

Attachment 3:

**Excerpts from Consent Decree in United States v. General Electric Company
(October 27, 2000), A.R. 9420**

CONSENT DECREE
Site: GE-2000
Break: 10, 8
Other: 9420

WESTON Ref. No.

00-0388

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

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

Plaintiffs,

v.

GENERAL ELECTRIC
COMPANY,

Defendant.

CIVIL ACTION NO'S. _____

99-30225, 99-30226,

99-30227-MAP

(consolidated cases)

CONSENT DECREE

9420



SEMS Doc ID 9420

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.

"Silver Lake Area" or "Silver Lake" shall mean the 26-acre Massachusetts Great Pond located on the Site, including the area bounded by properties with frontage on East Street to the south, Fourth Street and Fenn Street to the west, and Silver Lake Boulevard to the north and east, including the banks of Silver Lake, as depicted generally on the map attached to this Consent Decree as Appendix A-7.

"Site" or "GE-Pittsfield/Housatonic River Site" shall mean the GE Plant Area, the Former Oxbow Areas, the Allendale School Property, the Housatonic River Floodplain - Current Residential Properties, the Housatonic River Floodplain - Non-Residential Properties, the Silver Lake Area, the Upper ½ Mile Reach, the 1 ½ Mile Reach, the Rest of the River, and other properties or areas to the extent that they are areas to which Waste Materials that originated at the GE Plant Area have migrated and which are being investigated or remediated pursuant to this Consent Decree. The Site shall not include properties on which Waste Materials have come to be located solely as a result of the placement of fill and which are not being investigated or remediated pursuant to this Consent Decree (including but not limited to the Designated Fill Properties and/or the properties addressed by the new State Administrative Consent Order described in Paragraph 11 (except as provided in the SOW with respect to East Street Area 1-South)). The Site is depicted generally on the maps attached hereto as Appendix A-1, Figures 1-5.

"State," "Massachusetts" or "Commonwealth" shall mean the Commonwealth of Massachusetts.

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.

22. Rest of the River: Additional studies of the Rest of the River and the selection of a Remedial Action for the Rest of the River shall be conducted in accordance with the Reissued RCRA Permit and the following provisions.

a. Upon EPA's notification to Settling Defendant to move forward with completion of the RCRA Facility Investigation ("RFI") Report, as provided in the Reissued RCRA Permit, Settling Defendant shall complete and submit to EPA an RFI Report on the Rest of the River in accordance with, and on the schedule provided in, the Reissued RCRA Permit. Settling Defendant shall submit copies of that RFI Report to the Trustees, the State and Connecticut.

b. EPA will conduct the human health and ecological risk assessments of the Rest of the River. EPA has provided a scope of work for the risk assessments and supporting activities to Settling Defendant and other interested persons for review and discussion.

c. EPA's human health risk assessment will be subject to peer review by a panel of independent risk assessment experts, in accordance with the EPA Science Policy Council January 1998 Peer Review Handbook, EPA 100-B-98-001, and the Protocols set forth in Appendix J.

(i) The human health risk assessment peer review panel will be selected by a Selection Contractor in accordance with the following procedures. A neutral contractor ("the Selection Contractor") will be selected by agreement between EPA and Settling Defendant within 30 days of initiation of discussions relating to such peer review. If EPA and Settling Defendant do not reach agreement within 30 days of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

u. Second Appeal.

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

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

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

(A) which is not subject to dispute; or

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

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

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

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

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

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

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

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

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

v. Subsequent Appeals.

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

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

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.

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.

construction on that Removal Action, and Settling Defendant shall conduct studies and investigations as requested by EPA in connection with such reviews, consistent with Sections 2.2 (Performance Standard 7) and 11.5.4 of the final Removal Action Work Plan for the Upper ½ Mile Reach, as approved by EPA (Appendix F hereto).

c. For the Rest of the River Remedial Action, EPA will conduct such periodic reviews in accordance with Section 121(c) of CERCLA and any applicable regulations and guidance.

44. EPA Selection of Further Response Actions. If EPA determines, at any time, that any one of the response actions required pursuant to this Consent Decree is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

45. Opportunity To Comment. Settling Defendant, the State, Connecticut, and, if required by Sections 113(k)(2) or 117 of CERCLA, the City and the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of a review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period. PEDA shall be provided an opportunity to comment on any further response actions proposed by EPA as to property that has been or will be transferred to it by Settling Defendant pursuant to the Definitive Economic Development Agreement.

