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June 23, 2011

Honorable Lisa Jackson, Administrator
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Re: Housatonic River Clean-Up

Dear Administrator Jackson:

I am writing to you on behalf of the Commonwealth of Massachusetts. As you know, for many years the Commonwealth and EPA have worked together on devising and implementing a remedy for the contamination of the Housatonic River from PCBs discharged from General Electric's (GE) facility in Pittsfield, Massachusetts. Working together, the major source of the PCB discharge has been remediated, and the first two-mile stretch of the river has been properly addressed.

Pending before EPA is how to remedy the remainder of the river, particularly a ten-mile stretch in Pittsfield and Lenox where most of the remaining PCB contamination lies. Unfortunately, from the Commonwealth's perspective, the process for determining the appropriate remedy has been unsatisfactory and, for that reason, we are seeking your timely intervention. Specifically, we believe that submission of a proposed remedy to the Remedy Review Board (RRB) at this time drives a rush to judgment with insufficient sharing of information and discussion with the Commonwealth, deprives the Commonwealth of adequate opportunity to shape the remedy, and will likely result in a proposed remedy that will itself cause significant ecological harm. We therefore join Congressman Olver in requesting that EPA defer the RRB proceeding and instead engage in an intensive discussion with the Commonwealth and representatives of GE in an effort to find common ground prior to the submission of a remedy to the board.

By way of background, despite the legacy of PCB contamination, the ten-mile stretch of river in question is one of the most significant natural resources in the Commonwealth, and was designated by my predecessor as an Area of Critical Environmental Concern due to its unique



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soils, riverine characteristics, and abundance of rare plant and animal species. The Commonwealth's Department of Fish and Game owns approximately 80 percent of the land abutting this stretch of the river as a protected wildlife preserve.

Since the river is not a Superfund site, the remedy for the contamination is governed by RCRA. Under RCRA, GE was required to prepare a Corrective Measures Study analyzing a wide array of remedial alternatives. GE submitted the first draft of this document in March, 2008. Since then, MassDEP has worked with both EPA Region 1 and GE to have the CMS (and subsequent remedy) address and protect the aspects of this ecosystem that make it unique within the state. In January 2011, the Commonwealth submitted comments on the March, 2010 CMS, proposing a hybrid remedy that protects human health, while preserving the existing ecological systems. A key feature of the Commonwealth's proposal is that PCBs be removed from locations where they pose an unacceptable risk to human health through direct contact, and from areas where the disruption associated with the removal is clearly balanced by improvements in the ecosystem. For your convenience, we have attached a copy of our comments.

The Commonwealth strongly believes that the remedy selection process would benefit from a "principals meeting" between the Region 1 administrator, the Commissioner of MassDEP, and a GE representative to explore common ground with respect to a remedy. Such a meeting is expressly provided for in a Consent Decree signed by EPA, the Commonwealth, GE, and others. Unfortunately, the meeting could not be scheduled before June 29, 2011. Given the short time between the planned Principles Meeting and the July meeting of the EPA Remedy Review Board, the Commonwealth does not believe there is adequate opportunity for EPA Region 1 to modify its proposed remedy, even if presented with a compelling case. In addition, Region 1 has indicated a reluctance to discuss the substance of the proposed remedy at the meeting.

We have also repeatedly asked for a briefing from Region 1 as to its thinking on a preferred remedy. While Region 1 staff did provide the Commonwealth with a very general briefing on June 5, 2011, the level of detail provided by EPA was disappointing. It was apparent, however, that EPA and the Commonwealth are far apart on the remedy, particularly in the matter of preserving the function of the ecosystem as a whole. The Commonwealth would hope that EPA would see the wisdom of accepting the Commonwealth's intimate knowledge of this site and recognize its interests as the principal landowner – the land was specifically preserved at great expense to the state due to its unique ecosystem. Based on our current limited understanding, the proposed remedy is likely to involve a highly invasive cleanup requiring widespread tree-clearing, dredging, and construction of numerous staging areas and roads in sensitive areas. Moreover, the proposed "stabilization" of the river itself represents the loss of a unique natural resource.

Region 1 is proposing to submit its proposed remedy to the Remedy Review Board in late July. The Commonwealth's comments on that remedy were originally due on June 30, although in a conversation with senior members of your team, MassDEP Commissioner Ken Kimmell was told that the deadline could be extended until late July and efforts could be made to better inform the Commonwealth of the nature of the proposed remedy. While we appreciate the attention your staff has paid to our concerns, we still believe that it does not make sense to go through the

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RRB process at this time. We do not believe that this step is legally required at this time, and no one from your staff has cited any legal authority to demonstrate that it is. And, as Congressman Olver points out, the RRB process does involve the board "stamping its imprimatur" on a remedy, which will make it more difficult to devise and agree upon an alternative.

The procedure we recommend is fully consistent with the Consent Decree, which emphasizes the partnership between the state and federal government and the need for dialogue and collaboration. The remedy EPA is about to propose to the Remedy Review Board has been selected in isolation, which appears to violate the spirit, if not the letter of the Consent Decree. And the direction this process has taken is likely to lead to a long legal struggle, with appeals first to the Environmental Appeals Board, and then to federal district court as provided in the Consent Decree.

Our goal is to implement a solution that protects public health while preserving an irreplaceable ecosystem, balancing the benefits of remediating the PCBs with the damage that will be caused by the remedial action itself. Our ask is simple: EPA must provide sufficient time and space to allow such a solution to be developed before sending a proposed remedy to the Remedy Review Board. The Commonwealth would welcome Region 1's participation and leadership in discussions over the coming months in an intensive effort to reach a consensus that meets the needs of the principal stakeholders.

We thank you for considering this request and appreciate your attention to this highly important matter.

Sincerely,

A handwritten signature in black ink, appearing to be "RS", enclosed within a circular flourish.

cc: Senator John Kerry
Senator Scott Brown
Congressman John Olver
State Senator Ben Downing
Robert Sussman
Manny Stanislaus
Regional Administrator Curt Spalding
Commissioner Mary Griffin
Commissioner Ken Kimmell