

**BERKSHIRE REGIONAL PLANNING COMMISSION**  
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Executive Director

## **AGENDA**

**Rest of River Municipal Committee**  
**January 5, 2018, 9:00 a.m., Lee Town Hall**

1. Introductions
2. Review of minutes of November 9, 2017 meeting
3. GE Uncontested and Severable Permit Conditions
  - Conference call with Skeo Solutions on *Biota Consumption Advisory Outreach Plan* and *Plan for Obtaining EREs*
  - Formalize comments for submittal to EPA
4. Preparing for Next Steps
  - FY19 Budget allocations and DLTA Request for 2018
  - First Circuit Court of Appeals
5. Other Business
6. Adjournment

***City and Town Clerks: Please post this notice pursuant to M.G.L. Chapter 39, Section 23B.***  
***Please Note: In the case of inclement weather on the day of the meeting, please call***  
***BRPC at 413-442-1521, ext. 15 to confirm if the meeting is still being held.***

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## HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE

January 10, 2018

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

Re: Comments on the *Biota Consumption Advisory Outreach Plan Housatonic Rest of River – MA (Arcadis, Nov. 2017)*, and the *Plan for Obtaining Environmental Restrictions and Easements (Author Unknown, Nov. 2017)*

Dear Dean:

The Housatonic Rest of River Municipal Committee hereby submits the following comments on the *Biota Consumption Advisory Outreach Plan Housatonic Rest of River – MA (Arcadis, Nov. 2017)*, and the *Plan for Obtaining Environmental Restrictions and Easements (Author Unknown, Nov. 2017)*.

### ***Biota Consumption Advisory Outreach Plan Housatonic Rest of River – MA (the Outreach Plan)***

In general, we believe that GE's proposed Outreach Plan does not describe an outreach program with sufficient details to be protective of human health. GE's plan proposes to continue maintaining the existing warning sign program and distribute pamphlets to local license agents, which currently is inadequate to reach the populations that fish and hunt along the Rest of River in Massachusetts. We use this opportunity to urge the EPA to require GE to develop a comprehensive outreach program by working not only with the EPA and DEP, but also with local sportsmen's organizations and the Division of Fisheries and Wildlife (DFW) to identify sites where fish and wildlife are being taken for consumption, and the Massachusetts Department of Public Health (DPH) and DFW to develop an informational program that casts a wide net to reach populations that are not being served by the current program. We are particularly concerned that the proposed Outreach Plan does not describe how the DPH will be consulted outside of updating a pamphlet that DPH hosts on its website.

GE's proposed Outreach Plan should be based on the latest science and data regarding the current levels of PCBs in fish and wildlife in the Housatonic River corridor, in both Massachusetts and Connecticut. The Outreach Plan states that the DPH issued its advisory for mallard & wood ducks in the river Pittsfield south to Rising Pond in 1999. Does EPA or DPH have more recent data on PCB levels in ducks to indicate that the Pittsfield-to-Rising Pond segment is the only area where PCB levels in ducks are too high for consumption? Is there enough data to safely determine that ducks taken north and south of this river segment do not originate or feed in this area and are safe to eat? Is there a reason that only wood ducks and mallards are listed on the warning signs and the DPH pamphlet? Anecdotally there are reports of resident populations of Canada geese in this area – should they also be listed with ducks?

DFW's own website on Living with Geese mentions the establishment of year-round resident populations ([https://www.mass.gov/files/2017-08/living-with-geese\\_0.pdf](https://www.mass.gov/files/2017-08/living-with-geese_0.pdf)).

The Outreach Plan should be expanded to discuss how the program will adapt to address new data, such as the potential that fish and wildlife species are found to have increasingly greater levels of PCBs in their systems. It is not unreasonable to think that PCB levels could increase in wildlife over a series of years as cleanup activities disturb contaminated river sediment and floodplain soils, despite contractors' best efforts to limit PCB resuspension. It is the potential risk of greater PCB levels in fish, ducks and other wildlife that prompted us to object to GE's proposal to omit duck breast tissue monitoring in their *Housatonic River – Rest of River Baseline Monitoring Plan* (Anchor GEA, LLC, June 2017). Additionally, the Plan does not address the potential that the current consumption advisory thresholds could change in the future. What is GE's plans for adjusting their program if the federal or state consumption advisory thresholds change due to new scientific data about the human health risks of PCB? If the thresholds become stricter, how would the EPA and GE determine if consumption advisories should be expanded north or south of the Pittsfield-to-Rising-Pond stretch of the river?

We urge the EPA to require GE to conduct a comprehensive community participation program. GE should work with local municipalities to distribute advisory reminders through periodic mailings such as tax, water or sewer bills. GE should work directly with local DFW staff, local outdoor recreational organizations and municipalities in the Housatonic River watershed to identify new areas where signage should be installed. Anglers and hunters often park along country roads and hike deep off the beaten path to reach a suitable spot and thus may not have accessed the area through a well-known public access site that already hosts warning signs. As part of this effort updated and more detailed maps of the proposed consumption warning signs should be issued to stakeholder groups can provide timely feedback on the adequacy of the locations as well as suggest other locations to EPA, DEP and DPH for consideration. GE should establish an interactive website or hotline so that residents can report sites where warning signs are damaged or missing, or where new signs should be installed. GE would monitor the site and be responsible for replacing or adding signs.

We support GE's proposal for annual inspection of all consumption warning signs installed along the Housatonic River corridor. We believe it is important for GE or its agents to do all sign placement, whether new or replacement signage, and not task the EPA, DEP or local municipalities with this work. Full responsibility should maintain with GE in perpetuity, or until PCB levels are reduced to a level that warrants withdrawal of the consumption advisories.

