

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
	)	
UNITED STATES OF AMERICA <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action Nos.
	)	99-30225, 99-30226,
	)	and 99-30227-MAP
GENERAL ELECTRIC COMPANY,	)	(consolidated)
	)	
Defendant.	)	
_____	)	

**FIFTH MODIFICATION OF CONSENT DECREE**

WHEREAS, on October 27, 2000, the Court entered a Consent Decree (“Consent Decree” or “Decree”) in this action among the United States, the Commonwealth of Massachusetts (the “State”), the State of Connecticut (“Connecticut”), the City of Pittsfield (the “City”), the Pittsfield Economic Development Authority (“PEDA”), and the General Electric Company (“GE”) relating to the GE-Pittsfield/Housatonic River Site (“Site”). Pursuant to the Consent Decree (and without admitting liability), GE is required to perform and/or pay for response actions to remediate contamination at the Site, to reimburse the United States, the State, and Connecticut for certain response costs incurred with respect to the Site, and to take actions to address alleged damages to natural resources.

WHEREAS there have been four prior modifications to the Consent Decree: (1) the First Modification of Consent Decree, filed by the United States on February 6, 2002 (this non-material modification was effective upon filing with the Court); (2) the Second Modification of

Consent Decree, approved by the Court on May 15, 2003; (3) the Third Modification of Consent Decree, approved by the Court on March 31, 2005; and (4) the Fourth Modification of Consent Decree, approved by the Court on June 23, 2006.

WHEREAS the United States, the State, and GE (the “Modification Parties”) have agreed that certain additional modifications to the Consent Decree are appropriate in the interest of timely and effective implementation of the Decree. These modifications change the Decree and/or the accompanying *Statement of Work for Removal Actions Outside the River* (“SOW”) (which is Appendix E to the Decree) in three respects: (1) they allow GE to convey a leasehold and/or easement interest in land and buildings located within certain portions of the GE Plant Area – namely, certain portions of the Unkamet Brook Area and East Street Area 2-North (as designated in the Decree and SOW) – to a prospective purchaser of GE’s business known as GE Plastics prior to the recording of Grants of Environmental Restrictions and Easements (“EREs”) for those areas; (2) they eliminate a small property, known as Tax Parcel No. L12-1-2, and the adjacent portion of the City-owned Merrill Road right-of-way from the Unkamet Brook Area and from coverage under the Consent Decree; and (3) they allow for an alternative sampling approach, different from that specified in the SOW, for certain portions of Tax Parcel K12-9-1, a GE-owned non-industrial property which is located within the Unkamet Brook Area.

WHEREAS each of the foregoing modifications is a non-material modification of the Consent Decree and/or the SOW. As such, pursuant to Paragraphs 216 and 217 of the Decree, these modifications are effective upon filing with the Court by the United States.

WHEREAS written notice of these modifications has been provided to Connecticut, the City, and PEDDA. Those parties have no objections to these modifications.

WHEREAS the relevant background information relating to the modifications set forth herein is as follows:

Background Relating to Transfer of Leaseholds or Easements

A. GE is undertaking to sell its business known as GE Plastics.

B. GE Plastics currently uses and occupies property, owned by GE, at the GE Plant Area, within the Removal Action Areas (“RAAs”) designated in the Consent Decree and SOW as the Unkamet Brook Area and East Street Area 2-North.

C. GE has advised the United States Environmental Protection Agency (“EPA”) and the State of GE’s intent, as part of the sale of GE Plastics, to convey to the purchaser of that business (the “Transferee”) leasehold and/or easement interests in a portion of the land and buildings located within the Unkamet Brook Area and East Street Area 2-North (the “Transfer Area”). Although the exact boundary of the Transfer Area is not currently known, the maximum extent of the Transfer Area is shown on Exhibit 1 attached hereto.

D. GE is required by the Consent Decree to execute and record or register EREs for the GE-owned properties within the Unkamet Brook Area and East Street Area 2-North following completion of all investigations and remediation required at those areas. GE has not to date completed the investigation and remediation process at those areas and does not anticipate doing so prior to the anticipated sale of GE Plastics.

