ATTACHMENT 2
EXCERPTS FROM CONSENT DECREE IN
UNITED STATES ET AL. V. GENERAL ELECTRIC COMPANY
CIVIL ACTION NO. 99-30225-MAP *ET SEQ.* (OCTOBER 27, 2000)
(CONSENT DECREE, DECREE, AND CD), INCLUDING EXCERPTS FROM APPENDIX E TO THE DECREE AND ANNEX 1 TO APPENDIX E

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

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and avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 9606, 9607, and 9613(b), 42 U.S.C. §§ 6928 and 6973, 33 U.S.C. § 1319, and 15 U.S.C. § 2606. This Court has pendent jurisdiction over the state law claims. This Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendant, the City, and PEDA waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendant, the City and PEDA shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, on behalf of EPA, DOI, NOAA, the Army Corps of Engineers ("ACOE"), the Department of Defense ("DOD"), the Agency for Toxic Substances Disease Registry ("ATSDR"), and any other agency which may have authority to administer the statutes cited in Paragraph 161 (United States' Covenant), upon Massachusetts, upon Connecticut and upon the City, PEDA, Settling Defendant and their successors and assigns. Except as provided in Paragraph 12, any change in ownership or corporate status of Settling Defendant, the City or PEDA, including, but not limited to, any transfer of assets or real

or personal property, shall in no way alter Settling Defendant's, the City's or PEDA's responsibilities under this Consent Decree.

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each entity representing Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). To the extent that PEDA has assumed obligations under this Consent Decree, it shall comply with the provisions of this Paragraph.

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA, RCRA or in regulations promulgated under CERCLA or RCRA shall have the meaning assigned to them in CERCLA, RCRA or in such regulations. Whenever terms listed below are used in this Consent Decree or in

40.1074(2) ("Contents of a Notice of Activity and Use Limitation"), as such information may be modified to be consistent with CERCLA response actions conducted pursuant to this Consent Decree.

"Operation and Maintenance" or "O&M" shall mean all activities required to maintain the effectiveness of the Remedial Action for the Rest of the River as required under an Operation and Maintenance Plan developed for the Rest of the River Remedial Action.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States, the Commonwealth of Massachusetts, the State of Connecticut, the City, PEDA and the Settling Defendant.

"PCBs" shall mean polychlorinated biphenyls.

"PEDA" or "Pittsfield Economic Development Authority" shall mean the authority established pursuant to Mass. St. 1998, c. 194, Section 268 as amended by St. 1998, C. 486, Section 2.

"Performance Standards" shall mean the cleanup standards, design standards, and other measures and requirements set forth in Section IX of this Consent Decree and those identified as Performance Standards in the SOW, the Removal Action Work Plan for the Upper ½ Mile Reach of Housatonic River (as approved by EPA), the final modification of the Reissued RCRA Permit to select the Rest of the River Remedial Action, or the Rest of the River SOW. For Removal Actions Outside the River, the Performance Standards for Appendix IX + 3 constituents other than PCBs include both

pursuant to Paragraph 18.d of this Consent Decree and approved by EPA, and any amendments thereto.

"Rest of the River" or "Rest of River" shall mean the Housatonic River and its sediments and floodplain areas downstream of the confluence of the East and West Branches of the Housatonic River, including backwaters, except for Actual/Potential Lawns, to the extent that such areas are areas to which Waste Materials that originated at the GE Plant Area have migrated and which are being investigated and/or remediated pursuant to this Consent Decree. Between the confluence of the East and West Branches of the River and Woods Pond Dam, the Rest of the River generally includes the Housatonic River and its sediments, as well as its floodplain (except for Actual/Potential Lawns) extending laterally to the approximate 1 ppm PCB isopleth, as generally depicted on Figures 2 through 4 of Appendix A-1. Downstream of Woods Pond Dam, the Rest of the River shall include those areas of the River and its sediments and floodplain (except for Actual/Potential Lawns) at which Waste Materials originating at the GE Plant Area have come to be located and which are being investigated and/or remediated pursuant to this Consent Decree.

"Rest of River Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by Settling Defendant to implement the selected remedy for the Rest of the River, in accordance with a modification of the Reissued RCRA Permit as provided in Paragraph 22 of this Consent Decree, the Rest of River SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA pursuant to the Rest of River SOW.

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

Work Plan for Upper ½ Mile Reach, and Work Plans developed and/or implemented pursuant to this Consent Decree:

a. Settling Defendant shall perform the Removal Actions Outside the River in accordance with this Consent Decree and the SOW attached hereto.

b. Settling Defendant shall perform the Upper ½ Mile Reach Removal Action in accordance with this Consent Decree and the Removal Action Work Plan for Upper ½ Mile Reach (Appendix F hereto) as approved by EPA.

c. Settling Defendant shall, with respect to the 1 ½ Mile Reach Removal Action, pay its share of the 1½ Mile Reach Removal Action Costs in accordance with Section XX of this Consent Decree (Reimbursement of Costs) and perform other activities as specified in this Consent Decree.

d. Subject to and in accordance with Paragraph 22 (Rest of River) of this Consent Decree, Settling Defendant shall complete the RCRA Facility Investigation Report, shall propose Interim Media Protection Goals, and shall perform the Corrective Measures Study for the Rest of the River in accordance with the Reissued RCRA Permit, and shall perform the Rest of River Remedial Action and O&M in accordance with the modification of that Reissued RCRA Permit to select the Rest of the River Remedial Action and in accordance with the Rest of River SOW.

15. In addition to Settling Defendant's other obligations in this Consent Decree, including the specific obligations regarding the performance of response actions and Restoration Work and other natural resource protection and restoration actions pursuant to Sections VII (Removal Actions Outside the River), VIII (River

Response Actions), and XXI (Natural Resource Damages) and its obligation to achieve and maintain Performance Standards as set forth in Section IX of this Consent Decree and in the SOW, Settling Defendant shall comply with the following requirements with respect to each Removal or Remedial Action required under this Consent Decree:

a. Materials that are excavated or otherwise removed from their current location at the Site and demolition debris from building demolition may be permanently consolidated at the GE Plant Area using a combination of the Hill 78 Consolidation Area, the Building 71 Consolidation Area, and another potential Consolidation Area at the corner of New York Avenue and Merrill Road, as designated in the SOW as permanent consolidation areas (collectively referred to herein as "on-plant consolidation areas"), in accordance with the following:

(i) All materials to be consolidated at the Hill 78 Consolidation Area shall contain less than 50 ppm PCBs, as determined by appropriate composite sampling techniques or other techniques approved by EPA, and shall not constitute hazardous waste under RCRA.

(ii) Settling Defendant shall not place in the on-plant consolidation areas any asbestos-containing materials required by applicable law to be removed from buildings or structures prior to demolition, free liquids, "free product," intact drums and capacitors, or other equipment that contains liquid PCBs within its internal components. If such materials are encountered, Settling Defendant will instead dispose of these materials appropriately off-site. For purposes of this Paragraph, "free product" is defined as materials containing PCBs or other Waste Material that by visual inspection

flow at room temperature or from which liquid passes when a 100 mg or 100 ml sample is placed on a mesh number 60 plus or minus 5 percent paint filter and allowed to drain at room temperature for 5 minutes.

(iii) The specific design and implementation requirements of the on-plant consolidation areas, including, but not limited to, engineering limitations and consolidation area configuration (e.g., horizontal extent and maximum elevation), shall comply with Section 2.1.4 and Annex 1 of the SOW attached to this Consent Decree.

b. In addition to using the on-plant consolidation areas for consolidation of building demolition debris, Settling Defendant may use the existing foundations of certain buildings, as described in the SOW, for placement of debris from building demolition activities conducted pursuant to the Definitive Economic Development Agreement and at Buildings 12, 12X, and 12Y. Such building foundations shall not be considered "on-plant consolidation areas" for purposes of this Consent Decree. However, if Settling Defendant uses such building foundations for the placement of building demolition debris, it shall comply with the requirements of Section 2.1.5 of the SOW for placement of such material in building foundations and for the covering of those foundations after use. Building demolition conducted pursuant to the Definitive Economic Development Agreement and at Buildings 12, 12X, and 12Y is not part of the GE Plant Area Removal Actions; however, the placement of demolition debris in the foundations shall be part of the GE Plant Area Removal Actions for the areas where such foundations are located (but will be excluded from the spatial averaging for such areas, as provided in Section 2.1.5 of the SOW).

c. To the extent Settling Defendant performs the Work in accordance with this Consent Decree, the SOW, the Upper ½ Mile Reach Removal Action Work Plan, and other required work plans, RCRA land disposal restrictions shall not apply to on-plant consolidation (including placement of materials in the on-plant consolidation areas and placement of building demolition debris in building foundations), because the areas covered by those documents have been designated by EPA as an Area of Contamination pursuant to EPA's "Area of Contamination Policy." For the Building 71 and New York Avenue/Merrill Road Consolidation Areas, Settling Defendant shall: suitably prepare, cap, monitor and maintain the area in accordance with Section 2.1.4, Attachments G, H and J, and Annex 1 of the SOW; provided, however, that except as otherwise provided therein, the additional liner and leachate collection requirements of 40 C.F.R. § 761.75 and 40 C.F.R. § 253.301(c) and comparable requirements of Massachusetts regulations shall not apply to the consolidation areas. For the Hill 78 Consolidation Area, as well as the other on-plant consolidation areas, Settling Defendant shall comply with the requirements of Paragraph 25.b (Performance Standards) of this Consent Decree.

16. Performance of Removal Actions Prior to Effective Date of Consent Decree.

a. Obligations to be Performed. In order to expedite response actions at the Site, Settling Defendant has agreed to commence and perform the following work as a contractual obligation effective upon lodging of this Consent Decree: (1) all design and implementation of the Allendale School Removal Action, in

accordance with Sections VI, VII and IX of this Consent Decree and the SOW and Annex 3 to the SOW (Work Plan for Allendale School Removal Action); (2) all design and implementation of the Upper ½ Mile Reach Removal Action, in accordance with Paragraph 20 and Sections VI, VIII and IX of this Consent Decree and the Upper ½ Mile Reach Removal Action Work Plan; (3) the design, implementation, and operation of the Hill 78 and Building 71 Consolidation Areas for the consolidation of materials excavated as part of the Allendale School and Upper ½ Mile Reach Removal Actions, in accordance with the applicable provisions of Sections VI, VII and IX of this Consent Decree, the SOW, and Annex 1 to the SOW (Work Plans for On-Plant Consolidation Areas); and (4) submittal of Pre-design Investigation Work Plans for the 30s Complex Removal Action, the 40s Complex Removal Action, the 20s Complex Removal Action, and the Newell Street Area I Removal Action, as well as the Field Sampling Plan/Quality Assurance Project Plan portions of the Project Operations Plan, in accordance with the schedule set forth in Attachment A to the SOW, and submittal of the Baseline Monitoring Program Proposal for the Plant Site 1 Groundwater Management Area in accordance with the schedule set forth in Attachment H to the SOW; and (5) continuation of source control investigation, design, and implementation activities for East Street Area 2-South, the Lyman Street Area, and Newell Street Area II in accordance with the work plans and schedules approved by EPA as included in Annex 2 to the SOW; provided, however, that if the Court denies entry of this Consent Decree before completion of all work provided for in this Paragraph, or if the United States, the State or Connecticut withdraws from this Consent Decree pursuant to

Section XXXVIII (Lodging and Opportunity for Public Comment) of this Consent Decree, or if either the United States or Settling Defendant withdraws from this Consent Decree pursuant to Paragraph 10.c, then Settling Defendant may suspend performance as of the date of denial of entry by the Court or of written notice by the United States, the State or Connecticut (or Settling Defendant pursuant to Paragraph 10.c) that it has withdrawn from the Decree and Settling Defendant shall have no further obligations under this Paragraph 16. In the event that Settling Defendant suspends performance, the Parties reserve all of their rights except as specifically provided in this Paragraph 16.

