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

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

AGENDA

Rest of River Municipal Committee
October 8, 2014 -- 3:00 p.m.
Stockbridge Town Offices

1. Introductions
2. Review of minutes of September 24, 2014
3. Executive Session – final Committee comment letter to EPA with Pawa Law Group input
4. Other Business
 - Budget update
 - Signature page and final submission of comments to EPA
5. Adjournment

City and Town Clerks: Please post this notice pursuant to M.G.L. Chapter 39, Section 23B.

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Meeting Minutes
Rest of River Municipal Committee
October 8, 2014 @ Stockbridge Town Offices

1. The meeting opened at 3:53 p.m. Attending the session were the following Committee members:

Warren Archey, Lenox Select Board
Pat Carlino, Lee Select Board
Doug Clark, Pittsfield Community Development Director
Lauren Gaherty, BRPC
Nat Karns, BRPC
Chris Ketchen, Lenox Town Manager
Jim McGrath, Pittsfield Park, Open Space, and Natural Resources Program Manager
Jennifer Tabakin, Great Barrington Town Manager

Other: Andy McKeever, i-berkshires

2. **Review of minutes of September 24, 2014.** Motion to accept the minutes as presented was made by C. Ketchen and seconded by D. Clark. The motion passed unanimously.

3. **Motion to enter into Executive Session.** The following statement was read by N. Karns: "Request a motion to go into Executive Session to discuss the Pawa Law firm's advice regarding the appropriate strategy to best protect the Rest of River Municipalities' legal rights regarding the Draft Permit and such discussion, if held in open meeting, may have a detrimental effect on the legal position of the Rest of River Municipalities". The Committee will return to open session.

The motion was made by Pat Carlino and seconded by Chris Ketchen. Roll call vote: Warren Archey, Lenox: AYE; Doug Clark, Pittsfield: AYE; Pat Carlino, Lee: AYE; Jennifer Tabakin, Great Barrington: AYE. The Committee went into Executive Session at 3:55 p.m.

4. **Return to Open Session at 6 p.m.**

Jorja Marsden, Stockbridge had joined the meeting during the Executive Session.

P. Carlino motion to accept the changes to the Rest of River Municipal Committee's draft letter as developed in Executive Session, seconded by J. Tabakin. The motion was unanimously approved.

5. Pawa legal fees.

N. Karns informed the Committee that, as of October 1st, Pawa Legal Group had expenditures of \$21, 862.50; they were previously authorized \$15,000. Discussion ensued.

C. Ketchen motioned to authorize legal expenditures by Pawa Group up to \$25,000 to pay legal expenses incurred to date, provide language on future PCB liability and do a final legal proof read of draft Comments letter; seconded by J. Tabakin. The motion was unanimously approved.

N. Karns discussed having Sheffield exempt from this additional legal expense due to a trade off for doing all the minutes, thus dividing the additional legal expenses authorized by 5 not 6. A motion to divide the additional legal expenses for Pawa Legal Group by 5 not 6 communities to exclude Sheffield in exchange for doing minutes was made by P. Carlino and seconded by J. Marsden. The motion was unanimously approved.

6. Adjournment. The meeting was adjourned at 6:10 p.m. on a motion by P. Carlino, seconded by D. Clark and approved unanimously.

Respectfully submitted,
Rene C. Wood, Sheffield Delegate to ROR Committee

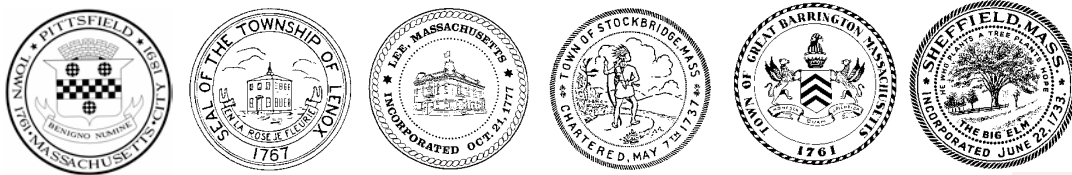
Meeting materials:

Draft meeting minutes for September 24, 2014.

