

## Rest of River Municipalities of Great Barrington, Lee, Lenox, Sheffield & Stockbridge Statement

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## **Rest of River Municipalities of Great Barrington, Lee, Lenox, Sheffield & Stockbridge**

### **Statement on Housatonic Rest of River Settlement Agreement**

The Towns of Great Barrington, Lee, Lenox, Sheffield and Stockbridge, known as the Rest of River municipalities, have signed a Settlement Agreement to enhance and accelerate the cleanup of PCB contamination in the Housatonic River flowing through their towns, as well as settled the difficult issue of sediment and soil disposal. Also signing this Agreement are GE, EPA, City of Pittsfield, State of Connecticut, Mass Audubon Society, the Berkshire Environmental Action Team (BEAT) and C. Jeffrey Cook. The Settlement Agreement is the result of years of working with EPA on the 2016 Permit, ongoing litigation and a year of intense mediation. The Settlement Agreement obligates EPA Region 1 to issue a new RCRA permit with a new “Rest of River” cleanup plan that is described in the agreement and it obligates the other parties (including GE and the five towns) not to appeal this permit to the Environmental Appeals Board.

The Rest of River municipalities fully understand not all residents will be pleased with this Settlement Agreement; some residents have wanted a complete river cleanup, others wanted less and some wanted none at all. Still others hope for future technologies to non-invasively clean the river. The discussion has gone on for over twenty years. The Rest of River municipalities have had to grapple with what was before them, including legal, political and financial realities. The Rest of River municipalities feel the Settlement Agreement is in the best interests of all their communities. The public will have ample opportunity to comment during the public comment period once EPA releases its draft revised Permit.

### **Background, the Municipal Committee, Mediation and Settlement**

#### **BRIEF HISTORY OF THE HOUSATONIC RIVER CLEANUP**

In 1999, after years of legal wrangling, EPA, GE and the City of Pittsfield signed a settlement to clean-up the former GE site in Pittsfield and the first two miles of river from the plant site to the confluence of the East and West Branches of the Housatonic. This settlement was approved by the U.S. District Court in Springfield in 2000 and became known as the Consent Decree. Three unique features of the Consent Decree have impacted the Rest of River cleanup:

1. Only Pittsfield, none of the towns south of Pittsfield or other stakeholders, had any involvement in negotiating the terms of the Consent Decree.



2. All decisions about how the remainder of the Housatonic River would be cleaned up were put off to a later time. The remaining 149 miles to Long Island Sound was termed “the Rest of River” in the Consent Decree.
3. A provision stipulating that the selection of the Housatonic River site and cleanup plan would not be governed by the Federal Superfund Law provided all parties, including GE, legal appeal options that would not have been available if the cleanup had been a Superfund site.

### **REST OF RIVER MUNICIPAL COMMITTEE**

The Rest of River Municipal Committee was created in 2013 to advocate common Housatonic River cleanup goals for the Rest of River to the EPA. It is governed by an Inter-Governmental Agreement (IGA) signed by each municipality. Committee members are appointed by their respective executive authorities. The Berkshire Regional Planning Commission has provided technical, fiduciary, facilitation and coordination assistance. The IGA authorized the Committee to represent the collective interests of the municipalities during development of the 2016 Permit and any potential subsequent actions.

Consisting initially of Pittsfield, Great Barrington, Lee, Lenox, Sheffield and Stockbridge, this was the first time all the Massachusetts municipalities on the Housatonic River directly impacted by the cleanup spoke with one voice. This single voice focus gave the Committee attention, access and a presence previously only afforded to Pittsfield. Before the 2016 Revised Permit was issued, the Committee sought to influence what would be in the EPA’s Permit governing the Rest of River cleanup. Pittsfield left the Committee in October 2016.

In order to effectively participate in the permit process, the Committee hired legal counsel, Hagens Berman, and exercised its rights as a party commenting on the Permit and subsequently appealed the permit before the EPA’s Environmental Appeals Board (EAB). The key issue before the EAB for the municipalities was whether there would be one or more in-county hazardous waste landfills.

The Committee has worked together for over six years and will continue to do so during the EPA’s rewrite of the 2016 Revised Permit, the public comment period, final issuance of the new Permit and during all phases of the River cleanup.



## **WHY THE REST OF RIVER MUNICIPALITIES ELECTED TO JOIN THE EPA SPONSORED MEDIATION**

### **1) Why?**

The Committee felt it was important to enter into mediation and listen to what both GE and EPA Region 1 had to say. As almost all the parties with legal standing had agreed to enter mediation, if the Committee did not, it would not be able to influence decisions that might be agreed to during mediation. The Committee knew it could leave mediation at any time if they felt the proposed mediation was bogus.

### **2) EPA DC has changed significantly in recent years.**

EPA Headquarters in Washington has told its regional offices to get stalled cleanups, such as the Rest of River cleanup, resolved. Concerns have continued to increase over a Washington dictated cleanup solution and cleanup control being taken away from EPA Region 1 staff.

### **3) General Electric appeared willing to negotiate.**

The Committee was given to believe GE wanted to negotiate. This provided the Rest of River towns an opportunity to negotiate a cleanup settlement where they could directly shape its terms. Given the political climate, it was felt this was likely a one –time opportunity.

### **4) Threat of an adverse EAB decision.**

The key issue before the Environmental Appeals Board (EAB) is whether all PCB soils and sediments would be disposed of in up to three landfills in southern Berkshire County. GE's position is yes; the municipalities and EPA Region 1 positions are to ship the waste out of state to a federally licensed landfill. No one knows what this decision will be in this winner take all matter.

### **5) The prospect of ongoing litigation all the way to the U.S. Supreme Court.**

When EPA first issued a "Rest of River" cleanup plan in 2016, GE was required to ship all waste removed from the River to an out-of-State facility. GE successfully appealed this decision to the EPA Environmental Appeals Board, which ordered EPA to reconsider disposing of the waste in any of three landfills proposed by GE in Berkshire County. When the parties entered mediation, it was clear that any decision by EPA to stick with out-of-State disposal would be appealed again by GE, and that any decision to opt for in-State disposal might require an appeal by the five Towns—possibly without any support from EPA. These appeals would not necessarily have stopped at the EAB, because GE had a right to appeal from the EAB to a federal appeals court and could even have pursued an appeal from there to the U.S. Supreme Court. Paying for such an appeal would require



an annual appropriation by each of the towns on an ongoing basis, which cannot be guaranteed. Such costs were estimated to be up to a million dollars.

**6) There were many Rest of River cleanup issues to resolve.**

The cleanup will encompass numerous socio-economic and logistical issues in addition to the PCB soil and sediment disposal question before the EAB, which was seen as an all or nothing decision. Mediation provided an opportunity to raise and negotiate these issues rather than have them either excluded or dictated to the impacted communities. Mediation was seen as a way to get more protections and engagement than provided in the 2016 Revised Permit and normally afforded municipalities in an EPA cleanup.

**7) As the Executive Authority, the Select Board for each of the five towns made the decision to enter mediation.**

Only the Select Boards may do so, just as only the Select Boards have the authority to approve any legally binding resulting settlement agreement to come out of mediation. The Committee was in place to represent the towns in the mediation process and had years of experience working on Rest of River cleanup issues as a group, as well as with the EPA.

**THE PRIORITIES OF THE REST OF RIVER MUNICIPAL COMMITTEE DURING THE MEDIATION**

**1) If a landfill were dictated, would public health and safety and the environment be protected?**

At the start of mediation, the Committee made it clear to EPA that if it was not satisfied that a landfill containing PCBs would be protective of public health, safety and the environment, it would not continue negotiating towards a settlement. In addition, the Committee wanted to make sure no materials from other cleanup sites or from the earlier Housatonic River cleanup would be disposed of at a new landfill. Using the Towns' legal funds, ESS, an environmental consultant, was hired to ensure those goals were reached. The landfill, as designed and specified in the Settlement Agreement, meets those standards.

**2) Ensure, if there was to be any local landfill, that it be limited to only one site – eliminating two of the three sites proposed by GE.** The Settlement Agreement eliminates all consideration of the landfills adjacent to Rising Pond in Great Barrington and off Forest Street in East Lee. The Lane site, since it was already heavily disturbed and adjoined the areas containing the largest amount of contaminated sediment to be removed, clearly was the most logical.



- 3) **More cleanup.** The Committee insisted on greater cleanup to include additional cleanup behind down-stream dams, backwaters, and additional sediments and soils. Due to concerns over long term reliability and the potential for subsequent re-contamination, the Committee asked for a significant reduction in the capping of contaminated sediments and increased sediment removal. These goals have been achieved.
- 4) **Protect public infrastructure during 15+ years of clean-up and landfill operations and closure.** The clean-up will occur in areas accessible only by local roads, some of which were never built to carry large volumes of heavy vehicles and are in fragile condition. Road, bridge, and culvert reconstruction costs can be extremely significant. A specified methodology to determine damage caused by GE during clean-up activities, and an agreement that GE will repair or replace infrastructure it damages, is in the Settlement Agreement.
- 5) **Ensure local input into how the clean-up proceeds.** The Towns wanted as much local input and control over how clean-up activities were performed in each town as possible. While federal law gives EPA the final say in decisions about the clean-up and exactly how it happens, the Settlement Agreement gives the municipalities, as well as affected property owners and neighborhoods, greater opportunities to review and provide input into these EPA decisions.
- 6) **Enhance public access to and enjoyment of the River.** GE has committed to work with municipalities and the State on improving opportunities for a variety of outdoor recreation facilities. Since they must construct access roads and staging areas throughout the areas being cleaned-up there will be lower cost and impact opportunities to provide such facilities as clean-up is completed in various sections.
- 7) **Receive compensation for the impacts of the contamination and clean-up.** Municipalities face substantial impacts due to the river clean-up. The Settlement Agreement, in providing \$55 million to the five Towns, provides substantial compensation that would not be there but for the Agreement.
- 8) **Release GE owned or controlled properties in Great Barrington from restrictions on future use.** A 149 acre parcel owned by GE adjacent to Rising Pond in Great Barrington will be donated to the Town or its designee and use restrictions on the former Rising Paper Mill (now Hazen Paper) in Housatonic will be released by GE, allowing fuller use of the mill.



## **WHY THE REST OF RIVER MUNICIPALITIES SIGNED THE SETTLEMENT AGREEMENT**

- 1) The Rest of River Committee directly negotiated the terms of the Settlement Agreement for their towns, which is preferable to a solution dictated to them by EPA, the Environmental Appeals Board, or a federal court.
- 2) By compromising on the disposal of PCB sediments and soils, the following were gained: greater clean-up of PCB contamination; strengthened and defined sampling and averaging techniques; additional safeguards for the communities; and additional community input on how the clean-up will be accomplished. The improvements in the Agreement are significantly better than what was in the 2016 Revised Permit and would be lost if no Agreement were reached. GE might have prevailed on the landfill issue before the Environmental Appeals Board or federal court and then all the contaminated soil and sediment would have been placed in a landfill in the County, without any of the benefits in the Agreement.
- 3) In addition to the numerous benefits and guarantees provided to the municipalities, it gets the Rest of River cleanup started after more than 20 years of uncertainty and delay since the 1999 Consent Decree. Continued appeals potential litigation would have continued the uncertainty and very expensive.
- 4) Makes significant improvements to the 2016 Revised Permit, has major new benefits, and eliminates the possibility of litigation between the Towns and GE and/or EPA. These would disappear without a Settlement Agreement. The Rest of River towns would not get this opportunity again and they felt they had significantly improved their citizens' current and future position, say and outcomes in the Rest of River cleanup.
- 5) The benefits negotiated by other parties to the Settlement Agreement, such as the City of Pittsfield, Mass Audubon and BEAT, provide economic development, improved recreational opportunities and an improved Rest of River cleanup.



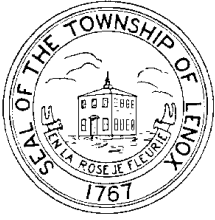
## Highlights and related specifics of the Settlement Agreement are:

### 1. MORE RIVER CLEANUP

GE has agreed to remove more PCBs. The volume of contaminated material to be removed under the Settlement Agreement will likely be higher than the volume estimated under the 2016 Permit cleanup, depending upon what is discovered in the course of cleanup. Additional contaminated sediments will be removed behind five downstream dams and two obsolete dams will be removed. The additional sediment removal is expected to reduce the contaminated areas to be covered with a cap by almost 100 acres, or one-third of the estimated 300 acres of capping in the 2016 Permit. More specifically:

- a. GE has agreed to remove contaminated soil from 22 floodplain residential properties in Pittsfield and, if the owners agree, an additional six residential properties in Lenox.
- b. Based on additional sampling, GE will evaluate and consider additional contaminated bank removal in Reaches 5A (Pittsfield) and 5B (northern portions of Lenox).
- c. GE will conduct additional cleanup at Mass Audubon's Canoe Meadows property.
- d. GE will remove contaminated sediments to a level of no more than 1 part per million (ppm) in Reach 5C in Lenox, eliminating approximately 57 acres of capping required by the 2016 Permit.
- e. GE will remove contaminated sediments to a level of no more than 1 ppm behind the Columbia Mill Dam (Lee), remove the dam, which is no longer used, and eliminate up to 10 acres of capping required by the 2016 Permit.
- f. GE will remove contaminated sediments behind the remnants of the Eagle Mill Dam (Lee) to a level of no more than 1 ppm and remove the remnants of the dam, which is no longer used, and eliminate up to 8 acres of capping required by the 2016 Permit.
- g. GE will remove sufficient contaminated sediments behind the Willow Mill Dam (Lee) and Glendale Dam (Stockbridge) to reduce capping required in the 2016 Permit from up to 20 acres to no more than 9.5 acres, eliminating up to 10.5 acres of capping.
- h. GE will remove sufficient contaminated sediments behind the Rising Pond Dam (Great Barrington) to reduce capping required in the 2016 Permit from up to 41 acres to no more than 31 acres, eliminating up to 10 acres of capping.
- i. EPA's new Permit will broaden the approach to remediation of vernal pools, testing methods for excavation and restoration of vernal pools and use of innovative non-invasive methods such as use of activated carbon; future remediation will be based on how successful each method performed.
- j. GE will discuss with EPA the storm drainage system on the PEDAsite.
- k. All other cleanup requirements in the 2016 Permit be retained.



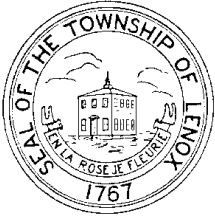


## **2. DISPOSAL SOLUTION: OUT OF STATE DISPOSAL & UPLAND DISPOSAL FACILITY**

The Parties agreed to a portion of the Lane Construction sand and gravel pit (Northern Lee) becoming a landfill for certain soils and sediments from the River, eliminating any possibility of a landfill at two other local sites previously under GE's consideration next to Rising Pond in Great Barrington and Forest Street in Lee. The Lane site will accept soils only if their average PCB concentration is below 50 parts per million (ppm), and sediments only if their average concentration is 25 ppm or less.

The most contaminated soils and sediments will be shipped out of state for disposal. The Upland Disposal Facility will be constructed with more stringent design features required for landfills containing highly contaminated soils. GE will be responsible for its permanent monitoring and maintenance. The requirements for the construction, operation, and maintenance of the Upland Disposal Facility are:

- a. A portion of the Lane Construction sand and gravel pit in northern Lee will become a landfill ("Upland Disposal Facility") for soils and sediments from Reach 5A (Pittsfield), 5C (portion of Lenox), Woods Pond, backwaters and from behind the five downstream dams. To be eligible for disposal in this landfill, soils must have PCB contamination levels averaging less than 50 mg/kg PCBs (50 ppm) and sediments must have PCB contamination levels averaging 25 mg/kg for river sediments. In addition, all sediment from Reach 5B will be disposed of out of state. The Agreement outlines a protocol for determining which materials can/cannot be disposed of in the Upland Disposal Facility.
- b. A minimum of 100,000 cubic yards of PCB-contaminated sediment and soils must be disposed of out of State, including all sediments and soils exceeding the standards allowing for disposal at the Upland Disposal Site.
- c. A more defined/delineated PCB sampling and averaging methodology has been agreed to, providing greater specificity in identifying contamination to be removed as well as when it will need to be shipped out of state.
- d. The landfill will not accept PCB waste in the form of intact drums, capacitors, or containers, or non-PCB material classified as federal RCRA hazardous waste.
- e. GE will not pursue other possible hazardous waste landfills which had been proposed adjacent to Rising Pond (Great Barrington) and on Forest Street (East Lee).
- f. The landfill will be strictly limited to material removed during the Rest of River Clean-up and no material from any other project or site will go into this landfill.



- g. The landfill will have a maximum design capacity of 1.3 million cubic yards and a maximum landfill area of 20 acres. It is also expected to have a maximum elevation of 1,099 feet above mean sea level (the highest current elevation on the site is about 1,040 feet). Any excess materials must be shipped out of state to a properly licensed facility.
- h. The landfill will be designed with a double liner, the bottom of which must be at least 15 feet above the seasonal high-water table; leachate collection system; and low-permeability multi-layer cap and vegetation.
- i. GE will pay the installation costs of connecting any non-community or private water supply wells within 500 feet of the landfill to a public water supply, unless the well owner does not consent to the connection.
- j. GE will install a groundwater monitoring network around the landfill to monitor for PCBs.
- k. GE is responsible for landfill inspections, maintenance, and groundwater sampling and shall remain responsible after the clean-up is complete and the landfill closed. GE is also responsible for closure and capping of the landfill as directed by EPA.
- l. The landfill design will include a stormwater management system to control surface runoff.
- m. GE shall include in its landfill design submissions one or more proposals (based on GE's consultations with the Town of Lee) describing how GE will prepare the site for potential re-use once the landfill is capped.

### **3. MORE RESEARCH**

EPA will facilitate continuing efforts towards the identification of opportunities to apply existing and potential future research resources to PCB treatment technologies. These opportunities may include soliciting research opportunities for research institutions and/or small businesses to target relevant technologies. GE and EPA will continue to explore current and future technology developments and will, where appropriate, collaborate on on-site technology demonstration efforts and pilot studies and, consistent with the Adaptive Management requirement in the 2016 Permit, consider their applicability at the Housatonic River site.

### **4. REDUCED LOCAL CLEANUP IMPACT & ENHANCED COORDINATION**

The Agreement calls for substantive steps to address potential adverse cleanup impacts on the communities and provide assistance to local stakeholders in reviewing cleanup plans as they are developed, including the following:

- a. GE shall implement, if feasible, hydraulic dredging and/or hydraulic pumping of contaminated material removed from Reach 5C, Woods Pond, and potentially backwaters in those areas. GE



estimates this could result in a 55% reduction in trucks hauling contaminated soil and sediment in Lee and Lenox.

- b. GE is required to consult with local officials and affected stakeholders in developing scopes of work regarding work activities, schedules and traffic routes and to describe such consultations in work plans submitted to EPA.
- c. GE is required to submit a Quality of Life Compliance Plan to EPA for review and approval. Five areas must be addressed in this Plan: noise, air, odor and light; recreational activities; road use and transport-related impacts; coordination with impacted residents/landowners; and community health and safety. EPA will seek input on the Plan from local governments, impacted residents/landowners, neighborhoods in the vicinity of the clean-up, and other interested stakeholders prior to approval of work activities, schedule and traffic routes.
- d. The Quality of Life Compliance Plan will consider methods to reduce residential impacts of transport of waste material through residential areas.
- e. The Quality of Life Plan will include documentation regarding how GE will repair any damage to roads and infrastructure used in the cleanup.
- f. EPA will provide consulting contractor support for technical assistance to the City of Pittsfield and the Towns of Lenox, Lee, Stockbridge, Great Barrington, and Sheffield. The contractor, funded by EPA, may provide support for the communities' oversight of the work and providing information back to the community on that work.

## **5. ECONOMIC DEVELOPMENT & COMMUNITY BENEFITS**

A significant economic development package has been committed to the five Rest of River municipalities and other signers of the Settlement Agreement, including the City of Pittsfield and Mass Audubon.

- a. GE is providing \$55 million to the Rest of River Towns of Great Barrington, Lee, Lenox, Sheffield and Stockbridge, who have determined the distribution of these funds amongst themselves. The Towns' funds will be placed in an interest-earning escrow account and released to the Towns upon final approval of a new EPA Permit that substantially conforms to the terms of the Settlement Agreement and after all potential legal appeals, if any, are concluded.
- b. GE is donating a 149-acre site adjacent to Rising Pond to the Town of Great Barrington or its designee for conservation and/or development.
- c. GE is releasing use limitations on the Hazen Paper Mill site in Great Barrington.
- d. GE commits to prioritize use of local labor to the extent feasible and economical.



- e. GE will work cooperatively with the City, Towns and State to facilitate their enhancement of recreational activities in the Rest of River corridor.
- f. GE will coordinate with municipalities regarding the upgrade of stormwater conveyances as the cleanup work is progressing.
- g. GE will evaluate roads prior to starting work and repair any damage to roads or infrastructure they cause. GE shall document the pre-existing condition of any municipal road to be used during remediation prior to any transport of materials or starting any work, as well as document the condition of other visible infrastructure (bridges, culverts, etc.).
- h. After completion of remediation activities affecting a specific road, GE will document the then-existing condition of the road and associated infrastructure. GE will repair/replace any damage caused by GE, which will meet current State or Federal standards.

## **6. IMMEDIATE START TO WORK ON REST OF RIVER CLEANUP**

GE will start to investigate and design the cleanup plan to speed up beginning the Rest of River cleanup while EPA finalizes the new Permit. Proposed changes to the new Permit that governs the cleanup will be released for public comment later this year.

### **ADDITIONAL INFORMATION**

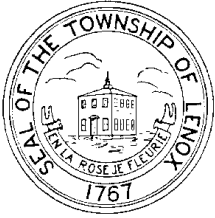
While all parties to the Settlement Agreement have retained the right to withdraw from the Settlement Agreement and litigate if the EPA's new Permit does not substantially conform to the terms of the Settlement Agreement, all parties to the Settlement Agreement have agreed not to challenge the new Permit if it does conform substantially to the Settlement Agreement.

The Rest of River municipalities have agreed that the GE compensation, to be placed in an interest earning Escrow Account, will be distributed as follows:

- 1) Each town will receive reimbursement for all of its financial contributions to this effort;
- 2) A portion of these funds will be set aside as a reserve fund to pay for future legal and technical services as needed during the cleanup process; and
- 3) Remaining funds: 45.90904% each to the Towns of Lee and Lenox and 2.7273% each to the Towns of Great Barrington, Sheffield and Stockbridge.

Beyond the Settlement Agreement, there are several additional steps to be completed.

- The Rest of River municipalities will hold one or more public informational sessions to explain the Settlement Agreement and answer questions.



- As the Settlement Agreement includes a number of modifications to EPA’s 2016 Permit, the EPA will work to modify the Permit to incorporate the contents of the Settlement Agreement.
- EPA will then present those revisions to the 2016 Permit to the public for comment during a public comment period.
- After considering and responding to received public comments, EPA will finalize and issue a revised Permit, which will govern the Housatonic River cleanup.
- EPA has stated it hopes to complete the revisions, solicit public comment (including a public meeting and hearing), and finalize a Revised Permit during 2020 or early 2021.
- Detailed Scopes of Work will be developed and subject to stakeholder review prior to approval. They spell out the details for each step of the clean-up, including sensitive items such as air quality monitoring, transport of PCBs downriver due to clean-up activities, impacts of the cleanup process itself, and how those will be monitored and managed.

**Contact Information:**

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Town of Lee: Patricia Carlino; [persbank12@roadrunner.com](mailto:persbank12@roadrunner.com); 413-441-6441

Town of Lenox: Channing Gibson; [channing.gibson@mc.com](mailto:channing.gibson@mc.com); 310-968-4333

Town of Sheffield: Rene Wood; [renecwood@aol.com](mailto:renecwood@aol.com); 413-248-1172

Town of Stockbridge: Steve Shatz; [stephenshatz@gmail.com](mailto:stephenshatz@gmail.com); 413-530-5680

**Public information sessions:**

*Wednesday, February 19, 2020 - 6:00 pm*

Lee High School  
300 Greylock Street  
Lee, MA

*Thursday February 20, 2020: 6:00 pm*

Monument Mountain High School  
600 Stockbridge Road  
Great Barrington, MA