Permit on GE. 40 C.F.R. § 124.19(a). Certain conditions and effluent limits set forth in the Permit are based on one or more findings of fact and/or conclusions of law which are clearly erroneous, involve an abuse of discretion, or implicate important policy considerations.

This NPDES re-issuance proceeding has a lengthy history, spanning nearly 16 years. Much of the data and information upon which the Region relied to re-issue the Permit dates back to 1998, when the predecessor permit expired and was administratively continued. GE appreciates that the Region made certain changes between the draft and final Permit based on GE's extensive comments. However, even with these changes, the Permit raises important policy considerations and imposes new conditions and limits that are overly burdensome, not required by law, and based on clearly erroneous findings of fact and/or conclusions of law. Additionally, several of the Region's responses in the record fail to meaningfully acknowledge or address significant comments and concerns raised by GE relative to the draft Permit, as required by 40 C.F.R. § 124.17(a)(2). *In re San Jacinto River Authority*, 14 E.A.D. 688, 692 (EAB 2010); *In re Wash. Aqueduct Water Supply Sys.*, 11 E.A.D. 565, 585-86 (EAB 2004). EPA also failed to provide GE with fair notice of its new compliance obligations in certain material respects. *D.C. Water and Sewer Auth.* at *112-114, citing *In re Indeck-Elwood, LLC*, PSD Appeal No. 03-04, slip op. at 28-29 (EAB, Sept. 27, 2006); *In re Amoco Oil Co.*, 4 E.A.D. 954, 981 (EAB 1993); *In re GSX Servs. of S.C., Inc.*, 4 E.A.D. 451, 467 (EAB 1992). Thus, GE

is compelled to contest the Permit and its various conditions and limits and respectfully requests the Environmental Appeals Board ("EAB") to grant review of this petition. More specifically, GE seeks review of the following questions:

1. Did the Region err by imposing unnecessary and burdensome requirements for the Cooling Water Intake Structures that are not supported by law or fact?

2. Did the Region err by including monitoring requirements, management practices and operational limitations on the Drainage System Outfalls that are excessive, rely on historical data that are not representative of current conditions, and fail to meaningfully consider technology limitations that will affect implementation?

3. Did the Region err by imposing water quality-based limits and conditions in the Permit that are not supported by law or fact?

4. Did the Region err by imposing technology-based limits in the Permit that are not supported by law or fact?

5. Did the Region err by not removing the former Gear Plant outfalls from the final Permit, or failing to provide a process for their removal upon confirmation of the sale of the Gear Plant property?

6. Does the Permit contain errors and unsupported requirements in the final Permit?

7. Did the Region err by failing to consider and include compliance schedules for new requirements that cannot be implemented or achieved on the effective date?

THRESHOLD PROCEDURAL REQUIREMENTS

For the following reasons, GE satisfies the threshold requirements for filing a petition for review under Part 124:

1. GE has standing to petition for review of the Permit decision because it timely submitted comments on the draft Permit (a copy of GE's Comments, the draft permit Fact Sheet, and EPA's Response to Comments ("RTC") are attached hereto as Exhibits 2, 3, and 4 respectively); and

2. All issues raised herein either (a) were raised during the public comment period, to the extent reasonably ascertainable at the time, or (b) concern changes from the draft Permit to

the final Permit decision. 40 C.F.R. § 124.19(a); *see also In re RockGen Energy Ctr.*, 8 E.A.D. 536, 540 (EAB 1999).

FACTUAL AND STATUTORY BACKGROUND

The facility at issue in this appeal is located along the banks of the Saugus River in Lynn, Massachusetts and is currently used for the design, manufacture, assembly and testing of aircraft jet engines and associated equipment (the "Facility"). The Facility consists of approximately 20 building complexes with associated storage areas, parking areas, roadways and a co-located power plant that serves an ancillary and support function for the manufacturing and testing operations. In the past, a portion of the Facility was used for the manufacturing of gearing for marine propulsion systems (the "Gear Plant"); however, these operations were discontinued in December 2010, the related buildings were razed, and the property was sold to a third party purchaser on October 29, 2014.

GE remains the largest local employer in Lynn, employing approximately 3,200 full-time workers with an average salary of $82,000, and the Facility generates a payroll tax base in excess of $250 million annually. The Facility is also a critical Department of Defense facility that provides the T700 turboshaft engine that powers the military's Apache and Black Hawk helicopters, and the F414 that powers the Super Hornet fighter jet.

