



What the General Electric and Environmental Protection Agency Settlement Means for REALTORS®

Thanks to the MAR Legal Team for this assistance.

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The background: On February 10, 2020 the General Electric Company (GE), the US government (EPA) and the Rest of the River Municipal Committee settled their ongoing litigation on polychlorinated biphenyl contamination (PCBs) caused by GE's transformer business in Pittsfield which dumped toxins into soil and rivers around its facility. The committee was comprised of Representatives from towns of Great Barrington, Lee, Lenox, Sheffield and Stockbridge, as well as the City of Pittsfield. There are groups challenging this signed settlement.

What are PCBs? PCBs are a group of 209 different chemicals that have been linked to causing cancer and other ailments. GE used and dumped PCBs locally for years before stopping in 1979 when their use was banned in the US.

What has transpired since PCBs were outlawed? Once PCBs were banned, community and environmental groups started advocating for GE to remediate their impact. In 2000, after years of activism, the U.S. District Court issued a decree requiring specific cleanup actions for 25 sites in Pittsfield and the Housatonic River. Over the next 11 years, 22 of those actions were completed. The remaining three required additional information and modeling as well as alternative cleanup approaches. From 2011 until the 2020 settlement, the EPA, GE, other stakeholders, and the courts traded proposals requiring various amounts and procedures of remediation.

What does the settlement require? For a detailed breakdown: www.epa.gov/ge-housatonic. Some of the key settlement provisions require GE to:

- ✓ Immediately start cleanup investigation and design work;
- ✓ Send at least 100,000 cubic yards of highly contaminated materials (PCBs at 50 parts-per-million) to an out of state facility;
- ✓ Create a 20-acre double-lined and covered landfill at a former-quarry in Lee to house more than 1 million cubic yards of contaminated materials (PCBs at 20-25 parts-per-million, below federal hazard levels); and,
- ✓ Pay 6 local communities a total of \$63 million.

The settlement also identifies the locations where remediation must occur. (see maps)

What does the settlement mean for REALTORS?

You may have a duty to disclose information about:

- Nearby PCB soil and water contamination;
- Ongoing remediation work, especially on abutting property or in neighborhoods contaminated soil will regularly be transported through;
- Limits on recreational use of certain waterways; or,
- Proximity to the dump site.

REALTORS® are required to disclose any information they know about a property that may influence a prospective buyer to decide not to enter a contract. Please see the reverse side for a helpful Q & A with the Massachusetts Association of REALTORS® Legal Staff about this issue.

Q. How far away from a property triggers the requirement for REALTORS® to disclose?

There is no bright-line rule that limits an agent's disclosure obligations under Chapter 93A to the geographic boundaries of the property. In the 1997 Supreme Judicial Court case, "*Urman v. South Boston Savings Bank*", the court found that the duty to disclose off-site problems in Massachusetts is limited to:

1. A physical condition "rooted in the land," such as groundwater contamination, not "transient social conditions", such as quality of schools and noisy neighbors.
2. A physical condition which is known to business-person (seller or broker) and may be unknown and not readily observable by the buyer; and
3. The existence of the condition(s) is of sufficient materiality to affect the habitability, use, or enjoyment of the property; and
4. A condition that makes the property substantially less desirable or valuable to the objectively reasonable buyer.

The firm's broker should provide direction to their agents on how to handle off-site issues and ensure everyone understands their disclosure policy.

To minimize risk, MAR Legal Counsel recommends erring on the side of disclosure with the seller's permission, when warranted. Agents should discuss the duty to disclose with their sellers and explain the potential liability for failing to disclose. All disclosures should be made in writing so that there is documentation of when and to whom disclosure was made. When in doubt, disclose! If the seller does not consent to disclosure, follow your office's policies and consult with your Broker and legal counsel if necessary. The MAR Legal Hotline is a free resource for members that can help with these decisions: 1-800-370-5342.

Q. What would be considered proper due diligence for buyer's agents related to the investigation of PCB contamination or issues surrounding the remediation and/or dumpsite?

REALTORS® should strongly consider using a buyer's agency agreement that instructs the buyer to conduct their own their own research.

Q. How should you talk about this with clients?

Talk to the sellers about the information you will share with prospective purchasers and their agents. Buyer's agents should keep information at a high level so that their clients can understand they may want to investigate further if concerned, as with any inspection issue.

Make sure buyers that may be impacted (outlined above) know about the settlement. Something as simple as, if you are concerned with PCB contamination on or around the Housatonic River, there is a settlement outlining cleanup and storage of contaminated soil agreed upon by Ge, the EPA and the six (6) municipalities along the river (Lenox, Lee, Stockbridge, Great Barrington, Sheffield, and Pittsfield.) Buyers should conduct their own research into the suitability of the property given that agreement. www.epa.gov/ge-housatonic.

Compiled with guidance from the MAR Legal team. Special thanks to Jonny Schreiber for his assistance.



General Reminder about Chapter 93 (triple damages) regs.

- ✓ The Attorney General has explained that Chapter 93A violations occur when any person or entity subject to this act fails to disclose to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction.
- ✓ Chapter 93A requires that a real estate agent volunteer this information, even if the real estate agent is not asked.
- ✓ This law does not impose a duty for brokers to investigate potential issues – rather, it requires you to disclose information of which you have actual knowledge.