

HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE

AGENDA

Rest of River Municipal Committee
August 24, 2018, 9:00 a.m., Lee Town Hall

1. Introductions
2. Review of minutes of Aug. 17, 2018 meeting
3. Executive Session – legal strategy, mediation
4. Other Business
-- Standing of Mediation Agreement
5. 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; August 24, 2018, Lee Town Hall

1. Introductions. N. Karns opened the meeting at 9:02 a.m. Attending the meeting were the following Committee members:

Pat Carlino, Lee Select Board
Chris Rembold, Great Barrington Town Planner
Steve Shatz, Stockbridge Representative
Rene Wood, Sheffield Representative

Others present:

Lauren Gaherty, BRPC
Tom Matuszko, BRPC Executive Director
N. Karns, BRPC Consultant

2. Review of minutes of August 17, 2018 meeting. *Motion to accept the minutes as presented, with one correction, was made by C. Rembold, seconded by P. Carlino, and approved by unanimous vote.*

3. Executive Session – to discuss ongoing litigation. At 9:04 a.m. N. Karns requested a motion to go into Executive Session to discuss legal strategy for potential mediation or actual litigation regarding the EPA Rest of River clean-up and the appeals of the EPA's Permit and the EAB decision. 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 reconvene in regular session. *Motion made by P. Carlino, seconded by R. Wood. Motion carried unanimously with the following roll call vote: P. Carlino, Lee, AYE; S. Shatz, Stockbridge, AYE; C. Rembold, Great Barrington, AYE; and R. Wood, Sheffield, AYE. The Committee went into Executive Session at 9:04am.*

4. Additional Business and Adjournment: The Committee returned to open session at 10:25 am. The draft mediation agreement was discussed, as it now incorporates comments by KP Law's lead attorney for Sheffield. Comments reviewed; each municipality to review and decide if sending to their counsel for review, as well as with appropriate colleagues. Any comments will be discussed at a future meeting. L. Gaherty noted Attorney Pawa will be submitting an invoice for activities through the end of August in early September. Next meeting was set for Friday August 30, at 9a.m., with the main business being an Executive Session limited to 1 hr. *R. Wood motioned to adjourn, which was seconded by S. Shatz, and unanimously approved. The meeting adjourned at 10:50a.m.*

Meeting Materials:

- Meeting Agenda 8-24-2018
- Draft Meeting Minutes of 8-17-2018
- Draft of proposed mediation agreement, with comments

Respectfully submitted,
Rene Wood, Sheffield's Representative

**BICKERMAN DISPUTE RESOLUTION,
PLLC MEDIATION AGREEMENT**

BETWEEN

**General Electric Company, United
States,
Commonwealth of Massachusetts, State of Connecticut, C. Jeffrey Cook, Rest
of River Municipal Committee, Berkshire Environmental Action Team,
Housatonic River Initiative, City of Pittsfield**

The parties identified above, whose authorized representatives' signatures are affixed below, hereby agree to the terms and conditions of this Mediation Agreement.

I. Purpose and Responsibilities

The purpose of the mediation will be to attempt to arrive cooperatively and informally at a mutually acceptable resolution of the dispute over the EPA's October 2016 RCRA Corrective Action Permit Modification regarding the cleanup of the Housatonic River, including the proceedings before the Environmental Appeals Board of the U.S. Environmental Protection Agency, In Re General Electric, RCRA Appeal Nos. 16-01, 16-02, 16-03, 16-04, and 16-05.

II. Mediation Process

A. Overview

John Bickerman will serve as mediator and may be assisted by others as reasonably necessary at his discretion to serve the parties and accomplish the objectives of this Agreement. The mediator may review written information submitted by the parties and counsel. He may also communicate *ex parte* with mediation participants and other interested parties and organizations, as necessary to accomplish the purpose of the ~~agreement~~ Agreement.

During any joint mediation session, representatives of the parties may be expected to briefly present their positions on the issues in dispute and respond to the other parties' ~~positions~~, except that it is understood, due to the nature of municipal decision making, the Rest of River Municipal Committee and its member municipalities, should not be expected to always respond as stated above. These summary presentations may be made by counsel

Commented [RCW1]: I would like something that speaks to our municipal decision making and those who need to be involved and not set us up for non-adherence to the agreement before we even sign it.

or representatives of the parties. No rules of evidence will apply except as set forth in Section VI. The mediator may meet separately and together, as necessary, with the parties, their counsel or other interested parties or organizations to assist in the resolution process. These contacts may be by telephone or in person.