Wastewater and stormwater discharges from the Facility are varied but typical of most manufacturing operations and include, among other things, non-contact cooling water and rain water from parking lots and rooftops. The Facility's industrial wastewater and stormwater are collected in the Facility's 19 miles of drainage pipes and routed to (a) the local publicly owned treatment works ("POTW"); (b) the Facility's Consolidated Drains Treatment System ("CDTS"), which was constructed in 1999; or (c) directly to the Saugus River. Upgrades to the CDTS were completed after the original NPDES renewal application was submitted in 1998, and included a

Facility-wide drainage system with vaults and gates designed and operated to better control the collection and management of the Facility's industrial wastewater streams. These upgrades minimize the potential for any discharge of untreated industrial wastewater (whether during wet or dry weather) to the Saugus River. In addition, GE reconfigured the Facility's drainage system in 2010 to hydraulically separate the Gear Plant property from the rest of the Facility and to eliminate all industrial sources of wastewater from the Gear Plant property outfalls.

GE currently operates two cooling water intake structures ("CWIS") at the Facility to withdraw water from the Saugus River for cooling purposes, which are also subject to the Permit. These include the Power Plant CWIS and the Test Cell CWIS. A third CWIS, associated with the former Gear Plant, has been permanently retired, has not been used for several years, and is not covered by the Permit.

The Facility's CWIS and discharges have been subject to an NPDES permit for many years. The predecessor permit issued in 1993 expired in 1998 but was administratively continued by virtue of GE's timely and complete renewal application. The renewal application was submitted on June 29, 1998, and was supplemented and/or revised in May 2000, September 2003, and July 2009 (in response to a Section 308 Request for Information). On February 2, 2011, the Region and the Massachusetts Department of Environmental Protection ("MassDEP") co-released a draft renewal Permit with an accompanying fact sheet for public comment. GE submitted timely and detailed comments on the draft Permit. On September 30, 2014, EPA and MassDEP co-issued the final Permit.

For the better part of three decades, GE has been engaged in remedial action at the Facility to address legacy soil and groundwater contamination in accordance with the Massachusetts Contingency Plan ("MCP"), 310 MASS. CODE REGS. 40.0000. Response actions

at the Facility have also been conducted to meet requirements under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*

GE has made significant progress with its remedial action, which has substantially improved the overall environmental conditions at the Facility by reducing the likelihood of contaminants leaching or discharging to the Saugus River. Toward this end, in 2001, GE conducted an Ecological Risk Assessment of the Saugus River as part of the remediation efforts and concluded that a condition of "no significant risk of harm to the environment" existed. The assessment took into account historical Facility operations and current site conditions, including the potential for, and impact of, groundwater infiltration to the Facility's underground drainage system. A reevaluation of potential ecological risks was conducted in 2011, and, once again, GE confirmed a "no significant risk" condition.

In October 2013, GE filed a Class A-3 Partial Response Action Outcome (RAO) to achieve site closure for the Gear Plant and Saugus River areas, and confirmed no significant risk in these areas. MassDEP conducted a review of this documentation in September 2014 and agreed with the conclusions in a memorandum to EPA.

Based on sampling conducted by GE in 2009, *de minimis* levels of contaminants were deemed to be infiltrating into the Facility's drainage pipes. To address this issue and reduce groundwater infiltration, GE implemented an aggressive pipe relining and replacement effort, focusing on areas where piping was located below the groundwater table or subject to tidal influence and therefore potentially susceptible to groundwater infiltration. These efforts resulted in the relining or replacement of several miles of drainage pipe. In addition, in 1999, GE initiated a significant capital project that involved the rerouting of stormwater and non-stormwater discharges to the CDTS for treatment prior to discharge. The CDTS is a state-of-the-

art wastewater treatment system that includes vaults and automated gates to control wet weather flows to the CDTS, low and high level flow alarms, dissolved air floatation, influent equalization and skimming, and granular activated carbon ("GAC") polishing.

In addition to the wastewater treatment technology and equipment noted above, GE has voluntarily implemented (or committed to implement) a combination of technologies, management practices, and operational measures to ensure no unacceptable impingement and entrainment for the CWIS (*e.g.*, using variable frequency drives to reduce both intake flows and through-screen velocities).

PARALLEL PROCEEDINGS

On parallel path with this petition to the EAB, GE has submitted requests to MassDEP for adjudicatory hearings regarding the state's issuance of the Permit under state law, as well as the state's water quality certification for the Permit. *In the Matter of General Electric Company*, MassDEP OADR Docket Nos. 2014-023 and 2014-0__, filed on October 15, 2014 (WQC) and October 30, 2014 (state permit), respectively. GE anticipates that those proceedings at the state agency will be stayed pending resolution of this appeal to the EAB. *See* 310 MASS. CODE REGS. 1.01(6)(h).

