



HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE

February 22, 2023

Dean Tagliaferro, EPA Project Manager
GE-Pittsfield/Housatonic River Site
Boston, MA
Submitted via email to R1Housatonic@epa.gov

Re: Comments on the *Plan for Implementing Future Projects or Work*

Dear Mr. Tagliaferro:

The Housatonic Rest of River Municipal Committee (the Committee) respectfully submits the following comments on the *Plan for Implementing Future Projects or Work* (hereafter referred to as the Plan). The Plan summarizes the requirements described in the Revised Permit and the SOW in how “Legally Permissible Future Project or Work” is defined.

The Plan outlines requirements from the Revised Permit and SOW and the actions GE will take to ensure future projects and work in the ROR remedial action are protective with respect to PCB contamination. While the Plan generally fulfills the required elements defined in the Revised Permit and SOW, the Committee has concerns regarding tracking mechanisms for properties affected by the cleanup and property ownership and with regard to the definition of “protective”. It is unclear whether an instrument for resolution has been established if there is a disagreement with regard to how terminology, such as “protective” is applied. The Committee strongly encourages EPA to establish such an instrument, if not already in place, and that it be included within a list of future actions that the Committee has requested in prior comment letters.

The Committee’s comments on the *Plan for Implementing Future Projects or Work* are enclosed as Attachment A.

Sincerely,
The Housatonic Rest of River Municipal Committee

Enclosure: Attachment A - Housatonic Rest of River Municipal Committee Comments on the Plan for Implementing Future Projects or Work

Enclosure: Attachment B - Technical Assistance Services for Communities Comments Plan for Implementing Future Projects or Work, February 13, 2023

ATTACHMENT A
HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE
Comments on the *Plan for Implementing Future Projects or Work*
GE/Housatonic River - Rest of River

While the *Plan for Implementing Future Projects or Work* (hereafter referred to as the Plan) generally fulfills the required elements defined in the Revised Permit and SOW, the Committee offers the following comments:

1. The Plan repeatedly describes the need for future project work to be “protective and maintain the applicable Performance Standards for the Rest of River Remedial Action under the Revised Permit.” According to footnote 4 on page 4, “GE interprets the quoted phrase ‘to be protective’ to mean that GE is to conduct response actions to ensure that the project or work is conducted in a protective manner and in a manner that maintains the applicable Performance Standards and/or the effectiveness of the ROR Remedial Action.” This interpretation/definition of protective is circular.

As a general rule of thumb, “protective” should relate to protective of human health and the environment. However, when referencing specific performance standards, GE should include a footnote that references where requirements for performance standards are located in other documents.

2. Section 1 Page 1 – The Plan defines “Legally Permissible Future Project or Work,” which can include and is not limited to “construction and repair of structures; utility work; flood management activities; road and infrastructure projects; dam removal, maintenance, repair, upgrades, and enhancement activities; and activities such as the installation of canoe/boat launches and docks.” The Plan later states that on an annual basis, in December, GE will send letters to the municipalities along the ROR in Massachusetts and to the Massachusetts Department of Transportation (MassDOT) notifying them of the potential for PCB contamination. It is unclear how potential future projects along the entire length of the ROR corridor will be tracked. GE should provide a variety of public input opportunities to ensure the public and adjacent landowners are aware of future project requirements (e.g., mailings, newspaper announcements, announcement on the EPA Site web page etc.). GE could also track construction permits (through local/county planning and zoning departments), Clean Water Act (CWA) Section 404 preconstruction notice applications, and CWA section 401 certification requests to identify river corridor projects. The City of Pittsfield currently has a flagging system so that properties affected by the cleanup are easy to identify when applying for permits or other activities. However, it is unclear whether other communities along the corridor have similar capacity to flag properties. It appears that there is a registry of properties in Pittsfield subject to the Consent Decree and it does not appear that a similar registry exists for the communities south of Pittsfield.

GE should develop a plan to proactively reach entities planning to conduct work in the river corridor. GE should work with EPA to ensure that other municipalities affected by the cleanup have a similar system to the City of Pittsfield’s that flags properties affected by the cleanup.

3. The Plan indicates that ownership of dams that are not owned by GE will be reviewed every five years. To ensure work at non-GE-owned dams is protective, ownership should be tracked more frequently (i.e., annually). Since GE will address PCB-contaminated sediments associated with these dams (three in Massachusetts and six in Connecticut), it would be beneficial to communicate the possible contamination to prospective purchasers. An environmental covenant or the equivalent of a 'Grant for Environmental Restriction and Easement (ERE)' (the instrument relied on for floodplain exposure areas in Reaches 5-8) may be appropriate to provide this information to potential purchasers.

EPA should consider whether properties with privately-owned dams should have an environmental covenant or ERE instrument to inform future dam owners of PCB contamination and the environmental commitment held by GE. At a minimum, a similar flagging system as discussed in Comment #2 should be adopted.