E. Paragraph 54.j of the Consent Decree provides that GE shall not convey any interest in GE-owned property for which an ERE is required under the Decree unless, prior to such transfer, GE has recorded or registered an ERE on such property and obtains from the transferee an Access and Interim Non-Interference Agreement.

F. The Modification Parties have agreed that, notwithstanding Paragraph 54.j of the Consent Decree, GE may convey a leasehold and/or easement in land and buildings located within the Transfer Area to the Transferee, as part of the sale of GE Plastics, prior to the execution and recordation of EREs on such property, provided that GE otherwise remains responsible to implement its obligations under the Consent Decree, and provided further that such lease includes and incorporates the schedule attached hereto as Exhibit 2 (the “Schedule”), and that any such easement includes and incorporates an agreement containing the same terms and conditions as are set forth in the Schedule.

Background Relating to Exclusion of Parcel L12-1-2 and the Adjacent Portion of the Merrill Road Right-of-Way from the Unkamet Brook Area

G. Under the definition of the “Unkamet Brook Area” in the Consent Decree, and as shown on the maps provided as Appendix A-5 of the Consent Decree and Figure 2-3 of the SOW, a portion of Tax Parcel L12-1-2 in Pittsfield, Massachusetts, and the adjacent portion of the Merrill Avenue right-of-way, are included within the Unkamet Brook Area. This parcel has a street address of 422 Merrill Road, Pittsfield, Massachusetts, is known as the “Xtra Mart Gas Station,” and as is identified by Massachusetts Department of Environment Protection (“MDEP”) Release Tracking Number 1-14305.

H. Following entry of the Consent Decree, Parcel L12-1-2, which had formerly been used as a gasoline station, was redeveloped for use as a gasoline station. As part of that process, environmental investigations and other response actions were performed at the property by the property owner under the Massachusetts Contingency Plan (“MCP”) due to documented environmental impacts related to the parcel’s former usage as a gasoline station. Documents

submitted to the MDEP in connection with these activities indicate that the investigations included the collection of six soil samples from this parcel for analysis of polychlorinated biphenyls (“PCBs”), and that these samples showed no PCBs above detection limits. In addition, these documents indicate that the redevelopment of Parcel L12-1-2 included the demolition of prior buildings, removal of former underground storage tanks, installation of new such tanks, installation of a soil vapor extraction system, and excavation of soil for new supply lines and a new building – collectively resulting in the removal of approximately 1,900 tons of petroleum-impacted soil from the property. The documents described in the prior two sentences are listed as follows:

- *Immediate Response Action Plan*, Williamson Environmental, March 12, 2002;
- *Immediate Response Action Plan Addendum*, Williamson Environmental, May 2002;
- *Phase I Initial Site Investigation Report*, Williamson Environmental, February 13, 2003;
- *Immediate Response Action Completion Report*, Williamson Environmental, March 10, 2003;
- *Phase II Comprehensive Site Assessment*, Williamson Environmental, February 24, 2004;
- *Phase III Remedial Action Plan*, Williamson Environmental, February 27, 2004;
- *Phase IV Remedy Implementation Plan*, Williamson Environmental, January 31, 2005; and
- *Release Abatement Measure Completion Report*, Williamson Environmental, January 31, 2005.

I. GE collected soil samples from the adjacent portion of the City-owned Merrill Road right-of-way and from areas of Parcel L12-1-3 adjacent to Parcel L12-1-2. These samples showed the presence of PCBs and other constituents only at concentrations below the Consent Decree’s Performance Standards for residential properties – i.e., 2 parts per million (“ppm”) for PCBs and the MCP Method 1 S-1 soil standards for other constituents.

J. Review of all available data from or adjacent to Parcel L12-1-2 indicates that if the adjacent portion of the Merrill Road right-of-way were to remain part of the Unkamet Brook Area, no soil removal would be required in such area.

K. The portion of Parcel L12-1-2 included within the Unkamet Brook Area is for the most part covered by a building and pavement, which reduces or eliminates exposure to the soil underlying the building and pavement.

