

Superfund Records Center
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Page: 1 of 51 02/10/2005 09:50 AM**GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT**42 U.S.C. § 9601 *et seq.*, and M.G.L. c. 21E, § 6.

[Note: This instrument is established as an institutional control for a federal Superfund Removal Site, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.]

EPA Site Name: GE-Pittsfield/Housatonic River Site
 DEP Site Name: GE Pittsfield Disposal Sites
 DEP Disposal Site No. GECD120

This GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT (the "Grant") is made as of this 28th day of January, 2005, by the General Electric Company ("Grantor"), a corporation organized and existing under the laws of the State of New York, duly authorized to do business in Massachusetts, with a principal office in Pittsfield, Berkshire County, Massachusetts.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of a certain parcel of land located between Woodlawn Avenue, East Street, and Silver Lake Boulevard in Pittsfield, Berkshire County, Massachusetts, with the buildings and improvements thereon;

WHEREAS, said parcel of land, numbered as Tax Parcel No. I10-4-101, which is more particularly bounded and described in Exhibit A attached hereto and made a part hereof (the "Property"), is subject to this Grant. The Property is shown on a plan entitled "Plan of Restricted Area - 30's Complex," prepared by Hill Engineers, Architects, Planners, Dalton, Massachusetts, dated January 28, 2005, and recorded in the Berkshire Middle District Registry of Deeds on February 10, 2005, in Plat G, No. 347;

WHEREAS, the Property and certain restricted areas of the Property referred to as the Building Demolition Barrier Area, the General Commercial Area, and the Groundwater Response Action Component Area (if any is established in the future), all as defined below (collectively, all of the foregoing restricted areas comprising the "Restricted Area"), are subject to covenants, restrictions, easements and other rights and obligations under this Grant; the Restricted Area being shown on the above-referenced plan entitled "Plan of Restricted Area - 30's Complex," recorded in the Berkshire Middle District Registry of Deeds on February 10, 2005, in Plat G, No. 347; as such plan may be revised by Grantor (or, by the General Electric Company ("GE"), if GE is not the Grantor, with notice to Grantor), with the approval of Grantee and in accordance with the Consent Decree and the Statement of Work attached thereto (as defined below), to show the location of any Groundwater Response Action Component Area (to the extent that any such response action to address groundwater contamination at the Site has not been completed as of the date of this instrument); said plan, with any such revision, being collectively referred to herein as the "Plan of Restricted Area";

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GEORGE DEGREGORIO MASSIMIANO
 & MCCARTHY
 ATTORNEYS AT LAW

WHEREAS, the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, a duly constituted agency organized under the laws of the United States of America and having a regional office at One Congress Street, Boston, Massachusetts 02114 ("EPA"), has identified a site, comprised of the GE facility in Pittsfield, Massachusetts, the Housatonic River adjacent to and downstream of the GE facility, and other areas, all as more particularly described in the Consent Decree (defined below), known as the "GE-Pittsfield Housatonic River Site" (the "Site"), as a result of the release of hazardous substances at or from the GE facility, as such terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.*;

WHEREAS, the MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION, a duly constituted agency organized under the laws of the Commonwealth of Massachusetts and having an office at One Winter Street, Boston, MA 02108 ("DEP"), as a result of the release of oil and/or hazardous materials at the Site, as those terms are defined in the Massachusetts Oil and Hazardous Materials Release, Prevention and Response Act, M.G.L. c. 21E ("Chapter 21E"), has placed the Site and/or portions of the Site on the Massachusetts List of Confirmed Disposal Sites and Locations To Be Investigated, pursuant to Chapter 21E, and has assigned to the portion of the Site containing the Property DEP Disposal Site Number GECD120, pursuant thereto;

WHEREAS, EPA regulates activities at hazardous substance disposal sites pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. 300.400, *et seq.*, as amended (the "NCP"), and DEP regulates activities at disposal sites pursuant to Chapter 21E and the Massachusetts Contingency Plan, 310 C.M.R. 40.0000, as amended (the "MCP"), respectively;

WHEREAS, the Property is situated within the Site, within an area formerly known as the 30s Complex;

WHEREAS, GE has entered into a Consent Decree in connection with the Site with the United States, the State of Connecticut, and the Commonwealth of Massachusetts (the "Commonwealth") in United States of America, State of Connecticut, and Commonwealth of Massachusetts v. General Electric Company, Civil Action No. 99-30225-MAP, entered by the United States District Court for the District of Massachusetts on October 27, 2000 (the "Consent Decree");

WHEREAS, the Consent Decree and an accompanying Statement of Work ("SOW") require the performance of certain Response Actions (as defined below) at the Site or portions thereof;

WHEREAS, the Response Actions are ongoing at the Site and include Response Actions at the Property;

WHEREAS, EPA has determined and the Consent Decree requires that certain easements, rights, obligations, covenants, and restrictions, as more particularly set forth below, are necessary at the Property and at the Restricted Area, to conduct and ensure the protectiveness and integrity of the Response Actions;

WHEREAS, DEP has provided EPA with review and comment on the Response Actions, and agrees with the need for easements, rights, obligations, covenants, and restrictions, as aforesaid;

WHEREAS, because the Response Actions, as they affect the Property, are a Removal Action under CERCLA, EPA has requested that DEP accept a grant of such easements, rights, obligations, covenants, and restrictions, as aforesaid, pursuant to its authority under M.G.L. c. 21E, § 6;

WHEREAS, Grantor has agreed to grant the aforesaid easements, rights, obligations, covenants and restrictions, as more particularly set forth below, to DEP and its assigns pursuant to the Consent Decree;

NOW, THEREFORE, pursuant to the terms of the Consent Decree and in consideration of EPA's and the Commonwealth's agreement on behalf of DEP to settle certain of their claims against Grantor pursuant thereto, the receipt and sufficiency of which consideration is hereby acknowledged, GRANTOR does hereby COVENANT AND DECLARE that the Property shall be subject to the restrictions on activity and use set forth below, and does GIVE, GRANT AND CONVEY to DEP ("Grantee"), with QUITCLAIM COVENANTS, (1) the perpetual right to enforce said activity and use restrictions, and (2) an environmental protection and access easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property (collectively, the "Environmental Restriction and Easement").

Said Environmental Restriction and Easement is subject to the following terms and conditions:

1. Purpose. It is the purpose of this instrument to establish covenants, restrictions and easements, all of which shall run with the land, to facilitate the cleanup of environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

2. Definitions. For purposes of this instrument, the following terms shall have the following meanings:

A. "Building" shall mean a structure, whether portable or fixed, enclosed by exterior walls or firewalls and a roof, built, erected and framed of a combination of any materials to form a structure for the shelter of persons, animals, or property.

B. "Building Demolition Barrier Area" shall mean those areas of the Property designated as such on the Plan of Restricted Area, as more particularly bounded and described in Exhibit B attached hereto and made a part hereof; such areas are generally areas where building demolition debris has been placed into an existing building foundation and where a permanent barrier has been constructed and will be maintained to isolate and contain underlying building debris and other materials.

C. "General Commercial Area" shall mean those areas of the Property designated as such on the Plan of Restricted Area; generally such areas are those areas of the Property that are outside of the Building Demolition Barrier Area.

D. "Grantor" includes the Grantor and any successor of Grantor in title to the Property.

E. "Groundwater Response Action Component Area" shall mean those areas of the Property designated as such on the Plan of Restricted Area; generally such areas contain components of the response action for groundwater at the Property, if any.

F. "Health and Safety Protocol" shall mean the Health and Safety Protocol attached hereto as Exhibit C and incorporated herein by reference.

G. "Licensed Site Professional" or "LSP" each shall mean a hazardous waste site cleanup professional, as defined in M.G.L. c. 21A, § 19, holding a valid license issued by the Board of Registration of Hazardous Waste Site Cleanup Professionals, pursuant to M.G.L. c. 21A, §§ 19 through 19J.

H. "Recorded" and its various conjugations shall mean recorded with the appropriate registry of deeds, conjugated as appropriate;

I. "Response Actions" shall mean the environmental response actions required to be undertaken at the Site or portions thereof pursuant to the Consent Decree and SOW (designated as Removal Actions under CERCLA), including (but not limited to) source control measures, soil removal, capping of contaminated soil, groundwater monitoring and (if necessary) response actions to address groundwater contamination, other actions to address existing contamination, institutional controls in the nature of restrictive covenants to prevent certain activities and uses at various properties, and certain operation and maintenance activities necessary to maintain the effectiveness of the response actions.

J. "Soil Management Protocol" shall mean the Soil Management Protocol attached hereto as Exhibit D and incorporated herein by reference.

K. "Statement of Work" or "SOW" shall mean the Statement of Work for Removal Actions Outside the River, which is Appendix E of the Consent Decree;

L. "Utility Maintenance Work" shall mean the maintenance and repair of pipes, lines and other such conveyances for water, sewer, storm-water, steam, gas, fuel oil, electricity, and communications, but not the installation of new pipes, lines, or other such conveyances.

3. Restricted Activities and Uses. Except as provided in Paragraph 4 ("Permitted Activities and Uses"), Paragraph 6 ("Conditional Exceptions From Restricted Activities and Uses"), Paragraph 7 ("Applicability"), and/or Paragraph 8 ("Emergency Excavation"), Grantor shall not perform, suffer, allow or cause any person to perform any of the following activities or uses in, on, upon, through, over or under the Property or portions thereof:

- A. residential activity or use;
- B. day care and educational (for children under eighteen (18) years of age) activity or use;
- C. community center (for children under eighteen (18) years of age) activity or use;
- D. recreational activity or use;
- E. agricultural activity or use;
- F. extraction, consumption, or utilization of groundwater underlying the Property, including without limitation, extraction for potable, industrial, irrigation, or agricultural use;
- G. excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil; and
- H. any activity or use that would interfere with, or would be reasonably likely to interfere with, the implementation, operation, or maintenance of any aspect or component of the Response Actions already constructed or under construction, or of which Grantor has notice, including without limitation, interference with any component of the Response Actions situated within the Building Demolition Barrier Area, any groundwater contaminant containment measures or barriers situated within the Groundwater Response Action Component Area (if any), or any groundwater monitoring wells, or any activity that would exceed the bearing load of, or pierce, any barrier or membrane situated within the Building Demolition Barrier Area.

4. Permitted Activities and Uses. Grantor reserves the right to perform, suffer, allow or to cause any person to perform any activity in, on, upon, through, over or under the Property, or make any use of the Property, that is not restricted by the provisions of this Environmental Restriction and Easement. In addition, Grantor may perform, suffer, allow or cause any person to perform the uses and activities set forth below in, on, upon, through, over or under the Property and the Restricted Area, or portions of either. Except for the permitted activities and uses allowed pursuant to subparagraph 4.A. and except as otherwise provided in subparagraph 4.G below, all such activities and uses shall only be conducted in accordance with the Soil Management Protocol and the Health and Safety Protocol, as applicable, as set forth below.

Grantor shall restore the Property, or any portion thereof, affected by any activity or use permitted under subparagraphs 4.A through 4.E and 4.G to its prior condition immediately upon completion of such activity or use, also in accordance with the Soil Management Protocol and the Health and Safety Protocol (except for permitted activities and uses allowed pursuant to subparagraph 4.A and except as otherwise provided in subparagraph 4.G below).

A. Excavation of Ten (10) Cubic Yards or Less in the Top Six Feet. Notwithstanding the restrictions set forth in subparagraph 3.G., excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil in the General Commercial Area, solely within the top six (6) feet of the surface of the ground, of no more than ten (10) cubic yards of such materials, in the aggregate, on a per project basis, shall be permitted. Grantor shall not segment a project to avoid the ten (10) cubic yard limitation established by this subparagraph 4.A. In conducting activities and uses pursuant to this subparagraph, Grantor shall comply with the following requirements:

- i. Such excavation shall be conducted in a timely fashion so as to minimize the time when excavated areas are open and/or excavated materials are stored in the General Commercial Area to the minimum time practicable for such activity or use; provided, however, that the duration of such excavation or storage shall not exceed fourteen (14) days.
- ii. Grantor shall take appropriate measures to secure stored soil and to control erosion, dust, and runoff.
- iii. Grantor shall (a) backfill excavations to the original surface grade with clean soil or soil excavated from the General Commercial Area solely from the top six (6) feet of the surface of the ground; and (b) reestablish any disturbed vegetation.
- iv. Grantor shall provide Grantee and EPA with written notice of each such excavation project no later than thirty (30) days after completion, and shall use the form attached hereto as Exhibit E for such notice, as such form may be modified in writing from time to time by Grantee; provided, however, that any such project where the total amount of soil that has been or will be excavated is less than five (5) cubic feet shall not be subject to the foregoing notification requirement.
- v. Grantor shall not store or dispose of any excavated material outside of the General Commercial Area.

