

**BERKSHIRE REGIONAL PLANNING COMMISSION**  
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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**  
**September 12, 2014, 9:00 am**  
**Stockbridge Town Offices**

1. Introductions
2. Review of minutes of August 27, 2014
3. EPA Remedy Plan – submission of comments to EPA
  - Finalize Municipal Committee comments for submission
  - Set schedule for final edits and signatures
  - Reminder: EPA Public Hearing 9-23-14
  - Reminder: deadline date for submission of comments 10-1-14
4. Other Business
  - Next meeting date 9-24-14 – set meeting agenda
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  
September 12, 2014 @ Stockbridge Town Offices**

- 1. Introductions.** The meeting opened at 9:03 a.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 (9:07 a.m.)  
Jorja Marsden, Stockbridge Town Administrator  
Jim McGrath, Pittsfield Park, Open Space, and Natural Resources Program Manager  
Bob Nason, Lee Town Manager  
Chris Reibold, Great Barrington Town Planner  
Steven Shatz, Stockbridge Select Board  
Rene Wood, Sheffield Select Board
- 2. Review of minutes of August 27, 2014.** Motion to accept meeting minutes as presented was made by P. Carlino, seconded by R. Wood and passed 5-0-1, with Stockbridge abstaining.
- 3. EPA Remedy Plan and next steps.** N. Karns lead a group discussion of the next steps, including the EPA's extension of the deadline for written comments to Monday October 27<sup>th</sup> and a revised timetable for getting signatures for the Committee's letter's signature page. L. Gaherty noted that Attorney Krauss had sent his edits on the Committee's letter and she would be sending them out shortly. An accompanying email would explain the Pawa Group's reasons for the edits and she noted that this had been reviewed by both Attorney Pawa and a colleague who was formerly with the EPA. Noting the confidentiality of the email, N. Karn said it dealt with the reality of what the EPA could grant the municipalities, re-focusing on a realistic strategy and how best to maintain a friend, rather than gain foe, status with the EPA. All of this will be discussed at the next session on 9/24/14.  
  
D. Clark gave an update of Pittsfield's current position and highlighted the results of their two public hearings, with tension noted between neighbors concerned about back yard/property value impacts and those who feel the current Remedy calls for too little cleanup and demand more. He reviewed

that about a quarter of the sediment removal will be in Pittsfield and there are significant neighborhood concerns. He shared language he proposed be incorporated into the Committee's letter which modified current language, seeking a more nuanced balance. He questioned whether the underpinning Risk Assessment methodology was solid and called for a better balance between short and long term goals in the Core Areas.

Discussion ensued as to whether such a position would either undermine the EPA's Remedy or the Committee's overall position. Members focused their attention on Table 1 *Cleanup Standards for PCBs for Floodplain Soil by Exposure Area – Current Use* (and by extension Tables 2 -5) for the 90 Exposure Areas (Figures 3 and 4) and questioned whether underlying assumptions of usage are valid and, by extrapolation, the validity of the conclusions of risk assessment. The use of the utility corridors and the frequency of canoeist usage were cited as examples of potential inaccurate information. The Committee wished to see the methodology used in determining the statements in Table 1 and determined it would be of use to volunteer to work with the EPA to revisit each parcel's general usage by activity and for each usage, time in area (exposure per day) and compare them to the assumed EPA risk assessments. It was felt such joint activity would help determine whether Tables 1 – 5 should be revised to more accurately state the amount of cleanup needed in each of these parcels. N. Karns noted the EPA is actively seeking comments on how each parcel is used by the public, including frequency of usage.

This tied back to Pawa Group's comment that it is key to address the community impacts of the cleanup and as such need to secure a seat at the table when the discussion turns to implementation details. Discussion turned to asking for EPA/GE consultation with the ROR communities, including specifically where and how the communities could be of real, tangible assistance to EPA, as it was felt this would increase our value at the table. ARARS were focused on, using the Conservation Commissions as an example, and it was agreed that Pittsfield would share its Community Development's draft letter making this case.

The group next discussed the next draft of its Committee letter and how best to deal with comments made on pages 6-7 of the current draft. Pittsfield was OK with the comments with the exception of those made relative to the Core Areas and provided new language to address them. It was suggested the ROR Committee come up with nuanced language acceptable to Pittsfield, again with each community able to be more specific in their own municipal letter to the EPA.