Agenda for October 8, 2014.

BRPC draft of Rest of River Municipal Committee's letter to D. Tagliaferro, EPA Western Region, undated, as verbally amended in Executive Session of October 8, 2014 and such changes annotated by L. Gaherty and N. Karns.

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HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE

October ???, 2014

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

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

Dear Mr. Tagliaferro:

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

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

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

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

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

Socioeconomic Impacts and Damages

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

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

Municipal Involvement and Input

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

Commented [BK1]: We used the language from a Scope of Work requiring a PRP to perform remedial action issued by EPA for the New Bedford site.

Commented [BK2]: We think clarification could be useful. However, please note that EPA will have power to help us once the permit is issued since it has the authority to approve design plans implementing the remedy and so EPA may have intentionally left this language vague to keep its options open.

Commented [BK3]: By statute, even States only have the right to review and comment but not approve/disapprove these plans. 42 U.S.C. § 9621(f)(E)(i-v). Thus, we do not think it is reasonable that EPA would give the municipalities more rights than the States. Thus, we have inserted the language from the statute that gives the States the right to review and comment and made your request consistent with the State’s rights. Since this theme reoccurs throughout the comments, we have made future references to this idea consistent with our proposed changes here.

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- We are extremely concerned that the Permit does not state that EPA, GE and the States will actively engage, consult and consider input from the Rest of River municipalities during the design and/or implementation of cleanup activities. The Permit clearly directs the EPA to consult with the States, but there is no such direction to actively engage the municipalities or the public in the review of and comment on Statements of Work, Remedial Design Work Plans, Remedial Action Work Plans or other associated plans. At a minimum the Permit should state that the Rest of River Municipal Governments be given a reasonable opportunity to review and comment on all design and implementation plans for each stage of Rest of River cleanup. This is vital to guarantee that the municipalities and the public will be involved in all work going into the future – years and decades from now and in perpetuity. EPA staff have a record of working closely with Pittsfield (which was a party to the Consent Decree) in the cleanup of the GE site and first two miles, and the municipalities have played a productive role so far. We want to ensure that this practice continues through the inevitable staff and management changes that may occur over the long life of this remedy, and we believe that the only way to guarantee this practice is to have it stated within the Permit. For example, there is a local desire to plan for increased access to the natural world along the river, and careful planning of access roads and staging areas could serve as future trails, canoe launches and other recreational amenities.
- To this end we request that the numeric cleanup standards for the Floodplain Exposure Areas be set as minimum guidance standards rather than strict cleanup standards. This will allow the EPA to work with municipalities and other stakeholders to set stricter standards if land uses change or user exposure times are found to have increased from the original designation, such as installing recreational amenities or conducting.
- The municipalities must be actively involved in the siting of all work areas, including locating access roads, staging areas, dewatering and treatment facility areas, storage sites, etc. We request that EPA: 1) acknowledge that, prior to commencing certain work such as the storage of hazardous waste to be transported out of state, GE will be required to comply with the Massachusetts Hazardous Waste Facility Siting Act, Mass. G.L. ch. 21D §§ 1-19, by, *inter alia*, submitting notices of intent as set forth in section 7 of this statute, obtaining siting agreements with host communities and providing compensation to communities as set forth in sections 12-15 of this statute; and 2) require GE to evaluate and comply with this statute in future submissions by GE such as its Scope of Work documentation. Our request is discussed in detail in Attachment A.
- We request that EPA acknowledge in the RCRA permit two additional, and important, aspects of state and local authority. First, to the extent that any work is conducted off of the “Site,” EPA should ensure that GE’s scheduling submissions and other documentation take into account the necessity of obtaining all necessary municipal approvals (for example relating to heavy truck traffic beyond the perimeter of the site). Second, even with respect to Work conducted entirely on the Site, the Work must comply with the substance of local permit laws. See, e.g., *Town of Fort Edward v. United States*, 2008 U.S. App. LEXIS 62, at *5 (2d Cir. 2008): “EPA is required to comply with the substance of state and local permit laws, and is merely exempted from ‘the administrative processes’ of obtaining the necessary permits that

Commented [BK4]: We tried to make the tone more positive.