The current proposal to distribute advisory pamphlets to four Berkshire County sporting goods stores is insufficient. The list of sites is not even consistent with the DFW's website of fishing/hunting license agents. At a minimum the pamphlets and wall posters should be distributed to every single outdoor shop selling hunting or fishing gear in the county, including gun and ammunition dealers. Those buying fishing and hunting licenses outside Berkshire County with the intent of visiting the Housatonic River area are unlikely to know about the consumption advisories. GE should work with DFW to develop a mechanism to distribute information to all freshwater fishing/hunting license recipients, including those beyond Berkshire County. The pamphlets could also be distributed to those who are taking shooting and/or hunting training classes to cast a wider net. The Plan should be expanded to discuss how consumption advisories will be distributed to people who get their hunting or fishing license online.

GE should work with local DFW staff and anglers to identify areas along the river where unlicensed anglers are known to fish, such as groups of teenagers under 15? Are signs displayed in these areas to inform them?

The Outreach Plan states that GE will either produce and install new updated signs, or will give the signs to designated agency staff for posting. We do not believe that limited public funds or agency staff time should be expended for installation of signage, unless it is in the interests of a specific agency to do so. All costs to develop and implement the outreach program should be borne exclusively by GE. Any costs incurred by state agency staff or materials to participate in the outreach program should be reimbursed to that agency by GE.

The Outreach Plan does not discuss the posting of signs nor the printing of brochures in other languages. GE should work with the EPA, DPH and local immigrant organizations to determine if developing advisory signs and other materials is warranted. As a start GE staff can contact the Berkshire Immigrant Center and Multicultural BRIDGE to determine what languages advisory materials should be printed in. GE staff should also distribute these materials to these and other immigrant advocate groups and churches.

GE and its consultants should check to see if all links on any proposed signs and pamphlets are still working. The Commonwealth has completely reworked its website, and many links are no longer valid. Although the website now offers to send users where they want to go, this instant redirection to the new webpages could end soon, leaving users at dead ends. Likewise, the phone numbers should be checked.

We urge the EPA to require GE to work directly with DPH to revise and update the pamphlet, *Fish and Waterfowl Consumption Advice for the Housatonic River Area in Massachusetts*. The first three paragraphs on page two of the pamphlet should be displayed in red font to draw the reader's attention to what is the most important message of the pamphlet. We ask that DFW and DPH determine if the addition of other waterfowl should be added to the advisory. Additionally, we believe that it would be prudent on page four of the pamphlet to specifically add the Housatonic River to the General State-wide Advice section, such as Boston and New Bedford Harbors, where advisories are in place. Listing the Housatonic River will avoid any confusion to the reader. It will also help to ensure that those who may mistakenly print only the first/last page of the pamphlet receive the complete state-wide advisory coverage.

### ***Plan for Obtaining Environmental Restrictions and Easements (ERE Plan)***

At this time cleanup activities seem to be years or decades away. Is there a need to establish environmental restrictions and easements (EREs) for some highly-contaminated properties prior to the final cleanup activities? If so, is there an opportunity to develop earlier EREs to serve as a protective mechanism to help prevent exposure in the interim?

Page 2 of the ERE Plan states that GE "may apply the 2 mg/kg standard to an entire property with the same owner, including both the portion within the floodplain and the portion outside the floodplain..." Below on that same page, in footnote 4, it further states that "GE may consider the entire

Actual/Potential Lawn of a residential property...as an averaging area...” If in the same parcel has PCB levels that are high in the floodplain and low outside floodplain, can GE use the lower levels found on the parcel to average out the high or hot spots – as long as “discrete concentration” in the top foot doesn’t exceed 10 mg/kg? Does this dilute the 2 mg/kg standard and allow GE to leave higher concentrations in the ground? We request that EPA consider our question as they review the proposed ERE Plan. We also request that EPA define “discrete concentration.”

Page 5 of the ERE Plan states that GE will do an annual inspection of properties restricted by an ERE. The Plan should state that GE will conduct this activity in perpetuity.

The Exposure Areas shown in Figures 3 and 4 of the Outreach Plan (taken from the Modified Permit) are too coarse because they do not show, via parcel boundaries and assessor’s information, which properties are likely to be involved in PCB concentration testing and be subject to possible remediation and EREs. As such the Plan does not clearly inform landowners, the public or municipal officials as to which properties are likely to be impacted. We request that GE provide this information in a table and a corresponding set of maps.

We are unclear as to what, if any, other institutional controls will be applied to properties of owners who do not sign an ERE. For example, should EPA consider requiring a linkage of a notice to a deed to alert future property owners or prospective buyers of the contamination even if the current property owner does not sign an ERE? Is there a way to compel property owners to comply with use restrictions for areas of contamination left on private property?

GE proposes to conduct an annual inspection of restricted areas of properties to assess compliance with the ERE, and will subsequently submit a report on that inspection to the EPA and DEP. The ERE Plan state that the report will include a summary of the findings of the inspection and any instances of potential non-compliance with the ERE and a copy of a completed ERE checklist. We request that EPA require that GE also provide a copy of those reports to the individual property owners of the EREs, whether state, municipal or private. We support GE’s proposal to send notices to new owners who have purchased properties restricted by EREs, and recommend that the notices explain in layman’s terms the restrictions placed on the respective properties.

Thank you for the opportunity to comment on the Housatonic Rest of River *Biota Consumption Advisory Outreach Plan Housatonic Rest of River – MA* and the *Plan for Obtaining Environmental Restrictions and Easements*. We appreciate EPA Region 1’s commitment to public input throughout the cleanup process.