L. For the above reasons, the Modification Parties have agreed that Parcel L12-1-2 and the adjacent portion of the Merrill Road right-of-way shall be excluded from the Unkamet Brook Area and from further investigations and other activities under the Consent Decree.

M. GE has notified the owner of Parcel L12-1-2 of the proposed exclusion of that property from the Consent Decree, and the owner has advised GE that it consents to that exclusion. A copy of the owner's consent is attached hereto as Exhibit 3.

Background Relating to Modified Scope of Sampling for Parcel K12-9-1

N. Section 2.2.3 of the SOW and Section 2.1.1 of Attachment D to the SOW require, *inter alia*, that for the non-industrial area of GE-owned Parcel K12-9-1 east of the Unkamet Brook interior landfill, GE must collect soil samples for the characterization of PCBs and non-PCB constituents on the following basis: (1) samples from the 0- to 1-foot depth increment on an approximate 50-foot grid for PCB analysis, (2) samples from the 1- to 3-foot, 3- to 6-foot, and 6- to 15-foot depth increments on an approximate 100-foot grid for PCB analysis, (3) samples for analysis of non-PCB constituents at a frequency of approximately one-third the number of samples collected for PCB analysis.

O. In work plans submitted in November 2002 and May 2003, GE proposed an alternative, iterative approach to soil sampling within the portion of the non-industrial area of Parcel K12-9-1 that is located more than 100 feet from Unkamet Brook, based on the overall size and non-industrial use of that area, existing data, and accessibility issues. In addition, pursuant to Paragraph 123.b of the Decree, GE is required to impose a conservation easement that prohibits future development of this area. This proposed approach involved sampling initially on a larger sampling grid than provided for in the SOW, followed by an evaluation of the need for additional sampling. Specifically, this approach involved the initial collection of the following samples: (1) samples from the 0- to 1-foot depth increment on an approximate 100-foot grid for PCB analysis; (2) samples from the 1- to 3-foot, 3- to 6-foot, and 6- to 15-foot depth increments on an approximate 200-foot grid for PCB analysis; (3) samples for analysis of non-PCB constituents at a frequency of one-third the number of samples collected for PCB analysis, except for polychlorinated dibenzo-p-dioxins (“PCDDs”) and polychlorinated dibenzofurans (“PCDFs”), for which approximately one-third the number of samples would be collected as were collected for analysis of other non-PCB constituents. GE further proposed that, based on review of the data from these initial samples, GE would determine the need for and scope of additional sampling to support future evaluations to assess whether some or all portions of this area would meet the applicable Performance Standards for PCBs and non-PCB constituents.

P. EPA, after consultation with MDEP, conditionally approved this alternative sampling approach by letters dated March 10, July 17, and August 19, 2003. EPA’s conditions included a requirement for collection of a number of additional samples at locations specified by EPA. EPA also stated that if GE determined, and EPA agreed, that no additional sampling was

necessary or that any additional sampling would be less than required by the SOW, GE and EPA would file a non-material modification to the SOW with the Court, after providing the MDEP with a reasonable opportunity for review and comment.

Q. GE performed the initial sampling in accordance with this approach, as described in GE's *Pre-Design Investigation Report for Unkamet Brook Area Removal Action*, dated September 2005. As explained in that report, based on review of the results, GE determined that the initial sampling was adequate to determine whether the Performance Standards for PCBs and non-PCB constituents were met in the portion of Parcel K12-9-1 east of the Unkamet Brook interior landfill and located more than 100 feet from Unkamet Brook, and that therefore no further sampling was necessary in that area. EPA, after consultation with MDEP, concurred with that conclusion in a conditional approval letter dated February 22, 2007, and noted again the need for a non-material modification of the SOW to reflect the reduced scope of sampling in this area.

