Attachment 2

Excerpts from Consent Decree in *United States et al. v. General Electric Company* (October 27, 2000)

Site: CONSENT DECREE GE-0080
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

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O. In addition to this Consent Decree, Settling Defendant, the City and PEDA have entered into a Definitive Economic Development Agreement providing, inter alia, for redevelopment of a portion of the GE Plant Area, in part through the transfer of portions of the GE Plant Area to PEDA, and economic aid to the City. Pursuant to this Consent Decree, PEDA is participating in the compensation to the Trustees for Natural Resource Damages.

P. On July 12, 1999, EPA issued an Action Memorandum for the Allendale School Removal Action. In that Action Memorandum, EPA selected a removal action for the Allendale School. In addition, on August 5, 1999, EPA issued an Action Memorandum for Removal Actions Outside the River. In that Action Memorandum, EPA selected removal actions for the Removal Actions Outside the River.

Q. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

R. Solely for the purposes of Section 113(j) of CERCLA, the response actions selected and the Work to be performed by Settling Defendant shall constitute response actions taken or ordered by the President.

S. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site, restore part of the Site to productive economic use, expedite restoration of natural resources,

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

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

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

8. Compliance With Applicable Law And Protectiveness

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

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

b. EPA, MADEP and CTDEP have determined that:

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

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

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

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

9. Permits

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

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

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

10. Reissuance of RCRA Permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

u. Second Appeal.

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

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

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

(A) which is not subject to dispute; or

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

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

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

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

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

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

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

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

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

v. Subsequent Appeals.

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

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

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

25. The Performance Standards for the Removal Actions at the GE Plant Area shall include all requirements for the GE Plant Area identified as Performance Standards in the SOW attached to this Consent Decree, and the following requirements:

a. Settling Defendant shall perform soil remediation to address PCBs at the GE Plant Area (excluding the on-plant consolidation areas) as follows:

(i) In an approximate 200-foot wide strip along the north side of the River, located in the area from the former Thermal Oxidizer location downstream to the GE Plant Area boundary, as depicted generally on Figures 2-1 and E-1 of the SOW, Settling Defendant shall remove all paved surfaces, gravel, buildings/structures (except for the 64W oil/water separator), and underlying soil to a total depth of one foot, and shall replace that pavement/soil with a one-foot vegetative Engineered Barrier, as described in Attachment G to the SOW; provided, however, that such barrier need not be installed in any discrete portion of this strip where the average PCB concentrations do not exceed 10 ppm in the top foot, 15 ppm in the 1-3 foot depth, and 100 ppm in the top 15 feet, so long as the effectiveness of the barrier is not impaired by discontinuities in the barrier.

(ii) In a portion of East Street Area 2 - South that has been proposed for use as a City recreational area, as generally depicted on Figures 2-1 and E-1 of the SOW, Settling Defendant shall install a one-foot-thick soil cover, as described in Attachment G to the SOW, and shall remove and replace soils in the next two feet below that cover as necessary to achieve a PCB average of 15 ppm in that depth increment.

(vi) At each averaging area (paved and unpaved portions combined) in which the PCB average exceeds 100 ppm in the top 15 feet after taking into account any response actions for soils in the top six feet, Settling Defendant shall install Engineered Barriers in accordance with the specifications for such barriers in Attachment G to the SOW. Where such Engineered Barriers are installed within the 100-year floodplain of the Housatonic River or Unkamet Brook, Settling Defendant shall provide Flood Storage Compensation.

b. Settling Defendant shall cap the Hill 78 Consolidation Area and other on-plant consolidation areas after use of these areas for on-plant consolidation of excavated materials and building demolition debris. The caps for these areas shall comply with the specifications set forth in Attachment G to the SOW for consolidation area/landfill caps.

c. Settling Defendant shall complete the installation of sheetpiling and other NAPL/groundwater containment/recovery controls in the East Street Area 2-South former seep areas and the Building 68 Area, and shall continue to operate and maintain those systems, in accordance with the Work Plans and EPA conditional approval letters contained in Annex 2 to the SOW, and as necessary to achieve the applicable Performance Standards set forth in those Work Plans and EPA conditional approval letters and in Attachment H to the SOW. If other similar seep areas are identified, Settling Defendant shall implement similar NAPL/groundwater containment/recovery systems as proposed to and approved by EPA.

(iii) Except at the areas described in Paragraph 25.a(i) and 25.a(ii) above and in Paragraph 25.d below, Settling Defendant shall take the following response actions for the top one foot of soil in each averaging area at the GE Plant Area: (A) For unpaved portions of such an averaging area that are located within the 100-year floodplain of the Housatonic River or Unkamet Brook, Settling Defendant shall remove and replace soils to achieve a PCB average of 25 ppm or below in the top one foot. (B) For unpaved portions of such an averaging area that are located outside that 100-year floodplain, Settling Defendant shall either (at its option) remove and replace soils in the top foot or place a soil cap over soils in the top foot to achieve a PCB average of 25 ppm or below in the top one foot. Specifications for such soil cap are described in Attachment G to the SOW. (C) For any averaging area where the average PCB concentration in the top one foot exceeds 25 ppm in the entire area (paved and unpaved portions combined), Settling Defendant shall recalculate the average PCB concentration after incorporating the anticipated performance of the response actions described in clause (A) or (B) above (as applicable). If that recalculated average PCB concentration still exceeds 25 ppm, Settling Defendant shall either (at its option) remove pavement/soils in the top foot to achieve a PCB average of 25 ppm in the top foot of the averaging area or maintain and enhance existing pavement/concrete surfaces in those paved areas determined to cause the exceedance of the 25 ppm average in the top foot, in accordance with the specifications for pavement enhancement in Attachment G to the SOW. Where such pavement enhancement is undertaken within the 100-year floodplain

of the Housatonic River or Unkamet Brook, Settling Defendant shall provide Flood Storage Compensation.

(iv) Except at the areas described in Paragraph 25.d below, if the PCB average in the soil at the 1-6 foot depth increment exceeds 200 ppm in any averaging area at the GE Plant Area, Settling Defendant shall perform the following activities: (A) In any such area located within the 100-year floodplain of the Housatonic River or Unkamet Brook, Settling Defendant shall remove and replace soils as necessary to achieve a PCB average of 200 ppm in the 1-6 foot depth. (B) In any such area located outside the 100-year floodplain, Settling Defendant shall undertake a combination of soil removal/replacement in unpaved areas and either (at its option) soil removal/replacement or enhancement of existing pavement/concrete surfaces in paved areas as necessary to ensure that the PCB concentrations causing the average to exceed 200 ppm are removed or covered by enhanced pavement.

(v) If any averaging area at the GE Plant Area containing utilities has a PCB average exceeding 200 ppm in the 1-6 foot depth in the utility corridor(s), Settling Defendant shall submit to EPA for review and approval an evaluation of the need for any additional response actions in such area and shall implement any such actions as approved by EPA. In addition, in the event that a new subgrade utility is installed or an existing subgrade utility is repaired or replaced in the future at the GE Plant Area, Settling Defendant shall ensure that the average PCB concentration in the backfill material does not exceed 25 ppm (or, for areas described in Paragraphs 25.a(ii) and 25.d(vi), 10 ppm in the top three feet and 25 ppm for soils at greater depth).

d. In addition to the other Performance Standards applicable to the GE Plant Area, Settling Defendant shall perform the following in the Unkamet Brook Area:

(i) Settling Defendant shall reroute Unkamet Brook to its approximate former channel, as specified in Section 2.2.2 of the SOW.

(ii) Settling Defendant shall cap the former Unkamet Brook landfill with a consolidation area/landfill cap in the unpaved portion and an asphalt Engineered Barrier in the currently paved portion, in accordance with the specifications in Attachment G to the SOW.

(iii) Following rerouting of Unkamet Brook, Settling Defendant shall remove and replace brook sediments to achieve a 1 ppm PCB average in the surface sediments (i.e., the top one foot of sediments) in each of three reaches of the brook, as specified in Section 2.2.2 of the SOW. In addition, Settling Defendant shall (at its option) either remove and replace sediments or install a soil cover over the inundated wetlands that are not subject to the former landfill cap to achieve a 1 ppm PCB average in the top foot of each such inundated wetland, as specified in Section 2.2.2 of the SOW. Any loss of wetlands shall be mitigated through the payment that Settling Defendant will make in accordance with Paragraph 114.b of Section XXI of this Consent Decree (Natural Resource Damages).

(iv) In the non-industrial area owned by Settling Defendant to the east of the former Unkamet Brook landfill (as generally depicted on Figures 2-3 and E-1 of the SOW), Settling Defendant shall remove and replace soils to achieve a 10 ppm PCB average in the top foot and a 15 ppm PCB average in the 1-3 foot depth, and shall

install a vegetative Engineered Barrier if the PCB average in the top 15 feet (after taking into account any soil removal/replacement in the top three feet) exceeds 100 ppm.

(v) Settling Defendant shall evaluate the potential changes to flood storage capacity of the Unkamet Brook floodplain due to the performance of the response actions described in Paragraphs 25.d(i) through 25.d(iv), and shall provide Flood Storage Compensation. However, to obtain such compensation, Settling Defendant shall not be required to remove soils from the former Unkamet Brook landfill prior to placement of the cap/barrier.

(vi) For non-industrial recreational areas in the Unkamet Brook floodplain that are not owned by Settling Defendant (as generally depicted on Figures 2-3 and E-1 of the SOW), if an ERE is obtained at a property in accordance with Section XIII of this Consent Decree, Settling Defendant shall remove and replace soils to achieve a 10 ppm PCB average in the top foot and a 15 ppm PCB average in the 1-3 foot depth at each averaging area; and Settling Defendant shall install an Engineered Barrier in any averaging area with a PCB average exceeding 100 ppm in the top 15 feet (after taking into account any soil removals for the top three feet) and shall provide Flood Storage Compensation. For any property in such areas for which an ERE is not obtained, Settling Defendant shall implement a Conditional Solution in accordance with Paragraphs 34-38 of this Consent Decree.

(vii) For commercial/industrial areas that are not owned by Settling Defendant (as generally depicted on Figures 2-3 and E-1 of the SOW), if an ERE is obtained at a property in accordance with Section XIII of this Consent Decree, Settling

Defendant shall achieve at such property the same Performance Standards set forth in Paragraphs 26.c(i)-(iv) and 26.e. For any such property for which an ERE is not obtained, Settling Defendant shall implement a Conditional Solution in accordance with Paragraphs 34-38 of this Consent Decree.

e. For the portion of the commercial/industrial property within East Street Area 1-North that is not owned by Settling Defendant (Parcel K10-14-1), if an ERE is obtained in accordance with Section XIII, Settling Defendant shall achieve the same Performance Standards set out in Paragraphs 26.c(i)-(iv) and 26.e. If an ERE is not obtained for such portion, Settling Defendant shall implement a Conditional Solution in accordance with Paragraphs 34-38 of this Consent Decree.