ARGUMENT

GE contends that the following contested conditions and limits are based on clearly erroneous findings of fact and/or conclusions of law, involve an abuse of discretion, or implicate important policy considerations.

1. **The Region erred by imposing unnecessary and burdensome requirements for the CWIS that are not supported by law or fact.**

The Permit requires GE to make significant and costly upgrades to its Test Cell CWIS and Power Plant CWIS, which the Region claims to represent the best technology available ("BTA") for minimizing impingement and entrainment impacts from the Facility. (*see* Fact Sheet, Attachment J, pp. 38-39, and 46-48). In particular, for the Test Cell CWIS, GE must install a new fish return trough and operate within defined flow limits (Part I.C.1.a and b). For the Power Plant CWIS, GE must reduce through-screen velocity to no greater than 0.5 feet per second (fps), operate within defined flow limits, and install a fine mesh wedgewire screen intake with a pressurized system to clear debris from the screens (Part I.C.2.a and b). GE also must implement a new biological monitoring program (Part I.D), which must include entrainment monitoring at the Power Plant CWIS and impingement monitoring at the Test Cell CWIS. The Region imposed these costly new requirements despite the fact that the Facility's CWIS are having no adverse impacts on fish in the Saugus River, and despite substantial evidence in the record against the Region's BTA determination.

The need for CWIS upgrades has been a point of significant disagreement between GE and the Region, as reflected in the record for this Permit proceeding. (*see generally* RTC at pp. 137-210). GE submitted extensive comments to the Region regarding the Facility's CWIS operations and the Region's proposed BTA determination in the draft Permit. In those comments, GE committed to install and operate variable frequency drives to reduce both intake

flows and through-screen velocities, designed to ensure that any impacts from the CWIS are not more than minimal. Although GE fully supports the Region's decision not to require closed-cycle cooling as BTA, GE nonetheless believes that the Region erred in its assignment of CWIS requirements in the final Permit.

As an initial matter, GE believes that the Region should have deferred imposing new CWIS requirements until the next Permit renewal, consistent with the timing and transition provisions of EPA's *Final Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities*, 79 Fed. Reg. 48,300 (Aug. 15, 2014), codified at 40 C.F.R. Parts 122 and 125 ("§ 316(b) Rule"). For permits like the one at issue here, where the reissuance proceeding was already underway at the time of EPA's final rulemaking action, the 316(b) Rule contemplates that the permitting authority will wait at least one permit cycle before imposing substantive impingement mortality and entrainment requirements, and will use the intervening time to gather all of the information necessary to make an informed determination about whether and how those requirements should be imposed (including any necessary schedule of compliance). GE believes that EPA erred by prematurely imposing § 316(b) requirements without regard to this transition provision or the supporting technical record. (*see* RTC at p. 147). As described in more detail below, on the one hand, the existing technical record is adequate to support a *de minimis* exemption (*see* GE Comments at pp. 55-58); on the other, additional data would need to be gathered before the Region could justify imposing any more stringent requirements.

The Facility's two CWIS are relatively small. The average monthly flow for the Test Cell CWIS (which withdraws water only a few days each month) is 1.5 MGD, and the average monthly flow for the Power Plant CWIS is 27 MGD. Based on these relatively small

withdrawals (*i.e.*, less than three percent of the tidal excursion volume of the Saugus River in the area of the Facility), current conditions and operational controls, GE believes that the Facility qualifies for the *de minimis* exemption in the § 316(b) Rule. The Region rejected this exemption, apparently based on the belief that GE's CWIS are "co-located" with the Wheelabrator-Saugus trash-to-energy plant CWIS, across the Saugus River. (RTC at p. 149). However, co-location is not defined in the § 316(b) Rule and is not an explicit factor in the *de minimis* determination. As a result, GE submits that the Region erred in rejecting GE's *de minimis* claim.

Even assuming for the sake of argument that the Facility is not a candidate for the *de minimis* exemption, the Region erred by not providing GE with an opportunity to conduct an impingement technology performance optimization study consistent with 40 CFR § 125.94(c)(6). (RTC at pp. 171-175). Under the § 316(b) Rule, facilities are provided with seven alternatives for addressing impingement mortality. Under the sixth alternative, a facility may operate a combination of technologies, management practices and operational measures, so long as EPA determines that these operations are BTA for impingement reduction. For this alternative, a facility must submit a site-specific impingement study including two years of biological data.

After EPA released the § 316(b) Rule, GE submitted comments to the Region presenting the company's views on how this rule (now final and effective as of October 14, 2014) should be interpreted and applied to the Facility. In those comments, as well as in its comments on the draft Permit, GE documented the technologies, management practices and operational measures that would be implemented at the Facility (or that already had been implemented at the Facility) for impingement reduction (*e.g.*, using variable-frequency drives to reduce both intake flows and through-screen velocities).

