Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

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July 1, 2022

BY ELECTRONIC & REGULAR MAIL
Judith C. Knight, Esq.
Attorney at Law and Mediation Services
342 Main Street
Great Barrington, MA 01230
jknight@judithknight.com

Re: Good Faith Fee Estimate for Public Records Request

Dear Attorney Knight:

This letter responds to your public records request received by this office by mail on June 17, 2022, seeking the following records: "...copies of any and all of the records in the possession of the Massachusetts Department of Environmental Protection regarding the proposed PCB[I] waste dump in an Upland Disposal Facility in Lee, MA pursuant to a permit issued by the EPA to General Electric Company (GE) in 2020 (hereinafter the 'Lee PCB dump'). This request for documents includes, but is not limited to, the following:

a) Any and all memorandums, notes and correspondence and writings of any kind that addresses the transfer of PCBs and other toxic substances to the Lee PCB Dump from or to GE; and
b) Any and all memorandums, notes, correspondence, and writings of any kind that addresses the transfer of PCBs and other toxic substances to the Lee PCB Dump from or to any other entity, corporation or person other than GE."

On June 23, 2022, I contacted you by email to inform you that the fee could exceed $1,000.00 and provided what was a rough good faith fee estimate, based on a broad interpretation of your request after interviewing a couple of staff members. I said it would be at least 150 hours of staff time (at $25/hr) amounting to at least $3, 650.00. (After, some additional conversation with staff as well as a preliminary IT search for email, we now realize that initial estimate was extremely low.) Nevertheless, I suggested narrowing the request by date, category, subject, or type of record, which could reduce the fee significantly. For example, I asked: "**do you need the**

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emails? Other ideas to further narrow this, **do you need the attorneys' emails?** (They would likely all be exempt anyway as attorney-client privileged communication, but we would have to take the time to review that.) We are assuming that you are only asking for records ***created subsequent to the 2016 permit, relating to the 2020 permit and only regarding allowing the material to be disposed of in the landfill/PCB dump.*** Is that correct, as that clarification may help as well."

MassDEP does not charge for staff time spent answering straightforward requests that take less than four (4) hours to answer. However, if requests are broad in scope, and are likely to require an extensive search across any of our regional offices and our Boston Office, we will charge a reasonable fee to recover the costs of responding. The fee includes the costs of staff time to search for the records responsive to your request (search time costs); if applicable, staff time to identify any records that are privileged, exempt, or prohibited from disclosure under law (segregation time costs); and the costs of duplicating and mailing the records (production costs). MassDEP charges $25 per hour for staff time, $ 0.05 per page for copies, the actual costs incurred in duplicating oversized copies or electronic records and the actual mailing costs.

MassDEP encourages all persons who make public records requests to narrow their requests. Narrowing the request may reduce or eliminate any fees. Possible strategies for narrowing the request include limiting the time period, subject matters covered by the request, or types of records (for example asking for the one specific, precisely described, document of most interest to you). MassDEP also encourages all persons who make requests for several different types or categories of records to prioritize the request and indicate which records they want MassDEP to provide first. Prioritization ensures that you will receive the records most important to you in the event the estimated fee is not sufficient to cover the total cost of responding to your request.

Please note that your request as written, without narrowing, would be a large undertaking and will incur a substantial fee. The search terms and time period to search would be overly broad and therefore, we won't be able to identify and locate those documents promptly. See 950 CMR 32.06(1)(b), which states that "requests for public records shall include a reasonable description of the requested record to the records access officer so that the records can be identified and located promptly." To eliminate or reduce any fees and more efficiently provide the records you are seeking, we ask that you clarify and narrow the scope of your request.