26. The Performance Standards for the Removal Actions at the Former Oxbow Areas shall include all requirements for the Former Oxbow Areas identified as Performance Standards in the SOW attached to this Consent Decree, and the following requirements:

a. At the Lyman Street and Newell Street parking lots owned by Settling Defendant (as generally depicted on Figure 2-4 of the SOW), Settling Defendant shall remove the top one foot of pavement/soil and replace such pavement/soil with a one-foot vegetative Engineered Barrier, as described in Attachment G to the SOW, except as follows: (i) In lieu of removal of the top foot of pavement/soil, Settling Defendant may propose to EPA the installation of a one-foot vegetative Engineered Barrier over the existing pavement/soil, and may implement that approach provided that EPA approves such approach (based on consideration of PCB levels, impacts on

drainage, and other relevant factors) and that Flood Storage Compensation is provided. (ii) An Engineered Barrier need not be installed in any discrete portion of either parking lot where the average PCB concentrations do not exceed 10 ppm in the top foot, 15 ppm in the 1-3 foot depth, and 100 ppm in the top 15 feet, so long as the effectiveness of such barrier is not impaired by discontinuities in the barrier.

b. For the wooded area at Newell Street Area II and the riparian strip at Newell Street Area I which are owned by Settling Defendant (as generally depicted on Figure 2-4 of the SOW), Settling Defendant shall either (at its option): (i) remove and replace soils to achieve PCB averages of 10 ppm in the top foot and 15 ppm in the 1-3 foot depth, and install a vegetative Engineered Barrier if the PCB average in the top 15 feet (after taking into account any soil removal/replacement in the top three feet) exceeds 100 ppm; or (ii) remove the top foot of soil and install a vegetative Engineered Barrier over portions of the area until the average PCB concentrations in the remainder of the area do not exceed 10 ppm in the top foot and 15 ppm in the 1-3 foot depth, and also install a vegetative Engineered Barrier in any other portions of the area where the PCB average exceeds 100 ppm in the top 15 feet. For any Engineered Barrier installed, Settling Defendant shall provide Flood Storage Compensation.

c. For commercial/industrial properties, if an ERE is obtained for a property in accordance with Section XIII of this Consent Decree, Settling Defendant shall, at each such property:

(i) remove and replace soils in the top one foot in the unpaved portion of each averaging area to achieve a 25 ppm PCB average in such portion;

(ii) in the paved portion of each averaging area, if the PCB average in the top one foot exceeds 25 ppm, either (at Settling Defendant's option) remove and replace soils to achieve a 25 ppm PCB average in the top foot or enhance existing pavement in such portion and provide Flood Storage Compensation;

(iii) remove and replace subsurface soils in the 1 to 6 foot depth interval to achieve a 200 ppm PCB average in such interval at the property (considering paved and unpaved portions combined); and

(iv) install an Engineered Barrier if the PCB average in the top 15 feet at the property (considering paved and unpaved portions combined) exceeds 100 ppm (after taking into account any soil removals for the top six feet), and provide Flood Storage Compensation.

d. For recreational properties (other than those described in Paragraphs 26.a and 26.b), if an ERE is obtained for a property in accordance with Section XIII of this Consent Decree, Settling Defendant shall, for each averaging area, remove and replace soils to achieve a 10 ppm PCB average in the top one foot and a 15 ppm PCB average at a depth of 1-3 feet. In addition, Settling Defendant shall install an Engineered Barrier if the PCB average in the top 15 feet at such a property (considering paved and unpaved portions combined) exceeds 100 ppm (after taking into account any soil removals for the top three feet), and provide Flood Storage Compensation.

e. At commercial/industrial or recreational properties where subgrade utilities are present and the average PCB concentration in soils in the utility corridor(s)

exceeds 200 ppm, Settling Defendant shall submit to EPA for review and approval an evaluation of the need for any additional response actions in such area, and shall implement any such actions as approved by EPA. In addition, in the event that a new subgrade utility is installed or an existing subgrade utility is repaired or replaced at such a property in the future, Settling Defendant shall ensure that the average PCB concentration in the backfill material does not exceed 25 ppm at a commercial/industrial property or 10 ppm in the top three feet and 25 ppm for soils at greater depth at a recreational property.

f. At current residential properties, Settling Defendant shall achieve a 2 ppm PCB average to a depth of one foot at each averaging area, using an approximate 25-foot sampling grid, and shall achieve a 2 ppm PCB average at a depth of one foot to the depth at which PCBs have been detected (up to a maximum of 15 feet), based on averaging procedures described more fully in the SOW.

g. Settling Defendant shall complete the installation of sheetpiling and other NAPL/groundwater controls in the Lyman Street Area former seep area and the installation of a dense non-aqueous phase liquid ("DNAPL") recovery system at Newell Street Area II, and shall continue to operate and maintain those systems, in accordance with the Work Plans contained in Annex 2 to the SOW, as approved or conditionally approved by EPA, and as necessary to achieve the applicable Performance Standards set forth in those Work Plans and EPA approval/conditional approval letters and in Attachment H to the SOW. If other similar seep areas are identified, Settling Defendant

shall implement similar NAPL/groundwater containment/recovery systems as proposed to and approved by EPA.

h. If an ERE is not obtained at a non-residential property not owned by Settling Defendant at the Former Oxbow Areas, Settling Defendant shall implement a Conditional Solution at such property in accordance with Paragraphs 34-38 of this Consent Decree.

27. The Performance Standards for the Allendale School Removal Action shall include all requirements for the Allendale School Property identified as Performance Standards in the SOW attached to this Consent Decree and in the Removal Design/Removal Action Work Plan for the Allendale School Property (contained in Annex 3 to the SOW), as approved or conditionally approved by EPA, and the following requirements:

a. Settling Defendant shall remove all soils (including soils under the existing cap) in which PCBs have been detected at concentrations exceeding 2 ppm, except within an approximate 25-foot wide strip along the rear portions of the school building, where (due to constructability issues) Settling Defendant shall remove soils to achieve a PCB average of less than 2 ppm.

b. Settling Defendant shall replace removed soils with clean soil and restore the area in accordance with the Work Plan and EPA conditional approval letter contained in Annex 3 to the SOW.

28. The Performance Standards for the Removal Actions at the Housatonic River Floodplain - Current Residential Properties shall include all requirements for the

Housatonic River Floodplain - Current Residential Properties identified as Performance Standards in the SOW attached to this Consent Decree, and the following requirements:

a. For current residential properties adjacent to the 1½ Mile Reach, Settling Defendant shall remove and replace soils in Actual/Potential Lawns to achieve, at each averaging area, a 2 ppm PCB average in the top one foot and a 2 ppm PCB average from one foot to the depth at which PCBs have been detected (up to a maximum of 15 feet), based on averaging procedures described more fully in the SOW. Other portions of these properties shall be addressed in the 1 ½ Mile Reach Removal Action as described below in Paragraph 32.

b. For current residential properties downstream of the Upper 2-Mile Reach, Settling Defendant shall perform the following:

(i) remove and replace soils in Actual/Potential Lawns on current residential properties to achieve, at each averaging area, a 2 ppm PCB average in the top foot and from one foot to the depth at which PCBs have been detected (up to a maximum of 15 feet), based on averaging procedures described more fully in the SOW;

(ii) implement appropriate short-term measures, approved by EPA, for portions of such properties that do not constitute Actual/Potential Lawns, where PCB levels exceed MADEP's short term measure ("STM") trigger levels, as specified in the SOW; and

(iii) address final remediation of the portions of such properties that do not constitute Actual/Potential Lawns in the Remedial Action for the Rest of the River, described in Paragraph 33 below.

29. The Performance Standards for the Removal Action for the Housatonic River Floodplain - Non-Residential Properties (which are located adjacent to the 1½ Mile Reach) shall include all requirements for the Housatonic River Floodplain - Non-Residential Properties identified as Performance Standards in the SOW attached to this Consent Decree, and the following requirements:

a. At recreational properties (other than riverbank portions), if an ERE is obtained for such a property in accordance with Section XIII of this Consent Decree, Settling Defendant shall remove and replace soils to achieve PCB averages of 10 ppm in the top one foot and 15 ppm in the 1-3 foot depth increment at each averaging area, and shall install an Engineered Barrier on such property if the average PCB concentration exceeds 100 ppm in the top 15 feet (after taking into account any soil removals for the top 3 feet) and provide Flood Storage Compensation. In addition, Settling Defendant shall comply with the requirements of Paragraph 26.e. If an ERE is not obtained for such a property, Settling Defendant shall implement a Conditional Solution at such property in accordance with Paragraphs 34-38 of this Consent Decree.

b. At commercial/industrial properties (other than riverbank portions), if an ERE is obtained for such a property in accordance with Section XIII of this Consent Decree, Settling Defendant shall undertake the same response actions and achieve the same Performance Standards described in Paragraphs 26.c(i)-(iv) and 26.e, for the non-riverbank averaging areas at these floodplain properties. If an ERE is not obtained for such a property, Settling Defendant shall implement a Conditional Solution at such property in accordance with Paragraphs 34-38 of this Consent Decree.

30. The Performance Standards for the Silver Lake Area Removal Action shall include all requirements for the Silver Lake Area identified as Performance Standards in the SOW attached to this Consent Decree, and the following requirements:

a. Settling Defendant shall remove and replace bank soils in accordance with the following:

(i) At the currently residential properties that are subject to this Removal Action (as described in Section 2.6.2 of the SOW and generally depicted on Figure 2-25 of the SOW), Settling Defendant shall either: (A) remove and replace bank soils to achieve a PCB average of 2 ppm in the top foot and in the depth from one foot to the depth at which PCBs have been detected (up to a maximum of 15 feet) in the bank soils; or (B) if the rest of a property will be remediated at the same time as the bank soils, remove and replace soils to achieve a PCB average of 2 ppm in the top foot and in the depth from one foot to the depth at which PCBs have been detected (up to a maximum of 15 feet) at the overall property (or designated averaging areas if less than the entire property).

(ii) For each remaining bank soil averaging area (as described in Section 2.6.2 and Attachment E of the SOW and generally depicted on Figure 2-25 of the SOW), if an ERE is obtained in accordance with Section XIII of this Consent Decree, Settling Defendant shall remove and replace bank soils to achieve PCB averages of 10 ppm in the top foot and 15 ppm in the 1-3 foot depth increment. If an ERE is not obtained for such an area, Settling Defendant shall implement a Conditional Solution at such bank soil area in accordance with Paragraphs 34-38 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-

design activities and for design and implementation of the additional response actions described in subparagraph 34.d.(i)-(iii). Following receipt of EPA's approval of the pre-design Work Plan and schedule, Settling Defendant shall submit the required Work Plans and implement the additional response actions in accordance with EPA's approval, including the approved schedule.

36. Settling Defendant shall, on an annual basis, after completion of physical on-site construction of any Conditional Solution under subparagraphs 34.c or 34.d, determine whether there has been a change in ownership of such property. Within 30 days of completion of physical on-site construction of any such Conditional Solution, and at any time there has been a change in ownership of such property, Settling Defendant shall provide notice to the owner (for the initial notice, notice shall also be sent to any holders of easements), with copies to EPA and MADEP, of:

a. the requirements set forth in subparagraph 34.d. for implementing any further response actions to be protective of any legally permissible future use (including providing such owner with notice of contact persons at Settling Defendant, EPA and MADEP), and

b. the residual contamination on the property where the Conditional Solution has been implemented.

37. Within seven days of a request from an owner of property where a Conditional Solution has been implemented, Settling Defendant shall provide to such owner a written certification of Settling Defendant's commitment to conduct further response actions on such property in accordance with subparagraph 34.d.

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

are reliable based on scientifically valid principles, EPA, MADEP, or CTDEP (as applicable) will take into consideration, where applicable, whether the theory or technique can be or has been tested, whether the theory or technique and conclusions drawn therefrom have been subjected to publication and peer review (for purposes of this subparagraph, "peer review" shall mean review by other professionals in the relevant field), the known or potential rate of error, and the degree of acceptance of the theory or technique and conclusions drawn therefrom in the relevant scientific community, including, but not limited to, the degree to which the conclusions of such studies have been replicated by other studies (if appropriate).

X. REVIEW OF RESPONSE ACTIONS

43. Periodic Review. In accordance with the following provisions, Settling Defendant shall conduct studies and investigations as requested by EPA to permit EPA to conduct periodic reviews, consistent with Section 121(c) of CERCLA and any applicable regulations, of whether the Removal and Remedial Actions undertaken pursuant to this Consent Decree are protective of human health and the environment:

a. For the Removal Actions Outside the River, EPA may conduct such periodic reviews commencing no earlier than five years after the initiation of construction on whichever of those Removal Actions is the last one on which construction is commenced, and Settling Defendant shall conduct studies and investigations as requested by EPA in connection with such reviews.

b. For the Upper ½ Mile Reach Removal Action, EPA may conduct such periodic reviews commencing no earlier than five years after completion of

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

reopener conditions in Paragraph 162 or Paragraph 163 (United States' Pre- and Post-Certification Reservations) are satisfied. Settling Defendant and/or PEDA (as to property that has been or will be transferred to PEDA pursuant to the Definitive Economic Development Agreement and for which it has assumed liability) may invoke the procedures set forth in Section XXIV (Dispute Resolution) to dispute (i) EPA's determination that the reopener conditions of Paragraph 162 or Paragraph 163 of Section XXVI (Covenants Not To Sue by Plaintiffs) are satisfied, (ii) EPA's determination that the response action is not protective of human health and the environment, and/or (3) EPA's selection of the further response actions. Disputes pertaining to whether the response action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 136 (record review).