In addition, the Parties agree that Settling Defendant may, upon lodging of this Consent Decree, commence use of certain existing building foundations for consolidation of building demolition debris, as described in Paragraph 15.b of this Consent Decree, in accordance with and subject to the requirements of Paragraph 15.b and Section 2.1.5 of the SOW.

b. Covenants by United States. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant as a contractual matter prior to the effective date of the Consent Decree, and except as specifically provided in this Paragraph, the United States, on behalf of EPA, NOAA, DOI, DOD, ACOE, ATSDR and any other agency of the United States which may have authority to administer the statutes cited in this subparagraph, as a contractual obligation effective upon lodging of this Consent Decree, covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 106 or 107(a)

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.

move the Court of Appeals for an expedited briefing schedule and expedited consideration of the petition for review. Settling Defendant may apply to the Court for a stay of the further revised permit modification decision pending review by the United States Court of Appeals for the First Circuit. The United States may oppose such application for a stay.

w. In the event that Settling Defendant invokes dispute resolution pursuant to Paragraphs 22.u or 22.v and 141.b (Dispute Resolution) and EPA's revised permit modification decision 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.

x. Whenever Settling Defendant is required to design and implement the Rest of the River Remedial Action or a portion thereof pursuant to this Paragraph 22, Settling Defendant shall develop and submit to EPA for review and approval a Rest of River SOW in accordance with the following provisions: Within 7 days after the date upon which the modification of the Reissued RCRA Permit, or portion thereof, requiring such action becomes effective pursuant to this Paragraph 22, Settling Defendant shall propose to EPA for review and approval a schedule for the subsequent submission of a Rest of River SOW for implementation of such Remedial Action or portion thereof. That proposed schedule will be discussed by EPA and Settling Defendant and shall be subject to final EPA approval, which in no event shall require submission of the Rest of

River SOW sooner than 90 days after the effective date of such Permit modification or portion thereof. In accordance with the schedule approved by EPA, Settling Defendant shall submit to EPA for review and approval a Rest of River SOW for the Rest of River Remedial Action or effective portion thereof. Such Rest of River SOW shall include provisions and schedules for the subsequent development of a Remedial Design Work Plan, a Remedial Action Work Plan, and/or other appropriate associated plans to achieve the Performance Standards and other requirements set forth in the effective modification of the Reissued RCRA Permit and the Rest of River SOW and (if applicable) reflecting the outcome of any completed dispute resolution proceeding.

y. Following EPA approval of the Rest of the River SOW, Settling Defendant shall submit the necessary Remedial Design and Remedial Action Work Plans to EPA for review and approval in accordance with the Rest of River SOW and Section XV (EPA Approval of Plans and Other Submissions) of this Consent Decree and subject to Paragraph 39 (Modification of SOW, Rest of River SOW, or Work Plans) of this Consent Decree.

z. Settling Defendant shall design and implement the Rest of River Remedial Action, and any required O&M, as a CERCLA remedial action pursuant to this Consent Decree, in accordance with EPA's final RCRA permit modification decision, the final outcome of any dispute resolution proceedings, the Rest of the River SOW, and any approved Work Plans thereunder. For purposes of the Rest of River Remedial Action and O&M, EPA's modification of the Reissued RCRA Permit to select such Remedial Action and O&M that is effective at the time of initiation of the Rest of River

Remedial Design/Remedial Action shall be considered to be the final remedy selection decision pursuant to Section 121 of CERCLA and Section 300.430 of the NCP (40 C.F.R. § 300.430). If such modification is changed by appeals and/or remands, the subsequent modification of the Reissued RCRA Permit shall be considered the final remedy selection decision pursuant to Section 121 of CERCLA and Section 300.430 of the NCP (40 C.F.R. § 300.430).

aa. In the event that both the Reissued RCRA Permit and this Consent Decree require performance of a given action by Settling Defendant, enforcement of such requirement shall be pursuant to this Consent Decree, rather than pursuant to RCRA and the Reissued RCRA Permit. In the event that a given action by Settling Defendant is required only by the Reissued RCRA Permit, enforcement of such requirement shall be pursuant to RCRA and the Reissued RCRA Permit.

bb. Challenges by State to EPA Determination to Waive an ARAR. In the event that the State petitions for review of EPA's permit modification decision referred to in Paragraph 22.p or EPA's revised or further revised permit modification decisions referred to in Paragraphs 22.t and 22.v(i), respectively, in the EPA Environmental Appeals Board pursuant to 40 C.F.R. § 124.19 and/or in the United States Court of Appeals for the First Circuit pursuant to Section 7006(b) of RCRA, and in such proceeding challenges EPA's determination, in such permit modification decision, to waive an ARAR for the Rest of the River Remedial Action or O&M, the following provisions shall apply:

(i) The United States, the State, and Settling Defendant (if a party) shall stipulate that the standard of review of the State's challenge to EPA's ARAR waiver determination shall be as provided in Section 121(f)(2)(B) of CERCLA.

(ii) During any such proceeding in the Environmental Appeal Board, the permit modification decision challenged by the State shall be stayed in accordance with the provisions of 40 C.F.R. §§ 124.15(b)(2), 124.16(a) and 124.19(f)(1).

(iii) If the State appeals to the Court of Appeals from a decision of the Environmental Appeals Board upholding, in whole or in part, EPA's determination to waive an ARAR in EPA's initial permit modification decision referred to in Paragraph 22.p, the following provisions shall apply with respect to such appeal.

(A) During the pendency of such appeal, Settling Defendant shall not be required to proceed with any design work on the selected Rest of the River Remedial Action or O&M for which resolution of the State's challenge is necessary to be decided prior to undertaking such design work. EPA may proceed with such design work during the pendency of the State's appeal. However, 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 such design work. At the conclusion of the State's appeal, if EPA's ARAR waiver determination is upheld and EPA was performing the design work, EPA shall provide Settling Defendant with the results of its design work relating thereto and return the performance of such 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 of this Consent Decree. If only a portion of EPA's ARAR waiver determination is upheld or if EPA's ARAR waiver determination is not upheld in any part, and EPA was performing the design work relating to the ARAR waiver determination, EPA will provide Settling Defendant with the results of its design work and return the performance of design work to Settling Defendant. If only a portion of EPA's ARAR waiver determination is upheld, Settling Defendant shall pay EPA's costs of such work relating to the portion that was upheld as U.S. Future Response Costs in accordance with Paragraph 95.a of this Consent Decree. If a portion of EPA's ARAR waiver determination is not upheld, or if EPA's ARAR waiver determination 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 in light of the Court's decision would have to be materially changed in substance in the remedial design for any revised permit modification decision which is not appealed or is upheld on appeal.

(B) If Settling Defendant has also appealed to the Court of Appeals pursuant to Paragraph 22.q and if the work subject to Settling Defendant's appeal is not severable from the work subject to the State's challenge, the United States will stipulate to a stay of the effectiveness of the modified permit, insofar as it applies to such work, during the pendency of the State's appeal, and neither Settling Defendant nor EPA shall proceed with the implementation of such work during the pendency of such appeal.

(C) If Settling Defendant does not appeal to the Court of Appeals pursuant to Paragraph 22.q or if the work subject to the State's challenge is severable from the work subject to an appeal by Settling Defendant, either the State or Settling Defendant may move the Court of Appeals for a stay of the effectiveness of the modified permit insofar as it requires Settling Defendant to perform, or for an order precluding performance of, any implementation work on the Rest of the River Remedial Action or O&M for which resolution of the State's challenge is necessary to be decided prior to undertaking such work. In connection with such motion, the parties shall stipulate that the Court of Appeals may consider the provisions of subparagraph 22.bb(iii)(D) below in considering the applicable stay factors.

(D) If, due to the absence, denial, or expiration of any stay, either Settling Defendant or EPA proceeds, during the pendency of the State's challenge, with any implementation work that is subject to the State's challenge, and if the Court of Appeals thereafter holds that EPA improperly waived an ARAR, then neither Settling Defendant nor EPA shall be required to undo or re-do any implementation work that has previously been completed, so as to comply with such ARAR. However, Settling Defendant shall comply with such ARAR, in accordance with the Court of Appeals' decision, in implementing all future work. In the event of a dispute regarding the scope of Settling Defendant's obligations pursuant to this subparagraph to implement the Court of Appeals' decision regarding the State's challenge, such dispute shall be resolved under the Dispute Resolution provisions of Paragraphs 133 through 139 of this Consent Decree; provided, however, that the State shall also have the right to invoke dispute

resolution with respect to such issue in accordance with the same procedures set forth in those paragraphs, and provided further that if the State does so, stipulated penalties or any other penalties or sanctions shall not accrue against Settling Defendant, during the pendency of such dispute resolution proceeding, for any failure by Settling Defendant to perform work which the State believes is required by the Court of Appeals' decision but which EPA has not required Settling Defendant to perform.

(E) Following the conclusion of the State's appeal to the Court of Appeals, if EPA's ARAR waiver determination is upheld and EPA was performing implementation work relating thereto, EPA will return the performance of such 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 this Consent Decree. If only a portion of EPA's ARAR waiver determination is upheld or if EPA's ARAR waiver determination is not upheld in any part, and EPA was performing implementation work relating to the ARAR waiver determination, EPA will return the performance of work to Settling Defendant, and Settling Defendant shall pay EPA's costs of the implementation work relating to the ARAR waiver determination, 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 permit modification decision upheld by the Court of Appeals or was incorporated into work performed to implement a subsequent revised permit modification decision that is not appealed or (if appealed) is upheld on appeal.

(iv) If the State appeals to the Court of Appeals from a decision by the Environmental Appeals Board upholding, in whole or in part, EPA's determination to

waive an ARAR in EPA's revised or further revised permit modification decision referred to in Paragraphs 22.t or 22.v(i), the following provisions shall apply with respect to such appeal:

(A) Notwithstanding the provisions of Paragraph 22.u(v), Settling Defendant or the State may move the Court of Appeals for a stay, pending the Court's decision, of any design work on the selected revised Rest of the River Remedial Action or O&M for which resolution of the State's challenge is necessary to be decided prior to undertaking such design work. If Settling Defendant or the State does not seek such a stay or if any motion for a stay is denied, Settling Defendant shall proceed with such design work during the pendency of the State's appeal. If such a stay is granted, EPA may proceed with such design work during the pendency of the State's appeal. However, 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 such design work. At the conclusion of the State's appeal, if EPA's ARAR waiver determination is upheld and EPA was performing the design work, EPA will provide Settling Defendant with the results of its design work relating thereto and return the performance of such design work to Settling Defendant, and Settling Defendant shall pay EPA's cost of such work as U.S. Future Response Costs in accordance with Paragraph 95.a of this Consent Decree. If only a portion of EPA's ARAR waiver determination is upheld or if EPA's ARAR waiver determination is not upheld in any part,

and EPA was performing the design work relating to the ARAR waiver determination, EPA will provide Settling Defendant with the results of its design work and return the performance of design work to Settling Defendant. If only a portion of EPA's ARAR waiver determination is upheld, Settling Defendant shall pay EPA's costs of such work relating to the portion that was upheld as U.S. Future Response Costs in accordance with Paragraph 95.a of this Consent Decree. If a portion of EPA's ARAR waiver determination is not upheld or if EPA's ARAR waiver determination 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 in light of the Court's decision would have to be materially changed in substance in the remedial design for any further revised permit modification decision which is not appealed or is upheld on appeal.

(B) If Settling Defendant has also appealed to the Court of Appeals pursuant to Paragraph 22.u or 22.v (as applicable) and if the work subject to Settling Defendant's appeal is not severable from the work subject to the State's challenge, the provisions of Paragraphs 22.u(iv) or 22.v(ii) (as applicable) relating to a stay of the effectiveness of EPA's revised or further revised permit modification decision shall apply to the implementation of such work; provided, however, that the State may also seek a stay of implementation of such work in accordance with the same procedures set forth in Paragraph 22.bb(iv)(C).

(C) If Settling Defendant does not appeal to the Court of Appeals pursuant to Paragraph 22.u or 22.v (if applicable) or if the work subject to the State's challenge is severable from the work subject to an appeal by Settling Defendant, either

the State or Settling Defendant may move the Court of Appeals for a stay of the effectiveness of the revised or further revised modified permit insofar as it requires Settling Defendant to perform, or for an order precluding the performance of, any implementation work on the Rest of the River Remedial Action or O&M for which resolution of the State's challenge is necessary to be decided prior to undertaking such work. In connection with such motion, the parties shall stipulate that the Court of Appeals may consider the provisions of subparagraph 22.bb(iv)(D) below in considering the applicable stay factors.

