

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

UNITED STATES OF AMERICA,  
STATE OF CONNECTICUT,  
COMMONWEALTH OF  
MASSACHUSETTS.

Plaintiffs.

v.

GENERAL ELECTRIC  
COMPANY.

Defendant.

CIVIL ACTION NO. 99-30225, 99-30226,  
99-30227-MAP (consolidated)

## EXHIBIT 1

UNITED STATES' MEMORANDUM IN SUPPORT  
OF MOTION TO ENTER CONSENT DECREE

100-172000  
June 1999

\*MA-1

Bryan Olson  
US EPA  
1 Congress Street  
suite 1100  
Boston, MA 0X14-2023

I would like to register my objections to your decision to allow General Electric (GE) to enlarge its current hazardous waste landfill at Hill 78 and create another landfill at Hill 71, both across from the schoolyard of the Allendale School.

This decision does not serve the public interest. There are treatment options which would greatly reduce the large amounts of contaminated sediments and soils from the first 1/2 mile of the Housatonic River, the Allendale clean-up, and clean-up work at Newell Street. I do not **believe this** decision meets the following critical requirements:

- 1) the overall protection of human health and the environment
- 2) the ability of the remedy to provide long-term reliability and effectiveness
- 3) the ability of the technology to control the sources of releases
- 4) the technology's compliance with standards for management of wastes.

EPA's own previous testimony reveals that landfills leak; and that landfill liners can not reliably be expected to last more than several decades.\* The agencies' decision to leave GE's toxic waste at the Hill 78 landfill, at levels as high as 120,000 ppm, including suspected barrels of liquid PCB waste, solvents, and metals, leads us to believe that you have been far too hasty to reach a negotiated settlement with GE. In rejecting the far safer option of treating PCB-contaminated waste, you are giving into GE's pressure to use the cheapest option available, landfilling, even if it means creating an eleven-acre toxic waste landfill directly across from young schoolchildren. For \$40 - 50 million dollars, GE can treat their contamination and remove it from our environment. One half of Jack Welch's 1998 salary, it's a small price to pay for public health and safety.

We strenuously object to expanding the toxic waste landfill 50 yards from the schoolyard at Allendale School in Pittsfield, Mass.

Sincerely,

Aurelia T Walsh

Signature

Aurelia T Walsh

Print Name

34 Pembroke Ave

Print Address

Pittsfield, MA 01201

Print City, State

\* Federal Register 2/5/1981 pg. 11128; Federal Register 5/26/1981 pg 28315, pg. 28324; Federal Register 7/26/1982 pg 32284; Federal Register 8/30/1988 Vol. 53, No. 168.

PS

I am a Pittsfield resident  
living right near the hill 78 I object  
to it and all the GE's toxic wastes  
in my environment + that of young  
children. I would like to see  
this soil properly cleaned + decontaminated  
as the GE has done in the past, rather  
than having the decontamination moved  
to a new far from safe place

Sincerely

Aune Walsh

MA-2

# PRECISION AUTOCRAFT INC

MA-5



J. Lyn Cutler  
Project Coordinator  
Department of Environmental Protection  
Western Regional Office  
436 Dwight Street  
Springfield, MA. 01103

To Whom It May Concern:

In accordance with Massachusetts's law, we are writing in regards of the proposed settlement between the General Electric Company and "the Settling Parties". We wish to have it be on record that we own a business, Precisidn Autocraft, Inc., on route 7 in Sheffield Massachusetts. This property falls within the Housatonic River area in question with this settlement. We would like it to be known that the well water has an awful odor and we are not able to drink it We must provide drinking water for all our employees and need to purchase all our drinking water. We can also show where the water has stained our bathroom facilities in spite of regular cleaning We are also concerned about the effect of using this water for cleaning vehicles that have been freshly painted and bow this may affect the finish We feel it is highly possible that the water table in this area has been adversely affected by the pollution from GE over the years. This is a low lying area that could build up deposits over a period of time from higher elevations to our North.

We inquired with other places located in our general area and they are experiencing similar problems. This would lead us to believe it is a wide scale problem and not isolated individual locations. It seems to be inevitable that some kind of water treatment is necessary. Good quality water should be a highly respected element: it is essential to all of us yet so highly abused by some.

Sincerely,

Thomas M. Andrus  
President.



11-9-99

Dear Lynn Carter -

I rec. 2 registered letters from you re: Housatonic River Settlement. Please advise how to proceed.

Our home, which was completed in 1947-48, was flooded from Housa. River. We had to have furnaces removed & left home with baby. Cellar had to be pumped & pipes removed. The garden areas covered with muck. ~~So~~ I have not been able to use large area between river & home for growing or bldg. Must keep mowed as is great hazard. We use PCB's & other chemicals.

Did you know that 60 yrs (or less) ago folks swam & ate fish fr. Housa R. in this area? Also, unable to use top for our crops during drought. ~~to~~ to ~~had~~ our environment destroyed!

Do you know if air is contaminated by PCB's etc.?? My husband worked so many hrs. in his orchard, berries & veg. gardens & mowing etc., He died of Cancer Oct '96.

For many yrs. had wondered why so many victims of Cancer in area.??

~~So~~ I have to say tapes of Housa to now as best fire. Sincerely,  
Doris G. Carter (wife)



**WILLIAM D. BARRY**

ATTORNEY AT LAW

23 EAST HOUSTONIC STREET  
PITTSFIELD, MASSACHUSETTS 01201

TELEPHONE (413) 442-2639

MA-5

December 2, 1999

Mr. Bryan Olson  
U. S. EPA  
One Congress ST. (HBT)  
Boston, MA 02114

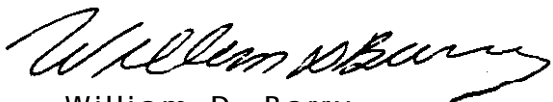
Dear Mr. Olson:

I strongly oppose the storage of additional PCB material and other hazardous materials in the area known as "Hill 78" and the area known as "Collection Point 71". It is inconceivable to me that the EPA can even consider placing such materials in the center of the city and directly adjacent to the Allendale School Yard. It **seems** that we now have a unique opportunity to remove the **PCB's** and hazardous materials from the City of Pittsfield and not to store them leaving a future generation to inherit the problems of leakage and other problems emanating from hazardous landfill.

I would also insist that the GE and the EPA make a full public disclosure of all the hazardous materials stored in that area in addition to the **PCB's** in accordance with the ruling made by Superior Court Judge John C. Cratsley where he approved the consent Judgment **which** is Commonwealth of Massachusetts vs. General Electric Company.

I also have grave concerns relative to the complete cleanup of Unkamet Brook, or 1 ack thereof, since the Commonwealth of Massachusetts has not made public nor disclosed the full extent of the said cleanup.

Very truly yours,



William D. Barry

WDB/j

cc:  Assistant Attorney General  
Environment and Natural Resources Diviaion  
 U. S. Department of Justice

Congressman John Olver

90-11-3-1479

DEPARTMENT OF JUSTICE
DEC -7 1999
LANDS DIVISION ENFORCEMENT RECORDS

10/18/99

D. J. PANOS  
77 BRUNSWICK STREET  
PITTSFIELD, MA 02101

October 18, 1999

J. Lyn Cutler  
Project Coordinator  
Department of Environmental Protection  
Western Region Office  
426 Dwight Street  
Springfield, MA 01103

Ref: United States et al. V. General Electric Company  
D.J. Ref. 90-11-3-1479, 90-11-3-1479Z

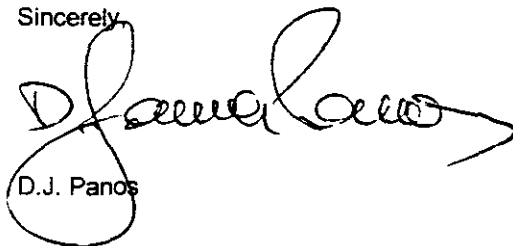
The following comments are in response to the recently received Notification of Proposed Settlement relative to the GE-Pittsfield/Housatonic River Site. In addition to the above address, copies of this correspondence are sent to all the individuals listed below.

According to the received Notification, "... GE will be required to remediate various areas at the Site, including.....residential properties in the floodplain of the River....."

The primary purpose of this correspondence is to notify the appropriate parties, for the record, that we believe our residence at 77 Brunswick Street, Pittsfield MA falls under this definition; "residential property in the floodplain of the River". A number of times, over the last 20 years of living in this home, our property has been flooded from the overflow of the River.

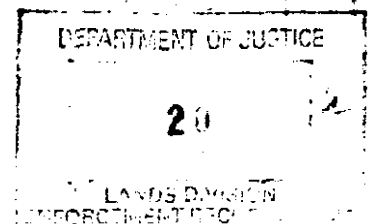
We hope that, as part of this remediation process, some tests are performed in our property to determine if any action is required.

Sincerely,



D.J. Panos

Cc: Nancy E. Harper - Environmental Protection Div., MA AT office  
✓ Assistant AG -Environment and Natural Resources Div.. U.S. Dept. of Justice  
Michael T. Carroll-GE Corporate Environmental Programs  
Jeffrey M. Bernstein. Esq. -Bernstein. Cuthner & Kimmel. P.C.



HUBER

MA-6

Attention: Assistant Attorney General,

I am concerned about the **Housatonic** River. Its come to **my** attention that the General Electric company Is polluting this river **with PCB's far** above any acceptable level. This practice has been going on for almost thirty **years**. This company is already responsible for 47 **superfund** sites **around** the country. I **am** wondering why the board of directors and **owners** of this company are not arrested. Go right in their headquarters and put in jail as I would. be if I **threw a can** of garbage **in the** cement pond in **front** of the Capitol. It's'a big leap but something like that should be done to show **these** people that **the** basic law affects **them** to. They **might** only be in jail for and how but **the** act would be symbolic. If they **are** responsible for that many **Superfund** sites they must not be getting **the** message. Look at the name of the building you work in and **your** title. **This** should not be happening in this country but it continues to this day. Tbis should **be** inspected carefully and I believe the **public** should be made aware of **this** danger. I also think that if GE is found responsible **that** record fines should be set to make it **unprofitable** to pollute in **the** future. DJ#:90-1 I-3-1479.90-1 1-3-14792

Thank You  
Robert **Mierzwa**

90-1479-1

JAN 25 2000





Robert & Carol Mierzwa  
P.O. Box 56  
Hartland, CT 06027-0056



Att: Assistant Attorney General  
U.S. Dept. of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

**David Cook**  
**291 N. Plain Rd.**  
**Housatonic, Ma. 01236**  
**(413)528-8283**  
**djcook@bcn.net**

Re: Comments on the G.E./Housatonic River/PCB/Cleanup issue

Dear EPA :

The affects of PCB contamination extend well beyond the mere presence of such materials and the belief that they may be carcinogenic. What follows are but a few points that might be **known**.

It may be, that sediments in Rising Pond relating with PCB may be contributing to an ice jam/flooding problem in the village of Housatonic.

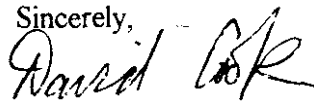
The sediments trapped behind the Rising Paper Company Dam seem to prevent the dispersal of **iceflow** which in **turn** jams up and causes floodingto occur to a number of properties and buildings just upstream. These ice jams continue to force businesses to close and residences to be rendered uninhabitable during periods of flooding.

An issue of the potential removal of the Rising Paper Company dam, some years ago, seems to have been that these PCB laden sediments could not be allowed downstream into the State of Connecticut. The removal of that dam may well have alleviated the ice jam/flooding problem.

In addition to the sediments proliferating the ice jam **problem**,it seems to have caused Rising Paper Company to spend some millions of dollars in excess to repair that dam rather than remove it, due to the issue of **PCBs**.

I believe that the role of PCB in these and other matters should be considered in the much broader issue of PCB contamination and it's affects on the environment and the occupants of that environment,

Sincerely,



David Cook



**BARBALVNGA**  
**ENTERPRISES**  
**INCORPORATED**

MA-8

December 22, 1999

Re: **Opportunity to Comment**  
GE-Pittsfield/Housatonic River **Site; Notice** of Proposed  
Settlement

**Dear Sir:**

Please be advised that I own a 14.3 acre **parcel** at 103 Elm Street in Pittsfield, Massachusetts. The initial removal design/removal action submittals for **former** Oxbow Areas A and Care 24 months from entry of the Consent Decree. A 2 year delay would have a detrimental effect on the property. I am **requesting** that this work commence immediately.

I think the Consent Decree is a well intentioned document. As an attorney, I can appreciate the many hours of work that it required. It is **my** opinion, however, that the Consent Decree does not adequately protect my real estate investment. The commercial and recreational cleanup standards indicated will still leave the property in an inferior position in the marketplace.

In **fact**, a recent Massachusetts case discusses the "stigma" and diminution in **value** of property as a result of contamination. Experts indicated that this "stigma" may cause a diminution in value even if the property is completely cleaned up and can have a "chilling effect" on the **market**.

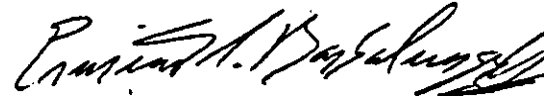
The banking community will certainly become aware of this "stigma" and the problems they **may** encounter when attempting to liquidate their collateral after a potential foreclosure. This in turn will negatively impact a property owner's ability to obtain financing.

103 ELM STREET  
PITTSFIELD, MA 01201-6503

413 4432777

12-22-99 79

Very truly yours,



Ermino S. Barbalunga Jr.  
President

ESB:kcb

**cc:** J.Lyn Cutler  
Project Coordinator  
Department of Environmental Protection  
Western Regional Office  
436 Dwight Street  
Springfield, MA 01103

Nancy E. Harper  
Environmental Protection Division  
Office of the Attorney General  
200 Portland Street  
Boston, MA **02114**

Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box **7611**  
Ben Franklin Station  
Washington, D.C. **20044**

Richard F. Webb  
Office of the Attorney General  
55 Elm Street  
P.O.-Box **120**  
Hartford, CT **06141-0120**

Michael T. Carroll  
Manager, Pittsfield Remediation Programs  
Corporate Environmental Programs  
General Electric Company  
100 Woodlawn Avenue  
Pittsfield, MA **01201**

Jeffrey **M** Bernstein, Esq.  
Bernstein, Cushner & **Kimmel**, P.C.  
One Court Street, Suite 700  
Boston, MA **02108**

Place this label over top of envelope to  
the right of the return address

**CERTIFIED**

Z 156 758 984

**MAIL**



0000

U.S. POSTAGE  
PAID  
PITTSFIELD, MA  
01201  
DEC 22 1999  
AMOUNT  
**\$2.98**  
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**BARBALUNGA**  
ENTERPRISES  
INCORPORATED

Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

**RETURN RECEIPT  
REQUESTED**

103 ELM STREET ■ PITTSFIELD, MA 01201-6503

20044-7611





## CITY OF PITTSFIELD

Mailed 1/13/00  
MA-9

Jim Brassard  
Councillor, Ward 2  
35 Dalton Avenue  
Pittsfield, MA 01201

413-445-7524  
Fax 413-445-2664  
e-mail: cavalier@berkshirenet.com

January 2, 2000

To Assistant Attorney General, Environment and Natural Resources Division;

I am writing this letter to express concerns that I have with the PCB Consent Decree involving the city of Pittsfield Massachusetts.

First, I must protest in the highest manner possible the location of Hill 78 within the city boundaries. If all the other parts of soil from private property can be trucked away from the city, I do not understand why the city of Pittsfield must become a home to a Toxic Waste Dump known as hill 78. I also have some serious concerns about the use of Building 71 as a consolidation area. I do not believe that this was ever made **public** in any of the press releases or statements published in the local media. The plan to install a **liner** and **leachate** collection system will not prevent the leakage that is already happening on Hill 78 according to the Environmental Protection Agency. I stand firmly against **any** holding area of contaminated soil within the city limits of Pittsfield. This soil should be trucked away the same as all the other soil was from private property.

However, the most frightening thought I can see in the consent decree is the possibility of an additional Toxic Waste Dump in the vicinity of New York Avenue and Merrill Road. This area, according to the decree will be nearly as high as Hill 78 (1,050 feet), at 1,027 feet maximum elevation. This will in fact be the second such unwanted waste site within shadows of a Pittsfield Public Grammar School and located in the middle of a residential area.

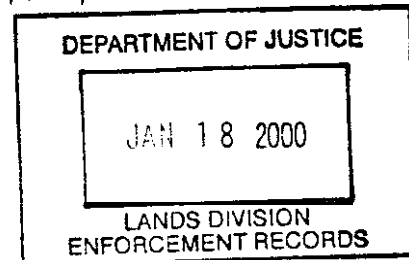
Some how the words LOVE CANAL keep coming into my mind. If all **we are** going to do is allow this contaminated soil to be transferred from one site to another only a few blocks away, then why are we bothering at all ?

Once again I repeat, I am totally against any effort to allow Hill 78 to remain in the city of Pittsfield and I am even more, **opposed** to the additional establishment of Building 71 and an additional Hill near the New York Avenue and Merrill Road Intersection.

Respectfully,  
James L. Brassard

*James L. Brassard*

90-11-3-1479



# HOUSATONIC RIVER INITIATIVE

Huber

Twenty Bank Row, Suite 206, Pittsfield, MA 01201  
Tel: 413 / 499-6112 Fax: 413 / 499-3924

MA-10

January 11, 2000

Mr. Bryan Olson  
U.S. EPA  
One ~~Congress Street~~  
HBT  
Boston, Massachusetts 02114

Ms. Cindy Huber  
Assistant Attorney General,  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
**Ben Franklin Station**  
**Washington, D.C. 20044**

Dear Mr. Olson and Ms. **Huber**,

The **Housatonic River** Initiative respectfully requests that the comment period for the General Electric / EPA consent decree be extended further. There are many reasons that this comment period should be extended further. The 30 days extension already agreed to by EPA falls far short of **how much** time the public should have to comment. These decisions **were** ten years in the making and Berkshire County will have to live with these decisions forever.

1) The legal document was years in the making and is of extraordinary length and complexity. **The fact that this is a public comment period and the public has not been included in many** aspects of the closed door negotiations starts us off at a disadvantage. We have to study, ask questions, just to begin to understand some sections of the decree. To expect the public to intelligently comment on this document in a few short months is unreasonable. The amount of personnel and resources the agencies put into this document and the time it took to put it into words and release it to the public speaks to its complexity. Many times when asking questions about the consent decree at the Citizen Coordinating Committee we were repeatedly told that the confidentiality agreement prevents EPA from public discussion of these matters.

2) EPA has extended the comment period for other documents at this site that are far less complex than the consent decree.

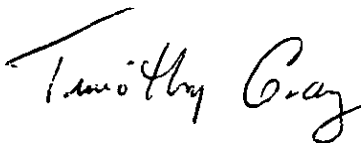
Board of Directors

Erik Bruun, Great Barrington; **George Darey, Lenox**; **Benno Friedman**, Sheffield; Mickey Friedman, Great Barrington; Ted **Giddings, Lenox**;  
Tim Gray, Lee; Chris **Hodgkins, Lee**; **Betty Phinney, Lenox**; Don **Roeder, Stockbridge**; Tom **Stokes, Stockbridge**; George **Wislocki, Pittsfield**

3) At the recently held public meeting in Connecticut it was apparent that **Connecticut** residents have never before had any publicized public meetings on this matter during the **almost** ten years we **have** been involved in this site. **Many** were unaware of the negotiations and consent decree. They were given copies of the consent decree with almost two thirds of the public comment period elapsed.

4) Parts of this consent decree include decisions that will forever effect neighborhoods around.. the GE facility and downstream on the Housatonic River. GE **will** get relief for performing these remedies. If these decisions are not supported by the effected property owners is the consent decree really acting in the publics interest?

**We hope you will consider this request**

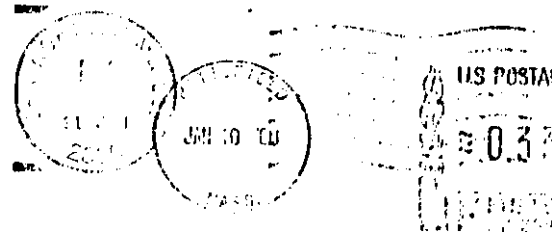
Sincerely, 

**Timothy Gray / for the Housatonic River Initiative**



**HOUSATONIC**  
RIVER INITIATIVE

Twenty Bank Row, Suite 206, Pittsfield, MA 01201



Ms. Cindy Huber  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Dept. of Justice  
Box 7611

25 Lowden Street  
Pittsfield MA 01201  
January 22, 2000

Bryan Olson  
U.S. EPA  
One Congress street (HBI)  
Boston MA 02114

Dear Mr. Olson:

This letter is in response to the request for comments on the consent degree outlining legal requirements for the cleanup of **PCB contamination** along the **Housatonic** River.

My property at **25 Lowden** Street has river frontage within the first two miles of the proposed cleanup, but not within the first half mile. Soil tests have been done by both GE and the EPA.

When the crew from the EPA was here we discussed the potential cleanup and noted that the shape of my very steep river bank might pose problems. I would hope that any and all efforts to dredge the river in this area and to dig into the bank would not risk undermining the back yard or the in-ground swimming pool. I believe that any alteration to the **bank must** be accompanied by placing rip-rap or some other barrier to the erosion effect of the current.

Thank you for your consideration of this recommendation.

Sincerely,



Caroline Church

131 Deer Hill Rd.  
Richmond, MA 01254

Jan. 3, 2000

f. Bryan Olson  
U.S. EPA  
Congress st. (HBT)  
Boston, MA 02114

Re: Public comment on the consent decree  
between EPA & GE on PCB's in Pittsfield.

Dear Mr. Olson,

My comment is to urge that GE be made to remediate the contaminated material it removes from the Housatonic River. Just moving this material to Hill 78 does nothing to make it harmless in the future. I consider it a **bandaid** solution.

In the case of the Rose site on Balance Rock Road a few years ago, with work done by **Maxymilian**, the process (was it thermal oxidizing?) was done **relatively** quickly, the equipment taken **away; and** the landscape now looks very natural. Most of all; it is now SAFE. Hill 78 could be rendered harmless in the same way. The technology is there. **Why** not use it.

I hope EPA insists on that, so that these **toxics** will not return to haunt us in the future.

Sincerely,

*Maria V. Morray*

Maria V. Morray

# SHAPIRO HABER & URMY LLP

Attorneys at Law

Thomas G. Shapiro  
Edward F. Haber  
Thomas V. Urmey, Jr.  
Michelle H. Blauner  
Andrew A. Rainer  
Theodore M. Hess-Mahan  
Christine E. Morin

*Counsel*

Lawrence D. Shubow  
Alfred J. O'Donovan

E-mail: [shu@shulaw.com](mailto:shu@shulaw.com)

**MA-13**

January 26, 2000

By Fax and Regular Mail

Ms. J. Lyn Cutler  
Department of Environmental Protection  
436 Dwight Street  
Springfield, MA 01103

Mr. Richard F. Webb  
Office of the Attorney General  
55 Elm Street, PO Box 120  
Hartford, CT 06141

Ms. Nancy E. Harper  
Environmental Protection Division  
Office of the Attorney General  
200 Portland Street  
Boston, MA 02214

Mr. Michael T. Carroll  
Manager, Pittsfield Remediation Pgm.  
General Electric Company  
100 Woodlawn Avenue  
Pittsfield, MA 01201

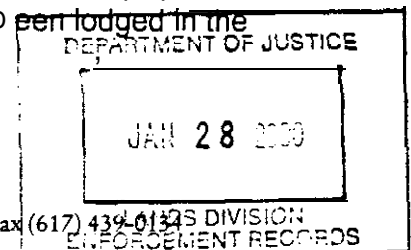
Ms. Lois Schiffer  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044

Mr. Jeffrey M. Bernstein  
Bernstein, Cushner & Kimmell, P.C.  
One Court Street  
Suite 700  
Boston, MA 02108

Re: United States v. General Electric Co., DJ Ref. 90-1 1-3-1479  
Notice of Proposed Settlement Under M.G.L. c.21E, §3A(j)(2)

Ladies and Gentlemen:

I am submitting these comments on behalf of Get REAL, a group of residential property owners who have been affected by General Electric's years of contamination in the City of Pittsfield. The group includes a number of residents, such as Roberta Orsi and Irene Cody, who received notice of the contribution protection proposed to be provided to GE under the terms of a Consent Decree that has been lodged in the United States District Court for the District of Massachusetts.



75 State Street, Boston, Massachusetts 02109 (617) 439.3939 Fax (617) 439-0132

1477

The proposal to provide contribution protection to **General Electric** is just one of the many respects in which federal and state regulators have forsaken the interests of innocent property owners in the deal they wish to strike with GE.

This abandonment of affected citizens began when GE and regulators refused to allow property owner representatives to participate in the negotiations that led up to the proposed Consent Decree, and instead imposed a wall of secrecy around the development of its most important terms. Regulators assured property owners that their interests would not be addressed, let alone compromised, in those negotiations - and then proceeded to address and compromise those interests.

In its most troubling form, the contribution protection proposed to be provided to GE may operate to shield the company from having to fully account for damage it has done to properties along the Housatonic River, Silver Lake, and any other area "to which waste materials that originated at the GE Plant Area have migrated." The clean-up standards provided for in the Consent Decree will allow GE to leave quantities of PCBs, dioxin, and other hazardous materials on these properties, and the owners of these properties-who bear absolutely no responsibility for the pollution - will face a choice between paying (if they can) to remove the contaminants themselves or living with the contaminants indefinitely.

It is clear from other terms of the Consent Decree that contaminants will be left on these properties. Most notably, the clean-up standards for residential properties abutting the River and Silver Lake do not require removal of all PCBs above 2 parts per million (as was done in the clean-up of Allendale School or the first 17 residential fill properties that were remediated in Pittsfield), but will entail "averaging" of PCB concentrations. Moreover, although soils at a depth of three feet are considered accessible under the Massachusetts Contingency Plan, the clean-up standards for properties abutting the River and Silver Lake contemplate "averaging" concentrations of PCBs from one to fifteen feet below ground surface.

That this contribution protection is to be given to GE is all the more astounding because our regulators have themselves documented that properties cleaned up along the Housatonic River can and have become re-contaminated within a matter of years. Thus, even property owners who get a clean-up under the terms of the Consent Decree may soon find themselves with renewed contamination, and no one to help them clean it up.

It is also astounding that contribution protection is to be given today for properties that have not yet even been identified, and whose owners therefore cannot meaningfully evaluate how they will be affected. It does not seem too hard to imagine that ten years from now a property owner will discover that "waste materials that

J. Lyn Cutler  
January 26, 2000

Page 3

originated at the GE Plant Area have migrated" to his or her property, but will be unable to recover from GE for even the costs of testing the extent of that contamination. Indeed, it will be entirely in the discretion of regulators as to whether that person's property gets cleaned up at all.

Although we do not believe it is the intent of regulators, we also anticipate an argument by GE that even the owners of residential fill properties that did not receive PCB contamination by "migration" will be subject to the contribution bar. The "matters addressed" by the Consent Decree include "all work performed and to be performed by [GE] pursuant to this Consent Decree." in the Consent Decree, GE undertakes to do work under the terms of new Administrative Order, attached as an exhibit to the Decree, governing the clean-up of residential fill properties.

In a fact sheet disseminated by the Massachusetts Attorney General's Office concerning the scope of the proposed contribution protection, the Attorney General's office acknowledges that the scope of the claims that will be barred "remains somewhat unresolved." The fact sheet also acknowledges that GE may well take the position in court that claims the regulators think are not barred by the proposed contribution protection are in fact barred. If regulators truly want to protect the interests of innocent property owners, they must insist on a specific agreement by GE on what "contribution" and "cost recovery" claims are to be barred and required a covenant by GE that it would not advance a different interpretation in court. Indeed, given the equities, we believe they should refuse contribution protection with respect to any residential property.

As noted above, the proposed contribution protection is only one of the ways in which innocent property owners may be harmed by the planned agreements with GE. Get REAL will submit comments on the others within the extended time period prescribed for public comment under federal law.

Sincerely,



Andrew Rainer

SEAPIRO HALL & URMY II

Attorneys at Law 75 State Street, Boston, Massachusetts 02109

MS. LOIS SCHIFFER  
ASSISTANT ATTORNEY GENERAL  
ENVIRONMENTAL AND NATURAL RESOURCES DIVISION  
U.S. DEPARTMENT OF JUSTICE  
P.O. BOX 7611  
WASHINGTON, D.C. 20044

0000-447311

CITY COUNCIL



CITY OF PITTSFIELD

MA-14

Jim Brassard  
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Pittsfield, MA 01201

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e-mail: [cavalier@berkshirenet.com](mailto:cavalier@berkshirenet.com)

January 31, 2000

To Assistant Attorney General, Environment and Natural Resources;

This letter is a follow up to one dated January 2, 2000.

After talking at length with officials from the EPA and the city. I believe that first letter was too harsh in its criticism of the consent decree between the city of Pittsfield, General Electric and the Environmental Agencies.

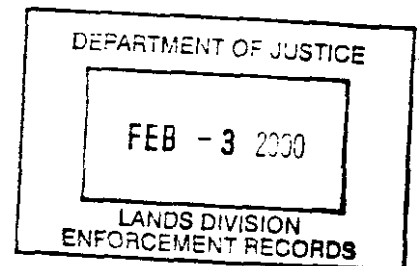
I have been assured that all the most recent technology will be used in monitoring Hi1178. I have also **been** assured that the height of the hill will be somewhat lower than it currently is and that every effort will be made to make it esthetically pleasing to the eye.

We are all aware that the best made plans can still go wrong. However, at this point, I now feel that this settlement is the best we can currently negotiate. I expect the testing and monitoring of Hill 78 will be closely watched and that in the event that a happening occurs, the Environmental Protection Agency will indeed correct it and will inform all the parties involved immediately. The reclaiming of the industrial heart of our city should remain as a focal point of the settlement. This land will provide a space where new businesses **can grow** and prosper.

While the agreement will never please everyone, including myself, I do believe that it is in the best interest of the city, its residents and its future, that the consent decree be approved.

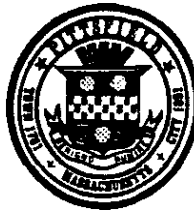
Respectfully,

James L. Brassard  
Councillor, Ward 2





CITY COUNCIL



CITY OF PITTSFIELD

Jim Brassard  
Councillor, Ward 2  
35 Dalton Avenue  
Pittsfield. MA 01201

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Fax 413445-2664  
e-mail: cavalier@berkshirenet.com

Mailed 1/13/00

January 2, 2000

To Assistant Attorney General, **Environment** and Natural Resources Division;

I am writing this letter to express concerns that I have with the PCB Consent Decree involving the city of **Pittsfield** Massachusetts.

Fist, I must protest in the highest **manner** possible the location of **Hill** 78 within the city boundaries. **If all** the other parts of soil from private property can be trucked away from the city, I do not understand why the city of Pittsfield must become a home to a Toxic Waste Dump known as **hill** 78. I also have some serious concerns about the use of Building 71 as a consolidation area. I do not believe that this was ever made public in any of the press releases or statements published in the local media. The plan to install a liner and **leachate** collection system will not prevent the leakage that is already happening on Hill 78 according to the Environmental Protection **Agency**. I stand firmly against any holding area of contaminated soil within the city limits of Pittsfield. This soil should be trucked away the same as all the other soil was from private property.

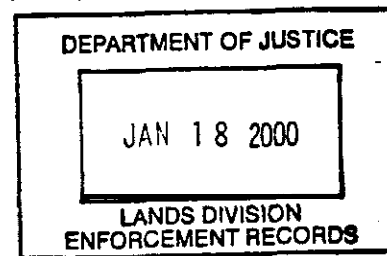
However, the most **frightening** thought I can see in the consent decree is the possibility of an **additional Toxic** Waste Dump in the vicinity of New York Avenue and Merrill Road. This area, according to the decree **will** be nearly as high as Hill 78 (1,050 feet), at 1,027 feet **maximum** elevation. This will in fact be the second such unwanted waste site within **shadows** of a Pittsfield Pubic Grammar School and located in the middle of a residential area.

Some how the words LOVE CANAL keep coming into my mind. If all **we are** going to do is allow this contaminated soil to be transferred **from** one site to another only a few **blocks away, then why are we bothering at all ?**

Once again I repeat, I am totally against any effort to allow Hill 78 to remain in the city of Pittsfield and I am even more opposed to the additional establishment of Building 71 and an additional Hill near the New York Avenue and Men-ill Road Intersection.

Respectfully,  
James L. Brassard

90-11-3-1479





**Jim Brassard**  
Councillor, Ward 2  
35 Dalton Avenue  
Pittsfield, MA 01201



Assistant **Attorney** General **Environment**  
And **Natural** Resources Division, U.S.  
P.O. Box 761 I, Ben Franklin **Station**  
Washington, **D.C.** 20044  
DJ No. **90-1** I-3-1479.90-1 I-3-14792



71-1-5

MA-15

February 18, 2000

Assistant Attorney General  
Environment and Natural Resources Division  
U. S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Dear Sir or Madam:

Subject Case **File Numbers, DJ#90-11-3-1479, 90-11-3-1479Z**

On behalf of the 1,200 members of the Chamber of Commerce of the **Berkshires**, we support the settlement relative to the GE-Pittsfield site and Housatonic River as embodied in the consent decree between GE and the EPA, and other government agencies.

It is our opinion that the consent decree adequately addresses the environmental concerns of our region. It ensures that work on the cleanup of the river, the GE plant site, and numerous other properties **will** proceed on the expedited schedule outlined by the EPA more than a year ago. We are pleased many of the cleanup **projects are** already underway.

The signing of the consent decree brings closer to reality a **brownfields** agreement between the City of Pittsfield and GE aimed at helping the city rehabilitate the **250-**acre former GE site. The rejuvenation of this industrial site is critical for the future economic growth of our region. Most significantly, the consent **decree** protects the health of all residents of Berkshire County. This action **also** paves the way for business development and encourages companies and individuals to relocate to the **Berkshires**.

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chamber@berkshirebiz.org  
www.berkshirebiz.org

*Affiliates:*  
Central Berkshire County  
Development Corporation  
(CBCDC) & Quality  
Educational Scholastic  
Trust, Inc. (QUEST)

90-11-3-1479Z

REC'D  
FEB 20 2000





Assistant Attorney General

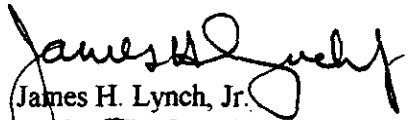
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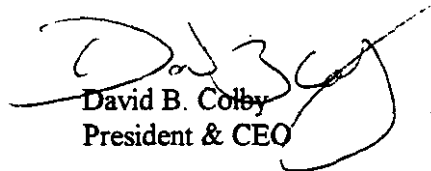
February 18, 2000

The Chamber extends its appreciation to all members of the government teams **who** -diligently worked to **finalize** the consent decree and related documents. The focused and prolonged efforts throughout the negotiations are already paying dividends. They have helped create a new wave of excitement in Berkshire County **contributing** to the momentum for other tourism and economic development opportunities, such as a runway extension project at the Pittsfield Municipal Airport, a new ballpark and restoration of the Colonial Theatre.

In conclusion, it is in the best interests of the Berkshire region that we give the consent decree, as presented, our vote of **confidence**. This expeditious and comprehensive solution **will** bring the closure necessary to continuing the rebii of a key industrial site as we **reclaim** our **environment** and create a new future for Pittsfield and Berkshire County.

Sincerely,

  
James H. Lynch, Jr.  
Chair of the Board  
(Greylock Federal Credit Union)

  
David B. Colby  
President & CEO

JHL/DBC/erg

cc: Bryan Olsen, U.S. EPA

boardepad.doc



66 West Street, Pittsfield, MA 01201



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Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044



MA-16

February 21, 2000

Mt. Bryan Olson  
United States Environmental Protection Agency  
One Congress Street  
Boston, MA 02114

Cynthia Huber  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

**Re: DJ#90-11-3-1479 and 90-11-3-1279Z**  
Consent Decree for PCB Remediation of the Housatonic River

Dear Mr. Olson and Ms. Huber:

On behalf of over 85,000 Appalachian Mountain Club members, of whom 40,000 live in Massachusetts and Connecticut, I am writing with concerns about the Consent Decree for Polychlorinated Biphenyls (PCBs) Remediation of the Housatonic River. The Appalachian Mountain Club promotes the protection, enjoyment and wise use of the mountains, rivers and trails of the Northeast. Central to our mission is the belief that mountains and rivers have an intrinsic worth and also provide recreational opportunity, spiritual renewal and ecological and economic health for the region. The Housatonic Watershed in particular is a natural, recreational and cultural resource that is highly valued by our members and by the organization as a whole.

After years of contention, that the removal of PCBs from the Housatonic River in Pittsfield has begun is cause for celebration. Removing the PCBs from the river bottom at and close to the source of contamination will improve the prospects for the entire river system. Avoidance of years of protracted legal battles over the Superfund designation will allow the Environmental Protection Agency to proceed with the second phase of the river clean up. These are some of the very positive outcomes of the Consent Decree. However, there are areas that could be improved in order to protect public health and the ecological well being of the Housatonic watershed. Among the issues that remain unresolved through the Consent Decree are the following

Main Office • Five Joy Street, Boston, MA 02108-1490 617-523-0636 / FAX 617-523-0722

Pinkham Notch Visitor Center • Route 16, Box 298, Gorham, NH 03581-0298 603-466-2721 / Business & Reservations FAX 603-466-2720 / Programs Office FAX 603-466-2822

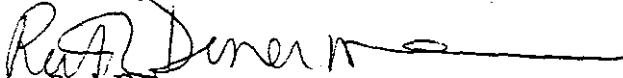
Mt. Greylock Visitor Center & Bascom Lodge • Box 1800, Lanesboro, MA 01237-1800 413-443-0011 or 413-743-1591 / FAX 413-442-9010

[www.outdoors.org](http://www.outdoors.org)

5. We are concerned **that the** Natural Resource Damages are set at \$17 million. Although no financial amount can be placed on the damage done to **the** river system, **and** on the human and ecological **health** lost due to **the** contamination of **PCBs**, this assessment seems **extremely** low.
6. One of the central **tenets** of environmental legislation is public **comment** and open public processes. **Although** we understand **that** extenuating **circumstances** required closed-door **negotiations** to **arrive** at **the** terms leading to **the** Consent Decree, we are concerned **that** this not set a precedent Involving **the** public is **central** to the success of this clean-up plan and **all subsequent** plans for **the** Housatonic River **remediation**. **The** EPA should continue to publicize and conduct regular public meetings to provide information and receive public input in both states throughout the process. The EPA **should** also continue to involve the Citizen's **Coordinating Committee** throughout the rest of **the** process.

**Thank** you for your efforts to protect the public **health** and ecological well being of the Housatonic River.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ruth Dinerman", with a long horizontal line extending to the right.

Ruth Dinerman  
Berkshire Conservation Advocate



Appalachian Mountain Club

Five Joy Street, Boston, MA 02108-1490

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Cynthia Huber  
Asst Attorney General  
Environment and Natural Resources Div.  
U.S. Dept. of Justice  
P. O. Box 7611 / Ben Franklin Station  
Washington, DC 20044

By Fed  
JGK  
2/23/00





The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES  
STATE HOUSE, BOSTON 02133-1054

*Heber*

MA-17

PETER J. LARKIN  
REPRESENTATIVE  
3RD BERKSHIRE DISTRICT  
PITTSFIELD, MA  
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Chairman  
Committee on  
Commerce and Labor  
ROOM 43, STATE HOUSE  
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FAX (617) 722-2215  
E-Mail: Rep.PeterLarkin@state.ma.us

February 22, 2000

Ms. Lois Schiffer  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

RE: Case File Numbers, DJ#90-11-3-1479, 90-1 1-3-14792

Dear Ms. Schiffer:

In the summer of 1997, I, along with other elected representatives of the city of Pittsfield, including Senator Kennedy, Senator Kerry, and Congressman **Oliver**, asked GE, the EPA, and other state and federal regulators to enter into negotiations to resolve the many environmental and economic problems which have beset our community. These negotiations were intended to address the issues of residential contamination, the cleanup and redevelopment of the industrial **facility**, and the cleanup of the **Housatonic** River. We asked for these negotiations to ensure that the future economic opportunities of Pittsfield and Berkshire County would not be contingent upon the long-standing regulatory battle between GE and the EPA.

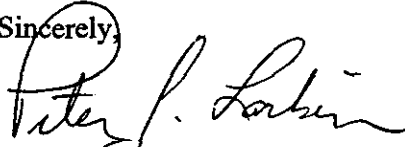
Today, on the eve of the closing of public comment on the consent decree that evolved out of these negotiations, I would like to add my voice to the others who have expressed their support for this historic document. Through the efforts of many, the residents of Pittsfield, the General Electric Company, the regulators, and the negotiating team have been given a unique **opportunity** to create a new opportunity for environmental and economic revitalization of our city and Berkshire County. This negotiated solution recognizes the importance of the industrial site as an economic generator while balancing the need for cleanup of our community. A cleaned-up community and industrial site will greatly contribute to the betterment of our region, socially, spiritually, and economically. The consent decree lays out a **plan by which we** will achieve our goals for remediation of our industrial land and the **beginning of the** restoration of our river.

