
ATTACHMENT 16
COMPLAINT: *UNITED STATES V. GENERAL ELECTRIC COMPANY*
(MUNICIPALITIES RESPONSE ONLY)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL ELECTRIC COMPANY,

Defendant.

Civil Action No.

COMPLAINT

The United States of America, by and through the undersigned attorneys, by authority of the Attorney General and acting at the request of the Administrator of the Environmental Protection Agency ("EPA"), the Secretary of the United States Department of the Interior ("DOI"), and the Secretary of the United States Department of Commerce, alleges:

STATEMENT OF THE CASE

1. This is a civil action under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607; Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973; and Sections 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1319(b) and (d).

2. The United States in its complaint seeks: (1) reimbursement of costs incurred and to be incurred by the United States for response actions at the General Electric Facility in Pittsfield, Massachusetts, and other related locations, as described in Paragraph 8 below (the "Site" or the "GE-Pittsfield/Housatonic River Site"), together with accrued interest; (2) injunctive

relief including the performance of studies, performance of response action work and/or the restoration or mitigation of damages caused by the Defendant's activities; and (3) recovery of damages for injury to, destruction of, or loss of natural resources under the trusteeship of the Secretary of the Interior, and the Secretary of Commerce, through the National Oceanic and Atmospheric Administration ("NOAA"), and for the reasonable costs of assessing such injury, destruction or loss, together with accrued interest.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action and over the Defendant pursuant to 28 U.S.C. §§ 1331 and 1345; 33 U.S.C. § 1319(b); and 42 U.S.C. §§ 6928, 6973, 9606, 9607 and 9613(b).

4. Venue is proper in this district pursuant to 42 U.S.C. §§ 6928, 6973, 9606(a) and 9613(b); 33 U.S.C. § 1319(b); 28 U.S.C. § 1391, because the claims arose and the threatened and actual releases of hazardous substances occurred in the District of Massachusetts.

NOTICE TO THE STATE

5. Notice of this action has been given to the Commonwealth of Massachusetts and the State of Connecticut consistent with Section 7003 of RCRA, 42 U.S.C. § 6973(a), and Section 309(b) of the CWA, 33 U.S.C. § 1319(b). The Commonwealth of Massachusetts and the State of Connecticut are each filing their own actions against the defendant based on the acts alleged herein.

DEFENDANT

6. Defendant General Electric Company ("GE") is a New York corporation with its headquarters in Fairfield, Connecticut. Since 1903, GE has owned a portion of land at the

Site, and currently owns approximately 250 acres of land at the Site. Since 1903, GE has also operated various manufacturing and office facilities at the Site. At all relevant times, GE was and is an owner and/or operator of the facility at the Site.

7. The Defendant is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21); Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

THE SITE

8. The Site comprises hundreds of acres and is divided into the following contiguous areas known by the following names:

a. the “GE Plant Area”, including the location of the current or former GE manufacturing facility (“the Facility”) in Pittsfield, Massachusetts, and the “Unkamet Brook Area”, including property from Dalton Avenue to the north and extending along Unkamet Brook and its floodplain to its confluence with the Housatonic River (“the River”) in Pittsfield, Massachusetts;

b. the “Former Oxbow Areas”, including the properties located where oxbows of the Housatonic River formerly conveyed river flows, where such properties have been isolated from the channel of the river, and subsequently filled, and found to contain hazardous substances, and any adjacent properties found to be contaminated with hazardous substances;

c. the “Allendale School Area”, including the school property located at 180 Connecticut Avenue in Pittsfield, Massachusetts;

d. the “Housatonic River Floodplain Properties”, including those properties which are in or adjacent to the Housatonic River floodplain downstream of the GE Plant Area;

e. the "Silver Lake Area", including the area of the 26-acre Massachusetts Great Pond located in Pittsfield, Massachusetts;

f. the "Upper Housatonic River" and the "Rest of River", including the East Branch of the Housatonic River, from Newell Street to the confluence with the West Branch of the Housatonic River (including riverbanks and associated floodplains) and downstream therefrom (including riverbanks and associated floodplains); and

g. other properties or areas to which hazardous substances that originated at the GE Plant Area have migrated from the above named areas.

9. As part of the Defendant's operations at the Site, the Defendant has generated and used hazardous substances, some of which have been released to the environment. Beginning in approximately 1932 and continuing until approximately 1977, the Defendant used various hazardous substances, including, but not limited to, polychlorinated biphenyls ("PCBs"), as part of its manufacturing operations at the Site. The Defendant disposed of these PCBs, and other hazardous substances, including, but not limited to, volatile organic compounds ("VOCs"), semi-volatile organic compounds ("Semi-Volatiles"), heavy metals, and dioxins, at the GE Plant Area, and PCBs, and other hazardous substances, have come to be located at various locations in and around the GE Plant Area and other areas of the Site.

