

HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE

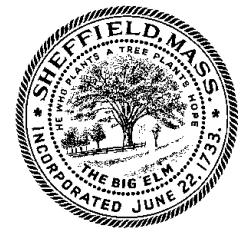
AGENDA

Rest of River Municipal Committee
April 3, 2018, 9:00 a.m., Lee Town Hall

1. Introductions
2. Review of minutes of March 9, 2018 meeting
3. Meeting with Alexandra Dunn, EPA Region 1 Administrator
4. Other Business
 - Reminder that there's a Citizens Coordinating Council meeting April 11, 2018
5. Executive Session – minutes of March 9, 2018
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.



HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE Meeting Minutes

Rest of River Municipal Committee, April 3, 2018, Lee Town Hall

1. Introductions. The meeting opened at 9:06 a.m and introductions were made. Attending the meeting were the following Committee members:

Pat Carlino, Lee Select Board
Christopher Ketchen, Lee Town Chief Administrative Officer
Christopher Ketchen, Lenox Town Manager
Christopher Rembold, Great Barrington Planner
S. Shatz, Stockbridge Representative
J. Tabikan, Great Barrington Town Manager
Rene Wood, Sheffield Representative

Others present:

Clarence Fanto, Berkshire Eagle
Lauren Gaherty, BRPC
Phil Gilardi Lenox citizen
Nat Karns, BRPC
Tom Matusko, BRPC
Jim McGrath, Pittsfield
Joel Williams, Berkshire Record

2. Review of minutes of March 9, 2018 meeting. Motion to accept the minutes as presented was made by C. Rembold and seconded by S. Shatz. Minutes were unanimously accepted as presented.

3. Preparation for meeting with EPA Regional Administrator Region One and other EPA members.

N. Karns reviewed the upcoming meeting requested by Alexandra D. Dunn, JD, newly appointed EPA Administrator, Region 1. Key points of the ROR Municipal Committee were reviewed as well as the need for continued municipal review and input on all GE submitted plans, including scopes of work and cleanup plans. C. Rembold commented on the work he is doing to document 12 – 15 years of information on GB water supply wells, new well plans, and the impact of the possible landfill site near Rising Pond dam on such plans. N. Karns stated such letters should be sent to Mike Gorskey, DEP who is DEP's lead on the no PCB landfill in Berkshire or South County issue. Discussion focused on what members specifically wanted to bring up during the discussion with Administrator Dunn, such as how may the committee help EPA in its EAB Remand response; response timelines; impact of Administrator Pruitt; request for continued SKEO technical support for commenting on GE documents; EAB denial of GE's in-perpetuity PCB responsibility; and the shifting of future PCB cleanup costs to third parties; and whether the EPA was holding course.

4. EPA joins meeting. At 9:36 A.M, following informal introductions,
Alexandra Dunn, EPA Region 1 Administrator
Jim Murphy, U.S. EPA
Dean Tagliaferro, U.S. EPA
Tim Conway, U.S. EPA, Legal
Kelsey Dunville, U.S. EPA
Matthew Russett, Staff Assistant to Congressman Neal
joined the meeting.

Formal introductions were made. N. Karns thanked Administrator Dunn, EPA staff, and M. Russett for being here today and acknowledged the excellent working relationship with EPA over many years. He next briefed the EPA delegation on the ROR Municipal Committee's concerns, on which there is total agreement, starting with no landfill. He thanked the EPA for siding with the Committee on opposition to any landfill in Berkshire County; he noting that each of the proposed landfill sites has fatal flaws. Asked the EPA how the committee can support the EPA as it addresses the EAB Remand. The second set of issues he discussed focused on the disappointment in the EAB's ruling on the in-perpetuity issue and gave several examples of construction require to maintain existing infrastructure and noted that the Committee does not understand why any third party should be responsible for future expenses that will be required to address PCB cleanup. He cited the recent \$50,000 cost to MassDOT for recently replaced bridge abutments on a Lee / Lenoxdale bridge as well as upcoming water line, sewer line and bridge replacements/repairs. His final point was the need for continued close collaboration between the Committee and EPA and the municipalities as the scope of work begins to play out. He stressed and cited benefits of doing so, using Pittsfield as an example.