B. Schedule

~~The parties agree to comply with the mediation schedule in Attachment A to this agreement.~~

Commented [LG2]: If no schedule, then delete this section... Yes, per KP Law or as agreed upon

C.B. Party Representatives

The participants in the process, as necessary and appropriate during the course of the mediation, include the following: for the United States, appropriate representatives of Department of Justice and Environmental Protection Agency ("EPA"), General Electric ("GE"), Commonwealth of Massachusetts, State of Connecticut, C. Jeffrey Cook, Rest of River Municipal Committee, Berkshire Environmental Action Team, Housatonic River Initiative, and City of Pittsfield.

The Parties understand that any settlement negotiated by the Parties and recommended by the representatives of the Parties will need to be approved by authorized representatives of the Parties, including the appropriate municipal boards.

Commented [RCW3]: Should we use the language KP Law provided for section VII?

Commented [LG4]: This acknowledges that the towns' CEOs approval will be required.

III. Destruction of Documents

Forty-five (45) days after the conclusion of the mediation, the mediator will destroy copies of all materials sent or provided to the mediator by the parties, including confidential statements, confidential communications, pleadings and other documents, including but not limited to audio/visual tapes and electronic mail (e-mail) transmissions, to protect the confidential nature of the mediation. The mediator will retain a copy of the settlement agreement, if a settlement is reached.

IV. No Legal Advice Rendered By The Mediator

The parties to the mediation represent that they have obtained legal counsel or have chosen not to obtain legal counsel to advise them during the mediation. The mediator will not provide legal advice.

V. Conflicts of Interest

A. Consent to Mediator Disclosure of Prior Relationships

~~The mediator has made a reasonable effort to learn and has disclosed to the parties; (a) all business or professional relationships the mediator and/or the mediator's firm has had with the parties or their law firms within the past three years; (b) any financial interest the mediator has in any party; (c) any significant social, business or professional relationship the mediator has had with an officer or employee of a party or with an individual representing a party in the mediation; and (d) any other circumstances that may create doubt regarding the mediator's impartiality in the mediation.~~

~~Each party and its law firm has made a reasonable effort to learn and has disclosed to every other party and the mediator any relationships of a nature described in the preceding paragraph not previously identified and disclosed by the mediator.~~

~~The mediator has previously served in a similar capacity in the same dispute, with the United States, GE, Massachusetts and Connecticut as parties, in 2015 and 2016. The mediator is currently mediating a dispute involving EPA Region 1 regarding another Region 1 cleanup.~~

~~The parties and the mediator are satisfied that any relationships disclosed pursuant to the preceding paragraphs will not affect the mediator's independence or impartiality. Notwithstanding any such relationships, the parties have consented to chosen the mediator to serve in the mediation, waiving any claim based on such relationships, and the mediator agrees to so serve.~~

B. Future Relationships

Neither the mediator nor the mediator's firm shall undertake any work for or against a party regarding the subject matter of the mediation. The mediator's firm may mediate other matters involving one or more of the parties during the pendency of the mediation.

VI. Confidentiality

Unless the parties agree otherwise, this entire mediation process is a compromise negotiation. All offers, promises, conduct, and statements, whether oral or written, made

Commented [RCW5]: Comment from KP Law – disclosures are listed as well that we have been involved n the choice of the mediator. No disclosures yet so this should be deleted or we should get them (disclosures) and on the choice of the mediator, it should be that we consent to him – quite different than involved in the choice.

Commented [LG6]: In general the towns are subject to state and federal open meeting and FOIA regulations, and we need Town Counsel to advise us on this section.

in the course of the mediation by the parties, their agents, employees, experts and attorneys, and the mediator are confidential. Such offers, promises, conduct, and statements will not be disclosed to third parties, except persons associated with the parties in the mediation process and persons or entities to whom a party has a legal or contractual obligation to report, and are privileged and inadmissible for any purpose, including impeachment, under Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule or common law provisions. All other information, reports, data and/or documents prepared by or on behalf of the parties, and/or presented to the mediator are also deemed confidential unless they (a) were previously disclosed or known to a Party and/or lawfully within the public domain; or (b) are required to be disclosed by the Freedom of Information Act, 5 U.S.C. Section 552, the Massachusetts Public Records Law, M.G.L. c. 66, Section 10, M.G.L. c.4, Section 7(26), the Connecticut Freedom of Information Act, C.G.S. Section 1-200 et seq., or other applicable law or regulation. If any request is received by any Party for the disclosure of information, reports, data and/or documents deemed confidential, the Party receiving such request must promptly notify the other Parties and provide them a reasonable opportunity to seek to protect said information, reports, data and/or documents from disclosure. Evidence previously disclosed or known to a party, or that is otherwise admissible, shall not be rendered confidential, inadmissible, or not discoverable solely as a result of its use in the mediation. Furthermore, party's experts who participate in this mediation shall not be disqualified from assisting a party in subsequent litigation concerning the subject of the dispute of this mediation. Written communications provided directly by one party to the other party may not be confidential under the Alternative Dispute Resolution Act.