DEPARTMENT OF JUSTICE  
FEB 28 2000  
LANDS DIVISION  
ENFORCEMENT RECORDS

I would also like to take this opportunity to express my gratitude to **all** those involved with the negotiations and with the production of the consent decree for your efforts on behalf of the City of Pittsfield and Berkshire County to achieve a settlement with General Electric. But for their efforts, we would not have this historical agreement today that had proven to be so elusive in the past. Everyone's understanding of and commitment to solving the issues that face the communities in Berkshire County delivered an unprecedented level of cooperation on all sides

Due to the commitment of all interested parties, we have **been** able to achieve an agreement that preserves our environmental health and ensures our economic prosperity. I sincerely thank you for this opportunity to express my resounding support for the consent decree and to applaud the time, effort and perseverance that was involved to bring this document forth.

Sincerely,

A handwritten signature in black ink that reads "Peter J. Larkin". The signature is written in a cursive style with a large, looping initial "P".

**PETER J. LARKIN**

State Representative, Third Berkshire District  
Chairman, Joint Committee on Commerce and Labor

cc: Mr. **Brian** Olsen, U.S. EPA



*The Commonwealth of Massachusetts*

HOUSE OF REPRESENTATIVES  
STATE HOUSE, BOSTON 02133-1054

PETER J. LARKIN  
REPRESENTATIVE  
3RD BERKSHIRE DISTRICT  
PITTSFIELD, MA  
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Chairman  
Committee on  
Commerce and Labor

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**FAX COVER SHEET**

TO: Senior Attorney, Cynthia Huber

FAX#: 202-514-2383

FROM: Peter Larkin

617-722-2030 - Boston Office  
617-722-2215 - Boston Fax  
413-448-8714 - District Office  
413-448-6223 -District Fax

DATE: 02/23/00

Pages Plus Cover Sheet: 3

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*The Commonwealth of Massachusetts*

HOUSE OF REPRESENTATIVES  
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Committee on  
Commerce and Labor

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February 22, 2000

Ms. Lois Schiffer  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

RE: Case File Numbers, DJ#90-11-3-1479, 90-11-3-1479Z

Dear Ms. Schiffer:

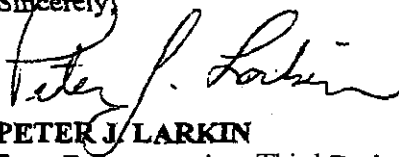
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Today, on the eve of the closing of public comment on the consent decree that evolved out of these negotiations, I would like to add my voice to the others who have expressed their support for this historic document. Through the efforts of many, the residents of Pittsfield, the General Electric Company, the regulators, and the negotiating team have been given a unique opportunity to create a new opportunity for environmental and economic revitalization of our city and Berkshire County. This negotiated solution recognizes the importance of the industrial site as an economic generator while balancing the need for cleanup of our community. A cleaned-up community and industrial site will greatly contribute to the betterment of our region, socially, spiritually, and economically. The consent d- lays out a plan by which we will achieve our goals for remediation of our industrial land and the beginning of the restoration of our river.

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Sincerely,



**PETER J. LARKIN**

State Representative, Third Berkshire District  
Chairman, Joint Committee on Commerce and Labor

cc: Mr. Brian Olsen, U.S. EPA

JOSEPH C. KOHN  
ROBERT A. SWIFT  
GEORGE W. CRONER  
JOANNE ZACK  
DENIS F. SHEILS  
DOUGLAS A. ABRAHAMS  
WILLIAM E. HOESE  
MARTIN J. D'URSO  
STEVEN M. STEINGARD  
MICHAEL J. BONI  
ELKAN M. KATZ  
CRAIG W. HILLWIG  
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MA-18

February 22, 2000

VIA OVERNIGHT DELIVERY

Bryan Olson  
U.S. EPA, One Congress St.(HBT)  
Boston, MA 02114

Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

Re: United States, et al. v. General Electric Co., C.A. No. 99-30225-MAP, D.J. Ref. 90-11-3-1479 & 90-11-3-1479

We are writing on behalf of our clients, Caroline Church, Dorothy Cohen, Thomas and Frances Ferguson, Abby Kramer Mayou, Gerald and Patricia Reder, Gwendolyn Sears, Tim and Nancy Smith, and the Mildred L. Zimmerman Trust, to comment on the proposed Consent Decree among and between the United States, the Commonwealth of Massachusetts, the State of Connecticut and the General Electric Company with respect to PCB contamination in and near Pittsfield, Massachusetts and along the Housatonic River.

Our clients object to the entry of this Consent Decree, which they believe is inadequate and puts them, and the environment, at risk of continuing harm from exposure to PCBs. The Consent Decree does not require abatement of all contamination which exists at levels acknowledged by EPA to be potentially harmful. The Decree also fails to address important sources and potential sources of contamination. Thus, the Decree accepts and preserves unacceptable risks of exposure, of continued contamination, and of recontamination.

DEPARTMENT OF JUSTICE  
LANDS DIVISION  
ENFORCEMENT RECORDS

Recent news reports and other evidence underscore the inadequacy of the proposed consent Decree. The Decree was drafted with the assumption that there was no contamination, or sources of contamination, in or near the West **Branch** of the Housatonic, which is one of that river's principal tributaries. In December 1999, however, news reports announced that significant levels of PCB contamination had been found in soil and sediment samples that EPA had taken from the West Branch **in** the hopes of obtaining "background" levels to compare to samples that were to be taken below the confluence of the East and West Branches of the Housatonic River.

In addition, PCB levels found in the West Branch near Dorothy Amos Park - an area thought to be "**clean**" and appropriate for children - were alarmingly high, with one **hotspot** alone measuring over 7,000 ppm of **PCBs** at or near the surface. The severity of this situation is underscored by the fact that, just recently, that Park was reopened (with new playground equipment installed for children) after a two-year "cleanup" effort by GE. According to a letter to GE from the Massachusetts Department of Environmental Protection, NAPL plumes in groundwater under the park may be to blame for this newly discovered contamination.

In addition, the decision to completely write off any future use of Pittsfield's groundwater supply is irresponsible, and demonstrates the short-sightedness of the Consent Decree. Not only **does that** decision foreclose Pittsfield's residents from ever being able to utilize their groundwater as a source of potable water, but this groundwater flows almost entirely toward, and into, the Housatonic. Thus, over time, even if GE were to completely remove all **PCBs** from the riverbed and riverbanks, there would be recontamination and future migration **of PCBs** throughout the watershed and floodplain.

Accordingly, the parties' compromise is simply unacceptable and defeats **the purpose** for the Decree. Indeed, federal courts have rejected similar consent decrees because of this same problem.

In addition, our clients object to the **following** defects in the Consent Decree:

To Bryan Olson  
Asst. Attorney Gen.  
February 22, 2000

1. It only provides for removal and cleanup of the first 2.5 feet of the river's soils and sediments.
2. It accepts the use of an untested method of capping the river bottom with a geotextile material that has never before been used in this sort of environment.
3. It unreasonably relies on spatial averaging for sampling and testing, when recent events have demonstrated the inability of this method to identify and locate dangerous hotspots of PCB contamination.
4. It leaves in place the landfill at Hill 78, which is only yards from the Allendale public elementary school, and which news reports have noted presents a very real danger of threatened future releases of PCBs and PCB migration into the environment and groundwater supply.
5. It leaves significant amounts of PCBs in Silver Lake, a twenty-nine acre lake that overflows into the Housatonic via a concrete conduit.

Our clients are not oblivious to the fact that GE is a tenacious and obstinate corporation, which has been fined for Pittsfield PCB-related duplicity. They also appreciate that it has taken years just to get to this point. However, the future of many, many Berkshire County families, as well as the environment, including over one hundred threatened or endangered species, is at stake. If EPA cannot convince GE to undertake a more comprehensive effort at cleaning up the area, then EPA should pursue the plan it first announced, and then apparently dropped, several years ago - place the area on the National Priorities List, undertake the cleanup, and then send GE the bill. The largest corporation in the world can afford to do a more comprehensive cleanup; indeed, it is unlikely that the cleanup contemplated in the Consent Decree is even material to GE's financial performance. GE should not benefit from a deal it cut at the expense of our clients, the Housatonic River, the Pittsfield community and the environment.

Again, on behalf of our clients, we urge you to withdraw the current proposed Consent Decree and demand from GE a



TO Bryan Olson  
Asst. Attorney Gen.  
February 22, 2000

safer, cleaner solution to this environmental and public health disaster.

Very truly yours,



Neil L. Glazer

cc: Cristobal Bonifaz, Esquire  
Martin J. D'Urso, Esquire  
Michael J. Boni, Esquire

H. Be -  
CITIZENS FOR PCB REMOVAL  
c/o 20 Bank Row  
Pittsfield, MA 01201  
February 22, 2000

Mr. Bryan Olson  
U.S. EPA  
One Congress St. (HBT)  
Boston, MA 02114

Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

RE: DJ#: 90-11-S-1479, 90-11-3-14792

MA-19

Citizens for PCB Removal believes that **PCBs** are harmful to public health. Not only are they probable carcinogens, but they have been proven to be hormone disrupters and can cause lower **IQs**. The studies reaching these **conclusions** are not limited to the United States. Most of the world has banned the use of **PCBs** and we believe that these chemicals must be **removed** from our environment.

Citizens for PCB Removal ("CPR") believes any settlement concerning PCB and other contamination in Pittsfield **and Berkshire** County, Massachusetts must accomplish a few basic goals: 1) it must provide for a thorough clean up; 2) it must leave open options for dealing with future problems when they arise; 3) it must not balance the settlement on the backs of innocent property owners and taxpayers. The Consent Decree and the appended work plans are a good start to accomplishing a thorough clean up; but are just that - a beginning. The Consent Decree is lacking in many ways. Our comments are informal, not technical, but state our passionate belief that the Consent Decree needs modification.

1. **The settlement burdens innocent property owners in a way that is not in the public interest.**

The Consent Decree ("CD") contains 68 pages of cross covenants not to sue and grants of contribution protection which protect the United States government and the governments of Massachusetts and Connecticut and the defendant, General Electric, while leaving all other property owners who own land containing General Electric **fill** or which was contaminated by the river exposed to potential future liability. Those owners are not only innocent of any role in causing the pollution, but have **already** been victimized by it. Leaving them exposed to future liability while letting General Electric off **the** hook is not in the public interest.

The CD provides, in paragraph 189, that all parties to the CD preserve all their rights against all others not parties to it. Thus innocent property owners may be **held** liable under CERCLA or MGL c. 21E, for future problems caused by General Electric's pollution. While the law may allow liability to be imposed on innocent property owners, it is our understanding that the public policy behind the law seeks to ensure that there is some party available who **can** be held responsible for cleaning up the pollution. The need to hold someone liable, even an **innocent** someone, simply does not apply here. This is not a case where the polluter is unknown, or is bankrupt, or whose assets are for some other reason unavailable for clean up. The polluter here is a party to this agreement and is not only **solvent but in fact is one of the wealthiest companies in the world**. A policy designed to ensure that funds are **available to clean up** pollution is not served by shifting the future burden from a wealthy culpable defendant to innocent persons with vastly fewer resources.

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LANDS DIVISION  
ENFORCEMENT RECORDS

The potential for future liability is very real. Many properties are being cleaned only to a depth of a few feet. Deeper contamination is not being addressed. Particularly for the "oxbow properties" (see #7) which are filled to a depth of as much as 20 plus feet and which have not been thoroughly tested, the potential exists for future releases which could impact the river. Liability for that clean up, should it be needed, should not fall on the property owners. If the plaintiff government agencies are confident that the solution they have agreed upon is indeed protective of public health and safety for the long term, they should, in this CD or an appended document, grant immunity from future liability to all contaminated property owners.

In addition, in paragraph 189, the CD specifically sites the right of contribution as one of the rights reserved by the parties against all others. Moreover, in paragraphs 194 and 195, the CD grants to the State of Massachusetts and the City of Pittsfield, the same contribution protection it grants to General Electric, should those entities acquire an interest in land that is the subject of this CD. Government agencies entered into negotiations that did not permit other interested parties to participate, then secured for themselves protection from liability while specifically preserving the potential for future liability of innocent property owners who were not allowed to participate. If forced to fund a clean up under CERCLA or MGL c.21, these property owners could not then seek contribution from General Electric. General Electric, however, can still seek contribution from them. Defending oneself is expensive; and where, as here, the polluter is being exonerated from future liability, there is no need for them to retain a right to contribution.

2. **The Consent Decree does not appear to leave the agencies the flexibility they need to deal with inadequate cleanups or subsequent recontamination of residential and commercial properties.**

One of our longstanding concerns has been the use of widespread discrete testing to investigate fill which could have been deposited in very small areas but with high concentrations, and at shallow depths with clean material above. Our concerns have been borne out on two properties where homeowners, after t h e i r i -, have found transformer parts while digging holes to plant shrubs or erect clothesline poles. CPR has, on several occasions, asked what will be done in these situations, in terms of retesting or further remediation and has never received an answer. We would like one now. Do the CD and the Administrative Consent Order (ACO) prevent the government agencies from taking administrative action on those properties ever again or would the post remediation discovery of evidence of contamination allow further investigation and clean up? If further action against General Electric is completely foreclosed, then once again the settlement lets the culpable party off the hook and shifts the burden to the innocent property owner in a way that is not in the public interest.

Furthermore, for properties along the water bodies, Silver Lake, Goodrich Pond, Unkamet Brook and the Housatonic River, the CD and the ACO appear to preclude cleanup of recontamination. Again this shifts the burden of clean up to innocent property owners who are unlikely to have the resources to undertake a clean up while absolving the wealthy polluter. This is particularly problematic for properties along Silver Lake because the remedy selected for the Lake itself is suspect (see #8 below).

3. **The liability relief granted to General Electric is unreasonably broad.**

The General Electric facility contains a vast number of chemical contaminants in, on and under the entire site. There is much more than PCB contamination to be addressed: Dioxin, Trichloroethylene, Benzene, and Toluene, to name a few, are documented as present. Much of this contamination will be here

forever because of the agreement to “cap” some of **the** most contaminated locations and turn **them** over to PEDDA, as well as to leave Hill 78 in place. Under the CD, it appears General Electric will never be liable for clean up of **these** areas in the future, even if they are impacting **the** river or may be found to be a greater health risk in the future than **they** are considered to be today, and even though GE will do no clean up initially. Since one of the primary arguments in favor of **the** CD seems to be that funding **the clean** up could be problematic if we have to rely on government resources, we are concerned that **the** CD will put our community in the future position of being recontaminated and without the resources to clean up. A grant of immunity from future liability for areas that are not being cleaned is overly generous and not in the interests of our community.

4. The Hill 78 Landfill poses an unacceptable risk.

**One** of the elements of the proposed Settlement **between** EPA and GE **that** is most disturbing and unpalatable is the plan to **locate** a toxic **waste dump** IN THE MIDDLE of our city: surrounded by an elementary school, family neighborhoods, retail businesses, industries including the potentially volatile US Generating plant, Silver Lake, Goodrich Pond, Unkamet Brook, and our long-suffering river!

The EPA and DEP have not conducted a thorough investigation of the contents of the **General Electric landfill** known as **Hill 78**; instead **they** propose to cap **this landfill** without ever obtaining **that** information. **While** the cap will be an improvement of **the** existing situation, it leaves an unacceptable **risk**. **This landfill is not lined**. There is apparently no paper trail to indicate what was disposed of in there. Without knowing what the **landfill** contains, EPA and DEP cannot possibly **assess** the impact of this solution's failure. They do not know what contaminants might be released or what impact those releases could have. While the agencies believe an “early warning” system of test wells provides adequate protection, we are well aware of other areas where the agencies were confident the existing **array** of test wells and borings provided adequate information, but were subsequently proven wrong. For example:

- 1) The plume under the Newell street parking lot was not discovered through early and fairly comprehensive testing; it took further investigation of a type that will not be performed on **Hill 78** to locate the plume;
- 2) The plumes on **the** residential side of Newell Street were not discovered through initial testing; we were given repeated **assurances** that testing had been done and there was **nothing** to worry about;
- 3) Tests at the Pittsfield Municipal landfill revealed nothing of concern, but a bulldozer **attempting** to cap the landfill uncovered barrels of toxic waste; a discovery that has yielded over 800 barrels of GE associated waste;
- 4) Dorothy Amos Park was tested and cleaned and found not to be impacting the river; had it not been for testing to attempt to establish background levels, the hot spot in the river next to the park would not have **been** located. The cap over **Hill 78** and the test wells around it are not an adequate solution for a landfill adjacent to an elementary school and a residential neighborhood and which could potentially impact a “cleaned” river in the future.

The worst part about this is that it will be designated as a “permanent” solution. Despite man's best efforts, the evidence that Mother Nature is relentless in her ability to destroy whatever man creates is all around us. Every homeowner knows the struggle it takes to keep one's property in good repair, especially the parts exposed to the harsh New England winters. Every gardener marvels at how the earth constantly changes, moves, evolves; rocks reappear yearly in flower beds that have been meticulously stripped of such. Roads and bridges crumble, majestic trees are felled, monuments wear away. Even in **this** area we are not immune to tornadoes, hurricanes, even the occasional earthquake. The forces of nature are ongoing, permanent; landfills, dumps - ‘though they may be humans’ “state of the art” - are, at best, temporary.

5. **The Building 71 containment area is not an acceptable long term solution for ridding our community of contamination when treatment is not only possible but also feasible from a cost perspective for this defendant.**

The CD also provides for a separate, lined landfill adjacent to Hill 78, known as Building 71 containment area. It will house higher levels of known PCB contamination. Not only have there been problems with other containment facilities in places such as North Carolina and Colorado where failures have occurred within two years of their construction, but also there are current technologies available that remove contamination from sediment, leaving clean sediment and allowing the contamination to be destroyed. We have a local business which has CLEANED PCB's from other sites around this county. It has been estimated that treatment of PCB contaminated material in this case would cost about 40 million dollars. While this may seem like a large sum, it is almost insignificant to the largest company in the world. In fact, it is less than HALF of what General Electric paid Jack Welch in salary and bonuses (\$87 million) for 1999 alone. Clearly treatment is a feasible option for this defendant. Construction of the Building 71 facility, if it expedited the clean up of Allendale School, was justifiable as a short term option, but treatment should be evaluated, and periodically reevaluated as the long term solution.

We plead that the decree he changed to name these facilities as temporary and that a final time limit he set on the complete treatment of the waste contained therein. While we prefer immediate treatment, a maximum time limit should not exceed thirty years.

6. **The clean up options offered to the commercial property owners are inadequate and insulting.**

At public and other meetings with EPA and DEP, commercial property owners were promised repeatedly that the agencies would support their needs even though they themselves were excluded from the negotiations. But the CD gives these owners only two options, neither of which allows them to operate their business without the cloud of contamination impacting their operations. Neither option will allow them to engage in future construction or expansion without finding themselves in negotiations with General Electric and the regulatory agencies. Furthermore, while the banking community has pronounced itself more comfortable with the idea of lending money to these property owners, assurances that PCB contamination will not affect lending in the future have not been forthcoming. These property owners still may not be able to grow, alter or sell their business in the future. We are not proposing specific solutions to this problem, but instead insist that this portion of the CD be reconsidered in a process that includes the affected property owners.

7. **Better investigation and clean up of the "oxbows" is needed to protect the river from the risk of recontamination.**

Along the river, in several places, are areas called "the oxbows", which were filled with General Electric facility "material" by the Army Corps of Engineers in the 1930's and '40's in an effort to straighten the flow of the river and reduce widespread area flooding. Again there is no paper trail of what materials were actually placed in these oxbows, but PCB laden fluids have been discovered and are being pumped from one of the oxbow areas. We ask for a complete investigation of these oxbows and that all clean up options be considered, including treatment and removal. It is not logical to spend millions cleaning the river and flood plain properties and then leave them subject to potential recontamination because known areas of fill were not properly explored.

8. The proposed solution for cleaning Silver Lake is not credible.

The proposed remedy for the **multi-contaminated** Silver Lake, as we understand it, is to place a sand cap on the bottom of the lake. We are not aware of any engineering to back up that proposal. From a lay-person's perspective, however, we cannot believe that a sand containment layer can prevent recontamination of a spring fed lake while 3 layers of plastic liner are needed to keep contaminated particles from filtering up into the river.

9. **Natural Resource damages are unreasonably low.**

The report by Industrial Economics estimated the maximum probable natural resource damages at well over 200 million dollars. The government has asserted that the uncertainty involved in proving those damages justifies settling for a **reduced** amount. It does not justify settling for approximately 10% to 12% of that amount.

10. **The extent (lack) of cleanup is based upon possibly overly optimistic science.**

**As stated in our opening paragraph, CPR believes PCB's and the other** contaminants found with the PCB's are a substantial health risk, as does EPA and DEP. However, standards and levels of cleanup, including decisions of how deep to excavate, levels of ppms in soil, water, and air, and even the concept of "averaging" levels of contamination to varying amounts dependent on usage are based upon a very complex science called "risk assessment". Our objections to many of the risk assessment conclusions are based upon the concept of environmental and human blood serum "background levels". We question whether the background levels cited for this Settlement are a valid standard for this state, country and the world, in general, or are they higher and **specific** to what is "normal" in this area, in particular, based upon the long term, widespread contamination throughout Berkshire County and adjacent areas specifically from the General Electric plant.

Numerous world wide studies support them suspicions, as well as evidence that even very low levels of contamination pose serious threats to the safety and well-being of certain populations, in particular the unborn and very young, most notably in the areas of hormone disruption, intelligence, behavior and learning capabilities. We suspect a long-anticipated study by an Expert Panel commissioned by the Mass Department of Public Health which we believe **will** confirm these health threats and will outline further toxin dangers has been **inexplicably delayed beyond this CD Comment deadline**. This Settlement should not be confirmed without this further scientific data and unless the calculations upon which it is based are verified, confirmed and validated as reasonable by recent and ongoing world-wide research.

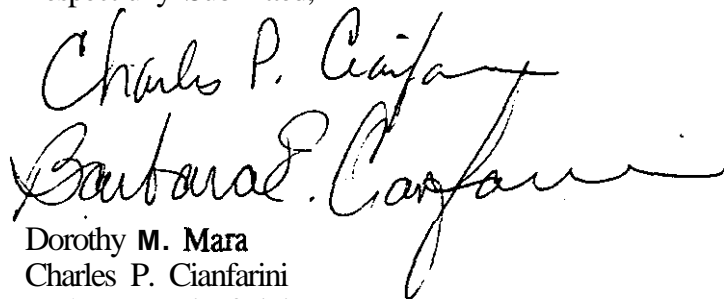
11. **Citizen participation has not been enhanced by the Citizen Coordinating Council and the existence of that body should not influence the review of this settlement.**

**Interested** citizens groups were invited to participate in an enhanced public participation process, though the Citizens Coordinating Council. The council has not enhanced participation, and in retrospect, its failure should have been anticipated. For many months the council meetings proceeded in the following fashion: a public member would make a comment which might be picked up on by **some other** public member but EPA, **DEP** or General **Electric** would not respond because they were **bound** by confidentiality rules of the ongoing negotiation. Clearly, a forum to enhance **communication can** not succeed where the **parties** who are **charged with determining** the solution are precluded from communicating. **In** addition, the single productive session of the council, concerning the remediation of the first half mile of the river, demonstrated strong opposition to a plastic liner being used in the river and that opposition was backed up by an expert from the Army **Corp** of Engineers who deemed it **unnecessary**. However, when the revised plan for the river was published it provided for not 1 but 3 layers of plastic liner. The public's concerns had been discounted without explanation **and** were clearly no more effective than if they had been made in writing and hadn't had expert support. In fact, because members of the CCC are volunteer activist with limited time to devote to reviewing the issues surrounding the clean up of our community, the time spent on the CCC feels more like misdirection than enhanced participation.

**In conclusion**, we submit that this Consent Decree, as it is now written is solely in General **Electric's best interests in terms of liability**, and economic responsibility. It fails to protect **the interests and principles of the general public and federal, state and local governments and their agencies, the environment, and the directly affected property owners and their communities** for which it is intended. Therefore, we ask that **substantial modifications** be made in this document, as based on these comments, with many more opportunities for the interested public to submit effective input, or to, ultimately, go back to mediation with all affected and interested parties well-represented at the bargaining table for another effort at a more equitable and long-term public-protective outcome.

We would honor the opportunity to have a representative of Citizens for PCB Removal appear before the Court for the purpose of addressing these **comments and** concerns.

Respectfully Submitted,



Dorothy M. Mara  
Charles P. Cianfarini  
Barbara E. Cianfarini

Comment Committee representing  
CITIZENS FOR PCB REMOVAL

*Kate Ryan*  
*P.O. Box 1218*  
*Stockbridge, MA 01262*

MA-20

February 23, 2000

Bryan Olson  
US EPA  
1 Congress St (HBT)  
Boston, MA 02114

Assistant Attorney General  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

DJ#: 90-11-3-1479, 90-11-3-1479Z

Dear Bryan Olson & Assistant Attorney General,

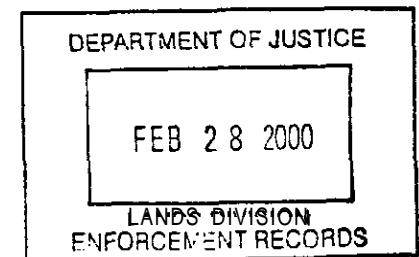
I would like to take the opportunity to comment on the **GE/Housatonic** River Consent Decree. As one of many citizens that live near the Housatonic River, I have been very disappointed in the lack of opportunity to be allowed to impact the outcome of any agreement, which **ultimately** effects all citizens in our community. In an effort to do so, I joined the Citizens Coordinating Council, attending meetings regularly but remaining frustrated that agreement took place behind closed doors. No citizen that is directly affected was given the opportunity to alternatives to a toxic waste site. Considering the tremendous profits that GE has seen, it seems the proper thing to offer our community treatment and removal -not insult to **injury** in the form of a toxic dump.

In addition, I would like to comment on the independent study that was arranged by the Massachusetts Department of Public Health. This study was to complete a report on PCB levels in members in our community. The independent study committee, having completed its findings, has not signed off as yet and will not do so until after the Consent Decree deadline. How can we, as citizens, properly comment without including **all** findings, especially those of such importance as public health?

This **entire** process has left me feeling a deep distrust for the government that is supposed to be "of the people". I can not help but **feel** that the government is "of the corporation" - not the people. It is certainly not of the people **in this** community. The state of Massachusetts has not represented the people of this community. Please give us the voice we deserve in this settlement. Treatment and removal should be in the final agreement.

Sincerely,

Kate Ryan  
Citizens Coordinating Council  
Alternate for Town of Stockbridge





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*Huber*

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MA-21

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February 23, 2000

By Fax and Regular Mail

Ms. Lois Schiffer  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044

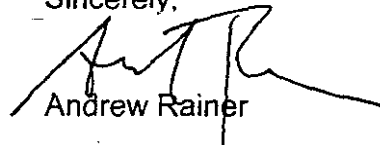
Mr. Bryan Olson  
Environmental Protection Agency  
One Congress Street  
Boston, MA 02114

Re: United States v. General Electric Co., DJ Ref. 90-I 1-3-1479  
Comments on Proposed Consent Decree

Dear Ms. Schiffer and Mr. Olson:

I enclose Comments on the proposed GE Consent Decree submitted on behalf of Get REAL, Roberta Orsi. and Marygrace Brown.

Sincerely,

  
Andrew Rainer

*9-11-2000*

**Get REAL Comments on Proposed Consent Decree  
Between the United States, Massachusetts, Connecticut and General Electric  
February 23, 2000**

These comments are being submitted on behalf of GetREAL, a group of approximately seventy families whose properties have been affected by General Electric's years of contamination in the City of Pittsfield, and its co-founders Roberta Orsi and Marygrace Brown.

By these comments, we urge the United States, and to the extent applicable, the Commonwealth of Massachusetts to withhold their consent from the Proposed Consent Decree because it is inadequate, improper, inappropriate and contrary to law. As more fully set forth below:

1. The Proposed Consent Decree is inadequate, improper, inappropriate and contrary to law because it attempts to disguise remedial actions required by the Comprehensive Environmental Compensation & Liability Act ("CERCLA") as CERCLA "removal" actions, without the necessary disclosure of remedial alternatives, without the appropriate opportunities for public involvement and comment, and without fully enforceable "applicable or relevant and appropriate" clean-up standards (ARARs).
2. The Proposed Consent Decree is inadequate, improper, inappropriate and contrary to law because it proposed to extinguish claims against General Electric with respect to releases or threatened releases of hazardous substances at properties, including residential fill properties, that are not addressed by a remedial action in the Decree, and does not take care to preserve claims for property damage and emotional distress by the affected property owners.
3. The Proposed Consent Decree is inadequate, improper, inappropriate and contrary to law because it proposes to grant contribution protection to General Electric with respect to residential properties that will remain contaminated or that will be re-contaminated in the future, and with respect to residential properties not yet even identified.

4. The Proposed Consent Decree and Proposed Administrative Consent Order are inadequate, improper, inappropriate and contrary to law because they purport to formalize procedures for the clean-up of residential till properties that give property owners no say in how their property will be cleaned up, that provide absolutely no mechanism for resolution of disputes before, during or after clean-ups, and that provide inadequate opportunities for public involvement and comment.
5. The Proposed Consent Decree and Proposed Administrative Consent Order are inadequate, improper, inappropriate and contrary to law because they relinquish, and do not replace, existing regulatory authority to require General Electric to investigate, remediate, and restore properties not already identified as recipients of contamination from GE.
6. The Proposed Consent Decree and Proposed Administrative Consent Order are inadequate, improper, inappropriate and contrary to law because they do not provide adequate compensation for natural resource damages.

These points will be addressed in turn.

1. The Consent Decree Disguises Remedial Actions as Removal Actions Without Providing Comparable Protections.

The Proposed GE Consent Decree is modeled after EPA's model Consent Decree for Remedial Actions from sites listed on the National Priorities Site List. The problem is that, with the exception of the remedial actions to be undertaken with respect to the "Rest of the River," all the response actions to be taken under the terms of the Proposed Decree are removal, not remedial actions and do not carry with them the important procedural protections required for remedial actions. Yet, GE is being given all of the procedural and legal protections, including releases of liability, that attend the performance of remedial actions. In other words, GE is getting the benefits, but not the burdens of conducting remedial actions under CERCLA.

The distinction between remedial and removal actions is set forth both in the statute and its implementing regulations, and has also been elucidated by the courts.

Removal actions are short term measures taken to counter immediate threats to **public** health and the environment, such as “security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing . . .” See 42 U.S.C. § 9601 (23); Minnesota v. Kalman W. Abrams Metals. Inc., 155 F. 3d 1019, 1024 (8th Cir. 1998). Remedial actions are designed to be “longer term, more permanent responses,” such as “dredging or excavating, repair or replacement of leaking containers, collection of **leachate** or runoff, on site treatment or incineration . . .” 42 U.S.C. § 9601 (24); Kalman Abrams, 155 F. 3d at 1024.

As explained by the Court in Kalman Abrams, the significance of the distinction between removal and remedial actions is that “[t]he NCP [National Contingency Plan] prescribes more detailed procedures and standards for remedial actions.” Kalman Abrams, 155 F. 3d at 1024, comparing 40 C.F.R. §§ 300.400-415 (removal actions) with 40 C.F.R. §§ 300.420-435 (remedial actions).<sup>1</sup>

In particular, the procedures for remedial actions require the development of detailed remedial action alternatives and a record of disclosed that must be published and opened to the public for comment. See 40 C.F.R § 300.430. There is no comparable requirement for removal actions, which also afford no opportunity for public comment. See 40 C.F.R. § 300.415. There is also a distinction in the standards applied to remedial actions as opposed to removal actions. As noted in Exhibit E to the proposed Decree, “removal actions must **attain ARARs** only to the extent practicable considering the exigencies of the situation (40 C.F.R. 300, 415(j)).” Under Section 121<sup>1</sup>

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<sup>1</sup> The removal regulations at 40 C.F.R. § 300.415 also provide for ‘non-time critical removal actions.’ However, these removal actions, like remedial actions, carry with them more procedural requirements, such as the development of an **engineering evaluation/cost analysis (EE/CA)** and **opportunities** for public comment, than is provided for in the proposed Consent Decree. See In re Circle Smelting Site, 6 E.A.D. 410 (1998).

of CERCLA, remedial actions "shall attain" ARARs. See also 40 C.F.R. 300.430 (f)(ii)(c) (remedial actions "must attain" ARARs).

The significance of this distinction here is that almost all of the actions that are to be taken under the Proposed Consent Decree, including clean-up of the Housatonic River, clean-up of the GE Plant Site, and clean-up of the **oxbows**, are in fact long term measures that are designed to serve as a permanent remedy, and this fairly should have been characterized as remedial, not removal actions. However, because these actions are disguised as removal actions, there will be no presentation of alternative remedies, there will be no Record of Decision and the public is being deprived of a full opportunity to comment on the remedies (other than through the opportunity to comment on the Consent Decree as a whole).

Significantly, the scope of work for the proposed removal actions also makes clear that the "applicable and relevant and appropriate" clean-up standards will be followed "only to the extent practicable considering the exigencies of the situation," not in all cases, as would be required for remedial actions. This is particularly important because the ARARs proposed for the clean-up of residential properties, as it is, do not contemplate removal of all contamination. Residential properties with **PCBs** in soils at concentrations above two parts per million are going to continue to have them, and GE is going to be allowed to average concentrations from one to fifteen feet below the surface, even though the top three feet of soil is considered relevant and appropriate under the Massachusetts Contingency Plan. As the Proposed Decree is written, GE is going to be required to meet even this standard "only to the extent practicable."

indeed, the proposed Consent Decree **impermissibly** provides, even for the one remedial action it does contemplate (the "Rest of the River" work) that, if the EPA improperly waives an ARAR, GE will not be required to redo the work it has already done that is inconsistent with that standard.\*

2. EPA May Not Give GE A Covenant Not to Sue With Respect to **Properties** as to Which No Remedial Action is Required.

For months, residential **fill** property owners were told that they should not be concerned that they were being left out of the secret negotiations on the Consent Decree because their interests were not going to be dealt with in the Decree. Then, when the Consent Decree was announced, these property owners were shocked to **find** that almost every one of their properties was listed in an Appendix to the Decree (Appendix T) and that the EPA was giving GE a covenant not to sue with respect to their properties (Proposed Decree §161 (a)).

As a matter of law, however, EPA may not give GE such a covenant. Section 122 (f) of CERCLA is the statute that authorizes the agency to grant covenants not to sue. That statute is quite clear that a covenant not to sue may be given only for liabilities resulting from releases of hazardous substances that are "addressed by a remedial action." Here, there is no remedial action (or even a removal action) proposed in the Decree that will address the release of hazardous substances at residential fill properties.

Residential fill properties are dealt with through the **inartful** attachment of a draft Administrative Consent Order running between the Commonwealth and GE (Appendix

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<sup>2</sup> The proposed Decree **also** improperly requires the Commonwealth to agree not to challenge a decision by EPA to waive **ARARs** with respect to the planned "removal" actions.

H). The Consent Decree does not require GE to perform any actions at the residential fill properties under the Administrative Consent Order. Likewise, the residential fill properties are specifically excluded from the operative definition of the "Site" in section 4 of the proposed Decree.

Thus, we have a situation where the EPA proposes to release GE from liability with respect to the residential fill properties, but asks GE to do nothing with respect to the clean-up of those properties (other than pay some of EPA's testing costs).

CERCLA simply does not authorize this,

Moreover, the EPA and the Commonwealth have repeatedly told the owners of residential fill properties that there is nothing in the Consent Decree that extinguishes the property owners' own claims for loss in property value or emotional distress (or other injury) resulting from exposure to contaminants. However, there is nothing in the Consent Decree to prevent GE from arguing that the Consent Decree does extinguish their claims. In fact, the only reference to such claims in the proposed Decree is a release of the Commonwealth's ability to pursue such claims on behalf of its citizens!

Thus, GE is free to argue, for example, that section 113(h) of CERCLA bars residential property owner's private claims. See, e.g., Fort Ord Toxics Project, Inc. v. California Environmental Protection Agency, 189 F.3d 828 (9<sup>th</sup> Cir. 1999); McClellan Ecological Services Situation v. Perry, 47 F.3d 325, 329 (9<sup>th</sup> Cir. 1995); Heart of America Northwest v. Westinhouse Hanford-Co., 820 F. Supp. 1265, 1278 (E.D. Wash. 1993). GE is also free to argue that it is protected against property damage claims under M.G.L. c. 21E because of the contribution protection it is getting for "all work performed and to be performed pursuant to this Consent Decree." These

arguments easily could have been precluded by an explicit statement in the Decree preserving property owners' private claims. This is something the governments simply must insist upon at this point.

3. The Proposed Consent Decree Grants GE Contribution Protection Where It Should Not.

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The Proposed Consent Decree grants GE "contribution protection" under CERCLA for "matters addressed" in the Decree. In its most troubling form, the contribution protection proposed to be provided to GE may operate to shield the company from having to fully account for damage it has done to properties along the Housatonic River, Silver Lake, and any other area "to which waste materials that originated at the GE Plant Area have migrated." The clean-up standards provided for in the Consent Decree will allow GE to leave quantities of PCBs, dioxin, and other hazardous materials on these properties, and the owners of these properties – who bear absolutely no responsibility for the pollution – will face a choice between paying (if they can) to remove the contaminants themselves or living with the contaminants indefinitely

It is clear from other terms of the Consent Decree that contaminants will be left on these properties. Most notably, the clean-up standards for residential properties abutting the River and Silver Lake do not require removal of all PCBs above 2 parts per million (as was done in the clean-up of Allendale School or the first 17 residential fill properties that were remediated in Pittsfield), but will entail "averaging" of PCB concentrations. Moreover, although soils at a depth of three feet are considered accessible under the Massachusetts Contingency Plan, the clean-up standards for



properties abutting the River and Silver Lake contemplate “averaging” concentrations of PCBs from one to fifteen feet below ground surface.

That this contribution protection is to be given to GE is all the more astounding because our regulators have themselves documented that properties cleaned up along the Housatonic River can and have become re-contaminated within a matter of years: Thus, even property owners who get a clean-up under the terms of the Consent Decree may soon find themselves with renewed contamination, and no one to help them clean it up. It is possible that the Commonwealth will help such property owners; but if the Commonwealth doesn't help, these people will simply be stuck.

It is also astounding that contribution protection is to be given today for properties that have not yet even been identified, and whose owners therefore cannot meaningfully evaluate how they will be affected. It does not seem too hard to imagine that, ten years from now, a property owner will discover that “waste materials that originated at the GE Plant Area have migrated” to his or her property, but will be unable to recover from GE for even the costs of testing the extent of that contamination. Indeed, it will be entirely in the discretion of regulators as to whether that person's property gets cleaned up at all.

As noted above, it is also not difficult to anticipate an argument by GE that even the owners, of residential fill properties that did not receive PCB contamination by “migration” are subject to the contribution bar. The “matters addressed” by the Consent Decree include “all work performed and to be performed by [GE] pursuant to this Consent Decree.” If the obligations GE has under the proposed Administrative Consent Order are considered work “to be performed under the Consent Decree,” these

properties too will be subject to the contribution bar (again despite assurances from regulators that they are not).

In a fact sheet disseminated by the Massachusetts Attorney General's **Office** concerning the scope of the proposed contribution protection, the Attorney General's office acknowledges that the scope of the claims that will be barred "remains somewhat unresolved." The fact sheet also acknowledges that GE may well take the position in court that claims the regulators think are not barred by the proposed contribution protection are in fact barred. If regulators truly want to protect the interests of innocent property owners, they must insist on a specific agreement by GE on what "contribution" and "cost recovery" claims are to be barred and require a covenant by GE that it would not advance a different interpretation in court. Indeed, given the equities, we believe they should refuse contribution protection with respect to any residential property.

4. The Proposed Administrative Consent Order Formalize Procedures for the Clean-Up of Residential Fill Properties That Give Property Owners No Say in How Their Properties are Cleaned Up.

After promising that they would not affect the interests of residential property owners in the proposed Consent Decree, the EPA and the Commonwealth then did just that. As noted above, SPA proposes to releases any claims it has for clean-up of the residential fill properties, and the Commonwealth proposes to address them through a new Administrative Consent Order. The proposed Administrative Consent Order, while purportedly ensuring "public involvement" in the actions it requires, in fact excludes the public, and especially affected property owners. from decisions affecting their properties and neighborhoods. This is contrary to the Massachusetts Contingency Plan.

The Proposed Administrative Consent Order gives property owners no role in whether contaminants are identified on their properties, no role in how their properties are tested for the presence of contaminants, no role in whether further testing is done, no role in how their properties are excavated or otherwise cleaned up, no role in assessing whether the clean-ups are properly performed, no role in dealing with the discovery of unexpected conditions, and no role or say in approval of Response Action Outcome Statements.

Moreover, the Administrative Consent Order, while providing detailed “dispute resolution” procedures under which GE can resolve any disputes it may have in connection with residential fill properties, contains absolutely no provision for resolution of disputes or concerns of the affected property owners! In fact, the Commonwealth proposes to give a covenant not to sue to GE upon its completion of a satisfactory remedial action plan for these properties, and thus even the Commonwealth may be without recourse against GE for any problem that arises in the performance of the clean-up work.

In order to obviate the need for these objections, GetREAL asked GE to negotiate changes in these procedures that would take account of the interests of affected property owners. GE refused to do anything other than to put the language of their letters to property owners into plain English. Thus, it is time for the governments to insist that changes be made.