NOW, THEREFORE, the Consent Decree, the SOW, and other appendices to the Decree are hereby modified as follows:

Transfer of Leaseholds or Easements

1. Notwithstanding any other provision of the Consent Decree, GE may, as part of the sale of GE Plastics, convey to the Transferee leaseholds (for both real property and buildings) and/or easements within certain portions of the Unkamet Brook Area and East Street Area 2-North (as generally shown on the map attached hereto as Exhibit 1) prior to the execution and recordation or registration of EREs on such properties, provided that: (a) the Transferee consents to, and the conveyance includes and incorporates, (i) for any such lease, the Schedule,

and (ii) for any such easement, an agreement containing the same terms and conditions as are set forth in the Schedule; and (b) the conveyance shall not include any portion of the Unkamet Brook Protected Area described in Paragraph 55 of the Consent Decree.

2. In all other respects, GE shall, notwithstanding the conveyance of any such property interest, remain responsible for the implementation of all of its responsibilities under the Consent Decree with respect to such property and all other portions of the Unkamet Brook Area and East Street Area 2-North. Except as specifically provided in this Fifth Modification, these modifications do not release or otherwise affect GE's obligation to comply with all provisions of the Consent Decree, including, without limitation, the provisions regarding execution and recordation or registration of EREs for such property and all other portions of the Unkamet Brook Area and East Street Area-2 North, and the notification requirements of Paragraph 12.a(i) of the Consent Decree.

3. As the proposed transfer will create a distinct exposure area, upon EPA's request GE shall submit for EPA's approval, with a reasonable opportunity for comment by MDEP, a modification of the spatial averaging areas for the Unkamet Brook Area and East Street Area 2-North by creating a new averaging area within the Unkamet Brook Area and a separate new averaging area within East Street Area 2-North both revised to represent the exposure related to the transfer. Such averaging areas shall not be greater than the areas shown on Exhibit 1. Upon approval of such new averaging areas, GE shall then evaluate whether the new averaging areas meet the Performance Standards established by the Consent Decree and SOW and shall propose and perform further response actions pursuant to the Decree and SOW, if necessary.

4. GE shall include provisions in the lease and/or easement requiring the Transferee to comply with the terms and conditions set forth in the Schedule, and GE shall enforce such lease and/or easement if the Transferee violates the terms and conditions set forth in the Schedule. If the Transferee does not comply with the Schedule and the United States and/or the State incurs costs as a result of such non-compliance, GE shall reimburse such costs as U.S. Future Response Costs and/or as Massachusetts Future Response Costs, pursuant to Paragraph 95 of the Decree.

Exclusion of Parcel L12-1-2 and the Adjacent Portion of the Merrill Road Right-of-Way from the Unkamet Brook Area

5. The areal extent of the Unkamet Brook Area, as defined in the Consent Decree and shown on maps attached thereto, is modified to exclude Tax Parcel L12-1-2 and the adjacent portion of the Merrill Road right-of-way, which are no longer considered part of the GE-Pittsfield/Housatonic River Site subject to the Consent Decree. The portion of the Unkamet Brook Area deleted by this Fifth Modification is shown on the attached Exhibit 4. The following maps and figures are modified to conform to Exhibit 4 attached hereto: Appendices A-1 (Figure 1), A-2 and A-5 of the Consent Decree; Figures 1-1, 1-2, and 2-3 of the SOW; Figure E-1 of Attachment E to the SOW; Figures H-1, H-6, H-7, and H-8 of Attachment H to the SOW; and Figure I-4 of Attachment I to the SOW.

6. GE is not required to perform any further response actions under the Consent Decree with respect to the area removed from the Unkamet Brook Area pursuant to Paragraph 5 above. Any covenants not to sue or take administrative action contained the Consent Decree from the United States and/or the State shall not include the area removed from the Unkamet Brook Area pursuant to Paragraph 5 above.

Modified Scope of Sampling for Parcel K12-9-1

7. Section 2.2.3 of the SOW and Section 2.1.1 of Attachment D to the SOW are modified to allow, for the non-industrial portion of Parcel K12-9-1 east of the Unkamet Brook interior landfill and located more than 100 feet from Unkamet Brook, the reduced scope of soil sampling and analyses implemented by GE in that area, as described in GE's *Pre-Design Investigation Report for Unkamet Brook Area Removal Action*, dated September 2005, as conditionally approved by EPA in a letter to GE dated February 22, 2007.