46. Settling Defendant's Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site pursuant to this Section, Settling Defendant shall undertake or fund such further response actions to the extent that the

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

(ii) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the individual Removal or Remedial Action or response action previously performed at a Designated Fill Property (as applicable) is not protective of human health or the environment; provided that such further response actions are related to EPA's determination that the individual Removal or Remedial Action, or response actions at a particular Designated Fill Property, as applicable, are not protective of human health and the environment.

163. United States' Post-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, subsequent 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

(ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the individual Removal or Remedial Action or response action previously performed at a Designated Fill Property (as applicable) is not protective of human health or the environment; provided that such further response actions are related to EPA's determination that the individual Removal or Remedial Action, or the response actions at a particular Designated Fill Property, as applicable, are not protective of human health and the environment.

164. United States Covenant as to the City.

a. In consideration of the facts and circumstances, and the actions that will be performed in connection with this Consent Decree and the Definitive Economic Development Agreement, and except as specifically provided in Paragraphs 162, 163, and 175 of this Section and below in this Paragraph 164, the United States, on behalf of EPA, covenants not to sue or to take administrative action against the City in its capacity

XXXV. APPENDICES

212. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the following set of maps related to the Site:

- A-1. GE-Pittsfield/Housatonic River Site
- A-2. GE Plant Area
- A-3. Building 71 Consolidation Area
- A-4. Hill 78 Consolidation Area
- A-5. Unkamet Brook Area
- A-6. Former Oxbow Areas
- A-7. Silver Lake Area
- A-8. GE Plastics Area

"Appendix B" is EPA's "Combined Action and EE/CA Approval Memorandum" for the Upper Reach, dated and approved May 26, 1998.

"Appendix C" is EPA's Action Memorandum for the Allendale School Removal Action, dated and approved July 12, 1999.

"Appendix D" is EPA's Action Memorandum for Removal Actions Outside the River, dated August 4, 1999, and approved August 5, 1999.

"Appendix E" is the SOW for the Removal Actions Outside the River.

"Appendix F" is the Removal Action Work Plan for Upper ½ Mile Reach of Housatonic River, dated August 1999, and EPA's approval letter dated August 5, 1999.

"Appendix G" is the Draft Reissued RCRA Permit.

"Appendix H" is the Administrative Consent Order to be executed by MADEP and Settling Defendant.

"Appendix I" is the list of Property to Be Transferred to PEDDA Pursuant to Definitive Economic Development Agreement.

"Appendix J" is the Protocol for EPA Peer Review Process – Housatonic River.

"Appendix K" is the Access and Services Agreement.

"Appendix L" is the Model Grant of Environmental Restriction and Easement for Settling Defendant Property.

"Appendix M" is the Model for Subordination Agreement.

"Appendix N" is the Model Grant of Conservation Easement and Restriction for Unkamet Brook Wetlands Area.

"Appendix O" is the Model Grant of Environmental Restriction and Easement for Non-Settling Defendant Property.

"Appendix P" is the Form of Notice ERE for State-Owned Properties.

"Appendix Q" is the EREs, CERs and Conditional Solution Inspection Criteria and Requirements.

"Appendix R" is the Model for Consent to Access to Property.

"Appendix S" is the Model Confidentiality Agreement for Mediation, referenced in Section XXIV (Dispute Resolution).

"Appendix T" is the List of Designated Fill Properties.

"Appendix U" is the list of Properties Owned by the City Subject to this Consent Decree.

"Appendix V" is the List of GE Documents Submitted to USEPA and MADEP from 1/1/98 through 7/31/99 Relating to Investigations and Response Actions Conducted by GE at the Site in that Time Period, Excluding Documents Submitted Under RCRA Permit, State ACOs, and Building 68 UAO.

"Appendix W" is the List of GE Documents Submitted to Connecticut Department of Environmental Protection Which Conveyed Site-Related Information: 1984 to Present.

Settling Defendant does not, by entering into this Consent Decree, admit the validity of any statements or conclusions set forth in Appendices B, C or D.

XXXVI. COMMUNITY RELATIONS

213. Settling Defendant shall propose to EPA and the State the extent of its participation in the community relations plan to be developed by EPA. Settling Defendant shall cooperate with EPA and the State in implementing that plan. Settling Defendant shall also cooperate with EPA and the State in providing information regarding the Work to the public, including the Citizens' Coordinating Council. As requested by EPA or the State, Settling Defendant shall participate in the preparation of such information for dissemination to the public, including the Citizens' Coordinating Council, and in public meetings which may be held or sponsored by EPA or the State to explain activities at or relating to the Site.

214. During the performance of the Work under this Consent Decree, the Parties shall coordinate and cooperate with the Citizens Coordinating Council established with regard to the Site.