

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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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.)	
_____)	

TENTH 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 nine 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 United States on May 25, 2007, and approved by the Court on May 30, 2007; (6) the Sixth Modification of Consent Decree, filed by United States on February 14, 2008; (7) the Seventh Modification of Consent Decree, filed by the United States on May 15, 2008, and approved by the Court on May 19, 2008; (8) the Eighth Modification of Consent Decree, filed by the United States on June 20, 2008, and approved by the Court on June 23, 2008; and (9) the Ninth Modification of Consent Decree, filed by the United States on July 22, 2009.

WHEREAS, the United States, the State, and GE (the “Modification Parties”) have agreed to enter into this Tenth Modification of Consent Decree (“Modification”) in the interest of effective implementation of the Consent Decree. This Modification allows a reconciliation between GE and the U.S. Environmental Protection Agency (“EPA”) with respect to the 1 ½ Mile Reach Removal Action Costs (as defined in the Consent Decree), and provides a mechanism for periodic future cost reconciliations between EPA and GE for such costs.

WHEREAS, this Modification is a non-material modification of the Consent Decree and the SOW because it is an adjustment to certain accounting procedures under the Consent Decree that will have no material impact on GE’s liability under the Consent Decree. As such, pursuant to Paragraphs 216 and 217 of the Decree, this Modification requires the agreement of the United States, the State, and GE. Paragraph 217 of the Decree also provides that written notification of non-material modifications of the Decree must be provided to the City and PEDDA and that non-

material modifications of the Decree are effective upon filing with the Court by the United States.

WHEREAS, prior written notice of this Modification has been provided to the City and PEDA;

WHEREAS, the City and PEDA have informed the Modification Parties that they do not object to this Modification;

WHEREAS, the relevant background information relating to this Modification is set forth below:

A. Among the response actions required under the Consent Decree was the remediation of a segment of the Housatonic River known as the 1 ½ Mile Reach. EPA and GE agreed to share the costs of EPA's performance of the 1 ½ Mile Reach Removal Action. The cost-sharing arrangements are provided in Paragraphs 101-111 of the Decree, and generally provide for advance payment by GE to EPA of GE's share of costs to be incurred. Paragraph 103 of the Decree includes the specific 1 ½ Mile Reach Removal Action cost-sharing arrangement, which includes a "sliding scale" of different percentage contributions by EPA and GE at different monetary increments of 1 ½ Mile Reach Removal Action Costs. GE's advance payments have been placed in the GE-Pittsfield 1 ½ Mile Reach Removal Action Special Account, SSID A1-67 ("1 ½ Mile Reach Special Account") and EPA has used the GE payments, along with EPA's cost share, to implement the 1 ½ Mile Reach Removal Action.

B. The cost-sharing arrangement for 1 ½ Mile Reach Removal Action Costs was modified by the Second Modification of Consent Decree. That Modification included a stipulation resolving a dispute between EPA and GE over the calculation of EPA's "indirect

costs” for purposes of the cost-sharing arrangement. The Second Modification sets forth the procedures to be used to calculate such indirect costs.

C. To pay for a portion of EPA’s share of the 1 ½ Mile Reach Removal Action Costs, as well as to pay for a portion of the response costs for Consent Decree response actions at other areas of the Site, EPA established, with funds that EPA has recovered from GE under the Consent Decree, a separate special account known as the GE-Pittsfield/Housatonic River Special Account, SSID 01-67 (“Sitewide Special Account”).

D. For the 1 ½ Mile Reach Removal Action, active remediation activities took place from 2002 to 2007. Currently, under the same cost-sharing arrangement referenced above, GE is conducting “Post-Removal Site Control” activities at the 1 ½ Mile Reach. Post-Removal Site Control activities include monitoring of the sediments and surface water, inspection of revegetation, erosion and stability, and monitoring of land use controls. Post-Removal Site Control activities will continue for the foreseeable future; there is no set date for conclusion of the 1 ½ Mile Reach Post-Removal Site Control activities.

E. EPA has been using an Interagency Agreement with the U.S. Army Corps of Engineers (“ACOE”) for performing the 1 ½ Mile Reach Removal Action activities, and for overseeing the current Post-Removal Site Control activities.