(D) If, due to the absence, denial, or expiration of any stay, either Settling Defendant or EPA proceeds, during the pendency of the State's challenge, with any implementation work that is subject to the State's challenge, and if the Court of Appeals thereafter holds that EPA improperly waived an ARAR, then neither Settling Defendant nor EPA shall be required to undo or re-do any implementation work that has previously been completed, so as to comply with such ARAR. However, Settling Defendant shall comply with such ARAR, in accordance with the Court of Appeals' decision, in implementing all future work. In the event of a dispute regarding the scope of Settling Defendant's obligations pursuant to this subparagraph to implement the Court of Appeals' decision regarding the State's challenge, such dispute shall be resolved under the Dispute Resolution provisions of Paragraphs 133 through 139 of this Consent Decree; provided, however, that the State shall also have the right to invoke dispute resolution with respect to such issue in accordance with the same procedures set forth in those paragraphs, and provided further that if the State does so, stipulated penalties

or any other penalties or sanctions shall not accrue against Settling Defendant during the pendency of such dispute resolution proceeding, for any failure by Settling Defendant to perform work which the State believes is required by the Court of Appeals' decision but which EPA has not required Settling Defendant to perform.

(E) Following the conclusion of the State's appeal to the Court of Appeals, if EPA's ARAR waiver determination is upheld and EPA was performing implementation work relating thereto, EPA will return the performance of such 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 this Consent Decree. If only a portion of EPA's ARAR waiver determination is upheld or if EPA's ARAR waiver determination is not upheld in any part, and EPA was performing implementation work relating to the ARAR waiver determination, EPA will return the performance of work to Settling Defendant, and Settling Defendant shall pay EPA's costs of the implementation work relating to the ARAR waiver determination, 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 revised permit modification decision upheld by the Court of Appeals or was incorporated into work performed to implement a subsequent further revised permit modification decision that is not appealed or (if appealed) is upheld on appeal.

(v) In any appeal by the State to the Court of Appeals challenging a decision by EPA to waive an ARAR for the Rest of the River Remedial Action or O&M, the United States, the State, and Settling Defendant (if a party) shall jointly move the

Court of Appeals for an expedited briefing schedule and expedited consideration of the State's petition for review.

(vi) For any work conducted by Settling Defendant during the pendency of a State challenge to a determination by EPA to waive an ARAR for the Rest of the River Remedial Action or O&M, Settling Defendant shall not be deemed to be in noncompliance with this Consent Decree for failure to comply with such ARAR unless and until the Court of Appeals determines that EPA improperly waived such ARAR and Settling Defendant fails to comply with such ARAR in accordance with the applicable schedule as determined by the Court or as approved by EPA (after reasonable opportunity for review and comment by the State) following the Court's decision.

(vii) In the event that Settling Defendant or EPA performs work during the pendency of a State challenge to a determination by EPA to waive an ARAR for the Rest of the River Remedial Action or O&M, and if the Court of Appeals thereafter holds that EPA improperly waived such ARAR, EPA shall not withhold issuance of the Certifications of Completion described in Paragraphs 88 and 89 of this Consent Decree on the ground that the work performed by Settling Defendant or EPA prior to the date when compliance with such ARAR is required under the Court's decision did not meet or comply with such ARAR.

(viii) The provisions of this Paragraph 22.bb shall not apply to any work that is severable from work subject to the State's challenge to a determination by EPA to waive an ARAR for the Rest of the River Remedial Action or O&M.

cc. Challenges by Connecticut to EPA Determination to Waive an ARAR. Paragraph 22.bb is incorporated in this subparagraph by reference except that each reference to "the State" shall be read as a reference to "Connecticut."

IX. PERFORMANCE STANDARDS AND RELATED REQUIREMENTS

23. Settling Defendant shall perform the response actions required under this Consent Decree to achieve and maintain the Performance Standards as described in this Section IX and in the SOW (Appendix E to this Consent Decree), the Upper ½ Mile Reach Removal Action Work Plan (Appendix F to this Consent Decree), and the Rest of the River SOW (to be developed pursuant to this Consent Decree).

24. The following general Performance Standards shall apply to the response actions undertaken pursuant to this Consent Decree.

a. For each Settling Defendant Property that is subject to a Removal Action Outside the River or the Upper ½ Mile Reach Removal Action pursuant to this Consent Decree, Settling Defendant shall execute and record a Grant of Environmental Restrictions and Easements ("ERE") in accordance with the applicable provisions of Section XIII of this Consent Decree.

b. For each Non-Settling Defendant Property that is not in residential use, and that is subject to a Removal Action Outside the River (except for the Allendale School Property) or the Upper ½ Mile Reach Removal Action pursuant to this Consent Decree, Settling Defendant shall make best efforts to obtain the execution and recordation of an ERE (or a Notice ERE for such property that is State-owned and subject to Article 49 of the State Constitution) in accordance with the applicable

31. The Performance Standards for the Upper ½ Mile Reach Removal Action shall consist of those requirements identified as Performance Standards Numbers 1, 2, 4, 5, 7, 8, 9, 10, and 12 in Section 2.2 of the Removal Action Work Plan for the Upper ½ Mile Reach as approved by EPA, which is set forth in Appendix F to this Consent Decree. (The other numbered Performance Standards in that Work Plan relate to Restoration Work, which is covered by Section XXI of this Consent Decree.)

32. For the 1 ½ Mile Reach Removal Action, Performance Standards will be developed through the Engineering Evaluation/Cost Analysis being performed by EPA and will be set forth in the 1 ½ Mile Reach Removal Action Memo. EPA intends to implement the selected 1 ½ Mile Reach Removal Action for sediments and riverbanks, including attainment of Performance Standards developed, with costs of the 1 ½ Mile Reach Removal Action to be shared pursuant to the provisions of Paragraphs 103-111 of Section XX of this Consent Decree (Reimbursement of Costs). EPA and Settling Defendant agree to coordinate and cooperate, and to have their respective contractors coordinate and cooperate, with each other in the performance of activities at the properties in and adjacent to the 1 ½ Mile Reach.

33. For the Housatonic River - Rest of the River Remedial Action, Performance Standards will be developed through the processes specified in Paragraph 22. and will be set forth in the final modification to the Reissued RCRA Permit and the Rest of River SOW as provided in Paragraph 22 of this Consent Decree. Settling Defendant shall perform the Rest of River Remedial Action and achieve such Performance Standards, as provided in Paragraph 22 of this Consent Decree.

34. The Performance Standards for a Conditional Solution shall include all requirements identified as Performance Standards for a Conditional Solution in the SOW attached to this Consent Decree, and that may be identified as Performance Standards for a Conditional Solution in the Rest of River SOW, and the following requirements:

a. (i) If Settling Defendant has made best efforts but has failed to obtain a property owner's agreement to record and/or register an ERE, or otherwise failed to record and/or register an ERE, pursuant to Section XIII of this Consent Decree, then Settling Defendant shall use best efforts to obtain the property owner's consent for access to the property for sampling and implementation of a Conditional Solution, as described in subparagraph 34.c. of this Paragraph. If Settling Defendant has used best efforts but consent for access for sampling and/or for implementation of a Conditional Solution cannot be obtained, the United States and the State will assist Settling Defendant in obtaining such access, including, but not limited to, use, as appropriate, of their statutory and regulatory authorities to secure such access.

(ii) Until such consent for access for sampling and for implementation of a Conditional Solution is obtained, Settling Defendant shall, on an annual basis, after the initial attempt to obtain access, determine whether there has been a change in ownership of such property. No less frequently than every fifth year after such initial attempt, and at any time there has been a change in ownership of such property, Settling Defendant shall make best efforts to obtain from the property owner either (A) an ERE, including access to perform related response actions, in accordance with Section XIII of this Consent Decree, or (B) consent for access for sampling and for

implementation of a Conditional Solution. If Settling Defendant, after using best efforts, cannot obtain either of these, the provisions of Paragraphs 60.f through 60.h relating to governmental assistance in obtaining EREs and consent for access for sampling and implementation of a Conditional Solution will apply. Settling Defendant shall implement a Conditional Solution whenever access is granted.

b. If consent for access for sampling is obtained, Settling Defendant shall conduct tightened grid soil sampling, in accordance with the SOW, to the extent determined by EPA to be necessary to implement the obligations set forth in subparagraph 34.c. of this Consent Decree.

c. If consent for access to implement a Conditional Solution is obtained, Settling Defendant shall implement the following response actions, in accordance with the SOW:

(i) For each averaging area at properties in commercial/industrial use (except riverbanks and the banks of Silver Lake), Settling Defendant shall remove and replace soils as necessary to achieve an average PCB concentration of 25 ppm in the top foot and 0-3 foot depth increments, and 200 ppm in the 1-6 foot depth increment (after taking into account any soil removals for the top 3 feet), and shall install an Engineered Barrier if the average PCB concentration in the top 15 feet exceeds 100 ppm (after taking into account any soil removals for the top 6 feet). In addition, Settling Defendant shall comply with the requirements of Paragraph 26.e.

(ii) For each averaging area at properties in recreational use (except riverbanks and the banks of Silver Lake), Settling Defendant shall remove and replace

soils as necessary to achieve an average PCB concentration of 10 ppm in both the top foot and 0-3 foot depth increments, and shall install an Engineered Barrier if the average PCB concentration in the top 15 feet exceeds 100 ppm (after taking into account any soil removals for the top 3 feet). In addition, Settling Defendant shall comply with the requirements of Paragraph 26.e.

(iii) For each averaging area at riverbanks and the banks of Silver Lake (where Conditional Solutions apply), Settling Defendant shall remove and replace soils as necessary to achieve an average PCB concentration of 10 ppm in both the top foot and the 0-3 foot depth increment.

d. After a Conditional Solution as described above has been implemented, Settling Defendant shall conduct further response actions as set forth in this Paragraph 34.d.(i)-(iii) to be protective of any legally permissible future use, as approved by EPA after reasonable opportunity for review and comment by the State, if and when the property owner or the owner's successors and assigns: (1) has submitted a plan to the appropriate governmental authority(ies) to authorize any legally permissible future use (if such plan or authorization is necessary) and such plan (if required) has been approved by the governmental authority(ies), and (2) provides to EPA and to Settling Defendant (directly or through EPA) other documented evidence of a commitment to such use (for example, such evidence may include evidence of financing or other financial assurance for the project, other plans for implementing the project (such as architectural plans, contracts for performance of the project, or other similar plans), or an affidavit that the owner intends to go forward with the project or other change in use if the necessary

response actions are taken). In such event, Settling Defendant shall conduct additional response actions at the property as necessary to achieve the following Performance Standards:

(i) For any change from commercial/industrial or recreational uses to residential, daycare, or school (children under 18 years old) uses, Settling Defendant shall achieve:

(A) for properties located in the floodplain of the Housatonic River, the same Performance Standards set forth in Paragraph 28 this Consent Decree and Section 2.5.2 of the SOW for current residential properties in the Housatonic River floodplain, or

(B) for properties in any other location at the Site, the same Performance Standards set forth in Paragraph 26.f of this Consent Decree and Section 2.3.2 of the SOW for current residential properties at the Former Oxbow Areas.

(ii) For any change from commercial/industrial uses to recreational uses. Settling Defendant shall achieve the same Performance Standards set forth in Paragraph 34.c.(ii) above.

