

CONSENT DECREE
Site: GE-0000
Break: 10.8
Other: 9420

WESTON Ref. No.

00-0388

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

UNITED STATES OF AMERICA,
STATE OF CONNECTICUT,
COMMONWEALTH OF
MASSACHUSETTS,

Plaintiffs,

v.

GENERAL ELECTRIC
COMPANY,

Defendant.

CIVIL ACTION NO'S. _____

99-30225, 99-30226,

99-30227-MAP

(consolidated cases)

CONSENT DECREE

9420

sampling and analysis or performing studies for such purposes, or otherwise overseeing the Rest of River Remedial Action under this Consent Decree. U.S. Rest of River Oversight Costs shall include, but not be limited to, payroll costs, contractor costs, travel costs, laboratory costs, community relations costs, technical support costs, interagency and intergovernmental agreement costs (including costs of ATSDR and Army Corps of Engineers), costs of maintaining a Field Office, data management costs, and modeling costs, insofar as such costs are incurred for the activities described in the first sentence of this definition. U.S. Rest of River Oversight Costs shall not include U.S. Oversight Costs, U.S. Future Response Costs, U.S. Future Rest of River Capped Response Costs, U.S. Post-Removal/Groundwater Monitoring Costs, U.S. Future Additional Sampling Costs, U.S. Interim Response Costs, or U.S. 1 ½ Mile Reach Removal Action Costs.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "oil and/or hazardous material" under M.G.L. c. 21E, section 2.

"Work" shall mean all activities Settling Defendant is required to perform under this Consent Decree, except those required by Section XXXI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health, welfare and the environment at the

Site by the design and implementation of response actions at the Site by the Settling Defendant and EPA, to reimburse response costs of the Plaintiffs as provided herein, to provide for recovery of damages and the performance of restoration projects for injury to natural resources, and to resolve the claims of Plaintiffs against Settling Defendant as provided in this Consent Decree. In addition to this Consent Decree, Settling Defendant, the City, and PEDDA have entered into a Definitive Economic Development Agreement which provides, inter alia, for redevelopment of a portion of the GE Plant Area and economic aid to the City. The United States and the State reserve the right to consult with and/or assist the City and PEDDA and to move to intervene or participate as amicus curiae in connection with any dispute or proceeding relating to enforcement or implementation of the Definitive Economic Development Agreement.

6. Commitments by Settling Defendant. Except as otherwise expressly provided in this Consent Decree, Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the SOW, the Rest of the River SOW, and Work Plans attached to this Consent Decree, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendant and approved by EPA pursuant to this Consent Decree. Settling Defendant shall also reimburse Plaintiffs for response costs as provided in this Consent Decree, and shall reimburse the United States for costs related to the 1 ½ Mile Reach Removal Action as provided in this Consent Decree. Settling Defendant shall also pay Natural Resource Damages to the Trustees, perform Restoration Work and other natural

resource protection and restoration actions as specified herein, and reimburse the Trustees for costs Incurred and to be Incurred, all as provided in this Consent Decree.

7. Commitments by EPA. EPA intends to implement a Removal Action in the 1 ½ Mile Reach. Performance of such Removal Action shall be in accordance with the 1 ½ Mile Reach Removal Action Memorandum. Funding of such Removal Action shall be in accordance with Paragraphs 103-111 of this Consent Decree.

8. Compliance With Applicable Law And Protectiveness

a. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Except for the Rest of the River Remedial Action, for all activities undertaken pursuant to CERCLA in this Consent Decree, Settling Defendant must also comply with any ARARs of all federal and state environmental laws, as described in Attachment B to the SOW and in ARARs tables in the Removal Action Work Plan for the Upper ½ Mile Reach (Appendix F hereto), EPA's Action Memorandum for the Allendale School Removal Action (Appendix C hereto), and a Supplemental Addendum to the Work Plan for On-Plant Consolidation Areas (included in Annex 1 to the SOW), unless otherwise determined by EPA pursuant to CERCLA and the NCP. For the Rest of the River Remedial Action, for all activities undertaken pursuant to CERCLA in this Consent Decree, Settling Defendant must also comply with any ARARs of federal and state environmental laws set forth in the documents selecting the Rest of the River Remedial Action and/or in the Rest of the River SOW, unless waived by EPA pursuant to CERCLA and the NCP. For purposes

of this Consent Decree, ARARs shall not be considered Performance Standards unless, for the Rest of the River, EPA specifically identifies an ARAR as a Performance Standard. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP.

b. EPA, MADEP and CTDEP have determined that:

(i) The Removal Actions, when implemented and completed in accordance with this Consent Decree, the SOW, and the Work Plan for the Upper ½ Mile Reach Removal Action (including achieving and maintaining Performance Standards), are protective of human health and the environment with respect to the areas addressed by those Removal Actions; and

(ii) Except as expressly provided in this Consent Decree, no further response actions for the areas addressed by such Removal Actions are necessary to protect human health and the environment.

c. The Consent Decree establishes a process intended to ensure that the Remedial Action to be selected for the Rest of the River will be protective of human health and the environment.

d. In the event that EPA, or MADEP or CTDEP (as applicable), determines that a Removal Action or Remedial Action is no longer protective of human health or the environment, the Consent Decree provides a procedure by which EPA or MADEP or CTDEP (as applicable) can seek additional relief.

9. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Any measures performed pursuant to Paragraphs 118 and 123 (Restoration Work and Other Natural Resource Protection and Restoration Actions) shall be considered on-site for purposes of this provision. Where any portion of the Work that is not on-site requires a federal, state or local governmental permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Defendant may seek relief under the provisions of Section XXIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation, or local law.

10. Reissuance of RCRA Permit.

a. Settling Defendant and the United States agree that, in connection with the settlement embodied in this Consent Decree, GE's RCRA Permit will be revoked and reissued pursuant to 40 C.F.R. §§ 124.5 and 270.41, upon the effective date of this Consent Decree. Settling Defendant and EPA have jointly proposed for

public comment, pursuant to 40 C.F.R. § 124.10, a draft Reissued RCRA Permit in the form attached hereto as Appendix G. Following the close of the public comment period on the draft Reissued RCRA Permit, and prior to any United States motion for entry of this Consent Decree, EPA shall issue a final permit decision on the Reissued RCRA Permit in accordance with 40 C.F.R. § 124.15, to be effective in accordance with Paragraph 10.d.

b. In the event that EPA's final permit decision on the Reissued RCRA Permit does not materially modify the draft Reissued RCRA Permit attached as Appendix G, Settling Defendant shall not seek review of, or otherwise contest, that final permit decision, and shall comply with requirements of the Reissued RCRA Permit and this Consent Decree.

c. To the extent that Settling Defendant believes the final Reissued RCRA Permit to be a material modification of the draft Reissued RCRA Permit attached as Appendix G, Settling Defendant, may, within 15 days of its receipt of the final Reissued RCRA Permit, file a motion with the Court for dispute resolution pursuant to Paragraph 136.c and d (record review) of this Consent Decree, regarding the final Reissued RCRA Permit. Settling Defendant's dispute shall be limited to whether the final Reissued RCRA Permit materially modifies Appendix G. The United States, the State and Connecticut may file an opposition to Settling Defendant's motion within thirty days after receipt of such motion. The Parties hereby stipulate that after lodging and prior to entry of this Consent Decree, such dispute shall proceed under this Paragraph as a contractual matter. If, at the conclusion of dispute resolution, the final Reissued

RCRA Permit is held not to materially modify the draft Reissued RCRA Permit set forth at Appendix G, Settling Defendant shall not oppose entry of the Consent Decree, shall not seek review of the Reissued RCRA Permit, and shall comply with the requirements of the Reissued RCRA Permit and this Consent Decree. If, at the conclusion of dispute resolution, the final Reissued RCRA Permit is held to materially modify the draft Reissued Permit set forth at Appendix G, the United States, the State, Connecticut and the Settling Defendant may agree to go forward with the Consent Decree, and the United States may thereafter move for entry and Settling Defendant shall not contest and shall comply with the requirements of the Reissued RCRA Permit and this Consent Decree. If, at the conclusion of dispute resolution, the final Reissued RCRA Permit is held to materially modify the draft Reissued Permit set forth at Appendix G, and the United States, the State, Connecticut and the Settling Defendant do not agree to go forward with the Consent Decree, either the United States or Settling Defendant shall withdraw from the Consent Decree.

d. In accordance with 40 C.F.R. § 124.15(b)(1), the effective date of the Reissued RCRA Permit shall be the date of entry of this Consent Decree; provided, however, that if, after dispute resolution, the final Reissued RCRA Permit is found to materially modify Appendix G and the United States, the State, Connecticut and the Settling Defendant do not agree to go forward with this Consent Decree, then EPA may finalize the permit after either the United States or Settling Defendant withdraws from the Consent Decree. In that event, Settling Defendant may appeal the final Reissued RCRA Permit in accordance with 40 C.F.R. § 124.19 and Section 7006(b) of RCRA, in

which case Settling Defendant's compliance with such Permit shall be governed by applicable laws and regulations relating to RCRA permits issued by EPA. If Settling Defendant does not appeal such Reissued RCRA Permit, Settling Defendant shall comply with all conditions of the Reissued RCRA Permit. If this Consent Decree is entered, upon the effective date of the Consent Decree, Settling Defendant shall comply with the provisions of the Reissued RCRA Permit and the requirements of Paragraph 22 (Rest of River) of this Consent Decree. If, after the effective date of this Consent Decree, a person other than Settling Defendant appeals the final Reissued RCRA Permit pursuant to 40 C.F.R. § 124.19, Settling Defendant shall comply with the requirements of the Reissued RCRA Permit, as well as the requirements of Paragraph 22 (Rest of River) of this Consent Decree, during the period of such appeal. In the event that a person other than Settling Defendant appeals the Reissued RCRA Permit, but Settling Defendant does not, Settling Defendant shall support the issuance of the Reissued RCRA Permit in such appeal.