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'could otherwise delay implementation of a response action.'" (quoting 53 Fed. Reg. 51394, 51406).

Section II.B.11.I. directs GE to develop a Quality of Life Compliance Plan. We support the inclusion of this directive in the Permit. However, we believe that the development of a more comprehensive Community Involvement Plan (CIP) should be included in this section, outlining a process to ensure meaningful public input and involvement with EPA as it implements the Permit. We refer EPA Region 1 staff to the CIPs for the Hudson River Superfund Site. We request that Section II.B.11.I.(4) be revised to include public involvement, health and safety. We respectfully suggest the section read as follows:

(4) Community Involvement, Health and Safety

- The Permittee shall develop a Community Involvement Plan (CIP), the purpose of which is to guarantee meaningful public input and involvement with the EPA and the Permittee during the implementation of the Permit (similar to the CIP developed as part of the Hudson River PCB Superfund Cleanup); the public involvement program shall at a minimum include regular community meetings at which the Permittee shall provide relevant updates on the progress of the cleanup and to which local permitting boards shall be specifically invited and also include meeting directly with effected landowners;
- The Permittee shall maintain a website (similar to <http://www.hudson dredging.com/>) to provide community access to information such as data, technical reports, work plans, and project fact sheets, as well as updates on current and future project activities; and
- The Permittee shall establish a call center which shall be manned 24 hours per day, 7 days a week during any and all construction activity in order that local citizens and officials may be able to communicate directly with the Permittee regarding work activities."

- A process to keep all citizens informed of the status of the cleanup should, at a minimum include a more frequent updates to the Citizen Coordinating Committee, periodic updates in local newspapers, access television and social media.

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

potential health risks generated from cleanup activities. We respectfully suggest the section read as follows:

(4) Community Involvement, Health and Safety

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

Requirements for the Rest of River Statement of Work

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

- We are most concerned that the Permit does not provide the municipalities a reasonable opportunity to review and comment on the content of these plans, even though EPA has recognized that it is necessary for GE to work closely with the municipalities on these plans. [As noted on pages 10-11 of the](#) *Statement of Basis for EPA's Proposed Remedial Action for the Housatonic River Rest of River*: "To ensure careful coordination and enhanced safety for residents, GE will be required to work closely with EPA, and in consultation with the appropriate city and town officials, in development management strategies and plans to guide the cleanup work." However, it is imperative that local government officials and citizens be directly involved early in the development of the outline for these plans, as well as the review of such plans to ensure that they incorporate local knowledge of sites and are fully

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protective of municipal interests. Direct municipal involvement in the development of plans will help to ensure that local plans and needs are incorporated into mitigation and restoration efforts. As an example [as stated previously](#), there is a local desire to plan for increased access to the natural environment along the river, and careful planning of access roads and staging areas could serve as future trails, canoe launches and other recreational amenities. There is also the desire to expand environmental educational opportunities, and the cleanup could offer a hands-on environmental educational experience where local schools and colleges can learn about the diverse habitats within the river corridor and about the science surrounding mitigation of contamination. The establishment of an environmental education/research facility could serve as a center to document pilot projects, innovative technologies and adaptive management approaches employed during the cleanup process.

