

## **TOWN OF LEE BOARD OF HEALTH**

*Robert Wespiser, MD~ Chairperson~ Carisa Vincent, RN~ JoAnne Sullivan*

*Sent via Priority Mail*

October 11, 2022

Henry Lawrence "Larry" Culp, Jr.  
Chairman and Chief Executive Officer  
Chief Operating Officer  
General Electric Company  
5 Necco Street  
Boston, MA 02210

*In Re: Invitation to General Electric to Provide Evidence at Adjudicatory Hearing*

The Lee Board of Health (LBOH) invites General Electric (GE) to participate and provide evidence at a forthcoming adjudicatory hearing LBOH will hold to determine whether a large PCB disposal facility (hereinafter Upland Disposal Facility (UDF)) GE wants to install in Lee, Massachusetts, will or will not be a risk of health to the residents of Lee and adjacent communities.

The United States Environmental Protection Agency (EPA) denied GE a permit to install the UDF in Lee in 2016 but reversed itself and granted the permit in 2020. LBOH invited EPA to participate at its forthcoming adjudicatory hearing to which EPA kindly responded by introducing into evidence at the forthcoming LBOH adjudicatory hearing the entire administrative record of its decisions to deny in 2016, and then to grant in 2020 the requested permit to GE to build the UDF in Lee.

EPA has the power under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) to preempt contrary decisions based of state and local laws. EPA does not have the power to preempt regulations of Boards of Health in Massachusetts issued to prevent risks of health to the residents of local towns. MGL c. 111, §§ 31 and 143, enacted in Massachusetts in 1861, was upheld by The Massachusetts Supreme Court (MASC) who in 1985 ruled that State and Federal Agencies do not have the power to preempt decisions of Boards of Health in Massachusetts related to health risks to the residents of a town. *Arthur D. Little v. Commissioner of Health of Cambridge* 395 Mass. 535; 481 N.E.2d 441; 1985 Mass.

EPA argues in its response to the LBOH invitation to participate at its forthcoming adjudicatory hearing, that *Arthur D. Little Id.*, applies only to the United States Department of Defense. LBOH disagrees with this narrow interpretation and will request MASC to resolve the disagreement in case LBOH finds that the UDF presents a risk to the health of residents in Lee, and GE decides not to abide by LBOH regulations.

LBOH jurisdiction is limited to issues dealing with the health of Lee's residents, thus unlike EPA it cannot make risk/benefit or cost/benefit analyses as EPA has done in granting GE the permit to install the projected UDF in Lee. It is unfortunate that before GE applied for a CERCLA permit to install the UDF in Lee it failed to seek for approval of the UDF from LBOH.

LBOH is requesting that GE participate at the projected hearing and provide all evidence it has that the UDF will not become a risk to the health of residents of Lee. LBOH will hold an open mind until after the adjudicatory hearing as to whether the UDF presents or does not present a health risk to the residents of Lee.

LBOH might disagree with conclusions reached by EPA but has no quarrel with a decision in which EPA balanced the risk of health to residents of Lee against risks of health to many others impacted by contamination of the Housatonic River with PCBs, the donation of 25 million dollars by GE to some local units, the donation of one half million dollars to Mass Audubon, and as well as other factors. LBOH has an interest in all these issues, but those factors cannot be balanced by LBOH against risks to the health of residents of Lee.

David J. De Simone, PhD, a geologist with enormous knowledge and experience and co-recipient of the 2020 EPA Region 1, Environmental Merit Award for Scientific Research, has made available to LBOH his research and conclusions regarding the proposed UDF. This report was entered into the EPA administrative record where it was balanced by EPA with other factors. This type of balancing is not allowed by the jurisdictional basis on which Boards of Health operate when issuing regulations.

The conclusions of David J. De Simone are disturbing to LBOH and would like GE to challenge these conclusions before or at the adjudicatory hearing. These are the conclusions of David J. De Simone that LBOH finds disturbing:

My primary concern for this site as a landfill is that a leak in the liner and leachate collection system will eventually occur; then, leachate will have no natural sediment barrier to flow in the subsurface. EPA has stated **"First, even the best liner and leachate collection systems will ultimately fail due to natural deterioration..."**(53 Federal Register 33345, August 30, 1988). The sand and gravel aquifer will become contaminated and leachate will easily infiltrate underlying bedrock. This is a poor site for a landfill (emphasis added).

**The bottom line is the geology of the proposed PCB landfill location is very likely to result in leachate contamination of surficial and bedrock aquifers if leachate penetrates the landfill liners. Based upon site geology, PCB disposal in a landfill in this location is a very poor choice that may result in PCB contamination of the sand and gravel aquifer and the underlying Stockbridge marble aquifer. (De Simone's Report found in EPA's administrative record.)**

LBOH is requesting evidence from GE disputing De Simone's conclusions and asserting that even if his conclusions are correct, and the aquifers are contaminated, this contamination does not present risks to the health of Lee's residents.

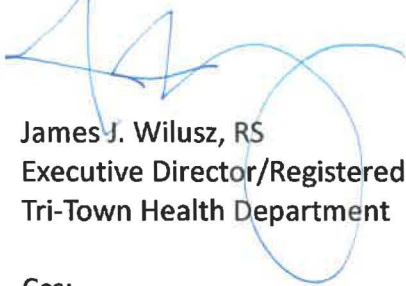
Sincerely

For the Lee Board of Health



Robert Wespiser, MD

Chair, Lee Board of Health



James J. Wilusz, RS  
Executive Director/Registered Sanitarian  
Tri-Town Health Department

Ccs:

Board of Selectmen of Lee, Massachusetts, with attachment.

Board of Health of Lenox, Massachusetts, with attachment.

Board of Health of Stockbridge, Massachusetts, with attachment.

Board of Health of Sheffield, Massachusetts, with attachment.

Board of Health of Great Barrington, Massachusetts, with attachment.

Senator Elizabeth Warren, with attachment.

Senator Edward Markey, with attachment.

Congressman Richard Neal, with attachment.

Board of Selectpersons of Stockbridge, with attachment.

Senator Adam G. Hinds, with attachment.

Representative Smitty Pignatelli, with attachment.

Michael S. Regan, Administrator of the US Environmental Protection Agency

CB/mj