Sincerely,

The Housatonic Rest of River Municipal Committee

CC: Hon. Elizabeth Warren, U.S. Senate  
Hon. Edward Markey, U.S. Senate  
Hon. Richard Neal, U.S. House of Representatives  
Sen. Adams Hinds, State Senator  
Rep. Smitty Pignatelli, State Rep., 4<sup>th</sup> Berkshire  
Rep. Tricia Farley-Bouvier, State Rep., 3<sup>rd</sup> Berkshire  
Rep. Paul Mark, State Rep., 2<sup>nd</sup> Berkshire

Commissioner Martin Suuberg, Mass. DEP  
Commissioner Ronald Amindon, Mass. Fish & Game  
Commissioner Monica Bharel, Mass. Dept. of Public Health  
Andrew Madden, Western District Manager, Mass. Div. of Fisheries and Wildlife  
Tom Brule, President, Berkshire County League of Sportsmen

DRAFT



# Technical Assistance Services for Communities

## GE Pittsfield-Housatonic River Site

### TASC Summary of GE Pittsfield/Housatonic River Site Institutional Controls (ICs) for Housatonic Rest of River - Massachusetts

This fact sheet summarizes two IC plans for the Rest of River at the GE Pittsfield-Housatonic River site. The plans are the Biota Consumption Advisory Outreach (for Massachusetts) Plan and the Environmental Restrictions and Easements Plan. EPA's Technical Assistance Services for Communities (TASC) program prepared the fact sheet. This fact sheet is funded by TASC. Its contents do not necessarily reflect the policies, actions or positions of EPA.

#### Background

Beginning in the early 1900s, GE ran a large industrial facility in Pittsfield, Massachusetts. From 1932 to 1977, GE made and serviced electrical transformers containing polychlorinated biphenyls (PCBs). Disposal activities led to extensive PCB contamination around Pittsfield and in the Housatonic River. The river runs about 150 miles from its headwaters on the East Branch in Hinsdale, Massachusetts, and flows through Connecticut into Long Island Sound.

EPA banned the production of PCBs in 1979. Health effects from PCBs have been linked to cancer and other serious effects on the immune system, reproductive system, nervous system, endocrine system and other organs.

#### Definitions

Biota – animal and plant life of a region or habitat.

Exposure Area (EA) – area within site boundaries where similar exposures to PCBs are expected. For example, a playground could be an EA with exposures that are different from exposures at a commercial property.

Exposure Point Concentration (EPC) – a conservative (more protective) estimate of the average chemical concentration of PCBs in designated EAs.

#### Current Status

The site includes:

- Twenty cleanup actions outside the river:
  - Ten cleanup actions on the GE Plant site
  - Five cleanup actions in former oxbow areas
  - Three cleanup actions in floodplains, including some residential properties
  - The Allendale School property
  - The Silver Lake Area
- Five Groundwater Management Areas
- Upper two miles of the river:
  - The Upper ½-Mile Reach
  - The 1½-Mile Reach
- Rest of River (See definition in *Rest of River* section below)

A Consent Decree (CD) set out the process for EPA to select the Rest of River cleanup plan. After years of investigations, risk assessments, feasibility studies and discussions with stakeholders, EPA

issued a Proposed Cleanup Plan (also referred to as a Draft Modification to GE's Reissued RCRA Permit) in June 2014. In October 2016, after reviewing public comments, EPA issued a Final Decision (Final Cleanup Plan). It estimates that the Rest of River cleanup will require 13 years of active remediation. In 2016, five entities, including GE, appealed the Final Cleanup Plan. The appeals process is ongoing. During the process, GE must implement uncontested components of the Final Cleanup Plan. The IC work plan is one of these components, and includes the Biota Consumption Advisory Outreach (for Massachusetts) Plan and the Environmental Restrictions and Easements Plan.

### Rest of River

The CD for the site defines the Rest of River as the part of the Housatonic River and its backwaters and floodplain (excluding actual/potential lawns as defined in the CD) downstream of the confluence of the East and West Branches of the Housatonic River (the Confluence) in Pittsfield, Massachusetts. The site includes Reaches 5 through 16. See Figure 1.

### Biota Consumption Advisories

GE has placed biota consumption advisory signs along the river south of the former GE plant and below the confluence of the east and west branches of the Housatonic River at likely public access points. Signs north of Rising Pond Dam are different than signs south of the dam. All signs warn people not to eat fish, frogs or turtles from the river. The northern signs also warn against eating wood ducks or mallard ducks from the river. See Figure 2. There are currently 38 signs along the river north of Rising Pond Dam and 12 signs south of the dam. In addition to placing and monitoring the signs, GE has been providing written notices of the biota consumption advisories to hunting and fishing license distributors for inclusion with licenses.