47. Submissions of Plans. If Settling Defendant is required to perform the further response actions pursuant to Paragraph 46, it shall submit a plan for such work to EPA for approval in accordance with the applicable procedures set forth in Section VI (Performance of the Work by Settling Defendant), Section VII (Removal Actions Outside the River), and Section VIII (River Response Actions) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

XI. SAMPLING PROTOCOLS

48. The Parties agree on the following sampling protocols in addition to those set forth in the SOW, Rest of River SOW and the Upper ½ Mile Reach Work Plan with respect to Settling Defendant's performance of the Work at the Site.

XV. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

73. Except as provided in Paragraph 22 and the Reissued RCRA Permit regarding the Rest of the River, after review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State and Connecticut, as applicable, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Settling Defendant modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendant at least one notice of deficiency and an opportunity to cure within 30 days or such longer time as is specified by EPA, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

74. In the event of approval, approval upon conditions, or modification by EPA pursuant to Paragraph 73.a, b, or c, Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XXIV (Dispute Resolution) with respect to such modifications or conditions. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 73.c and

the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXV (Stipulated Penalties).

75. a. Upon receipt of a notice of disapproval pursuant to Paragraph 73.d, Settling Defendant shall, within 30 days or such longer time as specified by EPA, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXV, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 76 and 77.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 73.d, Settling Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XXV (Stipulated Penalties).

76. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item in accordance with this Consent Decree. Settling Defendant shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XXIV (Dispute Resolution).

77. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Settling Defendant invokes the dispute resolution procedures set forth in Section XXIV (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXIV (Dispute Resolution) and Section XXV (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXV.

78. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

79. For any plan, report or other item which is required to be submitted for approval by the Trustees pursuant to this Consent Decree, the provisions of Paragraphs 73 to 78 shall apply, except that each reference to EPA shall be read as a reference to the Trustees and the reference to the reasonable opportunity for review and comment by the State shall be deleted.

80. For any plan, report or other item which is required to be submitted for approval with regard to the Rest of the River prior to the initial modification of the

Reissued RCRA Permit pursuant to Paragraph 22.p of this Consent Decree, approval procedures shall be in accordance with the Reissued RCRA Permit. After the initial modification of the Reissued RCRA Permit, the approval procedures shall be in accordance with this Section.

XVI. PROJECT COORDINATORS

81. Within 20 days of lodging this Consent Decree, Settling Defendant, the State and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Defendant's Project Coordinator shall not be an attorney for Settling Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

82. Plaintiffs may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene

91. 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, and that arises: (a) at the GE Plant Area (excluding the portions of the Unkamet Brook Area that are not owned or controlled by Settling Defendant, other than the area immediately surrounding Building OP-3); (b) at any other property at the Site owned or controlled by Settling Defendant; or (c) at any property at the Site not owned or controlled by Settling Defendant but due, in whole or in part, to Settling Defendant's performance of the Work; Settling Defendant shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the Consent Decree, the SOW, the Upper ½ Mile Reach Removal Action Work Plan and/or the Rest of the River SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Paragraph, and EPA or, as appropriate, the State takes such action instead, Settling Defendant shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP pursuant to Section XX (Reimbursement of Costs). Such costs shall be reimbursed as U.S. Future Response Costs or Massachusetts Future Response Costs, as applicable, and shall be recoverable in accordance with Paragraphs 95.a or 95.d, as applicable.

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;

c. $60,000 as mitigation for additional habitat impacts associated with PCB contamination and Removal Actions at the Site; and

d. $75,000 for Restoration Work to be performed by the Trustees in Silver Lake.

115. Settling Defendant shall pay to the Trustees the amounts set forth in Paragraphs 114.a, b, c and d of this Consent Decree using the U.S. Treasury's Remittance Express program, or, in the event said program is not available to Settling Defendant, then via Federal Wire Transfer. Payment shall be made in accordance with instructions provided by the Department of the Interior. Any payments received after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendant's notice that such payment has been made shall be sent to:

Bruce Nesslage
DOI Restoration Fund
Mail Stop 4449
1849 C St. NW
Washington, D.C. 20240

Executive Office of Environmental Affairs
Attn: Thomas LaRosa
100 Cambridge Street, Room 2000
Boston, Massachusetts 02202

Edward Parker
Bureau Chief, Bureau of Natural Resources
Department of Environmental Protection
79 Elm Street
Hartford, Connecticut 06103

Mark Barash
Office of the Regional Solicitor
U.S. Department of the Interior
One Gateway Center, Suite 612
Newton Corner, MA 02158-2868

DARP Program Attorney
GE-Pittsfield /Housatonic River Site
NOAA Office of General Counsel
Northeast Region
One Blackburn Drive
Gloucester, MA 01930-2298

Chief, Environmental Enforcement Section
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
DOJ# 90-11-3-1479Z

Office of Attorney General
Attn: Chief, Environmental Protection Division
200 Portland Street
Boston, Massachusetts 02114

John Looney
Office of Attorney General
55 Elm Street
Hartford, Connecticut 06103

and shall reference Account Number 14X5198 (NRDAR), and state that the payments are for Natural Resource Damages for natural resources under the trusteeship of EOEA, CTDEP, DOI and NOAA, with respect to the GE-Pittsfield/Housatonic River Site and are being made by the General Electric Company.

116. The amounts set forth in Paragraphs 114.a, b, c and d of this Consent Decree, together with all interest accrued thereon, shall be administered by the Trustees and only be spent for restoration, including restoration planning, and other allowable expenditures associated with the Site, consistent with the Natural Resource Damages provisions of CERCLA, M.G.L. c. 21E and Conn. Gen. Stat. § 22a-6a. Any and all costs Incurred or to be Incurred by the United States, the State, and/or Connecticut in

determining how to spend the funds paid pursuant to Paragraph 114 shall not be recoverable from Settling Defendant.

117. The trusteeships of EOEA, CTDEP, DOI and NOAA, for Natural Resources affected by the GE-Pittsfield/Housatonic River Site overlap. Accordingly, all monies recovered for Natural Resource Damages from Settling Defendant and PEDA shall be held by DOI in an interest-bearing account on behalf of EOEA, CTDEP, DOI and NOAA. All expenditures, disbursements or other dispositions of such monies together with all interest accrued thereon shall be pursuant to the terms of a Memorandum of Agreement to be entered into among EOEA, CTDEP, DOI and NOAA.

118. Restoration Work to be Performed or Funded by Settling Defendant. Settling Defendant shall perform and complete or fund the Restoration Work generally described below, in connection with and as part of the individual Removal Actions, in order to restore, replace and/or enhance natural resources and in accordance with the Removal Action Work Plan for the Upper ½ Mile Reach and Section 2.8 and Attachment I of the SOW. Such Restoration Work shall achieve the Performance Standards for Restoration Work set forth in the Upper ½ Mile Reach Removal Action Work Plan and in Attachment I of the SOW.

a. As part of the Work to be performed for the Upper ½ Mile Reach Removal Action, provided for in this Consent Decree, Settling Defendant shall perform habitat enhancements, including the installation of certain in-stream structures to increase variability in water flow and depth and enhance in-stream cover, and the

restoration and enhancement of vegetation on the banks of the river in the Upper ½ Mile Reach, in accordance with the Upper ½ Mile Reach Removal Action Work Plan.

b. EPA intends, as part of the 1 ½ Mile Reach Removal Action, to perform Restoration Work in the 1 ½ Mile Reach similar to that described in subparagraph 118.a above, as well as the installation of other structures to create pools and riffles (consistent with the Removal Action), and such work shall be funded in accordance with the cost-sharing provisions for the 1 ½ Mile Reach Removal Action as set forth in Paragraphs 103-111.

c. As part of the Silver Lake Area Removal Action, provided for in this Consent Decree, Settling Defendant shall perform habitat and recreational enhancements, including physical enhancement of the submerged shallow shelf in the lake adjacent to the shoreline, capping and vegetating an "island" located near the discharge outfall to the lake, planting of trees and other vegetation on the northern and eastern banks of the lake, planting of herbaceous vegetation on the remaining banks of the lake (as part of response activities at those banks), and installation of public access and use areas consisting of walking paths and picnic areas on the northern and eastern sides of the lake, all in accordance with Attachment I of the SOW. Settling Defendant shall also pay $75,000 to the Trustees in accordance with Paragraph 114.d for the Trustees to perform aquatic habitat and fish restoration in Silver Lake, and shall have no further obligation relating to those aquatic habitat and fish restoration activities.

d. As part of the pertinent Removal Actions at the GE Plant Area and Former Oxbow Areas, Settling Defendant shall perform the following Restoration Work at property owned by Settling Defendant:

(i) As part of the Unkamet Brook Area Removal Action, Settling Defendant shall reroute the brook to its approximate former channel, plant vegetation along the western banks and disturbed eastern banks of the rerouted channel, remove the existing stand of phragmites located in an approximate 2-acre wetland area east of Unkamet Brook, plant herbaceous vegetation on the surface of the landfill/consolidation area cap to be installed over the unpaved portion of the former Unkamet Brook interior landfill and control nuisance species in the Unkamet Brook Removal Action area, all in accordance with Attachment I of the SOW.

(ii) In the 200-foot-wide riparian strip located in East Street Area 2-South between the former Thermal Oxidizer location and the downstream boundary of the GE Plant Area (as depicted on Figure I-1 of Attachment I of the SOW), to enhance stormwater retention capacity and habitat quality, Settling Defendant shall create a vegetated buffer through the planting of an herbaceous native grassland community and installation of other habitat enhancements in accordance with Attachment I of the SOW.

(iii) At the former Hill 78 Consolidation Area (after completion of use for on-plant consolidation of excavated material), Settling Defendant shall plant an herbaceous native grassland community and install other habitat enhancements in accordance with Attachment I of the SOW.

(iv) At the Newell Street and Lyman Street parking lots, Settling Defendant shall plant an herbaceous native grassland community and install other habitat enhancements in accordance with Attachment I of the SOW.

e. To encourage increased wildlife use, Settling Defendant shall install and monitor a total of 12 acres, or the equivalent of 12 acres, of forested/wetland habitat, consisting of approximately 9.75 acres of floodplain forest habitat and approximately 2.25 acres of freshwater palustrine wetlands, at either: (1) an off-site non-contaminated riparian area within the Housatonic River watershed outside the Site ("Off-Site Restoration Area") designated by the Trustees and mutually agreed upon with Settling Defendant; or (2) a combination of the Off-Site Restoration Area and Former Oxbows A and C, in accordance with Attachment I of the SOW and the following provisions:

(i) Settling Defendant shall notify the LAT within 24 months from the entry of this Consent Decree whether it intends to use Former Oxbows A and C for the installation of forested/wetland habitat. If Settling Defendant decides to use Former Oxbows A and C for this purpose, Settling Defendant shall install a minimum of six acres of forested/wetland habitat at Former Oxbows A and C. Settling Defendant shall install the forested/wetland habitat in areas of Former Oxbows A and C that have average PCB concentrations at or below 10 ppm in the top foot and 15 ppm in the top three feet and where an Engineered Barrier will not be installed. Settling Defendant shall obtain an appropriate CER for such area in accordance with Paragraph 58 of this Consent Decree. If Settling Defendant elects to use Former Oxbows A and C for this purpose and can satisfy the above conditions and all of the requirements and Performance Standards set

forth in Attachment I of the SOW, then Settling Defendant shall install the remainder of the required 12 acres, or the equivalent of the remainder of the required 12 acres, of forested/wetland habitat at the Off-Site Restoration Area.