GE submits that the Region made compounding errors in the final Permit, by (1) rejecting GE's *de minimis* claim (RTC at pp. 141-142, 148-149), (2) by imposing new substantive impingement reduction requirements (Part I.C.1 and 2) instead of allowing GE to pursue the sixth alternative for a combination of technologies, management practices and operational measures (RTC at p. 149), and (3) by imposing the very kind of detailed monitoring requirements (Part I.D) that would be necessary in order to support the sixth alternative (RTC at pp. 205-211). The effect of the Region's decision-making is to deprive GE of one of the alternatives lawfully available to it under the § 316(b) Rule (without record support), while at the same time imposing additional costly and arguably unnecessary, substantive impingement reduction and monitoring requirements. It is also unsound policy for the Region to impose the new CWIS requirements in the final Permit given the availability of other, more supportable options.

Even if the Region believes that the biological monitoring requirements in Part I.D are necessary to support the BTA determination underlying the impingement mortality and entrainment requirements in Part I.C.1 and 2, those requirements are unnecessarily burdensome and fail to account for the extensive data collection and analysis already conducted for the Facility's CWIS. GE also believes that the requirements are not sufficiently tailored to the Region's asserted objective. Instead, they appear to support GE's claim to the sixth alternative, which the Region rejected. In short, the requirements in Part I.D *may* have been appropriate if the Region deferred the requirements in Part I.C.1 and 2, but taken together, they are not.

GE notes, as well, that there are ambiguities in the biological monitoring section that present unreasonable compliance and enforcement risks for GE. First, in the impingement monitoring section (Part I.D.2), the Region failed to prescribe a frequency or minimum number

of monitoring events over the 2-year monitoring period. Second, in the reporting section (Part I.D.3), the Region failed to prescribe when the first report will be due (*i.e.*, by March 31 after the Permit takes effect, after the biological monitoring program is initiated, or after the first full year of biological monitoring).

GE appreciates that the Region included a schedule of compliance for the new CWIS requirements (Part I.C.5). While the length of the schedule *may* be sufficient for purposes of installing the required upgrades, the Region failed to provide GE with an opportunity to assess and confirm this schedule or the milestones within it. GE is concerned that the milestones are not appropriate for enabling GE to implement the new requirements "as soon as possible," and GE is also concerned about the achievability of the eventual deadline for compliance. GE submits that the Region erred by not providing GE with an opportunity for input on the schedule before establishing it as final and binding in the Permit.

2. **The monitoring requirements, management practices and operational limitations imposed on the Drainage System Outfalls are excessive, rely on historical data that are not representative of current conditions, and fail to meaningfully consider technology limitations that will affect implementation.**

a. Monitoring requirements.

The Permit imposes extensive monitoring requirements on discharges from the eight Drainage System Outfalls (001, 007, 010, 019, 027B, 028, 030, and 031; addressed in Part I.A.1). The Region imposed these requirements notwithstanding the comprehensive changes that have been implemented at the Facility since 1998, all of which have resulted in significant improvements to the quality of the Facility's wastewater discharges to the Saugus River. GE submits that the Region relied on old data that are no longer representative of the discharges from these outfalls and do not support either the number of parameters or frequency of

monitoring set forth in the final Permit. It is contrary to sound policy for the agency to rely upon data that are no longer representative as the basis for its decision-making.

Although a limited subset of data was collected and provided to the Region in 2009 (in response to the Region's information request), these and other more recent data do not identify water quality issues that would necessitate the level of monitoring or management practices imposed by the Region in the final Permit. Available data confirm that there are no water quality issues associated with discharges from the Drainage System Outfalls that would justify these contested requirements; thus, the Region's decision to impose them was arbitrary.

GE also contests the Region's decision not to allow for representative outfall monitoring of four of the eight Drainage System Outfalls. We note that EPA's own guidance and practice allow for the designation of representative outfalls. *See* EPA's 2009 *Industrial Stormwater Monitoring and Sampling Guide*, at p. 8. In a situation like this one, where all of the eight outfalls (and influent flows) are substantially identical, GE respectfully submits that it was contrary to EPA's own policy, arbitrary and unreasonable for the Region not to allow GE to designate certain Drainage System Outfalls as representative of the others.

b. Management practices and operational limitations.