11. Revision of State Administrative Consent Orders. Settling Defendant and the State agree that in connection with the settlement embodied in this Consent Decree, the Administrative Consent Orders executed by Settling Defendant and MADEP on May 22, 1990, and July 2, 1990, will be terminated and superseded by a new Administrative Consent Order. Within fifteen (15) days of entry of this Consent Decree, Settling Defendant and MADEP will execute the Administrative Consent Order attached hereto as Appendix H. The properties addressed by the new Administrative Consent Order shall not be considered part of the Site, as Site is defined in Paragraph

22. Rest of the River: Additional studies of the Rest of the River and the selection of a Remedial Action for the Rest of the River shall be conducted in accordance with the Reissued RCRA Permit and the following provisions.
- a. Upon EPA's notification to Settling Defendant to move forward with completion of the RCRA Facility Investigation ("RFI") Report, as provided in the Reissued RCRA Permit, Settling Defendant shall complete and submit to EPA an RFI Report on the Rest of the River in accordance with, and on the schedule provided in, the Reissued RCRA Permit. Settling Defendant shall submit copies of that RFI Report to the Trustees, the State and Connecticut.
 - b. EPA will conduct the human health and ecological risk assessments of the Rest of the River. EPA has provided a scope of work for the risk assessments and supporting activities to Settling Defendant and other interested persons for review and discussion.
 - c. EPA's human health risk assessment will be subject to peer review by a panel of independent risk assessment experts, in accordance with the EPA Science Policy Council January 1998 Peer Review Handbook, EPA 100-B-98-001, and the Protocols set forth in Appendix J.
 - (i) The human health risk assessment peer review panel will be selected by a Selection Contractor in accordance with the following procedures. A neutral contractor ("the Selection Contractor") will be selected by agreement between EPA and Settling Defendant within 30 days of initiation of discussions relating to such peer review. If EPA and Settling Defendant do not reach agreement within 30 days of

initiation of discussions, EPA shall seek the decision of the Chair of EPA's Science ~~Advisory Board or other agreed-upon scientific body or expert.~~ EPA's decision to seek the decision of the Chair of EPA's Science Advisory Board or other agreed-upon scientific body or expert, and the selection of the Selection Contractor by the Chair or other agreed-upon scientific body or expert, shall not be subject to dispute resolution. The Selection Contractor shall accept nominations for participants in the peer review panel from any interested person for a period of 30 days. The Selection Contractor shall thereafter evaluate the nominations of all interested persons (including Settling Defendant) and other candidates it identifies for the peer review panel as it sees fit against the criteria identified in the charge for review, and select peer review panel members with the required technical expertise, free from direct and substantial conflict of interest. The affiliation of nominations will remain "blind" to the Selection Contractor.

(ii) The human health risk assessment peer review panel will review EPA's human health risk assessment to evaluate: (1) consistency with EPA policy and guidance; (2) the exposure scenarios and parameters used; (3) the toxicity assessment; (4) the risk calculations; and (5) the report conclusions. Settling Defendant and other interested persons will be provided an opportunity to submit written comments and make an oral presentation to the peer review panel in accordance with the Protocols set forth in Appendix J.

d. EPA's ecological risk assessment will be subject to peer review by a panel of independent risk assessment experts, in accordance with the EPA Science Policy Council January 1998 Peer Review Handbook, EPA 100-B-98-001, and the

Protocols set forth in Appendix J. The ecological risk assessment peer review panel will be selected by a Selection Contractor following the same selection procedures described in Paragraph 22.c.(i). The ecological risk assessment peer review panel will review EPA's ecological risk assessment to evaluate: (1) consistency with EPA policy and guidance; (2) the protocols applied in the studies used in the risk assessment; (3) interpretation of information generated from the studies included in the risk assessment, and (4) the report conclusions. Settling Defendant and other interested persons will be provided an opportunity to submit written comments and make an oral presentation to the peer review panel in accordance with the Protocols set forth in Appendix J.

e. Nothing herein shall prohibit Settling Defendant from conducting its own human health and/or ecological risk assessments and submitting reports thereon as a component of its comments to EPA on EPA's human health and ecological risk assessments.

f. Following EPA's approval of the RFI Report and EPA's determination that the peer review processes for both the human health and the ecological risk assessments have been completed, Settling Defendant shall develop and submit to EPA an Interim Media Protection Goals ("IMPG") Proposal, proposing IMPGs, in accordance with, and on the schedule provided in, the Reissued RCRA Permit. Settling Defendant shall submit copies of that IMPG Proposal to the Trustees, the State and Connecticut.

g. EPA will conduct modeling of the fate, transport, and bioaccumulation of PCBs in the Rest of the River. The models used will include a

hydrodynamics component, a sediment transport component, a PCB fate and transport component, and a bioaccumulation component. EPA and Settling Defendant will share with each other critical components of all working tools and data collected and/or used in modeling activities. A working group of technical staff and contractors from EPA and Settling Defendant has been assembled to have an ongoing dialogue on the technical aspects of model construction to simulate the Housatonic River, collection of information for input to the models, model calibration, model validation, and the types of questions and uncertainties that will be addressed by the model. EPA has provided draft sampling plans and will provide draft modeling frameworks to the working group members, the State, Connecticut and the Trustees for review and discussion.

h. EPA's modeling activities will be subject to peer review by a panel of independent modeling experts, in accordance with the EPA Science Policy Council January 1998 Peer Review Handbook, EPA 100-B-98-001, and the Protocols set forth in Appendix J. The modeling peer review panel will be selected by a Selection Contractor following the same procedures described in Paragraph 22.c.(i). The modeling peer review panel will review EPA's modeling activities at appropriate intervals during the modeling process, which will include review of at least the following EPA documents: (1) draft modeling frameworks and description of data needs; (2) model calibration report; and (3) model validation report. In this multi-staged review, the modeling peer review panel will address a number of questions, including but not limited to the following:

(i) Do the modeling frameworks include the significant processes affecting PCB fate, transport, and bioaccumulation in the Housatonic River,

and are the descriptions of those processes sufficiently accurate to represent the hydrodynamics, sediment transport, PCB fate and transport, and PCB bioaccumulation in the Housatonic River?

