

JOHN W. OLVER
1ST DISTRICT, MASSACHUSETTS

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SENIOR WHIP

Congress of the United States
House of Representatives
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March 6, 2009

Ian Bowles
Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Dear Secretary Bowles:

I am writing in regard to the recent request from the Environmental Protection Agency that its cleanup operations of the Housatonic River under the Consent Decree (CD) be largely exempted from the proposed designation of the upper river as an Area of Critical Environmental Concern (ACEC).

The EPA apparently wants to include a multitude of *potential* scenarios to be exempted from any impact of the ACEC designation, but one of the major advantages of the ACEC designation, as has been explained during public hearings, is its flexibility in not adversely affecting remediation under the CD. The requested exemptions would in effect negate the whole idea behind the ACEC as a layer of extra oversight to ensure that the river and floodplain be restored to its existing character to the greatest extent possible. Although the EPA refers to this same desired outcome in its letter, it does not appear to have been a guideline adhered to in the restoration of the initial two miles, a situation that forms much of the motivation behind the ACEC designation.

Providing exemptions based upon a host of potentialities is not good policy. In addition, some of the contingencies mentioned by the EPA raise further questions and concerns. Part C on Page 4, for example, requests clarification on a restriction of solid waste facilities that could be required by the EPA within the ACEC, but does not refer to the temporary aspect of such facilities that the public would demand. Part E requests clarification in regard to the state's position concerning "confined aquatic disposal facilities," a contingency I have not heard referred to before, and which is not described or explained in the letter.

I support the contention of *Save the Housatonic* and dozens of other environmental and recreational groups that the ACEC and its accompanying regulations comprise Applicable or Relevant and Appropriate Requirements (ARARs), and thus must be considered by the EPA and the General Electric Company in its operations within the

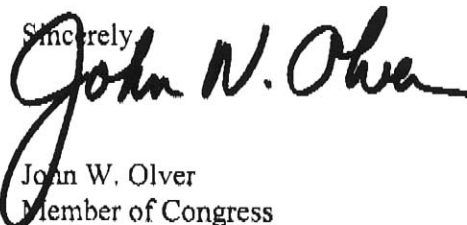
designated area. This contingency is one of the greatest potential benefits of the proposed ACEC designation. Failure by the EPA or GE to comply with the ACEC designation and its regulations as ARARs would provide you with the exclusive right to appeal such a matter. Consequently, the interests of all those towns and public and private landowners along the river who were excluded from the negotiations regarding the CD would gain a voice in the further plans to remove PCBs from the river and its floodplain.

In that regard, I noted that neither the Department of Fish & Game (DFG) nor the Division of Fisheries & Wildlife (DFW) were included in the dissemination of the EPA's letter. DFG and DFW have perhaps the largest stake among state agencies in the outcome of the cleanup operations. Both are firmly behind the ACEC designation, and should be included for important feedback in regard to the EPA request.

Hundreds of attendees at public hearings and dozens of significant environmental, recreational, and fishing and hunting organizations have expressed their strong support for the ACEC boundaries as proposed. Concerns that have been raised – the placement of a municipal water filtration plant within an ACEC, for example – can be resolved by simply referring to and looking at the impact of the many other ACEC designations within the state and Berkshire County. Although I commend the EPA for its difficult and crucial role in overseeing the cleanup of PCBs in the Housatonic River, it does not own the river, nor does it have exclusive domain over the people of Berkshire County who actually live along the river and its floodplain. It is the interests of the people of Berkshire County that should be paramount. Judging from the public testimony thus far, the people of Berkshire County want an ACEC designation that is not bureaucratically disempowered nor rendered moot for purely speculative reasons.

As a nominator of the ACEC designation, I hope you will give your fullest consideration to the wishes of the people of Berkshire County, its organizations and those state agencies overseeing the County's interests, as you act in your role to further protect one of our most scenic resources. To best do so, I urge you to hold the EPA to the applicable state laws and regulations and request that the ACEC designation be approved as nominated. I have enclosed copies of petition signed by several hundred County residents who also support this course of action. Thank you for your consideration of this important matter.

Sincerely,

A handwritten signature in black ink that reads "John W. Olver". The signature is written in a cursive style with a large, sweeping "J" and "O".

John W. Olver
Member of Congress

JWO: rtd
Enclosures