

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
)	(consolidated)
GENERAL ELECTRIC COMPANY,)	
)	
Defendant.)	
_____)	

EIGHTH 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 of Connecticut (collectively the “governments” or “Plaintiffs”), 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 respecting 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 restoration work and make certain payments in satisfaction of the Plaintiffs’ claims for Natural Resource Damages respecting the Site.

WHEREAS there have been seven prior modifications to the Consent Decree: (1) the First Modification of Consent Decree, filed by the United States on February 6, 2002; (2) the Second Modification of Consent Decree, approved by the Court on May 15, 2003; (3) the Third Modification of Consent Decree, filed by the United States on March 29, 2005, and

approved by the Court on March 31, 2005; (4) the Fourth Modification of Consent Decree, filed by the United States on June 20, 2006, and approved by the Court on June 23, 2006; (5) the Fifth Modification of Consent Decree, filed by the United States on May 25, 2007, and approved by the Court on May 30, 2007; (6) the Sixth Modification of Consent Decree, filed by the United States on February 14, 2008; and (7) the Seventh Modification of the Consent Decree, filed by the United States on May 15, 2008, and approved by the Court on May 19, 2008.

WHEREAS the Plaintiffs and GE (the "Modification Parties") have agreed that an additional modification to the Consent Decree is appropriate and is in the interest of timely and effective implementation of the Consent Decree. As further described herein, this modification allows the Trustees (as defined in Paragraph 4 of the Decree) to perform certain restoration work in Silver Lake, a Massachusetts Great Pond located on the Site (as further defined in the Consent Decree)(hereinafter "Silver Lake").

WHEREAS the foregoing modification is a modification of Performance Standards as defined in Paragraph 4 of the Decree. As such, pursuant to Paragraph 217 of the Decree, it requires the agreement of the Plaintiffs, GE and the Court. Paragraph 217 of the Decree also provides that written notification of modifications of the Decree is to be provided to the City and PEDDA.

WHEREAS written notice of this modification has been provided to the City and PEDDA. Those parties have authorized the United States to represent to the Court that they do not object to this modification.

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

A. As defined in Paragraph 4 of the Decree, the Trustees include the designated representatives of each of the Trustee Secretaries specified in the Decree, including the Secretary of the United States Department of the Interior, the Secretary of the United States Department of Commerce, the Secretary of the Executive Office of Energy and Environmental Affairs for the Commonwealth of Massachusetts (formerly the Executive Office of Environmental Affairs), and the Commissioner of the Connecticut Department of Environmental Protection, or their respective designees, who shall act collectively to carry out the Trustees' responsibilities under the Decree pursuant to a Memorandum of Agreement referenced in Paragraph 117 of the Decree.

B. A January 2002 Memorandum of Agreement among the Trustees (the "Trustee MOA") established a Trustee Council and SubCouncils to administer the amounts paid by GE in satisfaction of the Plaintiffs' claims for Natural Resource Damages pursuant to the terms of the Consent Decree including Paragraphs 112 and 114 through 117 of the Decree. Pursuant to the Trustee MOA and amendments thereto, the Trustee SubCouncil for the geographic region of Massachusetts ("Massachusetts SubCouncil") consists of the Commonwealth of Massachusetts and the United States Fish and Wildlife Service ("USFWS").

C. In accordance with Paragraph 114.d of the Decree, GE has paid \$75,000 to the Trustees for Restoration Work to be performed by the Trustees in Silver Lake. This amount is administered by the Massachusetts SubCouncil pursuant to the Trustee MOA and Paragraphs 114 through 117 of the Decree.

D. Technical Attachment 1, "Natural Resource Restoration/Enhancement Activities" ("Technical Attachment 1"), to Appendix E of the Decree, the Statement of Work for Removal Actions Outside the River (the "SOW"), further specifies, in relevant part, that with

respect to restoration work to be undertaken by the Trustees in Silver Lake, the following

Performance Standards are to be met:

1. GE shall fund activities to be performed by the Trustees to create littoral habitat (that will not interfere with the performance of the cap) suitable for a balanced, indigenous aquatic community in the lake, in the amount of \$25,000.
2. GE shall fund activities to be performed by the Trustees to remove the existing fish community and replace it with a balanced fish population, in the amount of \$50,000.

(Performance Standards 2 and 3 in Section 6.1, referred to herein as Paragraphs 6.1(2) and 6.1(3), of Technical Attachment 1.) As noted above, these amounts have previously been paid by GE.

E. To date, the Massachusetts SubCouncil has expended a portion of the above-referenced funds to collect data on polychlorinated biphenyl ("PCB") concentrations in representative fish species present in Silver Lake to evaluate the extent of the need for removal of the existing fish population.

F. Based upon the fish sampling data obtained by the Massachusetts SubCouncil, and a thorough review of the needs and objectives for the Silver Lake restoration work specified in the SOW, the governments have requested, and GE has agreed, that the Decree be modified to alter the Performance Standards contained in Paragraphs 6.1(2) and 6.1(3) of Technical Attachment 1.