(ii) If, within 24 months of entry of this Consent Decree, Settling Defendant notifies the LAT that it does not intend to use Former Oxbows A and C for the installation of forested/wetland habitat or is unable to demonstrate to the Trustees, prior to the installation of forested/wetland habitat, that the conditions in subparagraph (i) above and the requirements and Performance Standards set forth in Attachment I of the SOW will be satisfied at Former Oxbows A and C, then Settling Defendant shall install the entire 12 acres, or the equivalent of 12 acres, of forested/wetland habitat at the Off-Site Restoration Area.

(iii) The location of the Off-Site Restoration Area shall be designated by the Trustees, subject to mutual agreement with Settling Defendant on the area selected. The Off-Site Restoration Area will consist of a non-contaminated riparian area outside of the Site. Settling Defendant shall not incur any costs or have any responsibility for obtaining access agreements for, or securing any kind of property interest in, the Off-Site Restoration Area, including, but not limited to, ownership, easements or restrictions. Settling Defendant's sole obligations with respect to the Off-Site Restoration Area shall be to install and monitor (for a period not to exceed 5 years) the forested habitat/wetland in accordance with the requirements and Performance Standards set forth in Attachment I of the SOW after consultation with the Trustees. Based on consultation with, and approval from, the Trustees, the planting densities and

other specific requirements and Performance Standards set forth in Attachment I of the SOW for the Off-Site Restoration Area may be modified to accommodate any unique features presented by that area; provided, however, that Settling Defendant's obligations to install and monitor the forested/ wetland habitat for the Off-Site Restoration Area shall not exceed the equivalent of 12 acres (if Former Oxbows A and C are not used) or the number of acres not installed at Former Oxbows A and C (if Former Oxbows A and C are used).

(iv) If Settling Defendant does not use Former Oxbows A and C for the installation of forested/wetland habitat, Settling Defendant shall pay to the Trustees the sum of $60,000 (in addition to the payments specified in Paragraph 114) for habitat and wetlands impacts associated with PCB contamination and with Removal Actions at the Site. This payment shall be made using the same procedures described in Paragraph 115.

f. Settling Defendant acknowledges that the Restoration Work in this Paragraph may be in addition to work that otherwise might be required to implement the Removal Actions; provided, however, that nothing in this Paragraph 118 shall be construed to require, or to allow the Trustees to require, Settling Defendant to perform additional restoration activities beyond those generally described in this Paragraph 118 and in Paragraph 123 of this Consent Decree and as specified in the Upper ½ Mile Reach Removal Action Work Plan and in the SOW.

119. Work Plans for Restoration Work Components. For the Restoration Work component generally described in Paragraph 118.a, Settling Defendant shall perform

such component in accordance with the design details set forth in the Upper ½ Mile Reach Removal Action Work Plan (Appendix F to this Consent Decree), as approved by EPA and the Trustees. For each of the Restoration Work components generally described in Paragraphs 118.c through 118.e and in Attachment I of the SOW, Settling Defendant shall include specific plans for design and implementation of such component as part of its Removal Design/Removal Action ("RD/RA") Work Plan for the individual Removal Action for the area in which such Restoration Work component will be conducted and, for the Off-Site Restoration Area, in a separate Restoration Design/Restoration Action Work Plan. In addition, Settling Defendant shall develop and include in each such RD/RA Work Plan a detailed Restoration Project Monitoring and Maintenance Plan for the pertinent Restoration Work component, which shall be designed to achieve the monitoring and maintenance Performance Standards set forth in Attachment I of the SOW. The portions of the RD/RA Work Plans relating to the Restoration Work shall, in addition to the review and approval by EPA, after reasonable opportunity for review and comment by the State, pursuant to Section XV, also be subject to the review and approval of the Trustees, in accordance with Paragraph 79.

120. Certification of Completion of Installation of Restoration Work. Upon completion of installation of each Restoration Work component generally described in Paragraph 118.a, c, d, and e, including the achievement of applicable Performance Standards for installation of such component as set forth in the Removal Action Work Plan for the Upper ½ Mile Reach or in Attachment I of the SOW (as applicable), Settling Defendant shall submit to the LAT four copies of a Completion of Installation of

Restoration Work Report. Such report shall describe the activities undertaken by Settling Defendant and how the applicable Performance Standards for the installation of the Restoration Work component have been achieved. After submittal of the Completion of Installation of Restoration Work Report to the LAT, Settling Defendant shall schedule and conduct an installation inspection and meeting to be attended by Settling Defendant, EPA and the Trustees. Within 30 days of completion of the installation inspection, the Trustees, through the LAT, will notify Settling Defendant in writing as to whether the Restoration Work component has been installed in accordance with this Consent Decree and whether the applicable Performance Standards for the installation of the Restoration Work component have been achieved. The monitoring and maintenance portions of a Restoration Work component will not be required to be completed before the Trustees may issue such a notification or before EPA issues a Certification of Completion of the particular Removal Action for the area where such Restoration Work component was installed. If the Trustees determine that installation of the Restoration Work component has not been completed in accordance with this Consent Decree or that the applicable Performance Standards for the installation of the Restoration Work component have not been achieved, the LAT will notify Settling Defendant in writing of the activities that must be undertaken to complete the installation of the Restoration Work component; provided, however, that the Trustees may not modify the applicable Performance Standards (except as provided in Paragraph 217 (Modification) of this Consent Decree). Settling Defendant shall perform all activities described in the notice subject to its right to invoke the dispute resolution procedures set forth in Section XXIV.. Settling Defendant shall

submit the Certification of Installation of Restoration Work and conduct the installation inspection and meeting with the Trustees no less than 30 days prior to seeking Certification of Completion of the individual Removal Action from EPA. Once the Trustees have determined that a Restoration Work component has been installed in accordance with this Consent Decree and that the applicable Performance Standards for installation of such component have been achieved, the Trustees will so notify Settling Defendant and EPA. Settling Defendant may contest the Trustees' failure to respond to a request by Settling Defendant for such notification, pursuant to Section XXIV (Dispute Resolution) of this Consent Decree.

121. Certification of Completion for Restoration Work. Upon completion of each Restoration Work component generally described in Paragraph 118.a, c, d and e and the achievement of all of the Performance Standards, including those for monitoring and maintenance, as set forth in the Removal Action Work Plan for the Upper ½ Mile Reach or in Attachment I of the SOW (as applicable), Settling Defendant shall submit to the LAT four copies of a Completion of Restoration Work Report. Such report shall describe the activities undertaken by Settling Defendant and how all of the Performance Standards for the Restoration Work component have been achieved. After submittal of the Completion of Restoration Work Report to the LAT, Settling Defendant shall schedule and conduct a pre-certification inspection and meeting to be attended by Settling Defendant, EPA and the Trustees. Within 30 days of completion of the pre-certification inspection, the Trustees, through the LAT, will notify the Settling Defendant in writing as to whether the Restoration Work project has been completed in accordance with this Decree and

whether all of the Performance Standards for the Restoration Work component, including those for monitoring and maintenance, have been achieved. If the Trustees determine that the Restoration Work component has not been completed in accordance with this Consent Decree or that all of the Performance Standards for the Restoration Work component have not been achieved, the LAT will notify the Settling Defendant in writing of the activities that must be undertaken to complete the Restoration Work component; provided, however, that the Trustees may not modify the applicable Performance Standards (except as provided in Paragraph 217 (Modification) of this Consent Decree). Settling Defendant shall perform all activities described in the notice subject to its right to invoke the dispute resolution procedures set forth in Section XXIV. Once the Trustees have determined that a Restoration Work component has been completed in accordance with this Consent Decree and that the Performance Standards for such component, including those relating to monitoring and maintenance, have been achieved, the Trustees will so notify Settling Defendant and EPA. Settling Defendant may contest the Trustees' failure to respond to a request by Settling Defendant for such notification, pursuant to Section XXIV (Dispute Resolution) of this Consent Decree.

122. Non-Interference With Restoration Work at Settling Defendant Property. This Paragraph applies to the following areas of Settling Defendant Property where Restoration Work is to be performed by Settling Defendant ("Settling Defendant Restoration Areas"): (1) the portions of the riverbanks in the Upper ½ Mile Reach owned by Settling Defendant where Restoration Work shall be performed pursuant to Paragraph 118.a; (2) the banks of the rerouted Unkamet Brook and the surface of the unpaved

portion of the former Unkamet Brook landfill, where Restoration Work shall be performed pursuant to Paragraph 118.d(i); and (3) the 200-foot-wide riparian strip in East Street Area 2-South (between the former Thermal Oxidizer location and the downstream boundary of the GE Plant Area), the Newell Street and Lyman Street parking lots, and the surface of the Hill 78 Consolidation Area, where Restoration Work shall be performed pursuant to Paragraphs 118.d(ii)-(iv). Upon completion of installation of the Restoration Work at each of these areas, Settling Defendant shall prepare and submit to the LAT, with the Completion of Installation of Restoration Work Report under Paragraph 120, for the Trustees' approval, maps showing the final delineation of the Settling Defendant Restoration Areas subject to this Paragraph. The Trustees' approval of the final delineation of the Settling Defendant Restoration Areas subject to this Paragraph shall be in conjunction with and pursuant to the same procedures for the Trustees' Certification of Completion of Installation of Restoration Work under Paragraph 120.

a. Subject to the exceptions set forth in Paragraph 122.b below, commencing upon receipt from the Trustees of (1) Certification of Completion of Installation of Restoration Work under Paragraph 120, and (2) approval of the final delineation of the Settling Defendant Restoration Areas subject to this Paragraph for each area, Settling Defendant shall not take, and shall not allow its employees, agents, representatives, contractors, or lessees to take, any of the following actions within such Settling Defendant Restoration Areas:

(i) Construction or placement within such Restoration Areas of any structure, pavement, or other types of materials or items that would materially impact the habitat created by the Restoration Work;

(ii) Removal or destruction of any vegetation installed within such Restoration Areas; or

(iii) Any other activity within, or use of, such Restoration Areas that would materially impair or have material adverse impacts on the habitat created by the Restoration Work in such Restoration Areas.

b. The restrictions and prohibitions set forth in Paragraph 122.a (above) shall not apply to prohibit or restrict the following:

(i) Any response actions undertaken by Settling Defendant, EPA, MADEP or their employees, agents, representatives, or contractors pursuant to this Consent Decree;

(ii) Any monitoring and maintenance activities undertaken by Settling Defendant or its employees, agents, representatives, or contractors as part of the Restoration Work component pursuant to this Consent Decree;

(iii) The destruction, removal, or cutting of vegetation as part of maintenance of such vegetation, or as necessary to implement disease prevention measures, to eliminate a threat to public safety, or to remove invasive nuisance species;

(iv) Activities necessary to respond to an emergency at or near the Settling Defendant Restoration Area, such as fire, flood, or other situation that poses a danger to public health, welfare or the environment;

(v) Actions, activities or work permitted or approved by the Trustees; and/or

(vi) Any other activities or uses not otherwise prohibited by Paragraph 122.a.

c. Settling Defendant shall not sell, transfer, mortgage, assign or otherwise dispose of any Settling Defendant Restoration Area unless, prior to such sale, transfer, mortgage, assignment or other property disposition, Settling Defendant: (i) obtains an agreement from such purchaser, mortgagee, transferee, assignee, or other property interest transferee to impose upon such Restoration Area a legally enforceable Conservation Easement and Restriction that embodies the same restrictions set forth in this Paragraph and that will run with the land; and (ii) notifies the LAT of the proposed conveyance and the terms of the Conservation Easement and Restriction at least 60 days prior to the proposed conveyance.

d. Nothing in this Paragraph 122 shall be deemed to affect the actions of Settling Defendant outside the Settling Defendant Restoration Areas or to authorize the imposition of any restrictions on Settling Defendant's activities at or use of its property outside such Restoration Areas.