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

UNITED STATES OF AMERICA

Matthew J. McKeown  
Acting Assistant Attorney General  
Environment and Natural Resources Division

Date: 5/25/07

By: /s/ Donald G. Frankel  
Donald G. Frankel  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
Department of Justice  
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Michael J. Sullivan  
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1550 Main Street  
Springfield, MA 01103  
(413) 785-0235

Date: 5/25/07

/s/ John W. Kilborn  
John W. Kilborn  
Senior Enforcement Counsel  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region I  
One Congress Street – Suite 1100 (SES)  
Boston, MA 02114

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

COMMONWEALTH OF MASSACHUSETTS

Date: 5/24/07

By: /s/ James R. Milkey  
James R. Milkey, Chief  
Nancy E. Harper  
Assistant Attorney General  
Environmental Protection Division  
1 Ashburton Place  
Boston, MA 02108  
617-727-2200

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

GENERAL ELECTRIC COMPANY

Date: 5/22/07

By: /s/ Roderic J. McLaren  
Roderic J. McLaren  
Counsel-Pittsfield/Housatonic River  
Remediation  
General Electric Company  
Corporate Environmental Programs  
159 Plastics Avenue  
Pittsfield, MA 01201

CERTIFICATE OF SERVICE

I certify that this Fifth Modification of Consent Decree was filed through the Court's ECF system and was therefore electronically sent to the registered participants as identified on the Notice of Electronic Filing. In addition, paper copies of this document are being sent by first class mail to the following counsel this 25th day of May, 2007.

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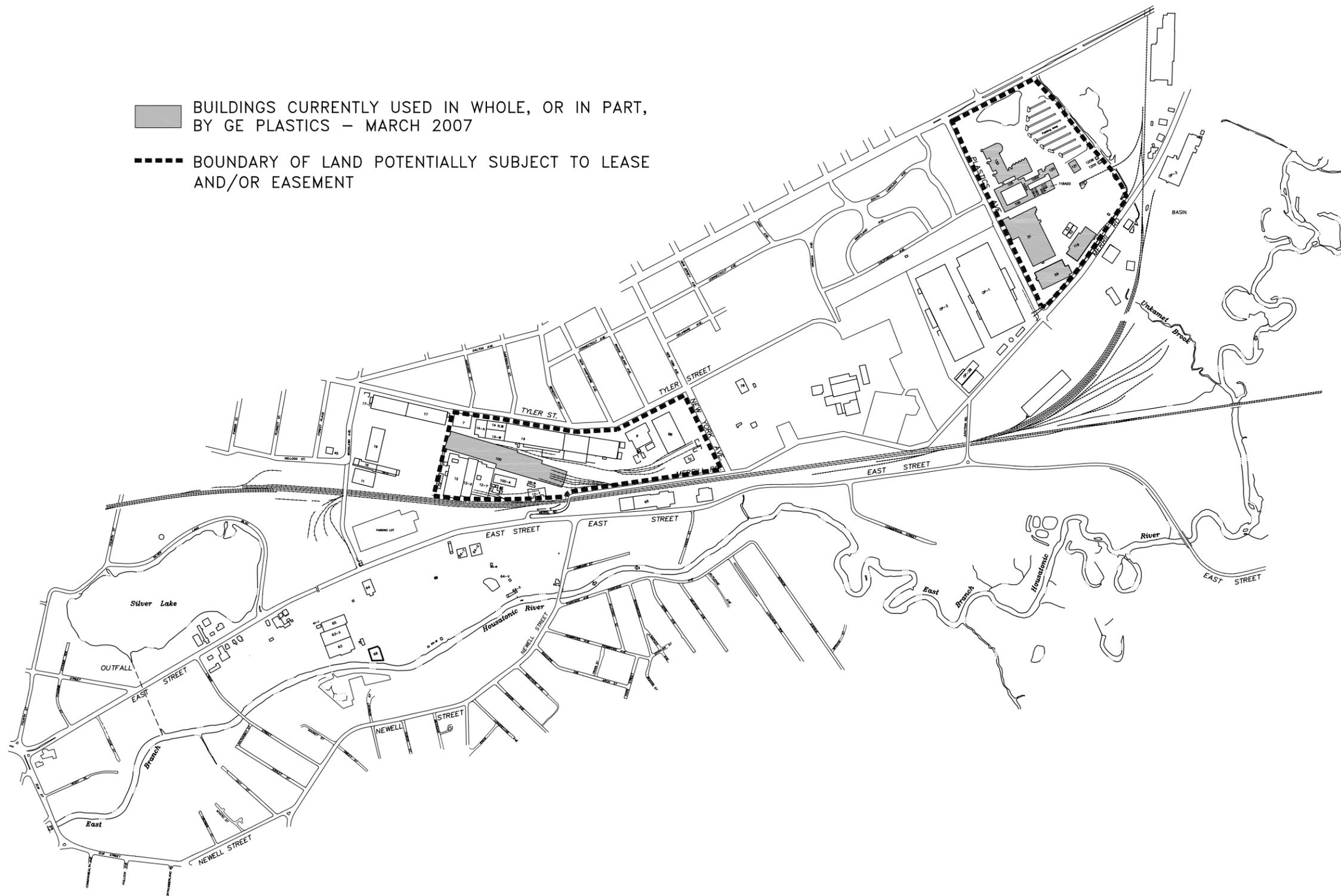
/s/ Donald G. Frankel  
Donald G. Frankel