- We again request that the Rest of River municipalities be given a reasonable opportunity to review and comment on the plans as they are developed.
- [We request that the Permit discuss the requirements for the Operation & Maintenance Plan in more detail. This plan will be critical in containing remaining PCB contamination left behind after the completion of the cleanup. We request that the EPA require the GE to fund in perpetuity an environmental monitoring consultant whose work will be overseen by, and who will report directly to, the EPA.](#)
- Article 89 of the Amendments of the Massachusetts Constitution reaffirms the right of local governments to self-governance. Massachusetts General Laws enable local governments to impose reasonable policies, laws, bylaws and regulations on land use activities to protect human health and the environment. This includes the right of local boards to hire consultants to aid them in reviewing and conditioning projects within their jurisdictions. Because the Rest of River cleanup has extensive environmental and human health implications and spans across several municipal jurisdictions, we believe that the most comprehensive and efficient means to meet the intent of these Home Rule provisions would be to [require-encourage](#) GE to fund the hiring of consultants to serve local boards in reviewing and commenting on plans, statements of work and other submittals during the cleanup, and to aid such boards in reviewing air and water quality monitoring and other data that is generated during construction. [Pawa Firm: We believe we should delete this paragraph because: \(a\) CERCLA explicitly overrides municipal regulations and \(b\) CERCLA does not give EPA authority to require GE to hire a consultant for the town. BUT DOES CHANGING THE WORDING TO ENCOURAGE RATHER THAN REQUIRE MAKE THIS MORE PALATABLE?](#)

Hazardous Waste Facility

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

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- We believe that the Permit should discuss in more detail how PCB-contaminated sediment and materials will be safely transported and stored.
- Attachment D of the Permit states: “Temporarily stockpiled TSCA-regulated material will be bermed and properly covered to capture runoff in accordance with the requirements of [40 CFR] S.761.65. Runoff shall be collected and disposed of, as appropriate, in accordance with S. 761.60 or S. 761.79(b)(1), or as otherwise approved by EPA.” The Permit should include language to describe the process by which EPA would “otherwise” approve stockpiled TSCA-regulated materials within the region. This is especially an important issue within the Upper Housatonic ACEC (in which municipal and hazardous waste facilities are prohibited) and in residential areas which are proximate to the river and proposed clean-up areas. We also believe that the permit should define “temporary stockpiling” of PCBs to be six months or less.
- ~~In accordance with Mass. General Law Chapter 40A, Section 2, all hazardous waste management facilities (defined in MGL C.23D, S.2) in non-industrially zoned locations may be subject to special permits issued by the local government; conversely, in industrially zoned locations, such facilities must be permitted, although they can still be subject to site plan review and reasonable conditions required by the local government. This distinction between non-industrial and industrial zoned areas is important in providing a means to protect proximate residences and non-industrial businesses from health, noise, dust and other impacts which may be injurious to the public health, safety and general welfare. The permit should require compliance by GE with the requirements of this section of State law and implementing ordinances and bylaws of local governments. DELETED. Discussion on MGL 21D more relevant to our point.~~
- We restate that the remedy should require that the municipalities must be actively involved in the siting of all work areas, including locating access roads, staging areas, dewatering and treatment facility areas, storage sites, etc. and should be actively involved in the review and comment on operational plans for work areas.

Commented [BK5]: We suggest that you add the specific questions that you had in mind.

Remaining PCB contamination

- The Permit would allow significant amounts of PCB contamination to remain in the river channel, bank, backwater and floodplain soils throughout much of the Rest of River area, most notably Reach 5. In general, the municipalities are concerned about the exposure and reintroduction of PCBs into this dynamic river system during high flow and extreme storm conditions. EPA’s own studies cite river sediment and bank as jointly redistributing more than 90% of PCBs back into the riverine system.
- The predicted impacts of climate change are cause for concern when considering the volume and spatial distribution of PCBs that will be left behind after the cleanup. We therefore ask that EPA insert language in the Remedy Plan that acknowledges the projected flooding increases due to climate change and requires GE engineering firms to incorporate