(ii) Are the available data sufficient for the development of acceptable models of hydrodynamics, sediment transport, PCB fate and transport, and PCB bioaccumulation in the Housatonic River?

(iii) Are the processes in the final models calibrated and validated to the extent necessary for accurately predicting future conditions?

(iv) How sensitive are the models to uncertainties in the descriptions of the relevant processes, and are the methodologies employed to evaluate the sensitivity of the model to descriptions of the relevant processes and to evaluate the uncertainties of model predictions sufficient?

In addition, the working group of technical staff and contractors from EPA and Settling Defendant, described in Paragraph 22.g above, may suggest additional questions to be posed to the modeling peer review panel, for consideration by EPA in developing any subsequent changes to the model. Settling Defendant and other interested persons will be provided an opportunity to submit written comments and to make an oral presentation to the modeling peer review panel, in accordance with the Protocols set forth in Appendix J at each stage of the peer review process:

i. Nothing herein shall prohibit Settling Defendant from conducting its own modeling or other studies of the Rest of the River and submitting reports thereon as a component of its comments to EPA on EPA's modeling activities.

j. Following EPA's approval of IMPGs, EPA's determination of the completion of the peer review processes on validation of EPA's model, and receipt by Settling Defendant of EPA's model (including its equations and results) from EPA, Settling Defendant shall develop and submit to EPA a Corrective Measures Study ("CMS") Proposal in accordance with, and on the schedule provided in, the Reissued RCRA Permit. Settling Defendant shall submit copies of that CMS Proposal to the Trustees, the State and Connecticut.

k. Following EPA's approval of the CMS Proposal, Settling Defendant shall carry out the CMS and shall develop and submit to EPA a CMS Report in accordance with, and on the schedule provided in, the Reissued RCRA Permit, or on an alternative schedule provided in the approved, conditionally approved or modified CMS Proposal. Settling Defendant shall submit a copy of that CMS Report to the State, the Trustees and Connecticut.

l. EPA expressly reserves the right to undertake any studies it deems necessary for the Rest of the River to shadow or supplement studies undertaken by Settling Defendant.

m. The RFI Report, IMPG Proposal, CMS Report, EPA's report(s) containing the human health and ecological risk assessments and EPA's modeling activities, the reports of the peer review panels on the human health and ecological risk assessments and on modeling, all comments submitted to EPA and those panels, and other documents considered or relied on by EPA will become part of the administrative record for the Rest of the River Remedial Action.

n. Upon satisfactory completion of the CMS Report in accordance with the Reissued RCRA Permit, EPA will issue a Statement of Basis and a draft modification to the Reissued RCRA Permit, which will set forth the proposed Remedial Action for the Rest of the River and O&M, to be implemented by Settling Defendant pursuant to CERCLA and this Consent Decree. EPA will propose this draft permit modification pursuant to the Reissued RCRA Permit and EPA's regulations on RCRA permit modifications (40 C.F.R. § 270.41 and Part 124), including the provisions requiring public notice and an opportunity for public comment on the draft permit modification.

o. Following the close of the public comment period, EPA will notify Settling Defendant of its intended final decision on the modification of the Reissued RCRA Permit. Settling Defendant shall have the right, within 30 days of such notification, to invoke administrative dispute resolution pursuant to Paragraph 135 of Section XXIV (Dispute Resolution) of this Consent Decree with respect to such notification.

p. Upon completion of such dispute resolution process (if invoked) or after the 30 day period from EPA's notification referred to in Paragraph 22.o (if Settling Defendant does not invoke dispute resolution), EPA will issue a modification of the Reissued RCRA Permit, obligating Settling Defendant to perform the selected Rest of the River Remedial Action and O&M, which performance shall be pursuant to CERCLA and this Consent Decree.

q. Settling Defendant shall perform the selected Rest of the River Remedial Action and O&M set forth in EPA's permit modification decision referred to in

Paragraph 22.p unless Settling Defendant files a petition for review of such permit modification decision in the EPA Environmental Appeals Board pursuant to 40 C.F.R. § 124.19 and Paragraph 141.b of Section XXIV (Dispute Resolution) of this Consent Decree, or unless EPA's permit modification decision is otherwise stayed pursuant to 40 C.F.R. Part 124. The decision of the EPA Environmental Appeals Board on such a petition for review shall be subject to appeal by Settling Defendant to the United States Court of Appeals for the First Circuit pursuant to Section 7006(b) of RCRA. Any proceedings in the EPA Environmental Appeals Board and the United States Court of Appeals for the First Circuit shall be governed by applicable law, the rules of such Board and Court, and the provisions of Paragraph 141.b of Section XXIV of this Consent Decree, except that, for work subject to such dispute, the United States stipulates to a stay of the effectiveness of the modified permit for those portions subject to the dispute through the conclusion of the initial appeal referenced in this subparagraph 22.q by Settling Defendant to the United States Court of Appeals for the First Circuit pursuant to Section 7006(b) of RCRA. The United States and Settling Defendant shall jointly move the Court of Appeals for an expedited briefing schedule and expedited consideration of the petition for review.

r. In the event that Settling Defendant invokes dispute resolution as provided in Paragraph 22.q, EPA may proceed with design work on the selected Rest of River Remedial Action during the pendency of such appeals. Prior to proceeding with design work under this subparagraph, EPA shall give written notice to Settling Defendant and give Settling Defendant the opportunity to implement such design work.