The Permit imposes wholly new requirements for GE to: (1) pump down wastewater contained in the Drainage System Outfalls vaults to the CTDS prior to any wet weather event forecasted to generate 0.1 inches or more of precipitation (Part I.B.1.b); (2) sample the "first pulse" of effluent the first time each of the Drainage System Outfalls' gates are opened (Part I.A.1, fn2); (3) report the total number of gate openings for each Drainage System Outfall (Part I.A.1, fn5); and (4) estimate and report the total volume of wastewater pumped from the Drainage System Outfalls vaults to the CDTS for treatment (Part I.A.1, fn6). GE notes, however, that the existing system is not designed or equipped to meet these new requirements. It

is unreasonable and unsound policy for the Region to impose these new management and design requirements for the CDTS in light of those already approved by MassDEP and which may provide only insignificant, if any, environmental benefits. In order to collect and report the information required under the Permit related to the drainage system and CDTS operations, significant upgrades to the existing monitoring and control equipment will be required. By way of example and not limitation, the existing system is not set-up to measure and record reliable flow data from each Drainage System Outfall during dry weather (when pumped to the CDTS) or wet weather (when discharged). Each outfall has an ultrasonic flow meter that can provide instantaneous flow readings at any given time; however, these meters and the current CDTS controls cannot provide sufficiently accurate totalizer readings to document and report flow under the new Permit requirements. Instead, new inline flow meters will need to be installed for this purpose and the current monitoring systems will need to be substantially upgraded and reprogrammed. (RTC at pp. 70-72). The Region wholly failed to consider the need for a schedule of compliance for GE to upgrade the system in an effort to meet these new requirements.

GE is also concerned that the Permit conflicts with the February 28, 2001 Alternate Operating Modes Evaluation Report (attached as Exhibit 5), which is part of the Facility's CDTS operating manual that was presented to MassDEP in accordance with the March 1999 MassDEP approval of the Facility's CDTS. Specifically, operating mode 5 allows for the direct discharge from the drainage system vaults to the river (after oil skimming/separation) when the slide gates, pumps and/or conveyance piping at the drain vaults or equalization tanks are down for maintenance. The final Permit does not provide the same flexibility authorized by MassDEP. GE submits that EPA erred by not allowing comparable flexibility for maintenance downtime,

which is critical for the proper operation and long-term maintenance of the Drainage System Outfalls and the CDTS.

Part I.B.1 of the Permit imposes additional Best Management Practices ("BMPs") designed to address dry weather flows from the Drainage System Outfalls. While GE supports the Region's decision to require BMPs in lieu of additional numeric limits, GE remains concerned that the types of BMPs required by the Permit are vague, may not be practicable, and absent new costly Facility upgrades (and a schedule of compliance to achieve these upgrades), could lead to operational problems and non-compliance.

For example, in order to minimize the comingling of dry weather and wet weather flows, Part I.B.1.b of the Permit requires GE to lower the elevation of dry weather flows contained in all eight of the drainage system vaults to no more than the "low alarm" level prior to the start of defined wet weather events. This requirement was not proposed in the draft Permit and thus GE did not have an opportunity to consider or comment on it. At this point, GE is uncertain whether the requirement is feasible or achievable. Even if it is, GE is concerned that it could reduce the effectiveness of the vault skimmers and thus adversely affect the performance of the system.

In addition, Part I.B.2 of the Permit imposes new BMPs that are required to be incorporated into the Facility's Storm Water Pollution Prevention Plan ("SWPPP"). Some of these requirements are excessive, such as the obligation to perform "regular cleaning" of the drainage system pipelines (Part I.B.2.c.ii). Given the extensive network of pipelines at the Facility and the substantial work that has already been done to clean, line and improve them, GE believes that the costs of "regular cleaning" far outweigh any perceived environmental benefits. In any event, no such benefits are identified or documented in the Permit record. Other requirements in Part I.B.2 incorporate by reference the control measures from EPA's wholly

separate multi-sector general permit for stormwater discharges associated with industrial activity ("MSGP"). GE submits that this kind of incorporation by reference is inappropriate and unsound policy, because it creates ambiguities that must be resolved – if at all – outside the four corners of the Permit and imposes MSGP-based obligations that, in some respects, duplicate or conflict with other specific requirements of the Permit.

GE also contests Part I.B.2.c.ix, which prohibits the discharge of *uncontaminated* excavation dewatering water to the storm drain system. GE understands why *contaminated* excavation water would need to be treated prior to discharge (whether in the CDTS, at a local municipal sewer system or through some other offsite disposal option), but GE sees no basis for treating uncontaminated excavation water. (RTC at p. 226). The Region has offered no credible explanation for this requirement in the Permit record.