F. The 1 ½ Mile Reach Removal Action cost-sharing provisions of the Decree do not adequately address the present situation for the funding of the 1 ½ Mile Reach activities. There are several issues that are addressed by this Modification:

1. Paragraph 109.c of the Decree provides that, within 90 days following EPA’s closeout of the interagency agreement with the ACOE for the 1 ½ Mile Reach Removal Action,

EPA shall provide to GE a final accounting showing cumulative U.S. 1 ½ Mile Reach Removal Action Costs and identifying the increment(s) into which costs reflected on the statement fall and GE's corresponding percentage share of such costs. EPA is also at that time to identify the amounts, if any, remaining in the 1 ½ Mile Special Account. However, EPA intends to continue use of the Interagency Agreement to oversee Post-Removal Site Control actions by GE. In addition, while EPA will retain the 1 ½ Mile Special Account, any future payments made by GE or credits due to GE for costs of Post-Removal Site Control activities or other future 1 ½ Mile Reach Removal Action Costs will be handled through the Sitewide Special Account. The Modification Parties did not anticipate, at the time they entered into the Decree, that the final accounting and reconciliation of costs for the active remediation measures and the associated amounts in the 1 ½ Mile Special Account would be delayed until completion of the Post-Removal Site Control activities due to the continuation of the Interagency Agreement for oversight of those activities. The Modification Parties seek herein to modify the Decree to allow for a final accounting between EPA and GE of the active remediation costs and Post-Removal Site Control costs through September 30, 2009, and the associated amounts in the 1 ½ Mile Special Account, similar to the accounting provided for in Paragraph 109.c, to take place at this time, instead of waiting an indefinite amount of time until the closeout of the Interagency Agreement.

2. The Decree does not provide a mechanism for any accounting or reconciliation of costs in the years following the closeout of the Interagency Agreement. Beyond the one-time accounting in Paragraph 109.c, there is no provision for accounting of continuing costs related to

Post-Removal Site Control. Accordingly, the Modification Parties seek herein to modify the Decree to provide such a mechanism.

3. Paragraph 109.a of the Decree provides that, on a periodic basis, the United States will submit to GE particular information on the U.S. 1 ½ Mile Reach Removal Action Costs. Paragraph 109.a further provides for an expectation that the United States will use its best efforts to submit such information every six months. EPA has submitted these updates to GE twice yearly since May 2001. However, the Decree does not provide for any modification or elimination of the submittal of these summaries until 90 days following closeout of the Interagency Agreement, at which time EPA is to provide a final accounting, as stated above. The Modification Parties agree that, at this point, with active remediation complete for the 1 ½ Mile Reach, submittal of the information at six-month intervals is no longer necessary, and that submittal of such information on an annual basis will be adequate.

4. Paragraph 105 of the Consent Decree provides that the amounts paid to the 1 ½ Mile Special Account shall be used solely to pay for GE's share of the 1 ½ Mile Reach Removal Action costs, except as provided in Paragraph 111 of the Consent Decree. Paragraph 111 of the Consent Decree governs the disposition of any funds remaining in the 1 ½ Mile Special Account at the time of closeout of the Interagency Agreement and provides that such funds will be applied as a credit against certain other obligations of GE under the Consent Decree. In view of the final accounting and cost reconciliation of funds in the 1 ½ Mile Special Account between EPA and GE, which will be implemented by this Modification, the Modification Parties have agreed that Paragraph 105 should be revised to provide that EPA may use the remaining funds in the 1 ½ Mile Special Account for any response actions in connection with the Site (as opposed to only

for the 1 ½ Mile Reach Removal Action) and that Paragraph 111 should be revised to provide that, if monies still remain in the 1 ½ Mile Special Account following EPA's closeout of the Interagency Agreement, EPA may transfer such funds to the Sitewide Special Account or, if such account is no longer in existence, to the EPA Hazardous Substance Superfund.

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

1. Paragraph 109.a of the Decree shall be replaced with the following provision:

“a. On a periodic basis, the United States will submit to Settling Defendant information on the U.S. 1 ½ Mile Reach Removal Action Costs. In January 2010, EPA submitted information to Settling Defendant under this Paragraph concerning the U.S. 1 ½ Mile Reach Removal Action Costs incurred from April 1, 2009 through September 30, 2009. Following the filing of the Tenth Modification of the Decree, the United States will use its best efforts to submit such information no less often than annually, covering approximately the time period each year from October 1 through September 30, concurrent with EPA's submittal to Settling Defendant of cost billing information for costs other than the U.S. 1 ½ Mile Reach Removal Action Costs. Such information shall include the documentation set forth in Paragraphs 100.a through 100.e and shall also include a statement showing cumulative U.S. 1 ½ Mile Reach Removal Action Costs and identifying the increment(s) into which costs reflected on the statement fall and Settling Defendant's corresponding percentage share of such costs. Additional documentation shall not be required to establish the amounts or recoverability of the costs incurred.”

