

# **EXHIBIT 22**

**Legal Opinion of Judith Knight Attorney for HRI with**

**Accompanying Settlement Agreement**

**Filed with the Lee Board of Health**

**January 31, 2023**

**From:** Judith Knight jknight@judithknight.com  
**Subject:** 11/19/22 LBOH Adj Hearing-submitting SA as an exhibit  
**Date:** January 31, 2023 at 5:18 PM  
**To:** Robert Wespiser rwespiser@gmail.com  
**Cc:** Cristobal Bonifaz ccrbonifaz@icloud.com, Tim Gray housriverkeeper@gmail.com

JK

Dear Dr. Wespiser,

On behalf of HRI, I am hereby submitting this letter and the Settlement Agreement ("SA") between GE, Town of Lee and other parties as exhibits to become part of the public record in above referenced 11/19/2022 LBOH Adjudicatory Hearing. The SA in pdf form is attached below in its entirety.

While all of the SA is relevant to the LBOH's consideration in this matter, I would like to draw the LBOH's attention to pages 8-12 of the SA, section III entitled: *Disposal of Excavated Material In Rest of River Remedial Action*.

In Paragraphs C & D of section III, the size and dimensions of the UDF (PCB-landfill) and some limited information about the liner(s) that will be used in the UDF are provided. Also set forth is the fact that the placement of the bottom liner to the UDF can be as close as 15 feet above the Town of Lee's water table.

Paragraphs F through H of section III set forth in surprisingly vague terms that GE will be required to "inspect and maintain" the UDF once the PCB contaminated soil is dumped there. However, no timeline is provided as to when, how often, or for how long GE will be required to "maintain, inspect the UDF and conduct groundwater samplings".

Secondly, there is no description as to what actions GE must take to constitute a proper "maintenance and inspection" of the UDF.

Lastly, there is no description of, or even a reference to, what scientifically acceptable standard GE must meet in order to be in compliance with the terms of SA.

It is my legal opinion that the terms in the SA which purportedly require GE to inspect and maintain the UDF are so vague that they are unenforceable.

I understand that the legal issues pertaining to the SA are not in the LBOH's domain. However, the unanswered questions and concerns about whether, in what manner, and for how long GE will be required to "inspect and maintain" the UDF going forward once the UDF is built, are relevant to the issues before the LBOH in this matter. This is especially true given the UDF's close proximity to the Town of Lee's water table, its residential neighborhoods and downtown Main Street.

Thank you for your time and consideration in this matter.

Sincerely,

**Judith C. Knight, Esq.**  
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GE. Settlement-  
Agree...DF.pdf

## SETTLEMENT AGREEMENT

The undersigned parties (“Parties”) hereby jointly agree to resolve their disputes regarding EPA’s October 2016 RCRA Corrective Action Permit Modification for the “Rest of River” portion of the GE-Pittsfield/Housatonic River Site (“the 2016 Permit”), including those issues affirmed or remanded by the EPA Environmental Appeals Board (the “EAB”). This Settlement Agreement (“Settlement Agreement”) shall be binding on and inure to the benefit of each Party and each Party’s successors.

On October 27, 2000, a Consent Decree for the GE-Pittsfield/Housatonic River Site (“Site”) was entered by the U.S. District Court for the District of Massachusetts (the “Decree”). Appendix G to the Decree, as reissued, is a RCRA Corrective Action Permit between EPA and the General Electric Company (“GE”), governing GE’s investigation and alternative evaluation responsibilities with respect to the Rest of River (“the 2000 Permit”). Pursuant to the Decree and the 2000 Permit, EPA, in October 2016, issued the 2016 Permit, with concurrence from Massachusetts. Five parties challenged the 2016 Permit before the EAB, including the Berkshire Environmental Action Team, C. Jeffrey Cook, GE, the Housatonic Rest of River Municipal Committee (“Municipal Committee”), and the Housatonic River Initiative. The City of Pittsfield, Massachusetts Audubon Society (“Mass Audubon”), Connecticut and Massachusetts also participated in the EAB process. The EAB issued a decision in January 2018, denying the challengers’ review in part and remanding to EPA on two issues challenged by GE.

The Parties have been engaged in mediated discussions concerning the 2016 Permit, pursuant to a mediation agreement executed in March 2019 (“Mediation Agreement”). The Parties entered into the Mediation Agreement with the objective of identifying whether there was one negotiated resolution of the permit dispute before the EAB that would result in a protective cleanup that is more comprehensive and faster, that minimizes the disputes and litigation going forward concerning the cleanup, and that is consistent with the overall Consent Decree for the Site.

The Parties have agreed on the following measures to achieve a cleanup that is protective, faster and more comprehensive, while minimizing disruption to affected parties, addressing community impacts, and promoting economic development. This Settlement Agreement is intended to address all disputes between the Parties regarding the 2016 Permit, including those raised in petitions to the EAB. The Parties recognize that the terms of this Settlement Agreement must be approved by each of the five towns making up the Municipal Committee (Great Barrington, Lee, Lenox, Sheffield and Stockbridge) (“the Towns”). The terms of the Settlement Agreement are not severable or modifiable other than with the consent of the affected Parties.

Agreements in this Settlement Agreement that relate to the provisions of the 2016 Permit will be set forth in EPA’s proposed revision of the 2016 Permit (“the Revised Permit” or “Revision to the 2016 Permit”). The Revised Permit will be subject to a regulatory public comment process. This Settlement Agreement will become part of the public file for this matter upon execution by the Parties.

To promote the ability of this Settlement Agreement to expedite the Rest of River cleanup, the Parties agree not to challenge the Revised Permit unless it is inconsistent with the terms of this Settlement Agreement. Except as specified in Sections I, V.A.1, V.B.3, 5 and 6, and VI.D below, any agreements by any Party in the Settlement Agreement are contingent on the final issuance of a Revision to the 2016 Permit containing terms substantially similar to those in the 2016 Permit, revised as specified by the terms in Sections II and III below.

## **SETTLEMENT TERMS**

### **I. Initiation of Rest of River Response Action Activities**

In order to expedite response actions at the “Rest of River” portion of the Site, GE has agreed to commence and perform investigation and design work as contractual obligations effective upon the date on which all of the Parties including EPA have signed this Settlement Agreement.