10. In both the Commonwealth of Massachusetts and the State of Connecticut, public health agencies have issued advisories regarding the consumption of fish from the Housatonic River below Pittsfield, Massachusetts due to contamination of the fish.

11. On May 22, 1990 and July 2, 1990, the Massachusetts Department of Environmental Protection ("MADEP") issued to the Defendant, and the Defendant consented to,

two Administrative Consent Orders (the "ACOs"). The ACOs require Defendant to perform response actions pursuant to M.G.L. c. 21E at the GE Plant Area in Pittsfield, Massachusetts and related areas including, but not limited to, the Housatonic River and Silver Lake and their floodplains, the Allendale School, the filled Former Oxbows along the Housatonic River, and the Unkamet Brook and its floodplain.

12. On February 11, 1991, EPA issued a RCRA permit to the Defendant to require corrective action activities related to Defendant's Pittsfield, Massachusetts facility pursuant to Sections 3004(u), 3004(v), 3005(c) and 3005(h) of RCRA, 42 U.S.C. §§ 6924(u), 6924(v), 6925(c) and 6925(h). The Defendant, as well as the Commonwealth of Massachusetts, the State of Connecticut, and a private party, appealed the terms of the permit and, on December 21, 1993, EPA issued a modified permit ("Modified Permit"). This Modified Permit became effective on January 3, 1994.

13. The Defendant has been performing investigations and response activities pursuant to the Modified Permit and the ACOs. Hazardous substances found at the Site during the investigations conducted by the Defendant, EPA and MADEP include PCBs, and other hazardous substances.

14. In the fall of 1996, an area of River bank soil and River sediments containing high levels of PCB contamination was discovered at the former site of the Facility's Building 68. On December 10, 1996, EPA issued an administrative order to the Defendant under Section 106 of CERCLA, 42 U.S.C. § 9606, directing the Defendant to remove the highly contaminated material from that portion of the River and bank. The Defendant has complied with that Order.

15. On September 25, 1997, pursuant to Section 105 of CERCLA, 42 U.S.C.

§ 9605, EPA proposed, by publication in the Federal Register, the Site for placement on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B. The National Priorities List is a national list of hazardous waste sites posing the greatest threat to public health, welfare, and the environment. The Defendant submitted comments to EPA in opposition to the proposed listing.

16. On May 26, 1998, EPA issued a Combined Action and Engineering Evaluation/Cost Analysis Approval Memorandum regarding the two mile stretch of River known as the "Upper 2-Mile Reach," which runs from Newell Street to the confluence with the West Branch of the River, in Pittsfield, Massachusetts ("The 2-Mile Reach Action Memorandum"). This 2-Mile Reach Action Memorandum authorizes a removal action for the portion of the River known as the "Upper ½ Mile Reach" which consists of the East Branch of the Housatonic River, including the riverbanks, from Newell Street to Lyman Street, in Pittsfield. The 2-Mile Reach Action Memorandum also authorizes further investigation and evaluation of cleanup alternatives for the Upper 1½ Mile Reach (i.e. the stretch of River immediately downstream from the ½ Mile Reach). The Defendant submitted comments to EPA in opposition to that Action Memorandum. EPA has responded to the comments on the Action Memorandum.

17. On June 3, 1998, EPA issued an administrative order to the Defendant under Section 106 of CERCLA, 42 U.S.C. § 9606, directing the Defendant to remove and restore contaminated bank soils and River sediments in the Upper ½ Mile Reach of the Upper 2-Mile Reach and undertake certain interim measures in other areas of the Upper 2-Mile Reach ("the ½ Mile UAO"), in accordance with the 2-Mile Reach Action Memorandum. The effective date of the ½ Mile UAO has been stayed.

18. On July 12, 1999, EPA issued an Action Memorandum regarding the Allendale School ("Allendale School Action Memorandum"). This Allendale School Action Memorandum generally authorizes the removal of soil with a PCB concentration of greater than 2 ppm at the School and replacement of the removed soil with clean soil.

19. On August 5, 1999, EPA issued an Action Memorandum regarding the cleanup of additional areas of the Site, excluding the Housatonic River. This Action Memorandum authorizes removal actions to be conducted to cleanup additional areas of the Site.

GENERAL ALLEGATIONS

20. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. The Defendant is an owner or operator of a portion of the Site, within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

22. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including, but not limited to PCBs, VOCs, Semi-Volatiles, heavy metals, and dioxins, have been disposed of at the Site. Such hazardous substances have been found at the Site.

23. Actual or threatened releases of hazardous substances within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), have occurred and continue to occur at or from the Site.

24. Solid waste and/or hazardous waste within the meaning of Sections 1004(5) and 1004(27) of RCRA, 42 U.S.C. §§ 6903(5) and (27), including but not limited to PCB waste, has been treated, stored, or disposed of at the Site.

25. The Defendant was involved in the past or present handling, storage, treatment or disposal of hazardous waste, within the meaning of Section 6903(5) of RCRA, 42 U.S.C.