If Settling Defendant does not notify EPA of its intent to perform such design work within 30 days of EPA's notification, EPA may proceed with design. At the conclusion of such dispute resolution, if the Rest of River Remedial Action and O&M is upheld and EPA was performing the design work, EPA shall provide Settling Defendant with the results of its design work and return the performance of design work to Settling Defendant, and Settling Defendant shall pay EPA's costs of such work as U.S. Future Response Costs in accordance with Paragraph 95.a (Future Response Costs) of Section XX (Reimbursement of Costs) of this Consent Decree. If only a portion of the Rest of River Remedial Action and O&M is upheld or if the Rest of the River Remedial Action and O&M is not upheld in any part, and EPA was performing design work, EPA will provide Settling Defendant with the results of its design work on the Rest of River Remedial Action and return the performance of design work to Settling Defendant, and Settling Defendant shall pay EPA's costs of such work relating to the portion (if any) of the Rest of River Remedial Action and O&M that was upheld, as U.S. Future Response Costs in accordance with Paragraph 95.a (Future Response Costs) of Section XX (Reimbursement of Costs) of this Consent Decree. If a portion of the Rest of River Remedial Action and O&M is not upheld or if the Rest of River Remedial Action and O&M is not upheld in any part, Settling Defendant shall not be required to pay EPA's costs of any portion of the design work related thereto that will have to be materially changed in substance in light of the decision of the Environmental Appeals Board or the Court of Appeals (as applicable). Further, in the event that Settling Defendant invokes dispute resolution as provided in Paragraph 22.q, Settling Defendant shall perform all

severable work not subject to such dispute in accordance with EPA's final permit modification decision referred to in Paragraph 22.p and a Rest of River SOW developed in accordance with that decision and Paragraph 22.x below.

s. If the EPA permit modification decision referred to in Paragraph 22.p. is upheld in whole or in part by the Environmental Appeals Board and, if appealed, by the United States Court of Appeals for the First Circuit, Settling Defendant shall perform the selected Rest of the River Remedial Action and O&M, as upheld in whole or in part, as a CERCLA remedial action pursuant to this Consent Decree.

t. In the event that the Environmental Appeals Board or the United States Court of Appeals for the First Circuit vacates or remands all or part of the EPA permit modification decision referred to in Paragraph 22.p. for further EPA action, EPA may revise its permit modification decision referred to in Paragraph 22.p.

u. Second Appeal.

(i) Upon EPA's issuance of a revised permit modification decision referred to in Paragraph 22.t. pursuant to a remand from the Environmental Appeals Board or the United States Court of Appeals for the First Circuit, Settling Defendant shall perform the selected Rest of the River Remedial Action and O&M set forth in EPA's revised permit modification decision unless Settling Defendant timely files a petition for review of such revised permit modification decision. Settling Defendant shall file its petition for review before the Environmental Appeals Board pursuant to 40 C.F.R. §124.19 unless otherwise approved by the United States Court of Appeals for the First Circuit.

(ii) If Settling Defendant seeks review before the Environmental Appeals Board, the disputed portions of the revised permit modification decision shall be stayed pending the decision of the Environmental Appeals Board. Settling Defendant may appeal the decision of the Environmental Appeals Board by filing a petition for review in the United States Court of Appeals for the First Circuit pursuant to Section 7006(b) of RCRA.

(iii) In the event that Settling Defendant files a petition for review with the Environmental Appeals Board or the United States Court of Appeals for the First Circuit, Settling Defendant shall perform all severable work:

(A) which is not subject to dispute; or

(B) for which EPA's original permit modification decision was upheld previously in the Environmental Appeals Board and, if there had been an appeal of the Environmental Appeals Board's previous decision, by the United States Court of Appeals for the First Circuit.

Settling Defendant shall perform such severable work in accordance with EPA's revised permit modification decision and a Rest of River SOW to be developed in accordance with that decision and Paragraph 22.x. below.

(iv) Any proceedings before the United States Court of Appeals for the First Circuit under subparagraph 22.u(i) or (ii) shall be governed by applicable law, the rules of the Court of Appeals for the First Circuit, and the provisions of Paragraph 141.b(iv)-(vi) of this Consent Decree, except as follows: The United States and Settling Defendant shall jointly move the Court of Appeals for an expedited briefing schedule and

expedited consideration of the petition for review. Further, the United States and Settling Defendant shall stipulate to a stay of the effectiveness of the disputed portions of the revised permit modification decision for a 12-month period or until the Court of Appeals issues its decision (whichever occurs first); provided, however, that: (A) at or near the end of the first six months of the stay period, EPA may apply to the Court to lift the stay at the end of the 6-month period and shall have the burden of making the necessary showing to support such application; and (B) at or near the end of the 12-month period of the stay (if the Court has not yet issued its decision or the stay has not previously been lifted), Settling Defendant may apply to the Court to extend the stay for an additional period or until the Court issues its decision and shall have the burden of making the necessary showing to support such application.