Specifically, GE must submit a schedule for the Rest of River Scope of Work (SOW), develop the SOW, and, subject to approval by EPA, implement the investigation and design components of the SOW and subsequent Work Plans to accelerate the commencement of the Rest of River cleanup. The obligation to perform this investigation and design work shall continue unless and until EPA issues a Revised Permit that does not contain terms substantially similar to those in the 2016 Permit, revised as specified by the terms in Sections II and III below.

### **II. Cleanup Enhancements**

As part of this Settlement Agreement, GE agrees to enhance the cleanup in the following ways, to be required in the forthcoming Revised Permit.

- A. GE shall implement all requirements of the 2016 Permit that are not explicitly modified in this Settlement Agreement, and all modifications of the 2016 Permit specified in Sections II and III of this Settlement Agreement.

- B. For Reach 5A Floodplains in Pittsfield, GE shall remove soil from twenty-two (22) floodplain properties specified in Attachment A to meet the residential Performance Standards in the 2016 Permit. To the extent the Town of Lenox determines that any of the owners of the six properties identified in Attachment B consent to such removal, GE shall remove additional floodplain soil from any such properties to achieve the residential Performance Standards in the 2016 Permit. Allocation of costs for such additional work in Lenox is governed by Section V.A.4 of this Settlement Agreement.
- C. For Reach 5A and 5B banks that do not otherwise require remediation pursuant to the 2016 Permit, GE shall evaluate the PCB data, erosion potential, the adjacent floodplain removal (if any), constructability issues, and the potential impact to PCB downstream transport should such banks erode and, based on these factors, consider supplemental bank removal.
- D. For Reach 5C, GE shall excavate sediment to achieve an average PCB concentration of 1 mg/kg or less followed by the placement of six inches of suitable backfill across the Reach. This will eliminate approximately 57 acres of capping otherwise required by the 2016 Permit.
- E. GE shall remove the sediments behind the Columbia Mill Dam in Reach 7 to achieve an average PCB level of 1 mg/kg or less, followed by the placement of a minimum of six inches of suitable backfill and additional material as necessary to maintain channel stability, and GE shall remove the Columbia Mill Dam, upon access being obtained to the property. The 2016 Permit will be revised to eliminate the option for any capping behind the dam. This will eliminate up to 10 acres of capping otherwise required by the 2016 Permit.

- F. GE shall remove the sediments behind the former Eagle Mill Dam in Reach 7 to achieve an average PCB level of 1 mg/kg or less, followed by the placement of a minimum of six inches of suitable backfill and additional material as necessary to maintain channel stability, and GE shall remove the former Eagle Mill Dam, upon access being obtained to the property. The 2016 Permit will be revised to eliminate the option for any capping behind the dam. This will eliminate up to 8 acres of capping otherwise required by the 2016 Permit.
- G. GE shall remove sufficient sediment to allow for a maximum of 3 acres of capping in the Willow Mill impoundment and 6.5 acres of capping in the Glendale impoundment, thus eliminating up to 10.5 acres of capping otherwise required by the 2016 Permit.
- H. For Rising Pond (Reach 8), GE shall remove sufficient sediment to allow for a maximum of 31 acres of capping, thus eliminating up to 10 acres of capping otherwise required by the 2016 Permit.
- I. All Legally Permissible Future Project or Work provisions in the 2016 Permit will be retained, but the related Corrective Measures provision of the Revised Permit will be modified to require that the specified “further response actions” will be (i) in accordance with and pursuant to the Consent Decree; (ii) consistent with the scope of the response actions selected in the Revised Permit; and (iii) that Permittee’s responsibility for the costs of said further response actions will be limited to those costs solely related to the presence of PCBs.
- J. For Vernal Pools, GE shall conduct a pilot study on not more than ten (10) Vernal Pools (none in Core Area 1 habitat) using either traditional excavation and restoration techniques, or amendments such as activated carbon. GE shall collect baseline data

including water and soil chemistry and a range of taxa and shall submit a plan that proposes criteria for success. Following an appropriate monitoring period determined by EPA, GE agrees to implement the appropriate remediation, as determined by EPA, on the remainder of Vernal Pools as necessary to meet the Performance Standards in the 2016 Permit.

K. For the remediation of Reach 5C, Woods Pond and potentially in backwaters adjacent to Reach 5C and Woods Pond, GE shall implement, if feasible, a hydraulic dredging and/or hydraulic pumping approach with material from these areas pumped directly to the Upland Disposal Facility described below and depicted in Figure 1. To the extent that the hydraulic dredging and/or hydraulic pumping approach is not feasible, GE shall transport material from Reach 5C and Woods Pond to the Upland Disposal Facility via trucks while avoiding driving on public roads to the maximum extent practical. See attached Figure 2 for depiction of the potential pipeline location from these remediation areas to the Upland Disposal Facility and of potential truck routes. Although PCBs from Reach 5C, Woods Pond and potentially in backwaters adjacent to Reach 5C and Woods Pond at any concentration may be pumped or trucked to the Upland Disposal Facility (as described in this paragraph) for temporary processing, all material permanently disposed of at the Upland Disposal Facility shall meet the standard described below in Section III.A.

L. Quality of Life Plan: GE is required to submit to EPA, for review and approval, a Quality of Life Compliance Plan, which specifies five separate areas to be addressed during remediation: noise, air, odor, light; recreational activities; road use and transport - related impacts; coordination with impacted residents/landowners; and community health



and safety. EPA will solicit input on this plan from local governments, impacted residents/landowners, neighborhoods in the vicinity of the cleanup, and other interested stakeholders. Section c of the Quality of Life Compliance Plan will include, among other requirements, consideration of methods to reduce residential impacts where practical, including remediation techniques that further restrict transport of waste material through residential areas. Examples of roads that would warrant such further restrictions include: Brunswick, Kenilworth, Warwick, Noblehurst, Chester, and Revilla Terrace; Shetland, Clydesdale, Pinto, and Palomino Drives; and Anita, Lucia, Quirco, Joseph, and Eric Drives. GE agrees to work with the City, the Towns and the landowners to take reasonable steps to minimize the adverse impact of the work activities by, among others, coordinating work activities, scheduling and traffic routing.

M. GE shall work cooperatively with the City of Pittsfield, the Towns of Great Barrington, Lee, Lenox and Stockbridge, and the State of Massachusetts to facilitate their enhancement of recreational activities, such as canoeing and other water activities, hiking, and bike trails in the Rest of River corridor. Such opportunities are possible on properties where remediation will occur and/or where temporary access roads are constructed.