### Biota Consumption Advisory Outreach (for Massachusetts) Plan

Starting in 2018, GE will conduct annual inspections for missing signs and continue consulting with EPA and the Massachusetts Department of Environmental Protection (MassDEP) regarding the need to place or replace signs. GE will produce and post signs or provide

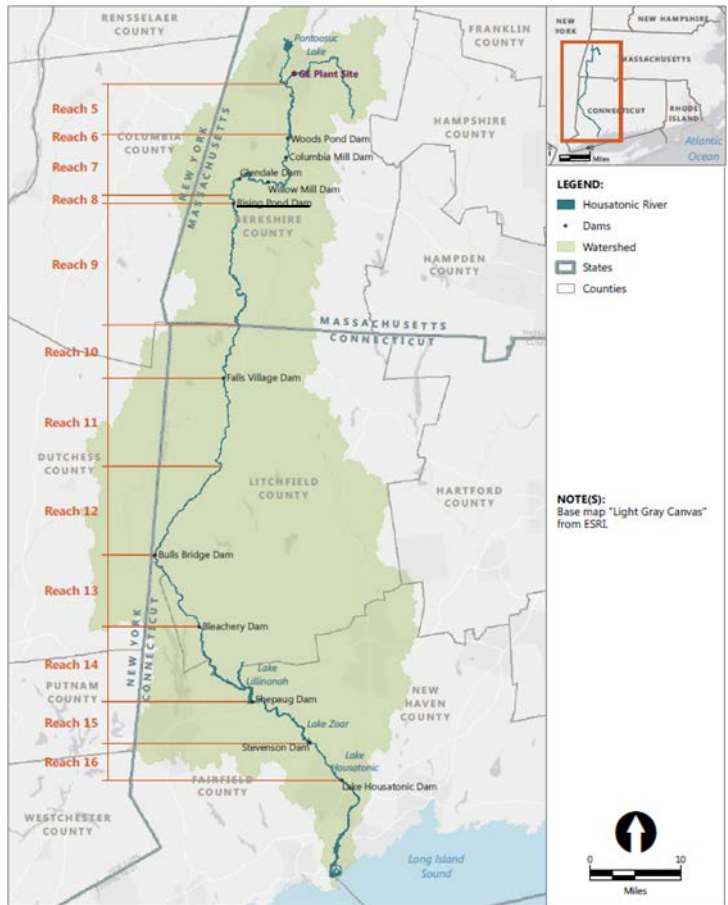


Figure 1. Housatonic River Map (Rest of River Baseline Monitoring Plan Figure 1-1)

signs to EPA or MassDEP to post, as requested by these agencies. GE will also provide copies of the Massachusetts Department of Public Health's Housatonic River fish consumption advisory pamphlet to the organizations that sell fishing and hunting licenses in Berkshire County and ask them to distribute the pamphlets to everyone getting a fishing or hunting license. GE will continue these activities until the advisories are discontinued or the program is modified with EPA approval.

### Residential Property Use Performance Standard

The performance standard for residential use of a property or area within a property is an average PCB concentration of 2 milligrams of PCB per kilogram of soil (mg/kg) in the top foot of soil and in the 1-to-X-foot depth increment (where X equals the depth to which PCB are detected at 2 mg/kg or greater, if measured), with no discrete sample concentration in the top foot exceeding 10 mg/kg.





Figure 2. Advisory Signs (Figures 1 and 2, Biota Consumption Advisory Outreach (for Massachusetts) Plan)

If PCBs in soil average 2 mg/kg or less and there are no soil samples from the top foot of soil that exceed 10 mg/kg, then use of the property is unrestricted. If this requirement is not met, then restrictions on use of the property are required. An EA may be an entire parcel with one owner or an EA may cover the floodplain portion of several properties.

### ERES

GE plans to prepare and record a Grant or Notice of Environmental Restriction and Easement (ERE), or make best efforts to obtain an ERE, for all EAs or portions of EAs in Reaches 5 through 8 that do not meet the residential use performance standard. GE will determine average EPCs for each EA and compare these averages to the residential performance standard to decide which EAs need ERES. There are 90 EAs in Reaches 5 through 8, all in Massachusetts.

Properties being considered for ERES are owned by GE, the Commonwealth of Massachusetts, the City of Pittsfield or other owners. GE will prepare ERES in accordance with the requirements of the CD for GE-, Commonwealth of Massachusetts- and City of Pittsfield-owned properties or portions of properties, as needed. All parties have agreed to ERES, where necessary. For all other properties/portions of properties where PCBs exceed the residential use performance standard,

GE will make best efforts to get the owners' agreement to execute ERES, including offering monetary compensation.

For each property/portion for which the owner agrees to execute an ERE, GE will prepare the ERE according to the requirements of the CD after completion of any cleanup action. In all cases, ERE requirements may be modified with approval from the agency that holds the ERE, most likely Massachusetts Department of Environmental Protection.

After ERES are signed, GE will record them in the relevant Registry of Deeds. For example, GE will record ERES for properties owned by the City of Pittsfield in the Berkshire Middle District Registry of Deeds.

Properties not owned by GE or the Commonwealth of Massachusetts will be inspected by GE annually to assess compliance with the respective ERES. GE will determine annually if a property has changed ownership and notify new owners of the ERE. GE will also send ERE reminders to property owners every two years.

FOR MORE INFORMATION, PLEASE VISIT:  
<https://www.epa.gov/ge-housatonic>



# Technical Assistance Services *for* Communities

## Comments on GE-Pittsfield/Housatonic River Site Institutional Control Plans December 21, 2017

**Contract No.:** EP-W-13-015

**Task Order No.:** 18 OSRTI-Multi Regions Support

**Technical Directive No.:** R1 2.1.2 General Electric (GE)-Pittsfield/Housatonic River Site

### **Technical Assistance Services for Communities (TASC) Comments on GE-Pittsfield/Housatonic River Site Institutional Control (IC) Plans – Biota Consumption Advisory Outreach Plan (for Massachusetts) and Environmental Restrictions and Easements Plan**

#### **Introduction**

This document lists TASC comments on the GE-Pittsfield/Housatonic River Site Biota Consumption Advisory Outreach for Massachusetts and Environmental Restrictions and Easements plans. GE submitted the plans to EPA for review. EPA may approve, conditionally approve, modify or disapprove them. This document is for the Berkshire Regional Planning Commission (BRPC) and municipalities to use as they develop comments on these plans to share with EPA. TASC does not make comments directly to EPA on behalf of communities. An accompanying TASC fact sheet summarizes these institutional control (IC) plans. This document and the accompanying fact sheet are funded by TASC. Their contents do not necessarily reflect the policies, actions or positions of EPA.