2. Paragraph 109.c of the Decree shall be replaced with the following provisions, which shall be Paragraphs 109.c and 109.d:

“c. 1 ½ Mile Reach Removal Action Costs Through September 30, 2009: As part of the filing of the Tenth Modification of the Consent Decree, EPA submitted to Settling Defendant a 1 ½ Mile Cost Reconciliation Accounting that addresses all 1 ½ Mile Reach Removal Action Costs incurred through September 30, 2009. That reconciliation indicated that Settling Defendant’s contribution to the 1 ½ Mile Reach Removal Action Costs was \$790,400.67 less than Defendant’s share of such costs, as determined pursuant to the formula set forth at Paragraph 103 of the Consent Decree. Therefore, Settling Defendant, within 30 days following the date of filing of the Tenth Modification of the Consent Decree, shall pay to EPA \$790,400.67. Settling Defendant’s payment is to be made via Electronic Funds Transfer (“EFT”) or by check, and should clearly reference the Sitewide Special Account, GE-Pittsfield/Housatonic River Special Account, SSID 01-67, and the DOJ case number 09-11-3-1479. For an EFT payment, GE shall direct the payment to the Federal Reserve Bank of New York; the ABA routing number is 021030004, and the account number is 68010727. For payment by check, Settling Defendant shall mail it to U.S. Environmental Protection Agency, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000.”

“d. 1 ½ Mile Reach Removal Action Costs After September 30, 2009: The cost-sharing provisions of Paragraph 103 of the Consent Decree shall continue to apply to 1 ½ Mile Reach Removal Action Costs incurred after September 30, 2009. When EPA submits to Settling Defendant information concerning the U.S. 1 ½ Mile Reach Removal Action Costs, pursuant to Paragraph 109.a, EPA shall also submit a 1 ½ Mile Reach Removal Action Cost reconciliation for the period of time at issue, which shall take into

account any information provided by Settling Defendant concerning any 1 ½ Mile Reach Removal Action Costs incurred by Settling Defendant during the same time period. The cost-share formula shall then be applied to determine if Settling Defendant owes additional funds to cover its share of 1 ½ Mile Costs or Settling Defendant is due a credit. To the extent that payment is required of Settling Defendant in a periodic accounting, Settling Defendant shall make all payments to the Sitewide Special Account pursuant to Paragraph 100.h of the Decree, except as otherwise provided in Paragraph 101. To the extent that a credit is due to Settling Defendant in a periodic accounting, such credit shall be provided to GE in the periodic cost billing under Paragraph 100. EPA agrees that in such periodic billings, EPA will not revise previous 1 ½ Mile Reach cost accountings based on revisions to the EPA provisional indirect cost rates. The procedures set out in the Second Modification of the Consent Decree for calculating EPA's indirect costs shall continue to apply to any reconciliation of 1 ½ Mile Reach Removal Action Costs after September 30, 2009, including in periodic cost billings under this Paragraph 109.d that occur after the final accounting and cost reconciliation of funds in the 1 ½ Mile Special Account between EPA and Settling Defendant, as provided for in the Tenth Modification of the Consent Decree.”

3. Paragraph 107 of the Decree shall be replaced with the following provision:

“1 ½ Mile Reach Removal Action Costs Incurred by Settling Defendant after September 30, 2009 shall be addressed by Paragraph 109.d of the Consent Decree, as added by the Tenth Modification of the Consent Decree. Settling Defendant shall provide EPA with sufficient documentation, including contractor invoices, to support its cost information.”

4. Paragraph 111 shall be replaced with the following provision:

“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 transferred to EPA’s GE-Pittsfield/Housatonic River Sitewide Special Account, SSID 01-67 or, if such account is no longer in existence, to the EPA Hazardous Substance Superfund.”

5. Paragraph 105 shall be replaced with the following provision:

“The United States established a Special Account for the 1 ½ Mile Reach Removal Action (“the 1 ½ Mile Special Account”), SSID A1-67. Following the final accounting and cost reconciliation of funds in that account between EPA and Settling Defendant, as provided for in the Tenth Modification of the Consent Decree, EPA shall use the remaining monies in the 1 ½ Mile Special Account to pay for response costs in connection with the 1 ½ Mile Reach Removal Action, or for other response costs incurred in connection with the Site, except as otherwise provided in Paragraph 111.”

THE UNDERSIGNED PARTY enters into this Tenth 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

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COMMONWEALTH OF MASSACHUSETTS

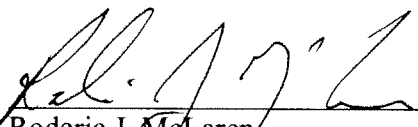
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THE UNDERSIGNED PARTY enters into this Tenth Modification of Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the GE-Pittsfield/Housatonic River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

Date: 9/28/2010

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CERTIFICATE OF SERVICE

I certify that this Tenth Modification of Consent Decree was filed on September 30, 2010, 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 30th day of September, 2010.

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