Finally, we note that there appears to be an internal inconsistency between Part I.A.1 of the Permit (which only explicitly authorizes the discharge of stormwater commingled with dry weather flows during *wet weather*) and Part I.B.1.a (which allows "minor weeping" during *dry weather*). GE strongly supports the authorization in Part I.B.1.a, and appreciates the Region's consideration of this issue in response to GE's comments. However, as written, Part I.A.1 appears to prohibit what Part I.B.1.a authorizes.

3. **The water quality-based limits and conditions in the Permit are not supported by law or fact.**

The Permit includes water-quality based effluent limits ("WQBELs") for pH and Oil & Grease in Parts I.A.1 and I.A.2, as well as additional water quality-based conditions. GE contests these limits, as well as the narrative "free from" prohibition in Part I.A.16.

For the contested limits, the Region failed to conduct or document the required "reasonable potential" analysis. 40 C.F.R. § 122.44(d)(1)(ii); *See, e.g., In the Matter of Broward*

County, Florida, 4 E.A.D. 705, 713 (EAB 1993) ("[EPA] must provide a detailed explanation of the factual basis for concluding that [the permittee's] effluent has the reasonable potential for causing or contributing to a violation of the [water quality standards], thus requiring regulation in accordance with 40 C.F.R. § 122.44(d)(1)"). Perhaps in recognition of this failure, the Region asserts that the limits are necessary in order to avoid the backsliding prohibition. (RTC at p. 27). However, the limits are now expressed in a manner that are more stringent than the previous permit (numeric versus narrative), and fail to account for the substantial changes and alterations to the Facility that have obviated the need and justification for such stringent limits. In addition, with respect to pH, the Region failed to account for the contribution of acid deposition over which GE has no control. Upon information and belief,[1] the Region has provided relief to other NPDES permittees for acid deposition; thus GE submits that it was arbitrary for the Region not to consider or provide similar relief here.

For the narrative "free from" prohibition in Part I.A.16, the Region erred by removing the "trace amounts" exception. (RTC at pp. 214-215). This exception is long-standing and well-documented. In fact, as documented in the RTC, the Region previously authorized and interpreted this exception for GE so as to provide fair notice of GE's compliance obligations. (*Id.*) It was arbitrary and capricious for the Region to allow the exception in the past but deny it now, especially since there has been no change in the relevant, underlying state water quality standard.

[1] The Region modified the terms of the NPDES Permit for GE's facility located in Pittsfield, Massachusetts (Permit No. MA0003891; renewed August 2009) to allow for pH excursions due to "natural causes."

4. **The technology-based limits in the Permit are not supported by law or fact.**

In addition to the WQBELs contested above, the Permit includes technology-based effluent limits ("TBELs") for TSS, temperature, TPH, BTEX, benzene, 14 VOCs and Total Groups I and II PAHs in Part I.A.2. GE contests these TBELs.

The Region claims that GE did not comment on these TBELs in the draft Permit. (RTC at p. 46). But this is not correct. GE generally contested all of the TBELs in the draft Permit. (*See* GE comments at pp. 12-16).

The Region seems to believe that the GAC is BAT and that the contested TBELs are achievable using the GAC. (*See* RTC at pp. 214-217). However, GE has no operational data to support this belief. In fact, to the contrary, GE has some operational data to show that the Region's belief is plainly wrong. At a minimum, GE will need to collect additional data to determine whether the TBELs are achievable. Absent such data, the Region lacks adequate record support for its BAT determination. Moreover, the Region erred by not providing GE with a schedule of compliance to assess if additional measures will be required and thereafter to implement those measures.

5. **The Region erred by not removing the former Gear Plant outfalls from the final Permit, or providing a process for their removal upon confirmation of the sale of the Gear Plant property.**

To facilitate the sale and redevelopment of the Gear Plant property, in 2010, GE reconfigured the drainage system to separate the northern part of the Facility from the southern part and to hydraulically separate the main facility from the Gear Plant, which eliminated all industrial/operational sources of dry weather flows to Outfalls 028, 030 and 031. (*See* RTC at pp. 18-20). In October 2013, GE completed a Remedial Action Outcomes (RAO) for the Gear Plant property. The risk characterization to support the RAO was conducted using a Method 3 and Stage II Ecological risk assessment in accordance with the Massachusetts Contingency Plan.

As a result of the response actions conducted at the property, a condition of No Significant Risk to health, safety, public welfare, and the environment has been achieved.