4. With its exposure area (EA)/reach-specific remedy actions, ERE instruments, and designated applicable use/exposure scenarios, the ROR project area has a lot of information to track. This information needs to be tracked in a public format so that changes in property use that meet the conditions for a Legally Permissible Future Use as defined in the Revised Permit can be identified. An ROR 'property parcel Geospatial tracking database' could be developed to track ownership and applicable use/exposure scenarios. It may also be appropriate to share this database with municipalities/county planning officials, to ensure local governments are aware of exposure/use requirements.

GE should develop a publicly accessible mechanism to track reach-specific remedy actions, ERE instruments, etc. that can be cross-referenced by parcel and dam ownership, to ensure landowners are aware of and will adhere to applicable use/exposure scenarios.

5. The Plan identifies several regulatory agencies that will be notified of ownership changes, such as EPA, Massachusetts Department of Environmental Protection (MassDEP), Connecticut Department of Energy & Environmental Protection (CTDEEP) and other applicable regulatory agencies (pdf page 9). The U.S. Army Corps of Engineers (USACE) tracks current status, use and features of dams across the United States and should also be notified of ownership changes.

6. The Plan summarizes dams and owners within the ROR site. It is important to track use of these dams, as they may include potable water supply. According to online records of the U.S. Army Corps of Engineer's inventory of Dams (US ACOE, 2023), the Columbia Mill and Lake Housatonic dams have a water supply use. If these impoundments provide a potable supply intake, the associated municipality should be part of the notification process when dam ownership and GE activities occur.

GE should clarify whether these impoundments provide a source of potable water, and whether associated water suppliers are part of the GE activity notification process.

7. GE and EPA should work closely with the impacted communities to discuss potential future municipal projects and objectives along the river to establish steps necessary to ensure the success of such projects while maintaining protectiveness of human health and the environment.



Technical Assistance Services *for* Communities GE-Pittsfield/Housatonic River Site Comments on Plan for Implementing Future Projects or Work February 13, 2023

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**Technical Assistance Services for Communities (TASC)
Comments on GE-Pittsfield/Housatonic River Site –
Plan for Implementing Future Projects or Work,
December 2022**

Introduction

This document provides TASC comments on the GE-Pittsfield/Housatonic River Site – Plan for Implementing Future Projects or Work. This document is for the Berkshire Regional Planning Commission (BRPC) and municipalities to use as they develop comments to share with the U.S. Environmental Protection Agency (EPA). TASC does not make comments directly to EPA on behalf of communities. This document is funded by EPA’s TASC program. The contents do not necessarily reflect the policies, actions or positions of EPA.

Pursuant to the 2000 Consent Decree for the GE-Pittsfield/Housatonic River Site, EPA issued a final revised modification of GE’s Resource Conservation and Recovery Act (RCRA) Corrective Action Permit (Revised Permit). The Revised Permit required GE to develop and submit a Statement of Work (SOW) specifying the deliverables and activities that GE will conduct to design and implement the Rest of River (ROR) Remedial Action. In accordance with Section II.H.20 of the Revised Permit and Section 4.5.1 of the Final Revised Rest of River Statement of Work, GE prepared the Plan for Implementing Future Projects or Work.

Summary

The December 2022 Plan for Implementing Future Projects or Work has four sections:

- Introduction.
- Plan Relating to Future Projects or Work in the Housatonic River.
- Plan Relating to Future Projects or Work in the Housatonic River Floodplain.
- Schedule.

The Plan for Implementing Future Projects or Work summarizes the requirements described in the Revised Permit and the SOW in how “Legally Permissible Future Project or Work” is defined. The Plan for Implementing Future Projects or Work also describes the ROR reaches and subreaches that are subject to the ROR remedial action. The document outlines requirements from the Revised Permit and SOW and the actions GE will take to ensure future projects and work in the ROR remedial action are protective with respect to PCB contamination.

TASC Comments

TASC compared the Plan for Implementing Future Projects or Work to the Revised Permit and the SOW. The document generally fulfills the required elements defined in the Revised Permit and SOW. TASC comments for the community to consider include: suggested documentation of future projects and property ownership to help track compliance; more clear definition of ‘protective’ criteria that apply to proposed future projects and work; having the city of Pittsfield review their future land use plans for Exposure Area 27 (EA 27) in context of the proposed requirements described in this document; and having the United States Army Corps of Engineers review applicable future projects and work associated with the dams.

Specific TASC comments are:

1. The document repeatedly describes the need for future project work to be “protective and maintain the applicable Performance Standards for the Rest of River Remedial Action under the Revised Permit.” As stated in footnote #4 (pdf page 8) “GE interprets the quoted phrase “to be protective” to mean that GE is to conduct response actions to ensure that the project or work is conducted in a protective manner and in a manner that maintains the applicable Performance Standards and/or the effectiveness of the ROR Remedial Action.” The Plan for Implementing Future Projects or Work document does not define ‘protective.’ Several performance standards apply to potential future projects at the ROR site. It would be helpful for the document to clearly define ‘protective’ and summarize appropriate performance standards applicable to each document section (e.g., 2.1 Dams and Impoundments in Massachusetts; 2.2 Other River-Related Projects in Massachusetts, through to Section 3.2).