(iii) Settling Defendant shall conduct the following additional response actions necessary to be protective of the legally permissible future use referenced above in this Paragraph 34.d, as approved by EPA after reasonable opportunity for review and comment by the State:

(A) any additional response actions necessary to achieve applicable Performance Standards in this Consent Decree or in the SOW for the legally

permissible future use, including but not limited to adding new GW-2 sentinel wells and/or other response actions if necessary to address any potential indoor air issues for new buildings, and deriving and achieving applicable Performance Standards for Appendix IX+3 constituents in accordance with the SOW based on the new uses;

(B) if there are no Performance Standards in this Consent Decree or the SOW for a legally permissible future use (i.e., the use of the property is not industrial/commercial, recreational or residential), Settling Defendant shall propose and EPA will approve performance standards and response actions for such use as appropriate, and Settling Defendant shall implement such response actions to achieve any such performance standards; and

(C) for any activities that would involve any off-property disposition of soils or excavation of soils, response actions to ensure the proper excavation, management and disposition of such soils and the protection of workers and other individuals during such excavation activities, in accordance with applicable laws and regulations.

35. Within 30 days from the date that EPA notifies Settling Defendant in writing that EPA has determined that the property owner has satisfied the criteria in Paragraph 34.d.(1) and (2) of this Consent Decree, Settling Defendant shall (subject to its rights to seek dispute resolution regarding such determination under Section XXIV of this Consent Decree) submit to EPA for approval a Work Plan for pre-design activities (if any) for the additional response actions described in subparagraph 34.d.(i)-(iii), and a proposed schedule for the subsequent submission of Work Plans for any other pre-

38. Following the implementation of any Conditional Solution under subparagraph 34.c or 34.d, Settling Defendant shall, on an annual basis, conduct an inspection of such property not then owned by the United States or the State to determine whether there has been any change in activities or uses in the property since the date of implementation of such Conditional Solution where such changes in activities or uses would involve exposure to soil greater than three feet in depth from the original grade or would be inconsistent with the land use for which such Conditional Solution was implemented. Such inspection shall be conducted in accordance with Appendix Q, including the criteria set forth therein. Within 30 days of such inspection, Settling Defendant shall submit a report to EPA and MADEP based on an evaluation of the criteria set forth in Appendix Q, together with the appropriate supporting information, and otherwise in accordance with Appendix Q.

39. Modification of the SOW, Rest of the River SOW, Upper ½ Mile Reach Removal Action Work Plan or Work Plans.

a. For each Removal or Remedial Action required under this Consent Decree, if EPA determines that modification to the work specified in the SOW, the Upper ½ Mile Reach Removal Action Work Plan, the Rest of the River SOW, and/or in work plans developed pursuant to the SOW, the Rest of the River SOW, and/or this Consent Decree is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of a particular Removal or Remedial Action, EPA may require that such modification be incorporated in the SOW, the Upper ½ Mile Reach Removal Action Work Plan, the Rest of the River SOW, and/or such other work plans;

provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the response action for which the modification is required and does not modify the Performance Standards (except as provided in Paragraph 217 (Modification) of this Consent Decree).

b. If Settling Defendant objects to any modification determined by EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to XXIV (Dispute Resolution), Paragraph 136 (record review). The SOW, the Upper ½ Mile Reach Removal Action Work Plan, Rest of the River SOW, and/or other work plans shall be modified in accordance with final resolution of the dispute.

c. Settling Defendant shall implement any work required by any modifications incorporated in the SOW, the Upper ½ Mile Reach Removal Action Work Plan, the Rest of the River SOW, and/or in work plans developed pursuant to the SOW, the Rest of the River SOW, and/or this Consent Decree in accordance with this Paragraph.

d. Nothing in this Paragraph shall be construed to affect any other authority or right EPA or the State has under other paragraphs of this Consent Decree to require performance of further response actions.

40. Nothing in this Consent Decree, the SOW, the Rest of the River SOW, the Upper ½ Mile Reach Removal Action Work Plan, or any of the Work Plans developed pursuant to this Consent Decree, the SOW or the Rest of the River SOW constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW, the Rest of the River SOW, the Upper ½ Mile Reach

Removal Action Work Plan and/or other Work Plans, which requirements are not part of or included within the Performance Standards, will achieve the Performance Standards.

41. Settling Defendant shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of non-liquid Waste Materials of all such shipments will not exceed 10 cubic yards.

a. Settling Defendant shall include in the written notification the following information, where available: (i) the name and location of the facility to which the Waste Material are to be shipped; (ii) the type and quantity of the Waste Material to be shipped; (iii) the expected schedule for the shipment of the Waste Material; and (iv) the method of transportation. Settling Defendant shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Settling Defendant following the award of the contract for construction of the Removal or Remedial Action in which the shipment of Waste Materials is to be undertaken. Settling Defendant shall provide the information required by Paragraph 41.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

(i) Settling Defendant has recorded and/or registered a CER, according to the process set forth in this Paragraph, on such property, or portion thereof, which is the subject of the sale, transfer, or assignment; and

(ii) Settling Defendant obtains from such purchaser, transferee, or assignee the Access and Interim Non-Interference Agreements described in Paragraph 59.

56. Non-Settling Defendant Property.

a. Where access to, and/or land and/or water use restrictions for, any Non-Settling Defendant Property in Massachusetts is required to implement, monitor, and/or protect the integrity of the response actions or Restoration Work required by this Consent Decree and the SOW, Settling Defendant shall use "best efforts", as defined in Paragraph 60, to secure from any persons who own or control such Non-Settling Defendant Property EREs, a CER, Access Agreements and/or Interim Non-Interference Agreements (as applicable) in accordance with Paragraphs 57, 58, and 59, respectively, subject to Paragraphs 61 and 62 of this Consent Decree.

b. For each Removal Action Outside the River, Settling Defendant shall submit to EPA and MADEP, at the deadline for submittal of the Pre-Design Work Plan for such Removal Action, or within such other time as is proposed by Settling Defendant and approved by EPA, a written notice, in accordance with the requirements of Paragraph 60.e, stating whether each person who owns or controls Non-Settling Defendant Property which is located within the area subject to that Removal Action agrees, after Settling Defendant has used "best efforts," to execute and record an ERE thereon. If

such person agrees to do so, such notice shall also include a statement as to whether any necessary subordination agreements for such property can be obtained, or if that has not yet been determined, a description of the status of Settling Defendant's efforts to obtain such subordination agreements. Settling Defendant shall provide final notice regarding whether such subordination agreements have been obtained no later than the deadline specified in Paragraph 57.a(i) for submittal of executed EREs and related documentation, including subordination agreements. If the person who owns or controls the property does not agree to execute and record an ERE thereon, after Settling Defendant has used "best efforts" to obtain such ERE, then Settling Defendant shall implement a Conditional Solution on such property, unless, within 30 days of Settling Defendant's above-mentioned written notice (or such later time as is approved by EPA, after reasonable opportunity for review and comment by MADEP), the State notifies Settling Defendant in writing that the State is undertaking efforts to obtain an ERE from such person. In the latter event, upon written notification from the State that the State has terminated such efforts without obtaining an ERE, then Settling Defendant shall implement a Conditional Solution on such property.

c. For the Upper ½ Mile Reach Removal Action, Settling Defendant shall submit to EPA and MADEP a written notice, in accordance with the requirements of Paragraph 60.e, stating whether each person who owns or controls the bank portion of Non-Settling Defendant Property which is located within the Upper ½ Mile Reach agrees to impose an ERE thereon. Such submittal shall be made at the time Settling Defendant is required to submit a written notice stating whether such person agrees, after Settling

Defendant has used "best efforts," to execute and record an ERE on the non-bank portions of the property pursuant to subparagraph 56.b. above, or within such other time as is proposed by Settling Defendant and approved by EPA. If such person agrees to do so, such notice shall also include a statement as to whether any necessary subordination agreements for such property can be obtained, or if that has not yet been determined, a description of the status of Settling Defendant's efforts to obtain such subordination agreements. Settling Defendant shall provide final notice regarding whether such subordination agreements have been obtained no later than the deadline specified in Paragraph 57.a(ii) for submittal of executed EREs and related documentation, including subordination agreements. If the person who owns or controls the property does not agree to execute and record an ERE thereon, after Settling Defendant has used "best efforts" to obtain such ERE, then Settling Defendant shall implement a Conditional Solution on such property, unless, within 30 days of Settling Defendant's above-mentioned written notice (or such later time as is approved by EPA, after reasonable opportunity for review and comment by MADEP), the State notifies Settling Defendant in writing that the State is undertaking efforts to obtain an ERE from such person. In the latter event, upon written notification from the State that the State has terminated such efforts without obtaining an ERE, then Settling Defendant shall implement a Conditional Solution on such property.

d. For the 1 ½ Mile Reach Removal Action, to the extent that EPA is unable to obtain EREs pursuant to Paragraph 21.b, Settling Defendant shall submit to EPA and MADEP, on a schedule to be approved by EPA in connection with the 1 ½ Mile Reach

Removal Action, a written notice, in accordance with the requirements of Paragraph 60.e., stating whether each person who owns or controls the bank portion of Non-Settling Defendant Property which is located within the 1 ½ Mile Reach Removal Action agrees to execute and record an ERE thereon. If such person agrees to do so, such notice shall also include a statement as to whether any necessary subordination agreements for such property can be obtained, or if that has not yet been determined, a description of the status of Settling Defendant's efforts to obtain such subordination agreements. Settling Defendant shall provide final notice regarding whether such subordination agreements have been obtained no later than the deadline established pursuant to Paragraph 57.a(iii) for submittal of executed EREs and related documentation, including subordination agreements.

e. If EREs are a component of the Rest of River Remedial Action for any Non-Settling Defendant Property, Settling Defendant shall submit to EPA and MADEP, on a schedule to be approved by EPA in connection with that Remedial Action (after a reasonable opportunity for review and comment by MADEP), a written notice, in accordance with the requirements of Paragraph 60.e, stating whether each person who owns such Non-Settling Defendant Property agrees, after Settling Defendant has used "best efforts," to execute and record an ERE thereon. If such person agrees to do so, such notice shall also include a statement as to whether any necessary subordination agreements for such property can be obtained, or if that has not yet been determined, a description of the status of Settling Defendant's efforts to obtain such subordination agreements. Settling Defendant shall provide final notice regarding whether such

subordination agreements have been obtained no later than the deadline established pursuant to Paragraph 57.a(iv) for submittal of executed EREs and related documentation, including subordination agreements. If the person who owns or controls the property does not agree to execute and record an ERE thereon, after Settling Defendant has used "best efforts" to obtain such ERE, then Settling Defendant shall implement a Conditional Solution on such property (if a Conditional Solution is a component of the Rest of River Remedial Action), unless, within 30 days of Settling Defendant's above-mentioned written notice (or such later time as is approved by EPA, after reasonable opportunity for review and comment by MADEP), the State and/or the United States notifies Settling Defendant in writing that the State and/or the United States (as applicable) is undertaking efforts to obtain an ERE from such person. In the latter event, upon written notification from the State and/or the United States that the State and/or the United States (as applicable) has terminated such efforts without obtaining an ERE, then Settling Defendant shall implement a Conditional Solution on such property.

f. (i) A Notice ERE may be substituted for an ERE only at State-owned property that is subject to Article 49 of the State Constitution. A Notice ERE shall be in a form that is consistent with the form attached to this Consent Decree as Appendix P, as it may be modified to be consistent with CERCLA response actions pursuant to this Consent Decree. The prohibited and permitted activities and uses and the conditions and obligations in a Notice ERE shall be substantially the same as set forth in the model

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. PEDA shall be invited to participate in inspections relating to property that will be transferred to PEDA 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 PEDA (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 PEDA. 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.

Submissions) and Michael Manlogon, Financial Management Officer, EPA Region I, One Congress Street, Suite 1100, Boston, MA 02114-2023.

111. To the extent that funds, including interest, remain in the 1 ½ Mile Special Account following EPA's closeout of the interagency agreement with the ACOE for the 1 ½ Mile Reach Removal Action, such funds shall be used and applied as a credit against Settling Defendant's obligations under Paragraphs 95.a, 98.a or 98.b of this Consent Decree for U.S. Future Response Costs, U.S. Oversight Costs or U.S. Rest of River Oversight Costs until the monies in the 1 ½ Mile Special Account have been fully depleted.

