

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

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

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

The United States hereby moves to modify the Consent Decree entered by this Court on October 27, 2000 ("Consent Decree" or "Decree") to facilitate certain efficiencies and other improvements to response action activities at the GE-Pittsfield/Housatonic River Site ("Site"). A copy of the proposed Fourth Modification is attached as Exhibit A hereto. The proposed modification is consented to by all the necessary parties as outlined under the Consent Decree. 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 which were filed by the United States, the Commonwealth of Massachusetts and the State of Connecticut (collectively the "governments" or "Plaintiffs") against the General Electric Company ("GE") related to the contamination at the Site. The City of Pittsfield and PEDA are also parties to the Consent



Decree. Pursuant to the Consent Decree, GE is required to perform and/or pay for response actions to remediate contamination at the Site, to reimburse the Plaintiffs for certain response costs incurred with respect to the Site, and to take actions to address damages to natural resources.

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"), for two purposes. First, the footprint of the on-plant consolidation area ("OPCA") at Hill 78 will be slightly modified to be located farther away from the Allendale Elementary School. Second, the Consent Decree and SOW will be modified to clarify that crushed building debris from buildings formerly located within the 40's Complex at the GE Plant Area may be used, under certain conditions, at certain properties that GE has or will transfer to PEDA (the "PEDA Properties"), with EPA written approval, and that certain crushed building debris from the 30's Complex may be used as grading material on the 30's Complex.

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 use crushed building debris is considered a non-material modification of the Consent Decree and SOW. Such modifications may be made, for 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. The modification of the footprint of the Hill 78

OPCA is 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.

The following describes the history of prior modifications, the reasons for the proposed Fourth Modification and the authority to do so under the Consent Decree.

I. Past Modifications of the SOW and/or Consent Decree

The parties to the Consent Decree have made three prior modifications to the Consent Decree. First, on February 6, 2002, the United States filed a First Modification to the Consent Decree which provided for six non-material modifications to the Consent Decree, including the following modifications: inclusion of an additional property in the Decree; modification to the Peer Review Process; modification to the schedule for the submission of Grants of Environmental Restrictions and Easements; modification to the schedule for submission of initial Removal Design/Action Work Plans; an addendum to the Upper ½ Mile Reach Removal Action Work Plan; and a modification to the location for payments to the Commonwealth of Massachusetts.

Second, on May 15, 2003, the Court approved a Second Modification to the Consent Decree, to modify the agreement for EPA recovery from GE of "Indirect Costs" incurred with respect to the Site. This Second Modification documents a settlement of a dispute that GE raised regarding the methodology EPA used to calculate Indirect Costs related to the 1 ½ Mile Reach Removal Action.

Third, on April 1, 2005, the Court approved a Third Modification to the Consent Decree. Pursuant to this Modification, GE's natural resource restoration/enhancement obligations for an approximately 20,000 square foot area in the Lyman Street Area will be carried out instead, together with the necessary associated remediation, at another location. This location is part of a larger riparian buffer area in the East Street Area 2-South Removal Action Area.

## II. Description and Purpose of Proposed Fourth Modification

The proposed Fourth Modification of the Consent Decree and SOW involves two parts. First, the parties seek to slightly modify the footprint of the Hill 78 OPCA to be farther away from a nearby elementary school. The proposed modification does not change the capacity or maximum elevation of the Hill 78 OPCA. Second, the modification clarifies that, for efficiency, certain crushed building debris may be used at the PEDAs Properties; provided that EPA gives its written consent and a number of conditions are met. These changes are described in more detail below.

### A. Hill 78 OPCA

The Decree establishes that certain materials from the cleanup can be consolidated at three OPCAs located in the GE-Plant Area. GE has constructed and is using the Hill 78 and Building 71 OPCAs. GE has not yet constructed the third OPCA at New York Avenue. The Hill 78 OPCA is limited to receiving materials that contain less than 50 parts per million, on average, of polychlorinated biphenyls ("PCBs") and are not classified as a hazardous waste under regulations issued pursuant to the Resource Conservation and Recovery Act. After completion, the Hill 78 OPCA will be covered with an impermeable liner, a layer of soil fill material, topsoil, and vegetation.