N. GE shall coordinate as soon as practicable with municipal officials and affected landowners regarding work activities, schedules and traffic routes. GE's coordination with officials and landowners shall be described in the relevant work plans submitted to EPA.

**O. Remediation of Mass Audubon Canoe Meadows Property:**

In addition to the sampling and remediation described in the applicable Performance Standards in the 2016 Permit, GE will:

1. Expand the Exposure Area (EA) 10 boundary to the east so that the EA incorporates the area with PCBs greater than 1 ppm in the top foot of soil. This expansion would also allow evaluation of the trail in this area. The expanded EA is shown in Figure 6.
2. Include an additional subarea, beyond that included in the 2016 Permit, in the attached Figure 6 Mass Audubon Property Revised EA 10 Remediation and remediate additional floodplain soils to meet the applicable floodplain soil Performance Standards.

**III. Disposal of Excavated Material in Rest of River Remedial Action**

EPA's Revised Permit will include Performance Standards, corrective measures, and requirements for a Statement of Work and Work Plans, including for the disposal of excavated material. GE shall implement a hybrid disposal approach that includes the following;

- A. Material disposed of at the Upland Disposal Facility pursuant to characterization and averaging method(s) approved and/or developed by EPA (Attachment C to this Settlement Agreement) shall not exceed the elevation, volume, and footprint limits described below. GE shall dispose of any material not placed in the Upland Disposal Facility in any out-of-state facility that is licensed/permitted to accept such waste and will accept it, including RCRA Subtitle C Landfills, so long as said facility is in compliance with EPA's Off-Site Rule (40 C.F.R. 300.440). Notwithstanding the first sentence of this

paragraph, a minimum of 100,000 cubic yards of PCB-contaminated sediment, riverbank soils, and/or floodplain soils shall be disposed of out of State.

- B. Transportation and disposal of other sediment, floodplain soils and other Waste Material (as defined in the Consent Decree) shall occur at a location depicted in Figure 1 and as described in Section III.D-G of this Settlement Agreement (“Upland Disposal Facility”). No material from the Rest of River Remedial Action will be disposed of at any other location in Berkshire County.
- C. No one shall take any materials to the Upland Disposal Facility for disposal except those identified for the Upland Disposal Facility as set forth in this Section III and generated in the Rest of River Remedial Action. No materials from previously remediated sites in the Upper 2-Mile Reach of the Housatonic River cleanup nor any other materials associated with the other response actions conducted pursuant to the Site Consent Decree will be disposed of at the Upland Disposal Facility.
- D. The Upland Disposal Facility shall have a maximum design capacity of 1.3 million cubic yards. The landfill consolidation area shall have a maximum footprint of 20 acres and a maximum elevation of 1,099 feet above mean sea level. If the seasonally high groundwater elevation determined pursuant to Section III.E is determined to be higher than 950 feet above mean sea level, the maximum elevation of the landfill consolidation area may be increased by the number of feet that is the difference between the seasonally high groundwater elevation and 950 feet above mean sea level in order for the Upland Disposal Facility to have a maximum capacity of 1.3 million cubic yards.
- E. GE shall construct the Upland Disposal Facility landfill with a double liner and a leachate collection system and shall cap the Upland Disposal Facility with a low-permeability cap

and vegetation. The liners shall have a permeability equal or less than  $1 \times 10^{-7}$  cm/sec, a minimum thickness of 30 mils and be chemically compatible with PCBs. The bottom liner of the landfill will be installed a minimum of 15 feet above a conservative estimate of the seasonally high groundwater elevation. The seasonally high groundwater elevation will be projected using site-specific groundwater elevation data collected in the location of the Upland Disposal Facility, modified by an appropriate technical method that takes into account historic groundwater level fluctuations at similarly-sited off-site long-term monitoring wells in Massachusetts. The estimation of a seasonally high groundwater elevation will be performed pursuant to a methodology reviewed and approved by the EPA. The estimate of seasonally high groundwater elevation shall then be used to support the design of the landfill relative to achieving the required minimum separation distance from the bottom of the liner system to the seasonally high groundwater elevation. The double liner system, separated by a drainage layer, shall incorporate primary and secondary leachate collection systems.

- F. GE shall identify all non-community and private water supply wells currently within 500 feet of the Upland Disposal Facility consolidation area. Unless the well owner does not consent, GE shall pay the installation cost of a connection to public water. In the event any new water users (*e.g.*, new construction) move within 500 feet of the Upland Disposal Facility consolidation area during construction or operation and maintenance, GE shall pay the installation cost of a connection to public water.
- G. Pursuant to EPA-approved or developed remedial design, remedial action, and operation and maintenance documents, and in accordance with the Consent Decree and the Revised Permit,

1. GE shall install a groundwater monitoring network around the Upland Disposal Facility to monitor for PCBs and other constituents identified in the groundwater monitoring plan as approved or modified by EPA. Groundwater monitoring shall include a sufficient number of monitoring wells to allow detection of groundwater impacts.
  2. GE shall perform landfill inspections, maintenance, and groundwater sampling activities.
  3. GE shall be responsible for the proper functioning of the Upland Disposal Facility landfill during landfill operations, and shall remain responsible for the proper operation and maintenance of the landfill thereafter. GE shall be responsible for the closure of the landfill including the installation of the impermeable cap and vegetative cover promptly upon EPA's determination that either of the following conditions has occurred: (1) the landfill is full (*e.g.*, when the maximum footprint, elevation and/or volume are reached), or (2) excavation and dredging activities conducted as part of the Rest of River Remedial Action are complete. GE shall be responsible for post-closure activities and monitoring thereafter.
  4. Landfill design will include a stormwater management system to control surface runoff, to minimize the potential for surface erosion or stormwater contribution to leachate generation.
- H. GE shall include in its landfill design submissions one or more proposals (based on GE's consultations with officials from the Town of Lee) describing how GE will prepare the Upland Disposal Facility for potential re-use once the landfill is capped if the Town of

Lee desires. Any such proposals shall be described in the final remedial design/remedial action work plans.