Members of the committee addressed their specific concerns to the EPA, as summarized below:

- P. Carlino: Discussed her years in Town service and that the dump issue is her main concern; spoke of Lee coming into its own as a destination and the negative impact a PCB landfill would have on Lee. Don't want to be the dump site for GE and asked why PCB's were away in Hudson but not here?
- S. Schatz: Unified nature of committee and each municipality supports its neighbor communities' concerns, particularly no dump; funding provided by towns to support the Committee's efforts.
- J. Tabikin: Focused on tremendous commitment South County communities have made over an extended period of time to the ROR effort and how to turn this liability to both our economies and health into an asset. Reviewed several negative impacts of PCB contamination. Proposed landfill location in GB is both adjacent to the river and near the site of a new Town water source. Asked the EPA to take a holistic view; importance of tourism and natural environment.
- C. Ketchen: Landfill adjacent to Wood's Pond impacts Lenox as much as Lee; concerns about details of cleanup, such as impacts on roads etc. Concern about state and local regulations such as ACEC and 21D being overridden; missing details such as siting of temporary

dewatering site; need more help from EPA to guarantee the cleanup will not negatively impact quality of life.

- R. Wood: Supported other's comments; noted ROR towns not included in developing the Consent Decree; spoke of income, job, health, income and other markers in Berkshire Co., which are below state averages, and the huge economic impact the cleanup will have on these communities and their budgets, such as road repairs after cleanup activities with PCBs left behind. Economic stability stressed as well as need for continued SKEO technical support.
- J. McGrath: representing Mayor Tyer who is interested in pursuing a mediated settlement; Pittsfield would also like to be at the table as cleanup work plans are developed as municipalities know their communities and can be helpful.

Administrator Dunn spoke, noting she was coming into a long novel and needed to know the previous chapters, and of the ongoing commitment of the EPA. She spoke of her short time on the job (10 weeks) and her wanting to come meet with the ROR Municipal Committee, the first of several discussions she will have in this area. Her background: 1) first job after law school was at American Chemistry Council where clients included GE and her focus was on superfund sites, RICRA, environmental justice, community engagement and the importance of municipal voices; 2) worked on municipal water and sewer issues; interested in infrastructure, municipal issues, and holistic watershed solutions; 3) Professor at Pace Law School when the Hudson River communities were engaged in whether to dredge PCB cleanup; and 4) worked with state regulators and taught environmental justice.

Other comments included:

- Fully supportive of municipalities being included; EPA can't direct without support of the communities; Get to a solution that is the right or best outcome under the circumstances.
- Multiple tracks to explore, including mediation, and government moves slow, including process EPA has to go through for decisions;
- On the EAB Remand, Mass Commonwealth providing additional support to EPA; working well together.
- EPA still wants to explore mediation as it can occur concurrently as legal options.
- She explored where the communities are unified and where their opinions may differ and this was explained to her.

T. Conway encouraged those who have information on areas covered by the Remand, all dealing with disposal, to forward it to him. EPA will be making the decision on what to include in about 6 weeks, when the record gathered will be evaluated against the 9 permit criteria. He feels the EAB gave specific guidance on what they wanted to see. After discussion, it was agreed that he would send specific areas / particular points where the EPA was seeking municipal assistance to L. Gaherty by April 10th. Highlighted areas were zoning by-laws, land use ordinances and master plans. (See pgs 128 – 145 or the Remand.) Include DEP in on a conference call re: this? Everything taken in by EPA becomes part of the Administrative Record.

Several times during the meeting, the EPA as well as the Committee emphasized the importance of its key point and the ROR Municipal Committee being at the table. The role of individual municipalities as it differs from the committee was explained.

N. Karns gave a brief review of the Consent Decree and who was present, and not present, in those negotiations and opened a discussion of the importance of impoundments and dams, particularly private and abandoned dams. This was cited as an example of how the Committee has helped EPA understand issues in the cleanup, as well as the condition of many dams in the ROR area, which were not previously on the EPA's radar. Administrator Dunn spoke to this and particularly if any capping is done behind dams. Compliments to the communities were given by EPA staff and these cited points were put into the Permit. Administrator Dunn indicated she would like to have the response to the EAB Remand address future work and that any extra costs will be handled by GE to avoid future financial burdens to the municipalities. Bridges and utility crossings also discussed.

R. Wood stressed the EPA/Committee partnership and thanked EPA for ongoing SKEO technical support and asked if it would continue to be made available. D. Tagliaferro said EPA will continue SKEO support.

S. Shatz brought up the issue of Administrator Pruitt, access by others to him, his priority list to push cleanups along, and his concerns as to the impact this has on our cleanup, as well as the need for EPA's continued support and partnership with the municipalities. If that EPA support were to change, the Committee's strategy may also change.