## EXHIBIT 1

# Exhibit 1

## Buildings and Land Potentially Subject to Lease and/or Easement to GE Plastics' Purchaser

-  BUILDINGS CURRENTLY USED IN WHOLE, OR IN PART, BY GE PLASTICS - MARCH 2007
-  BOUNDARY OF LAND POTENTIALLY SUBJECT TO LEASE AND/OR EASEMENT



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PROJECTNAME: IMAGES:  
XREFS:

## EXHIBIT 2

EXHIBIT 2 TO FIFTH MODIFICATION TO GE-PITTSFIELD CONSENT DECREE

**Schedule to Lease with Purchaser of GE Plastics  
Regarding Obligations Related to Consent Decree  
for GE-Pittsfield Housatonic River Site**

WHEREAS the General Electric Company (“Lessor”) and [“Transferee”] (“Lessee”) are simultaneously executing a Lease for certain property owned by Lessor and located in the City of Pittsfield, Massachusetts (the “Premises”), as generally shown on the attached map (Exhibit A);

WHEREAS Lessee acknowledges that the land comprising the Premises is subject to the requirements of a Consent Decree entered on October 27, 2000, by the United States District Court for the District of Massachusetts in *United States et al. v. General Electric Co.*, No. CV-99-30225-MAP *et seq.* (“the Consent Decree”), for the GE-Pittsfield/Housatonic River Site;

WHEREAS Lessee acknowledges having received a copy of the Consent Decree from Lessor;

WHEREAS Lessee acknowledges that, as required by the Consent Decree, Lessor will, from time to time throughout the duration of the Lease, be conducting environmental investigations, evaluations, and remediation actions (collectively “response actions”) at, upon, and beneath the surface of the land that comprises and surrounds the Premises, and will be conducting natural resource restoration and enhancement activities (collectively “restoration actions”) at, upon, and beneath the surface of the land near a portion of the Premises, which response actions and restoration actions are subject to oversight by employees and contractors of the United States and the Commonwealth of Massachusetts; and

WHEREAS Lessee further acknowledges that Lessor will, at a future date, be required to record a legal deed restriction known in the Consent Decree as a "Grant of Environmental Restriction and Easement" ("ERE") on each of the land parcels that include the Premises, in accordance with Paragraph 54 of the Consent Decree, which ERE is required to be substantially in the form attached as Appendix L to the Consent Decree (attached hereto as Exhibit B) with any modifications agreed upon by Lessor and the United States Environmental Protection Agency ("EPA"), after a reasonable opportunity for review and comment by the Massachusetts Department of Environmental Protection ("MDEP"), as appropriate for the specific area subject to the ERE.