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these increases when they design their remediation activities. Data from USGS streamflow gauges across the northeast show a clear increase in flow since 1940, with an indication that a sharp “stepped” increase occurred in the 1970s. Some scientists predict that the recurrence period for extreme storm and flood events will be significantly reduced, with some projecting that the 10-year storm may more realistically have a recurrence interval of 6 years, a 25-year storm may have a recurrence interval of 14 years, and the 100-year storm may have a recurrence interval of 49 years¹. Widespread severe storm events and resulting flooding in 2005, 2006, 2010, 2011, and 2014 in Massachusetts support the conclusion that recurrence times are being reduced. We note that severe storms this summer are causing GE to conduct repairs in Silver Lake, removing displaced armor stone, repairing a disturbed area of the cap isolation layer, and installing a new, stronger armoring system. If storm events can damage the conventional engineered infrastructure and cap at this stable urban pond, it causes us to wonder how the engineered solutions for erodible, unstable river banks will fare in the dynamic meanders throughout the Rest of River. These issues make it all the more critical that the EPA establish a rigorous and thorough program to monitor the movement of the river channel and establish strict mitigation protocols that can be activated quickly to minimize the amount of new PCB-contaminated soils being released into the water column for transport.

Commented [BK6]: It would be helpful to provide the citation for this information that you have referenced.

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

Commented [BK7]: We were not sure exactly which meeting you were referring to but we should insert the year.

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

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data thresholds to trigger requisite monitoring and to document the structural integrity of caps and armoring.

- Given the changing patterns of the river channel and banks over time, the permit should require a comprehensive review of the areas which may be at risk on a relatively frequent basis, such as every 3 years, with requirements to address newly identified at-risk areas on a timely basis.
- We would like to see a more balanced approach to cleanup in Core Areas. Neither EPA nor the Massachusetts Executive Office of Energy and Environmental Affairs (EEA) has offered evidence demonstrating that Core Area habitats would be irreparably and permanently damaged by cleanup activities. To the contrary, the remediation pilot project already conducted on a vernal pool in Pittsfield indicates that the post-construction functionality of this pool had returned within a breeding season or two after construction. This would indicate that these areas have proven to be resilient and can recover in a relatively short period of time. We ask that cleanup standards in the core areas be revisited to insure that the long term PCB removal goals have not been unduly compromised based on short term impacts to the core areas. We note that some studies conducted on frogs of various species taken from the Rest of River study area state that PCBs are implicated in lower species richness and density, reproductive stress, malformations, abnormal development and skewed sex ratios. Leaving high concentrations of PCBs in vernal pools and other amphibian habitat would diminish the long-term resiliency of these species. As such, we submit that all vernal pools and contributing habitats should be remediated to meet the 3.3 kg/mg target.
- Where feasible, we urge the EPA to require in the Permit that GE investigate methods to collect individual plants and animals from local populations of particularly vulnerable species, hold them during cleanup activities, and then re-establish them once construction has ended.
- The Permit should outline a framework for setting long-term Performance Standards once cleanup activities have been completed. These Standards would reflect post-construction conditions and incorporate lessons learned throughout the process.

GE Responsibility In Perpetuity

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

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

Commented [BK8]: We believe EPA will respond that it lacks authority to do more than compel GE to attain the performance standards. The CD contains a covenant not to sue by EPA and a process for certification that GE has completed the remedial action and attained the performance standards. We do not believe EPA can insert language into the permit that GE is liable in perpetuity because this would contradict the CD. In fact, we doubt that EPA will issue a certification of completion within the next 20 years and likely longer. On the question of GE going bankrupt, the CD already has a financial assurance provision, which is still in force (GE must submit an annual report, and if it shows any financial weakness, EPA can require additional measures such as establishment of a \$150 million escrow account). We think this section should thus be deleted.