Impacts of climate change were discussed and a report on this was cited (May 2014). L. Gaherty was going to locate it and possibly cite it in the group letter. The group discussed how to make sure monitoring and adaptive management address this when it happens, not years later. The short term result of less PCB removal means a longer term of PCBs being in the river, banks and floodplain and subject to reentry due to climate change and river meandering over the longer term. How to address this situation? Discussion focused on how best to call for more robust Remedy monitoring protocols - more reactive and timely in implementation - rather than as currently stated in the Remedy; how to ensure available and long term funding from GE or its successors; performance triggers and performance standards to make monitoring simple and straightforward; how to get the details teased out for the Statement of Work on pages 37 – 40, with emphasis on pg 40 v. operation and maintenance plan.

Next discussed and agreed upon was the need for the municipalities to have one or more consultant interfaces – paid for by GE – with the new idea of having a consultant in perpetuity for ongoing

review of plans, monitoring, etc., which for the Committee, covered issuance of the Permit through Certificate of Compliance; it was noted a Certificate of Compliance has yet to be issued in Region 1.

B. Nason focused on Onyx discharge permits and his concerns related to all discharge permits, such as those for municipal as well as private businesses. It was suggested the EPA be asked to require GE to post a bond to deal with such issues.

N. Karns encourage the municipalities to call out such details in their letters to the EPA and to encourage any impacted business or organization to write a letter to the EPA specifying their concerns in detail, as only they know this level of information.

It was suggested the Town of Lee include a specific listing, and maps, of the backwaters, coves and any other areas which were surveyed by EPA but not specifically called out in the Permit. They need to be cited so they are not left out. Suggestions further cited the EPA letter on this matter, their report and associated maps for inclusion in such a letter.

J. McGrath encouraged municipalities to specifically call out any in-place Municipal recreational plans such as their Open Space and Recreation plan, citations in Master Plans, etc. and to use the time between comment submission and EPA's release of Final Remedy to get plans updated or in place. Such plans will need to be reviewed by the EPA when implementing the Remedy and may provide opportunities for municipal benefits, such as support for the bike path in Lee or the access trail to the river in Stockbridge.

A three tiered response to the EPA Remedy was discussed: BRPC comments, 6 ROR Municipal Committee's comments and comments from individual municipalities and associated Boards, such as the Board of Health. Comments at each of tier may differ.

Next steps were reviewed: L. Gaherty to send Pawa Group's comments and suggested draft letter revision; she was going to update the group letter based on member comments; municipalities will share local letters as developed; focus on long term monitoring, involvement of local boards – and letters from same if possible – and recreation updates and opportunities. This brought the focus to the Quality of Life Plan and the need again for various Boards of Health to submit appropriate letters. Pittsfield will likely take a lead on this with the sharing of a possible letter from their Health department as Gina Anderson has been through this. A quick review of the community meetings revealed that all have yielded similar concerns: transportation impacts, property values and use disruptions during cleanup, impact on Scenic Berkshire Railroad and either too much or too little cleanup being called for in the Permit.

4. **Upcoming Events and Meeting.** The schedule was reviewed: September 23<sup>rd</sup> at 6:30pm, Lenox High School - EPA Public Hearing; next ROR Committee - September 24<sup>th</sup> at 9am, Stockbridge and if needed a final meeting on October 8, 2014 at 3pm at Stockbridge; final comments to the EPA due Monday October 27<sup>th</sup>. Signature dates were reviewed.
5. **Adjournment.** The meeting was adjourned after at 10:35 a.m. on a motion by D. Clark, seconded by C. Ketchen and approved unanimously.

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

**Meeting materials:**

Meeting minutes for August 27, 2014 meeting; Agenda for August 27, 2014; Pittsfield document with comments on page 7, 9/9/14 Draft; Housatonic ROR Municipal Committee draft letter.



**HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE**

???, 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:

We, the six Berkshire County Rest of River Municipalities, submit these comments on the Draft Modification to the Reissued RCRA Permit (the Permit) for the cleanup of the Housatonic Rest of River.