123. Other Natural Resource Protection and Restoration Actions.

a. Dam Integrity Studies. Within 60 days after entry of this Consent Decree, Settling Defendant shall conduct an assessment of the integrity of Woods Pond Dam and Rising Pond Dam. The assessment shall identify and evaluate conditions and circumstances affecting dam integrity including those that could lead to catastrophic

failure of the dams and/or substantial release of PCBs. Following such assessment, but no later than 90 days after entry of this Decree (unless an extension is approved by the Trustees, after reasonable opportunity for review and comment by EPA and MADEP), Settling Defendant shall submit a report on the assessment to the LAT, EPA and MADEP. Settling Defendant shall discuss with the Trustees, EPA and MADEP the need for and type of appropriate interim measures, if any, necessary to ensure dam integrity so as to prevent catastrophic failure and/or substantial release of PCBs at or from Woods Pond Dam and/or Rising Pond Dam. To the extent that the Trustees, EPA and MADEP believe that measures other than Settling Defendant's existing dam inspection and maintenance program and other measures (if any) proposed by Settling Defendant in its report are necessary to ensure dam integrity so as to prevent catastrophic failure and/or substantial release of PCBs at these dams, they will provide the technical information underlying their position to Settling Defendant for discussion. If, based on these discussions, Settling Defendant, the Trustees, EPA and MADEP agree on the need for and type of such interim measures, Settling Defendant shall undertake the agreed-upon interim measures in accordance with good engineering principles. If Settling Defendant, the Trustees, EPA and MADEP do not agree on the need for or type of interim measures, the Trustees, after consultation with EPA and MADEP, shall provide to Settling Defendant a written determination as to the measures that the Trustees, EPA and MADEP deem necessary to ensure dam integrity so as to prevent catastrophic failure and/or substantial release of PCBs at these dams. Within 21 days of receipt of that determination, Settling Defendant may initiate dispute resolution by serving on the

LAT, EPA and MADEP a written Statement of Position consistent with Paragraph 135 (Dispute Resolution). If it does not do so, Settling Defendant shall undertake the interim measures determined to be necessary by the Trustee, EPA and MADEP. If Settling Defendant invokes dispute resolution, such dispute resolution proceeding shall proceed initially pursuant to Paragraphs 137 and 142 of this Consent Decree, with an administrative decision by the Trustee Secretaries. If, after receipt of the Trustee Secretaries' decision, Settling Defendant wishes to pursue judicial resolution of the dispute, it shall file with the Court, within 21 days of receipt of the Trustee Secretaries' decision, a motion for judicial review of that decision in accordance with Paragraph 137 of this Consent Decree. Such proceeding shall be conducted in accordance with Paragraph 137 of this Consent Decree, under which judicial review is not limited to the administrative record. In that proceeding, any party to the dispute may request an evidentiary hearing before the Court. Upon the conclusion of the dispute resolution process, Settling Defendant shall undertake all interim measures determined pursuant to such process to be necessary to ensure dam integrity so as to prevent catastrophic failure and/or substantial release of PCBs at Woods Pond Dam and/or Rising Pond Dam.

The requirements of this Paragraph are in addition to any other investigations and response actions that may be required by EPA pursuant to the final modification of the Reissued RCRA Permit or the Rest of River Remedial Action. Subject to Paragraph 166.h (Massachusetts Covenants) of this Consent Decree, nothing in this provision or Consent Decree shall be deemed to limit any obligations or responsibilities for Woods

Pond Dam that Settling Defendant may have under current law, as amended, as the owner of Woods Pond Dam.

b. Conservation Easement. Settling Defendant shall, in accordance with the procedures and schedule set forth in Paragraph 55 of Section XIII (Access and Institutional Controls), execute and record in the Registry of Deeds of Berkshire County a CER, in substantially the form set forth in Appendix N, on 10 acres of wetlands located in the GE Plant Area to the east of the Unkamet Brook landfill, as depicted on a figure attached as Appendix A-5 to this Consent Decree.

c. Greenway/Walkway Projects. Settling Defendant agrees to discuss with the Trustees, EPA, and the City at a later time potential greenway/walkway projects in the vicinity of the river at or near the GE Plant Area; provided, however, that Settling Defendant shall not be subject to any stipulated penalties, liquidated damages, or other enforcement actions relating to any activities under this subparagraph 123.c.

124. PEDA Obligations. PEDA shall pay to the Trustees a total of $4,000,000.00 consisting of in-kind services and/or a percentage of Net Revenues. PEDA intends to use good faith efforts to satisfy this obligation as soon as feasible.

a. In-Kind Services. The Trustees may accept in-kind services of any type that may be offered by or through PEDA, by the City of Pittsfield or by other entities, including those who may be involved in the redevelopment at the GE Plant Area. PEDA shall make good faith efforts to actively assist and support the Trustees in securing in-kind services from the City of Pittsfield and other appropriate entities. Such in-kind services may include, but are not limited to, building space for use by the Trustees (for

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

(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

(B) 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 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 is not protective of human health and the environment.

165. United States' Known Conditions and Information

a. For purposes of Paragraphs 162 and 164.b, except as specified below, the information and the conditions known to EPA shall include the following, to the extent received by EPA 30 days or more prior to the date of lodging of this Consent Decree: (i) the 1981 RCRA Administrative Consent Order; (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) copies submitted to EPA of reports submitted to CTDEP as listed in Appendix W; (vii) the EPA Action Memorandum and the Unilateral Administrative Order (issued Dec. 18, 1996) for the Building 68 Removal Action, the Administrative Record for such Action Memorandum and reports submitted to EPA under such Unilateral Administrative Order; (viii) the EPA

Action Memorandum for the Upper Reach, its Administrative Record and reports submitted to EPA pursuant to that Action Memorandum; (ix) the EPA Action Memorandum for the Allendale School Removal Action and its Administrative Record; (x) other reports submitted to EPA in 1998 and 1999 relating to investigations and other response actions conducted by Settling Defendant at the Site in those years (as listed in Appendix V); (xi) the results of any sampling or other investigations conducted by EPA at the Site; (xii) the EPA Action Memorandum for the Removal Actions Outside the River and its Administrative Record; (xiii) with respect to the Designated Fill Properties, all documents submitted by Settling Defendant to EPA regarding the Designated Fill Properties; and (xiv) the narrative answers submitted by Settling Defendant in response to EPA's September 4, 1997 (supplemented on May 22, 1998) CERCLA Section 104(e) information requests ("EPA's Information Request"), and the September 9, 1997 MADEP information request, as well as the narrative answers submitted by Settling Defendant on August 19, 1996, November 27, 1996, March 19, 1997, June 2, 1997, and September 16, 1997, in response to information requests from MADEP dated July 19, 1996, and October 28, 1996. As of nine months following entry of this Consent Decree, for purposes of Paragraphs 162 and 164.b, the information and the conditions known to EPA shall include the documents specifically referenced in, and submitted with, Settling Defendant's August 19, 1996, November 27, 1996, March 19, 1997, June 2, 1997, and September 16, 1997 responses to MADEP's July 19, 1996, and October 28, 1996 information requests, and the Bates-numbered documents which were referenced by Bates number in, and submitted with, Settling Defendant's narrative responses to EPA's

Information Request and MADEP's September 9, 1997 information request. As of eighteen months following entry of the Consent Decree, for purposes of Paragraphs 162 and 164.b, the information and the conditions known to EPA shall include all other documents submitted by Settling Defendant in response to EPA's Information Request and MADEP's 1996 and 1997 information requests.

b. For purposes of Paragraphs 163 and 164.c, the information and the conditions known to EPA shall include only the information and conditions identified in the subparagraph immediately above, and that information and those conditions known to EPA as of the date of Certification of Completion of each individual Removal or Remedial Action and set forth in the applicable Action Memorandum or final modification of the Reissued RCRA Permit, the administrative record supporting the particular Removal or Remedial Action, the administrative record developed in design or implementation of the particular Removal or Remedial Action, or in any information received by EPA pursuant to the requirements of this Consent Decree or the Reissued RCRA Permit prior to Certification of Completion of the particular Removal or Remedial Action.

166. Massachusetts Covenants

a. (i) 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 provided in Paragraphs 166.k, 167, 168, 175, and 176, the State covenants not to sue or to take administrative action against Settling Defendant, pursuant to the statutes and common law theories listed in Paragraph 166.a(ii), whether on its own behalf or as *parens patriae,* for releases or threatened releases of Waste Material at the

Site (where such Waste Material originated at the GE Plant Area) or for performance of the Work; provided, however, that such covenant is limited to claims or actions: (A) to compel Settling Defendant to implement, comply with, or fund response actions, corrective actions or measures, or similar judicial or administrative response-type injunctive relief; (B) for recovery, reimbursement, contribution, or equitable share of response costs or Natural Resource Damages; and (C) for recovery, reimbursement, contribution, or equitable share of property damage.

(ii) The statutes and common law theories subject to the covenant in Paragraph 166.a(i), and to the limitations set forth therein, are the following: Sections 107, 113, 121(e)(2), 121(f), and 310 of CERCLA; Sections 1002, 1005, 1006, 1008, and 1009 of the Oil Pollution Act; Section 7002 of RCRA; Section 20 of TSCA; Section 505 of the Clean Water Act; Sections 3A, 4, 4A, 5, 9, and 10 of M.G.L. c.21E and Section 11 of M.G.L. c.21E for violation or enforcement of such Sections 3A, 4, 4A, 5, 9, and 10; Section 4 of M.G.L. c. 21H; Sections 5, 7, and 11D of M.G.L. c.12; Sections 42, 44, 46, and 53 of M.G.L. c.21; Sections 9 and 10 of M.G.L. c.21C; Sections 142A, 142B, 160, 160B, and 162 of M.G.L. c.111; Section 169 of M.G.L. c.111 for violation of Section 167; Sections 40, 40A, 42, and 90 of M.G.L. c.131; Section 7A of M.G.L. c.214; Section 39G of M.G.L. c.40; Sections 59 and 59A of M.G.L. c.91; Sections 4, 9, and 11 of M.G.L. c.93A for violation of Section 2; and Section 6 of M.G.L. c.131A (including the implementing regulations of the statutes listed in this subparagraph a(ii)); and nuisance, trespass, negligence, strict liability, or restitution.

(iii) While not agreeing that CERCLA does not authorize challenges to decisions by EPA to waive ARARs for removal actions, the State agrees not to challenge a decision by EPA to waive a standard or requirement for the Removal Actions Outside the River, the Upper ½ Mile Reach Removal Action, or the 1½ Mile Reach Removal Action, based on the status of such standard or requirement as an ARAR. The State further agrees not to challenge any failure by EPA to enforce such a standard or requirement based on the status of such a standard or requirement as an ARAR. The State reserves any other rights it may have with respect to enforcement or waiver of such standard or requirement.