In reviewing the two IC plans, TASC identified the following areas where the community could benefit from additional information or suggest a work plan revision to be more in line with community preferences. Community members could consider the following information as they develop comments for EPA.

#### **General Comments**

The two plans outline steps that will be taken to: 1) post and maintain biota consumption advisories and provide information to licensed fishers/hunters; and 2) establish environmental restrictions and easements for properties or portions of properties where polychlorinated biphenyl (PCB) contamination is above the concentration allowed for unrestricted residential use. Details will depend on the agreement to be signed by EPA and GE. Community members may want to ask EPA if the plans could be strengthened in the areas discussed below.

## **Comments on the Biota Consumption Advisory Outreach (for Massachusetts) Plan**

1. The plan could be expanded to encourage community participation. Community members could be given information from time to time (for example, in water bills, on the Internet, in local publications) on how to report places where advisory signs are damaged or missing and places where new signs may be needed.
2. Pamphlets are currently being provided to a limited number of stores that sell fishing or hunting licenses. Local officials could be asked to identify additional stores to provide pamphlets to more people who may hunt, fish or recreate in the area.
3. Advisory signs are in English. If there are immigrant populations nearby, signs in other languages could be added. Additional outreach to immigrant populations could take place. For example, advisory pamphlets in other languages could be provided through service organizations, churches, libraries, grocery stores and other appropriate locations.
4. The plan does not provide any outreach besides signs at public access points to potentially unlicensed local fishers and hunters. For example, children younger than 15 may not receive a pamphlet. If unlicensed fishing and hunting is prevalent in the area, an outreach plan to provide the consumption advisory materials to residents along the Housatonic River could be considered.
5. Community members may want to ask EPA if it is well established that wood ducks and mallards with higher PCB concentrations in their tissue stay north of Rising Pond Dam. If not, signs advising people to not eat these waterfowl could be installed south of the dam, as well as north of the dam.
6. Community members may want to ask EPA if it is well established that no other types of waterfowl that may be hunted on or near the Housatonic River have high tissue concentrations of PCBs. For example, could some resident Canada geese be contaminated with PCBs? See [https://www.mass.gov/files/2017-08/living-with-geese\\_0.pdf](https://www.mass.gov/files/2017-08/living-with-geese_0.pdf).

## **Comments on the Environmental Restrictions and Easements Plan**

7. Community members may want to ask EPA if there is any need to establish environmental restrictions and easements (EREs) for properties prior to cleaning them up. If there may be a long wait for property cleanups, could an earlier ERE serve as a protective mechanism to help prevent exposure in the interim?
8. Community members may want to ask EPA if GE will conduct post-recordation activities for a limited time, or if these activities will be required in perpetuity.
9. Community members may want to ask EPA what, if any, other ICs will be applied to properties of owners who do not sign an ERE. For example, can EPA require linkage of a notice to a deed to alert future property owners of the contamination even if the current property owner does not sign an ERE? Is there a way to compel property owners to comply with use restrictions for areas of contamination left on private property?

10. At the top of page 2, the plan states:

*“Further, in applying this standard, GE will evaluate the EAs from the edge of the Housatonic River to the floodplain boundary, with the exception that GE may apply the 2 mg/kg standard to an entire property with the same owner, including both the portion within the floodplain and the portion outside the floodplain (consistent with Figures 3 and 4), if it can show that (i) potential future residential exposure is equally likely throughout that entire property, (ii) adequate data exist to support such an evaluation, and (iii) the not-to-exceed level of 10 mg/kg is met. The EAs or, in the latter case, properties that are thus shown to meet the Performance Standard for residential use will not be subject to this plan.”*

- a. Community members may want to ask EPA how “edge of the river” is defined.
- b. They may also want to ask EPA how many properties will be affected by allowing GE to average PCB concentrations across floodplain and non-floodplain portions of a property. This approach potentially reduces the amount of PCB-contaminated soil removed from the floodplain.

11. Community members may want to review the ERE models in Appendices L and O of the Consent Decree (<https://semspub.epa.gov/src/document/01/38267>) to better understand the plan for activity restrictions for properties with EREs. Highlights from the ERE models are shared below.

### **Restricted Activities in Appendices L and O of the Consent Decree**

The Environmental Restrictions and Easements Plan states that EREs for GE-owned and Pittsfield-owned properties will be based on the ERE model in Appendix L of the Consent Decree. EREs for Massachusetts-owned and other properties will be based on the ERE model in Appendix O.

Pages from Appendix L showing activity restrictions are included below.