(v) During any stay pursuant to this subparagraph 22.u., Settling Defendant shall proceed with design work on the selected revised Rest of the River Remedial Action and O&M. If design work is completed prior to the lifting of any stay, Settling Defendant shall implement work on any non-disputed portions of the selected revised Rest of the River Remedial Action and O&M. If design work is completed prior to the lifting of any stay and EPA decides to move forward with implementation of the Rest of the River Remedial Action, EPA will so notify Settling Defendant in writing and give Settling Defendant the opportunity to implement work on the disputed portions of the selected revised Rest of the River Remedial Action. If Settling Defendant does not notify EPA of its intent to perform the Remedial Action within 30 days of EPA's notification, EPA may commence implementation of the Rest of the River Remedial

Action. If Settling Defendant does not agree to perform the Rest of River Remedial Action, EPA retains the right to list the Site on the CERCLA National Priorities List in accordance with and subject to Paragraph 200.b of this Consent Decree. Except as otherwise provided in the Consent Decree, if EPA proceeds with listing, Settling Defendant retains all rights to oppose or challenge such listing.

(vi) Upon the lifting or end of any stay pursuant to this subparagraph 22.u. prior to the conclusion of dispute resolution, Settling Defendant shall perform all Rest of River Remedial Design and Remedial Action and O&M. If EPA was performing the work, EPA will provide Settling Defendant with the results of its work on the Rest of the River Remedial Action and O&M and return the performance of work to Settling Defendant.

(vii) At the conclusion of dispute resolution, if the Rest of the River Remedial Action and O&M is upheld and EPA was performing work, EPA shall provide Settling Defendant with any results of its work and return the performance of work to Settling Defendant, and Settling Defendant shall pay EPA's costs of such work as U.S. Future Response Costs in accordance with Paragraph 95.a of Section XX (Reimbursement of Costs) of this Consent Decree. If only a portion of the Rest of the River Remedial Action and O&M is upheld or if the Rest of River Remedial Action and O&M is not upheld in any part, and EPA was performing work, EPA will provide Settling Defendant with any results of its work on the Rest of the River Remedial Action and O&M and return the performance of work to Settling Defendant. In addition, if only a portion of the Rest of the River Remedial Action and O&M is upheld or if the Rest of the

River Remedial Action and O&M is not upheld in any part, and EPA was performing work, Settling Defendant shall pay EPA's costs of the implementation work that EPA performed, as U.S. Future Response Costs in accordance with Paragraph 95.a., but only to the extent that such work was performed to implement any portion of the Rest of the River Remedial Action and O&M upheld by the Court of Appeals or was incorporated into a subsequent further revised permit modification decision that is not appealed or (if appealed) is upheld on appeal. Nothing in this subparagraph 22.u(vii) shall be deemed to affect the provisions of Paragraph 200.b of this Consent Decree.

v. Subsequent Appeals.

(i) In the event that the Environmental Appeals Board or the United States Court of Appeals for the First Circuit vacates or remands all or part of EPA's revised permit modification decision pursuant to subparagraph 22.u. or in a subsequent appeal under this subparagraph 22.v., EPA may again revise its permit modification decision. Settling Defendant shall perform such Rest of the River Remedial Action and O&M in accordance with such further revised permit modification unless Settling Defendant timely files a petition for review of such further revised permit modification decision. In the event Settling Defendant files a petition, the provisions of subparagraph 22.u. shall apply, except for subparagraph 22.u.(iv).

(ii) Any proceedings before the United States Court of Appeals for the First Circuit under subparagraph 22.v.(i) shall be governed by applicable law, the rules of the Court of Appeals for the First Circuit, and the provisions of Paragraph 141.b of this Consent Decree, except the United States and Settling Defendant shall jointly

XVIII. CERTIFICATION OF COMPLETION

88. Completion of Each Response Action

a. Within 90 days after Settling Defendant concludes that a particular Removal Action required by this Consent Decree (excluding Post-Removal Site Control) or the Rest of River Remedial Action (excluding Operation and Maintenance) has been fully performed and that the Performance Standards for such Removal or Remedial Action have been attained, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant, EPA, the Trustees (as appropriate), and the State. The City shall be invited to participate in inspections relating to the GE Plant Area Removal Actions and the Allendale School Removal Action. PEDDA shall be invited to participate in inspections relating to property that will be transferred to PEDDA by Settling Defendant. If, after the pre-certification inspection, Settling Defendant still believes that such Removal or Remedial Action (excluding Post-Removal Site Control or Operation and Maintenance) has been fully performed and that the Performance Standards for such Removal or Remedial Action have been attained, it shall submit a written report requesting certification to EPA for approval, with a copy to the Trustees, the State, and the City and PEDDA (as applicable), pursuant to Section XV (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and Settling Defendant's Project Coordinator shall state that the particular Removal or Remedial Action (excluding Post-Removal Site Control or Operation and Maintenance) has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and

stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or Settling Defendant's Project Coordinator:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the particular Removal Action or Remedial Action (excluding Post-Removal Site Control or Operation and Maintenance) referenced above, or any portion thereof, has not been completed in accordance with this Consent Decree or that the Performance Standards for such Removal or Remedial Action have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Removal Action or Remedial Action (excluding Post-Removal Site Control or Operation and Maintenance) and achieve the Performance Standards therefor; provided, however, that EPA may only

require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the response action and do not modify the Performance Standards (except as provided in Paragraph 217 (Modification) of this Consent Decree). EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XV (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XXIV (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the particular Removal Action (excluding Post-Removal Site Control) or the Rest of River Remedial Action (excluding Operation and Maintenance) has been performed in accordance with this Consent Decree and that the Performance Standards for such Removal or Remedial Action have been achieved, EPA will so certify in writing to Settling Defendant. Settling Defendant may contest EPA's failure to respond to Settling Defendant's request for certification pursuant to Section XXIV (Dispute Resolution), Paragraph 136 (record review) of this Consent Decree. This certification shall constitute the Certification of Completion of the response action for purposes of this Consent Decree, including, but not limited to, Section XXVI (Covenants Not to Sue by