The community may want to ask EPA to have GE consistently define ‘protective.’ In addition, the community may want to ask EPA to have GE include a footnote that references where requirements for performance standards are located in other documents.

2. Section 1 defines “Legally Permissible Future Project or Work,” which can include and is not limited to “construction and repair of structures; utility work; flood management activities; road and infrastructure projects; dam removal, maintenance, repair, upgrades, and enhancement activities; and activities such as the installation of canoe/boat launches and docks.” (pdf page 5). GE states that they will send letters to the ‘Conservation Commissions and Departments of Public Works (DPWs) for the municipalities along the ROR in Massachusetts and to the Massachusetts Department of Transportation (MassDOT) notifying them of the potential for polychlorinated biphenyl contamination...etc.” (pdf page 13). It is unclear how GE will track potential future projects along the entire length of the ROR corridor. GE could provide a variety of public input opportunities to ensure the public and adjacent landowners are aware of future project requirements (e.g., mailings, newspaper announcements, announcement on the EPA Site web page etc.). GE could also track construction permits (through local/county planning and zoning departments), Clean Water Act (CWA) Section 404 preconstruction notice applications, and CWA section 401 certification requests to identify river corridor projects. The City of Pittsfield currently has a flagging system so that properties affected by the cleanup are easy to identify when applying for permits or other activities.

The community may want to ask EPA how GE plans to proactively identify entities planning to conduct work in the river corridor, and to consider a variety of public notices to increase awareness of future project requirements. The community may want EPA to ensure that other municipalities affected by the cleanup have a similar system to the City of Pittsfield's that flags properties affected by the cleanup.

3. The Plan for Implementing Future Projects or Work describes the plan for projects at Massachusetts dams that are not owned by GE. The Plan indicates that ownership of these dams will be reviewed every five years. To ensure work at non-GE-owned dams is protective, it could be helpful to track ownership more frequently (i.e., annually). Because GE will address PCB-contaminated sediments associated with these dams (three in Massachusetts and six in Connecticut, as summarized in Table 1, pdf page 27), it would be beneficial to communicate the possible contamination to prospective purchasers. An environmental covenant or the equivalent of a ‘Grant for Environmental Restriction and Easement (ERE)’ (the instrument relied on for floodplain exposure areas in Reaches 5-8) may be appropriate to provide this information to potential purchasers.

The community may want to ask EPA to consider whether properties with privately-owned dams should have an environmental covenant or ERE instrument to inform future dam owners of PCB contamination and the environmental commitment held by GE.

4. With its exposure area (EA)/reach-specific remedy actions, ERE instruments, and designated applicable use/exposure scenarios, the ROR project area has a lot of information to track. This information needs to be tracked in a public format so that changes in property use that meet the conditions for a Legally Permissible Future Use as defined in the Revised Permit can be identified. An ROR ‘property parcel Geospatial

tracking database' could be developed to track ownership and applicable use/exposure scenarios. It may also be appropriate to share this database with municipalities/county planning officials, to ensure local governments are aware of exposure/use requirements.

The community may want to ask EPA if GE has a database to track parcel and dam ownership, to ensure landowners are aware of and will adhere to applicable use/exposure scenarios.

5. Section 2.1.1 describes applicable requirements for projects associated with non-GE-owned dams and impoundments. This section identifies several regulatory agencies that will be notified of ownership changes, such as EPA, Massachusetts Department of Environmental Protection (MassDEP), Connecticut Department of Energy & Environmental Protection (CTDEEP) and other applicable regulatory agencies (pdf page 9). Since the U.S. Army Corps of Engineers (USACE) tracks current status, use and features of dams across the United States, it may be beneficial for USACE to also be notified of ownership changes (USACE, 2023).

The community may want to ask EPA if the USACE can receive notices about impoundment and dam ownership changes.

6. Table 1 (pdf page 27) summarizes dams and owners within the ROR site. It seems important to track use of these dams, as they may include potable water supply. TASC identified inventory web pages for five of the dams in Table 1 (USACE, 2023). Two of those dams have a water supply use (Columbia Mill and Lake Housatonic Dam). If these impoundments provide a potable supply intake, the associated municipality could be part of the notification process when dam ownership and GE activities occur.

The community may want to ask EPA if the impoundment and/or dam water uses are thoroughly understood, whether these impoundments provide a source of potable water, and whether associated water suppliers are part of the GE activity notification process.

7. EA 27 was previously identified as an EA of interest to the city of Pittsfield. It may be appropriate to identify future projects associated with the ROR remedial action area that the City and/or BRPC would like to pursue (e.g., recreational access) and ensure the City and/or BRPC understand the requirements described in this document.

The community may want to ensure GE and EPA know about future potential planned projects along the river to establish steps needed for the protectiveness of human health and the environment.

References Cited

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