5. The Proposed Administrative Order Relinquishes Existing Regulatory Authority to Require GE to Investigate, Remediate and Restore Properties Not Already Identified as Recipients of Its Contamination.

The Proposed Administrative Consent Order would, by its terms, supplant two existing Administrative Consent Orders entered into between GE and the Commonwealth in 1990. Most significantly, these Administrative Consent Orders provided express authority to the Commonwealth to require GE to investigate contamination and perform response actions upon "notice" by the Department of Environmental Protection ("DEP") to GE.

The proposed Administrative Consent Order relinquishes this broad authority and does not replace it. For example, with respect to residential fill properties, DEP has authority to require sampling and, ultimately, clean-up by GE only if "GE obtain[s] credible evidence that Fill from the GE Facility may be located on [the] Property." There is no provision requiring GE to perform actions if the evidence independently comes to the attention of DEP. Similarly, the Administrative Consent Order provides for streamlined clean-ups of residential properties, but only if "GE agrees."

Perhaps even more importantly, the proposed Administrative Consent Order contains no provisions requiring action by GE if the contamination that is discovered is not contaminated "fill." This large hole is not filled by the existence of provisions in the proposed Consent Decree and the proposed Administrative Consent Order for the governments to act if they discover "new information," because there is so much information that GE has now produced. GE can argue that a reported new problem was disclosed on page 5,027 of the documents it produced in 1997 and 1998, and the governments will be precluded from acting.

### Conclusion

For all of these reasons, we **respectfully** urge the United States and the Commonwealth to withhold its consent to the Consent Decree, and turn their attention to ensuring that the concerns of residential property owners are addressed and resolved as part of this settlement.

*Huber*

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February 24, 2000

Ms. Lois Schiffer  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044

Mr. Bryan Olson  
Environmental Protection Agency  
One Congress Street  
Boston, MA 02114

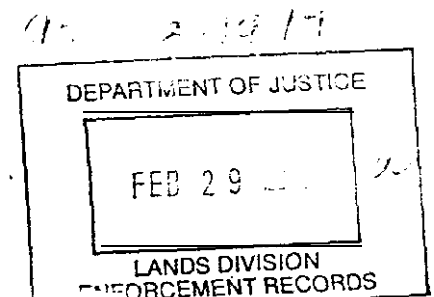
Re: United States v. General Electric Co., DJ Ref. 90-I 1-3-1479  
Comments on Proposed Consent Decree

Dear Ms. Schiffer and Mr. Olson:

I enclose a paginated copy of our Comments on the proposed GE Consent Decree.

Sincerely,

*ATR*  
Andrew Rainer



**Get REAL Comments on Proposed Consent Decree  
Between the United States, Massachusetts, Connecticut and General Electric  
February 23, 2000**

These comments are being submitted on behalf of GetREAL, a group of approximately seventy families whose properties have been affected by General Electric's years of contamination in the City of Pittsfield, and its co-founders Roberta Orsi and Marygrace Brown.

By these comments, we urge the United States, and to the extent applicable, the Commonwealth of Massachusetts to withhold their consent from the Proposed Consent Decree because it is inadequate, improper, inappropriate and contrary to law. As more fully set forth below:

1. The Proposed Consent Decree is inadequate, improper, inappropriate **and** contrary to law because A attempts to disguise remedial actions required by the Comprehensive Environmental Compensation & Liability Act ("CERCLA") as CERCLA "removal" actions, without the necessary disclosure of remedial alternatives, without the appropriate opportunities for public involvement and comment, and without fully enforceable "applicable or relevant and appropriate" clean-up standards (ARARs).
2. The Proposed Consent Decree is-inadequate, improper, inappropriate and contrary to law because it proposed to extinguish claims against General Electric with respect to releases or threatened releases of hazardous substances at properties, including residential fill properties, that are not addressed by a remedial action in the Decree, and does not take care to preserve claims for property damage and emotional distress by the affected property owners.
3. The Proposed Consent Decree is inadequate, improper, inappropriate and contrary to law because it proposes to grant contribution protection to General Electric with respect to residential properties that will remain

contaminated or **that will** be re-contaminated in the future, and with respect to residential properties not yet even identified.

4. The Proposed Consent Decree and Proposed Administrative Consent Order are inadequate, improper, inappropriate and contrary to law because they purport to formalize procedures for the clean-up of residential fill properties that give property owners no say in how their property will be cleaned up. that provide absolutely no mechanism for resolution of disputes before, during or after clean-ups, and that provide inadequate opportunities for public involvement and comment.
5. The Proposed Consent Decree and Proposed Administrative Consent Order are inadequate, improper, inappropriate and contrary to law because they relinquish, and do not replace, existing regulatory authority to require General Electric to investigate, remediate, and restore properties not already identified as recipients of contamination from GE.

These points will be addressed in turn

1. The Consent Decree Disguises Remedial Actions as Removal Actions Without Providing Comparable Protections.

The Proposed GE Consent Decree is modeled after EPA's model Consent Decree for Remedial Actions from sites listed on the National Priorities Site List. The problem is that, with the exception of the remedial actions to be undertaken with respect to the "Rest of the River," all the response actions to be taken under the terms of the Proposed Decree are removal, not remedial actions and do not carry with them the important procedural protections required for remedial actions. Yet, GE is being given all of the procedural and legal protections, including releases of liability, that attend the performance of remedial actions. In other words, GE is getting the benefits, but not the burdens of conducting remedial actions under CERCLA.

The distinction between remedial and removal actions is set forth both in the statute and its implementing regulations, and has also been elucidated by the courts.



Removal actions are short term measures taken to counter immediate threats to public health and the environment, such as “security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing . ” See 42 U.S.C. § 9601 (23); Minnesota v. Kalman W. Abrams Metals. Inc., 155 F. 3d 1019, 1024 (8th Cir. 1998). Remedial actions are designed to be “longer term, more permanent responses,” such as “dredging or excavating, repair or replacement of leaking containers, collection of leachate or runoff, on site treatment or incineration . ” 42 U.S.C. § 9601 (24); Kalman Abrams, 155 F. 3d at 1024.

As explained by the Court in Kalman Abrams, the significance of the distinction between removal and remedial actions is that “[t]he NCP [National Contingency Plan] prescribes more detailed procedures and standards for remedial actions.” Kalman Abrams, 155 F. 3d at 1024. comparing 40 C.F.R. §§ 300.400-415 (removal actions) with 40 C.F.R. §§ 300.420-435 (remedial actions).’

In particular, the procedures for remedial actions require the development of detailed remedial action alternatives and a record of disclosed that must be published and opened to the public for comment. See 40 C.F.R § 300.430. There is no comparable requirement for removal actions, which also afford no opportunity for public comment. See 40 C.F.R. § 300.415. There is also a distinction in the standards applied to remedial actions as opposed to removal actions. As noted in Exhibit E to the proposed Decree, “removal actions must attain **ARARs** only to the extent practicable

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<sup>1</sup> The removal regulations at 40 C.F.R. § 300.415 also provide for “non-time critical removal actions.” However, these removal actions, like remedial actions, carry with them more procedural requirements, such as the development of an engineering evaluation/cost analysis (**EE/CA**) and opportunities for public comment. than is provided for in the proposed Consent Decree. See In re Circle Smelting Site, 6 E.A.D. 410 (1998).

considering the exigencies of the situation (40 C.F.R. 300, 415(j)).” Under Section 121 of CERCLA, remedial actions “shall attain” ARARs. See also 40 C.F.R. 300,430 (f)(ii)(c) (remedial actions “must attain” ARARs).

The significance of this distinction here is that almost all of the actions that are to be taken under the Proposed Consent Decree, including clean-up of the Housatonic River, clean-up of the GE Plant Site, and clean-up of the oxbows, are in fact long term measures that are designed to serve as a permanent remedy, and this fairly should have been **characterized as** remedial, not removal actions. However, because these actions are disguised as removal actions, there will be no presentation of alternative remedies there will be no Record of Decision and the public is being deprived of a full opportunity to comment on the remedies (other than through the opportunity to comment on the Consent Decree as a whole).

Significantly, the scope of work for the proposed removal actions also makes clear that the “applicable and relevant and appropriate” clean-up standards will be followed “only to the extent practicable considering the exigencies of the situation,” not in all cases, as would be required for remedial actions. This is particularly important because the ARARs proposed for the clean-up-of residential properties, as ~~it is~~, do not contemplate removal of all contamination. Residential properties with PCBs in soils at concentrations above two parts per million are going to continue to have them, and GE is going to be allowed to average concentrations from one to fifteen feet below the surface, even though the top three feet of soil is considered relevant and appropriate under the Massachusetts Contingency Plan. As the Proposed Decree is written, GE is going to be required to meet even this standard “only to the extent practicable.”

Indeed, the proposed Consent Decree impermissibly provides, even for the one remedial action it does contemplate (the “Rest of the River” work) that, if the EPA improperly waives an **ARAR**, GE will not be required to redo the work it has already done that is inconsistent with that standard.’

2. EPA May Not Give GE A Covenant Not to Sue With Respect to Properties as to Which No Remedial Action is Required.

For months, residential fill property owners were told that they should not be concerned that they were being left out of the secret negotiations on the Consent Decree because their interests were not going to be dealt with in the Decree. Then, when the Consent Decree was announced, these property owners were shocked to find that almost every one of their properties was listed in an Appendix to the Decree (Appendix T) and that the EPA was giving GE a covenant not to sue with respect to their properties (**Proposed Decree §161 (a)**).

As a matter of law, however, EPA may not give GE such a covenant. Section 122 (f) of CERCLA is the statute that authorizes the agency to grant covenants not to sue. That statute is quite clear that a covenant not to sue may be given only for liabilities resulting from releases of hazardous substances that are “addressed by a remedial action.” Here, there is no remedial action (or even a removal action) proposed in the Decree that will address the release of hazardous substances at residential fill properties.

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<sup>2</sup> The proposed Decree also improperly requires the Commonwealth to agree *not* to challenge a decision by EPA to waive **ARARs** with respect to the planned “removal” actions.

Residential fill properties are dealt with through the **inartful** attachment of a draft Administrative Consent Order running between the Commonwealth and GE (Appendix H). The Consent Decree does not require GE to perform any actions at the residential fill properties under the Administrative Consent Order. Likewise, the residential fill properties are specifically excluded from the operative definition **of the** "Site" in section 4 of the proposed Decree.

Thus, we have a situation where the EPA **proposes to** release GE from liability with respect to the residential fill properties, but asks GE to do nothing with respect to the clean-up of those properties (other than pay some of EPA's testing costs). CERCLA simply does not authorize this.

Moreover, the EPA and the Commonwealth have repeatedly told the owners of residential fill properties that there is nothing in the Consent Decree that extinguishes the property owners' own claims for loss in property value or emotional distress (or other injury) resulting from exposure to contaminants. However, there is nothing in the Consent Decree to prevent GE from arguing that the Consent Decree does extinguish their claims. In fact, the only reference to such claims in the proposed Decree is a release of the Commonwealth's ability to pursue such claims on behalf of its citizens!

Thus, GE is free to argue, for example, that section 113(h) of CERCLA bars residential property owner's private claims. See, e.g., Fort Ord Toxics Project, Inc. v California Environmental Protection Agency, 189 F.3d 828 (9<sup>th</sup> Cir. 1999); McClellan Ecological Seepage Situation v. Perry, 47 F.3d 325, 329 (9<sup>th</sup> Cir. 1995); Heart of America Northwest v. Westinhouse Hanford Co., 820 F. Supp. 12651278 (E.D. Wash. 1993). GE is also free to argue that it is protected against property damage

claims under M.G.L. c. 21E because of the contribution protection it is getting for 'all work performed and to be performed . . . pursuant to this Consent Decree.'" These arguments easily could have been precluded by an explicit statement in the Decree preserving property owners' private claims. This is something the governments simply **must insist** upon at this point.

3. The Proposed Consent Decree Grants GE Contribution Protection Where It Should Not.

The Proposed Consent Decree grants GE "contribution protection" under CERCLA for "matters addressed" in the Decree. In its most troubling form, the contribution protection proposed to be provided to GE may operate to shield the company from having to fully account for damage it has done to properties along the Housatonic River, Silver Lake, and any other area "to which waste materials that originated at the GE Plant Area have migrated." The clean-up standards provided for in the Consent Decree will allow GE to leave quantities of PCBs, dioxin, and other hazardous materials on these properties, and the owners of these properties -who bear absolutely no responsibility for the pollution - will face a choice between paying (if they can) to remove the contaminants themselves or living with the contaminants indefinitely.

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That this contribution protection is to be given to GE is all the more astounding because our regulators have themselves documented that properties cleaned up along the Housatonic River can and have become re-contaminated within a matter of years. Thus, even property owners who get a clean-up under the terms of the Consent Decree may soon find themselves with renewed contamination, and no one to help them clean it up. It is possible that the Commonwealth will help such property owners: but if the Commonwealth doesn't help, these people will simply be stuck.

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As noted above, it is also not difficult to anticipate an argument by GE that even the owners of residential fill properties that did not receive PCB contamination by “migration” are subject to the contribution bar. The “matters addressed” by the Consent Decree include “all work performed and to be performed by [GE] pursuant to this

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Fax Cover Sheet

**MA-22**

**From: Perri C. Petricca**

Date: 2-23-00  
Number of Pages,  
Including Cover Sheet 3

Phone: (413) 442-6926  
Fax: (413) 499-1254

- 
1. Name: Lois J. Schiffer FAX: 202-514-2583  
Company: Environmental and Natural Resources Division
- 
2. Name: Bryan Olsen FAX: 617-918-1291  
Company: U.S. Environmental Protection Agency
- 
3. Name: Mayor Gerald S. Doyle FAX: 442-8043  
Company: City of Pittsfield
- 

MESSAGE:

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The information in this facsimile message is confidential information intended only for the use of the individual or entity named above. If you have received this communication in error, please notify us immediately by telephone. Thank You.

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# Petricca Industries

**Integrated** Construction

P.O. Box 1145 — 550 Choshin Rd.  
Pittsfield, MA 01202  
(413) 442-6926  
Fax: (413) 499-9930



February 23, 2000

Lois J. **Schiffer**  
Assistant **Attorney General**  
**Environment and Natural Resources** Division  
U.S. **Department** of Justice  
P.O. Box 7611  
Ben **Franklin** Station  
Washington, DC 20044

Re: Consent Decree

Dear Ms. **Schiffer**:

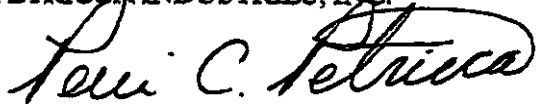
I am **writing** on **behalf of** **Petricca** Industries, one of **the** largest employers in Berkshire County, with regard to the proposed settlement between the **EPA**, the City of **Pittsfield**, General Electric Company and other government **entities**.

I have been following **with keen** interest **the** details of Consent Decree **that has been** prepared and while I understand that **a** number of parties have **challenged the adequacy** of it, I believe that it is **a fair** compromise of the **interests** of all parties. It is not a perfect solution, but then I doubt **a** perfect solution was ever to be found. The solution that has been found is in the best interest of the City **and** this **community** and will help **to** promote the long-term economic prosperity of The **Berkshires and** will help bring to closure **a very serious** and sensitive issue within the **community**. I believe **that** the Consent Decree, as proposed, adequately **addresses** the health **and environmental** issues raised by **the presence of PCB's** and that **the** standards set in **the** Consent Decree **will provide the** appropriate safeguards for the health and well-being of this community.

I urge you to make every effort to ensure that this Consent Decree is finalized and that all parties are held accountable for honoring their commitments.

If I can be of any assistance, please feel free to contact me.

Very truly yours,  
PETRICCA INDUSTRIES, INC.

A handwritten signature in black ink that reads "Perri C. Petricca". The signature is written in a cursive style with a large, looping initial "P".

Perri C. Petricca

PCC/jep

Pc: Bryan Olsen - U.S. Environmental Protection Agency  
Mayor Gerald S. Doyle - City of Pittsfield



Huber

THE CITY OF PITTSFIELD, MASSACHUSETTS  
Mayor Gerald S. Doyle, Jr.

MA-23

February 23, 2000

Lois J. Schiffer  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Dear Ms. Schiffer:

I am writing to restate my absolute support of the draft Consent Decree, as I **firmly** believe that its approval is **in the** best interest **of all** of us in Berkshire County. Without the approval, we not **only** lose our positive momentum, but we **also** risk slipping back to the inactivity that stalled Pittsfield's progress for nearly a quarter of a century.

In good faith, General Electric has already started work on the river remediation, which would not have happened without the negotiated agreement in principle and subsequent filing of the decree. Also with the understanding that the decree would be approved, the Pittsfield Economic Development Authority (PEDA) has formed and made progress • including employer recruitment activities. We risk the continuation of those activities without the approved consent decree.

Ultimately, if the two years of hard work is set aside, and the consent decree isn't approved, I predict that the only progress we'll see will happen in our court rooms • not making our environment better, not making the economy better.

I stand fast on my stated belief that we want a negotiated settlement -not a **Superfund** site.

Sincerely,

Gerald S. Doyle, Jr.  
Mayor

90 4 - 9

cc: Mayor John Barrett  
Representative **Daniel Bosley**  
Governor A. **Paul Cellucci**  
Dave Colby, Chamber of Commerce  
Representative Christopher Hodgkins  
Representative **Shaun Kelly**  
U.S. **Senator** Edward Kennedy  
U.S. Senator John Kerry  
Representative Peter **Larkin**  
Senator Andrea Nuciforo  
Bryan Olson, EPA  
Congressman **John Olver**

**Nani F. Beccalli**, General Electric **Plastics**  
**Mick Callahan**, Callahan Companies  
C. Jeffrey Cook, Cain, **Hibbard, Myers & Cook**  
**Lansing Crane, Crane & Company**, Inc.  
**John Cronin**, North Adams Regional Hospital  
J. **Williar Dunlaevy**, City **Savings** Bank  
Donald **Feigenbaum**, General Systems  
Nancy Fitzpatrick, **Red Lion Inn**  
Michael **Glazer**, Kay-Bee Toys  
William Hines, **Interprint**, Inc.  
James Lynch, **Greylock** Federal Credit Union  
Steven **Massicotte**, Fii Massachusetts Baok  
**Andy Mick**, The **Berkshire** Eagle  
Cynthia Niekamp, Mead Specialty Papers  
**Perri Petricca**, **Unistress** Corporation  
David **Phelps**, Berkshire **Health** Systems, Inc.  
Scott **Robinson**, The **Berkshire** Gas Co.  
**Randy Stratton**, **Litchfield Financial** Services  
Robert **Trask**, **Country** Curtains  
Robert Wells, Berkshire Bank

**Office of the Mayor**  
**Gerald S. Doyle, Jr.**

**FAX**

**C i o f Pittsfield**

To: *Lois Schiffer, Assistant Attorney General*  
Fax #: *(202) 514-2583*  
Subject: *Support Letter*  
Date: *2-23-00*  
Pages: *3, including coversheet*

From the desk of...  
Mayor Gerald S. Doyle, Jr.  
City Hall, 70 Allen Street  
Pittsfield, MA 01201  
(413) 499-8321  
FAX (413) 442-8043





THE CITY OF PITTSFIELD, MASSACHUSETTS  
Mayor Gerald S. Doyle, Jr.

February 23, 2000

Lois J. Schiffer  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Dear Ms. Schiffer:


I am writing to **restate** my **absolute support** of the draft **Consent Decree**, as I **firmly** believe that **its** approval is in the best **interest** of **all of us** in **Berkshire** County. Without **the approval**, we **not only** lose our positive **momentum**, **but** we also risk slipping back to the inactivity that **stalled Pittsfield's** **progress** for nearly a **quarter** of a **century**.

In good **faith**, General Electric has already **started** work on the **river remediation**, which would not have happened without the **negotiated agreement** in principle and subsequent filii **of the** decree. **Also** with **the understanding** that **the decree** would be approved, **the Pittsfield Economic** Development **Authority (PEDA)** has **formed** and made **progress** - including employer recruitment activities. We risk the **continuation** of those activities without the **approved consent decree**.

Ultimately, if the two years of **hard work** is set aside, and **the consent decree** isn't approved, I predict that the **only progress we'll see** will **happen** in our **court rooms** - not **making our** **environment** better, **not making** the **economy** better,

I stand fast on my **stated belief** that we want a **negotiated settlement** - not a **Superfund site**.

Sincerely,

  
Gerald S. Doyle, Jr.  
Mayor

City of Pittsfield • City Hall • 70 Allen Street - Pittsfield, MA 01201  
(413) 499-9321 or (413) 442-8043 fax

No. 4021 d , 2

PITTSFIELD MAYORS OFFICE Feb. 23, 2000 5:25PM

cc: Mayor **John Barrett**  
**Representative Daniel Bosley**  
**Governor A. Paul Cellucci**  
**Dave Colby, Chamber of Commerce**  
**Representative Christopher Hodgkins**  
**Representative Shaun Kelly**  
**U.S. Senator Edward Kennedy**  
**U.S. Senator John Kerry**  
**Representative Peter Larkin**  
**Senator Andrea Nuciforo**  
**Bryan Olson, EPA**  
**Congressman John Olver**

**Nani F. Beccalli, General Electric Plastics**  
**Mick Callahan, Callahan Companies**  
**C. Jeffrey Cook Cain, Hibbard, Myers & Cook**  
**Lansing Crane, Crane & Company, Inc.**  
**John Cronin, North Adams Regional Hospital**  
**J. Williar Dunlaevy, Cii Savings Bank**  
**Dodd Feigenbaum, General Systems**  
**Nancy Fitzpatrick, Red Lion Inn**  
**Michael Glazer, Kay-Bee Toys**  
**William Hines, Interprint, Inc.**  
**James Lynch, Greylock Federal Credit Union**  
**Steven Massicotte, First Massachusetts Bank**  
**Andy Mick, The Berkshire Eagle**  
**Cynthia Niekamp, Mead Specialty Papers**  
**Perri Petricca, Unistress Corporation**  
**David Phelps, Berkshire Health Systems, Inc.**  
**Scott Robinson, The Berkshire Gas Co.**  
**Randy Stratton, Litchfield Financial Services**  
**Robert Trask, Country Curtains**  
**Robert Wells, Berkshire Bank**



February 23, 2000

MA-24

James A. Cunningham, Jr.  
President & Chief Executive Officer

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Post Office Box 761  
Ben Franklin Station  
Washington, DC 20044

Dear Ms. Sshii

Subject: Case File Numbers, DJ#90-1 1-3-1479.90-1 1-3-14792

On behalf of the Board of Directors and employees of Berkshire Bank, we support the settlement relative to the General Electric-Pittsfield/Housatonic River Site as embodied in the consent decree between the United States and General Electric Company, and other government entities.

The signing of the consent decree brings closer to reality a brownfields agreement between the City of Pittsfield and GE aimed at helping the city rehabilitate the 250-acre former GE site. The rejuvenation of this industrial site is critical for the future economic growth of our region. Most significantly, the consent decree protects the health of all residents of Berkshire County. This action also paves the way for business development and encourages companies and individuals to relocate to the Berkshires.

Berkshire Bank extends its appreciation to all members of the government teams who diligently worked to finalize the consent decree and related documents. The focused and prolonged efforts throughout the negotiations are already paying dividends. They have helped to create a new wave of excitement in Berkshire County contributing to the momentum for other tourism and economic development opportunities, such as a runway extension project at the Pittsfield Municipal Airport, a new ballpark, and restoration of the Colonial Theatre.

In conclusion, as the leading locally-based financial institution, it is in the best interests of the Berkshire region that we give the consent decree, as presented our vote of confidence.

Sincerely,

James A. Cunningham, Jr.  
President CEO

JAC/rb

CC: Bryan Olsen, U.S. EPA  
Mayor Gerald S. Doyle

# MASS MoCA

**MA-25**

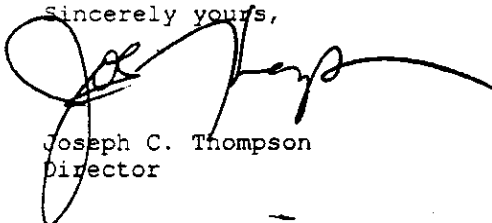
February 23, 2000

Lois' J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
US Department of Justice  
PO Box 7611  
Ben Franklin Station  
Washington, DC 20044

Dear Ms. Schiffer:

I have followed the GE-Pittsfield brownfield negotiation closely, and believe the consent decree provides a solid foundation for redevelopment of the GE site. Having dealt with more than a fair share of environmental remediation issues (at the former Sprague Electric Company, the site of **MASS MoCA**), I applaud the comprehensive nature of the consent decree provisions. **Public safety**, adaptive re-use, and economic development all are well-served under this umbrella agreement, and I hope the plan moves forward expeditiously.

Sincerely yours,

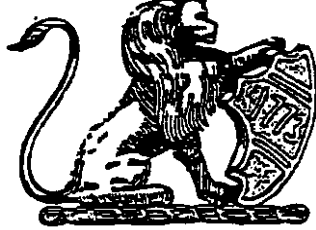


Joseph C. Thompson  
Director

JCT/pw

cc: Bryan Olsen  
Project Manager  
US Environmental Protection Agency

MASSACHUSETTS MUSEUM OF CONTEMPORARY ART  
87 MARSHALL STREET  
NORTH ADAMS MASSACHUSETTS 01247  
PH 413 664 4481 FAX 413 663 8548  
[www.massmoca.org](http://www.massmoca.org)



# THE RED LION INN

Food & Lodging Since 1775

Stockbridge, Massachusetts 01262

Phone 413-298-5545

Fax 413-298-4058

Date 2/25/0

To: Lois J. Schiffer

Assistant Attorney General

c/o Cynthia Huber

Senior Attorney

**MA-26**

From: Nancy Fitzpatrick

Pages (including this page) 2

F a x : 202-514-2583

Subject:

Message:

I have ammended my letter of February 23 2000 to include  
Case File Numbers: DJ#90-11-3-1479 &90-11-1-1479Z.



SINCE 1773

# THE RED LION INN

STOCKBRIDGE, MASSACHUSETTS 01262

TEL. 413 298-5545

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

23 February 2000

RE:Case File Numbers: DJ#90-11-3-1479 & 90-11-1-14792

Dear Ms. Schiffer,

I would like to express my support of the settlement that was negotiated between the EPA and other government entities and **G.E.** regarding PCB contamination in Pittsfield, Massachusetts. The consent decree adequately addresses the health and environmental issues that the EPA considers to be a "probable cause" of health problems.

In addition, the decree ensures use of the latest scientific standards and technologies during the remediation and containment processes. The decree also facilitates the rejuvenation of brownfields in the heart of Pittsfield's industrial neighborhood. It is central to the economical development of Berkshire County and the rehabilitation of a once-proud city that has languished for many years.

All parties worked very hard and in good faith to come up with solutions. The settlement has buoyed the general population in our area and there has been a great spirit of collaboration and moving forward. It would be a terrible blow if this effort did not move ahead. I **fervently** hope that the consent decree will be approved,

Sincerely yours,

Nancy J. Fitzpatrick  
President/ Owner

CC B. Olsen, E.P.A.; Mayor Doyle

MA-27

**FACSIMILE TRANSMISSION**

Cain, Hibbard, Myers & Cook  
A PROFESSIONAL CORPORATION  
COUNSELORS AT LAW

66 West Street  
Pittsfield, Massachusetts 01201-5764

Voice Phone: (413) 443-4771  
General Fax: (413) 443-7694

***FROM:***

Name: C. Jeffrey Cook  
Fax Number:  
Voice Number: 413-499-6679

***To:***

Name: Cynthia Huber, Sr. Any.  
Company:  
Fax Number: 1-202-514-2583  
voice Phone:  
Client: OFFPOO  
Matter: 0003

***MESSAGES:***

The attached should be delivered to Cynthia Huber, Senior Attorney who is receiving the fax for Lois J. Schiffer, Assistant Attorney General. Thank you.

Date and time of transmission: **Wednesday, February 23, 2000 4:34:00 PM**  
Number of pages including this cover sheet: **03**

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Great Barrington Office: 309 Main Street, Great Barrington, MA 01230-1616 Telephone (413) 528-4771 FAX (413) 528-5553

**Cain, Hibbard, Myers & Cook PC**  
Counselors at Law

66 West Street, Pittsfield, Massachusetts 01201-5764  
Writers Private Line: 413-499-6679  
Main Line 413-443-4771 Ext. 330  
Fax 413-443-7694  
email: [cicook@cainhibbard.com](mailto:cicook@cainhibbard.com)

C. Jeffrey Cook

February 23, 2000

VIA TELECOPIER **202-514-2583**  
**Attention:** Senior **Attorney Cynthia Huber**

Lois J. Schiffer  
Assistant **Attorney** General  
Environmental and **Natural** Resources Division  
U.S. Department of Justice  
PO Box 7611  
Ben Franklin Station  
Washington, DC 20044\

**Re:** Case **File** Nos. **DJ#90-11-3-1479**, 90-11-3-14792

**Dear Ms. Schiffer:**

As a member of the business community in Berkshire County and of the Concerned Citizens Counsel (the "CCCL"), established in connection with the settlement process, I am writing to express my support of the settlement between the United States and General Electric Company as the best possible solution to this very complicated situation.

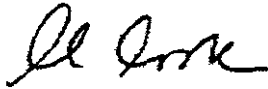
I have sat through monthly meetings of the CCC and have been very impressed by the extraordinary efforts made by the federal and state environmental officials to explain in detail the various aspects of the settlement and respond sympathetically to the concerns raised at those meeting by the members of the **Housatonic** River Initiative ("HRI") and other local environmental groups. Bryan Olsen and his staff, representing the EPA, and **Lynn** Cutler and her staff, representing the Massachusetts **Department** of Environmental Protection (the "Mass DEP"), have engaged in a detailed discussion of **all** of the major concerns raised. Those of us representing the community at-large in the process are convinced that the EPA and Mass DEP have done as much as could reasonably be expected to address the legitimate health concerns of the residents of Berkshire County. I cannot imagine how the Super Fund process **advocated by HRI** and its supporters could accomplish so much in such a short period of time.



Lois J Schiffer  
Assistant **Attorney** General  
February 23, 2000  
Page 2

I know I speak for the vast majority of the citizens of Pittsfield when I say that we support **the** work that was done and ask **that** you oppose the efforts of **HRI** to intervene in the **consent** decree proceedings and unravel the comprehensive settlement which has already done so much in the way of accelerated **clean-up** of the **Housatonic** River and support of important economic development for this community.

**Respectfully** yours,



C Jeffrey Cook

CJC/bn

cc: Bryan Olsen, via telecopier 617-918-1291

Daniel P. Schmutte  
President

MA-28

February 23, 2000

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
FAX: 202/514-2583

Case File Numbers, **DJ#90-11-3-1479, 90-11-3-1479**

Dear **Ms. Schiffer**,

I am writing to express my support of the Consent Decree that articulates the negotiated settlement between federal and state government entities and General Electric regarding the GE-Pittsfield site and the Housatonic River.

As an employer of 1,050 people in Pittsfield, I want to see progress on the PCB clean up and the resultant improvement of the Berkshire County environment and economy. Such progress improves the quality of life for my highly skilled workforce and improves my ability to attract and retain the people I need to grow my business.

I believe that the Consent Decree adequately addresses any health and environmental issues associated with PCBs, which EPA considers to be a "probable cause" of health problems. The decree also ensures use of the latest scientific standards and technologies during the remediation and containment processes. And, the decree facilitates the rejuvenation of the Brownfields in the heart of Pittsfield-key to economic development of Berkshire County

Finally, I encourage you and other approvers to sign off on the Consent Decree and let the remediation, restoration and redevelopment go forward to strengthen Pittsfield's prospects for a prosperous future.

Sincerely,



100 Plastics Avenue  
Pittsfield, MA 01201  
Tel 413 494 8500  
Fax 413 494 4442  
daniel.p.schmutte@gdds.com



*Hecker*

LAURIN PUBLISHING CO. INC.

Teddi C. Laurin  
Executive Publisher

February 23, 2000

**MA-29**

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Re: Case File Numbers, **DJ#90-11-3-1479, 90-11-3-1479Z**

Dear Ms. Schiffer:

This is in response to the request for comments on the General **Electric (Pittsfield)/Housatonic** River consent decree in regard to redeveloping some 250 acres that were polluted by **PCBs** [case file numbers **DJ#90-11-3-1479, 90-11-3-1479Z**].

As a member of the Mayor's Economic Task Force, I continue to strongly support the aforementioned consent decree, even though it has some imperfections. The reason for our support is that it is "on the table" and ready to move forward, whereas any alternative plan would take a long time (perhaps years) to achieve the necessary negotiations and agreements.

This is of vital importance, because a consent decree that is acceptable to all concerned and that can be implemented quickly is of urgent importance in Pittsfield's present economic situation. Redevelopment of the central area of the city - and indeed Berkshire County - is **essential** to our **economic** well-being.

Sincerely,

*Teddi C. Laurin*

Teddi C. Laurin  
Executive Publisher

TCL/bp

cc: Bryan Olsen, U.S. EPA

publisher of

Photonics Spectra Magazine • Biophotonics International Magazine • EuroPhotonics Magazine  
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*90-11-3-1479*  
DEPARTMENT OF JUSTICE  
FEB 25 2000  
LANDS DIVISION  
ENFORCEMENT RECORDS

Berkshire Common • 2 South Street • PO Box 4949 • Pittsfield, Massachusetts 01202-4949  
(413) 499-0514 • fax. (413) 442-3180 • e-mail, photonics@laurin.com

# FAX TRANSMISSION

**KB TOYS**  
100 WEST STREET  
PITTSFIELD, MA 01210  
413-496-3200  
FAX: 413-496-3608

**MA-30**

**To:** Lois J. Schiffer - Assistant  
Attorney General

**Date:** February 23, 2000

**Fax #:** 202-514-2583

**Pages:** 2, including this cover sheet.

**From:** Michael Glazer

**Subject:** Case File #'s: DJ90-1 1-3-1479,90-11-3-14792

## COMMENTS:

To follow is a **letter supporting** the PCB clean up **agreement**

Thank you,



100 West Street  
Pittsfield, Massachusetts 01201  
(413) 496-3200 • FAX (413) 496-3608

Michael L. Glazer  
Chief Executive Officer

February 23, 2000

Sent Via fax #202-514-2583

Lois J. Schiffer  
Assistant Attorney General  
Environmental and **Natural** Resources Division  
U.S. Department of **Justice**  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

**RE:** Case File Numbers: **DJ#90-11-3-1479** and **#90-11-3-1479Z**

**Dear Ms. Schiffer:**

We at **KB** Toys support the settlement between EPA and other government entities and the General Electric Company as it is set forth in the consent decree awaiting final approvals.

The **consent** decree adequately addresses health and **environmental** issues associated with **PCB's**, which EPA considers to be a "probable cause" of health problems.

The decree also ensures the use of the latest scientific standards and technologies during the remediation and containment processes.

The decree also facilitates the rejuvenation of the Brownfields in the heart of Pittsfield • key to the economic development of Berkshire County

Sincerely,

Michael Glazer

cc: Bryan Olsen, Project Manager • US Environmental Protection Agency  
Mayor Gerald Doyle • Pittsfield City Hall



William M. Hines

HERBORN

Indisputably

February 23, 2000

Ms. Lois J. Schiffer  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P. O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

FAX: 202-514-2583

MA-31

Dear Ms. Schiffer:

Ref: Case File Numbers: DJ#90-11-3-1479, 90-11-1-14792

As a member of the Chamber of Commerce of the Berkshires' Board of Directors, Economic Development Committee and the Mayor's Task Force, I strongly support the General Electric-Pittsfield/Housatonic River site settlement as embodied in the consent decree between the United States and General Electric Company and other government entities.

It is my opinion that the consent decree adequately addresses the environmental concerns of our region. It ensures that work on the cleanup of the river, the GE plant site, and numerous other properties will proceed on the expedited schedule outlined by the EPA more than a year ago with many of the cleanup projects already underway.

The signing of the consent decree brings closer to reality a brownfields agreement between the City of Pittsfield and GE aimed at helping the city rehabilitate the 250-acre former GE site. The rejuvenation of this industrial site is critical for the future economic growth of our region. Most significantly, the consent decree protects the health of all residents of Berkshire County. This action also paves the way for business development and encourages companies and individuals to relocate to the Berkshires.

I extend my appreciation to all members of the government teams who diligently worked to finalize the consent decree and related documents. The focused and prolonged efforts throughout the negotiations are already paying dividends. They have helped create a new wave of excitement in Berkshire County contributing to the momentum for other tourism and economic development opportunities.

In conclusion, it is in the best interests of the Berkshire region that we give the consent decree, as presented, our vote of confidence. This expeditious and comprehensive solution will bring the closure necessary to continue in the rebirth of a key industrial site as we reclaim our environment and create a new future for Pittsfield and Berkshire County.

Sincerely,

INTERPRINT, MC,

William M. Hines  
President and CEO

WMH/djk

c: Bryan Olsen, U.S. EPA  
Mayor Gerald S. Doyle, City of Pittsfield



William M. Hines

indisputably

■ February 23, 2000

Ms. Lois J. Schiffer  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P. O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

FAX: 202-5 14-2583

Dear Ms. Schiffer:

Ref: Case File Numbers: DJ#90-11-3-1479, 90-11-3-14792

As a member of the Chamber of Commerce of the Berkshires' Board of Directors, Economic Development Committee and the Mayor's Task Force, I strongly support the General Electric-Pittsfield/Housatonic River site settlement as embodied in the consent decree between the United States and General Electric Company and other government entities.

It is my opinion that the consent decree adequately addresses the environmental concerns of our region. It ensures that work on the cleanup of the river, the GE plant site, and numerous other properties will proceed on the expedited schedule outlined by the EPA more than a year ago with many of the cleanup projects already underway.

The signing of the consent decree brings closer to reality a brownfields agreement between the City of Pittsfield and GE aimed at helping the city rehabilitate the 250-acre former GE site. The rejuvenation of this industrial site is critical for the future economic growth of our region. Most significantly, the consent decree protects the health of all residents of Berkshire County. This action also paves the way for business development and encourages companies and individual, to relocate to the Berkshires.

I extend my appreciation to all members of the government teams who diligently worked to finalize the consent decree and related documents. The focused and prolonged efforts throughout the negotiations are already paying dividends. They have helped create a new wave of excitement in Berkshire County contributing to the momentum for other tourism and economic development opportunities.

In conclusion, it is in the best interests of the Berkshire region that we give the consent decree, as presented, our vote of confidence. This expeditious and comprehensive solution will bring the closure necessary to continue in the rebirth of a key industrial site as we reclaim our environment and create a new future for Pittsfield and Berkshire County.

Sincerely,

INTERPRINT, INC.

William M. Hines  
President and CEO

WMH/djk

c: Bryan Olsen, U.S. EPA  
Mayor Gerald S. Doyle, City of Pittsfield

MA-32

**K•B Toys**  
*Human Resources Department*

---

100 West Street  
Pittsfield, MA 01201  
(413)496-3218  
Fax: (413)496-3604

FAX TRANSMISSION COVER SHEET

---

*Date:* February 23, 2000  
*To:* Cynthia Huber, Senior Attorney  
*Fax:* 202-514-2583  
*Re:* Consent Decree  
*Sender:* Lorraine Moresi

---

YOU SHOULD RECEIVE 2 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT  
RECEIVE ALL THE PAGES, PLEASE CALL (413)496 3218.

---





110 West Street  
Pittsfield, Massachusetts 01201  
(413) 494-3000

**Gerry Murray**  
VICE PRESIDENT, HUMAN RESOURCES

February 23, 2000

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U. S. Department of Justice  
P. O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

Dear Ms. Schiffer:

Subject: Case File Numbers, DJ#90-11-3-1479, 90-11-3-1479Z.

As a member of the Chamber of Commerce of the Berkshires, we at K-B Toys support the settlement of the environmental concerns relative to the GE Pittsfield/Housatonic River Site as represented in the consent decree between the United States and General Electric Company, and other government entities.

We are pleased that the cleanup projects have begun and are confident that the consent decree will adequately address the environmental concerns of this region. It also means that the brownfields agreement will help to rehabilitate the former GE site in Pittsfield, making way for business development and relocation to the Berkshires.

Sincerely,

A handwritten signature in cursive script that reads "Gerry Murray".

Gerry Murray, Vice President  
Human Resources

MA-33

FAX: 413-442-0098\*\*\*\*\*PHONE: 413-443-4421

FAX MESSAGE

DATE: 2/23/00 Total number of pages: 2 (including this page)  
TO: C/O Senior Attorney, Cynthia Huber FAX NUMBER: 202-514-2583  
FROM: STEPHEN F. PIERCE  
TIME: 3:45 PM  
SUBJECT: GE Consent Decree

OTHER INFORMATION:

Reply requested  Yes  No

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02/23 '00, 16:35 NO.603 01/20

8600 422 473

CSB BUSINESS BANKING

February 23, 2000

Lois J. Schiffer  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Dear Ms. Schiffer.

Subject: **Case File Numbers, DJ#90-11-3-1479, 90-11-3-14792**

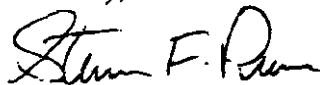
As a long time member of the Berkshire business community and resident of the Berkshires, I **strongly** support the settlement relative to the General **Electric-Pittsfield/Housatonic** River Site as embodied in the consent decree between the United States and **General** Electric Company, **and** other **government** entities.