Plaintiffs). Certification of Completion of the response action shall not affect Settling Defendant's remaining obligations under this Consent Decree.

c. For each Removal Action Outside the River for which one or more Conditional Solutions are a component, Settling Defendant may seek a Certification of Completion of such Removal Action, including the Conditional Solution(s). EPA will evaluate such request pursuant to the provisions in this Paragraph, and if it determines that the Removal Action has been performed in accordance with this Consent Decree and that the Performance Standards for such Removal Action have been achieved (excluding Post-Removal Site Control), EPA will issue a Certification of Completion of such Removal Action, including the Conditional Solution(s); provided, however, that insofar as such Certification relates to the Conditional Solution(s), it will be contingent on Settling Defendant's compliance with the obligations relating to Conditional Solutions, as set forth in Paragraphs 34.d and 35-37 of this Consent Decree. Such Certification relating to a property with a Conditional Solution shall terminate if and when EPA determines and notifies Settling Defendant that Settling Defendant has not complied with the conditions of Paragraphs 34.d and 35-37 with respect to such property. Settling Defendant shall have the right to seek dispute resolution of such determination by EPA in accordance with Section XXIV of the Consent Decree.

d. For any Removal or Remedial Action for an area that contains a Non-Settling Defendant Property to or at which the owner of such property has refused to allow access for implementation of the required response actions after Settling Defendant has used "best efforts" to obtain such access and to implement the response actions in

accordance with Section XIII of this Consent Decree, and after any efforts by EPA or the State to obtain access for the implementation of the response actions, Settling Defendant may seek a Certification of Completion of such Removal or Remedial Action except for the portion relating to such property. EPA will evaluate such a request pursuant to the provisions in this Paragraph, and if it determines that the Removal or Remedial Action has otherwise been performed in accordance with this Consent Decree and that the Performance Standards for such Removal or Remedial Action have otherwise been achieved (excluding Post-Removal Site Control or Operation and Maintenance), EPA will issue a Certification of Completion of such Removal or Remedial Action, subject to any contingencies set forth above in Paragraph 88.c, except for the portion relating to the property where the owner refused access. Settling Defendant shall continue to make best efforts to obtain access to such property to perform the required response actions in accordance with the same procedures set forth in Paragraph 34.a(ii) of this Consent Decree, and shall implement the required response action whenever such access is granted.

e. The Trustees shall determine that the Restoration Work that is part of a particular Removal Action has been fully performed in accordance with Paragraphs 120 and 121 of Section XXI (Natural Resource Damages).

89. Completion of the Work for the Site

a. Within 90 days after Settling Defendant concludes that all phases of the Work (including Post-Removal Site Control and Operation and Maintenance) have been fully performed for all Removal and Remedial Actions and Restoration Work required by

this Consent Decree, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant, EPA, the Trustees and the State. If, after the pre-certification inspection, Settling Defendant still believes that the Work has been fully performed, Settling Defendant shall submit to EPA, the Trustees and the State a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. A copy of the Report shall be sent at the same time to the City and PEDDA. The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or Settling Defendant's Project Coordinator:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State and the Trustees, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant

pursuant to this Consent Decree to complete the Work; provided, however, that EPA may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the response action and do not modify the Performance Standards (except as provided in Paragraph 217 (Modification) of this Consent Decree). EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XV (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XXIV (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendant and after a reasonable opportunity for review and comment by the State and the Trustees, that the Work has been performed in accordance with this Consent Decree, EPA will so notify Settling Defendant in writing. Settling Defendant may contest EPA's failure to respond to Settling Defendant's request for certification pursuant to Section XXIV (Dispute Resolution), Paragraph 136 (record review) of this Consent Decree.

c. To the extent that one or more Conditional Solutions are a component of the Work at the Site, Settling Defendant may seek a Certification of Completion of Work, including the Conditional Solution(s). EPA will evaluate such request pursuant to the provisions in this Paragraph, and if it determines that the Work

has been performed in accordance with this Consent Decree, EPA will issue a Certification of Completion of the Work at the Site, including the Conditional Solution(s); provided, however, that insofar as such Certification relates to the Conditional Solution(s), it will be contingent on Settling Defendant's compliance with the obligations relating to Conditional Solutions, as set forth in Paragraphs 34.d and 35-37 of this Consent Decree. Such Certification relating to a property with a Conditional Solution shall terminate if and when EPA determines and notifies Settling Defendant that Settling Defendant has not complied with the conditions of Paragraphs 34.d and 35-37 with respect to such property. Settling Defendant shall have the right to seek dispute resolution of such determination by EPA in accordance with Section XXIV of this Consent Decree.

d. If the owner of a Non-Settling Defendant Property at the Site has refused to allow access for implementation of the required response actions after Settling Defendant has used "best efforts" to obtain such access and to implement the response actions in accordance with Section XIII of this Consent Decree, and after any efforts by EPA or the State to obtain access for the implementation of the response actions, Settling Defendant may seek a Certification of Completion of Work at the Site except for the portion relating to such property. EPA will evaluate such a request pursuant to the provisions in this Paragraph, and if it determines that the Work has otherwise been performed in accordance with this Consent Decree, EPA will issue a Certification of Completion of the Work, subject to any contingencies set forth above in Paragraph 89.c, except for the portion relating to the property where the owner has refused access.

Settling Defendant shall continue to make best efforts to obtain access to such property to perform the required response actions in accordance with the same procedures set forth in Paragraph 34.a(ii) of this Consent Decree, and shall implement the required response actions whenever such access is granted.

e. The Trustees shall determine that the Restoration Work that is part of a particular Removal Action has been fully performed in accordance with Paragraphs 120 and 121 of Section XXI (Natural Resource Damages).

XIX. EMERGENCY RESPONSE

90. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall immediately notify EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Settling Defendant shall notify the EPA Emergency Response Unit, Region I. Settling Defendant shall also immediately notify the State Project Coordinator, and CTDEP if appropriate. For purposes of this Section XIX, the phrase "constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment" shall mean an unforeseen combination of circumstances, or the conditions resulting from such circumstances, not normally anticipated to occur as part of the Work, that require immediate action to avoid harm or an immediate threat of harm to human health, welfare or the environment.

b. Following receipt of Settling Defendant's Statement of Position, within 14 days or such longer time period as Settling Defendant received for submittal of its Statement of Position under Paragraph 135.a on the same dispute, EPA, after reasonable opportunity for review and comment by the State, will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 136 or 137. Within 14 days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and Settling Defendant as to whether dispute resolution should proceed under Paragraph 136 or 137, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 136 and 137.

136. Except as otherwise provided in Paragraph 123.a, formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent

Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Office of Site Remediation and Restoration, EPA Region I (or other appropriate official in Region I, at the level of Director or Deputy Director of an Office, as designated by the Regional Administrator), will issue, after reasonable opportunity for review and comment by the State, a final administrative decision resolving the dispute based on the administrative record described in Paragraph 136.a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 136.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 136.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all Parties within 21 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion within thirty days after receipt of such motion. Settling Defendant may file a reply to the United States' response within 10 days of receipt of such response. All deadlines set

forth in this subparagraph for filings with the Court may be extended by stipulation of Settling Defendant and the United States or by the Court for good cause shown.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Office of Site Remediation and Restoration Director (or other designated official in Region I, as specified in Paragraph 136.b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 136.a.

137. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 135.a, the Director of the Office of Site Remediation and Restoration, EPA Region I (or other appropriate official in Region I, at the level of Director or Deputy Director of an office, as designated by the Regional Administrator), after reasonable opportunity for review and comment by the State, will issue a final decision resolving the dispute. This decision shall be binding on Settling Defendant unless, within 21 days of receipt of the decision, Settling Defendant files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the

the State's selection or performance of response actions, oversight of response actions or approval of plans for such actions;

d. any claim under the Fifth Amendment to the United States Constitution or under the Massachusetts Constitution for "takings"; and

e. Any claim under the Tucker Act, 28 U.S.C. § 1491 or at common law, arising out of or relating to access to, land use restrictions on, or response activities undertaken at any of the properties identified in Appendix U.

188. The City reserves, and this Consent Decree is without prejudice to, the following:

a. claims by the City against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim against the United States shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the United States' oversight or approval of the City's or the Settling Defendant's plans or activities. (The reservation in this Paragraph 188.a applies only to

claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA);

b. in the event the United States or the State brings an action against the City pursuant to Paragraphs 164 and/or 174 of this Consent Decree, all claims, counterclaims, defenses or causes of action against the United States or the State for cost recovery, reimbursement, contribution or equitable share of response costs incurred by the City as a result of such further action; provided, however, that nothing in this subparagraph shall limit the right of the United States or the State to assert any defense to such claim or cause of action; and

c. in the event the United States or the State, on behalf of their respective Trustees, NOAA, DOI, and EOE, brings an action against the City for recovery of Natural Resource Damages, all claims, counterclaims, defenses or causes of action against the United States or the State for Natural Resource Damages paid by the City as a result of such further action; provided, however, that nothing in this subparagraph shall limit the right of the United States or the State to assert any defense to such claim or cause of action.

Nothing in this Paragraph shall be construed to create any rights or claims that do not otherwise exist independent of this Consent Decree.

XXIX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

189. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person

River Remedial Action that is determined to be arbitrary and capricious or otherwise unlawful by the EPA Environmental Appeals Board or by the United States Court of Appeals.

201. The Parties agree that the characteristics of the Site and the context of these negotiations are unique and that no aspect of this settlement should be considered precedent.

XXX. ACCESS TO INFORMATION

202. Settling Defendant shall provide to EPA, Connecticut and the State, upon request, copies of all documents and information within its possession or control or that of their contractors or agents relating to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendant shall also make available to the United States, Connecticut and the State, at a reasonable time and place, for purposes of assisting the United States, Connecticut or the State in overseeing the Work or implementing the Consent Decree, a representative of Settling Defendant with knowledge of, and to discuss, the performance of the Work. Nothing in this Paragraph constitutes a waiver of otherwise applicable privilege or business confidentiality claims.

203. In response to requests for information from EPA, Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Consent Decree to the extent permitted by and in