NOW, THEREFORE, any provision in the Lease notwithstanding, Lessee agrees as follows:

**Access to Premises and Non-Interference with Response Actions**

1. Lessee consents to the officers, employees, agents, contractors, subcontractors, consultants, and other authorized representatives of the United States, the Commonwealth of Massachusetts, and Lessor entering and having continued access to the Premises for the following purposes:

- a. Taking soil, sediment, surface water, groundwater, and air samples as may be determined necessary;
- b. Sampling any solids or liquids stored or disposed of on the GE-Pittsfield Housatonic River Site;
- c. Drilling or excavating holes and installing borings and/or monitoring wells for subsurface investigation;

- d. Taking other actions related to the investigation of surface or subsurface contamination;
- e. Conducting remediation or other response actions to mitigate the hazards posed by polychlorinated biphenyls and other hazardous substances found at the GE-Pittsfield/Housatonic River Site;
- f. Conducting or arranging to conduct restoration actions as required by the Consent Decree;
- g. Overseeing the above activities being performed by Lessor; and
- h. Taking any other response or restoration actions or evaluating the need to take other response or restoration actions.

Lessee realizes that these actions will be undertaken pursuant to the United States' response and enforcement authorities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, and the Commonwealth's response and enforcement authorities under M.G.L. ch. 21E, as amended.

2. Lessee agrees not to take any action, or allow any of Lessee's employees, agents, or independent contractors to take any action, at the Premises that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response actions or restoration actions implemented or to be implemented pursuant to the Consent Decree.

**Prohibition on Excavation Activities**

3. Lessee agrees not to engage in any excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil (collectively "excavation activities") on the Premises, or allow any of Lessee's employees, agents, or independent contractors to engage in any excavation activities on the Premises.

**Subordination of Leasehold Interest to EREs**

4. Lessee agrees that, following the preparation of an ERE covering any portion of the Premises and prior to the execution and recording or registration of such ERE, Lessee will, within 30 days of a request by Lessor and without charge to Lessor, subordinate its interest in the Lease to that ERE by the execution of a subordination agreement substantially in the form attached as Appendix M to the Consent Decree, and attached hereto as Exhibit C.

5. Upon recordation or registration of any ERE covering any part of the Premises, Lessee agrees as a condition of this Lease [or Easement] to comply with such ERE. Lessee agrees that any transfer, assignment, or sublease of its interest shall contain provisions requiring such transferee, assignee, or sublessee to comply with any such ERE.

**Prohibition on Sublease or Assignment**

6. Lessee shall not enter into any sublease respecting any portion of the Premises, nor shall Lessee assign or transfer any of Lessee's interests in the Lease or any of Lessee's obligations contained in this Attachment.

**Termination**

7. The obligations and agreements contained in this Attachment (except for the access consent in Paragraph 1 and the provisions of Paragraph 5) shall terminate as of the

date on which the subordination agreement executed by Lessee as required by Paragraph 4 is recorded or registered, which date shall occur concurrently with, or subsequent to, the date on which an ERE is recorded or registered on the Premises; provided, however, that Lessee shall, from that point forward, comply with the provisions of the ERE and that such obligations and agreements shall only terminate as to the portion of the Premises as to which such ERE and subordination agreement apply. As to any other portion of the Premises, such obligations and agreements shall continue in force and effect until the date on which an ERE and subordination agreement are recorded or registered on that portion of the Premises. The access consent in Paragraph 1 of this Attachment and the Provisions of Paragraph 5 shall extend for the duration of the Lease.

**Authorization**

8. Lessee consents to the terms contained in this Attachment voluntarily with knowledge of Lessee's right to refuse and without threats of any kind. Lessee's signature below confirms that Lessee has authority to consent to these terms and that no other party needs to be consulted.

**Public Document**

9. Lessee acknowledges that this Schedule as executed will be submitted to EPA and the State and that the Schedule will be a public, non-confidential document.

