

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

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UNITED STATES OF AMERICA,	)	
STATE OF CONNECTICUT,	)	CIVIL ACTION NOS.
COMMONWEALTH OF	)	99-30225, 99-30226, 99-30227-MAP
MASSACHUSETTS,	)	(Consolidated)
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
GENERAL ELECTRIC COMPANY,	)	
	)	
Defendant.	)	

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**MOTION OF PLAINTIFF UNITED STATES TO MODIFY  
CONSENT DECREE AND STATEMENT OF WORK**

The United States hereby moves to modify the Consent Decree relating to the GE-Pittsfield Housatonic River Site (“the Site”) entered by this Court on October 27, 2000 (“Consent Decree” or “Decree”) with respect to certain activities to be undertaken by the Trustees (as defined in the Consent Decree) at Silver Lake with funds paid by the General Electric Company (“GE”) to the Plaintiffs in satisfaction of the Plaintiffs’ claims for Natural Resource Damages pursuant to the Consent Decree, including Section XXI. A copy of the proposed Eighth Modification is attached hereto as Exhibit A. All the necessary parties as outlined under the Consent Decree consent to the proposed modification. In addition, the City of Pittsfield and the Pittsfield Economic Development Authority (“PEDA”), which are also parties to the Consent Decree, do not object to this Modification.

The Decree resolves the consolidated actions listed above. The actions were filed by the United States, the Commonwealth of Massachusetts and the State of Connecticut (collectively referenced herein as the “Plaintiffs”) against GE relating to releases of hazardous substances at the Site, as defined in the Consent Decree. Pursuant to the Consent Decree, GE is required to perform and/or pay for response actions to address releases of hazardous substances at the Site, to reimburse the Plaintiffs for certain response costs incurred with respect to the Site, and to perform specified work and make specified payments in satisfaction of the Plaintiffs’ claims for Natural Resource Damages. There have been seven prior modifications of the Consent Decree.

I. Description of the Proposed Eighth Modification

In essence, the United States seeks to modify the Consent Decree and the Statement of Work for Removal Actions Outside the River, which is Appendix E to the Consent Decree (the “SOW”), to ensure that activities undertaken by the Trustees to compensate for natural resource damages under the Consent Decree meet the natural resource restoration goals for Silver Lake and do not interfere with clean up activities or the removal action to be conducted by GE at Silver Lake (“Silver Lake Removal Action”).

The Consent Decree provides that, as one part of the compensation for Natural Resource Damages, GE shall pay \$75,000 to the Trustees so that they can undertake aquatic habitat and fish restoration in Silver Lake. Consent Decree ¶118.c. The SOW provides additional detail specifying that:

– \$25,000 (of the \$75,000) should fund the Trustees’ creation of “littoral habitat (that will not interfere with the performance of the [Silver Lake] cap).” SOW (Appendix E of Consent

Decree), Technical Attachment I, 6.1(2) at 16; and

– \$50,000 (of the \$75,000) should fund the Trustees’ removal of the existing fish community and replacement with a balanced fish population. SOW (Appendix E of Consent Decree), Technical Attachment I, 6.1(3) at 16.

Following entry of the Consent Decree, the Trustee SubCouncil for Natural Resources located in Massachusetts (“Massachusetts SubCouncil”) studied and evaluated the technical feasibility of installing a littoral habitat in Silver Lake that would not interfere with the performance of the cap on Silver Lake. The results of these studies and evaluations demonstrate that it is not technically feasible to install a littoral habitat in Silver Lake without potentially interfering with the performance of the cap on Silver Lake. Accordingly, the Massachusetts SubCouncil seeks to reallocate the funds designated for installing a littoral habitat (\$25,000) to the cost of removing contaminated fish from Silver Lake, which is another Trustee responsibility under the Consent Decree and SOW. SOW (Appendix E of Consent Decree), Technical Attachment I, 6.1(3) at 16.

Following entry of the Consent Decree, the Massachusetts SubCouncil also studied and evaluated PCB concentrations in representative fish species in Silver Lake and the current cost of removing contaminated fish from Silver Lake as required by the Consent Decree and SOW. Those costs are far greater than originally anticipated at the time of the Consent Decree. Accordingly, the Massachusetts SubCouncil seeks to allocate a total of \$75,000 (\$50,000 originally earmarked for fish removal plus \$25,000 originally slated for littoral habitat funding) for activities related to the removal of fish with the highest PCB concentrations from Silver Lake. There is no source of any additional funding for this fish removal work under the Consent Decree.

Accordingly, the United States proposes this amendment to permit the Trustees to spend the full \$75,000 on activities related to the partial removal of contaminated fish from Silver Lake. This proposal is consistent with the original Consent Decree, and will eliminate the possibility that littoral habitat planting by the Trustees will interfere with the cap on Silver Lake.

The United States seeks these modifications pursuant to Paragraphs 216 and 217 of the Consent Decree. These provisions of the Decree set forth the relevant procedures for the requested modifications. The specific authority to reallocate \$25,000 from the creation of littoral habitat in Silver Lake to the removal of contaminated fish from Silver Lake is considered a non-material modification of the Consent Decree and SOW. Such modifications may be made to the Consent Decree by written approval of the United States, the State, and GE, and, for the SOW, by written approval of GE and EPA (after providing the State with a reasonable opportunity to review and comment on the proposed modification). Consent Decree ¶¶ 216, 217. Such non-material modifications to the Consent Decree and SOW become effective upon filing with the Court. Consent Decree ¶¶ 216, 217. It is also considered a modification of a “Performance Standard,” which requires the written approval of the United States, Connecticut, the Commonwealth of Massachusetts, GE and the Court. Consent Decree ¶ 217. All the necessary Settling Parties have approved all the proposed modifications; thus, to finalize the modifications to the Consent Decree and SOW, the only remaining step is approval by this Court.

#### CONCLUSION

The United States, Connecticut, Massachusetts, and GE have signed the Eighth Modification, and the United States is hereby seeking the Court’s approval of the Modification.



CERTIFICATE OF SERVICE

I certify that the Motion of Plaintiff United States to Modify Consent Decree and Statement of Work filed through the ECF system will be sent electronically 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 20th day of June, 2008.

James R. Bieke, Esq.  
Goodwin Procter LLP  
901 New York Avenue, N.W.  
Washington, D.C. 20001-4413

Samuel I. Gutter, Esq.  
Sidley, Austin, Brown & Wood  
1501 K Street, N.W.  
Washington, D.C. 20005

Roderic McLaren, Esq.  
General Electric Company  
Corporate Environmental Programs  
159 Plastics Avenue  
Pittsfield, MA 01201

Nancy E. Harper, Esq.  
The Commonwealth of Massachusetts  
Office of the Attorney General  
Environmental Protection Division  
One Ashburton Place  
Boston, MA 02108

John M. Looney, Esq.  
State of Connecticut  
Office of the Attorney General  
P.O. Box 120  
55 Elm Street  
Hartford, CT 06141-0120

Jeffrey Bernstein, Esq.  
Counsel for City of Pittsfield and PEDAs  
Bernstein, Cushner and Kimmel  
585 Boylston Street  
Suite 200  
Boston, MA 02116