In general, we collectively have four main, overarching concerns regarding the Permit:

1. No acknowledgement that the Rest of River municipalities will suffer socioeconomic impacts **and damages** due to cleanup activities;
2. The lack of a clearly stated process for municipal involvement and input;
3. A concern that the Permit is not comprehensive enough **in some areas**; and
4. The lack of clear wording that demonstrates GE maintains 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 the 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 a host of negative socioeconomic impacts **and financial damages** due to cleanup activities that will occur over a series of 15 years **and/or** more. Although we understand that the EPA believes the RCRA/CERLA processes do not expressly allow for compensation of socioeconomic impacts that the Rest of River communities will endure during the cleanup process, we reserve the right to demand socioeconomic impact compensation if further legal research determines such compensation is allowed. We expect and look forward to working directly with the permitting

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agencies and GE to identify beneficial opportunities to mitigate these impacts that our municipalities, residents and businesses will experience.

- The Quality of Life Compliance Plan should specify a process by which business which are directly impacted by the clean-up, either by direct impacts on operations or due to loss of business, may receive compensation for economic losses. A qualified independent third party, based in Berkshire County, such as a community development corporation, should make decisions regarding claims and GE should establish a fund under the third party's control to pay for such claims, with requirements for re-capitalization as necessary throughout the course of the clean-up.
- We request that the EPA take all legal means to require ~~the~~ GE to employ/utilize local businesses, workers and resources to the extent possible throughout the cleanup process.

### **Municipal Involvement and Input**

The Rest of River Municipal Governments request equal status to GE and the States in reviewing, approving, disapproving or modifying design and implementation plans for each stage of Rest of River (ROR) cleanup.

- One of our most overarching concerns regarding the Permit is that nowhere does it state that the EPA, GE and 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 and comment of Statements of Work, Remedial Design Work Plans, Remedial Action Work Plans or other associated plans. At a minimum the Permit should state in the footnote on p. 7 and in Section II.B.10.a. that submittals pursuant to the Permit, or approvals, disapprovals or modifications to the Permit will be done in consultation with the States and the municipalities. This is needed 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. To date, EPA staff have a record of working closely with Pittsfield in the cleanup of the GE site and first two miles. Our concern is that a staff change could occur during the cleanup. Will new staff continue this good working relationship? Another concern is that top level EPA officials could change this approach. It is clear that many members of the US Congress would like to rein in the EPA's authority, so to be protective of municipal interests into the future, we believe that the ROR municipalities must be added to the list of entities that must be consulted for submittals under this Permit.
- 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.
  - The pPermit should explicitly require GE to comply to the maximum extent with local Applicable or Relevant and Appropriate Requirements (ARARs) in conducting the clean-up. Municipal bylaws and regulations should be included as ARARs in the pPermit; the municipal governments are operating under the sanction of Massachusetts General Laws and, in some instances, are actually given the responsibility of enforcing State regulations. We offer as an example the Federal Energy Regulatory Commission's Order Granting Authorization Under Section 3 of the Natural Gas Act and Issuing Certificates, issued June, 10, 2014 (FERC permit issued to Cameron LNG, LLC, and Cameron Interstate Pipeline, LLC

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(Docket Numbers CP-13-25-000 and CP-13-27-000)). Page 28 of that Order specifically gives deference to local authorities, stating:

78. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this authorization. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.

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- We cite a somewhat typical FERC permit requirement due to the fact that FERC has federal preemption authority over local and state permitting processes and requirements for interstate gas pipelines but explicitly requires that companies seek those local and state permits and only overrides them if they are contrary to the FERC permit or effectively prohibit the construction of the permitted activity.

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- The public information process should be expanded beyond the requisite website mentioned in Section 2.B.11.(4) Community Health and Safety. A process to keep all citizens informed of the status of the cleanup should include periodic updates in local newspapers, access television and social media.

#### Requirements for the Rest of River Statement of Work

We note and support the development of a series of plans as part of the overall work plan. We note however, that the list of requisite plans does not include any details as to what ~~the GE, the municipalities~~ or the public should expect to be included in these plans. We have concerns regarding this lack of clarity and absence of detail.

- Of greatest concern is a lack of understanding on the ability of the municipalities or the public to review and provide input on the content of these plans, which is the basis for our comments above. It is imperative that local government officials and citizens be involved early in the development of the outline for these plans, as well as the review of such plans, to ensure that they ~~are as comprehensive~~ incorporate local knowledge of sites and are as protective of municipal interests as possible. Direct involvement in the development of plans will help to ensure that local plans and wishes are incorporated into mitigation and restoration efforts. As an 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. 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.