#### **NON-PERMIT AGREEMENT(S)**

##### **IV. Other GE/EPA Agreements**

- A. GE and EPA's National Pollutant Discharge Elimination System permit program shall engage in good faith discussions regarding a renewal of the NPDES Permit for the former Pittsfield facility based on implementation of Best Management Practices to improve stormwater management, potentially including slip lining of damaged piping, pressure washing of other piping infrastructure, and removal of accumulated sediment from catch basins or other structures, as appropriate.
- B. The EPA will facilitate opportunities for research and testing of innovative treatment and other technologies and approaches for reducing PCB toxicity and/or concentrations in excavated soil and/or sediment before, during, or after disposal in a landfill. These opportunities may include: (1) reviewing recent and new research; (2) identifying opportunities to apply existing and potential future research resources to PCB treatment technologies, through EPA and/or other Federal research programs; and (3) encouraging solicitations for research opportunities for research institutions and/or small businesses to target relevant technologies. The research may focus on soil and sediment removed (or to be removed) from the Housatonic River or similar sites to ensure potential applicability to the permit/selected remedy. GE and EPA will continue to explore current and future technology developments and, where appropriate, will collaborate on on-site technology demonstration efforts and pilot studies, and, consistent with the adaptive management

requirements in the Final Permit together, will consider the applicability of promising research at the Housatonic Rest of River site.

#### **V. Economic Development and Other Community Benefits**

- A. GE shall pay a total of \$55 million, which the Towns of Lenox, Lee, Stockbridge, Great Barrington and Sheffield shall distribute among themselves.
1. GE agrees to establish an interest-bearing escrow account and to pay into that escrow account \$55 million no later than 30 days after the Agreement is signed by the Parties. GE and the Towns of Lenox, Lee, Sheffield, Stockbridge, and Great Barrington agree to enter into a mutually acceptable escrow agreement regarding said escrow account, including instructions to the escrow agent, specifying the terms on which the \$55 million deposited into said escrow account, and the interest, accrued, will be released.
  2. GE shall donate the Rising Pond Site (parcel 113/005.0-0000.0008.0 listed as 149 acres) to the Town of Great Barrington or its designee to allow for conservation and/or development contingent on GE retaining necessary easements to conduct response actions at Rising Pond and to maintain the Rising Pond Dam.
  3. GE shall release the use limitations currently effective at the adjacent Hazen Paper Mill Site subject to appropriate releases from future liability.
  4. After Lenox determines whether any of the owners of the six properties identified in Attachment B seek additional floodplain soil removal to achieve the residential Performance Standards in the 2016 Permit pursuant to Section II.B of this Settlement

Agreement, Lenox and GE will share equally the cost of such additional removal for any such owners who request such additional removal.

**B.**

1. GE shall pay a total of \$8 million to the City of Pittsfield within sixty (60) days of the final issuance of a Revision to the 2016 Permit containing terms substantially similar to those in the 2016 Permit, revised as specified by the terms in Sections II and III of this Settlement Agreement, with the understanding that the \$8 million will be put into the Pittsfield Economic Development Fund.

2. Within sixty (60) days of the final issuance of a Revision to the 2016 Permit containing terms substantially similar to those in the 2016 Permit, revised as specified by the terms in Sections II and III of this Settlement Agreement, GE will donate, as is, the land and building that it owns on Woodlawn Avenue (Parcel ID I100005001) to the Pittsfield Economic Development Authority ("PEDA") or another entity agreeable to the City, GE and PEDA. Pittsfield reserves the right to decline the donation. Should Pittsfield elect to decline the donation it shall do so within 12 months of the date of this Settlement Agreement.

3. By December 31, 2020, unless EPA has proposed a Revised Permit that is not substantially similar to the 2016 Permit, revised as specified by the terms in Sections II and III of this Settlement Agreement, GE will remove the pavement, fencing and guard rails on three parking lots on Tyler Street (Parcel IDs J11000701, J110003013, and



J110010001)(the "Parking Lots"). To landscape the Parking Lots, GE shall plant grass, and shall, at a cost not to exceed \$50,000, install appropriate shrubbery.

4. GE will also engage in good faith discussions with the City regarding the donation by GE of the Parking Lots to the City or another entity agreeable to the City and GE, which donation would occur within sixty (60) days of the later of the final issuance of a Revision to the 2016 Permit containing terms substantially similar to those in the 2016 Permit, revised as specified by the terms in Sections II and III of this Settlement Agreement, and completion of the landscaping of the Parking Lots.

5. GE will also agree to semi-annual meetings between the City and GE regarding GE's plans for the maintenance, potential repurposing or eventual demolition of the structures located at 55 Merrill Road, Parcel J100009002: Building 12 complex including Buildings 12, 12X, and 12Y, Building 14 Complex including Buildings 14, 14A, 14D, 14E, 14H and any extensions, and the buildings and parcels south of East Street with the first semi-annual meeting to occur within 60 days of execution of the Settlement Agreement unless EPA proposes a Revision to the 2016 Permit that is not substantially similar to the terms of the 2016 Permit, revised as specified by the terms in Sections II and III of the Settlement Agreement.

6. Aesthetic Improvements on GE Owned Property in City of Pittsfield: Within 120 days of the execution of the Settlement Agreement, unless EPA proposes a Revision to the 2016 Permit that is not substantially similar to the terms of the 2016 Permit, revised as specified by the terms of Sections II and III of the Settlement Agreement, GE will commence the specified activities in this Section V.B.6 to aesthetically improve GE

owned property in the City of Pittsfield and will complete said specified activities within 12 months of the commencement of said specified actions.

a. GE Property South of East Street

- i. Remove barbed wire from fencing along East Street and remove former employee turnstile and associated infrastructure (if any) subject to concurrence by GE Corporate Security, to be discussed with the City.
- ii. Plant 24 White pines or equivalent subject to availability. (This is limited to areas east of the Woodlawn Avenue/East Street intersection due to lack of unpaved areas west of Woodlawn Avenue. Additional aesthetic improvement will be suggested by GE which can be installed west of Woodlawn Avenue to improve the appearance of the property running parallel to East St.).
- iii. Improve aesthetics of area currently being used as a storage area by WMECO.

b. GE property bounded by RR tracks/Merrill Road, New York Avenue, Tyler Street and PEDDA property.

- i. Remove all barbed wire from fencing along Tyler Street subject to concurrence by GE Corporate Security, to be discussed with the City.
- ii. Remove pipe trestle extending from Building 12Y to the former 20s Complex (timing for removal subject to obtaining access and concurrence from CSX).
- iii. Remove guard rail north of Building 14E/14 Ext along Tyler Street subject to concurrence from the Pittsfield Department of Public Service.