XXI. NATURAL RESOURCE DAMAGES

112. Satisfaction of the Plaintiffs' claims for Natural Resource Damages shall consist of:

a. Performance of the response actions required under this Consent Decree.

b. The payment of cash to the Trustees by Settling Defendant for Natural Resource Damages as set forth in Paragraph 114 of this Section;

c. The performance of Restoration Work as set forth in Paragraph 118 of this Section;

d. Other natural resource protection and restoration actions to be undertaken by Settling Defendant as set forth in Paragraph 123 of this Section;

e. Performance by PEDA of the obligations set forth in Paragraph 124 of this Section (for which Settling Defendant shall not be liable); and

f. The payment of DOI Past Assessment Costs, DOI Future Costs, DOI Oversight Costs, NOAA Past Assessment Costs, NOAA Future Costs, NOAA Oversight Costs, Massachusetts Trustee Future Response Costs, Massachusetts Trustee Oversight Costs, and, to the extent they include costs Incurred or to be Incurred by the Trustees, Massachusetts Past Response Costs, Connecticut Past Response Costs, and Connecticut Future Costs, all in accordance with Section XX of this Consent Decree.

113. Notification of Lead Administrative Trustee ("LAT"). Within 30 days of the effective date of this Consent Decree, the Trustees will notify Settling Defendant, EPA, MADEP and CTDEP of the designation of a Lead Administrative Trustee ("LAT"). The LAT will serve as the contact representative for the Trustees for all meetings and other interactions with Settling Defendant, EPA, MADEP and CTDEP on all Trustee-related matters under this Consent Decree, unless otherwise specified in this Consent Decree. The LAT will only serve as the contact representative of the Trustees and will not exercise trusteeship authority on behalf of the Trustees.

114. Payment of Natural Resource Damages by Settling Defendant. Within 30 days of the effective date of this Consent Decree, Settling Defendant shall make the following payments:

a. $15,000,000 for Natural Resource Damages, plus Interest from the date of lodging of this Consent Decree;

b. $600,000 as mitigation for wetlands impacts associated with PCB contamination and with response actions at the Site, plus Interest from the date of lodging of this Consent Decree;

United States shall be read as a reference to the State, and each reference to the State shall be read as a reference to EPA. Dispute resolution under this Paragraph concerning stipulated penalties that relate to Massachusetts Past Response Costs, Massachusetts Future Response Costs, Massachusetts Interim Response Costs, or Massachusetts Oversight Costs shall be limited to whether MADEP has properly assessed and/or calculated such stipulated penalties. The resolution of disputes between the Commonwealth and Settling Defendant that relate to the amount of those Massachusetts Future Response Costs which are subject to Paragraph 95.d(iv), Massachusetts Interim Response Costs or Massachusetts Oversight Costs owed to the Commonwealth shall proceed in accordance with the provisions of 310 C.M.R. 40.1220(3).

141. Dispute Resolution Relating to the Rest of the River: Disputes between Settling Defendant and EPA relating to the Rest of the River shall be subject to the following dispute resolution procedures:

a. For disputes relating to EPA's conditional approval, disapproval, or modification of deliverables submitted by Settling Defendant to EPA under the Reissued RCRA Permit, or regarding other issues arising under the Reissued RCRA Permit, prior to EPA's issuance of the permit modification selecting a Remedial Action for the Rest of the River, as referenced in Paragraph 22.p of this Consent Decree, such disputes shall be resolved in accordance with the Dispute Resolution provisions in Special Condition II.N of the Reissued RCRA Permit. Settling Defendant shall not contend that EPA's conditional approval, disapproval, or modification of any such submissions or other action taken by EPA under the Reissued RCRA Permit (except for a permit modification

pursuant to General Condition I.C. of the Reissued RCRA Permit) prior to EPA's issuance of the permit modification selecting a Remedial Action for the Rest of the River constitutes a modification of the Reissued RCRA Permit for purposes of invoking 40 C.F.R. Parts 124 and 270 or Section 7006(b) of RCRA.

b. For disputes relating to EPA's modification of the Reissued RCRA Permit to select the Rest of the River Remedial Action, as referenced in Paragraphs 22.o, 22.p, 22.t and/or 22.v of this Consent Decree, the dispute resolution procedures shall be as follows:

(i) Upon receipt of EPA's notification of its intended permit modification decision, as provided in Paragraph 22.o of this Consent Decree, Settling Defendant shall have the right, within 30 days of such notification, to seek administrative dispute resolution within EPA Region I. Such dispute resolution shall include both informal and formal administrative dispute resolution processes in accordance with the administrative dispute resolution provisions of Paragraphs 133-136 of this Consent Decree; provided, however, that Settling Defendant shall not have the right to seek judicial review of the administrative decision on EPA's notification of its intended permit modification pursuant to this subparagraph.

(ii) Upon receipt of EPA's permit modification decision, as provided in Paragraph 22.p of this Consent Decree, Settling Defendant shall have the right to seek review of that permit modification decision in the EPA Environmental Appeals Board within 30 days pursuant to 40 C.F.R. § 124.19.

(iii) After issuance of a decision by the Environmental Appeals Board, Settling Defendant shall have the right to seek review of that decision in the United States Court of Appeals for the First Circuit pursuant to Section 7006(b) of RCRA.

(iv) In the event that the Environmental Appeals Board or the United States Court of Appeals vacates or remands all or part of EPA's permit modification decision and EPA revises and reissues that decision, as provided in Paragraph 22.t of this Consent Decree, Settling Defendant shall have the right to seek review of that revised permit modification decision in the Environmental Appeals Board pursuant to 40 C.F.R. § 124.19 (except as otherwise approved or determined by the United States Court of Appeals) and thereafter in the United States Court of Appeals for the First Circuit, pursuant to Section 7006(b) of RCRA, as provided in Paragraph 22.u. The rights and procedures applicable to subsequent EPA permit modification decisions shall be as provided in Paragraph 22.v.

(v) 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 and the rules of such Board and Court; provided, however, that the United States and Settling Defendant shall jointly move the Court of Appeals for expedited briefing and consideration as provided in Paragraphs 22.q, 22.u(iv), and 22.v(ii) (as applicable) of this Consent Decree, and provided further that the effectiveness of the initial or a revised permit modification shall be stayed pending review to the extent provided in Paragraphs 22.q, 22.u(iv), and 22.v(ii), as applicable.

(vi) In any administrative or judicial challenge to EPA's initial or revised permit modification decision, Settling Defendant shall not contend that EPA's conditional approval, disapproval, or modification of a deliverable submitted by Settling Defendant under the Reissued RCRA Permit or other action taken by EPA under the Reissued RCRA Permit (except for a permit modification pursuant to General Condition I.C. of the Reissued RCRA Permit) prior to EPA's initial permit modification decision setting forth the selected Remedial Action for the Rest of the River constituted a modification of the Permit. However, Settling Defendant shall not be precluded from challenging EPA's decisions on such prior submissions or other such prior EPA action on any substantive grounds. All Parties reserve their rights, during such a challenge, to raise any arguments related to implementation of Work in the Upper 2-Mile Reach of the River.

c. For any disputes which arise after a final determination has been made on the selection of the Rest of the River Remedial Action and which relate to the Rest of the River, such disputes shall be resolved under the Dispute Resolution provisions of Paragraphs 133 through 139 of this Consent Decree.

142. Disputes Between the Trustees and Settling Defendant. Disputes arising under this Consent Decree between the Trustees and Settling Defendant that relate to Settling Defendant's obligations under Section XXI (Natural Resource Damages) of this Consent Decree, costs Incurred by or required to be paid to the Trustees, and/or assessment of liquidated damages by the Trustees shall be governed in the following manner. The procedures for resolving the disputes mentioned in this Paragraph shall be

the State to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, civil penalties pursuant to Sections 122(l) and 109 of CERCLA; provided, however, that the United States shall not seek civil penalties under Sections 122(l) and 109 of CERCLA for any violation for which a stipulated penalty has been specifically demanded in writing hereunder, except in the case of a willful violation of the Consent Decree. If the United States seeks civil penalties for willful violations of this Consent Decree pursuant to Section 122(l) of CERCLA, Settling Defendant may argue that the amount of any civil penalty should be reduced by the amount of any stipulated penalty that has been paid for the same violation. The United States may oppose such reduction. Nothing in this Consent Decree shall prohibit the Court from reducing the civil penalty to be assessed in such action.

160. Notwithstanding any other provision of this Section, the United States, the State or Connecticut may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree and are due and owing to that party.

XXVI. COVENANTS NOT TO SUE BY PLAINTIFFS

161. United States' Covenant.

a. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 162, 163, 175 and 176 of this Section, the United States, on behalf of EPA, NOAA, DOI, ACOE, DOD, ATSDR, and any

other agency which may have authority to administer the statutes cited in this Paragraph covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 or 107(a) of CERCLA, Section 7003 of RCRA, Section 7 of the Toxic Substances Control Act ("TSCA"), and/or Section 504 of the Clean Water Act for releases or threatened releases of Waste Materials at the Site, where such Waste Materials originated at the GE Plant Area, for performance of the Work, or for Designated Fill Properties.

b. In consideration of the actions that will be performed and the payments that will be made by Settling Defendant under the terms of this Consent Decree, and except as specifically provided in Paragraphs 162, 163, 175, and 176 of this Section, the United States, on behalf of EPA, NOAA, DOI, ACOE, DOD, ATSDR, and any other agency which may have authority to administer the statutes cited in this Paragraph, covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 1002, 1005, 1006, 1009 and 1015 of the Oil Pollution Act, Section 113(f) of CERCLA, Sections 3004(u) and (v) and 3008 of RCRA, Section 17 of TSCA, Sections 309, 311 and 404 of the Clean Water Act, and/or Section 10 of the Rivers and Harbors Act for releases or threatened releases of Waste Material (regardless of the manner in which such Waste Materials may be listed, defined, or characterized under these statutes) at the Site, where such Waste Material originated at the GE Plant Area, for performance of the Work, or for Designated Fill Properties. The United States' covenant set forth in this Paragraph 161.b with respect to such statutory provisions does not apply to any action or claim other than an action or claim to compel Settling Defendant to

implement, comply with, or fund response actions, corrective actions or measures, or other similar judicial or administrative response-type injunctive relief, or for recovery, reimbursement, contribution or equitable share of response costs or Natural Resource Damages, and specifically does not apply to any action or claim for civil penalties under these statutory provisions, except as provided for in Paragraph 161.c.

c. In consideration of the actions that will be performed and the payments that will be made by Settling Defendant under the terms of this Consent Decree, the United States, on behalf of EPA, covenants not to sue for, or to take administrative action to assess, civil penalties for alleged violations of the Consent Order issued by EPA on June 30, 1981, pursuant to Sections 3007, 3013, and 7003 of RCRA (EPA Docket No. 81-164), or of the RCRA Permit that occurred at any time prior to lodging of this Consent Decree.

d. (i) Timing of Covenants for Removal and Remedial Actions. Except with respect to the covenants for future liability and for Designated Fill Properties, these covenants not to sue shall take effect upon the receipt by EPA, NOAA and DOI of the payments required by Paragraph 94.a, 94.b and 94.c of Section XX (Reimbursement of Costs). With respect to future liability (other than for Designated Fill Properties), the covenant not to sue shall be effective for each Removal or Remedial Action to be performed by Settling Defendant pursuant to this Consent Decree, and for the area and media addressed by such Removal or Remedial Action, upon EPA's Certification of Completion for that individual Removal or Remedial Action, except for the 1 ½ Mile Reach Removal Action, for which the covenant not to sue for future liability shall be

effective upon EPA's completion of the 1 ½ Mile Reach Removal Action referred to in Paragraph 21 of this Consent Decree. The covenant not to sue for future liability for the Site shall be effective upon EPA's issuance of the Certification of Completion of the Work for the Site issued pursuant to Paragraph 89 of this Consent Decree. EPA's Certification of Completion of the Work for the Site shall state that it is the final Certification for purposes of this Paragraph.