The modification sought pursuant to this motion will slightly modify the footprint of the Hill 78 OPCA to: (a) reduce the extent of the OPCA on the northern boundary by approximately 0.24 acre so that it is farther away from the Allendale Elementary School, which is located to the north of the Hill 78 OPCA; (b) reduce the extent of the OPCA on the southeastern side by approximately 0.16 acre to maintain a suitable area for continued operation of an existing perimeter access road; and (c) expand the horizontal extent of the Hill 78 OPCA on the south/southwestern side by approximately 0.8 acre to compensate for the capacity lost through the foregoing revisions. The new Hill 78 OPCA areas abut GE-owned industrial properties. This modification does not change the capacity or maximum elevation of the Hill 78 OPCA, and it only slightly increases, by approximately 0.4 acre, the overall horizontal extent of the Hill 78 OPCA from that stated in Section 2.1.4.2 of the SOW. This Modification does not affect any of the other OPCAs.

The modification of the Hill 78 OPCA will alleviate disturbances to sensitive neighborhoods, including Allendale School, by re-locating the OPCA at a greater distance from the School. In addition, this modification will allow a line of trees to remain as a vegetated buffer between the Hill 78 OPCA and Allendale School.

**B. Use of Crushed Building Debris**

The Consent Decree and SOW are silent on the question of whether crushed building debris that does not exceed certain soil-related Performance Standards may be used as grading or backfill material in lieu of material originating from an off-site location. The Consent Decree only permits building material to be consolidated in an OPCA or placed in the foundations of certain buildings and covered with an engineered barrier. Consent Decree ¶ 15; SOW at 2.1.4

and 2.1.5. Neither the Decree nor SOW, however, expressly prohibit the movement of materials such as building debris and excavated material to other portions of the Site or prohibit the use of building debris for grading and backfill purposes.

Because such crushed building debris could be put to beneficial use, such as to prepare areas for PEDAs redevelopment, the parties seek to clarify, through the proposed modification, that such materials may be used at the PEDA Properties under certain conditions. The use of this material would not only be beneficial and save PEDA the expense of purchasing off-site backfill, but it would avoid the costs and associated disruption of transporting the material off-Site or to an OPCA.

GE was required under the Decree to evaluate the need for soil remediation, and if necessary, conduct such remediation, in the 40's Complex of the GE Plant Area. The 40's Complex is among the areas subject to a separate Definitive Economic Development Agreement ("DEDA") entered into among GE, the City of Pittsfield ("City") and PEDA and will be transferred to PEDA. To allow for the construction of new buildings, GE has demolished a number of old buildings formerly located at the 40's Complex. To facilitate redevelopment, GE and PEDA requested that they be able to stockpile at the 40's Complex crushed brick and concrete from the demolition of the 40's Complex buildings up to the limits shown in Figures E-1 and E-2 of Attachment E ("Proposal for Stockpiling Building Materials") to GE's July 6, 2005 *Supplemental Building Material Characterization Report – Buildings 42, 43/43-A, 44, 40's Complex*, as conditionally approved by a letter from EPA to GE dated August 18, 2005 (the "Supplemental Report") until PEDA finalizes a redevelopment grading plan, at which point the

stockpiled brick and concrete may be used for backfill or grading purposes in the PED A Properties.

The material from the 40's Complex building demolition was characterized and found to be much lower than the PCB and non-PCB Performance Standards applicable to soil at the 40's Complex. For PCBs, the crushed building debris averages 5.8 parts per million ("ppm") PCBs, much lower than the PCB soil cleanup standard of 25 ppm PCBs in the top foot of the ground and 200 ppm PCBs in the 1-6 foot depth interval. In addition, the stockpiled material shall comply with the conditions found in Attachment E ("Proposal for Stockpiling Processed Building Materials") to GE's Supplemental Report. And finally, the Massachusetts Department of Environmental Protection ("MADEP") determined that the stockpiling of crushed material at the 40's Complex area meets the substantive requirements of MADEP's solid waste regulations (310 CMR 16.05), specifically the ABC Rubble Requirements.