Additionally, you should know that some of the records you have requested may be exempt from the definition of a public record set forth in M.G.L. c. 4, § 7(26) and we know there will be records that are protected by the attorney-client privilege because at least two MassDEP attorneys provided legal services related to this matter. We also expect to find other exempt information mixed in with potentially responsive records. We anticipate some email records may contain materials exempt from disclosure under the Public Records Law, including M.G.L. c. 4, § 7, cl. 26 (a), (b), (c), (d), (n), and (o). For example, we are likely to find internal meeting call-in codes, exempt under exemption (b) and (n) the cybersecurity exemption; and for any emails during the COVID-19 Pandemic, we are likely to find personal health information and staff private phone numbers, exempt under exemption (c) and (a) ((a) is pursuant to the Fair

Information Practices Act, M.G.L. c. 66A (FIPA)). Additionally, because the permit issued by the EPA to General Electric Company in 2020 has been appealed, there are also likely to be many deliberative process materials exempt under exemption (d) (M.G.L. c. 4, § 7(26)(d)).

Good Faith Fee Estimate for the Full Request

In accordance with M.G.L. c. 66, § 10(b) and 950 C.M.R. 32.07(2), we have determined that a charge of **$34,350** is necessary for copying/scanning and search time, as well as for segregation/redaction time and production costs to produce the requested records. This amount includes the following breakdown:

1. **Identifying the location of potential records: 2 hours of search time**. This process involves interviewing key staff, conducting meetings with these key staff as well as our IT staff to determine how we would conduct this search and how we would identify the location of any paper and electronic records. This also includes 1 hour for IT search time to locate emails.

2. **Search time for Paper Records**. **21 hours of staff search time** (4 staff) and an estimated 725 paper copies.

3. **Segregation Time charges**: A preliminary IT search (which went back to 2010) found 26,359 emails plus the above mentioned estimated 725 paper records = 27,084 records. Therefore, at least 27,084 pages @ 3 minutes segregation time per page = 81,252 minutes/60 = **1354 hours segregation time, mainly for attorney-client privileged materials, which will be interspersed**.

3. **Production Time & Costs: 1 hour** for records to be sorted, organized, and compiled for production. We anticipate that records will be produced electronically by OneDrive and therefore there will be no mailing costs, however, this is only our estimate and could be subject to change if we do have to mail any records.

4. **Total Cost**
   (23 hours of search time + 1 hour production time + 1354 hours segregation time = 1378 hours total, excluding the first four hours = 1374 hours at $25/hour = **Total Good Faith Estimate: $34,350**)

Due to the magnitude and complexity of the request, MassDEP has provided this good-faith cost estimate before commencing the search, and thus it is subject to change based on the actual time spent preparing a response.

MassDEP requires payment of the fee **before** it commences the process of searching for and copying the records. Therefore, if you would like us to proceed with this production, please

send MassDEP a check or money order in the amount of **$34,350** payable to the Commonwealth of Massachusetts at the following address:

Department of Environmental Protection
P. O. Box 4062
Boston, MA 02211

Please note on the check or money order that this is payment for the Public Records Request received on June 17, 2022, regarding "GE proposed landfill in Lee, MA". Please **mail a copy of the check or money order to me at the letterhead address above.** Upon receipt of the required payment, MassDEP will begin the process of searching for and copying the public records responsive to your request.

MassDEP will contact you again when it has completed its search and review of the requested records. However, if MassDEP does not receive the fee as set forth in this letter, MassDEP will assume that you are unwilling to pay the fee and no longer want the records you requested.

If you do not believe that MassDEP has responded to your request in accordance with the Public Records Law, you may appeal MassDEP's response to the Supervisor of Public Records within the Office of the Secretary of the Commonwealth. (See M.G.L. c. 66, § 10A and 950 CMR 32.08 as to your appeal rights relative to MassDEP's denial of access to the exempt records.) You may also file a civil action in accordance with M.G.L. c. 66, § 10A.

Please do not hesitate to contact me if you wish to clarify or narrow the scope of your request. I can be reached by email at Kathleen.Delaplain@mass.gov.

Sincerely,

K. Delaplain

Kathleen Delaplain
Office of General Counsel
MassDEP