B. Excavation of any Volume in the Top Six Feet. Notwithstanding the restrictions set forth in subparagraph 3.G., excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil in the General Commercial Area, solely within the top six (6) feet of the surface of the ground, of any volume of such materials, shall be permitted in accordance with the requirements of this subparagraph 4.B. In

conducting work pursuant to this subparagraph, Grantor shall comply with the following requirements:

i. Grantor shall utilize an LSP to oversee the excavation permitted pursuant to this subparagraph, including without limitation, the disposal of soil and other material. All activities and uses permitted pursuant to this subparagraph shall be conducted in accordance with the Soil Management Protocol and the Health and Safety Protocol.

ii. Such excavation shall be conducted in a timely fashion so as to minimize the time when excavated areas are open and/or excavated materials are stored on the Property to the minimum time practicable for such activity or use; provided, however, that the duration of such excavation shall not exceed fourteen (14) days. Any materials (e.g., soils, sediments, and personal protective equipment) excavated, collected, placed, used and/or stored on the Property or elsewhere, in connection with such excavation, shall be properly disposed of, or shipped or removed from the Property for proper disposal, within ninety (90) days from the date of such initial storage or within such longer time as is permitted under any applicable state or federal law or regulation.

iii. Grantor shall give Grantee and EPA at least fifteen (15) days' advance written notice prior to conducting any activities and uses pursuant to this subparagraph 4.B.

iv. Grantor shall provide Grantee and EPA with written notice of each such project no later than thirty (30) days after completion. Grantor shall use the form attached hereto as Exhibit E for such notice, as such form may be modified in writing from time to time by Grantee.

C. Excavation of Ten (10) Cubic Yards or Less at Any Depth. Notwithstanding the restrictions set forth in subparagraph 3.G., excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil in the General Commercial Area, at any depth, of no more than ten (10) cubic yards of such materials, in the aggregate, on a per project basis, shall be permitted. Grantor shall not segment a project to avoid the ten (10) cubic yard limitation established by this subparagraph 4.C. In conducting work pursuant to this subparagraph, Grantor shall comply with the following requirements:

i. Grantor shall utilize an LSP to oversee the excavation permitted pursuant to this subparagraph, including without limitation, the disposal of soil and other material. All activities and uses permitted pursuant to this subparagraph shall be conducted in accordance with the Soil Management Protocol and the Health and Safety Protocol.

ii. Such excavation shall be conducted in a timely fashion so as to minimize the time when excavated areas are open and/or excavated materials are stored on the Property to the minimum time practicable for such activity or use; provided, however, that the duration of such excavation shall not exceed fourteen (14) days. Any materials (e.g., soils, sediments, and personal protective equipment) excavated, collected, placed, used and/or stored on the Property or elsewhere, in connection with such excavation, shall be properly disposed of, or shipped or removed from the Property for proper disposal, within ninety (90) days from the date of such initial storage or within such longer time as is permitted under any applicable state or federal law or regulation.

iii. Grantor shall provide Grantee and EPA with written notice of each such project no later than thirty (30) days after completion. Grantor shall use the form attached hereto as Exhibit E for such notice, as such form may be modified in writing from time to time by Grantee.

D. Surface and/or Subsurface Excavation for Utility Maintenance Work at Any Depth.

Notwithstanding the restrictions set forth in subparagraph 3.G., excavation, digging, drilling, or other intrusive activity into or disturbance of surface of the ground and/or the underlying soil in the General Commercial Area, at any depth, for the purpose of Utility Maintenance Work, shall be permitted. In conducting Utility Maintenance Work pursuant to this subparagraph, Grantor shall comply with the following requirements:

i. All such Utility Maintenance Work shall be conducted in accordance with the Soil Management Protocol and the Health and Safety Protocol. Grantor shall utilize an LSP to oversee all such activities and uses, including without limitation, the disposal of soil and other materials.

ii. Such Utility Maintenance Work shall be conducted in a timely fashion so as to minimize the time when excavated areas are open and/or excavated materials are stored on the Property to the minimum time practicable for such activity or use; provided, however, that the duration of such excavation shall not exceed fourteen (14) days. Any materials (e.g., soils, sediments, and personal protective equipment) excavated, collected, placed, used and/or stored on the Property or elsewhere, in connection with such excavation, shall be properly disposed of, or shipped or removed from the Property for proper disposal, within ninety (90) days from the date of such initial storage or within such longer time as is permitted under any applicable state or federal law or regulation.

iii. Grantor shall give Grantee and EPA at least fifteen (15) days' advance written notice prior to conducting any activities and uses pursuant to this subparagraph 4.D.

iv. Grantor shall provide Grantee and EPA with written notice of each such project no later than thirty (30) days after completion. Grantor shall use the form attached hereto as Exhibit E for such notice, as such form may be modified in writing from time to time by Grantee.

E. Subsurface Excavation for Construction of New Utilities. Notwithstanding the restrictions set forth in subparagraph 3.G., excavation, digging, drilling, or other intrusive activity into or disturbance of surface of the ground and/or the underlying soil in the General Commercial Area, at depths below six (6) feet but not greater than ten (10) feet below the surface of the ground, for the purpose of construction of new utilities, shall be permitted, provided that any such work shall comply with the following requirements:

i. Grantor shall utilize an LSP to oversee such work, including without limitation, sampling, excavation, and the disposition of soil and other materials.

ii. All work permitted pursuant to this subparagraph shall be conducted in accordance with the Health and Safety Protocol and the Soil Management Protocol.

iii. Sampling data must be evaluated to characterize the soils in each proposed utility corridor. As set forth in the Soil Management Protocol, Paragraph 17, sampling data may be obtained by conducting new sampling, by using certain existing data (defined in the Soil Management Protocol as "Usable Existing Data"), or by a combination of both.

(a) As set forth in Paragraph 17.d of the Soil Management Protocol, at least thirty (30) days prior to collecting any additional data pursuant to such Paragraph 17.d, Grantor shall submit to Grantee and EPA a sampling plan.

(b) In situations where Grantor believes that it may rely on Usable Existing Data for all or some of the data required to be collected pursuant to the Soil Management Protocol for the permitted use under this subparagraph 4.E, Grantor shall submit to Grantee and EPA the information required by Paragraph 17.b (for the period within 5 years after Grantor executes this Grant) and/or 17.c (for the period beginning 5 years after Grantor executes this Grant) of the Soil Management Protocol in accordance with any schedule set forth therein.

(c) Also, at least fourteen (14) days prior to any work allowed by this permitted use, Grantor shall submit the information required by Paragraph 15 of the Soil Management Protocol.

(d) Grantee's and EPA's prior approval of the sampling plan required by Paragraph 17.d, or of the information required by Paragraphs 15 and 17.b of the Soil Management Protocol, is not required to perform the sampling

or work. Prior approval is required for any information submitted pursuant to Paragraph 17.c of the Protocol.

- (e) Grantor shall use the form attached hereto as Exhibit G, as such form may be modified by Grantee from time to time, as a transmittal form for each submittal required by this subparagraph 4.E.iii.

iv. Grantor shall provide Grantee and EPA with written notice of each such project completed under this subparagraph 4.E no later than thirty (30) days after completion. Grantor shall use the form attached hereto as Exhibit E for such notice, as such form may be modified in writing from time to time by Grantee.

This subparagraph 4.E shall expire if DEP no longer promulgates Method 1 and Method 2 soil standards (see the Massachusetts Contingency Plan of the Code of Massachusetts Regulations, 310 CMR 40.0970 and 40.0980), and if DEP no longer promulgates standards functionally equivalent to the Method 1 and Method 2 soil standards.

F. Subsurface Excavation for Construction or Placement of Buildings. Notwithstanding the restrictions set forth in subparagraph 3.G., excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil, at depths below six (6) feet but not greater than ten (10) feet below the surface of the ground, for the construction or placement of Buildings in the General Commercial Area shall be permitted, provided that any activity or use conducted pursuant to this subparagraph shall comply with the following requirements:

- i. Grantor shall use an LSP to oversee all such activities and uses, including, without limitation, sampling, excavation, and the disposal of soil and other materials.
- ii. All activities and uses permitted pursuant to this subparagraph shall be conducted in accordance with the Soil Management Protocol and the Health and Safety Plan.
- iii. Sampling data must be evaluated to characterize the soils in each area to be excavated and/or disturbed for the construction of a Building. As set forth in the Soil Management Protocol, Paragraph 12, sampling data may be obtained by conducting new sampling, by using certain existing data (defined in the Soil Management Protocol as "Usable Existing Data"), or by a combination of both.
 - (a) As set forth in Paragraph 12.c of the Soil Management Protocol, at least thirty (30) days prior to collecting any additional data pursuant to such Paragraph 12.c, Grantor shall submit to Grantee and EPA a sampling plan.
 - (b) In situations where Grantor believes it may rely on Usable Existing Data for all or some of the data required to be collected pursuant to the Soil

Management Protocol for this permitted use, Grantor shall submit to Grantee and EPA the information required by Paragraph 12.b.ii (for the period within 5 years after the Grantor executes this Grant) and/or 12.b.iii (for the period beginning 5 years after Grantor executes this Grant) of the Soil Management Protocol in accordance with any schedule set forth therein.

- (c) Also, at least fourteen (14) days prior to any work allowed by this permitted use, Grantor shall submit to Grantee and EPA the information required by Paragraph 15 of the Soil Management Protocol.
- (d) Grantee's and EPA's prior approval of the sampling plan required by Paragraph 12.c, or of the information required by Paragraphs 12.b.ii and 15 of the Soil Management Protocol, is not required to perform the sampling or work. Prior approval is required for any information submitted under Paragraph 12.b.iii of the Protocol.
- (e) Grantor shall use the form attached hereto as Exhibit G, as such form may be modified by Grantee from time to time, to submit the information required by this subparagraph 4.F.iii.

iv. Grantor shall provide Grantee and EPA with written notice of each such project completed under this subparagraph 4.F no later than thirty (30) days after completion. Grantor shall use the form attached hereto as Exhibit E for such notice, as such form may be modified in writing from time to time by Grantee.

This subparagraph 4.F shall expire if DEP no longer promulgates Method 1 and Method 2 soil standards (see the Massachusetts Contingency Plan of the Code of Massachusetts Regulations, 310 CMR 40.0970 and 40.0980), and if DEP no longer promulgates standards functionally equivalent to the Method 1 and Method 2 soil standards.

G. Sampling. Notwithstanding the restrictions set forth in subparagraphs 3.F and 3.G., soil and groundwater sampling activities shall be permitted in the General Commercial Area; provided that Grantor shall utilize an LSP to oversee such sampling; and further provided that all such activities and uses shall be conducted in accordance with the Soil Management Protocol and the Health and Safety Protocol. The foregoing requirements to utilize an LSP and to comply with the Soil Management Protocol shall not apply to soil or groundwater sampling activities conducted by or under the oversight of GE personnel or contractors familiar with the terms of this Grant and pursuant to a plan for sampling that takes into account contaminated media at the Property and has been approved by EPA or DEP, with notice to Grantee. The foregoing sentence shall run to the benefit of GE alone, not to any successors or assigns, and shall not run with the land.

H. All other restrictions set forth in Paragraph 3 ("Restricted Activities and Uses") shall apply to the activities and uses permitted pursuant to this Paragraph 4 ("Permitted Activities and Uses").

5. Obligations and Conditions. Grantor affirmatively agrees to perform the following activities at the Property and/or Restricted Area:

A. If Grantor observes or otherwise becomes aware of evidence of any failure or other significant alteration of the Building Demolition Barrier Area, including without limitation (i) exposure of or damage to any drainage layer, synthetic barrier, or liner; (ii) uneven settlement relative to surrounding areas; or (iii) damage to the pavement cover of the Building Demolition Barrier Area such as fissures, large cracks, or potholes; then Grantor shall notify Grantee and EPA thereof in writing within five (5) business days thereafter, with a copy to GE, if GE is not the Grantor.

B. Any utility repair, maintenance or installation conducted in confined spaces shall comply with the Health and Safety Protocol.