- iv. Remove 4 exterior vents/stacks that are on the outside wall of building 14/14-N and face Tyler Street.
- c. Building 14 complex
  - i. North side/facing Tyler Street; Paint rusted “columns” and “horizontal” facade near top of the building (excluding white siding) that faces Tyler Street.
  - ii. In the high bays on the north, east and south side of 14/14E; replace broken windows, or fill all window panes, and/or paint with consistent solid material if such work can be performed safely.
  - iii. Eastern side of Building 14/14E that faces south towards the SABIC parking lot; Remove, paint, refurbish or otherwise improve the rusted and/or peeling siding.
- d. Building 12, facing west (toward PED A property): paint perimeter façade of southern most garage door and rusted wall.
- e. Building 12 complex
  - i. Remove, paint, refurbish or otherwise improve the rusted and/or peeling siding that faces south toward East Street. (Siding is currently white.)
  - ii. Remove, paint, refurbish or otherwise improve the rusted and/or peeling siding that faces southeast toward East Street/Merrill Road and siding on the west, south and east side of the upper building on 12 (Y). Portions of the upper building may be inaccessible and not subject to such aesthetic improvements due to lack of access/safety concerns. (Siding is currently red.)

f. Additional aesthetic improvements identified by the City will be discussed by the City and GE at the semi-annual meetings referenced above in Section V.B.5.

C. GE shall prioritize the use of local labor for the Rest of River Remedial Action to the extent feasible and economical.

D. Upon request, GE will provide any municipality with information relevant to GE's liability to that municipality for taxes on any real or personal property that is related to the Rest of River cleanup.

E. Compensation and Access:

1. Once Mass Audubon and GE execute an Access Agreement, GE agrees to pay Mass Audubon \$500,000 for the placement and operation, for a period not to exceed 2 consecutive years, of a staging area of up to 3 acres (with appropriate access roads). Mass Audubon agrees that the staging area can be used to facilitate the remediation of Canoe Meadows Wildlife Sanctuary as well as other floodplain soils and Housatonic River sediments in Reach 5A. GE and Mass Audubon agree to execute an Access Agreement to provide additional details of the access that is consistent with the substance of Appendix R to the Consent Decree.

2. Such Access Agreement will include provisions relating to the restoration of Canoe Meadows Wildlife Sanctuary man-made infrastructure affected by the remediation, including but not limited to the boardwalk, walking trails, and public parking lot.

3. Such Access Agreement will include actions to be taken by GE to ensure continued recreational activities on walking trails and other areas of Canoe Meadows Wildlife Sanctuary that will not be affected by the remediation. This will include the provision of an alternate public parking lot and construction and maintenance of alternate connecting walking trails.

4. Such Access Agreement will not include additional monetary compensation.

**F. Restoration of Canoe Meadows Staging Area:**

Regarding ecological restoration of the staging area, GE agrees to comply with Section II.B.1.c of the 2016 Permit. Regarding all other restoration activities, GE agrees that when the remediation is complete and the staging area is no longer needed, GE will remove the staging area materials and plant appropriate vegetation based on a pre-construction survey of the area, replace any physical structures, trails, signs, public parking areas, and other improvements that are damaged or removed, and otherwise comply with the restoration provisions of the 2016 Permit.

**VI. Coordination and Consultation**

**A. Coordination and Consultation with Stakeholders**

1. EPA, in its 2016 Response to Comments on the Rest of River Permit, committed to soliciting input and working with all stakeholders as the cleanup design progresses. EPA reiterates that commitment in this Settlement Agreement. For example, during Remedial Design, EPA plans to engage with property owners, Native American tribes, local governments, communities and other stakeholders to ensure that their input is included in the design process. EPA will ensure that schedules for submissions and reviews take into account any necessary local government, property owner, and stakeholder reviews. At a

minimum, and not necessarily limited to the following, during remedial design EPA will provide an opportunity for input on key submittals required by the Permit, including the Quality of Life Compliance Plan and the design, construction and operation of the Upland Disposal Facility.

2. If in the course of remedial design, GE determines that it will encounter stormwater conveyances, GE will notify the municipality in which the stormwater conveyances are located. To the extent that said municipality wants to upgrade said conveyances, GE will coordinate with the municipality regarding said upgrade so long as it will not delay remedial action.

3. Prior to transporting any materials required for remediation or starting any work in the City of Pittsfield or in the towns of Great Barrington, Lee, Lenox, or Stockbridge, GE shall document the pre-existing condition of any municipal road to be used during remediation using 360 degree road imaging technology plus 3D road surface imaging technology. GE shall also photographically document the condition of other visible infrastructure associated with such roads, including bridges culverts and other exposed infrastructure that is not captured by the road scanning process and provide that documentation for review by the affected municipality. GE and the affected municipalities will meet and confer in good faith, and in consultation with experts, regarding the need for the use of Ground Penetrating Radar ("GPR") technology to assess subsurface conditions in particular areas where such GPR assessment may be warranted. The required Quality of Life Compliance Plan will include documentation showing how GE will repair any damage to the roads, other than normal wear and tear, caused by GE in order to allow safe public access during remediation activities. At the completion of

any remediation activities affecting a specific road, GE will document the then-existing condition of the road and associated exposed infrastructure using the same technology as set forth above and provide that documentation for review by the municipality; at that time, GE and the affected municipalities will meet and confer in good faith, and in consultation with experts, regarding the need for the use of GPR technology to assess subsurface conditions in particular areas where such GPR assessment may be warranted. GE shall repair or replace any damage caused by GE; any dispute under this Agreement between GE and a municipality regarding GE's responsibility for road and/or infrastructure repair, if the parties cannot resolve the matter through mediation, shall be determined by a single, neutral arbitrator with arbitration to occur in Massachusetts. The arbitration shall (unless the parties to the dispute agree otherwise) be administered by the Boston office of JAMS pursuant to the JAMS Streamlined Arbitration Rules and Procedures, effective July 1, 2014. Such repair or replacement shall meet current State or Federal standards and must be acceptable to the municipality, provided such acceptance is not unreasonably withheld. This provision does not affect any of EPA's authorities pursuant to the Consent Decree or the Revised Permit. GE and the affected municipalities agree to share relevant information regarding the usage of the roads during the remediation process.