Operation & Maintenance Plans. Borrowing language from Region 2's permit document, we suggest insertion of the following language into Section I, General Permit Conditions:

Duty to Comply with Monitoring, Operation and Maintenance

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

There are several reasons for our request for permanent responsibility-concern:

- The river is a dynamic, meandering system that will continue to change course and expose contaminated channel, bank, backwaters, floodplain, etc.
- This dynamic system has an ever-increasing risk of erosion and exposure due to an increase in the number and intensity of severe storm events.
- A change in the federal political landscape could reduce EPA authority.
- There is a current line of thought by many people in the region that GE will retain a strong American presence for decades to come. We do not agree with this line of thought. GE could be purchased and/or dissolved, go bankrupt or move all operations offshore, leaving the government with no responsible party to turn to for future remediation.
- The Permit allows significant PCB contamination to remain behind after cleanup activities, essentially passing along a lingering legacy of PCB contamination to our children and grandchildren. It will be the burden of future generations to monitor and manage those PCBs left behind, and it is imperative that the financial burden remains squarely on the shoulder of GE and any of its successors.

Human Health and Safety

- The Permit under Sec. 1.B Duty to Mitigate, requires that GE prevent "significant adverse impacts on human health." The term "significant" should be more clearly defined to include specific performance standards for soil, air quality and water quality for each reach of the river. Performance standards should also be set for air quality levels for volatilization of PCBs and emissions from truck traffic and construction equipment.
- We are unclear as to the role that the Massachusetts Department of Public Health and the local Boards of Health will play during the cleanup process. We note that the majority of local boards of health staff do not have the capacity and/or expertise to review the technologies being utilized nor the volumes of data that they generate to monitor conditions at and near cleanup sites. They will need support from professionals familiar with such monitoring programs to help them understand site conditions and potential health risks generated from cleanup activities. We therefore request that GE be required to fund a public health coordinator to serve the local boards of health during cleanup activities.

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- To ensure that the ARARs listed in the Permit are protective of human health, we request that the EPA work with the Massachusetts and Connecticut Departments of Health to identify relevant statutes and regulations that should be included in the final Permit.
- We ask that EPA ~~should~~ direct GE to identify the types of fires, accidents and other emergencies that may occur during cleanup activities and to evaluate the capabilities of the local fire and ambulance companies to respond effectively to such emergencies. EPA should require GE to provide any additional equipment or training that may be needed to meet all potential emergency situations described in the evaluation.

Transportation Issues

- The Committee takes this opportunity to once again state our support for EPA's direction to investigate the feasibility of transporting PCB-contaminated materials out of the cleanup area via the rail system.
- As EPA is aware, the municipalities are greatly concerned about the impact that heavy truck traffic generated during the cleanup will have on transportation infrastructure that was not designed to accommodate such high volumes or weight. The municipalities request that EPA define each cleanup site to include all local road infrastructure that will likely be damaged from cleanup-related truck traffic. The BRPC has provided EPA project staff with a transportation impact assessment methodology (Attachment C), and we request that it be utilized as specific cleanup plans are developed in each reach to help determine and assess costs for bringing an infrastructure component up to specification prior to its use and/or repairing damage done by increased and heavier truck traffic. EPA should clarify that the costs of preparing infrastructure to withstand future cleanup operations is to be determined by EPA in consultation with the affected municipality, and these costs are to be paid by GE.
- We specifically request that the "Road use..." section of the Quality of Life Compliance Plan (Sec. II.B.11.I.(3)) be expanded to state that GE must identify the truck routes and require a road, bridge and culvert assessment of all possible routes to determine pre-construction conditions. A baseline study of the current condition of transportation infrastructure for routes used during the cleanup must be conducted by GE. Any damage done to the infrastructure due to heavy truck traffic must be restored, at a minimum, to pre-construction condition. The assessment should be conducted in close coordination with each municipality. Also as part of this section, GE should be required to include a traffic management plan in the SOW, which should (like the rest of the SOW) be subject to a reasonable opportunity for review and comment by the affected municipality(ies) which maintains necessary access in a manner which the municipality finds acceptable, with that plan subject to municipal approval which shall not be unreasonably withheld, prior to approval of the specific clean-up plan in that area. GE should be required to adhere to the municipality(ies) requirement to maintain traffic and to promptly correct immediate deficiencies in traffic operations or roadway conditions as the municipal officials find necessary. The municipalities should have the ability to restrict use of roads during portions of the year when they are most susceptible to damage, particularly the "spring thaw" period.