C. During the period beginning with the date on which Grantor executes this Grant and ending five years thereafter, Grantor shall maintain a copy of the "Soil Data Compilation Report for 30s Complex," dated November 2, 2004 (the "Data Report") and a copy of a plan titled "Topographic Survey, 30s Complex," dated September 7, 2004, prepared by Hill Engineers, Architects, Planners, Inc. During such period, Grantor shall also maintain, as Addenda to the Data Report, a record of information regarding soil or materials that have been disturbed, moved, excavated, and/or placed on the Property, including, without limitation, information on the amount of soil, excavation dimensions, location of the excavation and/or disposition on the Property, and contaminants in such soil; all advance notices given under the Grant relating to the activities and uses permitted under Paragraph 4; all Post-Work Notification Forms (Exhibit E); all Pre-Work Transmittal Forms (Exhibit G); reports submitted pursuant to Paragraph 6.F (Conditional Exceptions); any notices regarding excavation conducted pursuant to Paragraph 8 (Emergency Excavation); and any excavation or grading plans. Upon conveying title to the Property, Grantor shall deliver a copy of such records to Grantor's successor in title. Five years after the date Grantor executes this Grant, the obligations of this subparagraph 5.C shall expire and shall be of no further force and effect.

6. Conditional Exceptions from Restricted Activities and Uses. Grantor may request from Grantee a conditional exception from one or more of the restricted activities or uses set forth in Paragraph 3 ("Restricted Activities and Uses") for a particular proposed activity or use and any related work, which would otherwise temporarily violate such restriction(s). Such request shall be submitted to Grantee in accordance with and shall be subject to all of the following:

A. **Submittal Requirements.** All requests for conditional exceptions shall, at a minimum:

- i. include a written description and/or plans of the proposed activity or use and other relevant information;
- ii. identify the Restricted Area or types of restricted areas for which the conditional exception is requested;
- iii. identify the specific restriction(s) from which the conditional exception is requested, and explain the need for the exception;
- iv. state the duration of the activity or use and any related work for which the conditional exception is requested, including a proposed termination date for the conditional exception; and
- v. if required pursuant to subparagraph 6.B, below, include (a) a determination by an appropriately trained and licensed professional, such as an LSP, that the proposed activity and use and any related work for which the conditional exception is requested would satisfy the human health and environmental risk standard set forth in subparagraph 6.C, and (b) supporting technical analysis upon which such determination is based.

B. Requirement to Use an Appropriately Trained and Licensed Professional: Request for Waiver. An appropriately trained and licensed professional, such as an LSP, shall make the risk determination required in subparagraph 6.A.v, unless waived by Grantee pursuant to this subparagraph 6.B. Grantor may request Grantee to waive such requirement, if appropriate under the circumstances, for example, if a particular proposed activity and use and any related work is de minimis. In the event of such a request or on its own initiative, Grantee, in its sole discretion, may waive such requirement taking into consideration the nature and scope of a particular proposed conditional exception request. Any such waiver must be in writing. A waiver for one conditional exception request shall not be deemed to be a waiver for any future conditional exception request.

C. Human Health and Environmental Risk Standard. Grantor shall demonstrate, in accordance with the procedures set forth in subparagraphs 6.A and 6.B, that the activity or use and any related work for which a particular conditional exception is requested would not result in an unacceptable risk to human health or the environment, pursuant to the criteria set forth at 40 C.F.R. § 300.430(e)(2)(i), as amended, or interfere with the integrity or effectiveness of the Response Actions. Such demonstration shall include, but not be limited to, consideration of the following factors, as applicable:

- i. potential exposure to or release of hazardous substances;
- ii. potential adverse impacts of the proposed activity or use on any Building Demolition Barrier Area or on surface water runoff pathways;

- iii. potential creation of pathways of contaminant migration;
- iv. potential impact on groundwater and any non-aqueous-phase liquids (NAPL);
- v. management plans for excavated contaminated materials, including handling and disposal;
- vi. appropriate worker health and safety plans; and
- vii. whether the proposed activity or use and any related work would interfere with the implementation, operation and/or maintenance of the Response Actions and if so, whether the proposed activity or use is necessary to reduce a threat to human health or the environment.

D. Other Relevant Considerations. In reviewing a proposed conditional exception request, Grantee may consider Grantor's financial and/or technical ability to perform the necessary response work in connection with such request. Grantee may also consider any other relevant matters related to the human health and environmental risk standard set forth in subparagraph 6.C, above.

E. Completeness Determination, Review and Response.

- i. If Grantee determines that Grantor's conditional exception request is sufficient and complete for purposes of review, Grantee shall review such request. If necessary, Grantee may notify Grantor of any deficiencies in Grantor's request, and may provide Grantor with an opportunity to submit supplemental information.
- ii. Except as provided for in subparagraph 6.G, Grantee, upon completion of its review of any conditional exception request, based upon whether the human health and environmental risk standard set forth in subparagraph 6.C would be satisfied, and upon the other relevant considerations set forth in subparagraph 6.D, shall determine whether the requested conditional exception is appropriate and, if so, shall issue the conditional exception. If Grantee determines that the requested conditional exception is not appropriate, then Grantee shall issue a written explanation. Grantee may condition its issuance of a conditional exception as appropriate, including without limitation, upon the results of future sampling and/or testing.
- iii. All conditional exceptions must be in writing and signed by Grantee.

F. Interim and Closeout Report Requirements. During and/or upon completion of the activity or use and any related work for which the conditional exception was obtained, upon request by Grantee, Grantor shall submit a written report confirming that such activity or use and related work was or is being implemented in accordance with the conditional exception, including

in accordance with the representations in Grantor's conditional exception request submittal regarding the requirements set forth in subparagraphs 6.C and 6.D. Such report shall be prepared and signed by an appropriately trained and licensed professional, such as an LSP, unless, pursuant to subparagraph 6.B, Grantee previously waived the requirement to include a risk determination and supporting technical analysis by such professional.

G. Applicability of Amendment Provision to Conditional Exception Requests. Any conditional exception request for an activity or use and any related work which, in the judgment of Grantee, would result in a permanent modification to an activity or use restriction established in Paragraph 3 ("Restricted Activities and Uses"), including without limitation, to the boundary of the Restricted Area or any particular type of restricted area, shall require an amendment to this instrument in lieu of a conditional exception, in accordance with Paragraph 15 ("Amendment and Release").

7. Applicability. The restrictions set forth in Paragraph 3 ("Restricted Activities and Uses") shall not apply to any response action undertaken by EPA or DEP, or their respective agents, representatives, contractors, subcontractors or employees, pursuant to CERCLA or Chapter 21E, and their respective implementing regulations. In addition, the restrictions set forth in subparagraphs 3.F through 3.H shall not apply to any of the following activities conducted by GE, or its employees, contractors, or subcontractors, pursuant to the Consent Decree and/or the SOW, as approved by EPA (which approval shall be after a reasonable opportunity for review and comment by DEP), for purposes of implementing or monitoring the Response Actions, provided that such activities do not permanently modify the boundary of the Restricted Area or of any particular type of restricted areas: soil or groundwater sampling; excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil; and/or groundwater extraction.

8. Emergency Excavation. If it becomes necessary to excavate a portion of the Property, as part of a response to an emergency (e.g., repair of utility lines or responding to fire or flood), any activity and use restriction provisions of Paragraph 3 ("Restricted Activities and Uses") above, which would otherwise restrict such excavation, shall be suspended with respect to such excavation for the duration of such emergency response, provided that Grantor:

A. Limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency;

B. Implements all measures necessary to limit actual or potential risk to the public health and environment arising from the emergency and the response thereto;

C. Undertakes precautions to minimize exposure of workers and neighbors of the Property to the hazardous substance or material; and

D. Utilizes an LSP (except as provided in the last sub-paragraph of this Paragraph 8) to oversee the implementation of the terms of this Paragraph 8 ("Emergency Excavation"), and to

prepare and oversee the implementation of a written plan which, in said professional's opinion, will restore the Property to a condition consistent with its condition before the emergency excavation took place, with minimal disturbance of the contaminated soils; said plan to be subject to the Soil Management and the Health and Safety Protocols, as applicable; said plan to be promptly prepared and implemented; a copy of said plan to be submitted to EPA and DEP within ten (10) days of its performance, together with a completed Post-Work Notification Form, attached hereto as Exhibit E, with a statement from said LSP that the Property has been restored to said condition; provided, however, that in cases where only minimal excavation has occurred such that there has been no significant impact on the protectiveness of the Response Actions, Grantor may request Grantee to allow the Grantor to prepare and submit the plan and statement, without utilizing the services of the otherwise required LSP.

In addition, Grantor shall notify EPA and the DEP Western Regional Office Emergency Response Section, or such other party as EPA or DEP may identify in writing to Grantor, of such emergency as soon as possible but no more than two (2) hours after having learned of such emergency.

The following provisions shall run to the benefit of GE alone, but not to any successor or assign, and shall not run with the land:

i. While GE continues to own and control the Property, to the extent that GE is unable practicably to utilize an LSP to oversee the implementation of this Paragraph 8 (as required by subparagraph 8.D, above) due to the time-critical nature of the emergency, GE may instead utilize a similarly trained and experienced GE employee during the emergency to satisfy said requirement, provided that such employee:

(a) is experienced in overseeing excavation and management of contaminated media;

(b) is familiar with health and safety considerations, including proper use of personal protective equipment;

(c) is familiar with regulatory requirements for sampling and management of hazardous material;

(d) is familiar with the relevant requirements of this Grant, the Consent Decree and the SOW; and

(e) has appropriate environmental science or engineering training and experience and other appropriate educational background.

- ii. While GE continues to own and control the Property, GE may, at its option, utilize a consultant, under the supervision of an LSP, to prepare the above-described written plan (as required by subparagraph 8.D, above).

9. Grant of Easements. In establishing this Environmental Restriction and Easement, Grantor hereby grants the following easements for the term of this Grant to Grantee, its agents, representatives, contractors, subcontractors and employees:

A. An easement to pass and repass over the Property for the purpose of inspecting the Property to ensure compliance with and fulfillment of the terms of this Environmental Restriction and Easement; and

B. An easement in, on, upon, through, over and under the Property, for the following purposes:

- i. constructing, implementing, monitoring, and performing the Response Actions and operation and maintenance for the Response Actions;
- ii. assessing the need for, planning, or implementing other response actions at the Site;
- iii. verifying any data or information submitted to EPA or DEP;
- iv. surveying and obtaining samples;
- v. installing groundwater monitoring wells and extraction wells;
- vi. conducting investigations relating to contamination at or near the Site; and
- vii. determining whether additional activity or use restrictions are necessary.

10. Severability. Grantor agrees, in the event that a court or other tribunal determines that any provision of this instrument is invalid or unenforceable:

A. That any such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal; or

B. That any such provision that, by its nature, cannot be so modified, shall be deemed deleted from this instrument as though it had never been included.

Such modifications and deletions shall be deemed effective as of the date of the determination of the court or other tribunal. In either case, the remaining provisions of this instrument shall remain in full force and effect.

11. Enforcement. Grantor expressly acknowledges that a violation of the terms of this instrument could result in the following:

A. The assessment of penalties and other action by DEP to enforce the terms of this Environmental Restriction and Easement, pursuant to Chapter 21E and the MCP; and/or

B. Upon a determination by a court of competent jurisdiction, the issuance of criminal and civil penalties, and/or equitable remedies, which could include the issuance of an order to (i) modify or remove any improvements constructed in violation of the terms of this Environmental Restriction and Easement at Grantor's sole cost and expense or (ii) to reimburse the Commonwealth and the United States for any costs incurred in modifying or removing any improvement constructed in violation of the terms of this Environmental Restriction and Easement.

12. Provisions to Run With the Land. The land use restrictions, obligations, and access rights provided herein establish certain rights, liabilities, agreements and obligations upon and subject to which the Property or any portion thereof, shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. The rights, liabilities, agreements and obligations herein set forth shall run with the Property for the term of this instrument, as applicable thereto, and any portion thereof, and shall inure to the benefit of Grantee and its assigns and be binding upon Grantor and all parties claiming by, through or under Grantor. Grantor hereby covenants for himself and his executors, administrators, heirs, successors and assigns, to stand seized and hold title to the Property, or any portion thereof, subject to these land use restrictions, access rights, and other provisions of this Grant; provided, however, that a violation of these land use restrictions, access rights, and other provisions shall not result in a forfeiture or reversion of Grantor's title to the Property.

13. Concurrence Presumed. It is agreed that:

A. Grantor and all parties claiming by, through or under Grantor shall be deemed to be in accord with the provisions herein set forth; and

B. Grantor and all such parties agree for and among themselves and any party claiming by, through or under them, and their respective agents, contractors, sub-contractors and employees, that the land use restrictions and access rights herein established shall be adhered to and not violated and that their respective interests in the Property shall be subject to the provisions herein set forth.

14. Incorporation into Deeds, Mortgages, Leases and Instruments of Transfer. Grantor hereby agrees to incorporate this instrument, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Property, or any portion thereof, is conveyed; provided, however, that any failure of Grantor to do so shall not affect the validity or applicability of the provisions of Paragraph 12.

15. Amendment and Release.

A. Amendment at Grantee's Request.

i. Grantee may request Grantor to amend this instrument. Grantor hereby further agrees to execute any such amendment that Grantee reasonably deems necessary for the effective administration of this instrument; provided, however, that such amendment shall be limited to procedural matters hereunder. Accordingly, the foregoing obligation shall not obligate Grantor to impose additional substantive restrictions on the Property, beyond those listed in Paragraph 3 ("Restricted Activities and Uses"); nor to impose additional substantive limitations on the permitted activities and uses set forth in Paragraph 4 ("Permitted Activities and Uses"); nor to impose additional substantive obligations and conditions upon Grantor, beyond those set forth in Paragraph 5 ("Obligations and Conditions"). All amendments shall include Grantee's signed approval and shall become effective upon Recordation.

ii. Notwithstanding the foregoing, if Grantor is not GE, Grantor expressly acknowledges and agrees that the within Grant includes the right of GE, in accordance with the Consent Decree, with notice to Grantor and written approval of Grantee, to Record and/or Register a revised Plan of Restricted Area indicating the location of any Groundwater Response Action Component Area and associated notice thereof. The Recordation of any such revised Plan of Restricted Area and associated notice thereof shall not be deemed an amendment to this Grant, but rather the exercise of rights established by, and effective upon the Recording of, this Grant.

B. Amendment at Grantor's Request. Grantor may amend this instrument only with the prior, written approval of the Grantee. Grantor may propose to Grantee an amendment of an activity or use restriction set forth in Paragraph 3 ("Restricted Activities and Uses") or of a permitted use set forth in Paragraph 4 ("Permitted Activities and Uses"), based upon changed circumstances, including, without limitation, new analytic and engineering data or a Grantor proposal to perform additional remediation at the Property. In the event that Grantor requests such an amendment, Grantor shall provide such information as Grantee may require for review of such a request, including without limitation, information that addresses the considerations set forth in Paragraph 6 ("Conditional Exceptions from Restricted Activities and Uses"), as applicable, and an explanation of the changed circumstances. If Grantee determines that any amendment to this Grant proposed by Grantor is not appropriate, then Grantee shall issue a written explanation.

C. Release. This instrument may be released, in whole or in part, by Grantee in Grantee's sole discretion, and in accordance with CERCLA, the NCP, Chapter 21E and the MCP, to the extent applicable. This instrument shall not be deemed released unless and until Grantee, its successors and assigns, and/or any other party claiming under Grantee, have released their respective interests. Said release shall become effective upon its Recordation.

D. **Recordation.** Grantor hereby agrees to Record any amendment to and/or release of this instrument, and/or other document created pursuant to this instrument for which Recording is required, within thirty (30) days of the date of having received from Grantee any such amendment, release, and/or other document. No more than thirty (30) days from the date of Recording, Grantor shall provide to Grantee a certified Registry copy of the amendment, release, and/or other such document. At that time, or as soon thereafter as it becomes available, Grantor shall provide Grantee with the final recording information for the amendment, release, and/or other such document, certified by said Registry. Grantor shall pay any and all recording fees, land transfer taxes and other such transaction costs associated with any such amendment, release, and/or other document. Grantor, if not GE, further agrees to cooperate with GE in the Recording of a revised Plan of Restricted Area, as described above, and any associated notice thereof.

E. **Notice to Local Officials.** Grantor further agrees to notify local officials and the public of the amendment or release in accordance with the requirements set forth in 310 C.M.R. 40.1403(7), as amended. A copy of said regulation is attached hereto as Exhibit F.

16. **No Dedication Intended.** Nothing herein set forth shall be construed to be a gift or dedication of the Property to Grantee, its assigns or to the general public for any purpose whatsoever.

17. **Term.** This instrument shall run with the land in perpetuity and is intended to conform to the exception for "other restrictions held by any governmental body" set forth in clause (c) of the first paragraph of M.G.L. c. 184, § 26, as amended.

18. **Rights Reserved.** It is expressly agreed that acceptance of this instrument by Grantee or its assignment shall not operate to bar, diminish, or in any way affect any legal or equitable right that Grantee or its assigns may otherwise have to issue any future order or take response action with respect to the Property or in any way affect any other claim, action, suit, cause of action, or demand which Grantee or its assigns may otherwise possess or hereafter acquire with respect thereto.

Nothing in this instrument shall limit or otherwise affect any rights that the United States or the Commonwealth may otherwise have to obtain access to, or restrict the use of, the Property pursuant to CERCLA, Chapter 21E, or any other applicable statute or regulation.

Nothing in this instrument shall waive such liability as Grantor may otherwise have for any release or any threat of a release of hazardous substances, oil or hazardous materials occurring as a result of Grantor's exercise of any of its rights hereunder, nor shall any provision of this instrument excuse compliance with CERCLA, Chapter 21E, or any other applicable federal, state or local laws, regulations or ordinances.

The rights reserved to Grantee in this Paragraph 18 ("Rights Reserved") shall be in addition to any rights reserved to Grantee elsewhere in this instrument.

19. Assignment. This instrument, including without limitation all easements, rights, covenants, obligations and restrictions inuring to the benefit of Grantee, herein contained, shall be assignable by Grantee, in whole or in part, at any time. This instrument may only be assigned to EPA, the City of Pittsfield, or any state or federal agency with at least statewide jurisdiction that has statutory authority to hold property interests and to administer or to enforce property restrictions such as this Environmental Restriction and Easement on behalf of the State or the United States, or to any other appropriate entity upon the mutual agreement of Grantee and Grantor. In the event of any assignment, Grantee shall notify Grantor by notice sent by first-class mail, postage prepaid, to Grantor's address first above-written.

20. Agency Review and Comment; Notice. Prior to responding to any request for approval or taking any other action pursuant to this instrument, Grantee shall first provide EPA with a reasonable opportunity to review and comment upon the requested approval or proposed action. Grantor shall submit duplicate copies of any submissions or notices made to Grantee pursuant to this instrument to Grantee, with a copy to EPA, at the following addresses, by first class mail, postage prepaid:

A. to EPA: U.S. Environmental Protection Agency
Office of Site Remediation and Restoration
One Congress Street,
Suite 1100 -- Mail Code HIO
Boston, MA 02114-2023
Attn: GE-Pittsfield Housatonic River Site

B. to DEP: Department of Environmental Protection
Western Regional Office
436 Dwight Street
Springfield, MA 01103; and to

Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street
Boston, MA 02108

C. or as otherwise provided in writing by EPA or DEP.

If GE is not the Grantor, Grantor shall submit any notices to GE made pursuant to this instrument to GE at the following address or such other address as provided in writing by GE, with a copy to Grantee and EPA:

General Electric Company
Corporate Environmental Programs
159 Plastics Avenue
Pittsfield, MA 01201

21. Effective Date. This instrument shall become effective upon its Recordation.

No more than thirty (30) days from the date of Recording, Grantor shall provide Grantee with a certified Registry copy of this instrument. At that time, or as soon thereafter as it becomes available, Grantor shall provide Grantee with the final Recording information for this instrument, certified by said Registry.

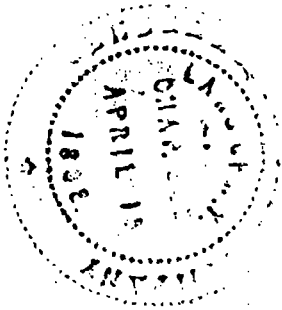
As this instrument is granted to an agency of the Commonwealth of Massachusetts, no Massachusetts deed excise tax stamps are affixed hereto, none being required by law (M.G.L. Chapter 64D, Section 1, as amended).

WITNESS the execution hereof under seal this 28 day of JANUARY, 2005.

THE GENERAL ELECTRIC COMPANY

By: Michael T. Carroll

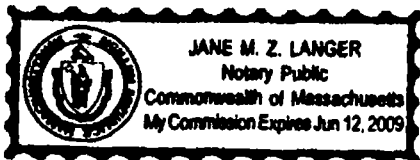
Michael T. Carroll
Manager, Pittsfield Remediation Programs,
Corporate Environmental Programs



COMMONWEALTH OF MASSACHUSETTS

County of Berkshire, ss

On this 28th day of January, 2005, before me, the undersigned notary public, personally appeared Michael T. Carroll, as Manager, Pittsfield Remediation Programs, Corporate Environmental Programs, of the General Electric Company, a corporation, proved to me through satisfactory evidence of identification, which was New York driver's license to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Jane M Z Langer

Notary Public

My commission expires: June 12, 2009

GENERAL ELECTRIC COMPANY

Certificate of Authorization

I, Laurence J. Bird, do hereby certify that I am an Attesting Secretary of General Electric Company, a New York corporation (the "Company"), and, in my capacity as such, further certify that:

1. I am duly authorized to certify resolutions of the Board of Directors of the Company.

2. The following is a true and correct excerpt of a Resolution #10855 duly adopted by the Board of Directors of the Company on April 26, 1988, as such Resolution was duly amended and restated by the Board of Directors of the Company on December 20, 1991 (as so amended and restated, the "Resolution") dealing with the execution of contracts and other instruments on behalf of the Company. The Resolution is in full force and effect as of the date hereof and has not been further amended, modified, rescinded or revoked:

"RESOLVED, that

(A) Any contract, lease license, assignment, bond or other obligation, conveyance, power of attorney, guarantee, proxy, court pleading, release, tax return and related documents, or other instruments may be executed on behalf of this Company by the Chairman of the Board, a Vice Chairman of the Board, an Executive Vice President, a Senior Vice President, a Vice President reporting directly to the Chairman or a Vice Chairman of the Board, the Comptroller, the Treasurer, the Secretary or any Vice President who is a corporate staff officer of the Company, all of the above named individuals being hereinafter called "Authorized Persons".

....

(C) Each Authorized Person is hereby authorized to delegate to others authority to execute on behalf of the Company the following types of contracts and other instruments which relate to the function or component for which such Authorized Person is responsible:

....

4. Contracts, leases, deeds, or other instruments relating to real property or to any improvements thereon."

IN WITNESS WHEREOF, the undersigned has executed the Certificate of Authorization as of this 26th day of January 2005.



Handwritten signature of Laurence J. Bird over a horizontal line.

Laurence J. Bird, Attesting Secretary

GENERAL ELECTRIC COMPANY

Certificate of Incumbency

I, Laurence J. Bird, do hereby certify that I am an Attesting Secretary of General Electric Company, a New York corporation (the "Company"), and, in my capacity as such, further certify that:

1. I am duly authorized to certify the incumbency of officers of the Company.
2. Stephen D. Ramsey is the duly qualified and appointed Vice President, Corporate Environmental Programs, of the Company, that he held that corporate staff office on April 10, 2003, and that he is an "Authorized Person" as defined in paragraph (A) of Resolution #10855 of the General Electric Board of Directors.
3. Attached as Exhibit 1 to this Certificate is a true and correct copy of a valid written delegation of authority dated February 7, 2003 by Stephen D. Ramsey, Vice President, Corporate Environmental Programs of the Company, to Michael T. Carroll, Manager, Pittsfield Remediation Programs, Corporate Environmental Programs, of the Company. This written delegation is in full force and effect as of the date hereof and has not been further amended, modified, rescinded or revoked.
4. Michael T. Carroll is, and was on January 28, 2005 the duly qualified and appointed Manager, Pittsfield Remediation Programs, Corporate Environmental Programs, of the Company.

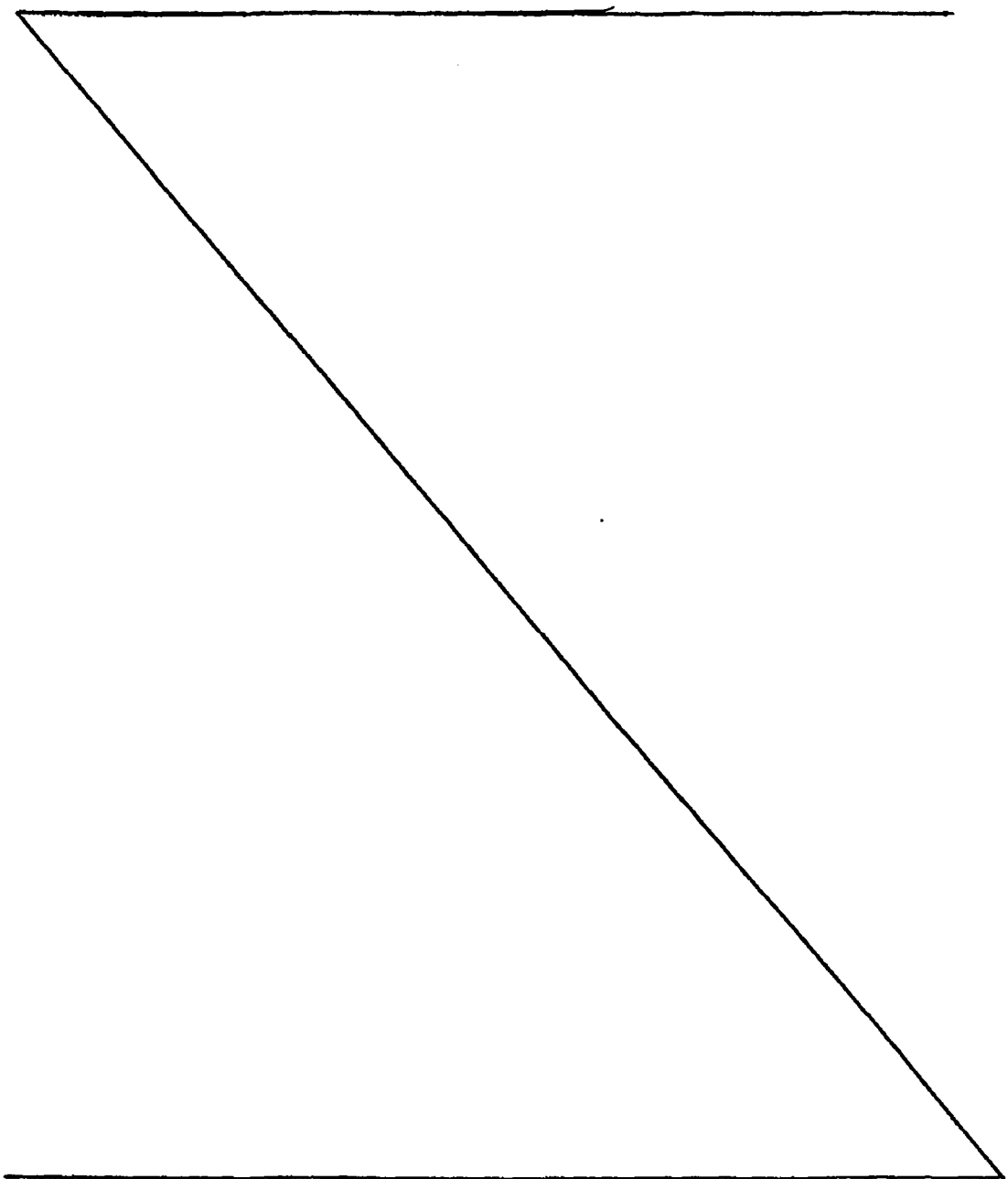
IN WITNESS WHEREOF, the undersigned has executed this Certificate of Incumbency as of this 28th day of January 2005.



Laurence J. Bird, Attesting Secretary



Exhibit 1





Corporate Environmental Programs
General Electric Company
3135 Easton Turnpike, Fairfield, CT 06431

DELEGATION OF AUTHORITY

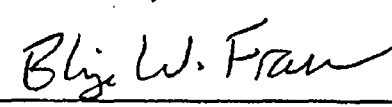
In accordance with the provisions of Paragraph (C) of the General Electric Company Board of Directors' Resolution #10855 dated April 26, 1988 relating to the Execution of Contracts and Other Instruments I, Stephen D. Ramsey, Vice President, Corporate Environmental Programs of the General Electric Company, hereby delegate to Michael T. Carroll, Manager, Pittsfield Remediation Programs, the authority to execute on behalf of the General Electric Company contracts, leases, deeds or other instruments relating to real property located within Berkshire County of Massachusetts, or to any improvements thereon (including, without limitation, instruments imposing environmental restrictions such as Activity and Use Limitations or Grants of Environmental Restrictions and Easements).

Dated this 7th day of February 2003



Stephen D. Ramsey
Vice President
Corporate Environmental Programs
General Electric Company

Attest:



Attesting Secretary

In accordance with M.G.L. c. 21E § 6, as amended, and the Massachusetts Contingency Plan (310 CMR 40.0000) as amended, the Commissioner of the Department of Environmental Protection hereby approves this Grant of Environmental Restriction and Easement (as to form only).

Date: 2/1/05

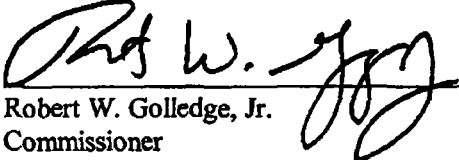

Robert W. Golledge, Jr.
Commissioner
Department of Environmental Protection

Exhibit A

[Description of Property by Metes and Bounds]

Exhibit B

[Description of the Building Demolition Barrier Area by Metes and Bounds]

Exhibit C

[Health and Safety Protocol]

Exhibit D

[Soil Management Protocol]

Exhibit E

[Post-Work Notification Form]

Exhibit F

[Copy of 310 C.M.R. 40.1403(7): Notice of Amendments or Releases.]

Exhibit G

[Pre-Work Transmittal Form for Permitted Uses 4.E and 4.F]

EXHIBIT A

DESCRIPTION OF PROPERTY BY METES AND BOUNDS

Tax Parcel No. I10-4-101

Beginning at a point in the northerly sideline of the 1907 City Layout of East Street marked by a brass bolt set in concrete;

Thence running S 59°43'09" W a distance of 215.21 feet along the northerly sideline of East Street to a point at the easterly side line of the 1927 City Layout of Silver Lake Boulevard; said point is located 0.16' on a bearing of S 11°47'39"E from a concrete bound;

Thence following the easterly sideline of said Silver Lake Boulevard along a curve to the right with a radius of 891.92 feet, an arc distance of 338.81 feet, and a chord distance of 336.77 feet on a bearing of N00° 55'32"W to a concrete bound;

Thence continuing along said sideline N09°57'19"E a distance of 137.43 feet to a point;

Thence following the easterly sideline of said Silver Lake Boulevard along a curve to the left with a radius of 338.07 feet, an arc distance of 429.45 feet, and a chord distance of 401.16 feet on a bearing of N26° 25'02"W to a point;

Thence following the easterly/northerly sideline of said Silver Lake Boulevard along a curve to the left with a radius of 425.07 feet, an arc distance of 282.90 feet, and a chord distance of 277.71 feet on a bearing of N81° 52'27"W to a point;

Thence following the northerly sideline of said Silver Lake Boulevard along a curve to the left with a radius of 177.66 feet, an arc distance of 21.02 feet, and a chord distance of 21.01 feet on a bearing of S75° 40'11"W to the southeast corner of land conveyed to Western Massachusetts Electric Company by deed recorded in the Berkshire Middle District Registry of Deeds in Book 511, Page 43;

Thence running along land of Western Massachusetts Electric Company N12°41'43"E a distance of 169.31 feet to a concrete bound in the southerly line of land of CSX;

Thence running along the southerly line of said CSX land N87°03'07" E a distance of 104.91 feet to a point;

Thence continuing along the southerly line of said CSX land N87°50'27"E a distance of 112.27 feet to a point;

Thence continuing along the southerly line of said CSX land S84°26'29"E a distance of 99.95 feet to a point;

Thence continuing along the southerly line of said CSX land N85°06'21"E a distance of 99.55 feet to a point;

Thence continuing along the southerly line of said CSX land S86°29'35"E a distance of 99.37 feet to a point;

Thence continuing along the southerly line of said CSX land S85°34'58"E a distance of 99.29 feet to a point;

Thence continuing along the southerly line of said CSX land N84°33'02"E a distance 100.19 feet to a point;

Thence continuing along the southerly line of said CSX land S85°29'08"E a distance 381.39 feet to the northeast corner of the lot herein conveyed;

Thence running S03°49'00"W along other land of the grantor herein a distance of 195.27 feet to a point;

Thence continuing along other land of the grantor along a curve to the left with a radius of 258.00 feet, an arc distance of 119.22 feet, and a chord distance of 118.17 feet on a bearing of S08°13'00"E to a point;

Thence running S20°15'00"E along other land of the grantor herein a distance of 333.69 feet to a point in the northerly line of said East Street;

Thence running S65°58'51"W along the northerly line of said East Street a distance of 666.80 feet to the point of beginning.

The above-described parcel of land is more particularly shown as Lot No. I10-4-101 on a plan entitled "Plan of Restricted Area – 30s Complex," dated January 28, 2005, prepared for General Electric Company by Hill Engineers, Architects, Planners, which plan is recorded in the Berkshire Middle District Registry of Deeds in Plat G, No. 347.

The above-described parcel of land contains 15.753 acres.

For the source of title of General Electric Company, reference may be made to the following deeds to the said General Electric Company:

- (1) Deed of Stanley G. I. Electric Manufacturing Company, dated June 18, 1908, and recorded in the Berkshire Middle District Registry of Deeds in Book 337, Page 536;
- (2) Deed of Secundo Ameris, dated May 5, 1917, and recorded in said Registry of Deeds in Book 384, Page 562;
- (3) Deed of Perrone Jaccoz, dated June 18, 1927, and recorded in said Registry of Deeds in Book 433, Page 351; and
- (4) Deed of William C. Witherow, dated October 2, 1970, and recorded in said Registry of Deeds in Book 896, Page 96.

Excepting any and all interest of General Electric Company in Woodlawn Avenue, so-called (more particularly shown as Lot J10-10-102 on a plan entitled "Plan of Restricted Area – 20's Complex," dated January 28, 2005, prepared for General Electric Company by Hill Engineers, Architects, Planners, which plan is recorded in the Berkshire Middle District Registry of Deeds in Plat G, No. 348).

Also excepting any and all interest of General Electric Company in Silver Lake Boulevard and East Street, so-called.

EXHIBIT B

**DESCRIPTION OF BUILDING DEMOLITION BARRIER AREA
BY METES AND BOUNDS**

For purposes of this Grant of Environmental Restriction and Easement, the Building Demolition Barrier Area consists of a portion of the Property subject to the Grant in the city of Pittsfield, Berkshire County, Massachusetts, bounded and described as follows:

Beginning at a point at the northwest corner of the parcel herein described, said point is located S 26°50'14" W a distance of 36.68 feet from an angle point in the southerly line of land of CSX;

Thence running S 87°09'20" E a distance of 55.04 feet to a point;

Thence running S 85°39'36" E a distance of 165.20 feet to a point;

Thence running N 02°11'25" E a distance of 4.20 feet to a point;

Thence running S 86°23'01" E a distance of 11.40 feet to a point;

Thence running S 02°00'02" E a distance of 4.68 feet to a point;

Thence running S 86°31'09" E a distance of 47.47 feet to a point;

Thence running S 86°57'29" E a distance of 30.44 feet to a point;

Thence running S 03°42'08" W a distance of 111.62 feet to a point;

Thence running N 85°50'12" W a distance of 30.51 feet to a point;

Thence running N 86°10'05" W a distance of 125.38 feet to a point;

Thence running N 87°00'09" W a distance of 12.57 feet to a point;

Thence running S 02°50'05" W a distance of 36.46 feet to a point;

Thence running N 86°32'13" W a distance of 44.75 feet to a point;

Thence running N 02°46'39" E a distance of 36.45 feet to a point;

Thence running N 86°22'56" W a distance of 26.78 feet to a point;

Thence running N 03°22'36" E a distance of 25.68 feet to a point;

Thence running N 88°08'54" W a distance of 20.52 feet to a point;

Thence running N 03°41'53" E a distance of 36.81 feet to a point;

Thence running N 86°38'56" W a distance of 50.00 feet to a point;

Thence running N 04°36'14" E a distance of 50.89 feet to the point of beginning.

The above-described area of land contains 32,833 square feet and is more particularly shown as "Building Demolition Barrier Area" on a plan entitled "Plan of Restricted Area – 30s Complex," dated January 28, 2005, prepared for General Electric Company by Hill Engineers, Architects, Planners, which plan is recorded in the Berkshire Middle District Registry of Deeds in Plat G, No. 347.

EXHIBIT C

HEALTH AND SAFETY PROTOCOL

1. This Health and Safety Protocol is an Exhibit to a certain Grant of Environmental Restriction and Easement (the "Grant") relating to the GE-Pittsfield Housatonic River Site. All terms used in this Protocol shall have the same meaning as defined in the Grant.

2. Except as provided, below, in Paragraph 3 of this Protocol, Grantor shall prepare and submit a Health and Safety Plan ("HSP") to Grantee and EPA pursuant to Paragraph 20 ("Agency Review and Comment; Notices") of the Grant, fifteen (15) days or more before conducting any permitted activity or use pursuant to Paragraph 4 ("Permitted Activities and Uses") of the Grant that is subject to this Health and Safety Protocol or as otherwise required by the Grant. If appropriate, Grantor may submit a pre-existing health and safety plan in lieu of preparing a new plan to address this requirement and/or incorporate by reference a previously submitted HSP. Grantor shall comply with the HSP when conducting any permitted activity or use pursuant to the Grant that is subject to this Health and Safety Protocol or as otherwise required by the Grant.

3. An HSP shall not be required for any excavation permitted pursuant to Grant Paragraph 4.A ("Excavation of Ten (10) Cubic Yards or Less in the Top Six Feet").

4. The HSP shall be prepared in accordance with the occupational health and safety provisions of 29 Code of Federal Regulations § 1910.120 otherwise applicable to hazardous waste operations and emergency response, as amended, and; any other applicable federal, state or local law. For any utility repair, maintenance or installation in confined spaces, the HSP shall also be prepared in accordance with the provisions of 29 Code of Federal Regulations § 1910.146, otherwise applicable to work in confined spaces, as amended.

5. In addition to the requirements of Paragraph 4 of this Protocol, the HSP shall, without limitation, include the following items:

- a. General information on the nature, extent, and concentrations of hazardous substances (as defined by CERCLA) and hazardous materials and oil (as defined by Chapter 21E) anticipated in the media to be impacted by the permitted activity and use, based upon existing information.
- b. Description of tasks which may involve exposure to hazardous substances, hazardous materials, or oil.
- c. Description of anticipated actions to protect the health, safety, and welfare of workers and the general public. Actions shall include, but not be limited to, dust control, odor control, personal protective equipment, and erosion and sedimentation control measures (as needed for the particular permitted activity and use).

- d. Discussion of relevant physical, chemical, and biological hazards. (Relevant portions of Material Safety Data Sheets may be incorporated as appropriate.)
- e. A requirement that all persons engaged in the work read and acknowledge the provisions of the HSP and document compliance with said provisions.
- f. A requirement that all persons engaged in the work receive appropriate training in matters of health and safety in accordance with 29 Code of Federal Regulations Section 1910.120, as amended, and, any other applicable federal, state or local law.

6. The HSP shall be approved by a Certified Industrial Hygienist.

7. The Grant and this Health and Safety Protocol are in addition to and do not supersede or relieve Grantor, Grantor's contractors or subcontractors, or any other person or entity performing work on the Property from complying with any applicable federal, state, or local laws, rules or regulations regarding health and safety. Notwithstanding the Grant and this Health and Safety Protocol, it remains the responsibility of such parties to comply with any applicable federal, state, or local laws, rules or regulations regarding health and safety, even if they are more stringent than the requirements of the Grant and this Health and Safety Protocol.

EXHIBIT D

SOIL MANAGEMENT PROTOCOL

1. This Soil Management Protocol is an Exhibit to a certain Grant of Environmental Restriction and Easement (the "Grant") relating to the GE-Pittsfield/Housatonic River Site. Except as otherwise provided herein, the provisions of Paragraphs 1 through 10 of this Protocol shall apply to all permitted activities and uses conducted pursuant to Grant Paragraphs 4.B, 4.C, 4.D, 4.E, 4.F, 4.G (except as otherwise provided in Paragraph 4.G), and to Grant Paragraph 8 (Emergency Excavation).
2. Soil sampling and excavation shall be conducted with the oversight of a Licensed Site Professional ("LSP"), to the extent required by Paragraph 4 (Permitted Activities and Uses) and Paragraph 8 (Emergency Excavation) of the Grant.
3. All terms used in this Protocol shall have the same meaning as defined in the Grant. As used in this Protocol, the term "Appendix IX+3" shall mean the constituents listed in Appendix IX of 40 C.F.R. Part 264, as amended, plus benzidine, 2-chloroethylvinyl ether, and 1,2-diphenylhydrazine, but excluding pesticides and herbicides. The term "Screening PRGs" shall mean the Preliminary Remediation Goals for industrial soils published by Region 9 of the U.S. Environmental Protection Agency, as amended, as modified by the use of the surrogate PRGs set forth below:

<u>Constituent</u>	<u>Surrogate Region 9 PRG that Grantor shall use:</u>
carcinogenic polycyclic aromatic hydrocarbons (PAHs) without PRGs	benzo(a)pyrene
non-carcinogenic PAHs without PRGs	naphthalene
cyanide	hydrogen cyanide
sulfide	carbon disulfide
xylenes (total)	m-Xylene
n-nitrosopiperidine	n-nitrosopyrrolidine
2-hexanone	methyl isobutyl ketone or methyl ethyl ketone
3&4-methylphenol	4-methylphenol

4. Grantor shall implement the management procedures and measures required by the provisions of 310 Code of Massachusetts Regulations (CMR) Section 40.0018 (1) and (2) otherwise applicable to response actions, as amended. Excavations permitted under Paragraphs 4.B, 4.C, 4.D, 4.E, 4.F, and 4.G (except as otherwise provided in Paragraph 4.G) of the Grant shall be conducted in a timely fashion so as to minimize the time when excavated areas are open and/or

excavated materials are stored on the Property to the minimum time practicable for such activity; provided, however, that the duration of such excavation shall not exceed fourteen (14) days for activities conducted pursuant to Grant Paragraphs 4.B, 4.C, 4.D, and 4.G, thirty (30) days for activities conducted pursuant to Grant Paragraph 4.E (Subsurface Excavation for Construction of New Utilities), and forty-five (45) days for activities conducted pursuant to Grant Paragraph 4.F (Subsurface Excavation for Construction or Placement of Buildings), unless a further extension is approved in writing by Grantee prior to the expiration of the fourteen (14), thirty (30), or forty-five (45) day period, as applicable. Grantor shall, during excavation, use best management practices to control contaminant migration, exposure to contaminated material, and erosion, runoff, and dust emissions.

5. Soil and materials from within the General Commercial Area which have been excavated solely within the top six (6) feet of the surface of the ground may be (i) disposed of in the General Commercial Area, with no sampling required; (ii) disposed of off-Property, in accordance with Paragraphs 8 and 9 of this Protocol; (iii) returned to the original excavation for use as backfill, with no sampling required; or (iv) a combination of the management options listed in this sentence. Soil and materials from within the General Commercial Area that have been excavated (pursuant to Grant Paragraph 4.C or 4.D) deeper than six (6) feet from the surface of the ground may be (i) returned to the General Commercial Area at depths below six (6) feet from the surface of the ground, with no sampling required, and covered with six (6) feet of clean soil or soil excavated solely from the top six (6) feet in the General Commercial Area; (ii) disposed of off-Property, in accordance with Paragraphs 8 and 9 of this Protocol; or (iii) a combination of the management options listed in this sentence. Grantor shall keep separate (i) soil excavated from within the top six (6) feet of the ground surface in the General Commercial Area; (ii) soil excavated from below the top six (6) feet of the ground surface in the General Commercial Area; and (iii) clean backfill. This Paragraph shall not apply to soil and materials excavated in connection with the activities and uses permitted pursuant to Paragraph 4.E (Subsurface Excavation for Construction of New Utilities) or Paragraph 4.F (Subsurface Excavation for Construction or Placement of Buildings).

6. As required by Paragraph 4 (Permitted Activities and Uses) of the Grant, Grantor shall return the Property, or any portion thereof, to its prior condition immediately upon completion of such activity or use. Such restoration shall include, without limitation, (i) backfilling excavations to the original surface grade with clean soil, except for any soil that may be returned to the original excavation pursuant to this Protocol; (ii) replacing and repairing any aspects or components of the General Commercial Area or of the Response Action situated within the Building Demolition Barrier Area that are disturbed by the activities and uses allowed hereunder; and (iii) reestablishing any disturbed vegetation.

7. Any materials (e.g., soils, sediments, and personal protective equipment) excavated, collected, placed, used and/or stored on the Property or elsewhere, in connection with such excavation, shall be properly disposed of, or shipped or removed from the Property for proper disposal, within ninety (90) days from the date of such initial storage or within such longer time as is permitted under any applicable state or federal law or regulation. The location of the storage of soil and

other materials shall be either (i) in the General Commercial Area, or (ii) as otherwise authorized by applicable state or federal laws and regulations. All soil and other material shall be stored in a manner consistent with 310 CMR § 40.0036 (as amended) and in accordance with: (a) EPA approval under 40 Code of Federal Regulations § 761.61(c) (as amended); or (b) 40 Code of Federal Regulations § 761.65, (as amended); or (c) the following requirements: Such materials shall be placed on an impermeable liner to prevent contact with the underlying ground surface, and shall then be covered by a second impermeable membrane. This cover shall remain in place at all times when the storage area is not actively being used, and shall be securely anchored to the ground using weight devices. The storage area shall be located such that potential impacts due to rainfall, wind, and surface runoff are minimized.

8. Sampling for Off-Property Disposition:

- a. Except as provided in Paragraph 8.b, Grantor shall conduct sufficient sampling of soils and materials to be disposed of off of the Property so as to assure adequate characterization of such soils and materials for off-Property disposal, subject to oversight by an LSP and in accordance with any state and federal laws and regulations, including, without limitation, 310 CMR § 40.0017. Also, at a minimum, Grantor shall perform the following sampling to characterize for disposal all soil and/or materials to be disposed of off the Property. Such sampling shall involve the collection and sampling of 1 discrete "grab" sample for each 100 cubic yards of soil and/or material. The discrete grab samples shall be collected at spatially distributed locations within the material and each sample shall be analyzed for PCBs.
- b. In lieu of and notwithstanding the provisions of Paragraphs 8.a, 12.a through 12.d, 13, 14, and 17 of this Protocol, for any soils or materials that will be consolidated at one or more of the EPA-approved on-plant consolidation areas (OPCAs) located at the GE Plant Area (with approval of the owner of such OPCA(s)), Grantor shall conduct such sampling (if any) as is specified by the owner of such OPCA(s) to allow consolidation of the soils or materials at such OPCA(s) under the Consent Decree. Following a determination that any soils or materials will be consolidated at an OPCA, all such soils or materials, while on the Property, shall be kept separate from all other soils and materials.

9. All off-Property disposal of soil and other materials, including without limitation, used personal protective equipment, shall be: (i) at a facility licensed to accept such materials and in compliance with all applicable laws, rules and regulations; or (ii) at an EPA-approved on-plant consolidation area at the GE Plant if such consolidation area is in operation at the relevant time and in compliance with all operating procedures for such consolidation area and with the approval of the owner of such consolidation area. All disposal of soil and other materials off-Property shall be conducted with the oversight of an LSP. Grantor shall submit written notice to Grantee and EPA at least fifteen (15) days prior to any material leaving the Property. Such notice shall contain a description of the volume of material, the disposal location, characterization sampling data, and the schedule for disposal. All off-Property disposal shall comply with all applicable laws, rules, and regulations.

10. In addition to any other applicable notice requirement, Grantor shall notify the Grantee and EPA if Grantor discovers any of the following during any activity subject to this Protocol: free product, drums, barrels, tanks, impoundments, capacitors, transformers, asbestos-containing material, and/or equipment that contains or contained PCBs within its internal components. Grantor shall dispose of such materials off-Property according to Paragraphs 8 and 9 of this Protocol. Except as otherwise provided by law, Grantor shall provide such notice in writing within three business days after discovering any of the materials listed in this paragraph.

11. Activities and uses conducted pursuant to Grant Paragraph 4.F (Subsurface Excavation for Construction or Placement of Buildings) shall be subject to the requirements set forth in Paragraphs 12 through 15 of this Protocol, in addition to all other applicable provisions of this Protocol.

12. Sampling for Subsurface Excavations for Building Construction: Grantor shall identify the volume and location of soil to be excavated and/or disturbed within strata extending from six (6) feet below the ground surface ("bgs") to no more than 10 feet bgs for the construction of a Building. This volume and location of soil shall be referred to in this Protocol as the "Deep Excavation Area." As provided in Grant Paragraph 4.F, excavations conducted pursuant to that paragraph of the Grant shall not extend below ten (10) feet from the surface of the ground. Except as provided in Paragraph 8.b of this Protocol, Grantor shall comply with the following:

- a. Grantor shall ensure that the following sampling data are available, at a minimum, to characterize the soils in the Deep Excavation Area: (i) There must be a minimum of either two (2) sampling locations per 10,000 square feet of building footprint, or 8 sampling locations, whichever is greater, within the Deep Excavation Area; (ii) these sampling locations must be spatially distributed within the Deep Excavation Area to adequately characterize the soil to be excavated and/or disturbed in the Deep Excavation Area; (iii) all samples must be analyzed for PCBs; and (iv) one-third of all of these samples must be analyzed for other Appendix IX+3 constituents.
- b. Under certain conditions, Grantor may use previously existing sampling data for PCBs and other Appendix IX+3 constituents within the Deep Excavation Area to satisfy some or all of the above criteria. Those conditions are as follows:
 - i. "Usable Existing Data" means pre-existing sampling data included in the *Soil Data Compilation Report for 30s Complex*, dated November 2, 2004 (the "Data Report"), plus any subsequent data collected pursuant to this Protocol (or in accordance with the methods specified in Paragraph 15 of this Protocol) and contained in any Addenda to the Data Report, as described in Paragraph 5.C of the Grant; provided, however, that pre-existing data for the soil associated with a given sampling location shall not be deemed usable if, after the date on which the sample was collected, such soil has been replaced with soil or materials originating from elsewhere on the Property or from off of the Property, has been excavated or disturbed, and/or has been covered by other

soil or materials, except to the extent that Grantor shows that such sampling data are representative after taking into account the soil replacement, excavation or disturbance, or soil cover (as applicable). In determining what data are usable, Grantor shall consider the information in any Addenda to the Data Report, as described in Paragraph 5.C of the Grant, regarding the replacement, excavation, disturbance, or covering of soil in the area.

- ii. During the period beginning with the date on which Grantor executes the Grant and ending five years thereafter, Grantor may use Usable Existing Data, in lieu of additional sampling, to meet the criteria described in Paragraph 12.a. Grantor shall verify (through survey or other means) that the pre-existing data proposed for such use constitute Usable Existing Data (as defined in Paragraph 12.b.i above), and shall submit a report describing such data, as well as a rationale for why they constitute Usable Existing Data, to Grantee and EPA at least 30 days prior to the excavation (if no additional sampling will be necessary) or along with the sampling plan described in Paragraph 12.c below (if additional sampling will be necessary, including sampling to meet any criterion not satisfied by Usable Existing Data).
 - iii. Beginning five years after the date on which Grantor executes the Grant, Grantor may use Usable Existing Data in lieu of new sampling only if and as approved by Grantee. In requesting such approval by Grantee, Grantor shall provide information regarding the location and size of the proposed Deep Excavation Area, the pre-existing data proposed for use, the relevant available information from any Addenda to the Data Report (as described in Paragraph 5.C of the Grant), and a rationale and evidence as to why the pre-existing data proposed for use constitute Usable Existing Data (as defined in Paragraph 12.b.i above).
- c. To the extent that Grantor cannot or does not rely on Usable Existing Data to meet all the criteria in Paragraph 12.a, Grantor shall conduct additional sampling of the Deep Excavation Area as necessary to meet those criteria that were not satisfied by the Usable Existing Data. At least thirty (30) days prior to collecting any additional data, Grantor shall submit to Grantee and EPA a sampling plan containing a description of and the rationale and schedule for the sampling. Grantee and EPA approval of the plan is not required to perform the sampling. Grantor shall conduct such additional sampling at least thirty (30) days prior to the excavation.
 - d. Grantor shall use the form attached hereto as Exhibit G to submit the information required by Paragraphs 12.b.ii, 12.b.iii, and 12.c of this Protocol, as such form may be modified from time to time by the Grantee.

13. Data Comparison for Building Construction: Except as provided in Paragraph 8.b of this Protocol, all Usable Existing Data (if any) and all new data that Grantor collects pursuant to Paragraph 12.c of this Protocol shall be compared against the standards for PCBs and Appendix IX+3 constituents, as outlined in subparagraphs a, b, c, d, e, and f below. Based on this

screening, all excavation and construction work shall be conducted with appropriate levels of personal protective equipment and engineering controls in accordance with the Health and Safety Plan (Grant Exhibit C). Grantor shall:

- a. Calculate the volumetric average of the Deep Excavation Area for PCBs using all Usable Existing Data (if any) and new data collected pursuant to this Protocol.
- b. If no one sample of soil in the Deep Excavation Area exceeds 25 ppm PCBs, and if the soil from the Deep Excavation Area does not exceed the Appendix IX+3 standards described in Paragraph 14, soil from the Deep Excavation Area may be used as backfill and/or placed anywhere within the General Commercial Area, with no further sampling required to support this use. All such soil may be stockpiled on the Property and shall be segregated from (i) all soil or materials to be disposed of off the Property and (ii) all soil associated with a sample location exceeding 25 ppm PCBs or a volumetric average greater than 25 ppm PCBs.
- c. If the volumetric average PCB concentration of the soil in the Deep Excavation Area is less than 25 ppm and if the soil from the Deep Excavation Area does not exceed the Appendix IX+3 standards described in Paragraph 14, but the maximum PCB concentration of any soil sample is greater than 25 ppm but less than 125 ppm at any sampling location within the Deep Excavation Area, then all soil associated with such sampling location and at least one-half the lateral and vertical distance to nearest sampling location with concentrations less than 25 ppm shall be stockpiled separately. Such soil may be (i) disposed of below one (1) foot of the surface of the ground anywhere within the General Commercial Area, (ii) disposed of off-Property, in accordance with Paragraphs 8 and 9 of this Protocol, or (iii) a combination of the management options listed in this sentence. The requirement in the previous sentence to dispose of soil below one (1) foot of the surface of the ground is intended to ensure the integrity of the existing analytical surficial data set and to retain the lower PCB concentration levels of certain surficial soils and is expressly not intended to modify in any way the Performance Standards established by the Consent Decree. At the discretion of the LSP, additional sampling may be conducted in the vicinity of a sample point exceeding 25 ppm PCBs prior to the soil excavation to better define the lateral and vertical extent of the soil that exceeds 25 ppm PCBs.
- d. If the volumetric average PCB concentration of the soil in the Deep Excavation Area is less than 25 ppm and if the soil from the Deep Excavation Area does not exceed the Appendix IX+3 standards described in Paragraph 14, but the maximum PCB concentration of any soil sample is greater than 125 ppm at any sampling location within the Deep Excavation Area, then all soil associated with such sampling location and at least one-half the lateral and vertical distance to nearest sampling location with concentrations less than 125 ppm shall be stockpiled separately. Such soil may be (i) disposed of below six (6) feet of the surface of the ground anywhere within the General Commercial Area, (ii) disposed of off-Property, in accordance with Paragraphs 8 and 9 of this Protocol, or

(iii) a combination of the management options listed in this sentence. At the discretion of the LSP, additional sampling may be conducted in the vicinity of a sample point exceeding 125 ppm PCBs prior to the soil excavation to better define the lateral and vertical extent of the soil that exceeds 125 ppm PCBs.

- e. If the volumetric average PCB concentration of the soil in the Deep Excavation Area is greater than 25 ppm PCBs but less than 100 ppm PCBs and if the soil from the Deep Excavation Area does not exceed the Appendix IX+3 standards described in Paragraph 14, then all soils from the Deep Excavation Area shall be stockpiled separately. All such soil may be (i) disposed of below six (6) feet of the surface of the ground anywhere within the General Commercial Area, except that such soil shall not be disposed of within a 50-foot-wide band centered on an existing or proposed utility (i.e., within 25 feet on either side of the existing or proposed utility); (ii) disposed of off-Property, in accordance with Paragraphs 8 and 9 of this Protocol; or (iii) a combination of the management options listed in this sentence.
- f. If the volumetric average PCB concentration for the Deep Excavation Area is greater than 100 ppm or if any Appendix IX+3 constituent exceeds the non-PCB standards described in Paragraph 14, then all soils from the Deep Excavation Area shall be stockpiled separately and shall be characterized and disposed of off of the Property, in accordance with Paragraphs 8 and 9 of this Protocol, and the Deep Excavation Area shall be backfilled with clean material (as necessary), unless otherwise agreed to by Grantee pursuant to Grant Paragraph 6 (Conditional Exceptions) or 15 (Amendments).
- g. Nothing in this Paragraph 13 or in this Soil Management Protocol shall be deemed to authorize or allow any excavation or use that is not authorized under the Grant, including, without limitation, Grant Paragraph 4 (Permitted Activities and Uses) or a conditional exception approved by Grantee pursuant to Grant Paragraph 6.

14. Standards for Non-PCB Constituents for Building Construction: Except as provided in Paragraph 8.b of this Protocol, the following provisions apply to the evaluation of non-PCB Appendix IX+3 constituents in soil in the Deep Excavation Area:

- a. For each Appendix IX+3 constituent other than dioxins and furans, Grantor shall compare the maximum detected concentration of such constituent to the Screening PRGs.
- b. For each Appendix IX+3 constituent other than dioxins and furans, where the maximum detected concentration exceeds the Screening PRG or for any constituent that does not have a Screening PRG, Grantor shall calculate the arithmetic average of that constituent for the Deep Excavation Area and compare that arithmetic average to the applicable Method 1/S-2 Soil Standard set out in the Massachusetts Contingency Plan (310 Code of Massachusetts Regulations 40.0975), as amended. If there is no Method 1 Soil Standard but there is a Screening PRG, Grantor shall compare the arithmetic average to the Screening PRG. If there is no Method 1 standard and no Screening PRG for a particular

constituent, then Grantor may derive a MCP Method 2 standard for use in the comparison, using procedures consistent with the MCP procedures for deriving such Method 2 standards (310 CMR 40.0984).

- c. For dioxins and furans, Grantor shall calculate for each sample a total Toxicity Equivalent (TEQ) concentration, using the consensus Toxicity Equivalency Factors (TEFs) published by the World Health Organization (Van den Berg et al., *Environ. Health Perspectives*, vol. 106, no. 12, December 1998). Grantor shall then compare either the maximum TEQ concentration or the 95% Upper Confidence Limit (95% UCL) on the mean of TEQ concentrations, whichever is lower, to the following preliminary remediation goals established by EPA for dioxin for commercial/industrial areas: a TEQ concentration of 5 parts per billion (ppb) for soil that may be disposed of within the top six feet at the General Commercial Area and 20 ppb for soil that may be disposed of below six feet, unless and until EPA publishes national revised preliminary remediation goals for dioxin, and EPA Region 1 establishes new preliminary remediation goals for dioxin and provides notice that such revised goals shall apply to this Protocol. Grantor and Grantee shall have a reasonable opportunity to review and comment on the applicability of such revised goals to this Protocol prior to said application.
- d. Soil from the Deep Excavation Area shall be deemed not to exceed Appendix IX+ 3 standards if (i) no Appendix IX+3 constituent other than dioxins and furans exceeds the Screening PRGs, or, if applicable, the MCP Method 1 or 2 standard, as described in subparagraph 14.b above, and (ii) for dioxins and furans, the lower of the maximum TEQ concentration or the 95% UCL on the mean of TEQ concentrations does not exceed the applicable preliminary remediation goal described in subparagraph 14.c above.
- e. If DEP no longer promulgates Method 1 and Method 2 standards and if DEP no longer promulgates functionally equivalent standards, then the permitted use allowed under Grant Paragraph 4.F shall expire.

15. All sampling and analysis performed pursuant to this Protocol shall comply with EPA accepted methods applicable at the time of such sampling and analysis. Grantor shall submit to Grantee and EPA, at least fourteen days prior to any work pursuant to Grant Paragraphs 4.E or 4.F, the following: (i) analytical results and a plan showing sampling locations (and depths) for soil sampling (if any) conducted pursuant to this Protocol for such work; (ii) all calculations and derivations required under Paragraphs 12, 13, 14 and/or 17 (as applicable) of this Protocol for such work; and (iii) a completed Pre-Work Transmittal Form as set forth in Exhibit G, as such form may be modified from time to time by Grantee, to this Grant.

16. Activities and uses conducted pursuant to Grant Paragraph 4.E (Subsurface Excavation for Construction of New Utilities) shall be subject to the requirements set forth in Paragraphs 15 and 17 of this Protocol, in addition to all other applicable provisions of this Protocol (except for Paragraphs 11 through 14). As provided in Grant Paragraph 4.E, excavations conducted pursuant to that paragraph of the Grant shall not extend below ten (10) feet from the surface of the ground.

17. Except as provided in Paragraph 8.b of this Protocol, soil and materials resulting from activities and uses conducted pursuant to Grant Paragraph 4.E. (Subsurface Excavation for Construction of New Utilities) that are excavated and/or disturbed from strata extending from six (6) feet bgs to not more than ten (10) feet bgs are subject to the following requirements:

- a. Grantor shall identify the proposed utility corridor where soil and materials will be excavated and/or disturbed in the strata between six (6) feet and ten (10) feet bgs ("Deep New-Utility Soils"), referenced herein as the "Deep New-Utility Excavation Area." For Deep New-Utility Soils, Grantor shall ensure that the following sampling data are available, at a minimum, to characterize such soils: (i) PCB data collected from between six (6) and ten (10) feet bgs at locations within a 50-foot-wide band centered on the proposed utility (i.e., within 25 feet on either side of the proposed utility) and spaced at intervals of 50 linear feet along the length of the Deep New-Utility Excavation Area; and (ii) data on other Appendix IX+3 constituents collected from between six (6) and (10) feet bgs within that 50-foot-wide utility band at one-third the number of samples analyzed for PCBs.
- b. During the period beginning with the date on which Grantor executes the Grant and ending five years thereafter, Grantor may use Usable Existing Data (as defined in Paragraph 12.b.i above) from the Deep New-Utility Excavation Area, in lieu of additional sampling, to meet the criteria described in Paragraph 17.a. Grantor shall verify (through survey or other means) that the pre-existing data proposed for such use constitute Usable Existing Data (as defined in Paragraph 12.b.i above), and shall submit a report describing such data, as well as a rationale for why they constitute Usable Existing Data, to Grantee and EPA at least 30 days prior to the planned excavation (if no additional sampling will be necessary) or along with the sampling plan described in Paragraph 17.d below (if additional sampling will be necessary, including sampling to meet any criterion not satisfied by Usable Existing Data).
- c. Beginning five years after the date on which Grantor executes the Grant, Grantor may use Usable Existing Data (as defined in Paragraph 12.b.i above) in lieu of new sampling only if and as approved by Grantee. In requesting such approval by Grantee, Grantor shall provide information regarding the location and size of the proposed Deep New-Utility Excavation Area, the pre-existing data proposed for use, the relevant available information from any Addenda to the Data Report (as described in Paragraph 5.C of the Grant), and a rationale and evidence as to why the pre-existing data proposed for use constitute Usable Existing Data (as defined in Paragraph 12.b.i above).
- d. To the extent that Grantor cannot or does not rely on Usable Existing Data to meet all the criteria in Paragraph 17.a, Grantor shall conduct additional sampling of the Deep New-Utility Excavation Area as necessary to meet those criteria that were not satisfied by the Usable Existing Data. At least thirty (30) days prior to collecting any additional data, Grantor shall submit to Grantee and EPA a sampling plan containing a description of, and rationale and schedule for, the sampling. Grantee and EPA approval of the plan is not

required to perform the sampling. Grantor shall conduct such additional sampling at least thirty (30) days prior to the excavation. Such additional sampling and analysis shall comply with the requirements of Paragraph 15 above.

- e. Grantor shall compare the Usable Existing Data (if any) and the new data collected by Grantor (if any) pursuant to Paragraph 17.d for the Deep New-Utility Soils to the reuse and disposal decision criteria outlined in Paragraphs 13 and 14, substituting the words "Deep New-Utility Excavation Area" for the term "Excavation Area." The Deep New-Utility Soils may be reused within the General Commercial Area if they meet the criteria for such reuse specified in Paragraphs 13 and 14. Otherwise, they must be disposed of off of the Property in accordance with Paragraphs 8 and 9 of this Protocol.
- f. If DEP no longer promulgates Massachusetts Contingency Plan Method 1 and Method 2 standards and if DEP no longer promulgates functionally equivalent standards, then the permitted use allowed under Grant Paragraph 4.E (Subsurface Excavation for Construction of New Utilities) shall expire.
- g. Grantor shall use the form attached hereto as Exhibit G to submit the information required by Paragraphs 17.b, c and d of this Protocol, as such form may be modified from time to time by the Grantee.

EXHIBIT E

**POST-WORK NOTIFICATION FORM
FOR PROPERTY WITH ENVIRONMENTAL RESTRICTION AND EASEMENT**

I. General Information

- Type of work: Excavation of greater than five (5) cubic feet and less than or equal to ten (10) cubic yards in the top six feet (per Grant Paragraph 4.A)
- (check all that apply) Excavation of any volume in the top six feet (per Grant Paragraph 4.B)
- Excavation of ten (10) cubic yards or less that is in whole or in part deeper than top foot (per Grant Paragraph 4.C)
- Surface and/or subsurface excavation for Utility Maintenance Work at any depth (per Grant Paragraph 4.D)
- Subsurface excavation for construction of new utilities (per Grant Paragraph 4.E)
- Subsurface excavation for construction or placement of buildings (per Grant Paragraph 4.F)
- Emergency excavation (per Grant Paragraph 8)

Property Address: _____

Tax Parcel ID: _____

II. Description of Excavation Activities

Start date of excavation/soil disturbance: _____

End date of excavation/soil disturbance: _____

Amount of soil excavated or moved: _____

Any soil or other excavated material moved out of the General Commercial Area? Yes No

Excavation dimensions (approximate length x width x depth, in feet) : _____

Description of project unless previously submitted (attach extra sheets, if necessary, identify date if previously submitted): _____

Final disposition of soil (attach grading or other plans showing disposition of soil on the Property, or bills of lading and certificates of disposal, if applicable): _____

Attach a plan (e.g., a copy of the Plan of Restricted Area), unless previously submitted (if previously submitted, identify date submitted _____), showing:

- (1) location of excavation(s) within the property

Licensed Site Professional:

I, _____, to the best of my knowledge and belief, state that the material information contained in this submittal is true, accurate and complete.

Signature: _____

Name/Title: _____

Organization: _____

Address: _____

Telephone #: _____

Relationship to site: _____

V. Notes About the Use of this Form

(1) This form is due no later than thirty (30) days after completion of the permitted activities and uses under Paragraph 4 ("Permitted Activities and Uses") of the ERE Grant. Immediate notification is required for Emergency Excavation pursuant to Paragraph 8 ("Emergency Excavation") of the ERE Grant. This form is required for the post-emergency excavation notice required by Paragraph 8 of the ERE Grant.

(2) Separate, 15 days' advance written notice is required for work conducted under Paragraph 4.B ("Excavation of any Volume in the Top Six Feet") of the ERE Grant and Paragraph 4.D ("Surface and/or Subsurface Excavation for Utility Maintenance Work at any Depth") of the ERE Grant. Separate advance notification requirements also apply to work conducted under Paragraph 4.E ("Subsurface Excavation for Construction of New Utilities") and Paragraph 4.F ("Subsurface Excavation for Construction or Placement of Buildings").

(3) The Health and Safety Protocol and the Soil Management Protocol do not apply to the Permitted Activities and Uses set forth in Paragraphs 4.A ("Excavation of Ten (10) Cubic Yards or Less in the Top Six Feet").

VI. Where to Submit this Form

Submit this completed form, via certified mail, to: MA Department of Environmental Protection
Bureau of Waste Site Cleanup, Special Projects
436 Dwight Street
Springfield, Massachusetts 01103
(Attn.: GE Housatonic Removal Action Project Manager)

Submit a copy of this form, via certified mail, to: U.S. Environmental Protection Agency
Office of Site Remediation and Restoration
One Congress Street,
Suite 1100 -- Mail Code HIO
Boston, MA 02114-2023
Attn: GE-Pittsfield/Housatonic River Site

EXHIBIT F

40.1403: Minimum Public Involvement Activities in Response Actions

* * *

(7) Within thirty days after recording and/or registering any original, amended, released or terminated Activity and Use Limitation pursuant to 310 CMR 40.1070 through 40.1080, the following requirements shall be met to inform local officials and the public of the limitations which apply to activities and/or uses of the property subject to the Activity and Use Limitation:

(a) a copy of the recorded and/or registered Activity and Use Limitation shall be provided to:

1. the Chief Municipal Officer;
2. the Board of Health;
3. the Zoning Official; and
4. the Building Code Enforcement Official in the community(ies) in which the property subject to such Activity and Use Restriction is located.

(b) a legal notice which indicates the recording and/or registering of the original, amended, released or terminated Activity and Use Limitation shall be published in a newspaper which circulates in the community(ies) in which the property subject to the Activity and Use Limitation is located.

1. This notice shall be in a form established by the Department for such purpose and shall include, but not be limited to:
 - a. the name, address, and Release Tracking Number(s) of the disposal site associated with the Activity and Use Limitation;
 - b. the type of Activity and Use Limitation;
 - c. information about where the Activity and Use Limitation instrument and disposal site file can be reviewed; and
 - d. the name, address and telephone number of the person recording and/or registering the Activity and Use Limitation from whom the public can obtain additional information.
2. A copy of this legal notice shall be submitted to the Department within seven days of its publication.

EXHIBIT G

**PRE-WORK TRANSMITTAL FORM
FOR PROPERTY WITH ENVIRONMENTAL RESTRICTION AND EASEMENT
(FOR PERMITTED USES 4.E AND 4.F OF THE GRANT)**

I. General Information

- Type of submittal: Sampling plan (Grant Paragraph 4.E and/or 4.F; Soil Management Protocol (SMP) Paragraph 12.c and/or 17.d)
- (check all that apply) Usable Existing Data report (Grant Paragraph 4.E and/or 4.F; SMP Paragraph 12.b and/or 17.b. or c)
- SMP calculations and derivations (Grant Paragraph 4.E and/or 4.F; SMP Paragraph 15)
- Analytical data, sampling locations (Grant Paragraph 4.E and/or 4.F; SMP Paragraph 15)

Property Address: _____

Tax Parcel ID: _____

II.

Submit, along with this Form, the appropriate documents referenced in I above.

III. Signature

Two signatures are required. The property owner, or person conducting the work if other than the property owner, and the Licensed Site Professional who has overseen the work, must each complete and sign the statement, below.

Owner or person conducting work if other than the property owner:

I, _____, to the best of my knowledge and belief, state that the material information contained in this submittal is true, accurate and complete.

Signature: _____

Name/Title: _____

Organization: _____

Address: _____

Telephone #: _____

Relationship to site: _____

Licensed Site Professional:

I, _____, to the best of my knowledge and belief, state that the material information contained in this submittal is true, accurate and complete.

Signature: _____

Name/Title: _____

Organization: _____

Address: _____

Telephone #: _____

Relationship to site: _____

V. Notes About the Use of this Form

- (1) Immediate notification (by means other than this Form) is required for Emergency Excavation pursuant to Paragraph 8 ("Emergency Excavation") of the ERE Grant.
- (2) Separate, 15 days' advance written notice is required for work conducted under Paragraph 4.D ("Surface and/or Subsurface Excavation for Utility Maintenance Work") of the ERE Grant.
- (3) This Form is only required for certain pre-sampling and/or pre-excavation submittals required pursuant to Permitted Uses 4.E and 4.F of the Grant.

VI. Where to Submit this Form

Submit this completed form, via certified mail, to:

MA Department of Environmental Protection
Bureau of Waste Site Cleanup, Special Projects
436 Dwight Street
Springfield, Massachusetts 01103
(Attn.: GE Housatonic Removal Action Project Manager)

Submit a copy of this form, via certified mail, to:

U.S. Environmental Protection Agency
Office of Site Remediation and Restoration
One Congress Street,
Suite 1100 -- Mail Code H10
Boston, MA 02114-2023
Attn: GE-Pittsfield/Housatonic River Site

A TRUE COPY ATTEST FROM THE
BERKSHIRE MIDDLE DISTRICT
REGISTRY OR DEEDS IN

BOOK 3156 PAGE 714c

BY

Mary K. O'Brien

REGISTER OF DEEDS