G. With respect to Paragraph 6.1(2), the Massachusetts SubCouncil does not intend to create littoral habitat as required under Paragraph 6.1(2) because of the potential for such work to damage the protective cover that GE will be installing in Silver Lake pursuant to the

Consent Decree. The Massachusetts SubCouncil therefore proposes that these funds be allocated towards efforts to remove the fish with the highest levels of PCB contamination.

H. With respect to Paragraph 6.1(3), the Massachusetts SubCouncil believes that partial removal of the fish population in Silver Lake, rather than complete removal of the fish community and replacement with a new fish population, will better achieve the natural resource restoration goals for Silver Lake. The Massachusetts SubCouncil believes that partial removal will allow for the removal of the most contaminated segment of the fish community, decrease total PCB biomass in the lake, and help to balance native and desired fish species community dynamics. In addition, the Massachusetts SubCouncil evaluated the current cost of removing contaminated fish from Silver Lake as required by the Consent Decree and SOW, and determined that those costs are far greater than originally anticipated at the time of the Consent Decree. Accordingly, the governments propose, and GE has agreed, that the remainder of the total \$75,000 be allocated to activities relating 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.

I. The governments believe that these changes to the Performance Standards in Paragraphs 6.1(2) and 6.1(3) of Technical Attachment I are desirable for the purposes of restoring the fish community in Silver Lake and that the changes proposed will not undermine the cleanup efforts being undertaken by GE in Silver Lake. GE has agreed to these changes.

NOW, THEREFORE, the Consent Decree, including its appendices, is hereby modified as follows:

1. The following sentence in Paragraph 118.c of the Consent Decree is deleted:

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.

And the following sentence is substituted in its place:

Settling Defendant shall also pay \$75,000 to the Trustees in accordance with Paragraph 114.d for the Trustees to perform activities related to fish removal as part of the restoration work in Silver Lake, and shall have no further obligation relating to those fish removal-related activities or for other aquatic habitat restoration activities in Silver Lake (except as provided in the Consent Decree).

2. Paragraphs 6.1(2) and 6.1(3) of Technical Attachment I to the SOW are , deleted and the following requirement is substituted in its place:

GE shall fund activities in the amount of \$75,000 to be performed by the Trustees for restoration work related to fish removal in Silver Lake.

3. Section 6.2.1 of Technical Attachment I is modified by deleting the following paragraph at the end of that section:

GE shall also provide funds to the Trustees for certain activities to be conducted by the Trustees or their contractor within Silver Lake. These activities include in-water plantings to create littoral habitat suitable for a balanced, indigenous aquatic community representative of a great pond of equal size, and the removal of the existing fish community and replacement of that community with a balanced fish population representative of a great pond

of equal size. GE shall pay the Trustees \$25,000 to create the aquatic habitat.

GE shall pay the Trustees \$50,000 to remove and replace the fish population.

And the following paragraph is substituted in its place:

GE shall also provide funds to the Trustees for certain activities to be conducted by the Trustees or their contractor within Silver Lake. These activities relate to the removal of a portion of the existing fish community. GE shall pay the Trustees \$75,000 for activities related to the removal of a portion of the existing fish population.

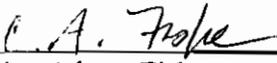
THE UNDERSIGNED PARTY enters into this Eighth Modification of Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the GE-Pittsfield/Housatonic River Site.

UNITED STATES OF AMERICA

Ronald J. Tenpas
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Date: 6/4/08

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COMMONWEALTH OF MASSACHUSETTS

Date: 6/ /08

6/20/08

By: Nancy E. Harper

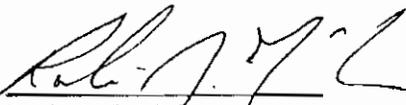
Nancy E. Harper
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THE UNDERSIGNED PARTY enters into this Eighth Modification of Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the GE-Pittsfield/Housatonic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

GENERAL ELECTRIC COMPANY

Date: 6/1/08

6/1/08

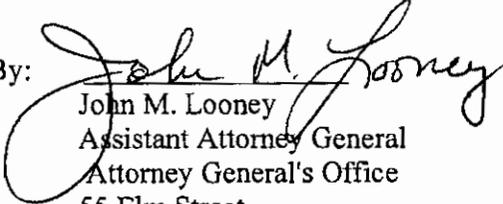
By: 

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THE UNDERSIGNED PARTY enters into this Eighth 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.

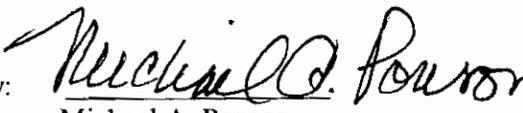
THE STATE OF CONNECTICUT

Date: 6/18/08

By: 
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The attached Eighth 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, is hereby approved.

SO APPROVED THIS 23rd DAY of June, 2008.

By: 
Michael A. Ponsor
United States District Judge