(ii) Timing of Covenants for Designated Fill Properties. Except with respect to the covenants for future liability, the covenants not to sue: (A) for Designated Fill Properties listed in Category 1 in Appendix T, shall take effect upon the receipt by EPA of the payments required by Paragraph 94.a of Section XX (Reimbursement of Costs); and (B) for Designated Fill Properties listed in Category 2 in Appendix T, shall take effect upon the receipt by EPA of the payments required by Paragraphs 94.a and 95.a of Section XX related to such Category 2 Designated Fill Properties. With respect to future liability for each of the Designated Fill Properties, the covenant not to sue shall be effective upon written approval by MADEP of a Response Action Outcome Statement (hereafter "RAO") for such property pursuant to the MCP.

e. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree; provided, however, that a failure by Settling Defendant to satisfactorily perform its obligations with respect to a Removal or Remedial Action shall not affect the United States' covenant not to sue with respect to any other Removal or Remedial Action, unless such failure to satisfactorily perform its obligations with respect to one Removal or

Remedial Action results in a Work Takeover pursuant to Paragraph 178 of this Consent Decree, in which case the covenants not to sue do not apply to any Removal or Remedial Action subject to the Work Takeover.

162. United States' Pre-Certification Reservations (Except Relating to Natural Resource Damages). The United States reserves its rights pursuant to this Paragraph with respect to performance of each individual Removal or Remedial Action at the Site or with respect to performance of response actions at the Designated Fill Properties. Issuance by the United States of a Certification of Completion for any individual Removal or Remedial Action at the Site or by the State of an RAO for any individual Designated Fill Property shall have no effect on the covenants or reservations of rights by the United States for any other response action at the Site or at the Designated Fill Properties. Subject to Paragraph 177 (Issuance of Administrative Orders) of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant,

a. to perform further response actions relating to the Site or the Designated Fill Properties, or

b. to reimburse the United States for additional costs of response,

if, prior to Certification of Completion of each individual Removal or Remedial Action or issuance of an RAO for each Designated Fill Property:

(i) conditions at the Site or the Designated Fill Property as applicable, previously unknown to EPA, are discovered, or

172. Connecticut's Post-Certification Reservations (Except Relating to Natural Resource Damages). Connecticut reserves its rights pursuant to this Paragraph with respect to performance of each individual Removal or Remedial Action at the Site. Issuance of a Certification of Completion for any individual Removal or Remedial Action at the Site shall have no effect on the covenants or reservations of rights by Connecticut for any other response action at the Site. Subject to Paragraph 177 of this Consent Decree, the State of Connecticut, on behalf of CTDEP, reserves, and this Consent Decree is without prejudice to, the right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under any applicable Connecticut law, including but not limited to Conn. Gen. Stat. §§ 22a-432 and 22a-451, seeking to compel Settling Defendant (1) to perform other response actions at the Site, or (2) to reimburse Connecticut for additional response costs for response actions at the Site, to the extent that EPA has determined that such response actions required under (1) and (2) above in this Paragraph will not significantly delay or be inconsistent with the response actions selected or contemplated by EPA, if, subsequent to EPA's Certification of Completion of each individual Removal or Remedial Action:

(i) conditions at the Site, previously unknown to Connecticut, are discovered or become known to Connecticut after the Certification of Completion, or

(ii) information previously unknown to Connecticut is received by Connecticut, in whole or in part, after the Certification of Completion,

and the CTDEP Commissioner or his or her delegate determines, pursuant to Conn Gen. Stat. §§ 22a-432 and 22a-451, that these previously unknown conditions or this information together with any other relevant information indicate that the individual Removal or Remedial Action taken is not protective of health, safety, public welfare or the environment; provided that such further response actions are related to CTDEP's determination that the individual Removal or Remedial Action is not protective of human health and the environment. The United States reserves all rights it may have under applicable law to oppose any determinations made or any actions taken, ordered or proposed by Connecticut pursuant to this Paragraph.

173. Connecticut Known Conditions and Information.

a. For purposes of Paragraph 171, except as specified below, the information and the conditions known to Connecticut shall include the following, to the extent received by Connecticut 30 days or more prior to the date of lodging of this Consent Decree: (i) the 1981 RCRA Administrative Consent Order issued by EPA; (ii) reports submitted to EPA pursuant to the 1981 RCRA Administrative Consent Order; (iii) the Administrative Record for the RCRA Permit (including the administrative records for the RCRA permit issued on February 11, 1991, and for the modified permit issued effective January 3, 1994, as described in Paragraph I of Section I); (iv) reports submitted to EPA pursuant to the RCRA Permit; (v) reports submitted to EPA after January 3, 1994 pursuant to the 1990 Administrative Consent Orders executed by Settling Defendant and MADEP; (vi) reports submitted to CTDEP under the 1984 and 1990 Cooperative Agreements between Settling Defendant and CTDEP and reports submitted to CTDEP

XL. FINAL JUDGMENT

225. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the Commonwealth of Massachusetts, the State of Connecticut, the City, PEDA and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 27 DAY OF Oct., 2000.

Michael A. Ponsor

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site.

FOR THE UNITED STATES OF AMERICA

Oct. 5, 1999
Date

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

10/4/99
Date

Cynthia S. Huber
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
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P.O. Box 7611
Washington, D.C. 20530-7611
(202) 514-5273

10/4/99
Date

Catherine A. Fiske by C.H.
Catherine Adams Fiske
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
One Gateway Center
Suite 616
Newton Corner, MA 02458
(617) 450-0444

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site.

Donald Stern
United States Attorney
District of Massachusetts

Karen Goodwin
Assistant United States Attorney
District of Massachusetts
1550 Main Street
Springfield, Massachusetts

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site.

10/5/99
Date

John P. DeVillars
Regional Administrator, Region I
U.S. Environmental Protection Agency
Boston, Massachusetts 02114-2023

10/5/99
Date

Timothy M. Conway
John W. Kilbom
Senior Enforcement Counsels
U.S. Environmental Protection Agency
Region 1
One Congress Street
Suite 1100
Boston, Massachusetts 02114-2023

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site.

10/4/99
Date

Steven A. Herman
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Washington, D.C. 20460

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site.

FOR THE COMMONWEALTH OF MASSACHUSETTS

Tom Reilly
Attorney General
Commonwealth of Massachusetts

10/2/99
Date

10/5/99
Date

Dean Richlin
First Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

James R. Milkey
Assistant Attorney General
Chief, Environmental Protection Division
200 Portland Street
Boston, Massachusetts 02114

10/5/99
Date

10/5/99
Date

Matthew Brock
Assistant Attorney General
Office of Attorney General
200 Portland Street
Boston, Massachusetts 02114

Nancy E. Harper
Assistant Attorney General
Office of Attorney General
200 Portland Street
Boston, Massachusetts 02114

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site.

10·5·99
Date

Lauren A. Liss
Commissioner
Department of Environmental Protection
Commonwealth of Massachusetts

Oct. 5, 1999
Date

Robert Durand
Secretary
Executive Office of Environmental Affairs
Commonwealth of Massachusetts

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site.

FOR THE STATE OF CONNECTICUT

10/5/99
Date

Richard Blumenthal
Attorney General
55 Elm Street
P.O. Box 120
Hartford, Connecticut 06141-0120

10/5/99
Date

John M. Looney
Richard F. Webb
Assistant Attorneys General
55 Elm Street
P.O. Box 120
Hartford, Connecticut 06141-0120

10/5/99
Date

Arthur J. Rocque, Jr.
Commissioner of Environmental Protection
79 Elm Street
Hartford, Connecticut 06106

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site.

FOR GENERAL ELECTRIC COMPANY

10-7-99
Date

Stephen D. Ramsey
Vice President
Corporate Environmental Programs
General Electric Company
3135 Easton Turnpike
Fairfield, CT 06431

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Michael Carroll
Title: Manager of Pittsfield Remediation Programs
Corporate Environmental Programs
General Electric Company
Address: 100 Woodlawn Ave.
Pittsfield, MA 01201
Ph. Number: 413-494-3500

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site.

FOR THE PITTSFIELD ECONOMIC DEVELOPMENT AUTHORITY

10/5/99
Date

Thomas E. Hickey, Jr.
Interim Director
100 Woodlawn Avenue, Bldg. 42-100
Pittsfield, MA 01201

Agent Authorized to Accept Service on Behalf of the Pittsfield Economic Development Authority:

Jeffrey M. Bernstein, Esq.
Bernstein, Cushner & Kimmell, P.C.
One Court Street, Suite 700
Boston, MA 02108

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site.

FOR THE CITY OF PITTSFIELD

10-5-99
Date

Gerald S. Doyle, Jr.
Mayor of the City of Pittsfield
City Hall
Pittsfield, MA 01201

Agent Authorized to Accept Service on Behalf of the City of Pittsfield:

Jeffrey M. Bernstein, Esq.
Bernstein, Cushner & Kimmell, P.C.
One Court Street, Suite 700
Boston, MA 02108

United States et al. v. General Electric Company (D. Mass.)

Appendix E to Consent Decree

Volume I

Statement of Work for Removal Actions Outside the River

Pittsfield/Housatonic River Site
General Electric Company
Pittsfield, Massachusetts

October 1999

BBL
BLASLAND, BOUCK & LEE, INC.
engineers & scientists

6723 Towpath Road, P.O. Box 66
Syracuse, New York, 13214-0066
(315) 446-9120

APPENDIX E TO CONSENT DECREE

STATEMENT OF WORK FOR REMOVAL ACTIONS OUTSIDE THE RIVER

PITTSFIELD/HOUSATONIC RIVER SITE
GENERAL ELECTRIC COMPANY
PITTSFIELD, MASSACHUSETTS

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Technical Attachment G	Technical Requirements for Capping, Engineered Barriers, and Other Surface Covers
Technical Attachment H	Groundwater/NAPL Monitoring, Assessment, and Response Programs
Technical Attachment I	Natural Resource Restoration/Enhancement Activities
Technical Attachment J	Inspection and Maintenance Activities
Technical Attachment K	Silver Lake Sediment Response Action Conceptual Design

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Annex 1 Documentation Related to On-Plant Consolidation Area Activities *[An index of documents contained in Annex 1 is presented at the front of Annex 1]*

Annex 2 Documentation Related to Source Control Activities *[An index of documents contained in Annex 2 is presented at the front of Annex 2]*

Annex 3 Documentation Related to Allendale School Removal Action *[An index of documents contained in Annex 3 is presented at the front of Annex 3]*

The evaluation of the need for and extent of response actions to address non-PCB constituents in soils will utilize a phased approach, which takes into account the implementation of response actions (if any) selected to address PCBs. That phased approach is described in subsequent sections of this SOW. In evaluating non-PCB constituents in soils, GE shall comply with the requirements described in those sections and with the protocols described in Attachment F to this SOW (Protocols for the Evaluation of Non-PCB Constituents in Soil).

2.1.4 On-Plant Consolidation Areas

2.1.4.1 General

Certain materials generated during the performance of Removal Actions will be permanently consolidated at select locations within the GE Plant Area, subject to conditions set out in the CD and this SOW. Materials subject to such on-plant consolidation generally include soils, sediments, and existing surface materials (e.g., asphalt, other debris) that are excavated or otherwise removed as part of the Removal Actions to be performed for each RAA. Building demolition debris generated as part of building demolition activities under GE's separate Definitive Economic Development Agreement with the City of Pittsfield and PEDA and as part of such activities at Buildings 12, 12X, and 12Y (prior to Certificaiton of Completion of the Removal Action for the RAA containing those buildings) may also be included; however, the building demolition activities themselves, as opposed to the disposition of the building demolition debris, are not part of any Removal Actions subject to this SOW.

Specifically excluded from consolidation within the GE Plant Area are free liquids, free product, intact drums and capacitors, and other equipment that contains PCBs within its internal components, as well as asbestos-containing material required by applicable law to be removed from structures prior to demolition.

Based on a review of potential locations at the GE Plant Area that could potentially be used as on-plant consolidation areas, together with preliminary estimates of the on-plant consolidation capacities needed for the Removal Actions described in this SOW as well as for the Removal Actions for the Upper ½ Mile Reach and 1 ½ Mile Reach of the Housatonic

River, the following locations have been identified as near-term or future on-plant consolidation areas:

- Hill 78 Consolidation Area;
- Building 71 Consolidation Area; and
- New York Avenue / Merrill Road Consolidation Area.

Figure 1-1 identifies the general locations of these areas. Further details regarding the selection of these locations for on-plant consolidation areas are provided in GE's *Conceptual Work Plan for On-Plant Consolidation Areas* (Conceptual Work Plan), which is included in Annex 1 to this SOW.