(iv) Nothing in this Paragraph 166 or Paragraph 22 shall be interpreted as modifying or otherwise affecting any of the following:

(A) Settling Defendant's obligations to comply with all ARARs for the Rest of River Remedial Action that have not been waived by EPA pursuant to Section 121 of CERCLA and Special Condition II.J. of the Reissued RCRA Permit;

(B) the State's rights pursuant to Section 121 of CERCLA and to this Consent Decree to receive notice of, and reasonable opportunity to comment on, EPA's remedy selection plans and decision for the Rest of River;

(C) the State's rights pursuant to Paragraph 22.bb of this Consent Decree to seek review of any determination by EPA, in its initial or a revised decision to modify the Reissued RCRA Permit, to waive an ARAR for the Rest of the River Remedial Action or O&M; and

(D) any rights the State may have pursuant to Section 121 of CERCLA to bring an action challenging EPA's determination to waive an ARAR for the Rest of the River Remedial Action or O&M during implementation of such Remedial Action or O&M (other than bringing an action challenging EPA's selection of such Remedial Action or O&M pursuant to Paragraph 22.bb) and/or to bring an action challenging EPA's failure to enforce such an ARAR during implementation of the Rest of the River Remedial Action or O&M; provided that, in either case:

(1) the State brings such action in this Court;

(2) the State brings such action within two years of obtaining actual knowledge of EPA' s determination to waive such ARAR or its failure to enforce such ARAR;

(3) Settling Defendant or the State may request this Court to grant a stay, pending the Court's decision, of the work (or portion of the work) for which resolution of the State's challenge is necessary to be decided prior to proceeding or proceeding further with such work (or portion thereof); and if Settling Defendant or the State does so, there will be a rebuttable presumption in favor of granting such stay and the Court will consider all relevant equitable factors in deciding whether to grant such stay;

(4) in the event that the Court holds that EPA has improperly waived such ARAR or has improperly failed to enforce such ARAR, neither Settling Defendant nor EPA shall be required to undo or re-do any implementation work that has previously been completed by Settling Defendant or EPA, so as to comply with such

ARAR. However, Settling Defendant shall be required to comply with such ARAR, in accordance with the Court's decision, in implementing all future work;

(5) 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 determines that EPA improperly waived or declined to enforce 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; and

(6) the United States reserves its rights to respond to any such State challenge, including the United States' right to argue that Section 121 of CERCLA does not provide for such a challenge, and Settling Defendant reserves any rights it may have to respond to any such State challenge.

b. (i) 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 provided in Paragraphs 166.c and 175, the State covenants not to sue or to take administrative action against Settling Defendant for civil or administrative penalties or civil fines with respect to the release or threatened release of Waste Materials at the Site (regardless of the manner in which such Waste Materials may be listed, defined, or characterized under the statutes and regulations listed in subparagraph 166.b(i)(D) and regardless of whether such release or threatened release is characterized as storage, release, threatened release, presence, disposal, discharge, handling or otherwise pursuant to the statutes and regulations listed in subparagraph

166.b(i)(D)) for alleged violations of or noncompliance with the following requirements that occurred prior to the lodging of this Consent Decree and that are based on "known conditions and information" (as set forth in Paragraph 166.b(iv)):

(A) the Consent Order issued by EPA on June 30, 1981, pursuant to Sections 3007, 3013, and 7003 of RCRA;

(B) the RCRA Permit;

(C) the Administrative Consent Orders executed in 1981 and 1990 by MADEP and Settling Defendant, to the extent such Orders applied to any properties within the Site; and

(D) M.G.L. c.21E; the Massachusetts Contingency Plan; M.G.L. c.21H; Sections 26-53 of M.G.L. c.21; M.G.L. c.21C; Sections 150A and 150B of M.G.L. c.111; Sections 40, 40A, 42, and 90 of M.G.L. c.131; M.G.L. c. 91; M.G.L. c.93A; and M.G.L. c. 131A (including the implementing regulations of the statutes listed above and including, but not limited to, alleged violations or noncompliance with respect to any report, response, or submission by Settling Defendant, or failure to make a report, response, or submission).

(ii) The State and Settling Defendant concur that the remediation of the existing Waste Material contamination at the Site is to be governed by this Consent Decree, subject to the terms and conditions set forth herein. Accordingly, 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, except as provided in Paragraphs 166.c and 175, the State covenants not to sue or to take administrative

action against Settling Defendant for civil or administrative penalties or civil fines with respect to the performance of the Work, or with respect to the release or threatened release of Waste Materials at the Site (regardless of the manner in which such Waste Materials may be listed, defined, or characterized under the statutes and regulations listed in subparagraph 166.b(iii) and regardless of whether such release or threatened release is characterized as storage, release, threatened release, presence, disposal, discharge, handling or otherwise pursuant to the statutes and regulations listed in subparagraph 166.b(iii)) for alleged violations of or noncompliance with the following requirements occurring after the lodging of this Consent Decree:

(A) those duties otherwise imposed by state law that have been preempted by operation of CERCLA;

(B) any obligations under state law where the conduct or inaction that underlies such violation or noncompliance also constitutes a violation of Settling Defendant's obligations under this Consent Decree (other than conduct or inaction that constitutes a violation solely of the first sentence of Paragraph 8 of this Consent Decree and not of any other provision of this Consent Decree); or

(C) any obligations that Settling Defendant otherwise may have independent of this Consent Decree, pursuant to the statutes and regulations listed in Paragraph 166.b(iii), with respect to the continued presence or passive release of Waste Materials at the Site that this Consent Decree is designed to address (regardless of the manner in which such Waste Materials may be listed, defined, or characterized under such statutes and regulations and regardless of whether such continued presence or

passive release is characterized as storage, release, threatened release, disposal, discharge, handling, or otherwise pursuant to such statutes), regarding the following:

(1) a duty to maintain records regarding, to abate, or to respond to such continued presence or passive release;

(2) a duty to secure a permit or other approval for such continued presence or passive release; or

(3) damage or injury caused by such continued presence or passive release.

(iii) The statutes and regulations referred to in Paragraph 166.b(ii) are: M.G.L. c.21E; the Massachusetts Contingency Plan; M.G.L. c.21H; Sections 26-53 of M.G.L. c.21; M.G.L. c.21C; Section 39G of M.G.L. c.40 and Sections 160, 162, and 170 of M.G.L. c.111; Sections 150A and 150B of M.G.L. c. 111; Sections 40, 40A, 42, and 90 of M.G.L. c.131; M.G.L. c. 91; M.G.L. c.93A; and M.G.L. c.131A (including the implementing regulations of the statutes listed above).

(iv) For purposes of Paragraph 166.b(i), "known conditions or information" shall mean:

(A) Information and conditions described in the following, to the extent received by the State 30 or more days prior to lodging of this Consent Decree:

(1) The reports submitted to MADEP in accordance with, and the documents issued by MADEP pursuant to, the 1981 Administrative Consent Order executed by MADEP and Settling Defendant;

(2) The reports submitted to MADEP in accordance with, and the documents issued by MADEP pursuant to, the 1990 Administrative Consent Orders (dated May 22 and July 2, 1990) executed by MADEP and Settling Defendant;

(3) The reports submitted to MADEP pursuant to the RCRA Permit;

(4) The reports and other documents submitted by Settling Defendant to MADEP pursuant to the Unilateral Administrative Order (issued by EPA to Settling Defendant on December 18, 1996) for the Building 68 Removal Action;

(5) Reports and other documents submitted to MADEP by Settling Defendant which were also submitted to EPA pursuant to the EPA Action Memorandum for the Upper Reach;

(6) The reports listed in Appendix V (which consist of other reports submitted to MADEP in 1998 and 1999 relating to investigations and other response actions conducted by Settling Defendant at the Site in those years);

(7) The results of any sampling or other investigations conducted by MADEP at or regarding the Site;

(8) Copies of reports submitted by EPA to MADEP of sampling or other investigations conducted by EPA at the Site; and

(9) Settling Defendant's responses (including Bates numbered and other documents submitted in such responses) to MADEP's 1996 and 1997 Requests for Information; and

(B) Information made known to MADEP concerning the Site, after entry of the Consent Decree, relating to the presence, concentrations, and quantities of Waste Materials or practices and policies for the treatment or disposal of Waste Materials (regardless of the manner in which such Waste Materials may be listed, defined, or characterized under the statutes and regulations listed in subparagraph 166.b(i)(D) that is generally consistent with such information already known to MADEP at least 30 days prior to lodging of this Consent Decree, as provided in subparagraphs iv(A)(1)-(9) above.

c. The covenant in Paragraph 166.b shall not apply to, and the State specifically reserves, any judicial or administrative claim seeking civil or administrative penalties for the following: (i) failure to notify MADEP of releases or threats of releases of oil or hazardous material; (ii) failure to timely, adequately, and completely respond to, or comply with, requests for information issued by MADEP, including, but not limited to failure to produce complete and timely information and records to MADEP with regard to the transportation, transfer, or disposal of fill, debris, or other material from the GE Plant Area, and making, or causing any person to make, false, inaccurate, incomplete, or misleading statements with regard to the transportation, transfer, or disposal of fill, debris, or other material from the GE Plant Area; (iii) to the extent not covered by clauses (i) and (ii), failure, prior to the lodging of this Consent Decree, to produce complete and timely information and records to MADEP with regard to the transportation, transfer, or disposal

of fill, debris, or other material from the GE Plant Area to or at Newell Street Area I or II as defined in the SOW; and (iv) to the extent not covered by clauses (i) and (ii), making, or causing any person to make, false, inaccurate, incomplete, or misleading statements, prior to the lodging of this Consent Decree, with regard to the transportation, transfer, or disposal of fill, debris, or other material from the GE Plant Area to or at Newell Street Area I or II as defined in the SOW; and (v) the matters reserved in Paragraph 175 (General Reservations), including all claims, liability, and actions expressly referenced therein.

d. Except as otherwise expressly provided by the terms of Paragraph 166.b, the covenant set forth in Paragraph 166.b does not apply to any judicial or administrative action through which the State is seeking a civil penalty for violations of those statutes set forth in Paragraph 166.b; provided, however, that nothing in this subparagraph shall be interpreted as qualifying the terms of Paragraph 166.c.

e. The State's covenants at Paragraphs 166.b and 166.j shall be effective upon entry of this Consent Decree. Except with respect to the covenants for future liability at Paragraphs 166.a and 166.g, the covenants not to sue at Paragraphs 166.a and 166.g shall take effect upon the receipt by the State of the payment required by Paragraph 94.d(i) of Section XX (Reimbursement of Costs). With respect to future liability, the covenants not to sue at Paragraphs 166.a and 166.g 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, 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 under Paragraphs 166.a and 166.g shall be effective upon EPA's issuance of the final Certification of Completion of Work for the Site issued pursuant to Paragraph 89 of this Consent Decree. EPA's Certification of Completion of Work for the Site shall state that it is the final Certification for purposes of this Paragraph 161.e.

f. 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 State's 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.

g. Without addressing whether the United States could lawfully do so, the Parties acknowledge that the United States has not to date delegated to the State the authority to take administrative or judicial action pursuant to Section 106 of CERCLA. The Parties further acknowledge that they intend that, in the event the United States were to delegate such authority to the State, the State shall not exercise such authority to

the extent that the United States has covenanted not to exercise such authority in Paragraph 161 of this Consent Decree.

h. Nothing in this Consent Decree affects Settling Defendant's obligations pursuant to M.G.L. c.253, §§ 44-50A, and to the regulations promulgated thereunder, and the State reserves the right to take any administrative or judicial action to enforce any such obligations, including, but not limited to, issuing administrative orders or pursuing judicial enforcement or cost recovery; provided, however, that the Parties acknowledge that such authority shall be used exclusively with regard to the dam safety purposes underlying such obligations, and not to seek additional response actions or costs to address the contamination concerns addressed by this Consent Decree.

i. The covenants included in this Paragraph 166 do not constitute a Brownfields Covenant Not to Sue Agreement entered into pursuant to M.G.L. c.21E, § 3A(j)(3) and 940 C.M.R. 23.00.

j. Notwithstanding any other provision of this Consent Decree, the State covenants not to seek civil penalties pursuant to Section 310 of CERCLA for any violation of this Consent Decree by Settling Defendant.

k. The covenants in this Paragraph 166 shall not apply to, and the State specifically reserves, any rights or claims that the Massachusetts Highway Department may have against Settling Defendant under any contracts, existing as of the date of lodging of this Consent Decree, between the Massachusetts Highway Department and Settling Defendant relating to the Massachusetts Highway Department's project to reconstruct Merrill Road and East Street in Pittsfield, Massachusetts, including but not

limited to such contracts regarding the properties and easements taken by eminent domain from Settling Defendant by the Massachusetts Highway Department in 1997 for the purpose of such reconstruction.

167. State's Pre-Certification Reservations (Except Relating to Natural Resource Damages): The State 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 the State for any other response action at the Site. Subject to Paragraph 177 (Issuance of Administrative Orders) of this Consent Decree, the State on behalf of MADEP reserves, and this Consent Decree is without prejudice to, any 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 State law, including but not limited to M.G.L. c. 21E, seeking to compel Settling Defendant (1) to perform other response actions at the Site, or (2) to reimburse the State 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, prior to EPA's Certification of Completion of each individual Removal or Remedial Action;

(i) conditions at the Site, previously unknown to the State, are discovered or become known to the State, or

(ii) information previously unknown to the State is received by the State, in whole or in part;

and the MADEP Commissioner or his or her delegate determines, pursuant to M.G.L. c. 21E, 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 MADEP'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 the State pursuant to this Paragraph.