A. Dunn answered his concerns: the EPA will not change its position on the landfill or other issues in answering the EAB Remand; the ROR cleanup site is not on Pruitt's superfund priority list, which applies only to cleanups that have languished for years/decades. She felt this cleanup site was in good place on community involvement. The priority list is a catalyst for conversation, but here conversations are very rich. She felt this site was exactly where it needed to be. She discussed mediation, as a separate track, as well as a recent letter from GE, from which she read a particular paragraph. She will make this letter available to the Committee. Feels GE needs to give specific details rather than generalities. Mediation may represent the potential for the best outcome with the least bad outcomes. Felt this might be a particular moment for talking.

Discussion ensued on mediation and GE's offer to pursue mediation, particularly given the binary nature of an onsite PCB landfill in one of the communities. Either way the EAB's forthcoming decision on the landfill issue is appealable. Mediation may be able to cut time; not uncommon for a community to be paid to host such a landfill, citing the recent Raymark case in CT. The EPA has never forced a mediated solution. There were questions regarding what constitutes consensus, as T. Conway said agreeable to all stakeholders, but it turns out that consensus may not be 100% agreement. How the mediation is set up can define what consensus means. S. Shatz said to discuss mediation the Committee needs to know specific details from GE and the EPA, including scope, framework, ground rules, who will participate, what role each party will have. Administrator Dunn agreed we need to get to specifics.

The EPA contingency left at 10:45 to mutual expressions of appreciation for the conversation and opportunity to get to know each other, restatements of continued support of ongoing EPA

positions, especially on the landfill issue, and the municipalities' pledges to help in supplying information for EPA's EAB Remand response.

Pat Carlino left the meeting at 10:47 a.m.

5. Executive Session – to discuss ongoing litigation. At 10:50 a.m. N. Karns requested a motion to go into Executive Session to approve the executive session minutes from the 3-9-18 meeting. Such discussion, if held in open meeting, may have a detrimental effect on the legal position of the Rest of River Municipalities legal action with EPA and GE. After the Executive Session, the Rest of River Committee will not reconvene in regular session but will adjourn from executive session. Motion made by R. Wood, seconded by J. Tabikan; motion carried unanimously. Roll call vote: C. Ketchen, Lee, AYE; C. Ketchen, Lenox, AYE; J. Tabikan, Great Barrington, AYE; S. Shatz, Stockbridge, AYE; R. Wood, Sheffield, AYE.

Meeting Materials:

- Meeting Agenda 4-3-18
- Draft Meeting Minutes of 3-9-18
- GE letter to Administrator Dunn

Respectfully submitted,
Rene Wood, Sheffield's Representative



Ann R. Klee
Vice President
Global Operations - EHS
41 Farnsworth Street
Boston, MA 02210
T 617 443 3004
www.ge.com

April 2, 2018

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

Re: Housatonic Rest of River

Dear Alex,

Thank you for your March 7th letter regarding the Region's selected Housatonic Rest of River remedy.

Your letter states EPA is "continuing to explore all possible avenues, including mediation, that will result in a more expeditious cleanup that is satisfactory to all parties." GE stands ready to work together to reach a commonsense solution that will expeditiously clean the Housatonic Rest of River while protecting human health and the environment. Mediation holds the potential for the Rest of River to be cleaned up sooner than would be realized through protracted litigation and provides the parties the opportunity to address their concerns rather than leave them to the courts.

As my earlier letter indicated, GE does not want to prejudge any outcome or scenarios. GE commits to approach any discussions with an open mind to listen to issues and contribute to solutions. For example, in such discussions, we would want to hear from the Towns, the State, EPA, and other stakeholders regarding ideas about how GE might address concerns including on-site disposal – the issue remanded by the Environmental Appeals Board. To that end, GE is willing to participate in this effort with an independent and neutral mediator.

GE is proud of its record of successfully completing clean-ups in the area. As you know, GE already has cleaned up its former Pittsfield facility and worked with EPA in completing the clean-up of the first two miles of the River. These successes occurred even though, like now, there was a wide continuum of views and interests, with some parties ultimately objecting to the clean-ups approved by the Court in the Consent Decree.

GE is committed to listening in good faith to issues and concerns raised by the parties in assessing how we can address such concerns. Similarly, here, we recognize the Rest of River remedy will not be fully acceptable to all parties. However, that should not discourage us from a process to assess whether there is a better path forward that accelerates the clean-up, realizes results faster, and is consistent with the Consent Decree.

Sincerely

A handwritten signature in black ink, appearing to read "A. R. Klee". The signature is stylized with a horizontal line under the first name and a horizontal line under the last name.

Ann R. Klee
Vice President
Environment, Health and Safety