Of these three areas, two of them -- the Hill 78 Consolidation Area and the Building 71 Consolidation Area -- will be designed and developed in 1999. The third area -- i.e., the New York Avenue/Merrill Road Area -- has been subject to preliminary design activities and will be available for use as an on-plant consolidation area in the future should additional on-plant consolidation capacity (associated with the RAAs addressed in this SOW) be needed beyond that provided by the Hill 78 and Building 71 Consolidation Areas.

Plans for the design, construction, operation, closure, post-closure care, and groundwater monitoring of these on-plant consolidation areas are contained in GE's Conceptual Work Plan and/or *Detailed Work Plan for On-Plant Consolidation Areas*, both of which are included in Annex 1 to this SOW along with EPA's conditional approval letters for those work plans. GE shall construct, operate, and close these on-plant consolidation areas, and shall conduct future inspections and maintenance of these areas as well as groundwater monitoring associated with these areas, in accordance with the specifications set forth in those work plans, as conditionally approved by EPA.

These on-plant consolidation areas shall be available for the permanent consolidation of materials generated by GE as part of the Removal Actions Outside the River and the Upper ½ Mile Reach Removal Action, as well as materials from building demolition/redevelopment

activities under the Definitive Economic Development Agreement , subject to the conditions and limitations set forth in the CD and this SOW. These consolidation areas shall also be available for materials generated by EPA as part of the 1 ½ Mile Reach Removal Action, subject to the same conditions and limitations noted above and also subject to the provisions of the Access and Services Agreement for the 1 ½ Mile Reach Removal Action, which is Appendix K to the CD.

2.1.4.2 Performance Standards for On-Plant Consolidation Areas

GE shall comply with and achieve the following Performance Standards for the construction, use, and final capping/restoration of the on-plant consolidation areas :

1. GE shall design and construct the on-plant consolidation areas in accordance with the Performance Standards set forth in this section, and the specifications set forth in the work plans and EPA conditional approval letters included in Annex 1.

2. The maximum horizontal extent and maximum height of materials to be placed in the on-plant consolidation areas shall not exceed the following criteria:

Consolidation Area	Approximate Horizontal Extent of Consolidation Area[1]	Approximate Maximum Elevation of Consolidation Area[2]
Hill 78 Consolidation Area	5.6 acres	1,050
Building 71 Consolidation Area	4.4 acres	1,048
New York Avenue / Merrill Road Area	1.6 acres	1,027

1. Area does not include adjacent ancillary facilities.

2. Elevation is based on the National Geodetic Vertical Datum (NGVD).

The specific design parameters regarding the consolidation areas are identified in the *Detailed Work Plan for the On-Plant Consolidation Areas* which is included in Annex 1.

3. GE may use the on-plant consolidation areas for the permanent consolidation of materials that are excavated or otherwise removed as part of the Removal Actions Outside the River and the Upper ½ Mile Reach Removal Action and for building demolition debris from redevelopment activities under the Definitive Economic Development Agreement, subject to the limitations in Performance Standards #5 and #6 below.

4. EPA may use the on-plant consolidation areas for the permanent consolidation of materials that are excavated or otherwise removed from the Housatonic River sediments and banks as part of the 1 ½ Mile Reach Removal Action, subject to the limitations in Performance Standards #5 and #6 below and subject to the provisions of the Access and Services Agreement for 1 ½ Mile Reach Removal Action, which is Appendix K to the CD.

5. Materials to be consolidated within the Hill 78 Consolidation Area shall be limited to materials that contain less than 50 ppm PCBs (as determined by an appropriate composite sampling technique or other techniques approved by EPA) and are not classified as a hazardous waste under regulations issued pursuant to the Resource Conservation and Recovery Act (RCRA). To assess the potential for materials to be classified as RCRA hazardous waste, an initial evaluation of the soils data will be conducted by dividing the soil sample results (expressed as mg/kg, or parts per million) by 20, changing the reporting units from mg/kg to micrograms per liter, and comparing the converted results to the allowable extract concentration limits associated with the Toxicity Characteristic Leaching Procedure (TCLP) procedure. Materials that are determined through this screening evaluation to have concentrations within allowable concentrations will be considered non-hazardous. If TCLP exceedances result from this screening exercise, more detailed evaluation (e.g., TCLP testing) will be conducted.

6. Materials to be placed in the on-plant consolidation areas shall not include free liquids, free product, intact drums and capacitors, other equipment that contains PCBs within its internal components, or asbestos-containing material required by applicable law to be removed from structures prior to demolition. Such materials, if

any, shall be sent to an appropriate off-site facility for disposal. (Specific details regarding the off-site disposal of these materials will be addressed in the technical RD/RA submittals prepared for each Removal Action, as described in Section 3.0 of this SOW.)

7. GE shall operate the on-plant consolidation areas in accordance with the operations plan and requirements set forth in the Conceptual Work Plan and the *Detailed Work Plan for On-Plant Consolidation Areas*, which are included in Annex 1, as such plans have been approved or conditionally approved by EPA.

8. Upon completion of use, GE shall cover the on-plant consolidation areas with an engineered landfill/consolidation area cap, which shall meet the general requirements for such a cap set forth in Attachment G to this SOW (Technical Requirements for Capping, Engineered Barriers, and Other Surface Covers). In addition, the closure of the on-plant consolidation areas shall meet the other closure requirements specified in the work plans included in Annex 1 to this SOW, as such plans have been approved or conditionally approved by EPA.

9. GE shall perform post-closure inspections and maintenance of the on-plant consolidation areas in accordance with Post-Removal Site Control Work Plans for such areas, to be submitted to EPA for approval.

10. GE shall conduct groundwater monitoring associated with the Hill 78 and Building 71 Consolidation Areas in accordance with the groundwater monitoring requirements in the work plans included in Annex 1 to this SOW as such work plans have been approved or conditionally approved by EPA. GE shall conduct groundwater monitoring associated with the New York Avenue/Merrill Road Consolidation Area (if constructed) in accordance with groundwater monitoring requirements to be established in subsequent work plans and EPA's approval or conditional approval thereof.

TECHNICAL REPORT

DRAFT
CONFIDENTIAL - FOR
MEDIATION PURPOSES

Conceptual Work Plan for Future On-Plant Consolidation Areas

General Electric Company
Pittsfield, Massachusetts

March 1999

BBL
BLASLAND, BOUCK & LEE, INC.
engineers & scientists

6723 Towpath Road, P.O. Box 66
Syracuse, New York, 13214-0066
(315) 446-9120

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4. Preliminary Design and Construction Information

4.1 General

This section presents conceptual information concerning the anticipated design and construction of the Hill 78 and Building 71 consolidation areas. Included is a discussion of the anticipated final configuration of each consolidation area (e.g., the area to be occupied, and the height and slope of each area), as well as the various components involved in the design and construction of each area. As previously indicated, the preliminary volume and design information presented in this Conceptual Work Plan is preliminary and subject to modification. Such modifications may occur in the near-term future based on the results of the pre-design activities (described in Section 5), the results of more detailed design activities to be conducted as part of the detailed RD/RA Work Plan, and/or discussions with the Agencies regarding this Conceptual Work Plan or the CD and SOW. In addition, modifications to the information presented in this Conceptual Work Plan may result from the future pre-design and RD/RA activities that will be performed for the various RAAs within the Pittsfield/Housatonic River Site. As these activities proceed over the next few years, estimates regarding the volume of material potentially subject to on-plant consolidation may change.

4.2 General Design Parameters

The preliminary evaluations of potential candidate consolidation areas within the GE Plant Area utilized several assumptions regarding the physical configuration of each potential area. This section provides additional information concerning the anticipated physical configuration of the Hill 78 and Building 71 consolidation areas. Specifically, this section provides general information concerning the horizontal limits of each consolidation area, the need for and type of base liner system, technical considerations affecting the final shape and contours of each consolidation area, and the components and configuration of the final cover system. Based on these general design parameters, a more specific (although still preliminary) evaluation of each proposed consolidation area has been conducted and is summarized in Section 4.3 of this Work Plan.

Please note that the majority of the information presented herein is related to the final configuration of each consolidation area (i.e., the configuration after each area has been utilized for consolidation, has achieved its volume capacity, and has been subject to the placement of a final cover). Also note that the information presented in this section incorporates several assumptions, some of which will be confirmed or modified within the RD/RA Work Plan based on the results of the pre-design activities.

4.2.1 Horizontal Limits of Proposed Consolidation Areas

Figures 6 through 8 identify the current site conditions and anticipated horizontal limits of the consolidation areas proposed for the Hill 78 and Building 71 areas. (Figure 6 also indicates the portions of such areas that would be used for the initial consolidation activities that may be conducted in 1999.) The horizontal limits of these areas have been selected based on a number of considerations, including current surface features and topography, information concerning past use of each area, available site mapping, and visual observations obtained during field reconnaissance. The potential future "footprints" of the Hill 78 and Building 71 consolidation areas provide a key component in estimating preliminary consolidation volume and conducting preliminary design activities.

For the Hill 78 area, the estimated horizontal footprint of the proposed consolidation area covers approximately 6 acres, which incorporates and expands upon the current landfill. This increase in size (relative to the existing landfill) is based on several considerations:

- First, the side slopes of the current landfill area are relatively steep and will need to be modified (i.e., reduced) to support the construction and operation of the future consolidation area. Expansion of the existing landfill will allow for the construction of less steep side slopes without requiring the removal and regrading of existing materials in the landfill.

- Second, the increased area of the proposed consolidation area will increase its capacity over the capacity of the existing landfill footprint. This increase will lessen the need for the construction of additional new on-plant consolidation areas.

- Third, for those areas into which the proposed consolidation area will expand (primarily extending to the south and west into GE-owned property), previous soil investigations have shown elevated levels of PCBs in the subsurface soil. Given that pre-existing contamination, these areas are suitable for use as part of the on-plant consolidation area.

For the Building 71 consolidation area, the estimated horizontal footprint, based on the configuration shown on Figures 6 and 8, is approximately 5 acres. That configuration assumes a distinct physical and visual separation between the Hill 78 and Building 71 consolidation areas, as shown on Figure 6. However, GE is also evaluating an alternative configuration which would also for consolidation of materials with the "trough" that would otherwise exist

between the Hill 78 and Building 71 consolidation areas, but which would still maintain the physical separation between these areas, so as to endure that the Hill 78 consolidation area is used only for non-TSCA, non-RCRA materials. This alternative configuration is illustrated on Figures 9 and 10. This alternative would maintain the current conceptual design information presented in this Conceptual Work Plan concerning the subgrade and final cover components and other key design parameters (e.g., maximum side and top slopes) for each consolidation area. However, by allowing for consolidation in the "trough" that would otherwise exist between the areas, this alternative would result in a potential increase in overall consolidation capacity or a reduction in the horizontal footprint of the Building 71 consolidation area (while maintaining the same consolidation capacity). Moreover, this alternative would result in the final visual appearance of a single consolidation area, although in fact the two consolidation areas would be physically separate. While the remainder of this Conceptual Work Plan focuses on the visually separate configuration described above (as well as other possible alternative configurations) for this consolidation area.

To supplement the foregoing information and support the remaining preliminary design activities, assumptions regarding the thickness of the base liner system (as required) and final cover system, and allowable configuration of the final consolidation area (i.e., maximum slopes for the top and sides of each area), were established and are summarized below.

4.2.2 Base Liner System

Under the settlement agreement, the subbase of any *new* on-plant consolidation area must be suitably prepared, although a liner and leachate collection system are not required. This agreement is applicable to the new Building 71 consolidation area. However, based on considerations related to this specific area (and not to any other new consolidation areas), GE has elected to enhance the subbase preparation activities to include additional containment and demarcation prior to the placement of materials in the Building 71 consolidation area. Specifically, following the performance of site preparation activities (e.g., removal of vegetation and grading of the existing surface), a multi-component base liner system with perimeter collection will be installed, as shown on Figure 2. Such a system is intended to provide a vertical separation between future consolidation materials and the native soils in this area, and to provide a mechanism to contain, collect, and convey any residual water that may be entrained in the materials placed in the consolidation area, or water that may enter the consolidation area via rainfall or snowmelt. For the purposes of conducting preliminary design activities, including estimates regarding the volume capacity of the proposed Building 71 consolidation area, it has been assumed that the thickness of the proposed base liner system is 6 inches.