4. EPA will coordinate with the affected municipality and interested stakeholders on the Vernal Pools to be remediated pursuant to this Settlement Agreement.

5. EPA also commits to coordinate closely with Connecticut and Massachusetts environmental agencies in implementing the Revised Permit.

**B. Consultation with Public and Private Property Owners where Remediation is Required**

EPA, in consultation with Connecticut and Massachusetts environmental agencies, commits to working closely with the affected property owner to obtain input prior to finalizing design submittals and other documents specifically related to property owners where remediation is required. These submittals/documents shall include but are not necessarily limited to the following:

- Floodplain Pre-Design Investigation Work Plans, which include:
  - Soil Sampling Plan
  - Potential Vernal Pool Certification Investigation Reports
  - Survey Report on Morphology, Habitat Characterization, and Accessibility
- Riverbed and bank Pre-Design Investigation Work Plans
- Pre-Design Investigation Summary Reports (summarizes investigation activities and sampling data, identifies additional data needs, if any)
- Baseline Restoration Assessment and Restoration Plans
- Cultural Resource Survey(s)
- Conceptual Remedial Design/Remedial Action (“RD/RA”) Work Plan (Preliminary identification of excavation footprint and quantities, preliminary restoration activities, and preliminary plans and specifications.)
- Final RD/RA Work Plan (Final excavation footprint, detailed design details, plans and specifications, including potential access roads, staging areas, and restoration activities, long-term inspection, monitoring and maintenance requirements, and a preliminary schedule).



**C. Coordination Among EPA, Mass Audubon, GE:**

EPA, Mass Audubon, and GE recognize that, as envisioned in the 2016 Permit and this Settlement Agreement, the proposed remediation will affect Mass Audubon's Canoe Meadows property in Pittsfield.

1. Prior to submittal of the Conceptual RD/RA Work Plan relating to actions to be taken by GE at Canoe Meadows Wildlife Sanctuary, GE will meet with EPA and Mass Audubon at a mutually agreeable time to review the Revised Permit terms and discuss how these relate to: the actual areas of remediation on Canoe Meadows Wildlife Sanctuary; other areas on Canoe Meadows Wildlife Sanctuary that may be needed to facilitate the remediation; and applicable requirements of the Access Agreement between GE and Mass Audubon (including restoration requirements and actions to allow for continued recreational activities).
2. After executing an access agreement but prior to mobilization of the remediation at Canoe Meadows Wildlife Sanctuary or mobilization of activities to make a staging area at Canoe Meadows Wildlife Sanctuary, GE will meet with Mass Audubon and EPA to discuss concerns.
3. Prior to submittal of restoration plans for Canoe Meadows Wildlife Sanctuary (which typically are included in the Final RD/RA Work Plan), GE will meet with EPA and Mass Audubon at a mutually agreeable time to discuss restoration plans for the property.

**D. Technical Assistance for Local Governments**

EPA is providing contractor support to provide technical assistance to the City of

Pittsfield and the Towns of Lenox, Lee, Stockbridge, Great Barrington, and Sheffield.

The contractor is funded by EPA and can provide the following:

- Project planning,
- Communications/coordination with EPA, the States and other stakeholders,
- Technical review of Permit submittals and other documents,
- Preparing and presenting technical presentations to the local governments and the general public,
- Development of Fact Sheets,
- Development of community informational material for dissemination to the public that summarize technical information and technical issues in plain language,
- Technical presentations to community, and
- Provide support responding to questions raised by the public.

EPA has already committed \$20,000 for this effort, effective on signature by all Parties to this Settlement Agreement. EPA intends, subject to the availability of funds, to further fund this effort during the design and implementation of the remedy.

## **VII. Effect of this Agreement**

A. This Agreement is not a modification of and shall have no impact upon, the terms and conditions of the Consent Decree.

B. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Agreement.

C. This Settlement Agreement may be executed in multiple counterparts. The executed signature page(s) from each actual or electronic copy of a counterpart may be joined together and attached and will constitute one and the same Settlement Agreement.

## **LIST OF ATTACHMENTS**

- Attachment A:** Reach 5A (Pittsfield) Floodplain Residential Properties Subject to Enhanced Cleanup
- Attachment B:** Reach 5C (Lenox) Floodplain Residential Properties Subject to Potential Enhanced Cleanup
- Attachment C:** Criteria/Methods Applicable to Disposal of Material Excavated in Rest of River Remedial Action

## **LIST OF FIGURES**

(including figures referred to in Attachment C)

- Figure 1:** Upland Disposal Facility
- Figure 2:** Potential Transport Routes for Reach 5C/Woods Pond Sediment to Upland Disposal Facility
- Figure 3:** Subreaches in Reaches 5/6 (referred to in Attachment C)
- Figure 4:** Subreaches in Reaches 7/8 (referred to in Attachment C)
- Figure 5:** Exposure Areas in Reaches 5 to 8 (referred to in Attachment C)
- Figure 6:** Mass Audubon Property Revised EA 10 Remediation

THE UNDERSIGNED PARTY enters into this Settlement Agreement to resolve disputes regarding EPA's October 2016 RCRA Corrective Action Permit Modification for the "Rest of River" portion of the GE-Pittsfield/Housatonic River Site

For the Town of Lenox:

Edward Lane

Name

2/5/2020

Date

CHAIR - LENOX BOARD OF SETTLEMENT

Title

THE UNDERSIGNED PARTY enters into this Settlement Agreement to resolve disputes regarding EPA's October 2016 RCRA Corrective Action Permit Modification for the "Rest of River" portion of the GE-Pittsfield/Housatonic River Site

For the Town of Lee:

Thomas P. Welch

Name

Feb 5, 2020

Date

Chairman Board of Selectmen

Title

J

THE UNDERSIGNED PARTY enters into this Settlement Agreement to resolve disputes regarding EPA's October 2016 RCRA Corrective Action Permit Modification for the "Rest of River" portion of the GE-Pittsfield/Housatonic River Site

For the Town of Stockbridge:

Terence R. Flynn  
Name

2/4/20  
Date

Select Board Chair  
Title

THE UNDERSIGNED PARTY enters into this Settlement Agreement to resolve disputes regarding EPA's October 2016 RCRA Corrective Action Permit Modification for the "Rest of River" portion of the GE-Pittsfield/Housatonic River Site

For the Town of Great Barrington:



Name *Stephen Bannon*

*2/5/2020*

Date

*Great Barrington Selectboard,*

Title *Chair*

THE UNDERSIGNED PARTY enters into this Settlement Agreement to resolve disputes regarding EPA's October 2016 RCRA Corrective Action Permit Modification for the "Rest of River" portion of the GE-Pittsfield/Housatonic River Site

For the Town of Sheffield:

Rene C Wood  
Name

Feb 3, 2020  
Date

Chair, Board of Selectmen  
Title



THE UNDERSIGNED PARTY enters into this Settlement Agreement to resolve disputes regarding EPA's October 2016 RCRA Corrective Action Permit Modification for the "Rest of River" portion of the GE-Pittsfield/Housatonic River Site

For the City of Pittsfield:

Linda M. Tyer  
Name Linda M. Tyer

2/5/2020  
Date

Mayor  
Title

THE UNDERSIGNED PARTY enters into this Settlement Agreement to resolve disputes regarding EPA's October 2016 RCRA Corrective Action Permit Modification for the "Rest of River" portion of the GE-Pittsfield/Housatonic River Site

For the State of Connecticut:

Lori D. DiBella

Name Lori D. DiBella

2/5/2020

Date

Assistant Attorney General

Title

THE UNDERSIGNED PARTY enters into this Settlement Agreement to resolve disputes regarding EPA's October 2016 RCRA Corrective Action Permit Modification for the "Rest of River" portion of the GE-Pittsfield/Housatonic River Site

For C. Jeffrey Cook:

\_\_\_\_\_  
Name 

\_\_\_\_\_  
Date 2.6.20

\_\_\_\_\_  
Title

THE UNDERSIGNED PARTY enters into this Settlement Agreement to resolve disputes regarding EPA's October 2016 RCRA Corrective Action Permit Modification for the "Rest of River" portion of the GE-Pittsfield/Housatonic River Site

For Berkshire Environmental Action Team:

Jane Winn

Name JANE WINN

February 6, 2020

Date

Executive Director

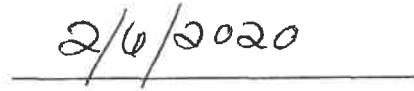
Title

THE UNDERSIGNED PARTY enters into this Settlement Agreement to resolve disputes regarding EPA's October 2016 RCRA Corrective Action Permit Modification for the "Rest of River" portion of the GE-Pittsfield/Housatonic River Site

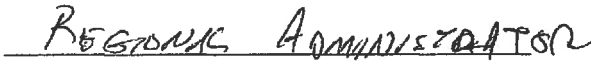
For the United States Environmental Protection Agency:



Name



Date



Title

THE UNDERSIGNED PARTY enters into this Settlement Agreement to resolve disputes regarding EPA's October 2016 RCRA Corrective Action Permit Modification for the "Rest of River" portion of the GE-Pittsfield/Housatonic River Site

For Massachusetts Audubon Society:

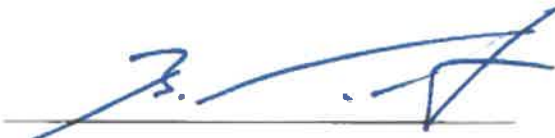
  
Name Kathleen E. Connolly

02/07/2020  
Date

\_\_\_\_\_  
Title Attorney

THE UNDERSIGNED PARTY enters into this Settlement Agreement to resolve disputes regarding EPA's October 2016 RCRA Corrective Action Permit Modification for the "Rest of River" portion of the GE-Pittsfield/Housatonic River Site

For General Electric Company:

  
Name BUCKMASTER DEWOLP Date 2/10/20

VP, ENVIRONMENT, HEALTH & SAFETY  
Title

**Attachment A****Reach 5A Floodplain Residential Properties Subject to Enhancement**

| Parcel ID |
|-----------|
| I6-1-42   |
| I6-3-13   |
| J6-2-3    |
| J4-3-7    |
| J4-3-8    |
| J4-3-9    |
| J4-3-10   |
| J4-3-11   |
| J3-1-10   |
| J3-1-9    |
| J3-1-8    |
| J3-1-14   |
| J3-1-13   |
| J3-1-12   |
| J3-1-11   |
| J3-2-2    |
| J3-2-3    |
| J3-2-4    |
| J3-2-5    |
| J3-2-6    |
| K3-1-2    |
| K2-1-10   |



**Attachment B**

**Reach 5C Floodplain Residential Properties Subject to Potential Enhancement**

| Parcel ID |
|-----------|
| 24-6      |
| 24-5      |
| 24-4      |
| 24-3      |
| 24-2      |
| 24-1      |

## **Attachment C to Settlement Agreement**

### **Criteria/Methods Applicable to Disposal of Material Excavated in Rest of River Remedial Action**

1. For floodplains in each of the 90 Exposure Areas shown in Figure 5, to the extent that remediation is required in any given Exposure Area, GE will segregate and dispose of off-site (out-of-state) soils containing high concentrations so that the remaining floodplain soil to be disposed of in the Upland Disposal Facility averages less than 50 mg/kg PCBs. The process is further described as follows:
  - After additional data collection required by the 2016 Permit, the horizontal footprint and vertical removal depth (the volume) of soil that needs to be removed in each Exposure Area will be determined.
  - The volume-weighted average PCB concentration of all soil to be removed from each Exposure Area will be calculated (using the same PCB data set used to delineate the soil to be removed).
  - If the volume-weighted average PCB concentration in the soil to be removed exceeds 50 mg/kg in an Exposure Area, the soil with the highest PCB concentrations (e.g., "hot spots") in the Exposure Area will be segregated, or separated out, for out-of-state disposal until the average concentration of the remainder of the soil to be removed in the Exposure Area decreases to less than 50 mg/kg for disposal at the Upland Disposal Facility.
2. For Reach 5A banks, GE will segregate and dispose of off-site (out-of-state) soils containing high concentrations so that the remaining Reach 5A bank soil to be disposed of in the Upland Disposal Facility has a volume-weighted average of less than 50 mg/kg PCBs. In calculating the volume-weighted average concentration of PCBs in Reach 5A riverbank soils for disposal purposes, the only soils that will be considered are soils to be removed from Reach 5A riverbanks.
3. GE will dispose of all riverbank and sediment from Reach 5B off-site (out-of-state), except in the following circumstances: If, pursuant to Section II.C of the agreement, GE removes additional riverbank soil with PCB concentrations less than 50 mg/kg, this material may be disposed of in the Upland Disposal Facility.
4. For all sediment except for Reach 5B, GE will segregate and dispose of off-site (out-of-state) sediments containing high concentrations so that the remaining sediment to be disposed of in the Upland Disposal Facility averages 25 mg/kg PCBs or less on a Reach or Subreach basis as described below.
  - The 25 mg/kg average applies individually to: Reach 5A, Reach 5C, Woods Pond, Backwaters, Reach 7 Subreaches (Subreach 7B [Columbia Mill Impoundment], Subreach 7C [Eagle Mill Impoundment], Subreach 7E [Willow Mill Impoundment], Subreach 7G [Glendale Impoundment], and Rising Pond. These Reaches/Sub-Reaches are depicted in Figures 3 and 4. The segregation of sediment for Reach 5B is described in item 3 above, which provides that all sediment removed from Reach 5B shall be disposed of off-site (out-of-state).

- As described in the 2016 Permit, each Subreach, and in some cases each Reach, has its own Performance Standards to be achieved through sediment removal and capping or backfill. Following additional data collection, the area and amount of sediment to be removed to meet the Performance Standard will be determined. After the horizontal footprint and vertical removal depth are determined, the volume-weighted average PCB concentration of the sediment within that footprint will be calculated.
  - If the volume-weighted average PCB concentration within a Reach or Subreach removal footprint exceeds 25 mg/kg, sediment with the highest PCB concentrations (e.g., “hot spots”) will be segregated for out-of-state disposal until the average concentration of the remaining sediment to be removed from the Reach or Subreach decreases to 25 mg/kg or less for disposal at the Upland Disposal Facility.
  - Relevant data from the RCRA Facility Investigation (RFI) and data collected pursuant to the 2016 Permit or Revised Permit will be used in determining average concentrations for comparison to the 25-mg/kg criterion for placement in the Upland Disposal Facility.
  - EPA agrees to work with GE to design an appropriate transition and hybrid disposal averaging area in the Woods Pond Headwaters area between Reach 5C and Woods Pond.
5. In addition, for all sediment in Reaches and Subreaches, including backwaters, except for Reach 5B, GE will segregate and dispose of off-site (out-of-state) sediment that is represented by a 3-dimensional polygon associated with a single vertical core that has an average concentration greater than or equal to 100 mg/kg PCBs, as further described below:
- GE will compare the 100 mg/kg criterion to the average concentration in each individual vertical core.
  - Vertical core polygons will be generated by a Thiessen polygon method. Thiessen polygon mapping involves the use of computer software to draw perpendicular bisector lines between adjacent sample locations to create two-dimensional polygon areas. The two-dimensional Thiessen polygon will be extended vertically to the depth of sediment removal to create a three-dimensional polygon.
  - The data used in this evaluation will be limited to, and representative of, the depth intervals that correspond to depth of removal associated with the location where the core was collected.
  - If sampling data, at a given vertical core location, consists of data from different depth intervals, the vertical PCB average concentration will be calculated as a depth-weighted average at that location.
  - Vertical sediment cores will be of sufficient depth to characterize sediment PCB concentrations throughout the full vertical interval required to comply with the Performance Standards for each Reach, Subreach and backwater under the 2016 Permit or Revised Permit.
  - If the vertical depth-weighted PCB average in a polygon is equal to or greater than 100 mg/kg, then all sediment associated with the vertical core polygon will be segregated and disposed of off-site (out-of-state).

- For all reaches except Subreach 5A and 5C, relevant data from the RFI and additional data collected by GE pursuant to the 2016 Permit or Revised Permit, as applicable, will be used in determining these vertical depth-weighted core averages.
  - Additional vertical core samples will be collected by GE pursuant to the 2016 Permit or Revised Permit, as applicable, in Reach 6 (Woods Pond) to supplement existing data and to fill in data gaps.
  - For Reaches 5A and 5C, only data collected pursuant to the 2016 Permit or Revised Permit shall be used in this evaluation. Vertical core samples will be collected in six-inch increments. The sampling will consist of 3 vertical cores per transect (left, center and right of the channel) with transects performed at a linear spacing of 250 linear feet of the river channel.
  - Additional vertical sediment cores may be collected to further refine the areas where average sediment concentrations exceed 100 mg/kg and/or to assist in achieving the relevant Performance Standards in all Reaches or sub Reaches.
  - GE will submit sediment sampling plans to EPA for review and approval. These plans shall detail, at a minimum, the approach for collection of vertical sediment cores and the data analysis approach to determine compliance with the 100 mg/kg criterion.
6. GE will not dispose of material classified as federal RCRA hazardous waste, or free liquids, free product, or any intact drums, capacitors or containers, into the Upland Disposal Facility. GE can use relevant data from the RFI and apply the 20 times rule (i.e., dividing the concentration in the sample by 20 and comparing the result to certain threshold values described in 40 C.F.R. 261) to determine if there are compounds that could potentially exceed the Toxicity Characteristic Leaching Procedure (TCLP) testing requirements. GE can also use relevant data from EPA's 1.5- Mile Reach Removal Action (e.g., TCLP data and other RCRA Characteristic requirements including ignitability, corrosivity and reactivity). If existing data is not sufficient to demonstrate that material will not contain RCRA hazardous waste, then GE will propose additional sampling in the appropriate Work Plans. In any Subreach where RCRA hazardous waste may be present, GE will collect a reasonable number of composite samples for analysis (for example, TCLP sampling for metals). If any composite sample demonstrates the material is RCRA hazardous waste, then: a) the material can be treated until testing demonstrates that the material is non- hazardous, or b) the material can be disposed of at an off-site facility in compliance with EPA's off-site rule (40 C.F.R. § 300.440).
  7. Any other materials to be disposed of not otherwise addressed above will be sampled prior to disposal and disposed of in the Upland Disposal Facility if they have less than 50 mg/kg PCBs. (This could apply to haul road materials, etc. that GE may need to dispose of as part of the overall remedy construction.)
  8. GE will dispose of the segregated high concentration sediment, soil and waste materials, and any free liquids, free product, or intact drums, capacitors or containers, in any facility that is licensed/permitted to accept such waste and will accept it, including RCRA Subtitle C Landfills, so long as said facility is in compliance with EPA's off-site rule (40 C.F.R. § 300.440).