§ 1004(5), at the Site.

26. Such handling, storage, treatment or disposal of hazardous waste presents an imminent and substantial endangerment to human health or the environment, within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

27. As a result of the releases or threatened releases of hazardous substances at or from the Site, the United States has incurred at least \$16 million in response costs as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a). The costs incurred by the United States in connection with the Site are not inconsistent with the National Contingency Plan, promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300. The United States will continue to incur response costs in connection with the Site.

28. As a result of the releases of hazardous substances at or from the Site there has been injury to, destruction of, or loss of natural resources under the trusteeship or joint trusteeship of the Secretary of the Interior and the Secretary of Commerce, within the meaning of Section 107 of CERCLA, 42 U.S.C. § 9607.

29. The United States has incurred and will continue to incur costs in connection with responding to natural resource damages, including costs for assessing the extent of injury to, destruction of, or loss of natural resources, within the meaning of Section 107 of CERCLA, 42 U.S.C. § 9607.

30. The Housatonic River and related wetlands are “navigable waters” of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

31. PCBs are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

32. The Defendant discharged and continues to discharge PCBs from its Facility and/or surrounding areas into the Housatonic River. These discharge locations constitute "point sources" as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

33. The Defendant has a National Pollutant Discharge Elimination System (“NPDES”) permit for the discharge of certain pollutants to the Housatonic River. The Defendant discharged and continues to discharge PCBs into navigable waters of the United States from numerous point sources outside, or not permitted by, the Defendant’s NPDES permit.

FIRST CLAIM FOR RELIEF (CERCLA - COSTS/NRD)

34. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

35. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the national contingency plan....

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release

36. The Defendant is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as the owner or operator of a facility. The Defendant is also liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the owner or operator of a facility at the time of the disposal of hazardous substances.

37. The Defendant is jointly and severally liable to the United States pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), for all unrecovered response costs incurred and to be incurred by the United States in connection with the Site, and for damages to natural resources related to the Site, including the reasonable costs of assessing injury to, destruction of, or loss of natural resources.

SECOND CLAIM FOR RELIEF (CERCLA-RESPONSE ACTION)

38. Paragraphs 1 through 29, and Paragraph 36, are realleged and incorporated herein by reference.

39. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may . . . secure such relief as may be necessary to abate such danger or threat The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

40. The President, through his delegate, the Regional Administrator of the U.S. EPA Region I, has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment at the Site.

41. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), authorizes the United States to bring an action to secure such relief as may be necessary to abate the danger or threat at the Site.

42. The Defendant is liable to the United States to abate the danger or threat at the Site.

THIRD CLAIM FOR RELIEF (RCRA)

43. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

44. Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), provides in pertinent part:

[U]pon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit . . . against any person (including any past or present generator . . .) who has contributed or who is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal, to order such person to take such other action as may be necessary, or both.

45. EPA has received evidence that the disposal of hazardous or solid waste at the Site may present an imminent and substantial endangerment to public health or the environment.

46. The Defendant contributed to the handling, storage, treatment, transportation or disposal of hazardous or solid waste at the Site.

47. Pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), the Defendant is liable to the United States for relief, including, but not limited to injunctive relief, as may be necessary to protect the public health and the environment and to abate the threat presented by

the past or present handling, storage, treatment, or disposal of any solid waste or hazardous waste at the Site.

FOURTH CLAIM FOR RELIEF
(CWA - DISCHARGE WITHOUT A PERMIT)

48. Paragraphs 1 through 19 and 30 through 33 are realleged and incorporated herein by reference.

49. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States except in compliance with, inter alia, an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

50. The Defendant has discharged, and continues to discharge, “pollutants”, including, but not limited to, PCBs, from the Facility, including from “point sources”, to the Housatonic River, that were and are not otherwise permitted pursuant its NPDES permit.

51. Defendant’s unauthorized, unpermitted discharges of PCBs constitute violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

52. Pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), the Defendant is liable for injunctive relief to abate present and prevent future violations of the CWA, and to redress the Defendant’s unlawful activities.

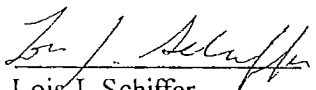
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

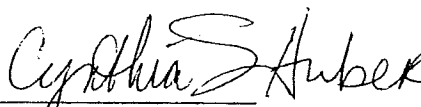
1. Order the Defendant to reimburse the United States for all response costs incurred and to be incurred by the United States relating to the Site, plus interest;

2. Order the Defendant to perform the work remaining to investigate, study, or otherwise implement the response actions at the Site;
3. Order the Defendant to pay damages for injury to, destruction of, or loss of natural resources related to the Site, including the reasonable costs of assessing such injury, destruction, or loss;
4. Order Defendant to undertake and expeditiously complete all actions necessary to redress the effects of prior unlawful discharges of pollutants in violation of the CWA and obtain and ensure compliance with the CWA and all applicable CWA regulations; and
5. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,



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