In his sole discretion, the mediator may restrict participation in this process to any party that fails to maintain confidentiality of mediation communications. The confidentiality provisions of this Mediation Agreement shall remain in full force and effect without regard to whether any legal actions or issues arising out of the case are

settled or concluded by final judgment or otherwise, and shall survive termination of this Mediation Agreement.

The ~~contract?~~ Agreement² in its entirety is subject to the Freedom of Information Act, the Massachusetts Public Records Law and the Connecticut Freedom of Information Act.

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VII. Settlement Agreement

Any resolution of the dispute shall be reduced to writing and executed by the parties, and ~~after receiving the required approval by management.~~ shall be subject to approval by vote of the appropriate executive body or officer as applicable to the party. Parties are advised to have the settlement agreement independently reviewed by their own counsel prior to executing the Agreement.

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VIII. Disqualification of Mediator

Neither John Bickerman, nor any person who assists him, is a necessary party in any arbitral or judicial proceeding relating to the mediation or to the subject matter of this dispute. Neither John Bickerman, nor any person who assists him, may be called as a witness or an expert in any pending or subsequent litigation or arbitration involving the parties and relating to this dispute. Moreover, John Bickerman and any person who assists him will be disqualified as witnesses or as experts in any pending or subsequent litigation or arbitration relating to this dispute.

IX. Mediation Costs

A. Explanation of Mediation Costs

GE and EPA shall each be responsible for payment of half the mediator's fees and expenses. Mediation fees represent charges for time spent with the parties, time required to study documents, research issues, correspond, make telephone calls, prepare draft and final agreements, and do such other things as may be reasonably necessary to facilitate the parties' reaching full agreement.

Actual expenses are billed at cost. They include expenses incurred for travel, meeting facilities, conference call bridges and any expenses incurred in providing reasonable accommodations as required by the Americans with Disabilities Act.

B. Sharing of Mediation Costs

The responsibility for payment of the mediator's fees and expenses shall be divided equally between GE and EPA. EPA and GE shall each establish appropriate contractual arrangements and other financial mechanisms to pay for their shares of the mediation expenses. The mediator shall provide monthly invoices to both GE and EPA.

C. Obligation of the EPA

The requirement of payment or obligation of funds by the EPA shall be subject to the availability of appropriated funds legally available for such purposes, and no provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the federal or state law. In the event the EPA fails to meet its financial obligation to the mediator, GE shall not be responsible to the mediator for such obligation.

X. Consent to Mediation

By their signatures on the attached pages, the parties to the action hereby consent to mediation and agree to be bound by the terms and conditions of this Agreement.

XI. Compliance with Laws.

The parties shall comply with and this Agreement shall be subject to all Federal, State and local laws, rules, regulations and orders as applicable, such provisions being incorporated herein by reference.

XII. Severability.

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal, or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both more parties would be substantially or materially prejudiced.

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XIII. Entire Agreement.

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This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matter described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

Signature blocks

For: United States

By: _____

Of: _____

Signature: _____

Dated: _____

For: General Electric Company

By: Roderic McLoren
Executive Counsel - Environmental Remediation

Of: One EHS

Signature: *Roderic McLoren*

Dated: 5/16/18

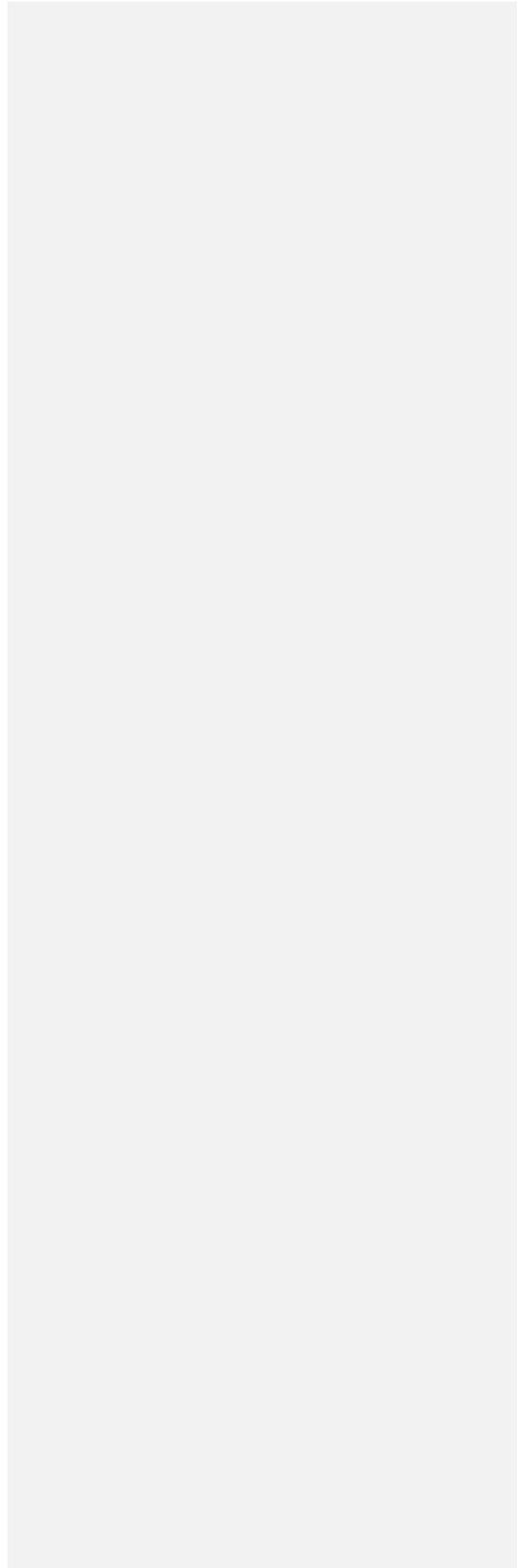
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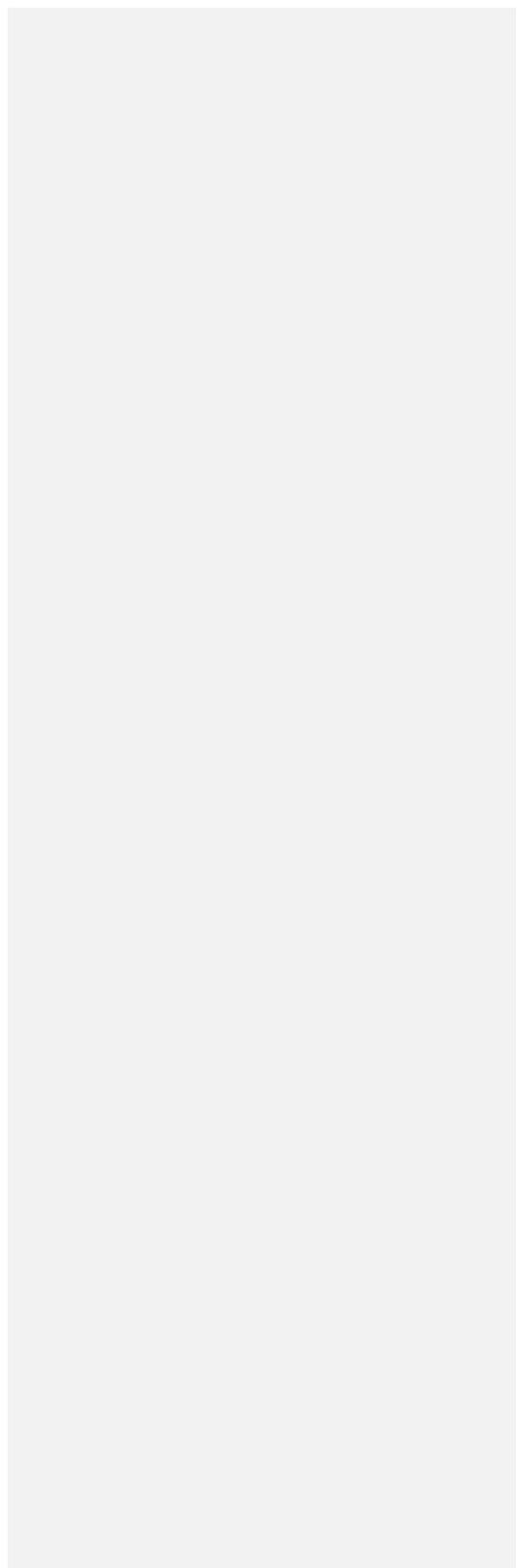
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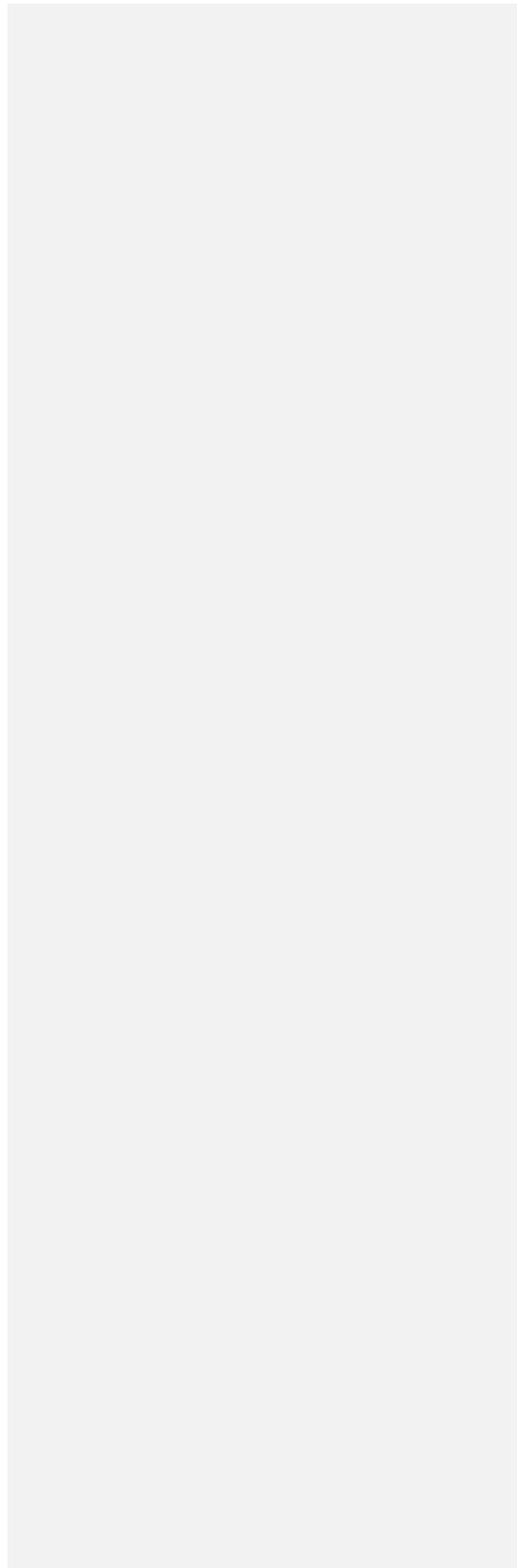
For: Jeffrey C. Cook

By: _____

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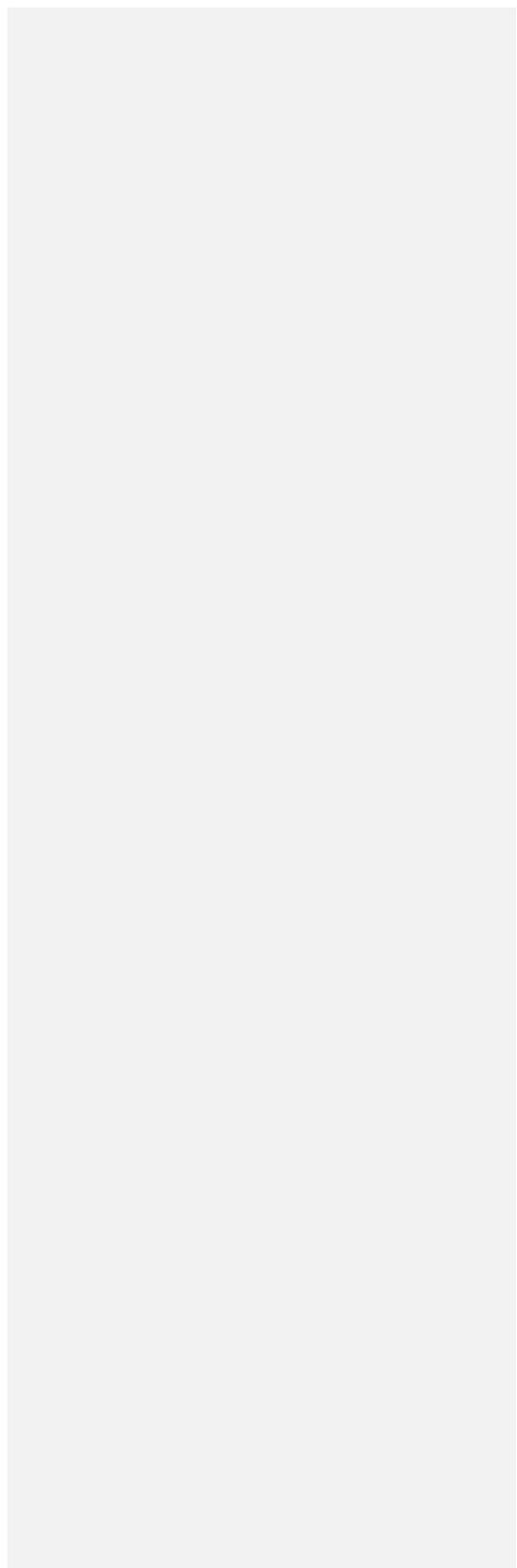
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For: Berkshire Environmental Action

Team

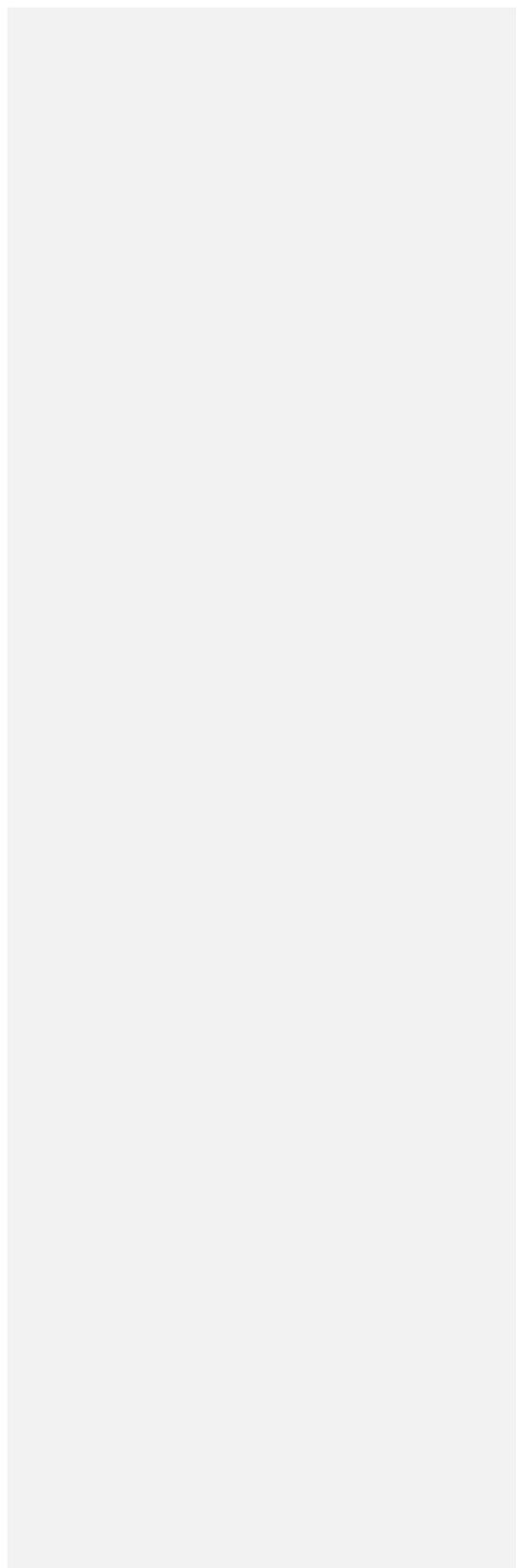
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For: The Housatonic Rest of River
Municipal Committee (comprised of
the Towns of Great Barrington, Lee,
Lenox, Sheffield, and Stockbridge)

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For: City of Pittsfield

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