168. State's Post-Certification Reservations (Except Relating to Natural Resources Damages). The State 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 the State for any other response action at the Site. Subject to Paragraph 177 of this Consent Decree, the State, on behalf of MADEP, 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 State law, including but not limited to M.G.L. c. 21E, seeking to compel Settling Defendant (1) to perform other response actions at the Site, or (2) to reimburse the State 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 the State, are discovered or become known to the State after the Certification of Completion, or

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

and the MADEP Commissioner or his or her delegate determines, pursuant to M.G.L. c. 21E, 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 MADEP'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 the State pursuant to this Paragraph.

169. State's Known Information and Conditions.

a. For purposes of Paragraphs 167 and 174.b, except as specified below, the information and the conditions known to the State shall include only the information and conditions described in the following, to the extent received by the State 30 days or more prior to lodging:

(i) The reports submitted to MADEP in accordance with, and the documents issued by MADEP pursuant to, the 1981 Administrative Consent Order executed by MADEP and Settling Defendant;

(ii) The reports submitted to MADEP in accordance with, and the documents issued by MADEP pursuant to, the 1990 Administrative Consent Orders (dated May 22 and June 29, 1990) executed by MADEP and Settling Defendant;

(iii) The reports submitted to MADEP pursuant to the RCRA Permit;

(iv) Reports and other documents submitted by Settling Defendant to MADEP pursuant to the EPA Unilateral Administrative Order (issued to Settling Defendant on Dec. 18, 1996) for the Building 68 Removal Action;

(v) Reports and other documents submitted by Settling Defendant to MADEP pursuant to the EPA Action Memorandum for the Upper Reach;

(vi) The EPA Action Memorandum for the Allendale School Removal Action and its Administrative Record;

(vii) The reports listed in Appendix V, which consist of other reports submitted to MADEP in 1998 and 1999 relating to investigations and other response actions conducted by Settling Defendant at the Site in those years;

(viii) The results of any sampling or other investigations conducted by MADEP at the Site;

(ix) Copies of reports submitted by EPA to MADEP of sampling or other investigations conducted by EPA at the Site; and

(x) Settling Defendant's written narrative answers (excluding documents referenced therein) submitted by Settling Defendant in response to MADEP's July 19, 1996, October 28, 1996, and September 9, 1997 Requests for Information.

As of nine months following entry of this Consent Decree, for purposes of Paragraphs 167 and 174.b, the information and the conditions known to the State shall include the documents referenced in and submitted with Settling Defendant's responses to MADEP's 1996 Requests for Information and the Bates-numbered documents which Settling Defendant submitted with and specifically cross-referenced in its narrative answers submitted in response to MADEP's September 9, 1997 Request for Information. As of eighteen months following entry of this Consent Decree, for purposes of Paragraphs 167 and 174.b, the information and the conditions known to the State shall include the remaining Bates-numbered documents submitted by Settling Defendant in response to MADEP's September 9, 1997 Request for Information.

b. For purposes of Paragraphs168 and 174.c, the information and the conditions known to the State shall include only the information and the conditions identified in subparagraph 169.a, and that information and those conditions known to MADEP as of the date of the Certification of Completion of each individual Removal or Remedial Action, EPA's administrative record supporting the particular Removal or Remedial Action, the administrative record developed in design or implementation of the particular Removal or Remedial Action, or any information received by MADEP pursuant to the requirements of this Consent Decree or the Reissued RCRA Permit prior to the Certification of Completion of the particular Removal or Remedial Action.

170. Connecticut Covenants

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 this Consent Decree, and except as specifically provided in Paragraphs 171, 172, 175 and 176 of this Section, Connecticut covenants not to sue or take administrative action against Settling Defendant pursuant to Sections 107, 121(e)(2), or 113 of CERCLA, Sections 310 and 106 of CERCLA, Sections 7002 and 7003 of RCRA, Sections 20 and 7 of TSCA, Sections 1002, 1005, 1006, 1008 and 1009 of the Oil Pollution Act or Sections 505 and 504 of the Clean Water Act for releases or threatened releases of substances subject to these statutes at the Site, where such substances originated at the GE Plant Area, or for performance of the Work; and not to sue or take administrative action against Settling Defendant pursuant to the Connecticut statutory provisions set forth herein with respect to releases, spills or discharges of or pollution from, or threatened releases, spills or discharges of or pollution from, the chemical liquids, hazardous wastes, oil or petroleum, waste oil or solid, liquid or gaseous products subject to such statutes at the Site, where such substances originated at the GE Plant Area, or for performance of the Work. The Connecticut statutory provisions subject to Connecticut's covenant are Sections 5, 6, 6a, 7, 427, 432, 435, 451 and 452 of Title 22a of the Connecticut General Statutes, and, to the extent Connecticut participates in the New England Interstate Water Pollution Control Commission, these covenants include Section 309, Article XII of the Connecticut General Statutes. For purposes of this subparagraph a, the phrase "substances subject to these statutes" includes wastes, hazardous constituents, refuse, materials, chemical

substances or mixtures, PCBs, pollutants, oil, hazardous substances, and pollution sources.

b. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of this Consent Decree, and except as specifically provided in Paragraphs 171, 172, 175 and 176 of this Section and subject to the limitations set forth herein, Connecticut covenants not to sue Settling Defendant pursuant to Sections 7002 and 3004(u) or (v) of RCRA, Sections 7002 and 3008 of RCRA, Sections 20 and 17 of TSCA, Sections 505 and 309 of the Clean Water Act, or Sections 505 and 311 of the Clean Water Act; and further covenants not to sue Settling Defendant for nuisance, negligence, negligence per se, strict liability for ultrahazardous activity, restitution, reckless misconduct, trespass, or under the public trust doctrine theory, with respect to pollution, chemical liquids, hazardous wastes, oil or petroleum, waste oil or solid, liquid or gaseous products at the Site where such pollution, chemical liquids, hazardous wastes, oil or petroleum, waste oil or solid, liquid or gaseous products originated at the GE Plant Area, or for performance of the Work; and further covenants not to sue or take administrative action against Settling Defendant, pursuant to the statutory provisions set forth herein, with respect to the pollution, chemical liquids, hazardous wastes, oil or petroleum, waste oil or solid, liquid or gaseous products subject to the statutes set forth herein at the Site, where such pollution, chemical liquids, hazardous wastes, oil or petroleum, waste oil or solid, liquid or gaseous products originated at the GE Plant Area, or for performance of the Work. The Connecticut statutory provisions subject to Connecticut's covenant are Sections 6b, 6e, 14 et seq.

(Environmental Protection Act), 123, 131, 133c-g, 225, 226, 226a, 226b, 416, 430, 438, 449(c) and 463-469 of Title 22a of the Connecticut General Statutes. Connecticut's covenant set forth in this subparagraph 170.b, with respect to the aforementioned common law and statutory provisions, does not apply to any action other than: (i) an action to compel Settling Defendant to implement response actions, corrective actions or measures, or for other similar judicial or administrative injunctive relief; or (ii) an action for recovery of response costs, damages, civil penalties or Natural Resource Damages.

c. For purposes of subparagraphs a and b of this Paragraph 170, the phrase "pollution, chemical liquids, hazardous wastes, oil or petroleum, waste oil or solid, liquid or gaseous products" shall be as defined in Chapters 445 or 446k of the Connecticut General Statutes.

d. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by Connecticut of the payment required by Paragraph 94.e of Section XX (Reimbursement of Costs). With respect to future liability, the covenant not to sue shall be effective for each Removal or Remedial Action upon EPA's Certification of Completion for that individual Removal or Remedial Action to be performed by the Settling Defendant, except for the 1½ Mile Reach, for which the covenant not to sue for future liability shall be effective upon EPA's completion of the 1½ 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 final Certification of Completion of the Work for the Site pursuant to Paragraph 89 of this Consent Decree.

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 Connecticut's 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.

f. In addition, Paragraphs 166.a(iii) and 166.a(iv) are incorporated into this Paragraph 170.f by reference except that each reference to "the State" shall be read as a reference to "Connecticut," each reference to "Paragraph 166" shall be read as a reference to "Paragraph 170," and each reference to "Paragraph 22.bb" shall be read as a reference to "Paragraph 22.cc."

171. Connecticut's Pre-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, any 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, prior 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, or

(ii) information previously unknown to Connecticut is received by Connecticut, in whole or in part;

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.

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

regarding investigations of the Connecticut portion of the Housatonic River subsequent to 1995 (all as listed in Appendix W); (vii) the EPA Action Memorandum and EPA Unilateral Administrative Order (issued to Settling Defendant on Dec. 18, 1996) for the Building 68 Removal Action, the Administrative Record for such Action Memorandum and reports submitted to EPA under such Unilateral Administrative Order; (viii) the EPA Action Memorandum for the Upper Reach, its Administrative Record, and reports submitted to EPA pursuant to that Action Memorandum; (ix) other reports submitted to EPA in 1998 and 1999 relating to investigations and other response actions conducted by Settling Defendant at the Site in those years (as listed in Appendix V); (x) the EPA Action Memorandum for the Allendale School Removal Action and its Administrative Record; (xi) the EPA Action Memorandum for the Removal Actions Outside the River and its Administrative Record; (xii) the results of any sampling or other investigations conducted by Connecticut at the Site; and (xiii) copies of reports submitted to CTDEP concerning sampling or other investigations conducted by EPA or MADEP at the Site.

b. For purposes of Paragraph 172, the information and the conditions known to Connecticut shall include only the information and conditions identified in the subparagraph immediately above, and that information and those conditions known to Connecticut as of the date of Certification of Completion of each individual Removal or Remedial Action, the administrative record supporting the particular Removal or Remedial Action, the administrative record developed in design or implementation of the particular Removal or Remedial Action, or any information received by Connecticut

pursuant to the requirements of this Consent Decree prior to Certification of Completion of the particular Removal or Remedial Action.

174. Massachusetts Covenants as to the City

a. (i) 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 167, 168, and 175 of this Section and below in this Paragraph 174, the State covenants not to sue or to take administrative action against the City in its capacity as an owner, within the meaning of Sections 5(a)(1) of M.G.L. c.21E and 107(a)(1) of CERCLA, of the portions of the property identified in Appendix U that are within the Site, pursuant to Section 5(a) of M.G.L. c. 21E or Section 107(a) of CERCLA, for releases or threatened releases of Waste Materials at such portions of property within the Site; provided, however, that with respect to the property at 901 Holmes Road (Parcel No. J2-2-1), the State's covenant shall extend only to releases or threatened releases of Waste Materials that originated at the GE Plant Area and that are remediated pursuant to this Consent Decree. Except with respect to the covenants for future liability, these covenants not to sue shall take effect upon entry of this Consent Decree. With respect to future liability, the covenants not to sue shall be effective for each property upon EPA's Certification of Completion for the individual Removal or Remedial Action related to such property. The covenant not to sue in this Paragraph with respect to each particular property is contingent upon the satisfactory performance by the City of its obligations under this Consent Decree as to such particular property.

176. Reservations Relating to Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States, the State and Connecticut, on behalf of their respective Trustees, NOAA, DOI, EOEA and CTDEP, reserve the right to institute proceedings against Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages, if, after lodging of this Consent Decree:

a. there is:

(i) a catastrophic failure of Woods Pond Dam or Rising Pond Dam that results in a substantial release of PCBs from the impoundments behind one or both of the dams to the Housatonic River and/or its associated environs, and such release results in injury to, destruction of, or loss of natural resources. Such action shall be limited to Natural Resource Damages that result from such release.