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- It is imperative the impacted municipalities not be left to pay for infrastructure damage caused by cleanup activities. Damage caused to discrete sections of road caused by the stress of heavy trucks and equipment may not be immediately apparent, but instead may manifest itself a few years after construction activities are complete. We request that an escrow account be established with the Berkshire County Rest of River municipalities, using GE funds, in the event that such funds are needed in the future by any of the Rest of River municipalities to cover the cost of repairing infrastructure damaged by transportation linked to PCB cleanup activities.

Commented [BK9]: It is unclear whether EPA has authority to require this but there likely is no harm in asking.

Backwaters

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

New PCB findings

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

Woods Pond

- Figure 6 of the Permit indicates that cleanup activities in Woods Pond (Reach 6) will be implemented in two phases, namely that cleanup on the pond will occur in Years 1-3 and that

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

Impoundments

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

Residential Properties

- A Quality of Life Compliance Plan should be inclusive of any impacts that may be experienced by property owners and/or residents within the vicinity of cleanup activities, as well as impacts that might be experienced by the general population from loss of recreational use of the river and the work site. This plan should be developed in cooperation with the impacted municipality and should include nuisance conditions (noise, light standards, etc), traffic impacts, health impacts (dust, airborne or waterborne PCBs, etc) and hours of operation. GE should be required to identify any residential properties that will experience a significant drop in value as a result of cleanup activities. *Pawa Note: This could play into GE’s hands because GE will likely argue that the remedy should be scaled back to minimize recreational and other impacts. We should discuss this and think it through carefully.*
- We support the Permit’s requirement that GE offer compensation for Environmental Restrictions and Easements that may be placed on private property as part of the cleanup.

Commented [BK10]: This could play into GE’s hands because GE will likely argue that the remedy should be scaled back to minimize recreational and other impacts. We should discuss this and think it through carefully.

GE should also be required to compensate property owners impacted by a loss of quality of life during clean-up and for access to their property required to accomplish clean-up.

Commented [BK11]: We are looking into this further but we believe CERCLA does allow compensation for access but that EPA typically encourages homeowners to give free access since contamination is being cleaned up.

Adaptive Management Approach

- We fully support an active and innovative adaptive management approach throughout the lifetime of the Rest of River cleanup. Once again we request a reasonable opportunity for review and comment by the municipalities so that the Rest of River municipal governments can actively participate in the design and implementation of the mitigation process. We appreciate that the Permit requires GE to utilize adaptive management, and we urge EPA to challenge GE to meet the adaptive management approach for every reach of the river. We restate our request that the EPA establish frequent periodic reevaluations to incorporate the latest innovative technological approaches or learn from failures at this or other sites, including in areas which may have been remediated already. Given the length of time this clean-up will take, there will be new information available about innovative approaches, about failures at sites, and as climate change impacts become better understood which will require reevaluation of the approach as outlined in the permit.
- The Permit should include a more detailed timeline for the 15+ years that the cleanup is expected to occur, including a set of milestones for work completed. Such milestones will allow the EPA and the public to see reasonable progress being made throughout the overall timeline.