In July 2014, GE provided the required notice to EPA that a sale of the Gear Plant property was imminent. In connection with that notice, GE requested that the Region remove these outfalls from the Permit, an action which squarely falls with a NPDES permit "minor modification." 40 C.F.R. 122.63(d) and (e)(2). EPA concedes that "all industrial operations by the Gear Plant have ceased and [GE's] industrial process discharges to Outfalls 028, 030, and 031 have been eliminated." (RTC at p. 21). However, the Region apparently believes that any incidental discharges from these outfalls must still be controlled by the Permit. We submit that the Region's position is clearly erroneous and contravenes important policy considerations. On October 29, 2014, GE consummated the sale of the Gear Plant property to a third party and, as a consequence, GE is no longer the owner or operator of Outfalls 028, 030 or 031 (*i.e.*, GE has no legal or practical control over them for permitting purposes). GE submits that the Region should have addressed and removed these outfalls as part of the Permit re-issuance proceeding. Requesting additional information from GE to facilitate timely transfer or retirement of the outfalls would be reasonable. Simply rejecting GE's request is not.

6. **A number of other errors and unsupported requirements in the final Permit necessitate review and remand.**

Without question, this is a complicated Permit proceeding. The Region's delay in reissuing the Permit, and the changes at the Facility in the intervening years, only compound these complications. GE appreciates the Region's efforts to address a significant number of comments and concerns that GE raised with the draft Permit. The final Permit marks a meaningful improvement over the draft. But it is far from perfect. The final Permit contains a

number of other requirements that GE believes to be unsupported, ill-defined or misplaced, as described below.

- Outfall 018C: GE contests the limits and conditions assigned to Outfall 018C in Part I.A.5. (RTC at pp. 30-31, 62). Outfall 018C is an internal outfall that is not representative of the various wastewater flows that the Region seeks to control.

- Outfall 020: GE contests the limits and conditions assigned to Outfall 020 in Part I.A.6. (RTC at p. 30). Outfall 020 simply returns unused river water to the Saugus River. Thus, no limits or monitoring conditions are warranted.

- WET testing requirements: GE contests the WET testing requirements in the final Permit. These requirements are based on outdated and unrepresentative data from 1998. They also are unclear and ill-defined in critical respects, including: (1) whether the Permit allows for dilution for WET testing; (2) how the data/statistics from testing are to be used to demonstrate "no toxicity"; and (3) how potential issues associated with the use of river water (*i.e.,* variable pathogens and/or chemical conditions of the river) that could negatively affect testing results are to be addressed. In addition, the requirement to conduct sea urchin tests may not be feasible due to the availability of limited seasonal testing by specialized laboratories. Finally, the Permit requires GE to collect flow proportional composite samples over a 24-hour period for the non-CDTS outfalls with WET testing requirements (Parts I.A.2 fn12; I.A.3 fn 5; and I.A.4 fn5). Such WET testing requirements are excessive. The Region erred in rejecting GE's request to allow the collection of evenly spaced grab samples that would achieve comparable results in a less burdensome manner.

- Other specific SWPPP requirements: GE contests Part I.B.2.d (requiring quarterly rather than annual inspections) and Part I.B.2.e (requiring the SWPPP be updated within 14 days of certain identified changes). GE believes that these schedules and deadlines are unnecessarily stringent and unsupported in the record.

- Monitoring at 027A: For the CDTS outfall, GE is required to monitor for benzene, total BTEX, MTBE, and PCBs. GE contests these monitoring requirements, which were previously suspended by the Region for good cause (i.e., GE's demonstration that dry weather flows had been re-routed and eliminated). (RTC at p. 67). The same good cause continues to apply now; thus it was arbitrary for the Region to reinstate these monitoring requirements.

- "Wet Weather" definition: GE contests the definition of "wet weather" in Part I.A.1 fn 1 as it relates to the timing of discharge from Outfall 027B, which needs to be clarified.

- "First pulse" sampling: GE contests the use of "first pulse" in Part I.A.a fn 2, because it is vague and undefined.

- PAH analyses: GE contests Part I.A.1 fn 9, which relates to PAH analyses but which appears to be inconsistent with the actual analytical requirements set forth in Part I.A.1.

- PCB reporting: GE contests Part I.A.1 fn 10 and, in particular, the requirement to report numeric results of individual Aroclors for all quarters as an attachment to the December discharge monitoring report. The Permit already requires the reporting of the results of individual Aroclors for each sampling period, so the additional requirement here appears to be duplicative and unnecessary.

- pH range: GE contests Part I.A.14, which mandates that pH remain not more than 0.2 units outside of the natural background range. The Permit fails to define "natural background range" and thus presents GE with an uncertain compliance obligation.

- Foamtrol: GE contests Part I.A.17, which prohibits the discharge of Foamtrol AF2290. This product is listed as an approved chemical additive in Attachment 4 to the Permit and thus should not be prohibited.