3. **Restricted Activities and Uses.** Except as provided in Paragraph 4 (“Permitted Activities and Uses”), Paragraph 6 (“Conditional Exceptions From Restricted Activities and Uses”) and/or Paragraph 8 (“Emergency Excavation”), Grantor shall not perform, suffer, allow or cause any person to perform any of the following activities or uses in, on, upon, through, over or under the Restricted Area [use “Property” if Restricted Area boundary is coincident with Property boundary - see note after third “WHEREAS” Clause above] or portions thereof:

- A. residential activity or use;
- B. day care and educational (for children under eighteen (18) years of age) activity or use;
- C. community center (for children under eighteen (18) years of age) activity or use; [Note: omit this restriction for Recreational property.]
- D. recreational activity or use; [Note: omit this restriction for Recreational property.]
- E. agricultural activity or use;
- F. extraction, consumption, or utilization of groundwater underlying the Property, including without limitation, extraction for potable, industrial, irrigation, or agricultural use;
- G. excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil; [In appropriate cases, this restriction can be made applicable to a smaller area than the other restrictions, provided that any revisions to this Model ERE necessary to effect such change shall be subject to the approval process set forth in the Consent Decree; further provided that GE may voluntarily consult with EPA and DEP regarding any such revision prior to submitting the executed ERE for approval.]
- H. constructing or placing buildings or structures; and [Note: This restriction is only for the GE-owned properties at GE Plant Area. Also, this restriction does not apply if GE chooses either of the first two options for designating averaging areas as set forth in Section 2.1, first bulleted paragraph, subparagraphs a. and b. of Attachment E (Protocols for Spatial Averaging) to the SOW. Further, in appropriate cases (where this restriction applies), this restriction can be made applicable to a smaller area than the other restrictions, provided that any revisions to this Model ERE necessary to effect such change shall be subject to the approval process set forth in the Consent Decree; further provided that GE may voluntarily consult with EPA and DEP regarding any such revision prior to submitting the executed ERE for approval.]
- I. any activity or use that would interfere with, or would be reasonably likely to interfere with, the implementation, operation, or maintenance of any aspect or component of the Response Actions already constructed or under construction, or of which Grantor has notice, including without limitation, interference with any component of the Response Actions situated within the

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Surface Cover Area, any groundwater contaminant containment measures or barriers situated within the Groundwater Response Action Component Area (if any), or any groundwater monitoring wells[; or exceeding the bearing load or piercing any barrier or membrane situated within the Engineered Barrier Area, the Building Foundation Barrier Area, or the Landfill/Consolidation Area Cap Area]. [Last clause to be included only where such areas are present.]

Pages from Appendix O showing activity restrictions are included below.

3. **Restricted Activities and Uses.** Except as provided in Paragraph 4 ("Permitted Activities and Uses"), Paragraph 7 ("Conditional Exceptions From Restricted Activities and Uses") and/or Paragraph 9 ("Emergency Excavation"), Grantor shall not perform, suffer, allow or cause any person to perform any of the following activities or uses in, on, upon, through, over or under the Restricted Area [use "Property" if Restricted Area boundary is coincident with Property boundary - see note after third "WHEREAS" clause above] or portions thereof:

- A. residential activity or use;
- B. day care and educational (for children under eighteen (18) years of age) activity or use;
- C. community center (for children under eighteen (18) years of age) activity or use; **[Note: omit this restriction for Recreational property.]**
- D. recreational activity or use; **[Note: omit this restriction for Recreational property.]**

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- E. agricultural activity or use;
- F. extraction, consumption, or utilization of groundwater underlying the Property, including without limitation, extraction for potable, industrial, irrigation, or agricultural use;
- G. excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil; **[In appropriate cases, this restriction can be made applicable to a smaller area than the other restrictions, provided that any revisions to this Model ERE necessary to effect such change shall be subject to the approval process set forth in the Consent Decree; further provided that GE may voluntarily consult with EPA and DEP regarding any such revision prior to submitting the executed ERE for approval.]**
- H. any activity or use that would interfere with, or would be reasonably likely to interfere with, the implementation, operation, or maintenance of any aspect or component of the Response Actions already constructed or under construction, or of which Grantor has notice, including without limitation, interference with any component of the Response Actions situated within the Surface Cover Area, any groundwater contaminant containment measures or barriers situated within the Groundwater Response Action Component Area (if any), or any groundwater monitoring wells[, or exceeding the bearing load or piercing any barrier or membrane situated within the Engineered Barrier Area]. **[Add last clause only if applicable to the Property.]**

The restriction set forth in subparagraph 3.G, above, shall not apply to activities which begin after the time that this Grant has been Recorded and/or Registered and end before the time that the Notice of Completion has been Recorded and/or Registered. Notwithstanding the foregoing, any interest in the Property acquired during the aforesaid time period shall nonetheless be subject to the provisions of subparagraph 3.G when they become applicable. Furthermore, during the aforesaid time period, Grantor shall not perform, suffer, allow or cause any person to perform in, on, upon, through, or under the Property or portions thereof, any digging, drilling, excavating or other intrusive activity into, or any other disturbance of, the surface of the ground and/or underlying soil, unless Grantor first provides fourteen (14) days' advance written notice to Grantee and EPA [, and DEP, if DEP is not the Grantee].

## TASC Contact Information

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**HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE BUDGET UPDATE**

**Budget Update January 3, 2018**

**Budget Breakdown by Municipality and Fiscal Year**

Municipality	Initial FY14 Allocation	FY 14 Expenses	FY14 Rollover Funds	FY15 Allocation	FY15 Budget	FY 15 Expenses*	FY15 Rollover Funds
Pittsfield	10,000.00	4,077.96	5,922.04	10,000.00	15,922.04	4,944.18	10,977.86
Lenox	10,000.00	4,077.96	5,922.04	10,000.00	15,922.04	4,944.18	10,977.86
Lee	10,000.00	4,077.96	5,922.04	10,000.00	15,922.04	4,944.18	10,977.86
Stockbridge	10,000.00	4,077.96	5,922.04	10,000.00	15,922.04	4,944.18	10,977.86
Great Barrington	10,000.00	4,077.96	5,922.04	10,000.00	15,922.04	4,944.18	10,977.86
Sheffield	10,000.00	4,077.96	-	10,000.00	10,000.00	786.00	9,214.00
<b>Total</b>	<b>60,000.00</b>	<b>24,467.76</b>	<b>29,610.20</b>	<b>60,000.00</b>	<b>89,610.20</b>	<b>25,506.90</b>	<b>64,103.30</b>

Municipality	FY15 Rollover Funds	FY 16 Allocation	FY16 Budget	FY 16 Expenses	FY16 Rollover Funds	FY17 Allocation	FY17 Budget	FY17 Expenses	FY17 Rollover Funds
Pittsfield	10,977.86	10,000.00	20,977.86	0.00	0.00	0.00	-	0	0
Lenox	10,977.86	10,000.00	20,977.86	1,157.50	19,820.36	10,000.00	29,820.36	14,524.61	15,295.75
Lee	10,977.86	10,000.00	20,977.86	1,157.50	19,820.36	10,000.00	29,820.36	14,524.61	15,295.75
Stockbridge	10,977.86	10,000.00	20,977.86	1,157.50	19,820.36	10,000.00	29,820.36	14,524.61	15,295.75
Great Barrington	10,977.86	10,000.00	20,977.86	1,157.50	19,820.36	10,000.00	29,820.36	14,524.61	15,295.75
Sheffield	9,214.00	0.00	9,214.00	1,157.50	8,056.50	0.00	8,056.50	3,057.78	4,998.72
<b>Total</b>	<b>64,103.30</b>	<b>50,000.00</b>	<b>114,103.30</b>	<b>5,787.50</b>	<b>87,337.94</b>	<b>40,000.00</b>	<b>127,337.94</b>	<b>61,156.22</b>	<b>66,181.72</b>

Municipality	FY17 Rollover Funds	FY18 Allocation	FY18 Budget	FY 18 Expenses	FY 18 Rollover Funds	FY19 Allocation	FY19 Budget
Pittsfield	-	0.00	0.00	-	0.00	0.00	-
Lenox	15,295.75	10,000.00	25,295.75	0.00	25,295.75	10,000.00	35,295.75
Lee	15,295.75	10,000.00	25,295.75	0.00	25,295.75	10,000.00	35,295.75
Stockbridge	15,295.75	10,000.00	25,295.75	0.00	25,295.75	10,000.00	35,295.75
Great Barrington	15,295.75	10,000.00	25,295.75	0.00	25,295.75	10,000.00	35,295.75
Sheffield	4,998.72	0.00	4,998.72	0.00	4,998.72	0.00	4,998.72
<b>Total</b>	<b>66,181.72</b>	<b>40,000.00</b>	<b>106,181.72</b>	<b>0.00</b>	<b>106,181.72</b>	<b>40,000.00</b>	<b>146,181.72</b>

**3 Invoices FY14**  
 Invoice 1 = 15,735.60 for Pawa = 2622.60 each  
 Invoice 2 = 4,187.58 Pawa, BRPC, Bracket & Lucas = 697.93 each  
 Invoice 3 = 4,544.60 Pawa = 757.43 each

**1 Invoice FY 15**  
 Invoice 4 = 25,506.91 Pawa, BRPC = 4944.18 X 5 and 786.00 Sheffield  
 \* Sheffield representative provided in-kind services in lieu of full cash contribution

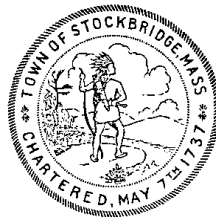
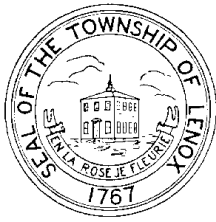
**1 Invoice FY16 (includes costs thru Aug. 18 2016)**  
 Invoice 5 & 6 = 5787.50 for Pawa = 1157.50 X 5  
 November 2016 Committee accepts Pittsfield notice to exit the IGA

**3 Invoices FY17**  
**3 invoices + additional payment (FY17 = 4 towns @ 23.75% and Sheff @ 5%)**  
 Invoice #7 = 30,277.65 for Pawa = 7179.07 X 4 and 1511.37 Sheffield  
 Invoice # 8 = 20,392.00 Pawa = 4843.10 X 4 and 1019.60 Sheffield  
 Invoice # 9 = 2850.00 Pawa = 676.88 X 4 and 142.48 Sheffield  
 Payment #10 = 7686.57 Pawa = 1825.56 X 4 and 384.33 Sheffield (per ROR Committee mtg 8-25-17)

**0 invoices FY18**

TOTAL COST SUMMARY	Pawa Costs	BRPC	Bracket & Lucas
FY 14	24,467.76	21,442.68	2,561.08
FY15	25,506.90	20,790.91	4,716.00
FY16 (thru Aug. 18 2016)	5,787.50	5,787.50	-
FY17 (53,469.65 + 7,686.57)	61,156.22	61,156.22	-
FY18	-	-	-
<b>TOTAL</b>	<b>116,918.38</b>	<b>109,177.31</b>	<b>7,277.08</b>





## HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE

### Meeting Minutes

Rest of River Municipal Committee  
January 5, 2018, 9:00 a.m., Lee Town Hall

**1. Introductions.** The meeting opened at 9:09 p.m. Attending the session were the following Committee members:

Pat Carlino, Lee Select Board  
Chris Rembold, Great Barrington Planner  
Steve Shatz, Stockbridge Representative

Others present:

Terrie Boguski, Skeo Solutions (via phone)  
Lauren Gaherty, BRPC  
Jim McGrath, City of Pittsfield  
Kirby Webster, Skeo Solutions (via phone)

**2. GE Uncontested and Severable Permit Conditions.** L. Gaherty opened the discussion reporting that the draft comments before them focused mostly on the *Biota Consumption Advisory Outreach Plan* and less so on the *Plan for Obtaining Environmental Restrictions and Easements (EREs)*. This is because BRPC does not have the legal expertise to evaluate the merits of the proposed ERE plan, and it appears to her that much of how the ERE's will be issued will be dictated by the Consent Decree. However, L. Gaherty believes that the biota consumption plan could be improved and strengthened to better protect human health.

As part of the research on the topic, L. Gaherty reached out to the Berkshire County League of Sportsmen for their input on the proposed plan. They met the previous evening to discuss the proposed plan and will likely have comments, but at this time we have no comments from them. The Dept. of Fisheries and Wildlife staff will be at that meeting and may be able to offer some insight of their own. The Committee agreed that if the League of Sportsmen come back with reasonable issues that we had not thought of, then the Rest of River Committee's comments should support and reference their letter. The group also asked that BRPC approach the Berkshire County Boards of Health Association and Tri-Town Health for input. C. Rembold stressed that GE themselves should be approaching the boards of health as part of the outreach.

S. Shatz proposed deleting the first sentence of the fifth full paragraph on p. 3 of the draft comments, along with a few other edits within that paragraph, and the rest of the Committee agreed with these edits.

K. Webster and T. Boguski from Skeo Solutions joined the meeting via telephone at 9:25 a.m. Skeo's comments to the Committee about the ERE plan focused on the potential human health to residents who may be currently recreating in the contaminated portion of the properties that will be encumbered with EREs in the future. Currently the land is contaminated and there are no restrictions in place to restrict people from using the land. T. Boguski reported that contaminated sites are often fenced off to keep people out of the site, but here it is all private property and fencing would require permission of the owners. C. Rembold suggested that the Committee request that GE notify all landowners of the contamination on their property and warn them of the human health risk of using that land. This would remind people that they should restrict the use of this land in the interim before EREs are legally put in place. T. Boguski stated that most likely GE has already contacted landowners and accessed these properties. EPA has some legal mechanism under Superfund to restrict use if the landowners are not agreeable to putting deed restrictions in place.

The Committee agreed that their recommendations for EREs was limited due to the fact that each ERE would be an agreement directly between the landowner and GE. J. McGrath noted that the City of Pittsfield tracks the properties that have post-construction EREs already in place, so if owners come into the City for wetland permits or other land use changes the city permitting authorities are aware of the restrictions. He suggested that the Rest of River towns also consider ways to track contaminated properties going forward. J. McGrath will ask city staff how they track these properties and share this information with the group.

Skeo confirmed that they are authorized to provide technical assistance to the Committee in the review of the dam maintenance plans issued by GE. Skeo staff left the meeting at 9:41 a.m.

3. **Review of minutes of Nov. 9, 2017 meeting.** Motion to accept as written by C. Rembold, seconded by P. Carlino; motion passed unanimously.

4. **Preparing for Next Steps.** The Town of Lee is serving as the lead applicant for this year's application for DLTA 2018 for Rest of River. P. Carlino will get the application to BRPC by the Jan. 10 deadline.

The Committee discussed the legal budget for the anticipated response or next steps in the EAB and/or First Circuit processes. L. Gaherty reported that BRPC is concerned that DLTA will not have enough of a budget to fund the total amount of work that will be needed for the Rest of River when the Committee has to re-engage the Pawa firm and file legal motions. DLTA has been providing approximately \$10,000-15,000 per year for Rest of River, with the exception of last year which was more than \$22,000. Luckily other projects came in under budget or fell away, so BRPC was able to direct more than the usual amount to Rest of River. But there is no guarantee that this situation can be repeated. BRPC is fairly confident that it can allocate \$15,000 in 2018 but can't guarantee more than that. Although Rest of River is a regional issue, there are a lot of demands on DLTA from communities all across the county.

L. Gaherty asked the Committee how they wanted to proceed with budgeting. Do they want to hedge their bet that BRPC could stay within a \$15,000 budget which? If the Committee has to re-engage Pawa and file with the First Circuit this budget is not realistic. Or do they think it would be prudent to

each budget an additional \$2,000 up front to be able to cover the deficit? L. Gaherty reported that the existing budget for legal costs is \$104,182, and with an additional \$10,000 each from Lenox, Lee, Stockbridge and Great Barrington for FY19's budget the total would be \$146,182. An additional \$2,000 from the four towns would add \$8,000 to the FY19 budget. The Committee chose to continue as they have done in the past without adding more upfront funding. S. Shatz stated that he would recommend another \$10,000 to town meeting in May 2018, and P. Carlino and C. Rembold stated that they would again pursue their \$10,000 share. S. Shatz felt that \$146,182 should be sufficient to file legal briefs with the First Circuit if necessary. The legal arguments have already largely been prepared for the EAB. S. Shatz asked BRPC to ask the Pawa firm for a preliminary budget for filing a brief and presenting oral argument at the First Circuit, assuming the worst-case scenario.

5. **Adjournment.** P. Carlino made the motion to adjourn the meeting, seconded by C. Rembold; motion passed unanimously at 10:09 a.m.

Meeting Materials:

- Meeting Agenda 1-5-18
- Meeting Minutes of 11-9-17
- Draft Comments on *Biota Consumption Advisory Outreach Plan and Plan for Obtaining Environmental Restrictions and Easements (EREs)*
- Housatonic Rest of River Municipal Committee Budget Update (1-3-18)

Respectfully submitted,  
Lauren Gaherty, BRPC