[signatures]

## EXHIBIT 3



April 25, 2007

GE  
159 Plastics Avenue  
Pittsfield, MA 01201  
USA

Jeffrey Walker, Esq.  
The Grove Corporation  
301 Edgewater Park, Suite 320  
Wakefield, Massachusetts 01880

**Re: Property on Merrill Road in Pittsfield, MA - Tax Parcel Number L12-1-2**

Dear Mr. Walker:

I am writing for the General Electric Company (GE) concerning the above-referenced property (Xtra-Mart Property) owned by your company and currently in use as a gasoline station on Merrill Road in Pittsfield, Massachusetts. A portion of that property is currently included within a site known as the GE-Pittsfield/Housatonic River Site (Site). GE has executed a Consent Decree with the U.S. Environmental Protection Agency (EPA), the Massachusetts Department of Environmental Protection (MDEP), and other governmental entities requiring GE to conduct sampling and, if necessary, cleanup at areas within the Site for polychlorinated biphenyls (PCBs) and other substances. GE has been performing those investigation and cleanup activities for a number of years. The portion of the Xtra-Mart property that is within the Site boundary is included within an area known as the "Unkamet Brook Area" under the Consent Decree.

On August 15, 2005, GE wrote a letter to EPA proposing to exclude the Xtra-Mart Property from the Site. A copy of that letter was sent to you. The bases for excluding the property were generally that an environmental investigation was recently conducted on the property under the supervision of the MDEP, no PCBs were detected on the property in the samples collected as part of that investigation, the property was subjected to a cleanup for petroleum-based substances, 1,900 tons of soil were removed from the property, and the portion of the Xtra-Mart Property included within the Site is now largely covered with buildings and pavement. Accordingly, no purpose would be served by keeping the Xtra-Mart Property within the boundaries of the site, and, due to the current usage of the property as an active gasoline station, further investigative activities on the property could be difficult and potentially problematic from a safety perspective. By excluding the property from the Site, your company also would not be subject to the provisions of the Consent Decree under which the property owner will decide between two alternatives addressing future use of the property: (a) agreeing to a deed restriction (known as a Grant of Environmental Restriction and Easement or "ERE"), as described in Paragraph 56, 57, and 60.a and Appendix O of the Consent Decree; or (b) another alternative known as a "Conditional Solution," as described in Paragraphs 34-38 of the Consent Decree.

EPA approved GE's proposal to exclude the Xtra-Mart Property from the Site by letter dated February 22, 2007, a copy of which also was sent to you. This change in Site boundaries

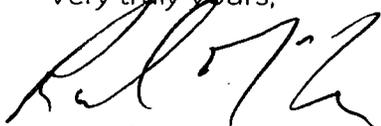
Jeffrey Walker, Esq.  
April 25, 2007  
Page 2

requires a modification to the Consent Decree. That modification is now in the process of being prepared by EPA, MDEP, and GE.

As part of the Consent Decree modification, GE is writing now to confirm your consent to excluding the Xtra-Mart Property from the Site. GE requests that you sign below, on one of the enclosed originals of this letter, to indicate your consent and return the signed original to us in the enclosed envelope. For reasons related to another aspect of the Consent Decree modification now in progress, GE must complete this process very soon. Therefore, GE asks you to please indicate your consent and return the countersigned letter at your earliest possible opportunity.

If you have any questions concerning this matter, please contact me at 413-448-5907, or our outside counsel, Jim Bieke, at 202-346-4190, or Larry Kirsch, at 202-346-4440. Your environmental personnel may contact our project manager Dick Gates at 413-448-5909. Thank you for your cooperation.

Very truly yours,



Roderic J. McLaren  
Counsel, Pittsfield Housatonic River Remediation

CONSENTED TO BY THE GROVE CORPORATION, *NKA Drake Petroleum Company, Inc.*

By: 

Printed Name: Jeffrey A Walker

Title: clerk

Date: 5/3/07

- cc: John Kilborn, EPA
- Jane Rothchild, MDEP
- Michael T. Carroll, GE
- Richard Gates, GE
- James Bieke, Goodwin Procter
- Laurence Kirsch, Goodwin Procter

## EXHIBIT 4