4.2.3 Final Cover System

Issues relating to the components and configuration of the final cover system for the on-plant consolidation areas are currently under discussion with the Agencies as part of the ongoing development of the CD and SOW. For present purposes, GE proposes use of the multi-layered final cover system depicted on Figure 3 for closure of the Hill 78 and Building 71 consolidation areas. However, GE has recently received and is evaluating preliminary comments from USEPA regarding the cover system presented on Figure 3. Although the specific design of a final cover system for each of these areas will be based on site-specific considerations and future discussions with the Agencies, and will be specified in detail as part of RD/RA activities, a nominal final cover thickness of two feet has been assumed for the present evaluation. It should be noted that the final cover system illustrated on Figure 3 will satisfy the requirements of the Massachusetts Contingency Plan (MCP) for the construction and performance of engineered barriers (310 CMR 40.0996(4)(c)) and is consistent with the pertinent technical standards under RCRA and state hazardous waste regulations for final landfill cover design and construction (40 CFR 264.310(a) and 310 CMR 30,633(1)). This final cover, in tandem with the proposed drainage and barrier layers, will provide a cover system capable of collecting and conveying any precipitation that may infiltrate the cover soils during the post-closure period.

4.2.4 Final Consolidation Area Geometry

Although there are several technical issues that will be addressed as part of the detailed design activities for each consolidation area, two specific technical components were considered in the preliminary design activities and were incorporated into the preliminary volume capacity estimates for each area -- the top and side slopes of the final consolidation areas. Regarding the slope and configuration of the final surface of the top of the consolidation area, a minimum slope of 4% has been selected to promote the surface drainage of rainfall or snowmelt runoff. With respect to the side slopes of the final consolidation areas, a maximum slope of 33% has been selected. This slope is anticipated to result in conditions that: 1) are sufficient for stability and protection against future slope failure, 2) minimize the potential of cover soil erosion due to runoff, and 3) allow future maintenance and inspection activities to occur without special needs or precautions.

4.3 Application of General Design Parameters

Based on the general design parameters identified, preliminary design information and a maximum consolidation volume estimate have been estimated for the Hill 78 and Building 71 consolidation areas. A summary is provided below.

4.3.1 Hill 78 Area

As discussed above, the estimated horizontal footprint of the proposed expanded consolidation area at the former Hill 78 landfill is approximately 6 acres. Once the horizontal extent of the future consolidation area was established, the maximum height of the final consolidation area was estimated and compared against the preliminary design criteria previously identified (i.e., the allowable side and top slopes). A maximum elevation of approximately 25 feet was selected. This maximum elevation is generally consistent with or lower than the elevation of other high profile installations in this area (i.e., the sound barrier wall and building roof lines associated with the U.S. Generating Company facilities), and is consistent with the current tree line located north of the Hill 78 area along Tyler Street Extension. Based on currently available information, the final elevation of the proposed consolidation area would be approximately 25 feet higher than the current surface elevation of the Hill 78 landfill, whose current surface elevation is approximately 15 feet above the ground surface of the surrounding area. This height/elevation is compatible with the technical design criteria regarding the allowable slopes of the final consolidation area.

Assuming that the Hill 78 consolidation area is constructed to the elevations described above, and includes an approximate two-foot thick final cover system, the estimated volume of material that can be consolidated within this area is approximately 140,000 cy. Under the settlement, only those materials that are not regulated by TSCA and are not considered to be hazardous waste pursuant to RCRA can be consolidated at this location. The current and preliminary estimate of materials that would not be regulated under TSCA is approximately 115,000 cy, and it is assumed for present purposes that these materials would not constitute hazardous waste under RCRA. Based on these estimates and assumptions, the proposed configuration of the Hill 78 consolidation area would provide sufficient capacity for the non-TSCA, non-RCRA materials that will be subject to on-plant consolidation.

4.3.2 Building 71 Area

As also stated above, the estimated horizontal footprint of the proposed Building 71 consolidation area is approximately 5 acres (although GE is continuing to evaluate the alternative configuration shown on Figures 9 and 10). For this phase of the preliminary design, a maximum elevation of approximately 30 feet was selected. This elevation was selected based on the topography of the surrounding area, as well as the elevation that was selected for the Hill 78 consolidation area. Construction of the proposed Building 71 consolidation area to a height of 30 feet would result in a final elevation that is approximately 10 feet less than the final elevation associated with the proposed Hill 78 consolidation area. In addition, the areas surrounding the north and east sides of the proposed area are GE-owned parking lots that are at an elevation approximately 10 to 15 feet above the ground surface elevation adjacent to Building 71. As a result, relative to these adjacent areas, the maximum height of the proposed Building 71 consolidation area would be 15 to 20 feet above the surrounding paved areas.

Assuming that the Building 71 consolidation area is constructed to the elevations/heights described above, including a six-inch thick base liner system and a two-foot thick final cover system, the estimated volume of material that can be consolidated within this area is approximately 115,000 cy.

TABLE 1

GENERAL ELECTRIC COMPANY
PITTSFIELD, MASSACHUSETTS
CONCEPTUAL WORK PLAN FOR FUTURE ON-PLANT CONSOLIDATION AREAS

SUMMARY OF POTENTIAL CONSOLIDATION AREAS AND VOLUMES

Candidate Location	Horizontal Extent of Area (acres)	Maximum Height Above Existing Grade (ft)	Maximum Consolidation Capacity (cy)
20's Complex Area	6.9	37	215,100
30's Complex Area	3.0	30	61,600
40's Complex Area	2.1	20	31,400
Former Hill 78 Landfill Area	6.2	25	140,000
New York Avenue / Merrill Road Area	1.7	10 to 30	23,800
Merrill Road Area	2.6	25	34,600
"Lower" Ordnance Parking Lot Area	3.3	20	63,400
Building 71 Area	5.2	30	115,000

Notes:

1. Consolidation areas to consist of material placement and final cover construction within the general limits shown on Figure 1.
2. The maximum sideslope of the consolidation areas is assumed to be 33%, while the top of the areas are assumed to be graded at 4%.
3. Potential locations and preliminary capacities are subject to modification based on the results of field activities, including identification of subsurface utilities (i.e., water, storm, electric, gas, etc.) and other site features/conditions that may effect final design configurations.
4. The maximum height includes the base liner and final cover systems. The base liner system is assumed to be 6-inches thick; the final cover system is assumed to be 2-feet thick.

Detailed Work Plan for On-Plant Consolidation Areas

General Electric Company
Pittsfield, Massachusetts

June 1999

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2. General Requirements for Consolidation Areas

2.1 General

This section of the Detailed Work Plan summarizes the information that has been and will be utilized to design, construct, and operate the on-plant consolidation areas. Initially, this section summarizes the Performance Standards for the on-plant consolidation areas (Section 2.2). Then, a discussion of various ARARs is provided (Section 2.3). The remainder of this section builds upon the general information presented in Sections 2.2 and 2.3 and describes the various components involved in the construction of the consolidation areas, including the installation, in certain cases, of a base liner system (and related facilities) and final consolidation area cap (Section 2.4), and the anticipated final conditions and configurations associated with each consolidation area (Section 2.5). Finally, Section 2.6 identifies several future design and construction components that will be evaluated and incorporated as appropriate.

The contents of this section are intended to provide general information concerning the overall design, construction, and operation of the future on-plant consolidation areas. This information was utilized in the near-term design of the consolidation areas to support the 1999 response actions, and will be applied to future efforts concerning the expansion/addition of existing or new consolidation areas. Finally, the majority of the information presented herein is related to the design and construction of the on-plant consolidation areas. Several other operational requirements associated with the consolidation areas, including daily activities, monitoring, closure, and post-closure monitoring, are addressed in separate sections of this Detailed Work Plan.

2.2 Performance Standards for On-Plant Consolidation Areas

The Performance Standards for the on-plant consolidation areas are as follows:

1. The maximum horizontal extent and maximum height of materials to be placed in the on-plant consolidation areas shall not exceed the following criteria:

Consolidation Area	Approximate Horizontal Extent of Consolidation Area [1]	Approximate Maximum Elevation of Consolidation Area [2]
Hill 78 Consolidation Area	5.6 acres	1,050
Building 71 Consolidation Area	4.4 acres	1,048
New York Avenue / Merrill Road Area	1.6 acres	1,027

1 Area does not include adjacent ancillary facilities.

2 Elevation is based on the National Geodetic Vertical Datum (NGVD).

In addition to the above criteria, the slope of the final surface topography for each consolidation area shall be between 4 and 33 percent.

2. GE may use the on-plant consolidation areas for the permanent consolidation of materials that are excavated or otherwise removed as part of Removal Actions to be conducted by GE for areas outside the Housatonic River, the Upper ½-Mile Reach of the Housatonic River, and building demolition debris from Brownfields re-development activities, subject to the limitations identified below.

3. USEPA may use the on-plant consolidation areas for the permanent consolidation of materials that are excavated or otherwise removed from the Housatonic River sediments and banks as part of a Removal Action to be conducted by USEPA for the 1½-Mile Reach of the Housatonic River between the Lyman Street bridge and the confluence of the East and West Branches of the River, subject to the limitations identified below and subject to the provisions of an Access and Services Agreement being negotiated between GE and USEPA for the 1½-Mile Reach Removal Action.

4. Materials to be consolidated within the Hill 78 Consolidation Area shall be limited to materials that contain less than 50 ppm PCBs (as determined by an appropriate composite sampling technique or other techniques approval by USEPA) and are not classified as a hazardous waste under regulations issued pursuant to RCRA.

5. Materials to be placed in the on-plant consolidation areas shall not include free liquids, free product, intact drums and capacitors, or other equipment that contains PCBs within its internal components. Such materials, if any, shall be sent to an appropriate off-site facility for disposal.

6. GE shall operate the on-plant consolidation areas in accordance with the operations plan and requirements set forth in Section 6 of this Detailed Work Plan.

7. Upon completion of use, GE shall cover the on-plant consolidation areas with an engineered landfill/consolidation area cap, as described in Section 2.4.1 of this Detailed Work Plan.

8. GE shall perform post-closure inspections and maintenance of the on-plant consolidation areas in accordance with a Post-Removal Site Control Plan for such areas to be submitted by GE, as approved by USEPA.

9. GE shall conduct groundwater monitoring associated with the on-plant consolidation areas in accordance with the groundwater monitoring requirements outlined in Section 8 of this Detailed Work Plan and to be described further in supplemental groundwater monitoring proposals to be submitted by GE, as they are approved by USEPA.

2.3 Applicable or Relevant and Appropriate Requirements (ARARs)

This section describes, for the on-plant consolidation areas, the applicable or relevant and appropriate requirements (ARARs) under federal and state environmental laws. Under the National Contingency Plan (NCP) under CERCLA, removal actions must attain ARARs only to the extent practicable considering the exigencies of the situation (40 CFR 300.415(j)). A requirement under federal and state environmental laws may be either "applicable" or "relevant and appropriate" to a removal action. "Applicable requirements" are those cleanup standards, standards of control and other substantive requirements, criteria, or limitations that are promulgated under federal or state environmental laws and that specifically addresses a hazardous substance, pollutant, contaminant, response action, location, or other circumstance found at the site (40 CFR 300.5). "Relevant and appropriate requirements" are those promulgated cleanup standards, standards of control, and other substantive requirements, criteria, or limitations that, while not applicable to a hazardous substance, pollutant, contaminant, response action, or other circumstance at the site, address problems or situations sufficiently similar to those encountered at the site that their use is well suited to the particular site *(ibid.)*. Only those state substantive standards that are identified in a timely manner and that are more stringent than federal requirements are ARARs *(ibid.)*.

To constitute an ARAR, a federal or state standard or requirement must be substantive in nature. Administrative requirements, such as those relating to permitting, documentation, reporting, and record keeping, are not ARARs.