- DMR deadlines: GE contests the reporting deadlines in Part I.F.1.a, which are too short and will prevent GE from performing the sampling and analysis required by the Permit.

- Reduced monitoring opportunities: GE supports the Region's decision to provide a process and opportunity for reduced monitoring of PCBs and WET in Part I.A.1 fn 11 and fn 13; however, GE believes that the Region erred by not providing a similar process and opportunity for the other monitored parameters.

- Cleaning pipelines: GE contests Part I.B.2.c.ii which requires cleaning on a "regular basis", which is vague and imposes unclear compliance obligations.

- Analytical methods: GE contests Parts I.A.1 fn4 to the extent it fails to expressly specify the analytical method for Oil & Grease and VOCs; for Parts I.A.2 fn2 for failing to specify a method for O&G, TPH, and VOCs; and for Parts I.A.3 fn2, I.A.4 fn2, I.A.5 fn2, and I.A.6 fn2 for similarly failing to specify a method for O&G.

7. **The Region erred by failing to consider and include compliance schedules for new requirements that cannot be implemented or achieved on the effective date.**

Except for the CWIS, the Region failed to consider, document or provide schedules of compliance for any of the new requirements contested by way of this petition. GE submits that this constitutes reversible error.

Even assuming for the sake of argument that the Region has the authority to impose these contested requirements, it cannot do so without first considering the need for one or more schedules of compliance. *See EPA Permit Writers' Manual*, EPA 833-B-96-003 (September 2010), at p. 9-8, Section 9.1.3 (noting that one justification for a special condition in a permit is "[t]o allow permit writers to establish schedules of compliance to give permittees additional time to achieve compliance with the CWA and applicable regulations . . ."). Such schedules are authorized by federal and state law, and are routinely granted by EPA in similar circumstances. *See Star-Kist Caribe, Inc.*, 3 E.A.D. 172 (Adm'r 1990), *modif. denied*, 4 E.A.D. 33 (EAB 1992) and 314 MASS. CODE REGS. § 4.03(1)(b). GE submits that it was clearly erroneous for the Region not to consider the need for them here. As documented elsewhere in this petition, many of the new requirements will take time to implement and will require the installation of new controls and equipment that cannot be completed by the effective date. In addition, it is unclear whether some of the new requirements are even feasible to implement. Thus, GE will need time to explore their feasibility and determine what – if anything – can be done to achieve them.

STAY OF CONTESTED AND NON-SEVERABLE CONDITIONS

In accordance with EPA regulations, the effect of the limits and conditions contested herein must be stayed, along with any uncontested conditions that are not severable from those contested. 40 C.F.R. §§124.16(a) and 124.60(b); *see also* 314 MASS. CODE REGS. 2.08(3)(c), the state's parallel provision. In light of the fact that GE is contesting all major provisions of the Permit, *i.e.*, Parts I.A., I.B, I.C., and I.D., and given the encompassing and interdependent relationship of these provisions to all remaining non-contested provisions, the proper effect is to extend the stay to the Permit in its entirety. In which case, and until such time as the Board reviews and resolves the contested provisions and/or remands the Permit to the Region for subsequent modification, GE should be directed to comply with the terms and conditions of the Facility's former NPDES permit, *i.e.*, those terms/conditions issued prior to the September 30, 2014 Permit issuance.

CONCLUSION

For the foregoing reasons, GE respectfully requests that the Environmental Appeals Board review, set-aside and remand to the Region the contested limitations and conditions in the Permit.

Respectfully submitted,

GENERAL ELECTRIC AVIATION

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October 30, 2014

LIST OF EXHIBITS

Exhibit 1	NPDES Permit No. MA0003905, issued on September 30, 2014
Exhibit 2	Comments of General Electric Aviation on Draft NPDES Permit No. MA0003905
Exhibit 3	Fact Sheet For Draft NPDES Permit No. MA0003905
Exhibit 4	EPA's Response to Comments on Draft NPDES Permit No. MA0003905
Exhibit 5	February 28, 2001 Alternate Operating Modes Evaluation Report

CERTIFICATE OF SERVICE

I, Brent Fewell, hereby certify that, on October 30, 2014, I caused to be served a true and correct copy of the foregoing Petition for Review, via First Class Mail, to the following:

Curt Spalding, Regional Administrator
U.S. Environmental Protection Agency, Region 1
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Carl Dierker
Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 1
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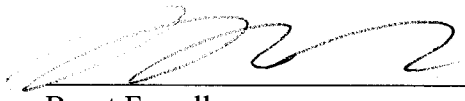
Dated on the 30th day of October, 2014.



Brent Fewell