This modification clarifies that crushed building debris from the 40's Complex meeting certain criteria may be used, under certain conditions, at PED A Properties in lieu of materials originating from an off-site location, with EPA written approval. Such building debris shall meet certain requirements, including, but not limited to the following: (i) such debris shall be used only for depths greater than one foot below grade; (ii) the average PCB concentration in such debris shall not exceed 25 ppm; (iii) such debris shall meet certain conditions regarding non-PCB constituents; and (iv) such debris shall not cause the averaging area receiving the materials to exceed the soil-related Performance Standards applicable to that averaging area.

Similarly, in a portion of the 30's Complex of the GE Plant Area, GE has used building debris from buildings formerly located in the 30's Complex for grading purposes. The debris

was characterized and found to meet or be lower than the PCB and non-PCB Performance Standards applicable to soil at the 30's Complex. This material has been covered with topsoil and grass. GE has transferred the 30's Complex area to PEDA for reuse. This modification confirms that the crushed building debris may remain as backfill material in the 30's Complex.

The use of crushed building debris at the 30's and 40's Complexes is more efficient than using off-site materials for several reasons. Rather than transporting the material to one of the OPCAs or to an off-site location, it may be put to beneficial use. In addition, the proposal minimizes truck traffic and transportation of materials over public roads. It further avoids the cost of transporting new materials to the site. Overall, the proposed modification benefits all affected parties.

### III. Satisfaction of the Consent Decree Requirements Regarding Modifications

This proposed Fourth Modification of the Consent Decree has been signed by all the necessary parties, including the United States, the Commonwealth, Connecticut, and GE. In addition, PEDA and the City assent to this Modification.

A. Documents Being Modified: Section XXXVII of the Consent Decree provides for execution of modifications to the Consent Decree and SOW, Appendix E to the Consent Decree. With respect to the Hill 78 OPCA changes, the SOW is being modified to reflect the revised configuration of the Hill 78 OPCA as shown on Figure 1 attached to the proposed Modification. Figure 1 is titled *Revised On-Plan Consolidation Area Footprint*, dated 04/13/06, by Blasland, Bouck & Lee, Inc (the "Revised Figure"). The Revised Figure replaces Figure 5 of the *Detailed Work Plan for On-Plant Consolidation Areas*, dated June 1999, attached as Annex 1 to the SOW; Figures 1-1 and 1-2 of the SOW; Figure E-1 of SOW Attachment E; Figures H-1 and H-5

of SOW Attachment H; and Figure I-3 of SOW Attachment I, insofar as they depict the Hill 78 OPCA. Similarly, the Consent Decree is being modified with respect to the definition of the “Hill 78 Consolidation Area” by substituting the Revised Figure for the figure attached as Appendix A-4 of Appendix A to the Decree. In addition, to the extent the Consent Decree and SOW are otherwise inconsistent with the modification of the Hill 78 OPCA footprint, the *proposed modification conforms the Consent Decree and SOW to the modified footprint.*

With respect to the use of crushed building debris, Paragraph 15 of the Decree and Sections 2.1.4 and 2.1.5 of the SOW are modified to clarify that such materials, not exceeding certain soil-related Performance Standards and other conditions, may be used at the PEDAs Properties, with EPA written approval. The details of this modification are described above in Section II. B.

B. Type of Modification: Section XXXVII of the Consent Decree provides different procedures for different types of modifications to the Consent Decree or SOW. Pursuant to Paragraph 217, “... any modifications to the Performance Standards may be made only by written notification to and written approval of the United States, Connecticut, [Massachusetts], [GE] and the Court.” As described above, this modification affects the Performance Standards for the Hill 78 OPCA as found at Section 2.1.4.2, paragraph 2 of the SOW, and in Performance Standard 1 of the Detailed Work Plan for On-Plant Consolidation Areas, dated June 1999, included in Annex 1 to the SOW. Accordingly, the United States, Connecticut, and Massachusetts, and GE have signed the Fourth Modification, and the United States is hereby seeking the Court’s

approval of the Modification. There is a signature line for the Court at the conclusion of the Fourth Modification.<sup>1/</sup>

Respectfully submitted,

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<sup>1/</sup> The remaining modifications to the Consent Decree and SOW with regard to the use of building debris are non-material modifications. Pursuant to Paragraphs 216 and 217 of the Consent Decree, these modifications become effective upon filing with the Court.

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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, 2006.

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