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- We again request that the Rest of River municipalities be given status equal to that of the States in reviewing and providing input on the plans as they are developed.
- 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 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 said boards in reviewing air and water quality monitoring and other data that is generated during construction.

▪ Sec. II.B.11.I.(3) Quality of Life Compliance Plan, Road Use (p. 39 of the Permit). Compliance with the Transportation Impact Assessments Scope of Work, drafted by Berkshire Regional Planning Commission and provided to EPA staff on January 7, 2014, should be required of GE and explicitly called out in this section. The assessment methodology is intended to provide a quantifiable and fair method to ensure that any damage to local infrastructure caused by clean-up operations is repaired and that traffic management is in place during the course of the project which fully involves the municipalities and allows them to protect the interests of their citizens and affected neighborhoods, both in the pPrimary and sSecondary sites.

▪ Sec. II.B.11.I.(4).(b). Quality of Life Compliance Plan, community complaints and concerns, p. 39. As established for the Hudson River clean-up, GE should be required to have a 24-hour, seven-days-a-week telephone call-in center where citizens can talk directly to a staff person regarding issues and questions regarding clean-up activities.

▪ Sec. II.B.11.I. Quality of Life Compliance Plan, p. 39. BRPC does not believe that the four areas to be included in the Plan are sufficient. We request that the following also be included:

(5) Property Value, including a requirement that GE establish a fund, controlled by a local non-profit or governmental housing organization, such as the Berkshire County Regional Housing Authority or Berkshire Housing Development Corporation, to compensate homeowners for documented losses to home values caused by clean-up activities or the presence of contamination on their residential properties which affects their ability to sell their properties at a fair market value if such activities or contamination was not present.

(6) Municipal Property Tax Revenue Compensation, requiring that GE compensate municipalities affected by documented reduced property valuations due to clean-up activities or the presence of pollution on properties. GE should also be required to document the value of clean up facilities and equipment with such value to be subject to approval by the municipal Assessor, such property shall be subject to property taxes (facilities as Commercial; equipment as Personal Property) and be required to pay subject property taxes.

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(7) Decommissioning Plans for sites and infrastructure necessary to accomplish the clean-up should be developed and implemented, -subject to review and approval by municipal authorities.

▪ (8) An interagency working group should be established, similar to what has been done for the Hudson River Clean-up, involving federal, state and local agencies, to work together to maximize benefits and minimize negative impacts from each stage of clean-up and to assist in locating resources to assist the municipalities in accomplishing community goals during the course of the clean-up and provide facilitation resources to this group to assist it in achieving its objectives.

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### In-county Landfill

We strongly support the EPA's requirement that all removed contaminated sediment and floodplain soil be disposed of at an existing hazardous waste landfill. We do, however, have questions regarding the movement and temporary storage of PCB-contaminated materials in more detail. For example:

- We believe that the Permit should discuss in more detail how PCB-contaminated sediment and materials will be transported and stored.
- In Attachment D of the Permit it states that "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 the EPA would "otherwise" approve stockpiled TSCA-regulated materials within the region. This is especially an important issue within the ACEC and in residential areas which are proximate to the river and proposed clean-up areas. We also believe that the permit should include a definition of what is "temporary"; we believe temporary should 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.
- We restate that the municipalities 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 approval of operational plans for work areassites.

## Remaining PCB contamination

- Significant amounts of PCB contamination will remain in the river channel, bank 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. As we understand it, in general Reach 5A contains a significant portion of existing PCBs and, where feasible, we request that the EPA remove PCBs to the greatest extent possible in this upper reach of the Rest of River to reduce the possibility of re-contaminating lower reaches. This includes Core Area habitat (please refer to our comments below).

*Pittsfield note for consideration: PTS position: the more extensive the clean up, the greater the socio-economic damages and local negative impact to neighborhoods, for which we may or may not be compensated. Leaving behind higher levels of contamination in the floodplain and core areas is OK, as long as it stays in place. PTS feels that a responsible position is to insure robust monitoring and response to river movements and erosion rather than arguing for more clean up.*

*We'd also like to state that while we don't have the technical expertise to comment on the specifics of the health risk analysis, we are concerned that if these assumptions of risk vs. user group are more conservative than justified, the scale of the clean up will be greater than needed and socio economic damages will increase proportionately. As such, we request that EPA revisit the risk assessment to make certain that their assumptions are as accurate as can be. This may require more communication with the noted user groups.*

- 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 EPA proactively require 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<sup>th</sup>. Other areas undoubtedly exist along the full length of Rest of River, and town officials look forward to working with the EPA to identify other areas which may require similar attention. 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.
- 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 the EPA insert language in the Remedy Plan that acknowledges the projected flooding increases due to climate change and requires GE engineering firms to incorporate these increases when they are designing their remediation activities. Data from

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USGS streamflow gages 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 7.5-14 years, and the 100-year storm may have a recurrence interval of 49 years. Widespread severe storm events and resulting flooding in 2005, 2006, 2010, 2011, 2014 in Massachusetts seem to support the theory 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.

- We are not convinced that leaving high PCB concentrations behind in Core Areas is scientifically justified. Neither the EPA nor the Executive Office of Energy and Environmental Affairs (EEA) have 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. 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 believe 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.

#### **GE Responsibility In Perpetuity**

It is clear to GE and the public that GE is responsible for cleanup of the Rest of River. There is no language in the Permit stating that GE is responsible for maintaining the performance standards in perpetuity. There are several reasons for our 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 severity of 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 believes that the GE Corporation will retain a strong American presence for decades to come-be around forever. We do not agree with this line of thought. GE could be purchased and/or dissolved taken over, go bankrupt or move all operations off shore, leaving the government with no responsible party to turn to for future remediation. Note, Rene has offered to bring information on the recent news about GE planning to divest it domestic appliance business as such evidence, We can consider including this in our comments.
- 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.

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#### Human Health and Safety

- The Permit under Sec. 1.B Duty to Mitigate, requires that the Permittee 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 Bboards of Hhealth will be involved 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 GE consultants will 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. As such, we take this opportunity to request that the Permit require GE to fund a public health coordinator to serve the local boards of health during cleanup activities and to aid them in conducting protective public outreach programs if the need arises.
- The Permit should direct the 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. The Permit should also state that GE will be responsible for providing any additional equipment or training that may be needed to meet all potential emergency situations described in the evaluation.
- 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. We respectfully request that the following language be added to Section II.B.11.I.(4)(b) of the permit: “This system shall include regularly scheduled community meetings at which the Permittee shall provide relevant updates on the progress of the cleanup. Local permitting boards shall be specifically invited to attend these meetings.” We also request that this language be inserted as Section II.B.11.I.(4)(c): “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.”

### Transportation Issues

- We take 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 negative impact that heavy truck traffic generated during the cleanup will have on local transportation infrastructure that was not designed to accommodate such high volumes or weight. The municipalities request that the EPA delineate each cleanup site as inclusively as possible to include all local road infrastructure that will likely be damaged from cleanup-related truck traffic and assess, with local assistance and input, the potential severity of such damage. Berkshire Regional Planning Commission has provided EPA project staff with a transportation impact assessment methodology, and we request that it be utilized as specific cleanup plans are developed in each reach to help determine and assess costs for bringing each utilized infrastructure component up to specification prior to its use and/or ~~and/or~~ repairing damage done by increased and heavier truck traffic. Such cost assessments will require a final review upon completion of each cleanup section.
- 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. The damage that occurred on Silver Lake Boulevard due to PCB-related construction is an explicit example of what should not be allowed anywhere else going forward. *Pittsfield note for consideration; PTS requests that this statement be removed...EPA is very sensitive about this matter with Silver Lake BLVD.* Also as part of this section, GE should be required to submit a traffic management plan to the affected municipality(ies) which maintains necessary access in a manner which the municipality finds acceptable, with that plan subject to municipal approval, 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.
- We request the Permit to include language requiring the Permittee to establish a written procedure for infrastructure review and remediation of any damaged infrastructure within a timely manner, consistent with state or local mandated engineering and construction

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standards, no longer than one to two construction seasons. We also request that in no circumstances be the infrastructure remediation be done to a standard lower than the infrastructure's previous surface or condition.

- It is imperative the impacted municipalities not be left to pay for infrastructure damage caused by cleanup activities. We highly recommend 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.

#### Backwaters

- The cove/pond areas located along Columbia Street in Lee, and tested by the 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, nowhere in the Permit does it 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 our understanding that the process to amend the Permit is arduous, and so 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 floodplain area, which is defined in the Permit as the 1 ppm isopleth of PCB contamination and has been referenced by EPA staff as the approximate 10-year floodplain. 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 made for tributaries east of the railroad, 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.

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#### 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 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. The Permit does not require GE to re-evaluate the PCB concentrations in the pond before the cap is placed. We believe that the Permit should explicitly state that GE, in consultation with the EPA, will re-test and evaluate PCB concentrations throughout the pond and perform additional remediation to ensure PCB levels are consistent with cleanup goals 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) 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 explicitly 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 establish a residential property value program for any residential properties which are negatively impacted by either reportable contamination on the properties or because of clean-up activities which are underway or planned in close proximity to the properties. We believe that there is a high likelihood that some property owners will find it difficult, if not impossible, to sell their properties due to the contamination or cleanup activities. If they are in a position where they must sell within a given timeframe (e.g. an elderly person who needs to move to a nursing home or a worker who is being transferred to another area), they could suffer a significant economic loss due to the contamination or

cleanup activities. The residential property value program should be administered locally by an established and unbiased third party, such as a respected non-profit or local financial institution with no business affiliation with GE.

- GE should 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.
- GE should be required to provide 100% compensation to local municipalities for loss of any property tax revenues caused prior to or during the cleanup process. Should negatively impacted property owners submit claims for reduction in property valuation or property taxes due to the presence of contamination or activities which impact their property during clean-up, or, if during the course of required property assessment valuations the municipality can document that properties in the vicinity of the clean-up, impacted by clean-up activities, or the community at large are showing unusual negative property valuations, GE should be required to compensate the municipal government for any resulting loss in property tax revenue.
- Both types (property owner and municipal property tax) of financial impact compensation should be maintained during the entire duration that such impacts are felt.

#### 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 formally request full party status in Section II.B.10.a. 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 the EPA to challenge GE to meet the adaptive management approach for every reach of the river. We restate our request that the EPA establish relatively frequent periodic reevaluations to incorporate the latest ~~an~~ innovative technological approaches or learn from failures at this or other sites, including in areas which may have been remediated ~~to some degree~~ already. Given the length of time of this clean-up ~~will take, there will be~~ new information available will emerge about innovative approaches, about failures at sites, and possibly as climate change impacts ~~become better understood~~ which will require ~~d~~ reevaluation of the approach ~~as~~ outlined in the ~~p~~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, the municipalities and the public to see reasonable progress being made throughout the overall timeline.

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#### 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 that the EPA amend the Permit to state clearly that GE must conduct new baseline sampling at all previously-several sites along the entire length of the river in Massachusetts, from the Confluence to Reach 9, to

~~duplicate/mirror~~ the original sampling taken over a decade ago. This new 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 on a timely basis detailing new, as well as previous, sampling results. 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 include more specific language and water quality standards to protect water quality and which guarantee 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.” *Rene note: It is frequently hard to show financial losses so can this be tightened up? Also the company’s losses do not cover potential worker financial losses such as wages if the plant is closed or lost overtime etc. This needs to be addressed.*

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- 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 wastewater treatment plants to meet their discharge permit requirements. We request that the EPA and DEP work together to set standards which 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. *In addition, the Permit should specify that any fines or penalties of any sort levied due to the impact of cleanup activities on such facilities is the financial responsibility of GE, not the impacted municipality or business.*

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### 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, we feel compelled to formally request that the Permit 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 this issue is not discussed in the Permit nor the Statement of Basis. We request that the Permit add a requirement for the development and implementation of an Invasive Species Control plan. This plan must include a pre-cleanup inventory, address dispersal of invasive species during cleanup activities and establish standards for the long-term control of invasive species post-construction.

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,  
Housatonic Rest of River Municipal Committee

[Signature Page Follows](#)

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, 3<sup>rd</sup> Berkshire  
The Honorable Smitty Pignatelli, State Representative, 4<sup>th</sup> Berkshire  
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