Downstream Transport of PCBs during Construction

- All of the Housatonic Rest of River municipalities are concerned about the likelihood of PCB transport during cleanup construction activities. We urge EPA to amend the Permit to state clearly that GE must conduct new baseline sampling at several sites along the entire length of the river in Massachusetts, from the Confluence to Reach 9, to mirror the original sampling taken over a decade ago. This baseline should be established immediately prior to the beginning of any type of cleanup activities within the river channels, banks, floodplains, oxbows or impoundments, and should continue throughout the life of the cleanup. The Permit should also state that monitoring be in place whenever an activity likely to disturb PCBs occurs. The results of the sampling should be presented to each municipal government and to the Citizens Coordinating Committee. Prior to commencement of cleanup activities within each reach of the river, mitigation plans should be drafted, shared and understood by all parties, including GE, the agencies, municipalities and stakeholder groups, which clearly state what actions will be quickly undertaken to capture PCBs should they become exposed or enter the river system during those cleanup activities
- The Onyx Mill in Lee needs high water quality, run-of-the-river flows for its manufacturing processes. This facility is the last working paper mill in the Town of Lee and employs approximately 150 people, so it is critical that this company not experience an interruption due to sediment transport, PCB contamination or low water flow conditions. The Permit must

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include more specific language and water quality standards to protect water quality and that guarantees adequate flow for manufacturing. We suggest that this language or similar language be added to Section .II.B.10.c. "(4) Permittee shall reimburse entities which experience financial losses due to a degradation to water quality or quantity due to corrective measures and/or construction within Reaches 5-16."

- The Glendale Hydro-electric Facility requires adequate flows, within the confines of its current FERC license, to operate. The Remedy Plan must set specific language and standards that guarantees adequate flow in order to not disrupt the hydro-electric plant's normal operations.
- We are concerned that water quality levels may be degraded during cleanup activities, which could impact the function and ability of our municipal [and industrial](#) wastewater treatment plants to meet their discharge permit requirements. We request that EPA and DEP work together to set standards that require GE to meet certain water quality standards during cleanup. Should GE be unable to meet these standards, we request that the agencies work cooperatively with municipal and industrial permit holders to help them continue to operate within the confines of broad environmental compliance, recognizing that the impacts of the PCB clean-up are entirely outside of the local operators' control. [Similar to the Permit section on Water Withdrawals and Uses \(Sec. II.B.10.c.\) there should be requirements regarding waste and stormwater discharges and uses.](#)

Archeological Concerns

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

Invasive Species Control

We are aware that invasive plant species thrive throughout the Rest of River corridor, yet [the Permit addresses this serious ecological issue only by listing an Invasive Species Control Plan as one of many that GE must develop as part of its SOW. Successful invasive species control will undoubtedly involve a long-term commitment. We thus](#) request that the Invasive Species Control Plan establish standards for the long-term, [post-construction](#) control of invasive species, [likely on the order of decades rather than years.](#)

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

Respectfully Submitted,

Daniel L. Bianchi, Mayor
City of Pittsfield

Channing Gibson, Chairman
Lenox Board of Selectmen

David Consolati, Chairman
Lee Board of Selectmen

Stephen A. Shatz, Chairman
Stockbridge Board of Selectmen

Deborah Phillips, Chair
Great Barrington Board of Selectmen

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

CC: The Honorable Elizabeth Warren, U.S. Senate
The Honorable Edward Markey, U. S. Senate
The Honorable Richard Neal, U.S. House of Representatives
The Honorable Benjamin B. Downing, State Senator
The Honorable Tricia Farley-Bouvier, State Representative, 3rd Berkshire
The Honorable Smitty Pignatelli, State Representative, 4th Berkshire
Ms. Maeve Vallely Bartlett, Secretary, Exec. Office of Energy & Environmental Affairs
Mr. Matthew Pawa, Esq., Pawa Law Group

ATTACHMENT A

Mass. General Laws and Hazardous Waste Siting

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

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

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

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1581 (10th Cir. 1993) (“Contrary to the United States’ claim, permitting state involvement in hazardous waste cleanup outside of CERCLA’s ARAR’s process, based on independent state authority, does not render the ARAR’s process irrelevant.”).

ATTACHMENT B

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

Section 3. Cap Monitoring and Maintenance.

ATTACHMENT C
BRPC Transpo