(ii) with respect to Woods Pond Dam only, material breach of the dam due to Settling Defendant's negligent operation or maintenance of Woods Pond Dam that results in a release of PCBs from the impoundment behind Woods Pond Dam to the Housatonic River and/or its associated environs, that is materially greater than PCB transport from that impoundment under the normal range of flow conditions, and such release results in injury to, destruction of, or loss of natural resources. Such action shall be limited to Natural Resource Damages that result from such release.

b. Any proceedings initiated pursuant to this Paragraph 176 shall be commenced within three years of such release. Except as provided in Paragraph 199.a of this Decree, in any proceedings initiated by the United States, the State or Connecticut

pursuant to this Paragraph, Settling Defendant may assert any defenses available under applicable law.

c. If the Rest of the River Remedial Action addresses the threat of catastrophic dam failure and the management of sediments in the impoundments behind Woods Pond Dam and Rising Pond Dam, the reservation of rights set forth in Paragraph 176.a(i) shall expire as to releases from Rising Pond Dam and Woods Pond Dam upon Certification of Completion of the Rest of the River Remedial Action pursuant to Paragraph 88 (Completion of Each Response Action).

d. Notwithstanding any other provision of this Consent Decree, the United States, the State and Connecticut, on behalf of their respective Trustees, reserve the right to institute proceedings against the City with respect to Natural Resource Damages related to the Site.

177. Issuance of Administrative Orders.

a. The United States, the State and Connecticut agree not to issue any administrative orders to Settling Defendant for the performance of Work that the Settling Defendant is performing or (prior to the time for such performance under the approved schedule) is required to perform under this Consent Decree except as provided in Paragraphs 162, 163, 167, 168, 171 and/or 172 (Pre- and Post-Certification Reservations) of this Consent Decree.

b. The United States, the State and Connecticut agree that, subject to Settling Defendant's satisfactory completion of the Work required by this Consent Decree, the information and conditions currently known to EPA, the State and

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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
U.S. Department of Justice
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. Kilborn
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, the Commonwealth of Massachusetts and Connecticut v. The General Electric Company (D. Mass.)
Consent Decree
APPENDIX D

Protection Agency

nd Restoration
One Congress Street, Suite 1100, Boston, Massachusetts 02114-2023

Enforcement-Sensitive Information Attached

Memorandum

Date: August 4, 1999

Subject: Request for Removal Actions Outside the River at the GE–Housatonic River Site, Pittsfield, Massachusetts–**Action Memorandum**

From: Richard Cavagnero, GE Project Leader
Office of Site Remediation and Restoration

Through: Patricia L. Meaney, Director
Office of Site Remediation and Restoration

To: John P. DeVillars
Regional Administrator

I. Purpose

The purpose of this Action Memorandum is to request and document approval for the proposed removal actions described herein for the GE–Housatonic River Site (the "Site"), Pittsfield, Massachusetts. The proposed removal actions will mitigate the human health and environmental threats posed by the existing levels of polychlorinated biphenyls ("PCBs") and other hazardous substances at the following areas of the Site:

The GE Plant Area, which is further divided into the following:

- The 20s Complex
- The 30s Complex
- The 40s Complex
- East Street Area 2 – South
- East Street Area 2 – North
- East Street Area 1 – North
- Hill 78 Consolidation Area
- Building 71 Consolidation Area
- Hill 78 – Remainder
- Unkamet Brook Area

The schedule for conducting the removal actions is outlined in Section VII of the Consent Decree, with the initial submittal dates specified in Attachment A (for non-groundwater-related removal actions) and Attachment H (for groundwater-related removal actions) of the SOW.

Identification and Analysis of Removal Action Alternatives

EPA performed the Identification and Analysis of Removal Action Alternatives during negotiations with GE. The Agency's analysis of alternatives was necessarily limited due to site-specific factors, principally the extremely large size of the contaminated area and the volume of contaminated soils and sediments. The initial evaluation focused on the question of treatment versus containment, i.e., to what extent, if any, should the PCB contaminated soils and/or sediments be treated to reduce toxicity, mobility, or volume or, alternatively, should containment be used to provide protectiveness.

In making this evaluation, the Agency considered the Superfund program management expectations outlined in the NCP § 300.430 (a) (1) (iii) (A), (B), and (C) for remedial actions since the removal actions under consideration are intended to be final actions. In general, the Agency expects to use treatment to address the principal threats posed by a site, whenever practicable; to use engineering controls for waste that poses a relatively low, long term threat or where treatment is impracticable; and to supplement engineering controls with institutional controls to prevent or limit exposure to remaining residual waste.

The Agency defines principal threat wastes to include liquids, high concentrations of toxic compounds, and highly mobile materials. The principal threat wastes at this Site were the millions of gallons of transformer oils and other liquid wastes containing very high levels (20 - 50 %) of PCBs and which have, for the most part, already been addressed by treatment either on-site in GE's Thermal Oxidizer, which operated from the early 1970s up until the late 1980s, or at off-site commercial incinerators. To the extent that such "principal threat" wastes are recovered or generated at the Site during the conduct of these removal actions, e.g., drums of liquid waste, NAPL recovered from groundwater, etc., these wastes will be sent off-site for treatment and subsequent disposal in accordance with these expectations. Otherwise, the wastes remaining at the Site consist of relatively low levels of PCB contaminated soils and/or sediments which are spread over a large area measuring hundreds of acres. PCBs are relatively immobile due to their low solubility in water. Thus, the Agency's expectation to use treatment to address principal threats, such as liquid wastes, high concentrations of toxic compounds, or highly mobile materials, is not applicable at this Site. Therefore, on-site treatment alternatives were not considered for analysis.

As stated above, if the volume of contaminated sediments and soils exceeds the capacity of the on-site consolidation units, then this material may be proposed for another form of appropriate

management, potentially including on-site treatment and disposal. Should this occur, EPA will further evaluate on-site treatment alternatives.

PCB contamination is present both at the surface and, in many cases, at depths up to 15 feet, including burial in two relatively large landfills at Hill 78 and Unkamet Brook. Hundreds of thousands of cubic yards of soil are contaminated above levels considered to be protective by the Agency. This immense volume of contaminated soils makes it impracticable to fully excavate all of the soils and further to treat the excavated soils. The situation at Silver Lake is similar. Sediments are contaminated with PCBs to depths of five feet and greater over the entire 26 acre lake bottom. The volume of contaminated soil exceeds 175,000 cubic yards (AR Doc. # 9), making it technically infeasible to excavate or dredge the contaminated sediments. Consequently, capping of the Lake bottom is the only feasible alternative, with the exception of a small (i.e., 400 cubic yard) hot spot near the outfall pipe. The hot spot material will be excavated and placed in an on-site consolidation unit. The specific cap design will be determined, after pre-design studies, in accordance with the Performance Standards and design standards set forth in Attachment K to the SOW. Therefore, the alternatives analysis focused on the use of engineering containment in combination with institutional controls to provide protectiveness, in accordance with the aforementioned program expectations.

In evaluating the types of containment remedies which could be used at the Site, either alone or in combination with institutional controls, the Agency considered its experiences at other Superfund sites and at equivalent sites managed under the Massachusetts Contingency Plan, State and Federal ARARs, and the Agency use of presumptive remedies for similar situations or types of wastes. The general approach used at containment remedy sites is to consolidate wastes into a defined area or areas and/or contain in place. This is then followed by the installation of a protective cap, engineered to minimize the infiltration of precipitation into the consolidated wastes and to prevent direct contact with the wastes. Institutional controls, e.g., deed restrictions or EREs, are then used to ensure that the protective cap is not compromised by future activities at the Site, such as excavation.

The alternatives analysis then focused on the range of capping alternatives which could be used at the Site. EPA considered soil cover, paving, hazardous waste landfill caps (a.k.a. RCRA C caps) and various combinations thereof. The approach selected entails excavating surficial contaminated soils in industrial/commercial areas and backfilling with clean fill or enhancing the existing pavement to prevent exposure to contaminated surficial soils. It also includes excavation and replacement of surface and near-surface soil in recreational areas as necessary to meet recreational cleanup standards. Where higher contaminant levels remain at depth, an engineered barrier meeting the requirements of the Massachusetts Contingency Plan will be installed and maintained to prevent direct contact and to minimize infiltration of precipitation. The specific technical requirements for these barriers are similar to those previously used at the

Sprague Electric Site, in North Adams, Massachusetts. Sprague Electric is a similar industrial site with PCB contamination.

Finally, institutional controls comparable to the Massachusetts Environmental Use Restrictions will be effectuated to prevent excavation or other activities that could disturb the barrier or otherwise allow for exposure to contaminated soils remaining at depth.

The two landfills, one of which will also receive additional contaminated material, along with any other on-site consolidation areas, will be capped in accordance with appropriate landfill caps as specified in the SOW.

Comparative Analysis of Removal Action Alternatives

The Agency did not conduct a specific Comparative Analysis of the effectiveness, implementability, and cost of the various types of caps/covers proposed since the type of cap for any particular area is governed by ARARs, the effectiveness and implementability of each type are well known to EPA based on previous experiences, and the incremental cost differences between the various types of caps were not a critical factor since the removal actions will not be Fund-financed.

Recommended Removal Action Alternative

The recommended removal action alternates for each area of the Site subject to this Action Memorandum are summarized in Section V.A.1.

5. Applicable or Relevant and Appropriate Requirements (ARARs)

Attachment B of the SOW and Tables 1 and 2 of the Work Plan for On-Site Consolidation Areas, which are appended to the Consent Decree, identify the ARARs and EPA's determination of the applicability and practicability of complying with each ARAR. EPA's determination was based on the criteria set forth in 40 CFR § 300.415(j).

For any off-site disposal of hazardous substances, GE shall comply with EPA's off-site rule (40 C.F.R. 300.440 – Procedures for Planning and Implementing Off-Site Response Actions).

In addition to the ARARs described above, EPA Region I's Regional Administrator, by approving this Action Memorandum, makes the following determinations.

1. Consolidation of hazardous waste, if present, on the GE facility will be conducted within a defined Area of Contamination (AOC). The defined AOC for this Site includes the entire Site, as defined by the Consent Decree. According to both 55 FR 8758-8760, March 1990, and a recent

EPA guidance, *"Use of Area of Contamination Concept during RCRA Clean-ups,"* March 13, 1996, the entire Site may be defined as an AOC because it includes discrete areas of generally dispersed contamination (i.e., contiguous contamination at varying levels across the site). EPA has determined that the movement of waste within an AOC is not considered "placement" for the purpose of RCRA. The concept of "placement" is important because the "placement" of hazardous waste into the landfill or other land-based unit is considered land disposal for RCRA purposes, which triggers the land disposal restrictions and other RCRA requirements. Since the movement of waste material around the AOC is not considered placement, the consolidation units fall under the category of "existing non-regulated landfills" (i.e., no "placement" of waste material has occurred after November 19, 1980 (see 40 CFR 270.1(c)). Therefore, the design and operating requirements of 40 CFR Parts 264 and 265 do not apply to this type of consolidation.

2. The removal actions proposed in this Action Memorandum, including on-site consolidation, will be conducted in accordance with 40 CFR 761.61(c), which addresses risk-based response actions for the remediation of PCB waste (i.e., contaminated soil, sediments and groundwater). 40 CFR 761.61(c) details the requirements for the risk-based approval. Specifically, this section requires that the following elements be submitted to EPA's Regional Administrator for approval:

- A summary of the nature of the contamination;
- A summary of the sample procedures used to characterize the Site;
- A summary of the location and extent of the identified contamination;
- A cleanup plan for the Site; and,
- A written certification that all sampling plans and procedures used to assess and characterize the Site are available for review.

The previous sampling and analytical plans and site investigation reports submitted by both GE and EPA, many of which are included in the Administrative Record for this Action Memorandum, meet the requirements of the first three bullets. This Action Memorandum, the Consent Decree and attached Statement of Work for Removal Actions Outside the River meet the requirements of the next two bullets.

40 CFR 761.61(c)(2) states that if the above-referenced summary, plans and certifications, etc., are submitted, "EPA [the Regional Administrator] will issue a written decision . . . for a risk-based method for PCB remediation wastes. EPA will approve such an application if it finds that the method will not pose an unreasonable risk of injury to health or the environment."

By signing this Action Memorandum, the Regional Administrator is making a determination that the proposed response actions will not pose an unreasonable risk of injury to health or the environment. This determination is based on the following: