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GE
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Via E-mail and First Class Mail

November 3, 2008

Dean Tagliaferro
EPA Project Coordinator
c/o Weston Solutions, Inc.
10 Lyman Street
Pittsfield, MA 01201

Michael Gorski
State Project Coordinator
Western Regional Office
Massachusetts Department of
Environmental Protection
436 Dwight Street
Springfield, MA 01103

**Re: GE-Pittsfield/Housatonic River Site
NPDES Permit No. MA0003891
Notice of Dispute**

Dear Mr. Tagliaferro and Mr. Gorski:

Pursuant to Paragraph 133 of the Consent Decree (CD) for the GE-Pittsfield/Housatonic River Site, this letter provides General Electric Company's (GE) Notice of Dispute regarding the final NPDES permit (the Permit) jointly issued on September 30, 2008 by the U.S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (MDEP). On November 3, 2008, GE filed administrative appeals of terms of the Permit before EPA and MDEP. This dispute addresses the extent to which the CD places limits on EPA's and MDEP's authority to impose certain obligations on GE, and the Permit abridges those limits.

The CD establishes "a program for comprehensive environmental remediation of the GE site and surrounding areas, including removal of contaminated soil, demolition of buildings, and groundwater treatment."¹ In return for GE's agreement to implement and fund that extensive remediation, EPA and MDEP agreed to condition their authority to impose new or expanded remedial obligations on GE. The Permit bypasses the procedures and requirements of the CD and purports to require GE to implement additional and expanded response actions outside the four corners of the parties' settlement.

The following summarizes the issues that GE intends to present in this dispute:

- 1. The GE Plant Site is exempt from the requirement to obtain a NPDES or state-equivalent discharge permit.**

¹ *Response To Public Comments on Draft Permit No. MA0003891 for General Electric Company, Pittsfield, Massachusetts*, EPA, Sept. 30, 2008 (*Response to Comments*), p. 3.

At the time GE initially applied for and obtained federal and state discharge permits, the Pittsfield facility conducted active manufacturing operations and discharged process wastewater. That is no longer the case. As EPA acknowledges, “the predominant activity on the GE site consists of environmental remediation, and is being conducted in accordance with a consent decree. . . .” *Response to Comments*, p. 3. Currently, there are three primary sources of discharges on the GE Plant Site: stormwater runoff from precipitation (rainfall and snowmelt), groundwater infiltration/inflow into subgrade stormwater conveyance piping, and treated waters associated with the response actions conducted under the Consent Decree (e.g., extracted groundwater). All of these sources are the subject of the remedial program established pursuant to the CD. In these circumstances, it is well established that no federal or state discharge permit is required. 42 U.S.C. § 9621(e)(1); 40 C.F.R. § 300.400(e); CD ¶ 9.a. As a result, EPA and MDEP should withdraw the Permit and instead follow the requirements of the CD, which establishes the obligations that GE has to comply with the substantive requirements of certain environmental regulations.

2. In the alternative, any discharge permit issued by EPA and MDEP cannot impose additional response actions beyond those established by and incorporated into the CD.

At the time of the parties’ settlement and the Court’s entry of the CD in 1999 and 2000, respectively, the GE Plant Site was subject to an existing federal and state discharge permit. In order for EPA to satisfy its obligation to demonstrate that the remedial program described by the CD adequately protects human health and the environment, the Agency specifically considered the limits set forth in the then-existing permit and concluded that those limits, along with the comprehensive remedial program set out in the CD, would be protective. The CD contains carefully drawn covenants that bar EPA and MDEP from imposing new or expanded remedial obligations on GE without satisfying the prerequisites established by the CD. The Permit imposes new and expanded source control obligations on GE, but does so without satisfying those prerequisites.

For these reasons, EPA and MDEP should withdraw the Permit in its entirety or, in the alternative, should take back the Permit for reconsideration and potential reissuance in a form that does not impose new or expanded response action obligations on GE.

Please contact us so that we can set a schedule for discussing these matters. Thank you.

Sincerely yours,



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cc: T. Conway, EPA
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