

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)
UNITED STATES OF AMERICA)
)
Plaintiff,)
) Civil Action No. _____
v.)
)
THE BERKSHIRE GAS COMPANY)
)
Defendant.)
_____)

CONSENT DECREE

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CONSENT DECREE

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter against The Berkshire Gas Company headquartered in Pittsfield, Massachusetts, (“Berkshire Gas”) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking reimbursement of response costs incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the 1 ½ Mile Reach, which is a portion of the GE-Pittsfield/Housatonic River Site in Pittsfield, Massachusetts (“the Site”).

B. Defendant Berkshire Gas, that has entered into this Consent Decree, does not admit any liability to the United States or General Electric Company (“GE”) arising out of the transactions or occurrences alleged in the complaint, and, other than for purposes of this Consent Decree, does not admit any matter of fact or law arising out of the transactions or occurrences alleged in the complaint. Nothing in this paragraph is intended to affect the findings, conclusions, provisions, or judgment set forth in the Berkshire Gas Judgment described in Paragraph E of this Section I.

C. On October 27, 2000, this Court entered a consent decree in *United States of America, State of Connecticut, and Commonwealth of Massachusetts v. General Electric Company*, Civil Action No. 99-30225-MAP *et seq.*, governing, *inter alia*, investigation and remediation of the Site (“Site Remediation Consent Decree”). Parties to the Site Remediation Consent Decree included the United States, Commonwealth of Massachusetts, State of Connecticut, GE, the City of Pittsfield, and Pittsfield Economic Development Authority. Pursuant to the Site Remediation Consent Decree, certain cleanup activities were required at and in connection with the 1 ½ Mile Reach, known as the 1 ½ Mile Reach Removal Action. Pursuant to the Site Remediation Consent Decree, the 1 ½ Mile Reach Removal Action was completed in October 2007, except for Post-Removal Site Control activities related to the 1 ½ Mile Reach Removal Action. In accordance with the Site Remediation Consent Decree, EPA and GE shared the costs of the 1 ½ Mile Reach Removal Action and hence the remediation of the 1 ½ Mile Reach.

D. On May 29, 2002, EPA notified Berkshire Gas of its potential liability for response costs related to the GE-Pittsfield/Housatonic River Site.

E. On May 8, 2003, this Court entered a final stipulated judgment in *General Electric Company v. Berkshire Gas Company*, Civil Action Number 00-CO30164-MAP, against Berkshire Gas and in favor of GE under Sections 107(a) and 113(f) of CERCLA and Sections 4 and 5 of the Massachusetts Oil and Hazardous Material Release Prevention and Response Act (Massachusetts General Laws Chapter 21E), and 28 U.S.C. Section 2201 for contribution to, and reimbursement of, costs that GE has incurred, and will incur, in response to releases of hazardous substances as defined by CERCLA Section 101(14) and/or oil and hazardous material as defined by Chapter 21E, Section 2, at or from former manufactured gas facilities owned and operated by Berkshire Gas or its predecessor company in Pittsfield, Massachusetts, subject to the terms of the

final stipulated judgment (the “Berkshire Gas Judgment”) and the Settlement Agreement between GE and Berkshire Gas dated December 19, 2002 (“Settlement Agreement”).

F. During the 1 ½ Mile Reach Removal Action, EPA incurred costs related to hazardous substances generated and/or disposed of by Berkshire Gas or its predecessor company. Pursuant to the cost-sharing provisions under the Site Remediation Consent Decree, GE paid EPA a portion of the costs related to Berkshire Gas’s hazardous substances.

G. On May 31, 2007, EPA issued to Berkshire Gas a demand for recovery of costs incurred related to hazardous substances generated and/or disposed of by Berkshire Gas or its predecessor company.

H. Pursuant to the Berkshire Gas Judgment and Settlement Agreement, Berkshire Gas and GE agreed to cooperate in an effort to reach an agreement with EPA regarding the allocation of the costs incurred in connection with the performance of the 1 ½ Mile Reach Removal Action in response to hazardous substances generated and/or disposed of by Berkshire Gas or its predecessor company.

I. With respect to Berkshire Gas and GE, except as specifically set forth in Sections X, XI, XII and XIII, nothing in this Consent Decree is intended to expand or diminish the rights and obligations of Berkshire Gas and GE as set forth in the Berkshire Gas Judgment and the Settlement Agreement.

J. The United States, GE, and Berkshire Gas (“the Parties”) agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Berkshire Gas. Berkshire Gas consents to and shall not challenge entry of this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, upon GE and its successors and assigns, and upon Berkshire Gas and its successors and assigns. Any change in ownership or corporate status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Berkshire Gas or GE under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "1 ½ Mile Reach" means the portion of the Site designated as the 1 ½ Mile Reach of the Housatonic River, as defined in the Site Remediation Consent Decree. The 1 ½ Mile Reach is generally shown on the map attached as Appendix A to this Consent Decree.

b. "1 ½ Mile Reach Removal Action" means the CERCLA removal action undertaken by EPA in the 1 ½ Mile Reach pursuant to the Site Remediation Consent Decree. Between 2002 and 2007, EPA performed the 1 ½ Mile Reach Removal Action (other than Post-Removal Site Control activities related to the 1 ½ Mile Reach Removal Action), subject to a cost-sharing agreement with GE, as set forth in the Site Remediation Consent Decree.

c. "1 ½ Mile Reach Removal Action Response Costs" means the costs incurred and paid by EPA in connection with the performance of the 1 ½ Mile Reach Removal Action through the Effective Date of this Consent Decree, including, but not limited to, such costs that have been or are required to be reimbursed by GE to EPA pursuant to the Site Remediation Consent Decree. 1 ½ Mile Reach Removal Action Response Costs shall not include United States Enforcement Costs or costs incurred that are subject, with respect to the United States, to the reservations of rights of the United States in Section IX of this Consent Decree or, with respect to GE, to the reservations of rights of GE in Section XI of this Consent Decree.

d. "Berkshire Gas" means The Berkshire Gas Company headquartered in Pittsfield, Massachusetts. Berkshire Gas is Settling Defendant in this consolidated action.

e. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

f. "Consent Decree" means this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

g. "Day" means a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

h. "DOJ" means the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

i. "Effective Date" means the effective date of this Consent Decree as provided in Paragraph 45.

j. "EPA" means the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

k. "EPA Hazardous Substance Superfund" means the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

l. "General Electric" or "GE" means the General Electric Company, headquartered in Fairfield, Connecticut.

m. "Interest" means interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607.

n. "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

o. "Parties" means the United States, General Electric Company, and The Berkshire Gas Company, each of which may individually be referenced as a "Party."

p. "RCRA" means the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

q. "Section" means a portion of this Consent Decree identified by a Roman numeral.

r. "Site" means the GE-Pittsfield/Housatonic River Site in Pittsfield, Massachusetts, as defined in the Site Remediation Consent Decree.

s. "United States" means the United States of America, including its departments, agencies and instrumentalities.

t. "United States Enforcement Costs," or "U.S. Enforcement Costs," means the costs incurred and paid by EPA or the DOJ, with respect to enforcement of this matter between October 1, 2006 and the Effective Date.

V. STATEMENT OF PURPOSE

4. The shared objectives of the Parties entering into this Consent Decree are for Berkshire Gas to make payments to address its alleged liability to the United States and GE for costs associated with the 1 ½ Mile Reach Removal Action which were incurred by the United States or GE prior to the Effective Date as provided in the Covenant Not to Sue by the United States in Section VIII and the Covenant Not to Sue by GE in Section X, subject to the Reservations of Rights in Sections IX and XI, respectively, for Berkshire Gas to receive contribution protection as provided in Section XIII, and for the United States and GE to comply with their respective obligations under the cost-sharing provisions of the Site Remediation Consent Decree for the 1 ½ Mile Reach Removal Action.

VI. PAYMENT OF RESPONSE COSTS

5. Payment to United States of 1 ½ Mile Reach Removal Action Response Costs:

Within 30 days of the Effective Date of this Consent Decree, Berkshire Gas shall pay to the EPA \$ 2,699,199, plus an additional sum for Interest on that amount calculated from August 1, 2008 through the date of payment.

6. Payment by Berkshire Gas pursuant to Paragraph 5 shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2008V00949, the EPA Region and Site Spill ID Number 0167 and DOJ Case Number 90-11-3-09166. Payments shall be made in accordance with instructions provided to Berkshire Gas by the Financial Litigation Unit of the U.S. Attorney’s Office in the District of Massachusetts following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

7. Payment of United States Enforcement Costs:

a. Within 60 days of the Effective Date of this Consent Decree, EPA will provide Berkshire Gas with a written summary of the amount of United States Enforcement Costs incurred between October 1, 2006 and the Effective Date of this Consent Decree (the “United States Enforcement Costs Bill”). Within 30 days after receipt of the United States Enforcement Costs Bill, Berkshire Gas shall pay to the EPA the amount billed; provided however, that if the amount of United States Enforcement Costs exceeds \$35,000, Berkshire Gas’s obligation to pay United States Enforcement Costs shall be an obligation to pay \$35,000.

b. In the event that the payment required by Paragraph 7.a is not made within 30 days of Berkshire Gas’s receipt of the United States Enforcement Costs Bill, Berkshire Gas shall pay Interest on the unpaid balance. The Interest will begin to accrue upon Berkshire Gas’s receipt of the United States Enforcement Costs Bill. Interest shall accrue through the date of Berkshire Gas’s payment. Payment made under this subparagraph 7.b shall be in addition to such other remedies or sanctions available to the United States by virtue of Berkshire Gas’s failure to make timely payment under this Section.

c. Payments made by Berkshire Gas under this Paragraph 7 shall be made to EPA by EFT to the U.S. EPA lockbox bank, referencing the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 0167, and DOJ Case Number 90-11-3-09166 and shall be made by EFT to:

Federal Reserve Bank of New York

33 Liberty Street

New York, NY 10045

ABA No.: 021030004

Account No.: 68010727

Field Tag 4200 of the Fedwire message should read: “D68010727 Environmental Protection Agency.”

Any EFTs received at the EPA lockbox after 3:30 pm (Eastern Standard Time) will be credited to the next business day.

8. The total amount to be paid to the United States pursuant to Paragraphs 5 and 7 of this Consent Decree shall be deposited by EPA in the GE-Pittsfield/Housatonic River Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site (including but not limited to EPA's oversight or enforcement), or to be transferred by EPA to the EPA Hazardous Substance Superfund.

9. Payment to GE of 1 ½ Mile Reach Removal Action Response Costs: Within 21 days of the final entry of this Consent Decree and the successful resolution of any appeals thereof, Berkshire Gas shall pay GE the sum of one million, one hundred fifty-six thousand, eight hundred dollars (\$1,156,800), together with Interest on that amount calculated from November 1, 2008 or the Effective Date (whichever is earlier) through the date of payment. Berkshire Gas shall make such payment by wire transfer of immediately available funds to GE in accordance with instructions to be provided by GE to Berkshire Gas, referencing "1 ½ Mile Reach Response Costs Payment to GE."

10. At the time of any payment under this Section VI, Berkshire Gas shall send notice to the United States and GE that payment has been made in accordance with Section XVI (Notices and Submissions).

VII. FAILURE TO COMPLY WITH CONSENT DECREE

11. Interest on Late Payments: If Berkshire Gas fails to make any payment under Paragraph 5, 7, or 9 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

12. Stipulated Penalty.

a. If any amounts due under Paragraphs 5 and 7 are not paid by the required due date, Berkshire Gas shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 11, the following penalties per violation per day that such payment is late:

<u>Penalty Per Violation</u> <u>Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 7th day
\$1,000	8th through 21st day
\$2,000	22nd day and beyond

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by EFT to the U.S. EPA lockbox bank, referencing the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 0167, and DOJ Case Number 90-11-3-09166 and shall be made by EFT to:

Federal Reserve Bank of New York

33 Liberty Street
New York, NY 10045
ABA No.: 021030004
Account No.: 68010727
Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency."

Any EFTs received at the EPA lockbox after 3:30 pm (Eastern Standard Time) will be credited to the next business day.

c. At the time of payment, Berkshire Gas shall send notice that payment has been made to EPA and DOJ in accordance with Section XVI (Notices and Submissions).

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Berkshire Gas of the violation or made a demand for payment, but need only be paid upon demand to Berkshire Gas. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

13. If the United States brings an action to enforce this Consent Decree due to a failure by Berkshire Gas to comply, Berkshire Gas shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

14. Payments made under this Section shall be in addition to any other remedies or sanctions available to EPA and GE by virtue of Berkshire Gas's failure to comply with the requirements of this Consent Decree, including, but not limited to, pursuant to the Berkshire Gas Judgment and the Settlement Agreement and the rights and obligations of GE and Berkshire Gas set forth therein.

15. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Berkshire Gas from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. COVENANT NOT TO SUE BY UNITED STATES

16. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Berkshire Gas pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or Section 7003 of RCRA, 42 U.S.C. § 6973 with regard to the 1 ½ Mile Reach Removal Action Response Costs and the U.S. Enforcement Costs. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by EPA of all payments required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Berkshire Gas of its obligations under this Consent Decree. This covenant not to sue extends only to Berkshire Gas and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY UNITED STATES

17. The United States reserves, and this Consent Decree is without prejudice to, all rights against Berkshire Gas with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 16. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Berkshire Gas with respect to:

- a. liability for failure of Berkshire Gas to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability of Berkshire Gas for any portion of the Site other than the 1 ½ Mile Reach, including any other CERCLA removal or remedial action other than the 1 ½ Mile Reach Removal Action;
- d. liability of Berkshire Gas for any costs related to the 1 ½ Mile Reach that are not included in 1 ½ Mile Reach Removal Action Response Costs or as U.S. Enforcement Costs in this action;
- e. liability based upon the active operation of the Site, or upon the transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Berkshire Gas;
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site; and
- g. liability for damages to natural resources.

X. COVENANT NOT TO SUE BY GE

18. Except as specifically provided in Section XI (Reservation of Rights by GE), effective upon GE's receipt of payment required by Paragraph 9 of this Consent Decree, GE, for itself and its past and present officers, directors, shareholders, employees, servants, agents, legal representatives, affiliates, divisions, subsidiaries, parent companies, holding companies, other related entities, successors and assigns, hereby:

- a. Fully, completely, unconditionally, irrevocably and forever releases and discharges Berkshire Gas and Berkshire Gas's past and present officers, directors, shareholders, employees, servants, agents, legal representatives, affiliates, divisions, subsidiaries, parent companies, holding companies, other related entities, successors and assigns, of and from any and all claims, demands, agreements, contracts, promises, covenants, omissions, rights, causes of action, damages (consequential, compensatory, special, punitive or otherwise), losses, debts, compensation, sums and sums of money, loss of income, obligations, attorney fees, other fees, expenses, costs, and liabilities whatsoever, of every nature, kind, character and description, both in law (including, without limitation, Section 107 of CERCLA, 42 U.S.C. § 9607, and/or Massachusetts General Law Chapter 21E) and equity, whether written or oral, known or

unknown, suspected or unsuspected, matured or unmatured, vested or unvested, contingent or fixed, and whether based upon the law of the United States or the law of any state, statute, contract, tort, common law, or any other law, or any other legal or equitable theory or source, for, upon, or by reason of any matter, act, omission, cause or thing whatsoever, with respect to the 1 ½ Mile Reach Removal Action Response Costs; and

b. Covenants not to sue or assert any claims or causes of action against Berkshire Gas pursuant to Sections 107(a) and/or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or Sections 4 and/or 5 of Massachusetts General Law Chapter 21E, including claims for contribution pursuant to those provisions, with regard to the 1 ½ Mile Reach Removal Action or the 1 ½ Mile Reach; except that in the event that a person or entity that is not a party to this Consent Decree brings a claim or cause of action against GE for recovery of costs relating to the 1 ½ Mile Reach Removal Action or the 1 ½ Mile Reach, this provision shall not bar GE from bringing a contribution action or claim against Berkshire Gas.

XI. RESERVATIONS OF RIGHTS BY GE

19. GE reserves, and this Consent Decree is without prejudice to, all rights against Berkshire Gas with respect to all matters not expressly included within the Covenant Not to Sue by GE in Paragraph 18 of this Consent Decree. Notwithstanding any other provision of this Consent Decree, subject to the rights and obligations of GE and Berkshire Gas set forth in the Berkshire Gas Judgment or the Settlement Agreement, GE reserves all rights against Berkshire Gas with respect to:

- a. liability for failure of Berkshire Gas to meet a requirement of this Consent Decree;
- b. liability of Berkshire Gas for any portion of the Site other than the 1 ½ Mile Reach, including any other CERCLA removal or remedial action at any portion of the Site other than the 1 ½ Mile Reach;
- c. liability of Berkshire Gas for costs related to or incurred in connection with the performance of the 1 ½ Mile Reach Removal Action, or otherwise related to or incurred in connection with the 1 ½ Mile Reach, that are incurred after the Effective Date;
- d. subject to and except as provided in Paragraph 18.b of this Consent Decree, liability of Berkshire Gas for any costs related to the 1 ½ Mile Reach Removal Action or the 1 ½ Mile Reach that are not included in the 1 ½ Mile Reach Removal Action Response Costs;
- e. liability based upon the active operation of the Site, or upon the transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Berkshire Gas; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

XII. COVENANTS NOT TO SUE BY BERKSHIRE GAS

20. Berkshire Gas covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the 1 ½ Mile Reach Removal Action Response Costs, the United States Enforcement Costs or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112 or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the 1 ½ Mile Reach Response Costs and United States Enforcement Costs, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the 1 ½ Mile Reach Removal Action Response Costs or United States Enforcement Costs.

21. Except as provided in Paragraph 23 (Waiver of Claims) and Paragraph 28 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 17, but only to the extent that Berkshire Gas's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

22. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

23. Except with respect to GE, Berkshire Gas agrees not to assert any claims or causes of action that it may have under CERCLA and shall dismiss any pending claims or causes of action that it has already asserted under CERCLA for all matters relating to the 1 ½ Mile Reach Removal Action Response Costs or the United States Enforcement Costs, including for contribution, against any other person; except, however, that Berkshire Gas respectively reserves any and all rights to assert causes of action pursuant to CERCLA for costs incurred that are subject to the reservation of rights of the United States in Section IX of this Consent Decree or the reservation of rights of GE in Section XI of the Consent Decree. This waiver shall not apply with respect to any defense, claim, or cause of action that Berkshire Gas may have against any person if such person asserts a claim or cause of action relating to the Site against Berkshire Gas.

24. Subject to the rights and obligations of GE and Berkshire Gas as set forth in the Berkshire Gas Judgment and the Settlement Agreement, Berkshire Gas:

a. Fully, completely, unconditionally, irrevocably and forever releases and discharges GE and GE's past and present officers, directors, shareholders, employees, servants, agents, legal representatives, affiliates, divisions, subsidiaries, parent companies, holding companies, other related entities, successors and assigns, of and from any and all claims,

demands, agreements, contracts, promises, covenants, omissions, rights, causes of action, damages (consequential, compensatory, special, punitive or otherwise), losses, debts, compensation, sums and sums of money, loss of income, obligations, attorney fees, other fees, expenses, costs, and liabilities whatsoever, of every nature, kind, character and description, both in law (including, without limitation, Section 107 of CERCLA, 42 U.S.C. § 9607, and/or Massachusetts General Law Chapter 21E) and equity, whether written or oral, known or unknown, suspected or unsuspected, matured or unmatured, vested or unvested, contingent or fixed, and whether based upon the law of the United States or the law of any state, statute, contract, tort, common law, or any other law, or any other legal or equitable theory or source, for, upon, or by reason of any matter, act, omission, cause or thing whatsoever, with respect to the 1 ½ Mile Reach Removal Action Response Costs or the United States Enforcement Costs; and

b. Covenants not to sue or assert any claims or causes of action against GE pursuant to Sections 107(a) and/or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or Sections 4 and/or 5 of Massachusetts General Law Chapter 21E, including claims for contribution pursuant to those provisions, with regard to the 1 ½ Mile Reach Removal Action or the 1 ½ Mile Reach; except that in the event that a person or entity that is not a party to this Consent Decree brings a claim or cause of action against Berkshire Gas for recovery of costs relating to the 1 ½ Mile Reach Removal Action or the 1 ½ Mile Reach, this provision shall not bar Berkshire Gas from bringing a contribution action or claim against GE;

Provided, however, that, notwithstanding Paragraphs 24.a and 24.b of this Consent Decree, Berkshire Gas reserves, and this Consent Decree is without prejudice to, all rights against GE with respect to all matters not expressly included within Paragraphs 24.a and 24.b of this Consent Decree, including all rights to assert causes of action against GE, including but not limited to causes of action pursuant to CERCLA or Sections 4 and/or 5 of Massachusetts General Law Chapter 21E, subject to the Berkshire Gas Judgment and the Settlement Agreement, for costs incurred that are subject to the reservation of rights of the United States in Section IX of this Consent Decree or the reservation of rights of GE in Section XI of this Consent Decree.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

25. Except as provided in Paragraphs 23 and 24, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Except as provided in Paragraphs 23 and 24, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

26. The Parties agree, and by entering this Consent Decree this Court finds, that Berkshire Gas is entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or other applicable law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are the 1 ½ Mile Reach Removal Action Response

Costs, the United States Enforcement Costs, and any response actions that have been taken and/or response costs that have been incurred by any person or entity other than the United States or GE at or in connection with the 1 ½ Mile Reach Removal Action; provided, however, that in the event such person or entity brings a claim or cause of action against GE for such response costs, this provision shall not bar GE from bringing a contribution action or claim against Berkshire Gas to the extent otherwise allowed under this Consent Decree. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States or GE has reserved rights pursuant to Sections IX and XI, respectively, of this Consent Decree.

27. Berkshire Gas agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA, DOJ, and GE in writing within 10 days of service of the complaint or claim upon it. In addition, Berkshire Gas shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree. Berkshire Gas also agrees that, with respect to any counterclaim for contribution or cost recovery brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such counterclaim.

28. In any subsequent administrative or judicial proceeding initiated by the United States or GE for injunctive relief, recovery of response costs, or other relief relating to the Site, Berkshire Gas shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims alleged by the United States or GE in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by United States set forth in Section VIII or the Covenant Not to Sue by GE set forth in Section X.

29. Entry and compliance with the terms of this Consent Decree will resolve all claims GE may have against the United States pursuant to the Site Remediation Consent Decree for a share of costs paid or to be paid pursuant to this Consent Decree by Berkshire Gas to the United States in reimbursement of 1 ½ Mile Reach Removal Action Response Costs.

30. Berkshire Gas and GE agree that in the event that GE seeks reimbursement from Berkshire Gas for response costs or response actions for which GE has reserved rights pursuant to Section XI of this Consent Decree and which are covered by the Settlement Agreement and the Berkshire Gas Judgment, GE and Berkshire Gas shall adhere to their respective obligations under the Settlement Agreement and the Berkshire Gas Judgment, as applicable, including, but not limited to, the process set forth in Section 6 (Demand for Cost Reimbursement), the allocation principles set forth in Section 7 (Principles for Cost Reimbursement) and the dispute resolution provisions set forth in Section 8 (Dispute Resolution) of the Settlement Agreement.

XIV. ACCESS TO INFORMATION

31. Berkshire Gas shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as “records”) within its possession or control or that of its contractors or agents relating to activities at the Site or the liability of any person under

CERCLA with respect to the Site, if needed, including, but not limited to, sampling, analysis, chain of custody records, manifests, receipts, reports, correspondence, deposition transcripts, meeting minutes, daily calendars or other documents or information related to the Site.

32. Confidential Business Information and Privileged Documents:

a. Berkshire Gas may assert business confidentiality claims covering part or all of the records submitted to EPA under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Berkshire Gas that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Berkshire Gas.

b. Berkshire Gas may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Berkshire Gas asserts such a privilege in lieu of providing records, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

33. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other factual information evidencing conditions at or around the Site.

XV. RETENTION OF RECORDS

34. Until 10 years after the Effective Date of this Consent Decree, Berkshire Gas shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

35. Upon request by EPA or DOJ, Berkshire Gas shall deliver any such records to EPA. Berkshire Gas may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Berkshire Gas asserts such a privilege, it shall provide EPA and DOJ with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

36. Berkshire Gas hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since

notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XVI. NOTICES AND SUBMISSIONS

37. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, GE, and Berkshire Gas, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-09166)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I
1 Congress Street, Suite 1100 (SAA)
Boston, MA 02114-2023
Attn: GE-Housatonic Site Attorney

EPA Cincinnati Financial Office
26 Martin Luther King Drive
Cincinnati, OH 45268

As to GE:

Michael T. Carroll
Manager, Pittsfield Remediation Programs
General Electric Company
159 Plastics Avenue
Pittsfield, MA 01201

Roderic J. McLaren
Counsel, Pittsfield/Housatonic River Remediation

General Electric Company
159 Plastics Avenue
Pittsfield, MA 01201

As to Berkshire Gas:

Richard E. Nasman, P.E.
Director of Operations
The Berkshire Gas Company
115 Cheshire Road
Pittsfield, MA 01201

Martin T. Booher
Dewey & LeBoeuf LLP
Goodwin Square
225 Asylum Street, 13th Floor
Hartford, CT 06103

XVII. RETENTION OF JURISDICTION

38. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION/APPENDIX

39. This Consent Decree and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than the Berkshire Gas Judgment and the Settlement Agreement and those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree:

Appendix A = map of the 1 ½ Mile Reach

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

40. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. GE and Berkshire Gas consent to the entry of this Consent Decree without further notice.

41. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XX. SIGNATORIES/SERVICE

42. The undersigned representatives of GE and of Berkshire Gas and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice each certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

43. GE and Berkshire Gas each hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified GE and Berkshire Gas in writing that it no longer supports entry of the Consent Decree.

44. Berkshire Gas shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Berkshire Gas hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Berkshire Gas need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXI. EFFECTIVE DATE

45. The Effective Date of this Consent Decree shall be the date upon which the Consent Decree is entered by the Court, or a motion to enter is granted as reflected by the Court's docket, whichever is earlier.

XXII. FINAL JUDGMENT

46. Upon approval and entry by this Court of this Consent Decree, this Consent Decree shall constitute the final judgment between and among the United States, GE, and Berkshire Gas. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2____.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Berkshire Gas Company, relating to the GE-Pittsfield/Housatonic River Superfund Site.

FOR THE UNITED STATES OF AMERICA



Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, D.C. 20530

Date: 11/13/08

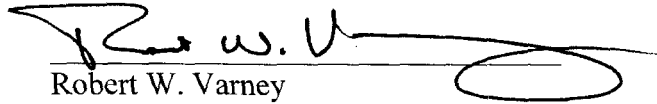
By: CA Fiske

Catherine Adams Fiske
Trial Attorney
Environmental Enforcement Section
One Gateway Center -- Suite 616
Newton, MA 02458
(617) 450-0444

Michael J. Sullivan
United States Attorney
District of Massachusetts

Karen Goodwin
Assistant United States Attorney
District of Massachusetts
1550 Main Street
Springfield, Massachusetts

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



Robert W. Varney
Regional Administrator, Region I
U.S. Environmental Protection Agency
1 Congress Street, Suite 1100
Boston, MA 02114-2023



Timothy M. Conway
Senior Enforcement Counsel
U.S. Environmental Protection Agency
1 Congress Street, Suite 1100
Boston, MA 02114-2023

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Berkshire Gas Company, relating to the GE-Pittsfield/Housatonic River Superfund Site.

FOR THE BERKSHIRE GAS COMPANY

Date: 9/21/08

Karen Zink
Karen Zink
President, Treasurer & COO
The Berkshire Gas Company
115 Cheshire Road
Pittsfield, MA 01201

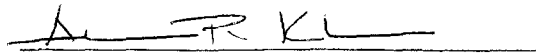
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Richard E. Nasman, P.E.
Director of Operations
The Berkshire Gas Company
115 Cheshire Road
Pittsfield, MA 01201

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Berkshire Gas Company, relating to the GE-Pittsfield/Housatonic River Superfund Site.

FOR GENERAL ELECTRIC COMPANY:

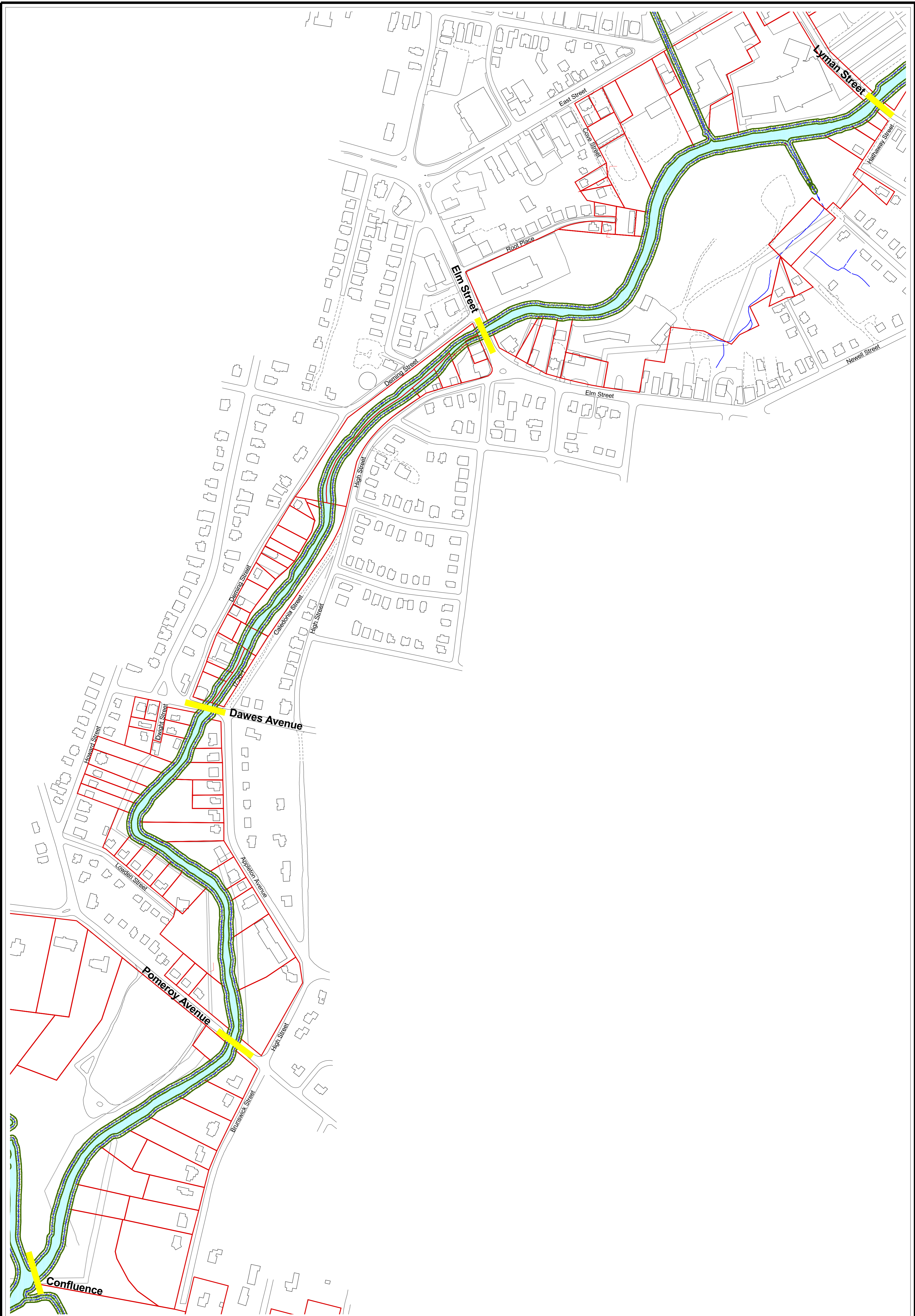
Date: 9.13.08



Ann R. Klee
Vice President, Corporate Environmental Programs
General Electric Company
3135 Easton Turnpike
Fairfield, CT 06431

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Roderic J. McLaren
Counsel, Pittsfield/Housatonic River Remediation
General Electric Company
159 Plastics Avenue
Pittsfield, MA 01201
(413) 448-5907



LEGEND:

- Approximate Property Lines
- Roads
- Housatonic River



APPENDIX A
1 1/2 Mile Reach of the Housatonic River
September 2008