In my opinion the consent decree adequately addresses the environmental **concerns** of our region and is a very **satisfactory** compromise which will allow for an expedited solution to the environmental problems. Significant work is already underway, protecting the **health** of residents and providing for future business development and relocation of jobs to the Berkshires.

All parties involved in this consent decree are to be commended for their efforts to resolve a very complex set of problems with a solution which is fair for all sides and **provides for** a near term solution to the **environmental** clean-up required.

Please help expedite final approval of this consent decree **so** that clean-up efforts will continue and the **Berkshires** can continue to be a desirable place to live and work.

Sincerely,



Steven F. Pierce  
Executive Vice President

cc: Bryan Olsen, U.S. EPA



MA-34

February 23, 2000

Mr. Bryan Olsen  
Project Manager  
U.S. Environmental Protection Agency  
JFK Building HBT  
Boston, MA 02203

Re: DJ#90-11-3-1479,90-11-3-1479Z

Dear Mr. Olsen:

I would like to take this opportunity to reaffirm our support of the negotiated settlement contained in the pending consent decree in the matter of General Electric's remediation of contaminated property in Pittsfield and along the Housatonic River.

GE has expressed its willingness to aid in the restoration of these parcels in an effort to get the City of Pittsfield growing again. This is critically important to all of us in Pittsfield. The consent decree is the product of two years of hard fought negotiation and compromise and represents the best possible solution to a problem that has dragged on for more than 20 years. To delay would be nothing but opportunity lost.

I would respectfully urge you to support this negotiated settlement and to bring the influence of your good offices to bear on this matter.

Sincerely,

Robert M. Alessio  
President and COO

# berkshire<sup>SM</sup> energy resources

MA-35

115 Cheshire Road • Pittsfield, MA 01201-1803  
(413) 442-1511 • Fax (413) 443-0546  
www.BerkshireEnergy.com

February 23, 2000

Mr. Bryan Olsen  
Project Manager  
U.S. Environmental Protection Agency  
JFK Building HBT  
Boston, MA 02203

Re: DJ#90-11-3-1479,90-11-3-1479Z

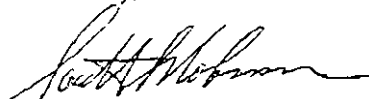
Dear Mr. Olsen:

I would like to take this opportunity to ~~reaffirm~~ our support of ~~the negotiated~~ settlement contained in the pending consent decree in the matter of General Electric's ~~remediation~~ of contaminated property in Pittsfield and along the Housalonic River.

GE has expressed its willingness to aid in the restoration of these parcels in an effort to get the City of -Pittsfield growing again. This is critically important to all of us in Pittsfield. The consent decree is the product of two years of hard fought negotiation and compromise and represents the best possible solution to a problem that has dragged on for more than 20 years. To delay would be nothing but opportunity lost.

I would respectfully urge you to support this negotiated settlement and to bring the influence of your good offices to bear on this matter.

Sincerely,



Scott S. Robinson  
President and CEO

**HOLLAND & KNIGHT LLP**

One Beacon Street  
Boston, Massachusetts 02108

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Atlanta	Northern Virginia
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Melbourne	Tallahassee
Mexico City	Tampa
Miami	Washington, D.C.
New York	West Palm Beach

DAVID S. BLACKMAR  
(617) 854-1424  
dblackmar@hklaw.com

February 23, 2000

Mr. Bryan Olson  
U.S. Environmental Protection Agency  
One Congress Street (HBT)  
Boston, MA 02114

Re: **GE/Housatonic** River Consent Decree and the Reissued RCRA Permit

Dear Mr. Olson:

This **firm** represents El Paso Energy Corporation ("El Paso Energy"), and its subsidiary company, the Tennessee Gas Pipeline Company ("Tennessee"). On behalf of El Paso Energy and Tennessee, we are pleased to submit the enclosed comments to the Consent Decree for the General Electric **Company-Pittsfield/Housatonic** River Site (the "**Site**") to assist the U.S. **Environmental Protection Agency ("EPA")**. ~~We would be happy to~~ meet with you to discuss any of the comments and information described herein and to further assist you with your mission. We reserve our rights to submit additional comments, **as necessary** and appropriate.

Our comments pertain to the proposed response actions for **PCBs** in Unkarnet Brook Area and all other areas subject to the Consent Decree that involve or potentially involve Tennessee's easement. **In** particular, our comments relate to the proposal to require or allow GE to seek Grants of Environmental Restrictions and Easements (**EREs**), or implement Conditional Solutions at properties where **EREs cannot** be obtained. **See** SOW at 2.2.2.

I. Introduction

Tennessee supports, in principle, the Consent Decree. The proposal to permit GE to obtain **EREs** or Conditional Solutions for certain contaminated properties is practical and

may be necessary at properties where future uses of those properties can be restricted, and where the remaining public health and safety risks are minimized. However, we believe that EPA should reconsider the approach of allowing **EREs** on easement properties, and, in particular on existing and active utility easements. A requirement to impose **EREs** or Conditional Solutions on easement properties is inconsistent with fundamental legal property rights of easement owners, including Tennessee. **ERE's**, by nature, impose incompatible conditions which interfere with current uses of the easements, including emergency maintenance and expansion of Tennessee's pipeline. Under applicable federal requirements, Tennessee is prohibited from subordinating or altering its easement property rights in any way that will restrict or interfere with access for these purposes.

As set forth more fully below, the application of **EREs** to existing active utility easements is inconsistent with the goals and requirements of the Consent Decree, **as well** as the State's cleanup program, Mass. Gen Laws, Chapter 21E and the MCP, that would, absent the Consent Decree, otherwise govern the release of hazardous materials at the Site. Chapter 21E, and the MCP require that active utility easements, involving "current use" scenarios, be cleaned up to levels that do not require imposition of property use restrictions, referred to under the MCP as "Activity and Use Limitations" or "**AULs**." We believe that the fundamental purposes and goals of the Consent Decree do, or should, be consistent with this approach.

For the reasons set forth more fully below, it is our position and recommendation that EPA clearly prohibit application of land use restrictions or "**EREs**" on existing active utility easements. Instead, EPA should require GE to set forth detailed cleanup plans, protocols, and procedures specifically for these easements, in advance of scheduled pipeline maintenance or expansion projects. As we have discussed with you **in** our meeting on February 8, 2000, Tennessee will conduct maintenance on the pipeline easement in the Unkamet Brook Area during the summer of 2000. Tennessee is limited to short time periods when maintenance can be carried out and **cannot tolerate the** additional cleanup delays and costs **that may** be imposed by GE.

In connection with these utility easement cleanup plans and protocols, EPA should also reconsider the sampling methods and exposure point concentrations to account for easement worker exposure at depth in the pipeline trenches. This may require cleanup standards at depth that are equivalent to surface standards for similar exposures at other areas of **the** Site and consistent with worker exposure limits under other federal laws governing pipeline maintenance and construction. We further suggest that federal pipeline safety regulations, and worker safety regulations (OSHA) be considered **ARARs** under the Consent Decree with respect to easement cleanup levels.

Without such procedures and protocols, Tennessee will be left with little time and few options outside of costly and time consuming litigation to resolve the private property disputes that will arise out of the imposition of **EREs** by GE. We believe that it is not EPA's

or GE's intention under the Consent Decree to encourage or foster litigation between landowners and easement owners in Pittsfield.

For reasons set forth more fully below, EPA should also consider coordinating with other utility easement owners and the Department of Telecommunications and Energy ("DTE") before permitting any **ERE's** that may complicate or impede the process of redeveloping existing utility and transportation easements. Existing easements, particularly utility and transportation easements, now play an important role in the continued growth in the telecommunications and energy industries in Massachusetts. As encumbrances on easement property rights, **EREs** may result in significant negative impacts on telecommunication and energy projects in the Berkshire region and the entire Commonwealth.

## II. Background

### A. Tennessee's Easement Property

El Paso Energy Corporation, headquartered in Houston, Texas, owns the nation's largest integrated coast-to-coast natural gas transportation system, consisting of over 26,600 miles of regulated mainline natural gas transportation pipeline across the United States. With over \$9.5 billion in assets, El Paso Energy operates one of the most reliable and safe natural gas pipeline transportation systems in the world. El Paso Energy's pipeline operations include two interstate subsidiary companies. The Tennessee Gas Pipeline Company operates the eastern half of the regulated transmission system (including East Tennessee **Natural** Gas and Midwestern Gas Transmission), which includes over 16,000 miles of pipeline connecting supply regions in Texas, Louisiana and the Gulf of Mexico to gas markets in 20 Eastern and Midwestern states, as well as major metropolitan areas such as New York, Boston, and Chicago.

~~Tennessee owns and maintains hundreds of miles of natural gas transportation pipeline in Massachusetts. Since the early 1950s, Tennessee has owned the perpetual and exclusive right to install, operate, and maintain its pipeline along its easements without unreasonable interference. These perpetual rights are valuable assets of Tennessee and El Paso. El Paso regularly protects and defends these rights.~~

Tennessee's use of its easements **necessarily involves** routine and emergency maintenance. Interstate natural gas by companies like Tennessee are regulated under the Natural Gas Act, 15 U.S.C. §§ 717 **et seq.**; the Natural Gas Pipeline Safety Act, 49 U.S.C. §§ 60101 **et seq.**; and the Pipeline Safety Regulations adopted thereunder at 49 C.F.R., Part 192. The federal natural gas pipeline laws establish exclusive authority in the Federal Energy Regulatory Commission ("**FERC**"), and the **Office** of Pipeline Safety ("**OPS**") within the U.S. Department of Transportation ("**DOT**") to develop regulations applicable to interstate natural gas pipelines. The regulations adopted by these agencies control **all** aspects of pipeline siting, construction, operation, maintenance, and environmental protection.



Tennessee is obligated under these federal laws to constantly maintain its easement in order to protect against safety-related problems.

The federal pipeline safety laws and regulations require **Tennessee** to have unencumbered access to perform safety-related maintenance activities at all times, and at a moment's notice. Tennessee must, and regularly does, enforce against any unreasonable interference with its obligations, right and ability to perform mandatory pipeline maintenance.

Tennessee also uses its easements in connection with significant new construction and pipeline expansion projects. These projects are a key factor in the new Massachusetts utility deregulation initiative. The success of this initiative, and the major environmental benefits it offers the Commonwealth, depend on successful siting and development of new clean natural gas-fired **power plants**. Tennessee has recently completed major expansions of its pipeline in key areas of Massachusetts to accommodate these new plants. More expansions are planned. The placement of encumbrances in the form of property use restrictions such as **EREs**, before or during planned construction, may prevent, or force delay or cancellation of these pipeline expansion projects.

### III. Our Detailed Comments and Suggestions

Set forth below are detailed comments regarding the current proposal to allow or require GE to apply **EREs** or Conditional Solutions on easement property. These comments are preliminary. Due to the seriousness and complexity of the issues set forth below, we are interested in working closely with EPA on this issue, and in reviewing the other comments, particularly those of other major utility easement owners in Massachusetts.

#### A. **EREs** on Existing Utility Easements Are Inconsistent with Massachusetts Easement Law.

Imposition of **EREs** on existing easements, by GE or other landowners by agreement with GE, without consent and compensation, is inconsistent with the rights of easement owners. The owner of a property burdened by an easement may not use his land in any way that interferes with the easement owner's right of use. See e.g. *Texon, Inc. v. Holyoke Machine Co.*, 8 Mass. App. Ct. 363,365366; 394 N.E. 2d 976,918 (1979). The owner of the burdened property must not interfere with the use of the easement in a way which would lead to a material increase in the cost or inconvenience to the easement holder's exercise of its rights. Further, the owner of property burdened by an easement whose use of that easement impairs the rights of the owner of the easement may be enjoined from the infringing activity or required to take measures at his expense to accommodate the easement owners rights of use. Id.

Tennessee's rights of use arising out of its easements are superior to the landowners' property interest. Tennessee is prohibited under federal law from subordinating its easement

property rights in any way that would restrict its access to the easement. The landowner must avoid activities which are inconsistent with Tennessee's use of its easement.

Under Massachusetts law, easement owners are entitled to enjoin any landowner from applying an ERE to easement property where that ERE will permit the landowner to avoid cleanup and to pass on the cleanup obligations and costs to the easement owner. The imposition of an ERE which allows the landowner to avoid cleanup of an easement would likely constitute actionable interference with the easement property interest and, where permitted by governmental action or regulation, a taking compensable under the U.S. and Massachusetts constitutions.

B. **EREs on Existing Active Utility Easements Are Inconsistent with the MCP and the Fundamental Purposes and Coals of the Consent Decree.**

EREs may be used to permit contaminated waste and soils to remain in an easement area at concentrations that may prohibit certain utility maintenance or construction work, or require utility easement owners to use special handling procedures and equipment to protect the workers and the public. The application of EREs in this manner, especially on existing active utility easements, is inconsistent with the MCP. EREs cannot prohibit or restrict in any way the construction and maintenance activities that must take place on these easements.' We believe that the fundamental purposes and goals of the Consent Decree do, or should, be consistent with this approach. The MCP provides that:

[t]he purpose of an Activity and Use Limitation [form of restriction analogous to an ERE] is to narrow the scope of exposure assumptions used to characterize risks to human health from a release . by specifying activities and uses that are prohibited and allowed at the disposal site **in the future**. 310 CMR 40.1012(1) (emphasis supplied).

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It is implicit under the MCP that ~~the only land uses which may be subject to an ERE~~ are possible future uses, changes in use, or uses that may otherwise be prohibited or restricted. It appears that the Consent Decree follows this approach. **See** Consent Decree at p. 136. An ERE is not appropriate where the uses to be prohibited or restricted are current uses of the property and where uses cannot, as a matter of law, be so restricted or conditioned. As a matter of law, Tennessee's maintenance activities, which are mandated under federal law, are uses that cannot **be prohibited** or restricted pursuant to any form of ERE under the Consent Decree, or pursuant to CERCLA or Chapter 21E and the MCP.

---

<sup>1</sup> Of **course**, an ERE may **be** used to notify persons interested **in** acquiring subsequent easement rights of any **use** restrictions, and any duty to evaluate and respond appropriately to risks associated with prior conditions. **See** 310 CMR **40.1012(5)**. This section, 40.1025, is inapplicable to prior easement holders whose interests are superior in time and right to **an** AUL.

The MCP does not contemplate use of **EREs** to narrow the scope of exposure assumptions or eliminate exposure points for any activities considered “current uses” of a property. We believe that the Consent Decree does, or should, follow this approach. Under Chapter 21E and the MCP, the Massachusetts DEP considers all rightful uses on active utility easements, including maintenance activities, to be consistent with the “current uses” of the easement. Thus, **EREs** cannot be used to restrict any rightful uses on active utility easements in order to avoid cleanup. See Guidance on Implementing Activity and Use Limitations, p. 7-9, (Draft, January 22, 1998). **DEP’s** AUL guidance provides, in pertinent part that:

[a]t property where an easement (e.g. for utility lines or rights of passage) is held the site must be cleaned up to a level consistent with the activities associated with that easement [e.g. maintenance] are consistent with the current conditions of the site and would thus be evaluated in a risk characterization of the current use of the property. Alternatively, the property owner could negotiate to formally modify the easement with the holder, or seek to obtain a Grant of Environmental Restriction. Id. (emphasis supplied).

Accordingly, instead of permitting **EREs** in lieu of cleanup, the DEP policy and the MCP both require cleanup of active utility easements, and other easements where workers will be exposed, to a level that does not require an ERE. The cleanup must be sufficient to support a finding of “**No Significant Risk**” based on the “current uses,” so that future maintenance activities and other rightful uses of the easement will be unencumbered by any risks associated with Site contamination. We believe that the Consent Decree does, or should, require the same results.

Under the MCP, the only available options for restricting use of an existing active utility easement are to: (1) negotiate with the easement owner to incorporate a modification of the easement rights; or (2) purchase and transfer the current easement rights by way of a Grant of Environmental Restriction. See 310 CMR 40.1071. For obvious reasons, these options are not available with respect to Tennessee’s easements. As stated previously, Tennessee is prohibited under federal pipeline law from subordinating its easement rights.

We recently confirmed the above interpretation with John Fitzgerald and Attorney Carol Wasserman of the DEP. Attorney Wasserman agrees with the above interpretation and takes the position that the imposition of **AULs/EREs** on active easements is “completely contrary to the MCP.” According to Mr. Fitzgerald, it is DEP’s position that **AULs/EREs** are not appropriate on active utility easements, in particular, because maintenance activities are assumed to be uses which will, or must, occur (“current uses”), and thus cannot be restricted or limited as if they are “future uses.” Rather, according to Mr. Fitzgerald, active easements must be cleaned up to Method 1 or Method 2 standards, unless a Method 3 risk assessment, based on proper characterization of the easement area and analysis of its exposure point concentrations, proves that unprotected workers will be exposed to contaminant levels

representing a condition of "No Significant Risk" under the MCP. At that point, an **AUL/ERE** would not be justified for the maintenance activities.

While an ERE in lieu of cleanup might present a cost-saving approach to reaching a "permanent" solution for the non-easement portions of a Site, it is not an available solution for Tennessee's pipeline easements. Tennessee fails to see any reason for **EREs** on an easement other than the reason of avoiding the costs of cleanup. There is nothing located on Tennessee's easements that would prevent GE from remediating the **waste and** contaminated soils. By their nature, Tennessee's easements are totally accessible for excavation of soils, and Tennessee regularly cooperates with responsible parties in similar situations to provide access and direction necessary to safely perform activities required under the MCP. Accordingly, there can be no practical or legal basis for avoiding remediation of such easements on grounds of unfeasibility, or on other grounds consistent with the Massachusetts Brownfields legislation or the MCP.

Tennessee will object to, and bring court actions as necessary to prevent any ERE that restricts its use of the easements. Such **EREs** will unfairly shift the costs and other burdens of response and management of the contamination from GE, as the party responsible under the Consent Decree, to Tennessee. A fundamental principle of the Consent Decree, Chapter **21E** and the MCP is that the burden of cleanup and response must rest on the responsible party.

c . **EREs Conflict with Federal Pipeline Safety Requirements.**

To the extent that **EREs** may be used to impose requirements that are additional to or different from requirements under the federal pipeline safety laws outlined above, the Consent Decree ERE provisions and may be preempted under the supremacy clause of the U.S. Constitution. See U.S.C.A., Const. Art. 6, cl. 2. By their nature, **EREs** may specifically prohibit, regulate, interfere with, or alter the manner in which land use activities may be carried out in ~~ERE restricted areas. See 40 CFR 401.099~~ (AUL Form 1075). **Construction, maintenance, and emergency maintenance at pipeline and other utility easements may be prohibited, physically prevented, or otherwise constrained by an ERE.**

We recommend that GE and EPA review, in detail, the potential for **EREs** to conflict with federal pipeline safety laws and regulations, and other federal laws and regulations applicable to utility and other easements. We also recommend that EPA include regulations governing pipeline safety and pipeline worker exposure limits as **ARARs** under the Consent Decree. We are happy to provide additional information regarding these issues.

D. **Utility and Transportation Easements Must Be Unencumbered for New Telecommunications and Energy Projects.**

Existing utility easements now play a major role in the development of our telecommunications and energy industries in Massachusetts. These industries are

responsible for our current healthy economy, and are critical to our **future** growth and competitiveness.

GE and EPA should investigate other state initiatives that may be impacted by imposition of **EREs** on utility easements, and coordinate with the relevant state agencies. For example, the Massachusetts **Department** of Telecommunications and Energy ("**DTE**") is currently investigating the potential for redevelopment of inactive transportation, railroad, and utility easements for the creation of new utility and telecommunications corridors in Massachusetts: See Massachusetts Acts and Resolves, 1997, Chapter 11, Section 99.

Additionally, telecommunications and energy companies throughout Massachusetts are working privately to expand use of their existing active and inactive easements. GE and EPA must become familiar with these initiatives and work closely with utility companies and other agencies in order to avoid imposing land use restrictions that will conflict with or obstruct these important **public** benefit projects.

E. EPA Should Require GE to Establish Special Easement Cleanup Plans

It is Tennessee's position that all **PCBs** must be removed **from** its easements so that maintenance activities can proceed unencumbered, without **Tennessee** incurring additional costs, and without subjecting Tennessee's workers to **health** risks. Tennessee's position is not unique to Tennessee. We are aware that **other** utility companies take the same position with respect to their easements, active or inactive. Tennessee and other utility easement owners are currently requiring responsible parties to perform cleanup under the MCP at locations throughout Massachusetts. Tennessee will not tolerate PCB contamination that may seriously delay essential maintenance activities, potentially subject Tennessee workers to health risks, and totally shift significant costs of cleanup from GE to Tennessee.

EPA should require GE to establish easement cleanup plans and protocols for utility easements, **considering** current use and the unique-worker exposure **scenarios**. These plans, and protocols should involve sampling and cleanup protocols based on spatial averaging on the easement area exclusively. These plans should also establish exposure point concentration standards for **PCBs** and other contaminants that are protective **of workers** in the pipeline trench, at depth of approximately 1 -- 7 feet, or to the bottom of the existing pipeline, and do not trigger state or federal cleanup requirements and additional costs and delays for Tennessee. In any event, the levels must be no less protective than the maximum exposure levels under pipeline safety regulations and OSHA as **ARARs** under the Consent D e c r e e .

IV. Summary & Conclusions

Imposition of **EREs** is inconsistent with existing pipeline and other active utility easements. The property interests of easement owners, such as Tennessee, are superior to the rights of the property owner and cannot be subordinated. Easement owners may sue to enjoin any actions which will interfere with the easement property rights.

**EREs** may be used to impose land use restrictions that create costly and dangerous barriers to maintaining natural gas pipeline structures and other utilities. Easements are valuable property interests that play a critical role in our State economy, particularly now that these property interests are being **utilized** for expansion or redevelopment for the telecommunications and energy industries. These industries are critical to the continued economic **growth** and prosperity in Massachusetts.

GE and EPA should establish special cleanup plans and protocols that are protective of utility workers under the unique exposure scenarios presented by current uses of the easements, which include routine **maintenance and** pipeline expansion. This may require EPA to establish additional **ARARs** under the Consent Decree, including pipeline safety and OSHA requirements. EPA and GE should coordinate and cooperate with other federal and state agencies, particularly DTE, to ensure that the goals of the Consent Decree are consistent **with** other regulatory programs and state economic development initiatives.

Sincerely,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read 'David S. Blackmar', is written over the printed name and firm name.

David S. Blackmar

DSB

cc: El Paso Energy Corp.  
Tennessee Gas Pipeline Co.

BOS1 #1019414 v2

# M. CALLAHAN INC.

P. O. Box 526  
Pittsfield, Massachusetts  
(413) 443-5931

1-23-02

February 23, 2000

MA-37

Ms. Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin-Station  
Washington, DC 20044

Dear Ms. Schiffer:

Subject: Case File Numbers, **DJ#90-11-3-1479, 90-11-3-14792**


First of all I want to congratulate all parties which successfully negotiated a settlement which addresses both our economy and our environment. After years of hard work a final work product was agreed upon and filed with the court.

I urge your continued support relative to the General Electric, EPA and our City of Pittsfield agreement. Our company is a four generation family business that is proud to call Pittsfield and the **Berkshire's** home for well over 125 years. The large majority of our citizens have renewed hope for our region. which was created by this model agreement, and it is important that we do not turn back now. Our communities have **many** new exciting projects on the horizon and we do not need to return to the days of uncertainty about our future.

Please continue to fight for us and deliver the promise that we all deserve - a negotiated settlement addresses public health, gets our river clean and provides economic benefits to everyone with the restoration of the GE plant. Thank you for your attention to this matter.

Sincerely,

M. CALLAHAN INC.



M.E. Callahan, Jr.  
President

cc: Bryan Olsen; Project Manager-EPA

90-11-3-1479  
MAR 1 1999



**Western  
Massachusetts  
Electric**

333 West Street, Pittsfield, MA 01201

**Western Massachusetts Electric Company  
P.O. Box 1178  
Pittsfield, MA 01202-1178  
(413) 443-6411**

**The Northeast Utilities System**

**Charles J. Dooley  
General Manager**

February 23, 2000

Ms. **Lois** J. Schiffer  
Assistant Attorney General  
Environment and **Natural** Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

**MA- 38**

RE: Case File Numbers **DJ#90-11-3-1479, 90-11-3-1479Z**

Dear Ms. Schiffer:

On behalf **or** Western **Massachusetts Electric** Company (**WMECO**), **we** support the settlement relative to the General **Electric-Pittsfield/Housatonic** River Site as embodied in the consent decree between the United **States** and General Electric Company, and other **government** entities.

It is **our** opinion that the consent decree adequately addresses the environmental concerns of our region. It ensures that work on the cleanup of the river, **the** GE plant site, and **numerous** other properties will proceed on the expedited schedule outlined by the EPA **more** than a **year** ago. We are pleased many **of** the cleanup projects are already underway.

**The** signing of the consent decree brings closer to **reality** a **brownfields** agreement between the City of Pittsfield and GE aimed at helping the city rehabilitate the **250-acre** former GE site. The rejuvenation of this industrial site is critical for the **future** economic **growth** of our region. Most significantly, the consent decree protects the health of all residents of Berkshire County. This action **also** paves the way for business development and encourages companies and individuals to relocate to **the Berkshires**.

**WMECO** extends its appreciation to all **members of the** government teams who diligently worked to **finalize** the consent decree and related documents. **The** focused and prolonged **efforts** throughout the negotiations are already paying dividends. **They** have helped create a new wave of excitement in Berkshire County contributing to **the momentum** for **other** tourism and economic development opportunities.

in conclusion, it is in the best interests of the Berkshire region that we give the consent decree, as presented, our vote of confidence. This expeditious and comprehensive solution will bring the closure necessary to continuing the rebirth of a key industrial site **as** we reclaim our environment and create a new future for Pittsfield and Berkshire County.

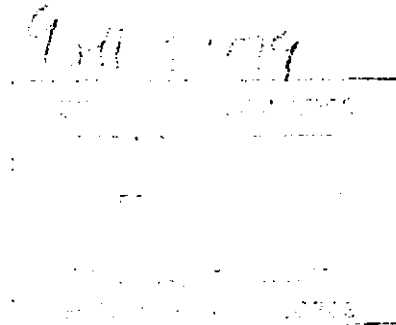
Sincerely,

*Charles J. Dooley*

**Charles J. Dooley  
General Manager  
Pittsfield District**

CJD/kjl

cc: Bryan Olsen, U.S. EPA  
Kery J. Kuhlman, President, WMECO







57 MAIN STREET, NORTH ADAMS, MA 01247

Creating Northern Berkshire's Future Together!

Hudson  
MA-39

February 23, 2000

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Dear Ms. Schiffer:

Subject: Case File Numbers, DJ#90-11-3-1479, 90-11-3-1479Z

On behalf of the 350 members of the Northern Berkshire Chamber of Commerce, we support the settlement relative to the General Electric-Pittsfield/Housatonic River Site as embodied in the consent decree between the United States and General Electric Company, and other government entities.

It is our opinion that the consent decree adequately addresses the environmental concerns of our region. It ensures that work on the cleanup of the river, the GE plant site, and numerous other properties will proceed on the expedited schedule outlined by the EPA more than a year ago. We are pleased many of the cleanup projects are already underway.

The signing of the consent decree brings closer to reality a brownfields agreement between the City of Pittsfield and GE aimed at helping the city rehabilitate the 250 acre former GE site. The rejuvenation of this industrial site is critical for the future economic growth of our region. Most significantly, the consent decree protects the health of all residents of Berkshire County. This action also paves the way for business development and encourages companies and individuals to relocate to the Berkshires.

The Chamber extends its appreciation to all members of the government teams who diligently worked to finalize the consent decree and related documents. The focused and prolonged efforts throughout the negotiations are already paying dividends. They have helped create a new wave of excitement in Berkshire County contributing to the momentum for other tourism and economic development opportunities, such as a runway extension project at the Pittsfield Municipal Airport, a new ballpark, and restoration of the Mohawk Theatre and the Greylock Center Project.

In conclusion, it is in the best interest of the Berkshire region that we give the consent decree, as presented, our vote of confidence. This expeditious and comprehensive solution will bring the closure necessary to continuing the rebirth of a key industrial site as we reclaim our environment and create a new future for Berkshire County.

Sincerely,

President of the Board  
(True North Financial Center)

Executive Director

90-11-3-1479  
DEPARTMENT OF JUSTICE  
FEB 28 2000

WAL/MPS/sm  
cc: Bryan Olsen, U.S. EPA

**THE NORTHERN BERKSHIRE ECONOMIC PARTNERSHIP**

The Adams Chamber of Commerce · The Northern Berkshire Industrial Park & Development Corporation  
PHONE: (413) 663-3735 FAX: (413) 664-1049 E-MAIL: NBCC@BCN.NET

NORTHERN BERKSHIRE  
INDUSTRIAL PARK &  
DEVELOPMENT CORPORATION

MA-40

February 23, 2000

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Dear Ms. Schiffer:

Subject: Case File Numbers, **DJ#90-11-3-1479, 90-11-3-14792**

On behalf of the **Northern Berkshire Industrial** Park and Development, we support the settlement relative to the General **Electric-Pittsfield/Housatonic** River Site as embodied in the consent decree between the United States and General Electric Company, and other government entities.

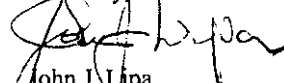
It is **our** opinion that the consent decree adequately addresses the environmental **concerns** of **our** region. It ensures that work on the cleanup of the river, the GE plant site, and **numerous** other properties will proceed on the expedited schedule outlined by the EPA more than a **year** ago. We **are** pleased many of the cleanup projects are already underway.

The signing of the consent decree brings closer to reality a **brownfields** agreement between the City of Pittsfield and GE aimed at helping the city rehabilitate the 250 acre former GE site. The rejuvenation of this industrial site is critical for the **future** economic growth of **our** region. Most significantly, the **consent** decree protects the **health** of all residents of Berkshire County. This action also paves the way for business development and encourages companies and individuals to relocate to the **Berkshires**.

The Chamber extends its appreciation to all members of the government teams who diligently worked to finalize the consent decree and related documents. The focused and prolonged efforts throughout the negotiations **are** already paying dividends. They have helped create a new wave of excitement in Berkshire County contributing to the momentum for other tourism and economic development **opportunities**, such as a runway extension project at the Pittsfield Municipal Airport, a new ballpark, and the restoration of the Colonial and Mohawk **Theatres**, and the Adams Corporate Park.

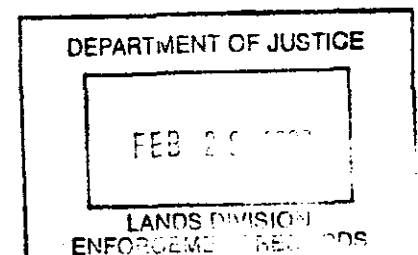
**In** conclusion, it is in the best interest of the Berkshire region that we give the consent **decree, as** presented, our vote of confidence. This expeditious and comprehensive solution will bring the closure necessary to continuing the rebirth of a key industrial site as we reclaim **our** environment and create a new future for Berkshire County.

Sincerely,

  
John J. Lapa  
President of the Board

JJL/sm

cc: Bryan Olsen, U.S. EPA



NEW ENGLAND NEWSPAPERS, INC.  
**The Berkshire Eagle**

75 South Church Street  
P.O. Box 1171  
Pittsfield, MA 01202

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**MA-41**

February 24, 2000

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U. S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Dear Ms. Schiffer:

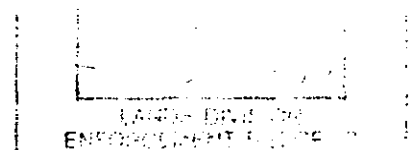
RE: Case File Numbers, **DJ#90-1** I-3-1479  
90-11-3-14792

As the *owners* and operators of both *The Berkshire Eagle* and *the North Adams Transcript*, we wish to voice our support of the settlement outlined in the consent decree between the United States and General Electric Company and other government bodies.

We believe that this consent decree adequately addresses the environmental concerns of Berkshire County. It provides for work on the cleanup of the river, the GE plant site and various other properties to proceed on the schedule outlined by the EPA over a year ago. In fact, we are pleased to see that many aspects of the cleanup are already underway, and it is my personal feeling that it would be a shame to allow a few malcontents to bring that good work to a standstill.

The consent decree prepares the way for a **brownfields** agreement between the City of Pittsfield and GE, aimed at the rehabilitation of the **250-acre** former GE site. That project is of critical importance to the future economic growth of our region. More significantly, however, is the protection of the health of **all** of the residents of Berkshire County. This decree works toward that end and thereby paves the way for business development as companies and individuals are encouraged to relocate to the Berkshires.

The extensive efforts of all parties involved in finalizing this decree and related documents have already begun to bear **fruit**. There is a new excitement in Berkshire County, which contributes to the development of tourism and economic **development** opportunities such as the runway extension project at the Pittsfield Municipal Airport, the



plans for a new multi-purpose stadium in downtown Pittsfield and restoration of the Colonial Theatre.

In short, it is imperative to the best inter&s of the **Berkshires** that we continue to support the consent decree as presented, in order to move forward on the restoration of a key industrial site for Pittsfield and a clean, healthful environment for Berkshire County.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew H. Mick". The signature is fluid and cursive, with a large initial "A" and "M".

Andrew H. Mick  
CEO/President  
New England Newspapers, Inc.

AHM/pl

Huber

MA-4a

February 24, 2000

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

Subject: Case File Numbers **DJ#90-11-3-1479, 90-11-3-1479Z**

Dear Ms. Schiffer:

We support the settlement relative to the General **Electric-Pittsfield/Housatonic** River site as explained in the **consent** decree between the United States and General Electric Company, and other government agencies.

It is imperative to Berkshire County that the consent decree be signed, as it is. Please do not let a small group of individuals, who have misinterpreted the decree and have only their own self interests in mind ruin the chance for the Berkshire County area to be like it once was.

We implore you to please sign the consent decree and let Berkshire County move forward!

Sincerely,  
*Maureen Lally*  
*Joseph McBride*

**Maureen Lally**  
Joseph McBride  
Carter Road  
Becket, MA 01223

9 11 2000

[Faint stamp or signature area]



*The Commonwealth of Massachusetts*

HOUSE OF REPRESENTATIVES  
STATE HOUSE, BOSTON 02133-1020

**SHAUN P. KELLY**  
2ND BERKSHIRE DISTRICT  
399 MAIN STREET  
DALTON, MA 01226  
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Committees on:  
Ways and Means  
Federal Financial Assistance  
Personnel and Administration  
ROOM 473-B, STATE HOUSE  
TEL. (617) 722-2240

February 24, 2000

Lois J. Schiffer  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Dear Ms. Schiffer,

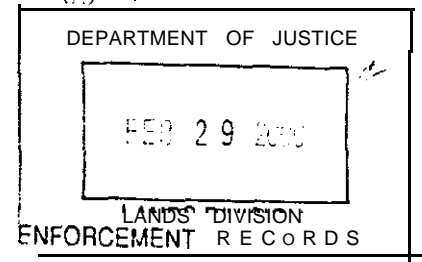
I am **writing** to express my full support of the draft consent decree, as I **firmly** believe its approval is **in** the best interest of all residents **in** Berkshire County. Without the approval of the consent decree, we not only lose our positive momentum, but risk slipping back to the inactivity that stalled Pittsfield's progress for nearly a **quarter** of a century.

**In** good faith, General Electric has already started work on the **river remediation**, which would not have happened without the negotiated agreement in principle and subsequent tiling of the decree. Based on the **understanding** that the decree would be approved, the Pittsfield Economic Development Authority (PEDA) has formed and made progress-including employer recruitment activities. We risk the **continuation** of those activities without the approved consent decree.

As a State Representative for Pittsfield, I have witnessed the city dedicate two years of hard work to reach a settlement with General Electric. Based on the above mentioned reasons, I again strongly believe a negotiated settlement is the best for all of us **in** Berkshire County.

Sincerely,

SHAUN P. KELLY  
State Representative



Lee, MA.

2-26-2K.

EPA Regional

Mr. Brian Olson:

while considering all options to completion of PEBs; I find it necessary to consider further investigation in some areas of contamination.

#1 The "Bed" of Silver Lake. Full  
#2 Basin of water waste. Areas in some critical areas. (The City of Pittsford local labor unions and other agencies)

#3 HRT Court action may lead to future action, in a "Hold position" which sometimes takes place by Judge rulings:

therefore:

#4 EPA should be present: as a class with S.C. to complete the project in detail to be upheld at a later date??

#5 Rally to a freeze on the ~~decree~~ meaning fulfill the decree. Has as pointed to day & agreed upon.

#5 Then onto a 2nd degree in unfinished business in 2 to 3 yrs; which could be done by certain documents within decree; as written in present days such as a certain amt of dollars to finish your work, as outline in some ways by HRT and others with their personal interest.

Good Luck to each Division in proceeding.

P.O. Box 828

General Intent

Lee, MA 01238

Frank Flint

can't meet deadline?

MA-44

Housatonic River Initiative  
20 Bank Row  
Pittsfield, MA 01201

February 18, 2000

Ms. Cindy **Huber**  
Assistant Attorney General,  
**Environmental** and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben **Franklin** Station  
Washington, D.C. 20044

Re: DJ#: 90-11-3-1479; DJ#: 90-11-3-1479Z

Dear Ms. **Huber**:

Enclosed please find a copy of the Comments of the Housatonic River Initiative (**HRI**) regarding the Consent Decree between GE, the United States, Connecticut and Massachusetts. There is an accompanying videotape that includes some supporting **comments**, historical observations etc.

Sincerely,

A handwritten signature in black ink that reads "Timothy Gray". The signature is written in a cursive style with a long, sweeping underline.

Tim Gray,  
Executive Director



February 18, 1999

Mr. Bryan Olson  
U.S. EPA  
One Congress Street  
HBT  
Boston, Massachusetts 02114

Ms. Cindy Huber  
Assistant Attorney General,  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Re: **DJ#: 90-11-3-1479; DJ#: 90-11-3-1479Z**

The Housatonic River Initiative (**HRI**) is a broad-based, non-profit community organization concerned with the clean-up of **PCBs and** other toxic substances from the Housatonic River, Silver Lake and the Berkshire County community. Our members include sportsmen and women, environmentalists, town and county political leaders, and concerned Berkshire County residents. Based on our decade-long advocacy and our ability to represent a wide variety of stakeholders, the Massachusetts Department of Environmental Protection (MADEP) has recognized HRI "*as a primary citizens advisory group for these sites*" suggesting that "*interested citizens and other parties are encouraged to join forces under the HRI umbrella.*" (Revised PUBLIC INVOLVEMENT PLAN for the Housatonic River and the General Electric Company Pittsfield Disposal Sites, prepared by Massachusetts Department of Environmental Protection, April 1995, Pg. 66.)

When negotiations began **between the** United States, Massachusetts, Connecticut and General Electric, we strenuously but unsuccessfully argued that representatives of **HRI** and the Berkshire County community other than the Mayor and City Council President of Pittsfield be invited to participate. We were told that appropriate members of the **USEPA, DOI, NOAA etc.**, and **MADEP** could adequately represent and advocate for the public interest.

We were told, additionally, that the Citizens Coordinating **Council** (**CCC**) would serve as the appropriate forum where community input could be offered. As active, and often frustrated members of this Council, we were repeatedly told at CCC meetings that the most critical and substantial **matters** regarding the cleanup were covered by the confidentiality provisions of the negotiating process, and could not be fully or openly discussed. True, substantive public participation was thwarted by this closed-door negotiating process.

Before we comment in detail about the Consent Decree, we would like to make several general comments about our experience dealing with the tremendously **complicated** issues pertaining to the **GE/Housatonic** Site. HRI began its public advocacy for a cleanup in 1992 after more than a decade of widespread public frustration. We felt that only by marshaling a broad-based citizens group could we propel the clean-up process forward. We were frustrated by the fact that **USEPA** had made the critical strategic decision to handle this site under RCRA, rather than CERCLA. In addition, state and federal environmental **officials, and** Massachusetts public health **officials** had allocated few resources to addressing the problem. For years, MA DEQE and **USEPA** were engaged in disputes about authority, and non-action was the order of the day.. **HRI's** loud and consistent advocacy was met with a change in attitude and **personnel** at both the state and federal level.

Subsequently, the Agencies' personnel, including but not limited to, **USEPA officials** Douglas Luckerman, Bryan Olson, and John **DeVillars**; **MADEP** officials Alan Weinberg, Mary Holland, J. Lyn Cutler, Robert Bell; **MAEOEA** officials Leo Roy and Dale Young; MA Attorney General Scott Harshbarger, and his assistant, James Mielke; Anton Geidt of NOAA; and Mark **Barash** of **DOI** worked together to fashion a coordinated approach to the problem. While we have never hesitated to express our critical **judgments**, we are aware **that** there has been progress in this respect..

Nevertheless, our absence at **the** negotiating table and our resultant inability to adequately put forth alternative solutions and remedies to those fashioned at the table, means we are **left** only with this public comment period to advocate for some important revisions to the proposed Consent Decree;

The courts have ruled, on more than one occasion, that Statute of Limitations concerns have precluded former GE employers and residential and commercial property owners from pressing some of their claims against GE. It is our belief that public ignorance and inaction stemmed from a complex mix of **regulatory** inaction, a widespread desire not to agonize the principal employer of Berkshire County, and the very slow process of the scientific and public health community to fully appreciate, and adequately communicate, the dangers of relatively small dosages of the **PCBs** and other contaminants used on a daily basis at GE.

Unfortunately, it has been our experience over the years that from **the initial** discovery of contaminated milk coming from the **DeVos** farm in **Lenox** in the late **1970s**, state and federal regulators have been extremely slow to fully comprehend the vast extent of PCB-contamination that moved from GE's Pittsfield plant to the surrounding areas, either directly through storm drains and storage tank leakage to the river, or, in the form of contaminated materials, transported from the GE facility to locations throughout the County. The Agencies were also extremely slow to take corrective action. A single example involves the estimated amount of PCB-contamination in the Housatonic River,

For more than a decade and a half, GE's 1982 Stewart Report estimate of a total of 39,000 pounds (less than 20 tons) of **PCBs** in the entire river system prevailed. It took years and years of advocacy – including presenting testimony of Ed Bates, the former GE Manager of Tests at Power Transformer that a million and a half pounds of **PCBs** due to daily spillage and loss at Power Transformer alone went down the drain and into the river – to ensure that the Agencies reviewed GE's sampling protocol and revised their estimates of the contamination. Indeed, during the Building 68 Removal of a **550-foot** section of bank soil and river sediment, we learned from the December 2, 1997 issue of The Berkshire Eagle: *"If GE's estimated average concentration of 1,550 parts per million for the sediments in the hot spot is even close, then at least 10 tons of pure PCBs were removed from the river bed off Building 68. That would represent more than half of the 39,000 pounds a GE consultant estimated was in the Housatonic River sediments above the Connecticut border in 1983."*

Unfortunately, while the **USEPA** and **MADEP** have made positive strides in the last few years, we believe today that they are still playing catch-up with GE, both in fully delineating the scope of the problem and in their remediation plans. Because of the respect we have earned in **the** community over the years, many former and present GE employees or employees of GE contractors have informed us of additional areas of contamination. We have always communicated these concerns to the Agencies. We notified **MADEP** about Dorothy Amos Park, about our concerns with possible contamination of the West Branch of the Housatonic, the King Street Dump, Goodrich Pond, possible till contamination at the Super Stop and Shop, Downing Industrial Park, and the softball complex, to name just a few sites. Unfortunately, because these recollections were anecdotal, and without hard evidence, and contradicted what GE had reported, the Agencies were slow to recognize how pervasive PCB distribution had been throughout our community.

We are quite aware that GE has **been** able to marshal great resources to delay and **influence** remediation decisions. And we understand that it is against this complicated backdrop, that the Agencies made the decision to seek a negotiated settlement, rather than face a protracted legal battle and **a delayed cleanup**. Nevertheless, we are convinced our absence at the negotiating table has resulted in a settlement that needs to be strengthened.

*Notwithstanding* their best efforts, while the **Plaintiffs** declare, as a **matter** of fact, in V.8.b that *they* have “**determined that: (i) The Removal Actions, when implemented and completed in accordance with this Consent Decree, the SOW, and the Work Plan for the Upper 1/2 Mile Reach Removal Action (including achieving and maintaining Performance Standards are protective of human health and the environment with respect to areas addressed by those Removal Actions: and (ii) Except as expressly provided in this Consent Decree, no further response actions for the areas addressed by such Removal Actions are necessary to protect human health and the environment**” we believe a careful reading of the Consent **Decree reveals** several critical instances where the public health and welfare, and the well-being of the environment, can be better protected. In these respects, this Consent Decree can be more fair, reasonable, and **better** serve the public interest. As it stands, the proposed settlement is inadequate to the task of guaranteeing that the public health and environment will be fully protected from **future** releases of contamination stemming from the **GE site and/or** GE’s off-site dumping actions.

CERCLA Section 9621(b), General rules for cleanup, clearly states:

***“(I) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity, or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or containment. In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedies, the President shall, at a minimum, take into account:***

- (A) the long- term uncertainties associated with land disposal;***
- (B) the goals, objectives, and requirements of the Solid Waste Disposal Act (42 U.S.C 6901 et seq.);***
- (C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;***
- (D) short- and long-term potential for adverse health effects from human exposure;***
- (E) long-term maintenance costs;***
- (F) the potential for future remedial costs if the alternate remediate action were, to fail: and***

“(G) the potential threat to human health **and** the environment associated with **excavation, transportation, and redispisal**, c. containment. **The** President shall **select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to maximum extent practicable.** **If** the President selects a remedial action not appropriate for a preference under this subsection, the President **shall** publish an explanation as to why a remedial **action** involving such reductions was not selected

(2) The President may select an alternative remedial action meeting the objectives of this subsection whether or not such action has been achieved in practice at **any** other facility **or** site that has similar characteristics. In making such **a** selection, the President may take into account the degree of support for such remedial action by parties interested in such site. ” (Emphasis added).

The Housatonic River Initiative believes that this Consent Decree fails to meet these standards. This site calls for a range of remedial actions and treatment **“which permanently and significantly reduces the volume, toxicity, or mobility of the hazardous substances.”** The Defendant and Responsible Party is *more than able* to meet the costs associated with alternative, remedial actions and treatment **“which permanently and significantly reduces the volume, toxicity, or mobility of the hazardous substances”**

The decision to exclude the Housatonic River Initiative and other public representatives from these negotiations has ensured the fact that the great public support for selecting these alternative remedies has been discounted by the parties. And this exclusion all but ensured that, contrary to Section 9621(2), the President has unfortunately failed to **“take into account the degree of support for such remedial action by parties interested in such site.”**

Critical to this Consent Decree are the Plaintiffs’ covenants not to sue. Section 9622 (f) (4) of CERCLA states:

**“In assessing the appropriateness of a covenant not to sue under paragraph (1) and any condition to be included in a covenant not to sue under paragraph (1) or (2), the President shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:**

(A) The effectiveness and **reliability** of the remedy, in light of the other alternative remedies considered for the **facility** concerned

(B) The **nature** of the **risks** remaining at the facility.

(C) The extent to which performance standards are included in the order or decree.

(D) The extent to which the response action provides **a** complete remedy for the facility.

(E) The extent to which the technology used in the response action is demonstrated to be effective.

- (F) Whether the Fund or other sources **of funding** would be available for any additional remedial actions that might **eventually** be necessary at the **facility**.
- (G) Whether the remedial action **will** be carried out, in whole or in **significant** part, by the responsible parties **themselves**.

As we will demonstrate in our comments below, this Consent Decree fails the public interest in several respects:

*“The **effectiveness** and reliability of the remedy, in light of the other **alternative** remedies **considered** for the **facility** concerned.*

*The nature of the risks remaining at the facility.*

*The extent to which performance standards are included in the order or decree.*

***The** extent to which the response action provides a complete remedy for the **facility**.*

*The extent to which the technology used in the response action is demonstrated **to** be effective. ”*

And because of these failures, we believe it is premature for the Plaintiffs to agree to covenants not to sue.

In light of these concerns, we suggest specific improvements to provisions regarding:

- 1) Upper 112 Mile Reach Removal Action
- 2) The **Hill 78** and Building 71 Consolidation Areas Removal Action ,
- 3) The Silver Lake Area Removal Action
- 4) Removal Actions at the Former Oxbow Areas
- 5) The Natural Resources Damage Award

In June, 1988, the **Office** of Technology Assessment of **the** U.S. Congress published its report, “Are We Cleaning Up? 10 **Superfund** Case Studies.” The OTA concluded: “*This report examines **two fundamental** questions about using technology to cleanup toxic waste sites. First, is the **Superfund program** consistently selecting permanently effective treatment technologies which, according to SARA, are preferable because they reduce “toxicity, mobility, or volume” of hazardous wastes? The answer OTA **finds** is that it is not. Second, are land disposal and containment, both impermanent technologies, still being frequently used? The answer we find is yes. Future cleanups are likely for the **wastes left** in the ground or shipped to **landfills**. ”* (NTIS order #PB89-139018, pg. 1.)

Unfortunately, the decisions EPA has made these twelve years **later**, regarding both its decision not to utilize treatment technologies in its Removal Action Work Plan for the Upper 1/2 Mile **Reach** of Housatonic River and its decision to **landfill and contain** wastes at the Hill 78 and Building 71 disposal sites show that we have not made significant enough progress in seeking permanent remedies. EPA's decisions are **all** the more **regrettable**, precisely because of the strides made during these twelve years with alternative remedial technologies.

These decisions translate to moving large volumes of hazardous waste • the contaminated bank soils and sediments • from one section of this site, the Housatonic River, Allendale School, and the GE facility, to another section of this site, Hill 78 and Building 71. Once more, truly permanent solutions are rejected in favor of untreated containment.

Let's examine some of these decisions in greater detail.

### **1.) Upper 1/2 Mile Reach Removal Action**

According to **Appendix F to Consent Decree: Removal Action Work Plan for Upper 1/2 Mile Reach of Housatonic River, dated August 1999, and EPA approval letter** dated August **5, 1999**, October 1999, the following remedies have been chosen:

#### ***“1.3.1 Sediment-Related Activities***

***“GE proposes to remove and restore (i.e., replace with cap and armor) certain river sediments in the 1/2-Mile Reach. Within this reach, the vertical extent of removal in the majority of these areas where removal will occur will be up to 2 feet, with removal to a depth of 2.5 feet proposed for one area. In areas of low PCB concentrations, no action is planned. For example, a stretch of the River downstream of Newell Street contains sediment with little to no detectable levels of PCBs; thus no action is required for this section. . . It is anticipated that approximately 8,100 cubic yards (cy) of sediment will be removed. . . The removed sediment will be permanently consolidated with other GE site-related materials at USEPA-approved locations at the GE facility. Following removal, the sediment removal areas will be capped and armored using a multi-layer cap system. . .***

***“... The current spatial average PCB concentration for the top foot of sediment in the 1/2-Mile Reach is approximately 55 ppm. Following implementation of the sediment removal and replacement activities, the sediment with the highest PCB concentrations will have been removed and the spatial average PCB concentration in the surficial sediment (top foot) will be reduced to less than 1 ppm. Further, the proposed sediment replacement activities will effectively isolate any remaining PCB-containing sediment and minimize the potential for resuspension of sediments, desorption of PCB from the sediments into the water column, and direct contact of humans and biological receptors with PCB-containing sediment. (pp. 1-4 to 1-5.) (emphasis added)***

In our June 1999 public comments to EPA regarding GE's proposed remediation for the Upper 1/2 Mile Reach we addressed the interconnected issues of permanently effective technologies vs. land disposal or containment, and raised several issues regarding the limits of the remediation. Today, we reiterate our concerns that:

- 1) unnecessarily high levels of contaminants are being **left unremediated** in the sediment and bank soil;
- 2) a geotextile liner will be placed above that **unremediated** and remaining contaminated layer of river sediment in an attempt to cover over contaminants that may, in later years, re-contaminate the river system;
- 3) geotextiles have only been used for twenty-five years; there is significant disagreement among technical experts as to its **efficacy in riverine** systems. There has not been an adequate pilot test in situations similar enough to the Housatonic to justify its use here without such a pilot test;
- 4) the Agencies have decided to allow GE to place contaminated river sediment and contaminated soil from the banks **from** the Upper 1/2-Mile Reach of Housatonic River, as well as contaminants from the Allendale School and Newell **Street** properties in an existing, unlined non-TSCA approved hazardous waste dump with existing **PCBs** averaging 498 **ppm**, and with levels as high as 120,000 ppm, 50 yards across the street from the playground of the Allendale School;
- 5) even though the costs of completely treating and removing the overwhelming bulk of the contaminated sediments and bank soils of the Upper 1/2-Mile Reach of Housatonic River from the local environment are reasonable and certainly affordable by General Electric - the Agencies have chosen instead to allow GE to landfill these contaminants in our community; and
- 6) the Agencies haven't followed their own guidelines regarding a thorough examination of all remediation options.

EPA's **response** to these concerns can be found in its **Responsiveness Summary for Allendale School Removal Action, 1/2 Mile Removal Action and Consolidation, October 1999:**

*"Comment: Two commenters expressed concerns about the use of spatial averaging and also asked how EPA determined the cleanup levels for the sediments and bank soils.*

*"Response: Sediments. EPA did **not** explicitly **specify** a cleanup level for PCBs in sediments **nor** did EPA approve the use of spatial averaging for the sediments in the 1/2-Mile Reach: rather a cleanup approach **was** used to determine the limits of excavation. **Based on the experience of the Building 68 Removal Area (a 550-foot section of the river located within the 1/2-Mile Reach), EPA determined that the complete removal of PCB-contaminated sediments in the 1/2-Mile Reach is not feasible.** For example, during the Building 68 cleanup, the sediments in some sections of the River were excavated to a depth of eight feet and PCB levels as high as 2,240 remained.*



*“Therefore, EPA based its review of the **limits** of sediment **excavation** on the following criteria: removing a significant **mass** of PCB-contaminated sediments: reducing **surficial** PCB sediment levels to less than 1 ppm; excavating sediments to a **sufficient** depth to **allow** for the installation of an appropriate **cap/backfill** configuration that would effectively prevent the **residual PCBs** that remain in the **underlying** sediments **from** migrating up to the surface sediments or water column. Although EPA did not rely on spatial averaging, GE **calculated** that a spatial average of 0.164 ppm **PCBs** will remain in **surficial** sediments **after** the cleanup is completed.”* (emphasis added)

This is the first time that **we** have heard so clearly that the most critical decisions **regarding** the Agencies’ cleanup strategy for the **1/2-Mile** Reach were determined **by the** experience of the Building 68 remediation. Considering the critical role the Building 68 Removal Action has played in the Agencies’ decision-making process, we believe it is necessary to look back at the Building 68 experience.

According to GE: *“In the late 1960s, a PCB storage tank (containing liquid PCB Aroclor 1260) located at Building 68 collapsed, releasing a portion of its contents of liquid **PCBs** . . . to the river bank. . . . This release, and the subsequent cleanup effort, were described in a 1982 report prepared by GE and submitted to the Agencies. . . . In May 1996, nearby sediments and additional bank soils were sampled as part of ongoing supplemental Phase **III/RFI** activities. These **data** were **submitted** to the Agencies during June and July 1996 as part of **GE’s** monthly reporting for the ongoing supplemental Phase **III/RFI** activities.”* (Building 68 Area Removal Action Work Plan, February 1997, Pp. 1-1 to I-2.) Later GE documents specify that the accident took place in 1968.

According to the MADEP: *“General Electric Company provided verbal notification on July 15 to the Department of Environmental Protection (“the Department”) of levels of polychlorinated biphenyl’s (“**PCBs**”) in Housatonic River sediments in excess of **15,000 ppm** at a location adjacent to Building 68 in East Street Area II. The **D**e~~partment~~ had been previously **notified** of elevated levels of **PCBs** in adjacent bank deposits up to **37,000 ppm**.”* (July 24, 1996 Letter from J. Lyn Cutler of MADEP to Ronald F. Desgroseilliers, GE).

Upon determination that the levels at the Building 68 Area posed an imminent **hazard** to human health and the environment, the Agencies’ requested the submission of an Immediate Response Action Plan (**IRAP**) from GE by July 30, 1996 *“to address complete removal of the potential source areas, rather than propose temporary measures. such as capping or armoring, to abate the imminent hazard.”* GE challenged the Agencies’ determination of an imminent hazard, yet continued further sampling, and posted warning signs etc. After commenting on problems with GE’s **first** proposed remediation, the Agencies requested a revised **IRAP** from GE.

GE's **IRAP** of October, 1996 stated: "*GE continued the field program until October 9, 1996, when the Agencies agreed that the extent of the affected area had been defined. . . PCB concentrations in bank soils ranged from 8.6 to 5,500 ppm at the surface (0 to 6 inches) and from less than 1 to 102,000 ppm in subsurface soils. . . . the relatively higher concentrations of PCBs, notably Aroclor 1260, in sediments of this area generally encompass the northern approximately two-thirds of the river bed extending from the area immediately adjacent to Building 68 downstream for approximately 520 feet . . . The spatially weighted average PCB concentrations in this affected area are 2,042 ppm overall and 2,041 for surface (i.e., 0 to 6 inches) sediments only. The vertical extent of PCBs in this area generally ranges from 2 to 4 feet. However, at several locations where core samples were collected to refusal and analyzed at depth, relatively high levels were detected in the deepest sample collected.*" (emphasis added)

GE proposed to excavate contaminate bank soils over an **area** of 4,400 square feet to a depth of 2 feet, and install a geotextile layer over the contaminated river **sediment** in an area of approximately 20,000 square feet, and add to that a 6-inch layer of silty sand and an S-inch stone protective layer.

GE concluded its arguments for its **IRAP** by declaring: "*We believe that requiring more extensive removal m that time is unwarranted and would inappropriately turn an Immediate response Action into a premature decision about final remedial options for this area.*" (October 21, 19% letter from Ronald Desgroseilliers, GE to MADEP and USEPA).

The Agencies response to GE's October 1996 **IRAP** raised a series of critical concerns about the strategy of partial soil removal, containment, and inspections, and concluded that "*the IRAP is not sufficient to abate the imminent hazards and potential threats to releases posed by the PCB-contaminated sediment and riverbank soils adjacent to Building 68.*"

HRI believes that the concerns voiced by the Agencies were valid in 1996 and remain valid today. While the Agencies were specifically responding to the October 19% **IRAP**, and GE's proposed solution to an imminent hazard, we believe their comments can fairly be applied to the most recent decisions for the 1/2 Mile Reach . In the November 22, 1996 letter from MADEP and USEPA to GE, the Agencies wrote:

"Criterion C: elimination of a potential source

*Covering over the large volume of extremely elevated levels of PCBs in the sediment of a dynamic river system does not eliminate the potential source of PCBs to that river system. In the event of failure of the armoring system, the PCBs would remain a threat to receptors and resources both at the Site and downstream. Downstream areas -including many sensitive resource and residential areas, some of which have been remediated- would be subject to recontamination or further contamination in the event of exposure and migration of the contaminated sediment from the Site. For these reasons, the IRAP does not satisfy criterion C.*" (emphasis added).

Criterion F: consistency with, and not an impediment w. final remedial actions  
 ... armoring the **grossly-contaminated** sediments in this area would be an impediment to any subsequent removal and **disposal** of grossly-contaminated **sediment**. Moreover, **armoring** these sediments **would** make subsequent sediment **removal** and disposal more expensive (because of both the cost of **removing the added sand and rock** as well, as added disposal costs), more complicated, more **difficult**, and less **efficient**. Therefore, GE's armoring is not consistent with, and **would likely** be an impediment to, final remedial **actions** . . . Removal of the majority of the grossly-contaminated sediment **would** be more consistent with the Agencies' **goals** with **respect** to the very high levels of contamination found in a relatively discrete area. Thus, the **IRAP fails** to **satisfy** Criterion F with respect to the river sediments." (emphasis added).

We want to reemphasize the main **concerns** raised by the Agencies:

- **failure of the armoring**
- **covering over the large volume of extremely elevated levels of PCBs in the sediment of a dynamic river system does not eliminate the potential source of PCBs to that river system**
- **armoring the grossly-contaminated sediments in this area would be an impediment to any subsequent removal and disposal of grossly-contaminated sediment**

Negotiations between the Agencies and GE over the **remediation** of the Building 68 site continued through 1996 and into 1997, as GE insisted its **IRAP** met the Agencies' criteria to prevent human and ecological exposure to the contaminants. In February 1997, GE issued its draft **Building 68 Area Removal Action Work Plan**. In section 3.7 Off-Site Disposal Facility (**To** be Selected), GE stated:

**"At this time, GE is considering the possible use of on-site treatment technologies (including thermal desorption) in lieu of (or to supplement) off-site disposal for the materials removed from the Building 68 area. The concept of on-site treatment and disposal of the treated materials was briefly discussed with the Agencies during a review meeting on February 18, 1997. During this meeting, the Agencies indicated a willingness to consider on-site treatment as a disposition alternative and will notify the Agencies of the final approach to materials disposition after selection of the contractor(s)." (emphasis added).**

Unfortunately, GE decided not to implement on-site treatment. And the Agencies have not insisted upon treatment.

Because of the results of additional sampling required by the Agencies, and their insistence on more removal rather than simply capping the contamination, GE presented a revised Building 68 Area Removal Action Work Plan in May 1997.

In Section 5.2 Removal Limits/Quantities, GE stated:

*“The Agencies’ March 27, 1997 comment letter stated that the initial sediment removal depth in the eastern portion of the removal area adjacent to Building 68 should be 5 feet. **However, in subsequent conversations, the Agencies agreed that the initial removal** in that **area** could be to a depth of somewhat less than **5** feet (e.g., 3 to 4 feet); **provided that GE samples the remaining sediments and conducts additional removal at deeper intervals if the Agencies so require. Based on that understanding (as further discussed in Sections 5.5 and 5.6), the initial removal depth in the area adjacent to Building 68 will be 3 to 4 feet as shown in Figure 5.1. Similarly, the Agencies’ letter stated that the initial removal in the upstream area where GE had proposed an initial excavation of 1.5 feet should be modified to a depth of 2.5 feet. Based on similar rationale to that noted above, the initial removal depth in the upstream area has been modified to 2 feet, as also shown on Figure 5-1.**”* (Pp. 5-1 to 5-2.) (emphasis added).

The Work Plan called for remediation of contaminated river sediments at depths of six inches in the shallower depths to up to 4 feet in the vicinity of Building 68. In the event that post-removal sampling revealed additional significant contamination, GE’s sheetpiling wall would allow them to go as deep as 8 feet.

The Plan stated:

*“For the design of the sheetpiling in this area, an allowance for **additional removal** has been identified based on available information. Specifically, from the sediment probing performed in January 1997, it was determined that the average depth of refusal for a metal rod driven into the underlying materials was approximately 8 feet (as **measured from the top of the sediment layer**). Based on this information, the sheetpile **installation has** been designed to allow sediment removal up to a **depth of 8 feet.**”*

*“Although the preliminary sheetpiling design supports the possible removal of up to 8 feet of the sediments, the need to remove sediments to this **depth** is contingent upon the results of **post-removal** sampling, as well as the technical practicabilities of continued further removal. These considerations are further discussed in Section 5.6.”*

*“In determining the technical practicability of further excavation, the stability of such excavation is a **critical factor**. As discussed in Section 5.3.3, the sheetpiling installation has been designed to **allow** for an additional depth of sediment removal beyond the initial removal depth. **Specifically, the sheetpiling has been designed to support possible sediment removal to a maximum depth of 8 feet in the eastern portion of the removal area in the vicinity of Building 68 and to a maximum depth of 5 feet in the western portion of the removal area. GE does not believe that excavation in excess of those maximum depths would be appropriate.**”* (Pp. 5-5 to 5-6.) (emphasis added).

According to the GE's February 1998 *Report on Supplemental Characterization Activities – Building 68 Area*:

*“During the course ‘of sediment removal activities within the river, oil and sheens were observed within certain areas of the excavation limits on three separate occasions. ”*

Responding to the Agencies' concerns, GE and its contractors discovered in well **3-6C-EB-25** extremely high levels of PCBs at 18 feet – a new, previously unknown source of contaminated oil with PCB levels as high as 624,000 ppm. While we're aware that in his March 7, 1997 letter Steve **Simmer** of the United States Army Corps of Engineers (US ACE) reviewed and commented upon GE's written Action Plan, we wonder **whether** the Corps or EPA engineers conducted any independent on-site engineering studies in the Building 68 Area US ACE made detailed comments about GE's calculations of water flow, but we wonder if, with more time and effort put to engineering and design, the sheetpiling could have been sunk more deeply. Or, if that was impossible, **whether** an alternative plan might have been implemented that called for a slurry ditch constructed on the GE **riverbank property**. Perhaps with either better engineering or an alternate strategy, the Building 68 remediation might have been able to **more** effectively remove the contamination at depth.

Faced with this new source of **almost** pure PCB product, and unanticipated high levels of contamination at depth, removal efforts were modified. The **January 20, 1998** letter from Andrew T. **Silfer** to USEPA and MADEP reviews GE's removal actions at Building 68:

**Area A**

*Excavation activities in Area A were performed on July 31, 1997 through August 8, 1997 and were completed to an approximate depth of 3.5 feet. Despite stability concerns ~~with the~~ footings of Building 68, excavation of this area did not proceed to the depth of the stormwater pipeline. Additionally, a wedge of soil was left against the building foundation due to stability concerns. As requested by the USEPA, five PCB samples were obtained on August 27, 1997 at the base of the wedge of soil for documentation purposes. These samples were obtained at the base of the sloped soil against the south wall of the building. The results of these samples ranged from 891 to 63,700 ppm. Based on these results, the USEPA requested that GE place a geotextile on the sloped surface and bonom of this excavation prior to backfilling. Additionally, at the request of the VSEPA, some additional soil was removed from the top of the soil wedge at the western end of the building (to ensure that a minimum of 6 inches of clean backfill would be placed over the PCB-containing soils).”*

GE's February 1998 Report on Supplemental Characterization Activities - Building 68 Area states:

### **“3.5 NAPL/Surface Water Characterization**

“... NAPL sample **68-Cell 5-1** was collected from several locations approximately three to four feet below original grade (i.e., the top of the pre-removal sediment layer) in Cell 5 on October 7, 1997. The oil contained PCB quantified as Aroclor 1260 (930 ppm), chlorobenzene (100 ppm), tetrochloroethene (16 ppm - estimated value), pentachlorobenzene (31,000 ppm - estimated value), 1,2,4,5-tetrachlorobenzene (21,000 ppm - estimated value), and 1,2,4-trichlorobenzene (250,000 ppm). The specific gravity of the oil was reported to be 1.5295. The viscosity values at 100°F and 210°F were 45.77 and 33.13 SUS, respectively.

**“The DNAPL sample from well 3-6C-EB-25 (sample 3-6C-EB-25-1) was collected December 3, 1997. The NAPL exhibited Aroclor 1242 and Aroclor 1260 concentrations of 10,700 ppm and 613,000 ppm, respectively, and a specific gravity of 1.550. The compound 1,2,4-trichlorobenzene was detected at a concentration of 190,000 ppm. No other SVOCs or VOCs were present above quantitation limits.**

**“NAPL sample 68 Cell-CO&I, collected September 25, 1997 from Cell 6 excavation area, containing 251,000 ppm of PCB Aroclor 1260 as reported previously in Building 68 Removal Action - Assessment Of Observed Oil and Proposed Activities.”** (Pp. 3-3 to 3-4.) (emphasis added).

The Building 68 chronology mimics our experience with every other aspect of this site. A 1968 GE spill that goes unreported until 1982. 14 years of regulatory inaction that leads to a sampling program in 1996. Remediation in 1997, and additional remediation in 1998, 30 years after the spill, that still leaves large amounts of contamination in place.

The underestimation of contamination led to an engineering plan that was ultimately unable to support dredging below 8 feet, and extremely high levels of contaminants were left unremediated. These remaining contaminants are a continuing potential threat not only to the river but to Pittsfield's groundwater.

What we now understand is that GE's difficult experience with the Building 68 Removal Action has, in effect, determined the limits of remedial action for the entire 1/2-Mile Reach. USEPA's analysis of the Building 68 Removal Action has affected all the subsequent decisions concerning the 1/2-Mile Reach, including the decision not to obtain PCB and Appendix IX+3 constituents samples in the river beyond a depth of 2.5 feet.

As the **USEPA** states on page 41 of Appendix **F**: “Recent sampling performed by the **USEPA** (August – October 1998) involved establishing 63 transects, **approximately** 50 feet apart, along the River in the **1/2-Mile Reach**, **and generally** obtaining samples (when retrievable) from three locations along each transect at **6-inch** depth intervals, to a maximum depth of 2.5 feet. Samples **collected from** this reach between 1981 and 1998 indicate the presence of **PCBs** in sediments ranging from less than 1 part per million (**ppm**) to 9,411 ppm.” (Emphasis added).

Why obtain deeper samples when a de facto decision had already been made for the 1/2-Mile Reach to limit all activity to 2.5 feet. Unfortunately, we believe that this decision will leave extremely large quantities of **PCBs** untouched below the 2.5 feet level. And this strategic decision has **led** inevitably to the determination to employ a multi-layered computer-designed cap system.

The engineering limitations of the Building 68 Removal, and discovery of an unexpected source, led to the decision to leave contaminated bank soils with PCB levels as high as 102,000 ppm at a depth of 6 to 8 feet deep and river sediments with **PCB** levels of 2,240 ppm at a depth of 8 feet.

Many, many times **during** the last decade we have requested that the Agencies set up a pilot project for remediation – a site-specific project to better test the specific conditions of the river system and to do side by side comparisons of remediation choices, including several treatment modalities.

We believe that more extensive engineering, **and/or** a pilot project, ought to be considered as an alternative to the proposed plan for the **1/2-Mile Reach**. The Building 68 Removal Action revealed the existence of an unanticipated source of **DNAPL** – wouldn’t it make sense now to consider a range of remediation strategies, including the construction **of a** slurry/ditch and pumping system deep enough to capture and drain the DNAPL plumes that continue to endanger the river system. There is certainly room enough on the extensive GE property which borders the 1/2-Mile Reach for such a drainage ditch and pumping system to ensure that the deep plumes heading to, and possibly **travelling** below, the river itself are immobilized and remediated. Such a system would not only prevent any possible future recontamination but would **enable** the remediation efforts in the 1/2 Mile Reach to go deeper and remove greater quantities of contaminated sediment.

GE has already constructed a slurry ditch **380** feet long by 30 feet deep to aid its efforts to recover oil from **the massive** plume in East Street Area 2.

Let's review the main concerns raised by the Agencies on November 22, 1996:

1. *when and **if there is any failure of the armoring***
2. *covering over the **large** volume of extremely elevated levels of **PCBs** in the sediment of a dynamic river system does not eliminate **the potential source of PCBs** to that river system*
3. ***armor**ing the **grossly-contaminated** sediments in this area would be **an impediment to any subsequent removal and disposal of grossly-contaminated sediment***

Now let's examine some of the features of the Removal Action Work Plan for the Upper 1/2 Mile Reach:

**Capping and geotextiles:** We have several comments about the decision of the Agencies to allow the use of GE's proposed cap for sections of the Upper 112 Mile Reach of the river without an adequate pilot-project under the real conditions of the **Housatonic**. Thus far, all major decisions regarding the cap are based on computer-modeling.

Our technical consultant, Joel Loitherstein of LEEI, has stated: "**LEEI was not able to find other locations where a cap and armor has been placed beneath a river. The available literature refer to caps being placed beneath relatively calm surface waters such as harbors and lakes. There is a similar project being proposed in New York, but a pilot test is being performed before it is put in place.**

**"It is the opinion of LEEI that these remedial decisions are based on entirely too little data, and that the data itself are highly questionable. Given GE's proposed plan to cap the remaining river sediment subsequent to excavation, we seriously question the benefit that such an exercise will have on the ecological systems and potential human receptors when compared to the disruption and uncertainties that the exercise will entail.**

**It is also the opinion of LEEI that capping the sediment should be further evaluated as a remedial option before it is implemented over the entire 1/2-mile stretch. We have reviewed many articles on capping, including some cited in BBL's report .**

According to one study 'capping is likely to be used only in environments where the long-term integrity of the cap can be guaranteed. Typically this would mean low hydrodynamic energy environments such as harbours, estuaries and lake bottoms.' ... It is the opinion of LEEI that the Work Plan should also involve a pilot test of a high velocity and scouring area before the cap is implemented over the entire 1/2-mile reach. It is our opinion that, rather than a prediction of PCB flux based on computer models (Appendix G of BBL's report), that GE be required to obtain actual data on flux and PCB concentrations using seepage meters placed at key locations on the river bottom. These data could then be used to calibrate the model to make more accurate predictions of the cap's useful life."



On February 11, 1999, at the request of HRI, the EPA brought their river remediation consultant from the U.S. Army Corps of Engineers to address the Community Coordinating Council. Michael Palermo, Ph.D., Director of the Center for Contaminated Sediments, who has extensive experience with a range of projects, said :

*"I don't know of that many **riverine** sites - once again, rivers present a set of site conditions that are a little **different** say than an **estuarine** or open ocean **type** of site -you have **different** things to design for, for instance, **flood** events, or in this case, even ice, you know, formation and ice effects, **but** no, we **have not seen caps** constructed **in** many **riverine situations.**" (emphasis added).*

In response to HRI and CCC member Benno Friedman's question about what it would cost to go back into the river to **fix the** cap in the event of cap failure, Palermo said: *"Well, I'm not a good cost estimator, but I **would just** guess it would cost more than it did to do it the first time for sure. It would not be an easy proposition to do, it would not be an inexpensive proposition to do. "*

When Benno Friedman continued to ask whether complete removal and treatment, even though it might cost more, made more sense than a system that might fail, Palermo added:

*"I have no way of knowing that because I don't know what the cost **estimates** are to remove, you know, even what they propose to remove -I haven't seen those figures. "*

We were disturbed to learn that even the EPA's own consultant hadn't been told what the most reasonable alternative to landfilling and capping might cost! And we wonder whether this indicates that the Agencies haven't adequately examined all the other remediation options!

Because-of the Agencies' decision to allow GE to leave significant **amounts of** PCBs in the river, the ability of the cap to **perform** perfectly is critically important, and the fact that there has not been significant past experience with capping a similar **riverine** system is very significant.

Palermo continued:

*"... in this particular half-mile reach. you know, the objective is going the next step - this cap has got to not **only physically stabilize** what sediments are left in place, it's also got to isolate those contaminants from moving up, **you** know, up through the **cap** and back into the river system. This cap design has **that** added level of concern in the design, another process that has to be looked at very closely."*

*"It's easier to design the armoring layer to resist scouring or erosion than it is to design a cap to contain the contaminants under certain circumstances. "*

**HRI** and its consultants believe that **these** decisions are too important to be made by a computer modeling program. We need a pilot project to prove it will work.

## 2. The Hill 78 and Building 71 Landfills:

According to GE's June 1999 *Detailed Work Plan for On-Plant Consolidation Areas*:

"2. GE may use the on-plant consolidation areas for the permanent consolidation of **materials** that are excavated or otherwise removed as part of Removal Actions to be conducted by GE for areas outside the Housatonic River, the Upper 1/2-Reach of the Housatonic River, and **building demolition debris from Brownfields re-development activities**, subject to the limitations identified below.

3. USEPA may use the on-plant consolidation areas for the permanent consolidation of materials that are excavated or otherwise removed from the Housatonic River sediments and banks as part of a Removal Action to be conducted by USEPA for the 1 1/2-Mile Reach of the Housatonic River between the Lyman Street bridge and the confluence of the East and West Branches of the River...

4. **Materials** to be consolidated within the Hill 78 Consolidation Area shall be limited to **materials** that contain less than **50 ppm PCBs** . . .

5. **Materials** to be placed in the on-plant consolidation areas shall not include free liquids, free product, intact **drums** and capacitors, or other equipment that contains **PCBs** within its internal components. Such **materials**, if any, shall be sent to an appropriate off-site facility for disposal. . . .

7. Upon completion of use, GE shall cover the on-plant consolidation areas with an engineered landfill/consolidation area cap

8. GE shall perform post-closure inspections and maintenance of the on-plant consolidation areas in accordance with a Post-Removal Site Control Panel for such areas to be submitted by GE. as approved by USEPA.

9.. GE shall conduct **groundwater** monitoring associated with the on-plant consolidation areas (emphasis added).

The Agencies' plan is to put PCB-contaminated material less than 50 ppm on top of the existing unlined landfill of Hill 78, and to create a new landfill for higher-level contaminated materials above 50 ppm in the nearby Building 71 Site. These sites are adjacent to an elementary school and a residential neighborhood.

In describing what will be placed in the Building 71 Site landfill, Bryan Olson, the EPA Project Manager stated at its public meeting of May 18, 1999: 'We're not going to allow any liquids. so that automatically puts a maximum concentration on it . probably when you get above tens of 1,000s of ppms you have some kind of liquid we 're not going to put in any drums. any transformers. any capacitors. or anything like that ... as long as there's no liquids in there, it doesn't matter what . the concentration is because we'd be doing the same thing, the same kind of protective cap and liner system. "

As regards the use of the existing Hill 78 landfill, he stated:

*"One of the main reasons **why** we chose **specifically** the **Hill 78** site is **that** it is on existing **landfill** - it's a **landfill** that contains high levels of **PCBs**, **probably** much higher than we're going to be putting in there, **and you can't remove it, it's not the kind of project that anyone does -you don't remove landfills, you can cause many more problems by doing that, than just by capping it and leaving it in place . . . from a risk standpoint you can use it, we have parks on top of landfills in other parts of the country in similar situations to this one "** (emphasis added).*

The 1988 EPA RCRA Site Assessment delineates the extent of the problem: *'Building 78 **Landfill** - The unit was formerly a ravine which has been **filled** with waste material. . . Former employees stated in an interview that **drums** and liquid containing **'Pyranol'** were disposed in the **landfill** in the 1950s and 1960s. **Pyranol** is composed of 60% **PCBs**. Sampling of the fill has **revealed** some **areas** with PCB concentrations at several **hundred ppm**. . . **DEQE [the Massachusetts Department of Environmental Quality and Engineering - which preceded the DEP]** suspects an oil layer **exists** in the **landfill**. Former employees stated **PCB-containing** liquids **were poured on the ground "** (emphasis added).*

The APRIL 1994 Public Involvement Plan document by the Massachusetts DEP states: *"The Hill 78 **landfill** is **approximately** two **acres** in size with a maximum depth of approximately 40 feet. . . The school property is within 50 feet of the **Hill 78** site fence **line**. From approximately 1940 to 1980, GE used the Hill 78 **area** as a **landfill** for demolition or construction debris, **excess fill** and solid (reportedly non-hazardous) waste. GE **also allegedly** used the **landfill** to dispose of drums containing **PCBs and fuller's earth** saturated with **PCBs** in the 1950s and 1960s. The EPA RCRA Facility Assessment stated that former GE employees disposed of **PCB** oil in the landfill. From 1980 to early 1990, GE used this area to store soils containing less than 50 ppm **PCBs** from routine, facility-wide excavations. Sampling of the **fill** revealed **areas** with PCB concentrations up to **120,000 ppm** in subsurface **soil "** (emphasis added).*

*"In 1991, GE's consultants **completed a Phase I** investigation of the site . . . Results **confirmed** that the **landfill area** is the most **contaminated portion** of the site Ground water in the **vicinity** of the **landfill area** is contaminated with **PCBs** at **concentrations** up to 9ppb. In addition, **VOCs** were detected in ground-water samples collected from **wells** located **downgradient** of the **landfill** area and south of the Altresco power plant at concentrations of less than 1,000 ppb. Ground-water samples collected from a **well** in the southwestern corner of the site contained concentrations of less than 30ppb of **dioxins and furans**.*

*“The Department classified the site as a priority and GE submitted Phase II Scope of Work proposing further definition of ground-water contamination at the site and assessment of contamination potential & attributable to abandoned tram-former oil lines extending from the East Street Area II site across this site and to Building 51 (part of the Unkamet Brook site)“.* (emphasis added).

And then from the DEP's Public Involvement Plan, Volume 5, Page 12:

*“Table I: Descriptions and Characteristics of GE Pittsfield Disposal Sites Hill 78 Landfill Area; 57 acres; DEP & EPA jurisdiction - Contamination: PCBs in subsurface soils (average concentration 498 ppm; maximum concentration: 120,000 ppm). ”*

Members of the public and HRI kept reminding the EPA and DEP regulators that the existing Hill 78 landfill was already filled with all kinds of toxic materials, including liquid plumes, many barrels of **PCB-contaminated** liquids, solvents, and probably metals - precisely the kind of high-level, dangerous waste that the EPA wasn't willing to add to Hill 78 or put in the newly-lined Building 71 landfill.

HRI and many members of the public are very concerned that GE and the Agencies are adding tons and tons of more waste on top of extremely dangerous **toxic** wastes in Hill 78, ensuring that any potential problems of leaking barrels will be that much more **difficult** to deal with.

We believe public health and safety will be unnecessarily threatened by the Agencies' decision to not only leave such high-level contamination in place at Hill 78 but to add to it and make more difficult any efforts that may prove necessary at a later date to deal with potential problems. Previous reports detail the presence of buried barrels of liquid **PCBs**, contaminated fullers earth, possible metals, solvents, **VOCs**, and **SVOCs**. ~

Bryan Olson's response at the May 18, 1999 public meeting to some of these concerns was that: *“we have monitored this landfill for a fairly long time and we don't see any impacts from the landfill, going away from the landfill \_\_\_ we're expecting that they're probably drums in that landfill, but we think that the solution will work no matter what's in the landfill. ”* We recognize and appreciate that the Agencies have set up a long-term monitoring program for this containment facility. But monitoring, unfortunately, will only confirm that migration has occurred; and that a problem exists.

The Agencies are quick to tell the public that this is a “public perception” issue, not one of public health. But our concerns are not based on a generalized, uninformed fear, or a typical not-in-my-backyard “**NIMBY**” response. We have conducted extensive research, and contacted other communities who have had serious problems with landfills that release contaminants.

There are valid reasons to doubt the **long-term** ability of these proposed containment measures for **both** the Hill 78 and Building 71 **landfills**. First, it's necessary to reiterate that the Hill 78 **landfill**, the repository of **PCBs** in subsurface soils at an average concentration of 498 ppm and a maximum concentration of 120,000 ppm, has no base liner.

Here's some of what other EPA scientists have said about landfills in the past:

*"There is good theoretical and empirical evidence that the **hazardous** constituents that **are placed** in land disposal facilities **very likely will migrate from** the facility into the broader environment. This may occur several years, even many decades; **after** placement of the waste in the facility, but **data and scientific** prediction indicate that, in most cases, even with the application of best available land disposal technology, it will occur **eventually**." (Federal Register, Feb. 5, 1981, pg. 11128)*

*"**Manmade permeable** materials that **might be used for** liners or covers (e.g., membrane liners or other materials) are subject to eventual deterioration, and although this might not **occur for 10, 20 or more years**, it eventually occurs **and**, when it does, **leachate** will migrate out of the facility." (pg. 11128)*

*"**A liner is a barrier technology that prevents or greatly restricts migration of** liquids into the ground. **No liner, however, can keep all liquids** into the ground. Eventually liners will either degrade, tear, or crack and **will allow liquids** to migrate out **of the unit**." (Federal Register, July 26, 1982, Pg. 32284)*

*"Some have **argued** that liners are devices that provide a perpetual seal against any migration **from** a waste management unit. EPA has concluded that the more reasonable assumption based on what is known about the pressures placed on liners over time, is that **any liner will begin to leak eventually**." (Pp. 32284-32285)*

*"Since disposing of hazardous wastes in or on the land inevitably results in the release of hazardous constituents to the environment at some time, any land disposal **facility creates some risk**" Federal Register, May 26, 1981, Pg. 28315)*

*"The **longer** one wishes to contain waste, the more **difficult** the task **becomes**. Synthetic liners and caps will degrade: soil liners and caps may erode and crack . . . EPA is not aware of **any field** data showing successful long-term containment of waste at facilities which have not been maintained over time." (Pg. 28324)*

*"**First**, even the best liner and **leachate** collection will **ultimately fail** due to natural deterioration, and recent improvements in **MSWLF** containment technologies suggest that releases may be delayed by many decades at some **landfills**. For this reason, the **Agency** is concerned that while corrective action may have already been triggered at many facilities, 30 years may be **insufficient** to detect releases at other landfills." EPA, Federal Register, August 30, 1988, Vol., 53, No. 168.*

Joel **Hirschorn**, a technical consultant and advisor to citizens in Warren, County, North Carolina who were concerned about their hazardous waste landfill, has written:

*"Data **obtained from a 1983 EPA study** showed **conclusively** that uncontrolled releases of PCBs into the air were occurring. **Neither EPA or the state analyzed the data properly, and EPA made incorrect statements. In fact, the levels of PCBs found by EPA in the air near the landfill and in the yard of a residential house more than a half mile from the landfill** were several times greater than the level of health significance in EPA's own risk assessments. . .*

*"An analysis of the only state documents referring to the 1983 study by EPA and the **only** information given to the public has shown that the state intentionally misrepresented the findings of the 1983 tests for PCB air releases from the landfill. For example, the highest levels of PCBs found at the landfill's main vent were not reported by the state, and the state indicated that no measurable amounts of PCBs had been found around the site, which was not the case. The state has persistently deceived the public about PCB air releases **and, more importantly, the significant public health risks resulting from them.**" (emphasis added).*

Given EPA's own admission of the many problems that characterize landfill liners, and the inability of landfills to guarantee the long-term isolation of these toxic chemicals, we renew our advocacy for the treatment of these wastes. And respectfully remind the Agencies of their stated commitment to the treatment option.

We quote from the Joint letter from *USEPA and Massachusetts DEP to Ronald F. Desgroseilliers, General Electric Company, Area Environmental and Facility Operations* - January 6, 1995 - re: GE/Ho&tonic River and Silver Lake, *PICM Proposal* comments and requirements for *resubmittal*:

"Corrective Measure Evaluation

9. According to the federal register of July 27, 1990, Corrective Action for Solid Waste Management Units at **Hazardous** Management Facilities; Proposed Rule (Subpart S), there are four standards used in evaluating Corrective Measure technologies.

**The four evaluation standards are:**

- 1) overall protection of **human health and the environment;**
- 2) **ability of the technology to attain media cleanup standards;**
- 3) **the ability of the technology to control the sources of releases; and,**
- 4) **the technology's compliance with standards for management of wastes.**

***“If two or more technologies meet the evaluation standards then there are five evaluation decision factors which must be considered The five evaluation de&ion factors are:***

- 1) ability of the remedy to provide long-term reliability and effectiveness;***
- 2) ability to reduce the toxicity, mobility, or volume of wastes:***
- 3) short-term effectiveness;***
- 4) ability to implement; and,***
- 5) cost***

***10. In accordance with the Permit and the proposed Subpart S regulations. economic considerations shall not be the sole standard or criterion applied to any technology in the Corrective Measures evaluation process.***

General Determinations

***12. In general (especially in view of existing DEP and EPA policies and TSCA), GE needs to give full consideration to removal technologies coupled with ex-situ treatment and/or disposal. As required by the Permit, the PICM Proposal proposes to study a selected number of these technologies. After sediment is removed, potential next steps include, at a minimum: dewatering, treatment and disposal. In the CMS, GE shall better evaluate these next steps and evaluate them on a reach-by-reach basis. ”***

Volume 5, Massachusetts Department of Environmental Protection Public Involvement Plan (Pp. 4-6) (emphasis added).

While the decisions to enlarge the Hill 78 Consolidation Area, and construct the Building 71, and possibly the New York Avenue/Merrill Road, Consolidation Areas meet the criteria for short-term effectiveness, ability to implement, and cost, it certainly fails the criteria for reducing the volume of waste. And there is reliable testimony and good reason to **doubt that** this decision provides either long-term reliability or effectiveness.

Hill 78 is 50 yards **from** an elementary school and a block from a populated residential neighborhood. School children, teachers, local residents are without protective clothing or respirators. An unexpected fire or explosion at Hill 78, with its large quantities of liquid PCB oil, buried barrels, and other toxic liquids would represent a public hazard. We appreciate that the Agencies have designed a ground water monitoring system and an inspection regime to ensure the integrity of the cap, but what about unanticipated fires, explosions, and tornadoes. Why needlessly expose schoolchildren to such risks?

## **The Alternative: Treatment**

HRI believes that there is a far more protective alternative: treatment. Unfortunately, the Agencies have not adequately considered the clear benefits of a complete removal/treatment plan rather than the partial removal/capping/landfilling plans they have endorsed. When we have asked the EPA for comparative figures for treatment vs. landfilling options for the clean-up of first half mile of the Housatonic, we were given an estimate based on their experience with the remediation at the Loring Air Force Base.

There, we were told, dumping on site, or very close to the site, was estimated to cost \$30 a ton, as opposed to \$300 a ton or more to treat it. In that scenario, treatment costs ten times as much as landfilling.

Let's examine the costs of landfilling versus treatment for this site:

GE, in its revised Removal Action Work Plan - Upper 1/2 Mile Reach of Housatonic River states that "It is anticipated that approximately 8,100 cubic yards (CY) of sediment will be removed." (Page 1-5). Add to that GE's estimate of bank soils to be removed: "It is estimated that the bank soil removal activities involve the removal of approximately 4,300 cy of banksoils ... An additional 340 cubic yards of bank soils will be removed between the sheetpiling and the River at East Street Area 2 to help complete source control activities in that area." (Page 1-5). Together, that comes to 12,740 cubic yards of contaminated soil and sediment.

If one cubic yard is equal to a ton and a half, 12,740 cubic yards equals 19,110 tons. Multiplied by \$300, the estimated cost of treating these soils and sediments, the total is ~~\$5,733,000~~. Let's assume that the \$300 a ton is a low estimate. If treatment costs average \$400 a ton, the added expense for treatment comes to ~~\$7,644,000~~. If the treatment costs average \$500 a ton, the added expense for treatment comes to ~~\$9,555,000~~.

The EPA says the remediation decision was not simply about the contaminated wastes from the first half mile of the river: their decision encompassed the next mile and a half of contaminated sediments and bank soils, the contaminated soil from the Allendale School, and anticipated contaminated soil from the Newell Street properties.

Let's attempt to estimate the total volume. According to GE's June 1999 Detailed Work Plan for On-Plant Consolidation Areas:

"For the removal actions to be performed by USEPA in the 1 1/2 Mile Reach of the Housatonic River, it is difficult to make any reliable estimate of the volume of materials to be subject to removal, since USEPA has not yet proposed the removal actions for that reach. Nevertheless, based on discussions with the USEPA GE has assumed a maximum removal volume of 50,000 cy for EPA's use in the on-plant consolidation areas in connection with response actions for this reach." (Pp. 2-2 to 2-3.)



**GE's October 1999 Documentation Related to Allendale School Removal** states that: "the volume of soil subject to possible consolidation as **TSCA** material is approximately 5,000 cubic **yards**." (Page 3-7.)

GE also plans to **landfill** building debris associated with the demolition activities it **will** undertake as part of its **Brownfields** agreement with the City of Pittsfield. GE states:

"Using: 1) the information available for each **RAA**; 2) **GE's understanding** of the response action requirements established in the sediments; 3) information provided by the **USEPA**; and 4) several assumptions (summarized below), the volume of materials **potentially** subject to on-plant consolidation is estimated to be approximately 230,000 cubic yards (**cy**). Of this total, it is **currently** estimated that approximately **half of** the materials would be regulated under **TSCA**, while the other **half would** be considered non-TSCA material containing less than **50 ppm PCBs**." *GE's June 1999 Detailed Work Plan for On-Plant Consolidation Areas* (Page 2-2.)

Using the estimate of 230,000 cubic yards brings the total volume of contaminated soil and sediments subject to possible treatment up to 345,000 tons. At \$300 a ton, the costs of treating 345,000 tons equals **\$103,500,000**. At \$400 a ton, **the** costs rise to **\$138,000,000**. At \$500 a ton, the costs rise to **\$172,500,000**.

So we're talking about a range of \$103 million to **\$172 million** dollars to treat **all** this waste rather than bury it across from the Allendale School. The additional \$103 to \$172 million to ensure a permanent remedial solution **would** be an impossible burden for *many* Responsible Parties, but we believe, given the enormous profits General Electric made with its Power Transformer and Capacitor divisions in Pittsfield, and its continuing status as one **of the** world's most profitable corporations, that this extra expenditure can be met. In years past, no one could reasonably expect that this much money could be allocated to redress environmental grievances. But in an era where basketball players are awarded \$100 million dollar contracts, and corporate CEO are awarded multi-million dollar bonuses, why should public health and the environment be sacrificed when the financial resources are available.

According to the Berkshire Eagle of April 9, 1999, Jack Welch, CEO of General Electric doubled his annual earnings in 1998 to \$83.6 million dollars. According to a March 17, 1999 press release from **the United** Electrical Workers, CEO Jack Welch's total compensation package for 1998 equaled \$97 million dollars, averaging about \$50,000 an hour. Clearly, GE has the **financial** wherewithal to treat this contamination. (

For less than what GE's Board of Directors will compensate Jack Welch for two years' work, GE can treat the total 230,000 cubic yards of contaminated sediments, and bank soils from two miles of the Housatonic River, the **Allendale** School and the Newell Street area.

The Berkshire **community** has endured irreparable damage because GE allowed **PCBs** and other tonics to escape its industrial facility and move to the Housatonic River, Silver Lake, adjacent neighborhoods and other towns. For an additional \$ 172 million we can treat this waste, and almost completely reduce its volume and toxicity. Given the financial price we have paid, it is incumbent upon **the Agencies** to not allow this additional cost to stand in the way of the most thorough cleanup.

We remind the Agencies of the strictures of CERCLA Section 962 1:

*“In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedies, the President shall, at a minimum, take into account:*

*(A) the long- term uncertainties associated with land disposal;*

*(B) the goals, objectives, and requirements of the Solid Waste Disposal Act (42 U.S.C 6901 et seq.);*

*(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;*

*(D) short- and long-term potential for adverse health effects from human exposure;*

*(E) long-term maintenance costs;*

*(F) the potential for future remedial costs if the alternate remediate action were to fail: and*

*(G) the potential threat to human health and the environment associated with excavation, transportation, and redisposal, c. containment. The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to maximum extent practicable. If the President selects a remedial action not appropriate for a preference under this subsection, the President shall publish an explanation as to why a remedial action involving such reductions was not selected.*

*(2) The President may select an alternative remedial action meeting the objectives of this subsection whether or not such action has been achieved in practice at any other facility or site that has similar characteristics. In making such a selection, the President may take into account the degree of support for such remedial action by parties interested in such site. ” (Emphasis added).*

And we believe that our position on treatment rather than **landfilling** is supported by the very mandates of the Agencies and an objective review of the standards regarding Corrective Measures:

- 1) **overall protection of human health and the environment;**
- 2) **ability of the technology to attain media cleanup standards;**
- 3) **the ability of the technology to control the sources of releases; and,**
- 4) **the technology's compliance with standards for management of wastes**

We believe a critical examination of these four factors leads to the treatment **option rather** than the decision to landfill across from a public school. As prior EPA testimony states, sooner or later landfills will discharge contamination **into** the environment and the **landfilling** option **cannot**, therefore, guarantee **"to control the sources of** releases. " Therefore, neither *can* it guarantee the **"overall protection of human health and the environment. "**

To the extent that EPA and DEP believe that **landfilling** meets those standards, they have the added burden of comparing the effectiveness of treatment and landfilling: *"If two or more technologies meet the evaluation standards then there are five evaluation decision factors which must be considered. The five evaluation decision factors are:*

- 1) *ability of the remedy to provide long-term reliability and effectiveness;*
- 2) *ability to reduce the toxicity, mobility, or volume of wastes;*
- 3) *short-term effectiveness;*
- 4) *ability to implement: and.*
- 5) *cost. "*

HRI believes that treatment • thermal desorption, for example • will greatly reduce the large volume of toxic contaminants. By destroying much of the **contamination, rather** than burying it, the treatment option better provides 'long-term **reliability and effectiveness. "** It clearly better meets the standard of **"reducing the toxicity, mobility. or volume of wastes."** Treatment is not only effective in the short-term, it is a far more effective option for the long-term. GE has proven its ability **"to implement"** the treatment option in its remediation of the Rose **Superfund** site in Lanesboro, Massachusetts. Similarly, **GE Canada** is utilizing thermal **desorption** treatment in Canada Only when it comes to cost, and the ability to implement, does **landfilling** have advantages.

### **3. The Silver Lake Area Removal Action**

Section 30.a.(i) of the Consent Decree sets out the removal requirements for residential properties in the Silver Lake Area: “Settling **Defendant** shall either: (A) remove and replace bank soils to achieve a **PCB** average of 2 ppm in the top foot and in the depth from one foot to the depth at which **PCBs** have been detected (up to a maximum of 15) in the bank soils, remove and replace soils to achieve a **PCB** average of 2 ppm in the top foot and in the **depth from one foot to the depth at which PCBs have been detected (up to a maximum of 15)** at the overall property (or designated averaging areas if less than the entire property).

We support the Agencies’ decision to require a spatial average of 2 ppm in the bank soils of residential properties abutting Silver Lake, but are disappointed that a similar average is not required in the non-residential properties abutting the Lake.

Section 30.a.(ii) states: “For each remaining bank soil averaging area (as described in Section 2.6.2 and Attachment E of the SOW . . . if an ERE is obtained in accordance with Section XIII of this Consent Decree, Settling Defendant shall remove and replace bank soils to achieve **PCB averages of 10 ppm in the top foot and 15 ppm in the 1-3 foot depth increment**. If an ERE is not obtained for such an area, Settling Defendant shall implement a Conditional Solution at such bank soil area in **accordance with Paragraphs 34-38 of this Consent Decree**.

According to Section 34.c. (iii): “For each averaging area at riverbanks and the banks of Silver Lake (where Conditional Solutions **apply**), Settling Defendant shall remove and replace soils as necessary to achieve an average PCB concentration of **10 ppm in both the top foot and the 0-3 foot depth increment**.”

Older **Pittsfield residents** remember the days when they swam in Silver Lake in the summer, and skated on it in the winter. A **remediated** and renewed Silver Lake will once again **attract** Pittsfield residents in great numbers. Clearly, a clean lake can **serve** as the centerpiece to the commercial renaissance envisioned by the Pittsfield Economic Development Authority (**PEDA**). Unlike other areas of the site, such as the more industrial **1/2-Mile Reach** where public access has not been easy in recent years, we can reasonably anticipate large numbers of people taking advantage of Silver Lake: walkers, picnickers, teenagers, men and women **fishing**. As Figure 2-25 of the **Scope of Work** indicates, Recreational Areas 1 through 5 circle Silver Lake, and provide the best access. If, in fact, the City of Pittsfield invests time and energy in encouraging a renewed public appreciation of Silver Lake, these areas will experience great use. Why allow levels as high as 10 ppm when it is likely that children will be active in this area? We urge the Agencies to **find** some middle ground between their residential and normal recreational scenarios in the Silver **Lake** Removal Area.

According to Section 30:

b. "Settling Defendant shall remove approximately 400 in situ cubic yards of sediments from an area of Silver Lake near the outfall from the GE Plant Area, as specified in Section 2.6.2 and Attachment K to the SOW and as generally depicted on Figure 2-25 of the SOW. Settling Defendant shall replace such removed sediments with clean soil and restore and vegetate the portion of the affected area that is not under water, in coordination with the installation of the sediment cap described in Paragraph 30.c and consistent with the requirements of Paragraph 118.c (Restoration Works) of Section XXI (Natural Resource Damages) of this Consent Decree.

c. Settling Defendant shall install a cap and armoring system in Silver Lake, which shall include a cap over the entire lake bottom (approximately 26 acres) and armoring over the cap around the perimeter of the lake, which shall meet the design standards set forth in Section 2.6.2 and Attachment K to the SOW. To the extent that the conditions specified in Attachment K to the SOW for further evaluation or corrective actions such as further evaluations and/or corrective actions subject to and accordance with EPA approval. In the absence of those conditions, no further response actions shall be required for this system (except as otherwise required pursuant to Section XIX (Emergency Response) or Paragraphs 162, 163, 167 and/or 168 (Pre- and Post-Certification Reservations) of this Consent Decree)."

Attachment K to the SOW details the nature of the cap intended for Silver Lake:

"b.(i) This cap shall include on isolation layer positioned directly above the sediments over the entire lake bottom. This layer shall consist of silty sand, with a presumptive thickness of 10 inches, if geotextile is placed between the sediments and the cap (or 12 inches, installed in two six-inch lifts, if a geotextile is not placed between the sediments and the cap), an organic carbon content of 0.5 percent (as total organic carbon) and concentrations of PCBs at non-detectable levels and other constituents at background levels as approved by EPA. (The presumptive thickness of the cap is based on use of a 6-inch isolation layer to control PCB migration from the underlying sediments into the surface water of the lake, plus an additional 4 inches of silty sand if geotextile is not used), to account for uncertainties associated with bioturbation. GE shall perform pre-design investigations to confirm the design parameters which support the above presumptive thickness and organic carbon content assumptions presented in this Attachment, then the isolation layer. If those pre-design investigations confirm the design assumptions presented in this Attachment, then the isolation layer will consist of a silty sand layer with a thickness of 10 inches, if geotextile is placed between the sediments and the cap (or twelve inches, installed in two six-inch lifts, if a geotextile is not placed between the sediments and the cap), and an organic content of 0.5 percent (as total organic carbon). If the pre-design investigations indicate that a thicker cap and/or a higher organic content is necessary, then the cap thickness and/or organic content will be modified using revised input parameters based on the results of the pre-design investigations and the procedures/equations presented in Exhibit K-1. GE shall ensure that the design cap thickness is achieved over the entire bottom of the lake."

"(ii) The capping system shall also include an overlying armoring layer of stone, incorporated along the shoreline as necessary to prevent erosion of the isolation layer due to wind-induced wave action.

“d.(i) **If the periodic inspections and monitoring of the cap thickness and the shoreline armoring layer indicate that the design standards for those components of the capping system are not achieved or maintained, GE shall evaluate and propose to EPA appropriate corrective actions to achieve those design standards, and shall implement such corrective actions upon approval by EPA.**

(ii) **If the sampling of the isolation layer indicates that that layer is not performing in general accordance with the predictions on which the isolation layer design was based in terms of controlling PCB migration from the underlying sediments into the surface water of the lake, GE shall evaluate corrective actions and submit the results of such evaluation to EPA for approval, and shall implement such corrective actions, if any, upon approval by EPA.**” (Technical Attachment K, pp. 2-3) (emphasis added).

The Agencies’ decision to limit remediation of Silver Lake to a 10 to 12 inch layer of silty sand is one of the most disappointing decisions we have seen at this site in the last decade. Let’s **examine this** decision in greater depth.

GE summarizes **the** conclusions of its *Supplemental Phase II/RCRA Facility Investigation Report for Housatonic River and Silver Lake* (Bouck & Lee, Inc., January 1996):

“**More than 200 sediment samples have been collected from Silver lake and analyzed for PCBs. The results of the analyses indicate PCB concentrations in lake sediments a concentrations at concentrations up to 20,700 ppm and averaging approximate 330ppm (based on spatial average of all samples obtained from the upper 1 foot of sediment. excluding those proposed for removal, e.g. 20,700 ppm).**” Further research reveals that 125 of those samples were conducted in 1980 and 1982 as part of the Stewart investigations, the same GE study that claimed that the Housatonic River from **the GE plant** down to the Connecticut border was contaminated with only **39,000 pounds of PCBs**. Subsequent sampling by GE took place in 1991 as part of the initial MCP Phase II activities and in 1992 by **Blasland** and Bouck, then as part of the Supplemental Phase II activities.

GE’s Supplemental Phase II/RCRA Facility Investigation Report For Housatonic River and Silver Lake, Volume I, January 1996 stated:

“**As for Silver Lake, investigations have shown PCBs to be present in sediments a an average concentration of 402 ppm, and a an average depth of approximately 5 feet. Aroclor 1254 is found to be the principal Aroclor detected in Silver Lake sediments (averaging 57 percent of the total), with Aroclors 1242 and 1260 also being detected (each averaging about 21 percent of the total). ... In addition, recent (1990 and 1994) investigations of Silver Lake have identified the presence of other hazardous constituents in sediments possibly related to the GE facility.**” (Page 2-8).

About Silver Lake bank soil, GE stated:

*"PCBs have also been detected in the bank soils around Silver Lake in a fairly narrow strip around the lake. PCB concentrations in this area average approximately 21 ppm. The analytical data indicate that the PCBs detected in Silver Lake bank soils consist of an approximately equal combination of Aroclor 1254 and Aroclor 1260."* (Page 2-10).

We've previously stated our longstanding concern with GE's sampling program. We renew these concerns when it comes to Silver Lake. GE stated:

*"Similar to the Housatonic River, although the vertical extent of PCBs has not been defined to non-detectable levels at a number of locations in Silver Lake, the existing data on the extent of PCBs in deep sediments are adequate to characterize the PCB concentrations in such sediments for risk assessment purposes and are sufficient to allow reasonable volume estimates to be made for purposes of assessing remedial alternatives."* (Pp. 3-38 to 3-39) (emphasis added). We restate our call for testing which clearly delineates the depth at which non-detect levels are found.

Based on its previous testing, GE estimated the following approximate volumes for sediments and bank soils:

*Approximate Volumes (cubic yards) - Silver Lake*  
*Containing Greater than 1 ppm PCBs: 175,000*  
*Containing Greater than 10 ppm PCBs: 140,000*  
*Containing Greater than 50ppm PCBs: 70,000*  
*Containing Greater than 100 ppm PCBs: 60,000*  
*Containing Greater than 500 ppm PCBs: 46,000 :*  
 (Page 3-46)

*5.5 Estimation of Volumes of Impacted Floodplain Soils*

*Approximate Volume (cubic yards) Silver Lake*  
*Containing Greater than 1 ppm PCBs: . . . 5,000*  
*Containing Greater than 10 ppm PCBs: . . .3,200*  
*Containing Greater than 50 ppm PCBs: . . .800*  
 (Page 5-34)

If GE were to remove PCB-contaminated sediments above 10 ppm from Silver Lake, the approximate volume involved would be 316,000 cubic yards. 316,000 cubic yards is 474,000 tons. Let's use the high end estimate of what it costs to treat this contaminated sediment: at \$500 a ton, 474,000 tons at \$500 a ton comes to \$23,700,000.

It's not surprising that faced with a cost of \$24 million that GE would forcefully advocate for a far less thorough and costly **remediation**. Their position was **clearly** stated in their March 1995 revised *Proposal for the preliminary Investigation of Corrective Measures for Housatonic River and Silver Lake Sediment. (PICM)*. At that time, GE was arguing that natural recovery, and re-silting of sediment, could eventually remove the threat posed by Silver Lake sediments.

GE argues in the PICM that there are potential problems with an armoring scenario in waters as deep as Silver **Lake**:

*"The armor layers are placed either from a barge, from a floating platform, or from the banks of the river or lake. The depth of the water affects the ability to effectively place the armoring. In shallow water depths, the armoring can be placed with more control, reducing sediment resuspension. However, as discovered in the New Bedford Harbor Pilot Study described below, armoring is difficult to place effectively in deeper waters (depths greater than approximately 10 feet)." (Page 2-3) (emphasis added).*

*GE continued:*

*"On occasion, placement of armoring at depth is difficult to control and can result in mixing of contaminated sediment with the clean cap material. In the New Bedford Harbor Pilot Study, one to three feet of clean sediment was placed on sediment contaminated with PCBs in an aquatic disposal area. Four months after capping, sediment cores taken from the capped area and analyzed for PCBs indicated that the capping effort was not successful [Herbich (undated) and USACE 1990b]. This was due to the method of placement and the fact that the site was in deep water, resulting in little control of placement of the capping material. This site is in relatively deep water, and thus, is generally applicable only to the deeper areas of Silver Lake and Woods Pond" (Page 2-5) (emphasis added).*

The Agencies performed extensive independent testing in the Upper 2-Mile Reach of the Housatonic River. This did not happen with Silver Lake: the Agencies did no independent testing, nor, as far as we can tell, did they perform any independent analysis of remediation options. After a review of the publicly available records concerning Silver Lake, it appears to us, that with the hectic year and a half of difficult negotiations, the Agencies seem to have regarded Silver **Lake** as an afterthought.

At the least, **HRI** requests a pilot project for the Silver Lake remediation to see whether or not complete removal of contaminated sediments is possible. If the Agencies are serious about their desire to restore Silver Lake so that people can fish and swim in it, it is vital to restore **public confidence**. It is commonplace for older Pittsfield residents to reminisce about the years that the highly contaminated Silver Lake wouldn't freeze or the time it caught fire. We do not, nor do we believe that the public will, regard as adequate a clean-up scenario limited to dropping twelve inches of sand from a barge thirty feet down to cover contaminated sediments with levels as high as 20,700 ppm.



We, again, remind the Agencies of the strictures of **CERCLA Section 6211** :

“In making such assessment, the President **shall** specifically address the **long-term effectiveness** of various alternatives. In assessing alternative remedial **actions**, the President **shall**, at a minimum, take into **account**:

(A) the long- term uncertainties **associated with land** disposal:

(B) the goals, objectives, and requirements of the Solid Waste Disposal Act (42 U.S.C 6901 et seq.):

(C) the persistence, toxicity, mobility, and propensity to **bioaccumulate** of such **hazardous** substances and their constituents:

(D) short- and long-term **potential for** adverse health **effects from** human **exposure**;

(E) long-term maintenance costs;

(F) the **potential for future** remedial costs **if the** alternate remediate action were to **fail**; and

(G) the **potential** threat to human health and the environment associated with excavation, transportation, and **redisposal**, c. containment. The **President shall** select a **remedial** action that is protective of human health and the environment, **that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to maximum extent practicable.** **If** the President selects a **remedial** action not appropriate for a preference under this subsection, the President **shall publish** an explanation as to why a remedial **action involving** such reductions was not selected. ”

We do not understand how the proposed remediation of Silver Lake adequately meets any of these important goals. This remediation plan can easily fail. It does not utilize permanent solutions. It does not reduce the quantity of toxic wastes in any large or material way.

#### **4. Removal Actions at the Former Oxbow Areas**

As we address the issues of the Former Oxbow **Areas**, it is interesting to reflect upon the words of an internal public relations plan generated for GE by EIM in 1991. “Part B, Housatonic River Sites” of that plan addresses the problems posed by the Former Oxbow Areas:

“The activities in this section apply to **all** former **Oxbows** which **were filled** in, including **Newell Street**, the **Lyman Street** parking lot, the **landfill** areas on **Day street**, **Sacred Heart School**, the **Italian** American Club, the **Marchetto property**, and **Hibbard** playground.

A significant amount of activity will be taking place related to the **Oxbows** in the immediate **future**. There is a strong chance that these **areas** could become more **problematic** during the course of the remedial investigation as more evidence of the presence of heavy metals and other industrial debris comes to **light**. The major issues related to this site are the **economic** impact on the landowners, the potential health effects of the **materials** of concern, and the threat of their release to the Housatonic.

... We **will also focus on providing information to the parties about the benefits of capping versus removal, which is particularly important** since some members of the local community and the **Conservation Commission have expressed support for removal and destruction.**" (Page 16) (emphasis added)

In its May 26, 1998 Combined Action and **EE/CA** Approval Memorandum, the **USEPA** notes: "During the **1930's**, approximately one mile of the Housatonic River from Newell Street to Elm Street was straightened and **channelized** to reduce flooding. This action resulted in eleven oxbow being **isolated from** the River channel. Some of these channels **were filled** with material from GE (see November 27, 1996 **letter from GE to the Massachusetts DEP RE: Request for Information regarding Properties That May Have Received Fill from the General Electric Facility in Pittsfield) later found to contain PCBs.**" (Appendix B, Page 5.)

The Agency goes on to list these **oxbows** as Potential Sources of **PCBs** to the Housatonic River:

"6. **Heavily contaminated soils in the banks of the Housatonic River including the filled in portions of oxbows A through L.** GE has documented high levels of **PCBs** in contaminated soils in the riverbanks in the subject area, especially in the former **oxbows**. ... In addition, **PCBs** have been detected in former oxbow soils in **concentrations** as high as **290,000 ppm** (both at Lyman Street, sampling location **LS-11** and Newell Street I, sampling location **QP-9**). The contaminated bank soils pose a threat of release of **PCBs into the Housatonic River via erosion and storm runoff.**" (Appendix B, pp. 7-9).

In its Action Memorandum for Removal Action Outside the River at the **GE-Housatonic River Site**, Appendix D, the Agencies state: "**In parts or all of the Unkemet Brook Area, Oxbows A and C, Oxbows J and K, ... access is unrestricted and the land use is residential, recreational, or commercial. Therefore, the potential exists for residents, recreational users, workers, and trespassers to come into contact with contaminated soil. Direct contact with contaminated surficial soil could result in the ingestion, inhalation and/or dermal absorption of hazardous substances. In addition, any disturbance of subsurface soils, which is currently not prohibited, could expose people to contaminated subsurface soils.**

"Other areas of the Site, such as Newell Street I, **East Street Area I** and portions of the Lyman Street Area, are non-GE owned commercial/industrial properties. Access in many of these areas is not restricted. Therefore, the potential exists for workers, customers, and trespassers to come in **contact** with contaminated surface **soils**. Also, any disturbance of subsurface soils (e.g., for building expansion, installation of fence posts, regrading of parking areas, repaving, etc.) could result in the uncovering and exposure of contaminated soils." (Page 24).

We are concerned that extremely high levels in the Oxbow at **both the surficial and subsurficial** levels pose a threat to humans and the environment.

Section IX PERFORMANCE STANDARDS AND RELATED

**REQUIREMENTS, 23** e. of the Consent Decree sets the clean-up standards for these areas. It allows GE to select one of three options for determining spatial averaging of contamination for the top foot of soil at a property: *“(i) consideration of the overall property as an averaging area . . . (ii) establishment of averaging areas which do not exceed 1.0 acre for GE-owned industrial portions of the GE Plant Area. 0.5 acre for other commercial/industrial properties or recreational properties, or 0.25 acre for residential properties . . . (iii) proposal of other specific averaging areas to EPA for approval. “ If GE selects the first option, it must “remove and replace all soils in the top foot in unpaved portions of such property or area in which PCBs have been detected in excess of the following NTE concentrations: 125 ppm at a commercial/industrial property or area; 50 ppm at a recreational property or area; or 10 ppm at a residential property. ”* (Page 116, Consent Decree)

**HRI** urges a downward revision of these allowable not-to exceed (**NTE**) concentrations for Removal Actions Outside the River for the top foot of soil: current levels of 125 ppm at commercial/industrial properties; **50** ppm at recreational properties; and 10 ppm at residential **properties** should all be lowered.

Appendix E provides further details, For GE-owned commercial/industrial properties in the Former Oxbow Areas, or properties for which an ERE has been obtained, cleanup levels are as follows: 0 to 1 foot, a spatial average of less than 25 ppm; 1 to 6 feet, less than 200 ppm; and if averaged levels at 0 to 15 feet, incorporating anticipated response actions, will exceed 100 ppm, then GE shall install an engineered barrier. For properties where an ERE cannot be obtained, cleanup levels are as follows: 0 to 1 foot, a spatial average of less than 25 ppm; if the spatial average, after incorporating anticipated response actions, will exceed 25 ppm at 0 to 3 feet, then shall remove and replace soils to achieve a less than 2.5 ppm average; from 1 to 6 feet, after incorporating anticipated response actions, less than 200 ppm; and if averaged levels at 0 to 15 feet, incorporating anticipated response actions, will exceed 100 ppm, then GE shall install an engineered barrier. (Page 50).

For recreational properties within the Former Oxbows *“if the spatial average PCB concentration exceeds 10 ppm in the top foot or 15 ppm in the 1- to 3-foot depth increment. GE shall remove and replace soils as necessary to achieve spatial average PCB concentrations at or below those levels . GE shall then calculate the spatial average PCB concentration for the 0- to 15-foot depth increment . . . If that spatial average PCB concentration exceeds 100 ppm, GE shall install an engineered barrier . . .”* (Page 51).

We do not believe that these decisions fully protect public health or the environment. GE and the Agencies arrived at an averaged cleanup level of 2 ppm for residential fill properties. While we do not challenge that there is some difference between 24 hour a day residential exposure and less constant occupational or recreational exposure, we do not believe leaving PCB contamination at levels up to 25 ppm in the top foot in commercial areas like Newell Street.

Newell **Street** is a perfect example of an area that transcends simple categorization. The same **area** is home to the **workers** and management of Moldmaster **Engineering, the** members of the Italian American Club, and borders many homes.

Similarly, a sampling and **remediation** regime which allows averaging **areas** of half an **acre** does not adequately serve to either discover or remove potential hotspots.

Finally, we do not believe that a remediation strategy which calls for an engineered barrier when and if high levels of contamination are found at depth is an adequate solution to the **potential** dangers of buried **barrels**, new-found potential plumes and free product in the **oxbows**. 'Former GE workers have spoken often of buried barrels, and yet to be discovered GE dumpsites. Only a more comprehensive testing regime in the Former **Oxbows** and a commitment to remove all high level contaminants at depth can adequately protect the **public** health for **years** to come and ensure that the Housatonic River will not **be** recontaminated.

Recent experience reveals that the Agencies and GE have yet to detect all possible sources of contamination within the Former Oxbow areas. For several years **HRI** has been questioning **the** reliability of GE's demarcation of the DNAPL and LNAPL plumes. For several years we questioned whether or not it was possible that the plumes had migrated below and to the other side of the Housatonic River, and were assured that this had not happened. The recent discovery of a new plume in the Newell Street area reveals that our concerns are well-founded. And since July 1999, they've pumped *out* at least **9,000** gallons of PCS-contaminated oil from this previously undetected plume. This is a significant amount of oil. According to Technical Attachment H of Appendix E, Groundwater/NAPL Monitoring, Assessment, and Response Programs, GE recovered 1,750 gallons of LNAPL and **600** gallons of DNAPL from 1990 to March 1999 from the Lyman Street Area, and **700** gallons of LNAPL from 1991 to the present in East Street Area 1. This new plume has already greatly exceeded those outputs. Hopefully it is far less extensive than the large plume at East Street Area 2, from which, since the **1970s**, GE has removed **800,000** gallons of NAPL.

We are very concerned by the highly contaminated groundwater in these areas. The Combined Action and **EE/CA** Approval Memorandum (Appendix B) recognizes this problem as it relates to **the** Housatonic River: "7. Dissolved contamination in groundwater migrating into the Housatonic River. Due to the presence of several DNAPL plumes, LNAPL plumes, and heavily contaminated soils, PCBs are present in low levels in the groundwater. Although the concentrations of PCBs are low, the volume of groundwater discharging to the Housatonic River may be large, and the total loading of PCBs may be significant. Therefore, this represents a potential source of PCBs to the Housatonic River." (Page 9).

Appendix C of the Consent Decree gives a sense of how **compromised** Pittsfield's groundwater has become. Within Groundwater Management Removal Action Area #1 (GMA #1), which includes the GE Plant, East Street Areas 1 and 2, Newell Street I and II and **the Silver Lake area**, the groundwater contains "**PCBs in levels as high as 51,600 ppb (unfiltered) and 420 ppb (filtered) in the Lyman Street Area and 3,700 ppb in unfiltered samples and 770ppb in filtered samples along the east edge of Silver Lake . . . Lyman Street Area LNAPL that contains up to:27,000 ppm PCBs, 1,280 ppm 1,2,4-trichlorobenzene, . . .up to 20,000 ppm trichloroethene . . . Newell Street Area II: DNAPL that contains up to 388,500 ppm PCBs, 430,000 ppm 1,2,4- trichlorobenzene ... LNAPL that contains up to: 24,000 ppm PCBs, 7,300 ppm 1,4-dichlorobenzene . . .**" (pp. 17-18).

The Agencies seem to have made the decision that Pittsfield's groundwater has been so thoroughly contaminated by GE's **PCBs** and other **toxics** that it will never serve as a source for drinking water. Therefore, their remediation decisions at the GE plant, East Street Area 1 and 2, the first two miles of the Housatonic River, Silver **Lake**, the **Oxbows** etc. consist of limited removal/capping scenarios rather **than** complete removal. The Agencies also believe that for now the City has sufficient alternate sources of water so that it won't have to tap this groundwater.

Let's review some recent history as regards Pittsfield's groundwater. Concerned about future water needs in the early 1970s, the City of Pittsfield took land in **Windsor** for a reservoir. During a court battle, when this supply was in jeopardy, the city was assured by consultants that even if the court ruled against them, the city had plenty of usable groundwater available in the southeastern quadrant of the city.

In 1974, the Vincent property on East Street, not far from GE and the Housatonic River and **2,000** feet from the old city landfill in that section of town, was identified as one of the best sources for water. In **1977**, the city was informed by the state that **PCBs** were found **in the** groundwater at the Vincent property. Afterwards, the City of Pittsfield in the late **1970s** and the 1980s was so concerned about its limited water reserves, that it began a testing **program** to search for usable groundwater. During a drought in 1981, the City was considering pumping water from **Lake Onota**. The city's concern for future water sources was quite clear. Based on that concern, the Berkshire Regional Planning Commission sought in **1983** a \$250,000 state grant for expanded monitoring to determine the extent of contamination under the Vincent property on East Street, and **for** a possible clean-up program. The application was rejected because the **state** felt that the site was a poor choice for potential drinking water, and that Pittsfield was competing against towns and cities forced *to* close already existing water supplies because of contamination.

The October 1999 Safe Water Act Ground Water Report to Congress speaks about the economic and ecological impacts of contaminated **groundwater**:

*“Ground water contamination can also impair the economic well-being of the nation through the following:*

*1. Removal of contaminants from &inking water sources through **remediation** or at the point of supply through treatment can be **very** costly.*

*2..**Relocating wells and finding** new ground water supplies is expensive and may not be technically feasible.*

*3. The presence of contaminants in ground water **adds** liability to the land owners of the property that is the source of the contamination.*

*4. Loss of ground water due to over-pumping and contamination can lead to **loss** of drinking water, agricultural and industrial supplies, and recreational uses.*

*... Contaminated ground water discharging into **surface** water can degrade surface water quality and affect surface water ecosystems.” (Page 19)*

The August 4, 1999 Request for Removal Actions Outside the River at the GE-Housatonic River Site Action Memo, Appendix D of the Consent Decree states:

*“The **groundwater** at the Site discharges to either **Unkamet Brook**, Silver Lake or the Housatonic River. Currently, control of the groundwater discharge to these **surface** waters consists mainly of **groundwater** extraction and treatment in support of preventing the migration of **NAPLs**. At a majority of the **groundwater/surface** water interface, there is no hydraulic control to prevent discharge to the surface water. Therefore, there is a potential threat of release of these hazardous substances to surface waters (i.e., sensitive ecosystems). Part of the proposed actions contained in this Action **Memorandum** are procedures to further characterize the **groundwater** contamination, the magnitude of the threat to the surface waters, and if necessary, to conduct **additional** response actions.” (Pp. 27-28).*

We **have** always advocated the most through clean-up strategies. And while we **appreciate** the cost **considerations** involved in thorough removal scenarios rather than partial removal and capping, we nevertheless question the wisdom and long-term efficacy of a policy that abandons a community’s ability to utilize its groundwater to meet its growing needs for water in the years to come.

**HRI** therefore suggests an expansion of the provisions of the Consent Decree regarding groundwater and NAPL. Not only should GE implement an increased monitoring and assessment program but should immediately expand **its** Groundwater Treatment Program to begin a systematic and comprehensive treatment regime of Pittsfield’s PCB-contaminated ground water throughout the Former Oxbow **areas**.

## 5. The Natural Resources Damage Award

HRI would like to challenge the provisions of Section XXII. Natural Resource Damages of this Consent Decree. Amount of money negotiated by the Agencies and the Trustees and the Settling Defendant for Natural Resource Damages fails to adequately reimburse the nation, the Commonwealth of Massachusetts, the State of Connecticut and the people who live within the reach of the Housatonic River and Silver Lake for the almost 70 year loss of these resources, and future losses until full restoration; and for the damages to them.

Unlike the typical **CERCLA** process, the expedited nature of these negotiations created a pressing need for the Natural Resource Trustees to quicken the process of assembling the Natural Resource Damage Assessment. We believe, as a result of this time crush, that the Trustees and their contractors, Industrial Economics, Incorporated of Cambridge, Massachusetts failed to adequately quantify lost availability to the public of the Housatonic River and Silver **Lake**, and damages to these natural resources, and therefore underestimated the natural resources liability of the Defendant

By excluding the Housatonic River Initiative from these negotiations, some of whose members have a lifetime experience with these resources, as hunters, fishermen, sportsmen, canoeists, hikers, etc. the Trustees failed to involve some of the most important and informed stakeholders. These stakeholders ought to have been involved in the critical discussions between the Plaintiffs and the Defendant regarding Natural Resource Damages.

From the very beginning of these negotiations, HRI has been asking to see both the raw data and estimated amounts of the Natural Resource Damage Assessment that **the** Trustees had prepared. We were told continually that these documents could not be made public during the negotiations and were considered to be privileged documents under the rules of the process.

On January 3, 2000 **HRI** received a copy of Industrial Economics, **Inc.**'s *Housatonic River Preliminary Natural Resource Damage* Assessment. Without having the pertinent data, we have, up to now, been unable in a timely **manner** to critically and competently offer an alternative assessment. While we will offer preliminary comments about the substance of this report, we can more generally speak to the failure of the Assessment process to reasonably involve a wide range of stakeholders with critical knowledge and experience with regard to the issues of the injuries **these** resources sustained as a **result** of GE's release of **PCBs** and other **toxics**, and to recreational and passive use losses. At a public meeting at the Lee Library, many informed members of the Berkshire community challenged the Trustees and the representatives of industrial Economics when they presented some of the preliminary estimates they had made regarding lost usage, but that presentation was often marked by the Trustees invoking the confidentiality provisions of the negotiations. We were given no figures.

Section 114 of the Consent Decree: Payment of Natural Resource Damages by Settling Defendant states:

“Within 30 days of the effective date of this Consent Decree, Settling **Defendant** shall make the following payments:

- a. **\$15,000,000** for Natural Damages, plus interest from the **date** of lodging of this Consent Decree;
- b. **\$600,000 as mitigation** for **wetlands** impacts associated with PCB contamination and with response actions at the Site, plus interest from the date of lodging of this **Consent** Decree;
- c. **\$60,000 as mitigation** for additional **habitat** impacts associated with **PCB contamination** and Removal **Actions** at the Site; and
- d. \$75,009 for Restoration Work to be performed by the **Trustees** in Silver Lake.” (Pp. 258-59)

Section 118. Restoration Work to be Performed or Funded by Settling Defendant sets forth a variety of restoration projects that are to accompany individual removal actions at the site, and Section 123 delineates a Dam Integrity Study, all of which are subject to the review and approval of the Trustees, and which are to **be** considered part of the Restoration award.

Section 124 states: “PEDA shall pay to the Trustees a total of **\$4,000,000** consisting of in-kind services **and/or** a percentage of Net Revenues. PEDA **intends to use good faith** efforts to **satisfy this** obligation as soon **as feasible.**”

a. In-Kind Services. The Trustees **may** accept on-kind services of any type that may be **offered** by or through PEDA, by the **City** of Pittsfield or by other entities, including **those** who may be involved in the redevelopment at the GE **Plant** Area . . . Such in-kind services may **include**, but are not limited to, building space for use **by** the **Trustees** (for restoration, **coordination**, administration and public information) and **habitat** enhancements at the **portion** of the GE Plant Area to be redeveloped under the Definitive Economic Development Agreement.”

HRI objects to the consideration of in-kind services as a **fulfillment** of PEDA’s **\$4,000,000** NRD obligation. This NRD award hardly begins to adequately compensate the Berkshire community for the loss of such a major resource: to further reduce potential financial compensation for building space, coordination; and administration, hardly **serves** the public interest. To the extent that the Trustees believe that **these** are pressing needs, they ought to have negotiated appropriate reimbursement from the Defendant; not reduced the public’s already meager compensation.



Let's examine the Industrial Economics, Inc. report On Page 1-3, in the *Limitations* section, the authors state: "The **nature of existing, readily available data and information limited our ability to complete all of the objectives described in the Statements of Work. In particular, our injury assessment does not identify and quantify all of the natural resources injuries likely to present in the Housatonic River . . .**

- **Contaminants of concern: Polychlorinated biphenyls (PCBs) are the primary contaminants of concern at this stage of the damage assessment. Though there are other hazardous substances present in the Housatonic River that may contribute to natural resource injuries, we have not addressed potential injuries resulting from exposure to substances other than the PCBs.**
- **Geographic Scope: . . . We have not assessed potential injuries and damages associated with Silver Lake and Unkamet Brook. Both may require additional scrutiny. In addition, we have not addressed specific injuries and damages that might be associated with the former oxbows located in Pittsfield, though we do recognize the potential importance of these areas to a final determination of restoration and compensation requirements. Furthermore, we recognize that these areas may be sources of continuing contamination to the Housatonic River.**
- **Injury Assessment: Existing data are available to characterize the nature and extent of contamination in the Housatonic River environment but do not in all cases provide sufficient information to document natural resource injury. As a result our injury assessment focused on a summary of the existing contaminant concentration data and the likelihood that those data are indicative of natural resource injuries (which could be documented through additional data collection and/or analysis).**
- **Restoration: Due to the limitations of the injury data and the dependence of restoration planning on the injury assessment, we focused our efforts in his area on the preliminary identification of categories of activities as well as specific activities that might be appropriate for the purposes of compensatory restoration. These activities do not include primary, physical restoration of natural resources (e.g., sediment removal), the specification of which would be the primary outcome of a completed injury assessment. (Pp. 1-3 to 1-4) (Emphasis added).**

The clearly stated limitations of the report itself buttress our previously stated concerns that the Trustees entered the negotiations with insufficient data: limited natural resource injury data; a failure to include potential injuries resulting from exposure to substances other than the PCBs; and the failure to assess past active and passive use loss of Silver Lake are the most glaring examples. We remind the Agencies that many older residents of Pittsfield have spoken fondly of swimming in both the Housatonic River and Silver Lake, and Silver Lake was also the site of winter sports and outings.

The acceptance of a Natural Resource Damage Award absent a thorough assessment for past use loss of an extraordinarily popular 26 acre lake in the heart of Pittsfield reveals a major weakness in this settlement. Similar questions are raised by the lack of sufficient data for the Housatonic River.

We have written about the ongoing struggle for reliable data concerning the entire **GE/Pittsfield/Housatonic** site. A quick look at the information sources that Industrial Economics relied upon reveals why they've acknowledged the limitations of their work – all the data they accessed was generated by GE, beginning with the MCP Interim Phase 11 Report of 1991 on through the May **1996** PICM that we've previously referred to. **It is** our belief that these reports **have systematically** unreported the contamination at these sites. The Building **68** remediation coupled with the EPA's most recent acknowledgment of the contamination of the West Branch revealed major PCB contamination at levels and in places previously unreported. As this report reveals this lack of accurate data regarding contaminated river sediments and bank soils is absolutely critical. The authors state in Exhibit 2-1: **Injury Assessment Summary – Housatonic River NRDA**, on Page 2-3:

*“Sediments are the **key** link in the pathway to biological resource injuries. Sediment toxicity testing **and/or** a comprehensive review **of** the sediment toxicity literature is recommended. . . Contaminated floodplain soils may also be an important **link** in the pathway to biological resource injuries. Toxicity testing **may be** warranted.”*

Because of the time rush associated with the negotiations, the Trustees were unable to access data that only now is emerging as a result of the most recent EPA testing and studies on the River.

The authors note in Exhibit 2-1: **Injury Assessment Summary – Housatonic River NRDA**, their lack of sufficient injury data about birds on Page 2-3:

*“**Lack of organism-specific data** limits the current value of existing toxicity literature; expert opinion needed to judge likelihood of injury given PCB concentrations to which birds **are potentially exposed**” (emphasis added).*

New data generated by Susan **Svirsky** and her team at EPA has just emerged about the very high levels of contamination in young wood ducks is only one example. These PCB levels were the highest levels ever found in wood ducks in the nation (more than 17 times higher on average than levels found at **the** Lower Fox River Superfund Site in Wisconsin). These levels triggered an immediate health advisory by the Massachusetts Department of Public Health alerting hunters not to consume wood ducks from Pittsfield south to Rising Pond in Housatonic, and for hunters to skin and remove fat from ducks found in southern sections of the river. Those hunters were urged to limit intake to two **meals** a month. These ducks accumulated these high levels in a very short time, as a result of feeding on plants and small invertebrates.

On Page 2-16, in their Data Review of Biological Resources -Birds, the authors note **once more** their lack of data about birds:

*“Previous investigations have not included the collection of organism-specific data that could be used to assess the effects of PCBs on bird populations that utilize habitat provided or influenced by the Housatonic River.*

*“We note that a terrestrial ecosystem assessment (ChemRisk 1994) evaluated the density, diversity and reproductive success of avian species in a 5.85 hectare portion of the floodplain forest between New Lenox Road and Woods Pond. . . . This study concluded that the weight of evidence indicates that the ‘floodplain’ ecosystem . . . is not impacted by the presence of PCBs.”* (Emphasis added).

This is yet another perfect example of how a **GE-funded** study either totally ignored or drastically underestimated the quantity and/or the effects of **PCB**-contamination. The same floodplain ecosystem they claimed in **1994** had no adverse impact as a result of **PCBs**, is the cause in **1999** for the highest known levels of **PCB** contamination found in wood ducks.

This lack of critical data also impacted the consultants’ ability to adequately gauge injury to invertebrates and the authors have noted similar concerns about the lack of organism-specific data regarding mammals. Additionally, the authors state: *“In the months to come more EPA studies will emerge with more critical information about a whole host of natural resource injuries.”*

To quantify natural resource injuries, and gauge an appropriate restoration award, it is necessary to **first** establish a baseline condition for **the resource**, *the “conditions that would have been expected at the assessment area had the . . . release of hazardous substances not occurred . . . .”* While the authors note that GE began to use **PCBs** in 1932 and continued their active use until 1977, they state that because **PCBs** were **first** detected in **fish** and sediments approximately 20 years ago, and because *“many damage assessments have limited the quantification of injury and damages to the period that began with the promulgation of CERCLA in December 1980”* they have chosen *“the date of CERCLA promulgation as a conservative starting point for injury determination and quantification.”* (Pp. 2-4 to 2-6) (Emphasis added).

Section 9607(f) (1) of CERCLA states:

*“There shall be no recovery under the authority of subparagraph (C) of subsection (a) of this section where such damages and the release of a hazardous substance from which such damages resulted wholly before December 11, 1980.”* (Emphasis ours).

The fact of the matter is, that while GE stopped its use of **PCBs** before December 11, 1980, there has been since that time, and continues to be, a continuing release of **PCBs** and other substances into the Housatonic River and Silver Lake., GE, after all these years, has not yet controlled the release of hazardous substances into these natural resources and, as a result, there is on-going damage.

We believe Industrial Economics, Inc. has misread the intent of **CERCLA** in this matter. And their decision to limit the “Temporal Scope” for injury determination and quantification to the onset of **CERCLA** does a grave disservice to **all** those whose activities in and on the River and Silver Lake have been limited all these years by contamination. Everyone in Berkshire County knew that pollutants had invaded the River and Silver Lake beginning in the 1930s with the use of PCB-oil at the GE facility.

They smelled **PCBs** in the air and they had friends and family working at GE who spoke about the stench in the factory buildings and they knew men who suffered rashes from contact with **Pyranol**. They stopped swimming. Take a simple walk in the **Lakewood** community of Pittsfield and you can find people who can speak about what happened to the river and Silver Lake. A truly accurate portrait of the baseline condition can be drawn from the drastically changed actions of real people, not the compilation of statistics or the promulgation of legislation in Washington, D.C. Hiring consultants from Cambridge, Massachusetts may not have been the best idea when it came to accurately establishing a true picture of how the **Berkshires** felt about and utilized its own natural backyard.

Another important factor associated with an injury assessment is endangered and threatened species. The authors note:

*“As reported in the PICM (HE&C 1996), a total of 120 species of flora and fauna that have protected status at the state and federal level are known or likely to occur in the Housatonic River environment. We do not currently have information that would lead us to conduct a focused injury assessment of one or more of these species.”*

As for **“Collateral Injury During Remediation”**, the authors state:

*“Our assessment of injury focuses on the current state of resources associated with the Housatonic River. However, for restoration planning purposes, it may be necessary to estimate the extent of additional injury that might occur as a result of remedial activities (e.g., loss of wetlands due to dredging) and include this estimate in the final accounting of injury.”* (Pg. 2-6) (Emphasis added).

There are many other examples where **the** consultants were hampered by the lack of data: injury to mammals, including mink, reptiles and amphibians, and an assessment of groundwater resources.

In light of concerns we’ve noted in the section regarding the Former **Oxbows** and Groundwater we note the authors’ statements on Page 2-21 concerning injury assessment for Groundwater Resources:

*“We have not yet reviewed the groundwater data collected as part of the investigations of the other GE-Pittsfield disposal sites.*

***"In general, groundwater is injured if concentrations of hazardous substances in the groundwater exceed existing standards for a potable drinking water supply. Injury can also be established if concentrations of hazardous substances in the groundwater are sufficient to cause injury to other natural resources (e.g., surface water) (§# CFR 11.62(c)(1)(iv))."***

***"As noted in Chapter 5, injury to groundwater resources would be a significant concern if the injury were based on the degradation of a public water supply. Without such an occurrence, the groundwater resource would be important only in the context of its contribution to the contamination of surface water." (Pg. 2-21) (Emphasis added).***

Clearly, contaminated groundwater has and continues to be a threat to the Housatonic River. But even beyond that clearly acknowledged injury to the River, we contend that the Agencies have overlooked Pittsfield's past desire to utilize its groundwater. The de facto contamination and loss of a **highly** valuable potential source of potable water—a source the City invested funds to study and develop — surely needs to be considered for possible natural resource damage claims.

Industrial Economics' Assessment states on Page 2-22:

***"The services that the Housatonic River provides can be divided into three general categories: human use-recreational, human nonuse (i.e., passive value), and ecological (i.e., habitat). In terms of restoration, the first two services are addressed separately through our calculation of a preliminary estimate of compensable values for recreational and passive use losses (which relies largely on the observed injury to fish). Additional injury assessment must be geared toward the third category. Therefore, future data collection and/or analysis must focus on the exposure of different resources to PCBs through a variety of pathways. This effort should emphasize the effects that PCBs in the environment have had or are having on biological resources."***

With yet another caveat regarding inadequate data, Industrial Economics made several estimates regarding damages:

***"The preliminary estimates we present in this chapter are based entirely on existing data, including interviews with resource managers and other knowledgeable parties, a review of studies of recreational behavior on the Housatonic and other rivers in Massachusetts and Connecticut, and a review of the economics literature. The results presented are for settlement and case management purposes only. These analyses could be extended and refined through primary data collection and analysis at this site."***

***"... compensable damages for those categories for which preliminary damage estimates have been developed include \$11 million to \$32 million in direct use losses and \$25 to \$250 million in passive use losses. Recreational fishing damages are estimated to be on the order of \$10 million to \$30 million. This range reflects uncertainty in the assumed recovery period (i.e., the date on which the human health risk advisories will be lifted), as well as uncertainty in the damages associated with fishing trips still taken to the river, despite the presence of elevated levels of PCBs. Recreational boating damages are believed to fall in the range of \$1 million to \$2 million; this range***

*also reflects uncertainty in the assumed recovery period. Compensable losses associated with changes in recreational behavior can also be expressed in terms of the number of 'trips lost' or 'trips with diminished value,' as described in the following sections. Passive use losses are thought to **fall** in the range of \$25 million to **\$250 million**. This range **reflects uncertainty in the extent of the market** ' for passive use values for the Housatonic environment, as discussed below.*

*While the presence of elevated levels of **PCBs** has likely had an effect on hunting and trapping activities near the Housatonic River, the relatively small number of participants involved leads us to conclude that this category of damages is likely to be small. In **addition, wildlife** viewing and other general outdoor activities may have been, and **continue** to be, affected by the presence of **PCBs**. However, no **data** are available to **quantify** this **category** of loss. Finally, economic damages may be **associated** with (1) reductions in the value of **state-owned** land in the Housatonic **River floodplain**; (2) **contamination of groundwater** resources in the vicinity of the **GE facility**; (3) the increased cost of development in and near the **river**, as a **result** of the presence of **PCBs**; and (4) a diminishment in **ecological services** provide (sic) by this resource. These categories of damage, however, are outside the scope of this preliminary damage assessment." (Page 3-1 to 3-2) (Emphasis added).*

As we have delineated, and will discuss farther, while we believe this report reveals major flaws in the assessment process, we are nonetheless struck by the preliminary figures of between \$11 million to \$32 million for Recreational Damages, and \$25 million to **\$250** million for Passive Use Losses. While Industrial Economics cautions that these two categories cannot be automatically added because of possible overlap the sums nevertheless exceed by a large factor the amounts the Agencies and Trustees negotiated with the Defendant.

As an exercise let's **reduce** the combined sums by 25% to account for possible duplications in accounting for lost use. We are left with a combined range of \$27 million to **\$211,500,000**.

Now let's imagine a Resource Damage Assessment that takes into account the newly acquired data being gathered by the EPA's Susan Svirsky **and her** team working on the Ecological Risk Assessment. Add the emerging data about tree **swallows**, amphibians, small mammals and minks, etc. Add an accurate assessment about the lost use and ecological damage to Silver **Lake**. **Take** into account the fact that **we** now know the West Branch of the Housatonic River has large levels of PCB contamination, and assess that ecological damage. Do the same for Goodrich Pond which we now know has high levels of **PCBs** in bank soils. Add the appropriate assessment for loss of Pittsfield's groundwater.

And with a Berkshire-based comprehensive study, more accurately estimate how wildlife viewing and other general outdoor activities have been, and will continue to be, affected by the presence of **PCBs**. This is particularly important because many of us who have worked diligently to reawaken an appreciation for the Housatonic River, know all too well that the Berkshire **community early** on understood how poisoned their **river** was. While **PCBs** cannot be seen, their presence was palpable throughout the County, and extraordinarily large numbers of people **turned** their back on the River. That some poor people and some particularly hardy and stubborn fishermen continued and continue to eat **fish** from the River is quite different from the larger, more pervasive reaction of the community, which early on considered the River damaged goods.

A similar dynamic occurred with Silver Lake. Because of this, a Resource Damage Assessment that starts the clock on lost use with the passage of **CERCLA legislation thoroughly** misperceives the everyday experience and history of Berkshire County. Industrial Economics, Inc. made a good faith effort to fill its data gaps, but much of the pertinent data regarding lost use requires knowledge of, and experience with, Berkshire life.

On Page 3-3, the authors state:

*“In **order** to develop estimates **of** lost or diminished value, we generally look to compare fishing pressure at a contaminated site prior to the issuance **of public health** advisories with current pressure (i.e., **pressure** given the presence of contaminants). Such comparisons of **baseline** angler behavior given a contaminant problem **allow us** to estimate, at a minimum, the number of trips lost or **displaced from** the site. In **this** instance, however, **data on fishing pressure prior to the public health** advisories **generally** do not exist . . . “ (Emphasis added).*

We respectfully submit that this information can be gathered by interviewing older active **and retired** members of the many sportsmen’s’ clubs active in the County. George **Darey**, HRI Board Member and Chairman of Massachusetts Division of **Fisheries** and Wildlife, is only one of several local residents who grew up near the Housatonic and has fished and trapped for more than 60 years. An organized effort could gather the extension anecdotal testimony that is available, and, in the process fashion an accurate portrait of how many people fished before **fish** advisories were posted. In fact, it was Massachusetts **Fisheries** and Wildlife who posted the river when it became apparent that the other Agencies hadn’t gotten around to it.

Industrial Economics begins without accurate baseline data for fishing, then compounds the problem by its choice of current data for various stretches of the River from New **Lenox** Road south:

*“For each of these segments we consider both current and potential fishing pressure based on various **data sources and assumptions**. For example, for the New **Lenox Road to Woods Pond segment we use data from a 1985-86 Connecticut angler survey to estimate potential fishing trips**. Specifically, we use the data from Lakes **Lillinonah and Zoar** given their comparability to the New **Lenox Road-Woods Pond segment in terms of fishery type (warm water), fish species, and fishing method (boat)**.*

*We then assume that the 1985-86 data an adequate approximation of annual potential fishing pressure from 1980 forward To estimate actual fishing trips for the New Lenox Road-Woods Pond segment, we use data from a 1992 creel survey that includes fishing pressure estimates for Woods Pond and for the river segment between Woods Pond and Pittsfield. We calculate the fishing pressure per mile on the latter segment in order to estimate the number of trips on the portion of the segment downstream of New Lenox Road” (Pp. 34 to 3-5) (Emphasis added).*

With all due respect, it is possible to gather accurate data for current use without having to extrapolate from Connecticut surveys. George Darey, in particular, has an intimate knowledge of the New Lenox Road to Woods Pond stretch; canoes it and fishes it frequently. There are many people who have long-term past and continuing experience fishing that stretch of the river.

As Exhibit 3-3, Recreational Fishing Damages Due To PCB Contamination Of The Housatonic, demonstrates, all final estimates for fishing losses in Massachusetts begin with 1980. The lack of prior data severely reduces the estimated damages.

We appreciate the fact that the Trustees and Agencies settled for a significant remediation package, and that such remediation fulfills in part the mandate of the Trustees to ensure that the injured resources be restored. Nevertheless, the Plaintiffs' and public's interest is ill-served by an underestimation of the damages these resources incurred and an inaccurate accounting of the lost use of these resources.

We believe the public interest would be better served by conducting a full-fledged Natural Resource Damage Assessment that better incorporates the newly emerging EPA data and more accurately accounts for past and future lost Massachusetts usage.



## SOME VERY RECENT PCB PUBLIC HEALTH DATA

HRI would like to put our concerns about remediation levels in a larger public health context. Recent history has taught us that **there** is almost always a lag between the introduction of potentially-dangerous chemicals and a clearly demonstrated understanding and quantification of the risks to human health.

The latest research on **PCBs** reveals a trend: lower levels than previously expected are causing cancers and creating developmental problems. Recent research seems to suggest that **neurodevelopmental** effects are the critical effects – the effects that show **up first** as exposure levels increase from zero. These results have been noted both in animal study and human studies.

According to a June, 1998 *article* entitled “Assessing **the Cancer Risk from Environmental PCBs**” by Vincent James Cogliano, Chief, Quantitative Risk Methods Group, **USEPA**:

Twenty years after their manufacture was halted, **polychlorinated biphenyls (PCBs)** remain a major environmental concern.

Standards often have been based on **cancer** risk, yet before 1996 only commercial mixtures with 60% chlorine had been adequately tested. . . . A recent study compared the cancer potential of the commercial mixtures Aroclors 1016, 1242, 1254, and 1260 **(1)**. Its results strengthen the case that all PCB mixtures can cause cancer, although different mixtures have different potencies.

(Environmental Health Perspectives, Vol. 106, No. 6, Page 3 17)

Cogliano cites the 1998 **Mayes** study which found that a variety of Aroclors caused **significant** increases in liver cancer in rats. Some of the Aroclors were linked to increased thyroid cancer in male rats. According to Cogliano, the **1996 Brunner** rat study found a 20% increase in liver tumors in females when they were exposed to doses of 2.5 ppm of **Aroclor 1260**; and a **48%** increase when exposed to levels of 100 ppm. The **Brunner** study also revealed that less than lifetime exposure to the more persistent **mixtures** may pose disproportionately high risks. **Aroclor 1260** is common to the **GE/Pittsfield** site.

A December 18, 1999 article in *New Scientist* reports on a link between **PCBs** and the death of **harbour** porpoises they studied **since 1990**. Peter Bennett and Paul Jepson of the Institute of Zoology in London have found that harbour porpoises who **died** stranded on British coast had an average level of **PCBs** of 3 1.1 milligrams per kilogram of blubber. They compared these levels to levels found in otherwise healthy porpoises who suffocated in fishing nets. These healthier porpoises had an average level of **PCBs** of 13.6 milligrams per kilogram of blubber.

In a paper delivered at the December 1999 International Symposium on Environmental Endocrine Disruption, Dr. John Peterson Myers noted:

*The **levels** of exposure known to cause serious **effects** in laboratory **experiments** with animals is **dramatically lower**, thousands **if not millions of times lower**, than what was **even five years ago toxicologists thought** was relevant.*

*Every hormone system that has been studied carefully has been **found** vulnerable to one endocrine disruption or another. ... [and] the research is forcing **us** to ask about the adult **consequences of fetal exposure**. **Niels Skakkebaek's** work with testicular cancer, **Fred vom Saal's** with prostate **effects**, **Dick Peterson's** with dioxin impacts on sperm count, and many many others, fundamentally **challenge generations** of studies that **appear to refute the links between chemical exposure and human health**. (Emphasis added).*

Fetal exposure seems to be increasingly critical. A Science News article of November 27, 1997 **entitled** "Breast Milk: a leading source of **PCBs**" by Janet **Raloff** (Exhibit 24) reports that a Netherlands study of 137 Rotterdam **pre-schoolers** found that those children who were breast-fed had 3.6 *times* more **PCBs** in their blood **plasma** that those who were **fed** formula.

A December **21, 1999** report by Reuters **Health** Information highlights an article in the December **18/25** issue of The **Lancet** that links organochlorines such as DDT and **PCBs** with gene mutations found in patients with cancer of the pancreas.

The Reuters report declares:

*The study is the **first** to link a genetic alteration commonly **found in** -pancreatic cancer patients and **an** environmental substance, according to a statement issued by the editors **of the journal**.*

*'The results . . . suggest new roles **for** organochlorines in the development of several cancers in **human** beings, ' according to Professor **Miquel Porta from Institut Municipal d'Investigacio Medica** in Barcelona, Spain and associates. .*

***Patients** who were already diagnosed with pancreatic cancer were 5 to **10 times** more likely to show increased blood levels of organochlorines than were **patients hospitalized for reasons other than cancer** . . . (Emphasis added)*

The **Lancet** article states:

Organochlorine compounds such as **p,p9-DDT**, **p,p9-DDE**, and some **PCBs** could play a part in the pathogenesis of exocrine pancreatic cancer through modulation of K-ras activation. (“Serum concentrations of **organochlorine** compounds and K-ras mutations in exocrine pancreatic cancer” **Miquel Porta**, etc. The **Lancet**, December 18.1999, **v354 i9196, p2125**.)

A January 3, 2000 article on the **WebMD website** by **Rochelle Jones** reports that:

*Rapidly falling sperm counts in the United States. Rising rates of genital defects in male infants. Unprecedented numbers of cases of testicular cancer among young American males. Scientists are increasingly worried that these problems are being caused by **environmental** estrogens, **man-made** chemicals capable of interfering with the hormones that regulate the **male** reproductive system. . . .*

*A review of **data from** 61 studies, published in **BioEssays** in 1999, found that the dramatic decline of average sperm density in the **United States and Western Europe may be even greater than previously estimated**. An earlier review, conducted by researchers at the University of Copenhagen in 1992, found that sperm density **had** fallen by **50** percent between 1938 and 1990. In the 1999 reanalysis of the controversial studies, **Shanna Swan, Ph.D.**, a professor at the University of Missouri-Columbia, confirmed the findings and concluded that the decline **may** be more than 50 percent. (Emphasis added).*

The people of the **GE/Pittsfield** site have had and continue to have many routes of exposure. According to Vincent James **Cogliano**, Chief, Quantitative Risk Methods Group, **USEPA**:

*Capacitor manufacturing workers exposed to a series of commercial mixtures with **41-54% chlorine** had increased mortality from liver, gall bladder, and biliary tract cancers, gastrointestinal tract cancers, or malignant melanoma. An analysis of these and a smaller study found the combined results significant for liver, gall **bladder**, and **biliary** tract cancers and for malignant melanoma. Earlier, petrochemical **refinery** workers exposed to **Aroclor** 1254 and other chemicals had **significantly** increased **mortality** from increased melanoma. More recently, electric utility workers exposed to **PCBs** had significantly increased mortality from malignant melanoma and brain cancer.*

Recent *case-control studies* have found a significant association between *non-Hodgkin's lymphoma* and PCB concentrations in adipose tissue and serum. In a general population, dietary consumption of rice oil accidentally contaminated with PCBs and chlorinated dibenzofurans, which can be formed when PCBs are heated above 270°C, was associated with significantly increased mortality from liver cancer and lung cancer. (Id, Pg. 317)

PCBs bioaccumulate, and as the chemical works its way through the food chain, the most potent PCB congeners, and the most difficult to eliminate, are passed on and up. Along the way PCBs can undergo a chemical transformation, where they no longer resemble the original Aroclor. Cogliano writes:

... ingesting contaminated sediment or soil or inhaling contaminated dust can pose relatively high risks. ... Bioaccumulated PCBs appear to be more toxic than Aroclors and more persistent in the body. The Aroclors tested in laboratory animals were not subject to prior selective retention of persistent congeners through the food chain. For exposure through the food chain, therefore, risks can be higher than those estimated in this assessment. . . . Early-life exposure is treated with special concern because of the potential for higher exposure during pregnancy and nursing and the possibility of greater perinatal sensitivity. Metabolic pathways are not fully developed in human infants: for example, some nursing infants receive a steroid in human milk that inhibits the activity of glucuronyl transferase, reducing PCB metabolism and elimination. In animals, Aroclor 1260 induced high incidences of liver tumors when exposure began early in life and lasted a short time. ... It is, therefore, important to assess early-life exposure through human milk and other pathways. . . . Finally, the EPA's assessment proves that good research can improve risk assessments. (Id, Pp. 320-322). (Emphasis added).

Recent studies have found a link between low levels of PCB exposure with immune system suppression and developmental neurotoxicity. Research in the Netherlands has linked dietary exposure to PCBs and dioxins -found in dairy products - with decreases in cognitive functioning. Negative effects were found at levels as low as 3 ppb in maternal plasma. This 3 ppb level corresponds with our current background level in the United States.

The fact that levels as low as 3 ppb have been linked with observable problems in cognitive functioning is troubling given the results of the September 1997 Massachusetts Department of Public Health study, "Housatonic River Area PCB Exposure Assessment Study."

**HRI** was critical of this study and questioned its methodology and the fact that only 79 participants had blood drawn. Nevertheless, the results are illuminating. Serum PCB levels ranged from not detect to 115 ppb, with a mean of 9.07 ppb and a median of 6.60 ppb. 53 of the 69 participants who had no opportunity for occupational exposure had a mean serum PCB level of 5.77 ppb (median 4.86 ppb). Those with opportunities for occupational exposure had a mean level of 15.79 ppb (median 8.81 ppb).

Participants had a range of exposure scenarios: fish-eating, eating fiddlehead ferns from the watershed, canoeing in the Housatonic, birdwatching, other recreational activities along the River, hunting, etc.

When evaluating these results, the Massachusetts Department of Public Health relied on an outdated estimate of U.S. background serum PCB levels of 4 to 8 ppb. They therefore found that these levels fell within the normal background range.

**HRI** believes the most recent data shows background serum levels at 1 to 3 ppb. In which case, Berkshire County levels range from 2 to 8 times higher than national levels, and there is serious reason to be concerned that as much contamination as possible is removed from our **community**.

## **CONCLUSION**

As with much legislation, RCRA and CERCLA attempt to confront and provide remedies for extraordinarily complicated problems. And there are various interpretations about how best to implement the intentions of the laws in the real **world** of hazardous waste **sites**, **and** the competing interests of the public, the regulatory agencies charged with statutory responsibility, and the responsible parties.

The intrinsic problem with excluding knowledgeable members of the public from settlement negotiations is that they are without an intimate understanding of what might have been better negotiated. Compromise is strongest when it is forged by all the parties who must live with its consequences.

That said, **HRI** believes a better settlement can be crafted. **HRI** specifically calls for:


- **More extensive removal of contaminated sediments and bank soils in the 1st 1/2-Mile Stretch of the Housatonic River**
- **A remediation strategy that does not require a geotextile liner for the River**
- **Construction of a slurry ditch, wherever technically feasible, to more effectively guarantee source control along the 1/2-Mile Stretch of the Housatonic River**

- **Treatment of the contaminated sediments and bank soils instead of landfilling at Hill 78 and Building 71 landfills**
- **Excavation and removal of all contaminated sediments and bank soils in silver Lake**
- **An extensive sampling program, at depth, for the West Branch; and a thorough removal of all contaminated sediments and bank soils**
- **A thorough investigation of the GE contaminated wood giveaway program and complete cleanup of affected properties**
- **A thorough investigation of buildings with PCB-contaminated earth floors and a complete cleanup of affected properties**
- **Excavation and removal of all PCB-contaminated sediments and bank soils in the former Oxbow Areas, and especially the Newell Street properties, to the Massachusetts DEP Default Standard of 2 ppm**
- **Immediate treatment of PCB-contaminated groundwater throughout the GE/Pittsfield site**
- **A more accurate Natural Resource Damage Assessment and a Natural Resource Damage Award from the Defendant that better compensates the Trustees for damages and lost use.**

Therefore, HRI respectfully asks you to modify this Consent Decree to better protect human health and the environment.

Respectfully submitted by:

Tim Gray,  
Executive Director

A handwritten signature in black ink that reads "Mickey Friedman". The signature is written in a cursive, flowing style.

Mickey Friedman  
Board Member

For the Board of Directors and Members of the **Housatonic** River Initiative  
20 Bank Row  
Pittsfield, Massachusetts 01201  
(413) 499-6112

## CLEAN WATER ACTION

3/9/00

Ms. Cindy Huber  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Ms. Huber,

I am writing on behalf of Clean Water Action members in Pittsfield Massachusetts regarding the PCB clean up consent decree between EPA Region 1 and GE. Specifically, ~~we~~ would like to comment on five specific areas of concern.

1. Protecting the health of children attending Allendale Elementary School.

It is our understanding that PCB's will be consolidated in a "landfill" approximately 50 yards from the school. EPA's proposal to concentrate a known neurotoxin and endocrine disrupter 50 yards from children is simply unconscionable and unacceptable. instead of moving **forward** with the current plan, EPA should engage local citizens in a decision making process to secure a safer alternative.

2. Hill 78

It is our understanding that Hill 78 is a Tier One hazardous waste site. Furthermore, it is our understanding that GE will not be required to remediate Hill 78. Hill 78 obviously poses a serious health threat to the elementary school children at Allendale Elementary **School** and the community at large. EPA should absolutely require GE to employ the most modern clean up technologies to prevent PCB's in Hill 78 from threatening public health.

3. Contaminated Oxbows

It is our understanding that EPA is not (a) requiring GE to detect and clean up all oxbow sites, and (b) plans to use tax payer dollars to subsidize GE's efforts to clean up specific sites such as the GE Newell Street parking area

EPA should implement a "Polluter Pay" principle and require GE to locate, assess and clean all oxbow sites. Furthermore, under current agreement GE appears to be guilty of a land "takings". EPA should require GE to compensate land owners for loss of property values.



#### 4. Silver Lake

EPA should adopt a “precautionary principle” approach to protecting public health. Given that Silver Lake is heavily contaminated with PCB’s, EPA should implement a ban on fishing and swimming until more data is available post remediation. Again it is important to note the serious health threats PCB’s pose to the developing fetus and to children.

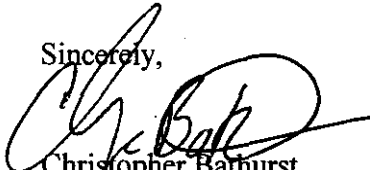
#### 5. Natural Resource Damage

EPA **should** promote **further** dialog with the citizens of Pittsfield and allow a public assessment of the preliminary natural resource damage report. From our perspective, an assessment of damage caused by PCB contamination throughout the city of Pittsfield as well as a river that travels through two states must be determined in the light of public discourse before settling on a **final** cost.

In closing, I would like to remind you that the EPA’s main function should be to protect the environment and public health. GE has been extremely irresponsible with its handling of extremely dangerous pollutants and with informing the public. EPA should hold GE 100% responsible for cleaning up it’s mess. EPA should employ the “polluter pay” principle and not force tax payers to subsidize a multi-million dollar company.

I want to thank you for the opportunity to comment on these critical areas of concern. I look forward to your response.

Sincerely,



Christopher Bathurst

Clean water Action Alliance of Massachusetts

DATE: March 8, 2000

TO: XI Signatories to the Housatonic Rivet / GE Site Consent Decree

RE: Recommendation for Support to Consent Decree

**MA-46**

Ladies and Gentlemen:

It is time to flex **some bureaucratic** muscle. You all worked very hard to achieve what was **believed** to be impossible. The agreed to Consent **Decree** is clearly a solution which accommodates the vast majority of Berkshire County residences and the momentum you created should not be stopped or slowed because of **the** baseless actions of a few individuals.

I moved my young family to the area three (3) years ago because I felt there was great potential here. The potential and **future** of Pittsfield and Berkshire County greatly depends upon the timely clean up of this prime commercial and **industrial** real estate. The **sooner the** site is cleaned, the sooner we can market the opportunity for new businesses to come into Pittsfield, Massachusetts. With **new** business will come stability and the outlook of a bright future for Berkshire County.

We've **come** so far; don't second-guess this landmark agreement that provides so much opportunity to both Berkshire County. and the state of Massachusetts.

Sincerely,



Mark McKenna  
VP, Commercial Loan Officer

cc: The Chamber of Commerce of the **Berkshires**, Governor Cellucci, Lieutenant Governor Swift, Senators Kennedy, Kerry and Nuciforo, Congressman **Olver**, Representatives Bosley, Kelly, Larkin and Hodgkins



MA-47

**DISTRIBUTION COVER SHEET**

**All Signatories to the Housatonic River/GE Site Consent Decree**

DATE: March 3.2000

TO: FOR THE **UNITED STATES OF AMERICA**  
Lois **J. Schiffer**, Assistant Attorney General  
Cynthia S. **Huber**, Senior Attorney  
Catherine Adams Fiske  
Donald Stem, United States Attorney  
Karen Goodwin, Assistant United States Attorney  
Mindy **Luber**, Regional Administrator, Region 1  
Timothy M. Conway/John W. Kilbom, Senior Enforcement Counsels  
Steven A. Herman. Assistant Administrator •

FOR **THE COMMONWEALTH OF MASSACHUSETTS**  
Honorable Thomas F. Reilly, Attorney General  
Dean **Richlin**, First Assistant Attorney General  
James R. Milkey, Assistant Attorney General  
Matthew **Brock**, Assistant Attorney General  
Nancy E. Harper, Assistant Attorney General  
Lauren A. Liss, Commissioner  
Robert Durand, Secretary

FOR THE STATE OF CONNECTICUT  
Honorable Richard Blumenthal, Attorney General  
John M. Looney, Assistant Attorney General  
Richard F. Webb. Assistant Attorney General  
Arthur J. Rocque, Jr., Commissioner of Environmental Protection

FOR GENERAL ELECTRIC COMPANY  
Stephen D. Ramsey, **Vice** President  
Michael Carroll. Manager of Pittsfield Remediation Programs

FOR THE CITY OF PITTSFIELD  
Honorable Gerald S. Doyle, Jr., Mayor  
Thomas E. **Hickey**, Jr., Interim Director, PED  
Jeffrey M. Bernstein, Esquire

66 West Street  
Pittsfield  
Massachusetts  
01201  
Tel (413) 499-4000  
Fax (413) 447-9641  
chamber@berkshirebiz.org  
www.berkshirebiz.org

Affiliates:  
Central Berkshire County  
Development Corporation  
(CBCDC) & Quality  
Educational Scholastic  
Trust, Inc. (QUEST)

FROM: Chamber of Commerce of the **Berkshires**

MAR 7 2000





**CHAMBER OF COMMERCE**  
OF THE BERKSHIRES

DATE: March 3, 2000

TO: **All Signatories to the Housatonic River/GE Site Consent Decree**  
(Please see distribution **cover** sheet.)

FROM: The Chamber of Commerce of the **Berkshires**

SUBJECT: Recommendation to **Support** the Consent Decree

We are **disturbed by** the actions **of a few** people **who** are taking steps to **undermine** your conscientious **and** thoughtful efforts to achieve an historic settlement to **remediate** environmental issues associated with the **Housatonic** River and the former General Electric site in Pittsfield. On this procedural issue, please take the position that **the** petitioners have no **standing** in this case and oppose their petitions for intervention.

The Chamber of Commerce of the **Berkshires**, with more than 1,200 member companies, urges you to support the Consent Decree -as it stands -- and keep the positive momentum going. In fact, OUT Board of Directors unanimously voted this week to **approve** the **following** motion:

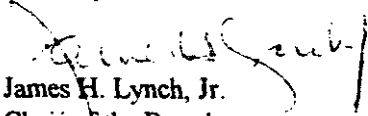
The Chamber of Commerce of the **Berkshires** continues to support the **negotiated** PCB settlement and Consent Decree. We oppose any intervention that would **allow** re-negotiation of the Consent Decree

Attached is an advertisement that we ran in *The Berkshire Eagle* on March 2, 2000 in support of the Department of Justice's approval of the pending Consent Decree. We hope that it **clearly states our** desire for you to oppose any intervention. If you have any questions **on** this, don't hesitate to **call** us.

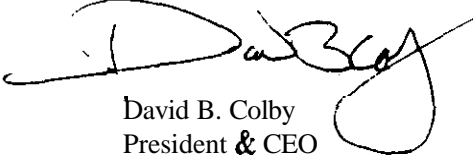
**In closing**, we encourage you to stand by **your** landmark agreement, which protects the best **interests** of the thousands of employees **within our** Chamber. **There** is too **much at stake** to let this Consent Decree unravel.

66 West Street  
Pittsfield  
Massachusetts  
01201  
Tel (413) 499-4000  
FAX (413) 447-9641  
chamber@berkshirebiz.org  
www.berkshirebiz.org

Sincerely,



**James H. Lynch, Jr.**  
**Chair of the Board**  
(Greylock Federal Credit Union)  
413/236/4 109



David B. Colby  
President & CEO  
413/499-4000

cc: Senator Kennedy, Senator Kerry, Congressman **Olver**, Governor **Cellucci**, Lieutenant Governor **Swift**, Senator **Nuciforo**, Representatives **Bosley**, **Kelly**, **Larkin**, and **Hodgkins**

*Affiliates:*  
Central Berkshire County  
Development Corporation  
(CBCDC) & Quality  
Educational Schools  
Trust, Inc. (QUEST)



## Chamber of Commerce of the Berkshires supports EPA'S participative approach to clean up environmental problems

Far **better** than a **Superfund** designation, the pending consent decree offers the promise of a timely **clean up** of the **Housatonic River** and **brownfields** in **Pittsfield**.

The **Environmental Protection Agency** (EPA) engaged **countless resources**, using state-of-the-art scientific knowledge and **remediation** technology to protect the best interests of the residents of and visitors to our region. And, our **community** was **well represented** in the **process**. **During** two **lengthy** public comment periods, citizens had the **opportunity** to comment on **the** content of the negotiated agreement. In addition two **dozen people** - about a **fourth** of them Chamber members - are participating on the Citizens Coordinating Council for regularly scheduled briefings by EPA **and** dialogue with EPA about **the** core elements of the settlement.

Members of the Chamber are concerned that relatively small **groups**, who are **not** representative of the large **populace** that EPA is trying to protect, are taking steps to **unravel** the progress to date. **Through** the leadership of EPA, elected officials, local **businesses**, and area **residents**, we have seen amazing progress - clean up of **school grounds**, **homes**, and properties to name a few. We don't want to **lose** that **momentum**. We don't want to risk losing the year 2000 construction season (short as it is in **our** climate). We don't want to lose the jobs that were created for the River and GE-site clean up either. We believe that EPA needs to continue to demonstrate its vision for a healthier Berkshire County and stay the course that technical **experts** so **carefully** formulated for us.

To that end, the Chamber sent a letter to EPA (and others) during the comment **period** that **ended** last **week**. Excerpts of that letter follow.

The 1,200 member Chamber of Commerce of the **Berkshires** supports the settlement **relative** to the General Electric, **Pittsfield/Housatonic River Site** as embodied in the consent **decree between** the United States **and** General Electric Company, **and** other **government** entities.

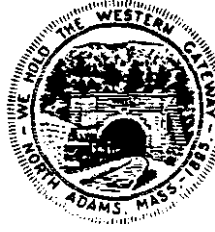
It is our opinion that the consent decree adequately addresses the environmental concerns of our region. It ensures that work on the cleanup of the river, the GE plant site, and numerous other **properties** will **proceed** on the **expedited** schedule outlined by the EPA more than a year ago. We **are** pleased many of the cleanup projects are already underway.

The **signing** of the consent **decree** brings closer to **reality** a **brownfields** agreement between **the** City of Pittsfield and GE aimed at helping **the** city rehabilitate the **250-acre** former GE site. The rejuvenation of this industrial site is **critical** for **the** **future** economic **growth** of our region. Most **significantly**, the **consent** decree protects the **health** of all residents of **Berkshire** County. This action also paves the way for business development and **encourages** companies and **individuals** to relocate to the **Berkshires**.

**The** Chamber extends its appreciation to all members of **the** government teams **who** diligently **worked** to finalize the **consent** decree and **related** documents. The focused and prolonged efforts throughout the negotiations are already paying dividends. They have helped **create** a **new** wave of excitement in Berkshire County contributing **to** the **momentum** for **other** tourism and economic development opportunities.

It is in the best **interests** of the **Berkshire** region **that** we give the consent decree, as presented, **our** vote of **confidence**. This **expeditious and comprehensive** solution will bring **the closure** necessary to continuing the **rebirth** of a key **industrial** site as **we** reclaim our environment and create a new **future** for Pittsfield and Berkshire **County**.





Hood

CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor  
John Barrett III

MA-48

February 29, 2000

Lois J. Schiffer  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

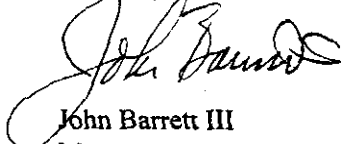
Dear Ms. Schiffer:

I am writing to express my full support of the Consent Decree, believing strongly that it well serves the public interest, in both the City of Pittsfield and all of Berkshire County.

As Pittsfield moves forward to rehabilitate the **250-acre** former GE site, and to revitalize its economy, the results effect not only the city but also the surrounding region. We all share in the environmental and economic concerns of Pittsfield and will benefit as a region **from** the negotiated settlement. The Consent Decree protects the health of all residents in Berkshire **County**, **as well as paving the way for econom** ic development and a higher quality of life.

As the Mayor of a neighboring city, I fully support the Consent Decree and the efforts of Mayor Doyle in negotiating a settlement.

Sincerely,

  
John Barrett III  
Mayor

9013479



# Link to Life™

March 1, 2000

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

MA-49

Dear Ms. Schiffer:

Subject: Case File Number, **DJ#90-11-3-14792**

As president of a company that recently relocated to the **Berkshires**, and as a resident of "South County" I heartily support the settlement relative to the General **Electric-Pittsfield/Housatonic** River Site as embodied in the consent decree between the United States and General Electric Company, and other government entities.


I feel strongly that the consent decree adequately addresses the environmental concerns of **our** region. It is heartening that many of the cleanup projects are already underway.

The signing of the consent decree brings the rehabilitation of the 250 acre former GE site much closer to reality. The rejuvenation of this **industrial** site is critical for the future economic growth of our region. This renaissance of a once proud site paves the way for business development and encourages companies and individuals to relocate to the Berkshires.

I and most other Berkshire residents are grateful to all members of the government teams who **diligently** worked to finalize the consent decree. It is already paying dividends. It has already contributed momentum for needed community **facilities**, such as a runway extension project at the Pittsfield **Municipal Airport**, which **will allow us to have commercial air carrier service**.

It is imperative to the best interests of the Berkshire region that the consent decree, as presented becomes a "fait accompli". I urge you to do everything within your power to bring this about.

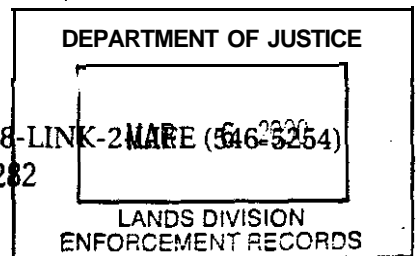
Sincerely,

  
Joyce S. Bernstein  
President 90-11-3-147 j

cc: Mayor Gerald S. Doyle, Jr.

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email: ltl@lmrgroup.com • fax: 800-949-6282

**GTL, Incorporated**





**Berkshire**

Berkshire Life Insurance Company

James W. Zilinski  
President and Chief Executive Officer

MA-52

February 23, 2000

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

Dear Ms. Schiffer:

Subject: Case File Numbers: DJ#QO-11-3-1479, 90-1 I-3-14792

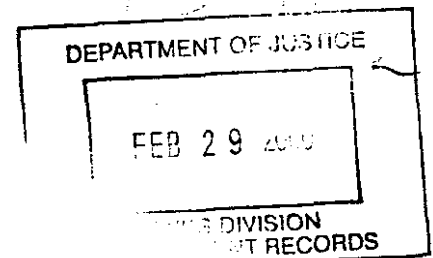
A great deal of work has been done to create a quality settlement relative to the **GE-Pittsfield/Housatonic** River site. With this in hand, the Berkshires is better positioned to solve its environmental problems while improving the economy that has languished for too long.

I endorse the consent decree, and urge you to move forward on this agreement ASAP. Your work here has meant a great deal to the region. Thank you.

Sincerely,

JZ:cw

cc: Bryan Olsen, EPA



700 South Street, Pittsfield, Massachusetts 01201  
Telephone: 413-499-4321 Facsimile: 413-445-6213



*Handwritten signature*

Daniel P. Schmutte  
President

April 6, 2000

Lois J. Schiffer  
Assistant Attorney General  
U.S. Department of Justice  
Environment and **Natural** Resources Division  
P.O. Box 7611  
Washington, D.C. 20530

Case File Numbers, **DJ#90-11-3-1479, 90-11-3-1479**

Anomey General **Schiffer,**

After reading an article in yesterday's *Berkshire Eagle* about another delay preventing approval of the Consent Decree, I am writing to restate my support of the decree. I am disturbed by the actions of three small groups of people who are taking steps to undermine your efforts that achieved a historic settlement to remediate environmental issues associated with the Housatonic River and the former General **Electric** site in Pittsfield. On this procedural issue, please take the position that the petitioners have no standing in this case and oppose their petitions for intervention.

My company employs 1,050 people in Pittsfield, and we are in a hiring mode - adding people with salaries ranging from \$35,000 to \$70,000 a year. They are well-educated people coming to work in ultra-high-tech software and systems engineering positions. As you may imagine, it is far easier to recruit such talented (and highly sought after) individuals to a place with a promising future. Without the Consent Decree, and resultant clean up and economic development, we can't offer much promise in Pittsfield.

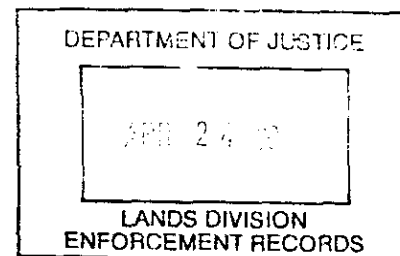
I believe that the Consent Decree adequately addresses health and environmental issues associated with **PCBs**, which EPA considers to be a "probable cause" of health problems. The decree also ensures use of the latest scientific standards and technologies during the remediation and containment processes. And, the decree facilitates the rejuvenation of the **Brownfields** in the heart of Pittsfield -key to economic development of Berkshire County.

Please stand firm and oppose the petitions for intervention.

Sincerely,

*Handwritten signature of Daniel P. Schmutte*

100 Plastics Avenue  
Pittsfield, MA 01201  
Tel 413 494 6500  
Fax 413 494 4442  
daniel.p.schmutte@gdds.com



# Deadline delayed for responses to decree motions

By Greg Sukiennik

Berkshire Eagle Staff

**PITTSFIELD** — The extension to the extension has been extended — again.

The period in which the Environmental Protection Agency and others can respond to three motions to intervene in the consent decree, the proposed settlement for cleanup of the Housatonic River and the General Electric Co. plant, has been extended.

The response period, originally slated to end March 17 and rescheduled to end yesterday, has been pushed back again in U.S. District Court in Springfield.

Tuesday is now the date by which EPA, the city of Pittsfield and other state and federal agencies may file opposition to three motions to intervene in the consent decree.

The Housatonic River Initiative, a group of Newell Street commercial property owners and a group of residents whose properties lie in the flood plain of the Housatonic, have all filed motions

to intervene in the decree, claiming it did not include enough public input and that the cleanup it proposes is inadequate.

The date was pushed forward one more week so that all three motions could be responded to at one time by parties to the consent decree. The 14-day opposition period for the most recent motion, that filed by the flood plain property owners, would have ended on Tuesday.

But Bryan Olson EPA's project manager for the Pittsfield GE/Housatonic cleanup, said this extension is likely to be the last one. He also said that EPA will likely make a decision on what stance it will take on the motions by the end of this week.

Those motions, two of which were made just as the public comment period for the consent decree was ending, seek to admit the plaintiffs as intervenors in the formal complaint brought by U.S., Connecticut and Massachusetts agencies.

Key issues the intervenors want

**DECREE, continued on B4**

## Decree from B1

addressed include the removal of PCB contamination many believe was used as fill in the former oxbows of the East Branch of the Housatonic River, elimination of the Hill 78 landfill, and assurances that residential property owners will not be left on the hook, and GE off the hook, after the cleanup is completed.

Attorney Cristobal Bonifaz of Amherst is representing the flood plain group and the commercial street property owners, and advised HRI on its motion.

Olson said that EPA is still talking with those who filed motions to intervene, as well as those who filed public comments on the consent decree, in an effort to clarify both the decree and resident concerns about what it will and won't do.

"I think we have been able to address some of the issues with intervenors and [those who filed comments]." Olson said. "But we're still working on that to see how far we can get."

The EPA is compiling and reviewing those public comments, and now expects that it will make a decision on whether to continue pursuing the agreement or not by

May.

Meanwhile, lawyers for the city of Pittsfield have completed a draft of the city's comments on the motions to intervene, said Mayor Gerald S. Doyle Jr.

"Every day that goes by jeopardizes the economic situation and the economic opportunity we have with [the GE] site," Doyle said.

And although officials of EV Worldwide, which plans to build electric vehicles at the old transformer plant and create up to 1,000 jobs over a five-year period, have said it remains committed to locating in Pittsfield, Doyle is concerned that the business must keep its options open in case the GE site is unavailable.

In a related development, according to Olson, GE is preparing to resume cleanup operations in the East Branch of the Housatonic. The cleanup had halted for two weeks. Olson said, as the company completed investigation and removal of oil found in the bed of the river.

The contractor, Maxymillian Technologies, drove new sheet piling in the river, at greater depth, and has already siphoned or removed 900 gallons of oil.

By date, that oil has not tested positive for PCBs, Olson said.

Page 2 of 2

CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP  
GENERAL ELECTRIC'S ACKNOWLEDGED PCP CONTAMINATION IN THE  
HOUSATONIC RIVER.

"Concentrations of polychlorinated biphenyls (PCBs) in streambed sediments and fish in the Housatonic River were among some of the highest detected in the National Water Quality Assessment Program (NA WQA). Concentrations of trace elements and organic contaminants in streambed sediment and fish were highest in the southern pan of the Study Unit (Massachusetts and Connecticut)." U.S. Geological Survey Circular 1155. Last modified 23 August 1998.

"Top Twenty Hazardous Substances" 1999 notice of the federal Agency for Toxic Substances and Disease Registry (ASTDR), has PCBs listed as the #6 hazardous substance in the country. See "Public Health Implications of Exposure to Polychlorinated Biphenyls" (1999). Both available at <http://www.atsdr.cdc.gov>

The consent Decree:

- 1) The consent decree limits the rights of Connecticut property owners and residents by absolving General Electric of criminal and partial civil liability. This is done without a formal public hearing in Connecticut.
- 2) A Natural Resource Damage Study (NRD) has not been performed on the Connecticut portion of the Housatonic River as required in Department of Interior regulations. No analysis includes the recent waterfowl contamination study. No appropriate contingent valuation study or use loss study has been performed for Connecticut. A tubing and swimming use-loss analysis is excluded. Recent data would substantially add to the highly speculative and conservative estimates suggested,
- 3) No flood plain or thorough PCB study has been performed in Connecticut.
- 4) The baseline dates in the reports are arbitrary. Data available for Connecticut would push these back substantially in time.
- 5) Appendices G and J reflect the extent Connecticut is an afterthought. No provision is made for Connecticut to receive notice (no CT project coordinator) of a Corrective Measures Study (CMS), although these are required for the "rest of the river." The "Peer Review Process" is to take place in Pittsfield only, with no consideration given to Connecticut participation.
- 6) There is no plan to clean up the "rest of the river"(read Connecticut), but instead there is an agreement for a "process." Pages 88 through 114 (#22) create a process that will ensure litigation over the consent decree itself, for years to come, rather than a focus on the clean up of PCBs.
- 7) In the background analysis, the intent of the consent decree is stated to be avoidance of prolonged and complicated litigation. No cost benefit analysis has been done to determine which is more expensive and complex; a government remediation and restoration of the Housatonic and billing of General Electric, or implementing the consent decree.

Why is Connecticut part of this package deal? Why is Connecticut a deal breaker if it backs out? Pittsfield is held hostage the city won't be remediated unless Connecticut signs this outrageous document.

If 1) you do not want Connecticut to be a party to this consent decree, or 2) request a public hearing and six month extension for written comments, please sign below and provide your name, address and contact numbers.

Print Name: Audrey A. Cole Signature Audrey A. Cole

Address: 270 West Cornwall Rd., West Cornwall, Ct 06796

Contact/Telephone # 860 - 672 - 2772 Date 1/4/2000

1) Connecticut not party to decree X OR, 2) Six month extension/public hearing \_\_\_\_\_

Mail to: Audrey Cole, 270 West Cornwall Road, West Cornwall, CT 06796 or Fax: (860) 672-6557

Immediately upon receipt, please telephone:

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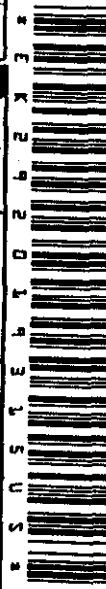
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*Anthony Cole  
276 West Cornwall Rd.  
West Cornwall, CT 06796*

TO: (PLEASE PRINT) PHONE

*DJ# 90-11-3-1479, 90-11-3-14712  
Assistant Attorney General  
Environmental National Bureau Division  
U.S. Department of Justice  
P.O. Box 7611, Danforth Station  
Washington, DC 20540*

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# SCHAGHTICOKE TRIBAL NATION



SCHAGHTICOKE TRIBAL NATION  
CONNECTICUT

Richard L. Velky  
*Chief*

601 Main Street  
Monroe, CT 06466

Office Tel. (203) 459-2531  
Fax (203) 459.2535  
E-mail chiefvelky@schaghticoke mm

January 4, 2000

Mr. **Edward** Parker  
Chief for Bureau of Natural Resources  
Department of Environmental Protection  
79 **Elm** street  
Hartford, CT 06106

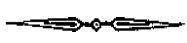
RE: United States of America, **State** of Connecticut, Commonwealth  
of Massachusetts, Plaintiffs Vs. **General** Electric Company, Defendant  
CONSENT DECREE

Dear Mr. Parker:

On behalf of the Schaghticoke Tribal Nation, which is an American Indian Tribe,, whose current State of Connecticut Reservation is located in Kent, Connecticut with Tribal offices located in Monroe, Connecticut, this letter contains **the** Tribe's preliminary comments concerning the Draft Consent Decree.

Since time immemorial, the Tribe has used and occupied lands within and **without the** State of Connecticut. The Tribe is recognized by the State of Connecticut pursuant to Connecticut General Statutes §47-59(a) and has an active petition for federal recognition pending before the United States Department of Interior Bureau of Indian Affairs.

The land defined in the **Draft Consent Decree** as "Rest of River" includes land which abuts and/or is part of the existing Tribal Reservation in Connecticut. Further, the Tribe has claims currently in litigation against **Connecticut** Light and Power ("CL&P"), with respect to one of the Tribe's ancient burial grounds located on land adjacent to the Federal **Energy** Regulatory Commission regulated, CL&P Housatonic River Project. Due to its proximity to the **CL&P** Bulls Bridge Dam, the burial ground and its adjacent land is flooded throughout much of the year and therefore may be included in the definition of lands to potentially be remediated under the definition "Rest of the River".



**Based** on the hereinabove, the **Tribe** has **significant** and important economic, **cultural** and environmental interests in the **proposed** Consent Decree, and further has an interest in the **manner** in which **expenditures** are made with respect to the natural resource damage funds, which are contemplated to be paid by the "Settling Defendant" General Electric under the proposed Consent Decree.

Since the ultimate impact upon Tribal land could be significant, the Tribe initially is concerned regarding the **limited** amount of time for public comment with respect to the voluminous and complex **CONSENT DECREE** and would at the outset request additional time to comment upon the Draft Consent Decree prior to its **final** approval by the court.

In this matter, the Schaghticoke Tribal Nation is being presented by Attorneys, Thomas Van Lenten and Ted D. Backer of **PINNEY, PAYNE VAN LENTEN, BURRELL, WOLFE AND DILLMAN, P.C.**

**RESPECTFULLY SUBMITTED,**

**THE SCHAGHTICOKE TRIBAL NATION**

By: Beth Stackpole Stewart  
Beth Stackpole Stewart

January 4, 2000

Bryan Olson  
U.S. EPA  
1 Congress St (HBT)  
Boston, MA 02114

CT-3

Mr. Olsen,

On behalf of the Housatonic Environmental Action League (HEAL), I emphatically request a **six month** extension for **the comment** period on **the Housatonic River consent decree**, and **urge the EPA** to hold at **least two more** public **hearings** in Connecticut. The **reasons** for this **request are as** follows:

1. **We find** it highly suspect that the **comment** period, **along** with public **hearings**, was conducted **during** the holiday **season**. **In** addition, holding the only public **hearing** in Connecticut just **three weeks before the end of the comment period** hardly gives the citizens of this state time to read the **consent decree** so that they may comment on it in an **intelligent manner**. **Even we as an organization--one that has** followed this issue in great detail--have found precious little **time** to **systematically** examine the agreement. **Lawyers who are helping us** would **especially** like more **time** to **examine** those sections of the d- that pertain to **future liability**.

**Furthermore, we** have **found** that citizens, **as well as** elected **officials**, in the **communities** along the **Housatonic** have been **woefully ignorant** about the **fact** that an **agreement was even** reached. **In** short, **more time** is needed to **inform** the public about the **ramifications** this **consent decree will** have **on the Connecticut section** of the **Housatonic**.

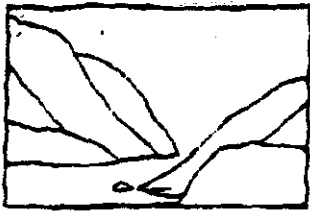
2. **We believe** that **before** my consent decree is signed, indepmdmt **baseline** testing of the Connecticut portion of the **Housatonic** should be **performed**. **General Electric has** done the **majority** of tenting to **date**, and **frankly**, we do not **trust any** of their results. **Simply** put, we **really** do **not** know **what we are dealing** with in regards to PCB pollution in the Connecticut section of **the river**. **Therefore**, we **request an extension** so systematic testing can be done before the decree **is** approved.

Sincerely,

Thomas J. Seigny  
HEAL

cc: Assistant Attorney General  
U.S. Dept. of Justice





**SCENIC  
HUDSON** INC

9 VASSAR STREET • POUGHKEEPSIE, NY 12601 • (914) 473-4440 • FAX (914) 473-2648

**Statement to  
The United States Environmental Protection Agency  
and the  
Connecticut Department of Environmental Protection  
Public Information Meeting  
January 4, 2000  
Kent Town Hall, Kent CT.**

**Submitted by  
Scenic Hudson, Inc.**

Thank you for the opportunity to submit these comments. We apologize for not being able to attend in person and we have asked Judy Herkimer of Housatonic Environmental Action League to read these comments for the record.

Scenic Hudson is a 36-year-old non-profit environmental organization based in Poughkeepsie, New York, dedicated to protecting and enhancing the scenic, natural, historic and recreational treasures of the Hudson River Valley. For 20 years, Scenic Hudson has been a leader in advocating for a PCB cleanup of the Hudson River. As you are aware, the Hudson River is also heavily contaminated with General Electric PCBs. The Hudson River is arguably one of the nation's largest federal Superfund sites, with 200 miles of the River affected by the PCB contamination.

Residents of Connecticut have brought to our attention the grave concerns they have with the settlement between General Electric and the government on the Housatonic River PCB contamination.

**Request for Additional Review Time**

It is our understanding that this informational meeting is the first to be held in Connecticut, with previous public meetings being held in Pittsfield. Although the comment period has been open since October 26, 1999, we would request that the government agencies and the citizens of Connecticut be given additional time beyond the current January 24, 2000 deadline to review and comment on the Consent Decree and Reissued RCRA Corrective Action Permit. This additional time will afford Connecticut residents the opportunity to more fully understand the effects of the settlement on those that live downriver.

## **Need for Clear Characterization of Contamination**

While Scenic Hudson believes it is important to move forward with the cleanup of the first two miles of the Housatonic River, the health and ecological impacts of downriver contamination must not be overlooked and should be better understood and fully considered. In the Hudson River, the primary PCB contamination is in the Upper Hudson, yet EPA Region 2 has found that 50 percent of the PCBs in New York Harbor are GE PCBs carried downriver from upriver sources. GE PCBs have negatively effected the health of 200 miles of the Hudson River from Hudson Falls to the Battery in New York City. All fish species from all locations along the Hudson River are currently subject to an EAT NONE health advisory for women of childbearing age and children.

It is our understanding that the extent of downriver contamination in the Connecticut area of the Housatonic is not clearly documented. It is imperative that the impacts of PCB contamination on the biota and on human health are more clearly characterized for Connecticut residents who live near and use the Housatonic River. Downriver impacts of the cleanup efforts that take place along the first two miles of the Housatonic must also be analyzed. We recommend that EPA develop a downriver monitoring program to analyze the presence of PCBs in water, sediment, and fish and on the floodplains along the entire Housatonic River. This baseline analysis is critical to develop an adequate clean up plan and monitor the overall health of the River systems.

## **GE's Involvement in the Process for the Rest of the River**

An element of the Consent Decree that we found particularly disturbing is in Section 22e. Rest of the River (p. 88, EPA website version) that states that:  
"Nothing herein shall prohibit Settling Defendants from conducting its own human health and/or ecological risk assessments and submitting reports thereon as a component of its comment to EPA on EPA's human health and ecological risk assessments."

We question why the above-cited language has been included and recommend that it be removed. Our experience on the Hudson has taught us that GE will use such opportunities to endlessly debate the need to remedy any downriver contamination of PCBs. GE has used the production of its own models such as the GE Upper Hudson River model to muddle the scientific information about Hudson River PCBs, mislead the public about the dangers of PCBs and delay the process by continually insisting that GE documents be peer reviewed side-by-side with EPA documents. This section and any others like it should be removed from the Consent Decree affording the EPA the opportunity to conduct the necessary scientific work along the Housatonic without interference by the polluter.

Prepared by  
Rich Schiafo  
Environmental Associate  
Scenic Hudson  
January 4, 2000





# Northwestern Connecticut Council of Governments

17 SACKETT HILL ROAD WARREN CT 06754

Telephone (860) 868-7341 Fax (860) 868-1195

January 7, 2000

CT-5

Bryan Olson  
U.S. EPA  
One Congress Street (HBT)  
Boston, MA 02114

Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

Re: Proposed GE Settlement Agreement for Housatonic River

Dear Sirs:

The Northwestern Ct. Council of Governments (NWCCOG) consists of the 1<sup>st</sup> Selectmen of nine towns - Canaan, Cornwall, Kent, North Canaan, Roxbury, Salisbury, Sharon, Warren and Washington. All of the towns are within the Housatonic River watershed and six of the towns have frontage along the River.

To date, the NWCCOG has not received any information from the Connecticut Department of Environmental Protection regarding PCB test results in the Housatonic River. The NWCCOG has serious concerns about the PCB levels in the Housatonic River - especially behind the Falls Village dam and the Bulls Bridge dam. Until these concerns are addressed, the NWCCOG cannot support the proposed consent decree with the General Electric company. The NWCCOG fully supports the proposed clean up in Massachusetts and urges that it proceed without delay.

The NWCCOG requests that the public comment period be extended until at least February 29, 2000. The NWCCOG believes that the Connecticut public has-not been given sufficient time to review and evaluate the consent decree.

The NWCCOG also requests that the proposed consent decree agreement be changed to include the following points.

DEPARTMENT OF JUSTICE
JAN 18 2000
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ENFORCEMENT RECORDS

C:\Director doc\COG LETTERS\GE settlement - COG position  
CANAAN \ CORNWALL \ KENT \ NORTH CANAAN \ ROXBURY \ SALISBURY \ SHARON \ WARREN \ WASHINGTON

First, the consent decree should require that all compensatory restoration funds be used only for projects along the Housatonic River. No funds should be used for projects on other rivers.

Second, the consent decree should state that no compensatory restoration funds are to be used to reimburse the Connecticut Department of Environmental Protection for its costs in administering the fund.


Third, the consent decree should require that **all compensatory** restoration funds be used to supplement - not replace - funds that the State of Connecticut is currently spending on open space, fisheries, and other natural resource programs in the Housatonic Valley.

Fourth, the NWCCOG and the Housatonic River Commission should be represented on the committee that the Connecticut Department of Environmental Protection is proposing to establish to advise it on spending the compensatory restoration funds.

Fifth and last, for more than twenty years, the **residents of** Northwestern Connecticut have had their use of the Housatonic River restricted because General Electric dumped **PCBs** in the River. They have lived with the constant worry about the threat **PCBs** have posed for their health and their children's health. In view of this, the NWCCOG believes the compensatory restoration fund is woefully inadequate.

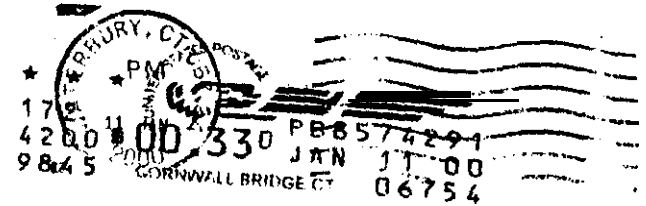
While the NWCCOG appreciates the efforts government agencies have made to insure the clean up of the Housatonic River, the NWCCOG **remains** concerned that the proposed consent decree does not go far enough to insure that the complete restoration of the Housatonic River.

Sincerely,

*Dolores R. Schiesel* 

Dolores Schiesel, Chairman, NWCCOG  
1<sup>st</sup> Selectman, Kent

cc: file, Gov. Rowland, Ct. DEP, Sen. A. Eads, Rep. A. Roraback, Rep. J. **Garvey**, Rep. P. Prelli, Housatonic River Commission



Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 161  
Ben Franklin Station  
Washington, D.C. 20044

20044+0761 

**CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP  
GENERAL ELECTRIC'S ACKNOWLEDGED PCP CONTAMINATION IN THE  
HOUSATONIC RIVER.**

*"Concentrations of polychlorinated biphenyls (PCBs) in streambed sediments and fish in the Housatonic River were among some of the highest detected in the National Water Quality Assessment Program (NAWQA). Concentrations of trace elements and organic contaminants in streambed sediment and fish were highest in the southern part of the Study Unit (Massachusetts and Connecticut). "U.S. Geological Survey Circular 1155. Last modified 23 August 1998.*

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Why is Connecticut part of this package deal? Why is Connecticut a deal breaker if it backs out? Pittsfield is held hostage the city won't be remediated unless Connecticut signs this outrageous document.

If 1) you do not want Connecticut to be a party to this consent decree, or 2) request a public hearing and six month extension for written comments. please sign below and provide your name, address and contact numbers.

Print Name: ALBERT N. STACKPOLE Signature: *Albert N. Stackpole*

Address: 12 Broadway N West Brook CT

Contact # (860) 669-0114 Date 1-9-00

1) Connecticut not party to decree \_\_\_\_\_ OR, 2) Six month extension/public hearing

Mail to: Audrey Cole, 270 West Cornwall Road, West Cornwall, CT 06796 or Fax: (860) 672-6557

CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT **FAILS TO** CLEAN UP GENERAL ELECTRIC'S ACKNOWLEDGED PCP CONTAMINATION IN THE **HOUSATONIC RIVER.**

"Concentrations of polychlorinated biphenyls (PCBs) in streambed sediments and fish in the Housatonic River were among some of the highest detected in the National Water Quality Assessment Program (NAWQA). Concentrations of trace elements and organic contaminants in streambed sediment and fish were highest in the southern part of the Study Unit (Massachusetts and Connecticut)." U.S. Geological Survey Circular 1155. Last modified 23 August 1998.

"Top Twenty Hazardous Substances" 1999 notice of the federal Agency for Toxic Substances and Disease Registry (ASTDR), has PCBs listed as the #6 hazardous substance in the country. See "Public Health Implications of Exposure to Polychlorinated Biphenyls" (1999). Both available at <http://www.atsdr.cdc.gov>

The Consent Decree:

The Consent Decree limits the **rights** of Connecticut property **owners** and residents by absolving General **Electric** of **criminal** and **partial** civil liability. This is done without **a formal public hearing** in Connecticut.

A Natural Resource Damage Study (NRD) has not been **performed** on the Connecticut portion of the Housatonic River **as** required in Department of **interior regulations**. No **analysis** includes the recent waterfowl contamination study. No appropriate contingent valuation study **or** use loss study has been **performed** for Connecticut. A tubing and swimming use-loss analysis **is** excluded. Recent data would substantially **odd** to the highly speculative **and** conservative estimates suggested. No flood plain or thorough PCB study has been **performed** in Connecticut. The baseline dates in the reports are **arbitrary**. Data available for Connecticut would push these back substantially in time.

Appendices G and J reflect the extent Connecticut is on afterthought. No provision **is made for** Connecticut to receive notice (no CT project coordinator) of **a Corrective Measures Study (CMS)**, although these are required **for** the "rest of the **river**." The "Peer Review **Process**" **is** to take place in Pittsfield only, with no consideration given to Connecticut **participation**.

There is no plan to **clean up** the "rest of the **river**" (read Connecticut), but instead there is on agreement for **a "process"**. Pages **88** through **114** (**#22**) **create a** process that will ensure litigation **over** the Consent Decree itself, for **years** to come, rather than **a** focus on the **clean up** of **PCBs**. In the background analysis, the intent of the Consent Decree is **stated** to be avoidance of prolonged and complicated litigation. No **cost** benefit analysis has been done to determine which is more expensive and complex; **a government remediation** and restoration of the Housatonic and billing of **General Electric**, or implementing the Consent Decree.

Why is Connecticut **part** of this package **deal**? Why is Connecticut **a deal** breaker if it backs out? Pittsfield is held hostage ... the city won't be remediated unless Connecticut signs **this** outrageous document.

If 1) you do not want Connecticut to be **a party** to this Consent Decree, **or** 2) request **a** public hearing and **six** month extension for Mitten comments, please sign **below** and provide your name, address and contact **numbers**.

Print Name: Donald J. Murray Jr.

Signature: [Handwritten Signature]

Address: 29 North Center Rd, North Center, CT 06059

Contact/Telephone # 860-379-4309/860-482-3636 Date 1-11-2000

1) Connecticut not party to decree [initials] OR 2) Six month extension/public hearing [initials]

Mail to: Audrey Cole, 270 West Cornwall Road, West Cornwall, CT 06796 or Fax: (860) 672-6557



CT-8

CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP  
GENERAL ELECTRIC'S ACKNOWLEDGED PCP CONTAMINATION IN THE  
HOUSATONIC RIVER

"Concentrations of polychlorinated biphenyls (PCBs) in streambed sediments and fish in the Housatonic River were among SOME OF the highest detected in the National Water Quality Assessment Program (NA WQA). Concentrations of trace elements and organic contaminants in streambed sediment and fish were highest in the southern part of the Study Unit (Massachusetts and Connecticut)." U.S. Geological Survey Circular 1155. Last modified 23 August 1998.

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The Consent Decree:

- 1) The consent decree limits the rights of Connecticut property owners and residents by absolving General Electric of criminal and partial civil liability. This is done without a public hearing on the matter.
- 2) A Natural Resource Damage Study (NRD) has not been performed on the Connecticut portion of the Housatonic River as required in Department of Interior regulations. The NRD study performed in 1996 by Industrial Economics of Cambridge, MA, is for Pittsfield and Massachusetts only.
- 3) No analysis includes the recent waterfowl contamination study. No appropriate contingent valuation study or use loss study has been performed for Connecticut. A tubing and swimming use-loss analysis is excluded. Recent data substantially adds to the highly speculative and conservative estimates suggested.
- 4) No flood plain or thorough PCB study has been performed in Connecticut.
- 5) The baseline dates in the reports are arbitrary. Data available for Connecticut would push these back substantially in time.
- 6) Appendices G and J reflect the extent Connecticut is an afterthought. No provision is made for Connecticut to receive notice of a Corrective Measures Study (CMS), although these are required for the 'rest of the river.' The "Peer Review Process" is to take place in Pittsfield only, with no consideration given to Connecticut participation (no CT project coordinator).
- 7) There is no plan to clean up the "rest of the river" (rest of Connecticut), but instead there is an agreement for a "process." Pages 88 through 114 create a process that will ensure litigation over the consent decree itself, for years to come, rather than a focus on the clean up of PCBs.
- 8) In the preamble, the intent of the consent decree is to reduce costs by avoiding litigation. No cost benefit analysis has been done to determine which is more expensive; a government remediation and restoration of the Housatonic and billing of General Electric, or implementing the consent decree.

Why is Connecticut part of this package deal? Why is Connecticut a deal breaker if it backs out? Pittsfield is held hostage the city won't be remediated unless Connecticut signs this outrageous document.

If 1) you do not want Connecticut to be a party to this consent decree, or 2) request a public hearing and six month extension for written comments, please sign below and provide your name, address and contact numbers.

Print Name: Frederic W. Koenig Signature: [Handwritten Signature]  
 Address: 5 Great Hill Road, Southington CT 06488  
 Contact # 203-226-3335 Date 1/11/00

1) Connecticut not party to decree \_\_\_\_\_ OR, 2) Six month extension/public hearing ✓

Mail to: Audrey Cole. 270 West Cornwall Road, West Cornwall, CT 06796 or Fax: (860) 672-6557

**CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP GENERAL ELECTRIC'S ACKNOWLEDGED PCP CONTAMINATION IN THE HOUSATONIC RIVER.**

" Concentrations of polychlorinated biphenyls (PCBs) in streambed sediments and fish in the Housatonic River were among some of the highest detected in the National Water Quality Assessment Program (NAWQA). Concentrations of trace elements and organic contaminants in streambed sediment and fish were highest in the southern part of the Study Unit (Massachusetts and Connecticut)." U.S. Geological Survey Circular 1155. Last modified 23 August 1998.

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**The Consent Decree:**

The Consent Decree limits the rights of Connecticut property owners and residents by absolving General Electric of criminal and partial civil liability. This is done without a formal public hearing in Connecticut. A Natural Resource Damage Study (NRD) has not been performed on the Connecticut portion of the Housatonic River as required in Department of Interior regulations. No analysis includes the recent waterfowl contamination study. No appropriate contingent valuation study or use loss study has been performed for Connecticut. A tubing and swimming use-loss analysis is excluded. Recent data would substantially add to the highly speculative and conservative estimates suggested. No flood plain or thorough PCB study has been performed in Connecticut. The baseline dates in the reports are arbitrary. Data available for Connecticut would push these back substantially in time. Appendices G and J reflect the extent Connecticut is an afterthought. No provision is made for Connecticut to receive notice (no CT project coordinator) of a Corrective Measures Study (CMS), although these are required for the "rest of the river." The "Peer Review Process" is to take place in Pittsfield only, with no consideration given to Connecticut participation.

There is no plan to clean up the "rest of the river"(read Connecticut), but instead there is an agreement for a "process." Pages 88 through 114 (#22) create a process that will ensure litigation over the Consent Decree itself, for years to come, rather than a focus on the clean up of PCBs.

In the background analysis, the intent of the Consent Decree is stated to be avoidance of prolonged and complicated litigation. No cost benefit analysis has been done to determine which is more expensive and complex; a government remediation and restoration of the Housatonic and billing of General Electric, or implementing the Consent Decree.

Why is Connecticut part of this package deal? Why is Connecticut a deal breaker if it backs out? Pittsfield is held hostage . the city won't be remediated unless Connecticut signs this outrageous document. If 1) you do not want Connecticut to be a party to this Consent Decree, or 2) request a public hearing and six month extension for written comments, please sign below and provide your name, address and contact numbers.

Print Name:

Thomas J Case

Signature:

Thomas J Case

Address:

35 Blue Mountain Rd. Norwalk CT 06851

Contact/Telephone # 203-229-0177

Date 1-13-00

1) Connecticut not party to decree \_\_\_\_\_ OR, 2) Six month extension/public hearing ✓

Mail to: Audrey Cole, 270 West Cornwall Road, West Cornwall, CT 06796 or  
Fax: (860) 672-6557

**CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP GENERAL ELECTRIC'S ACKNOWLEDGED PCP CONTAMINATION IN THE HOUSATONIC RIVER.**

"Concentrations of polychlorinated biphenyls (PCBs) in streambed sediments and fish in the Housatonic River were among some of the highest detected in the National Water Quality Assessment Program (NAWQA). Concentrations of trace elements and organic contaminants in streambed sediment and fish were highest in the southern part of the Study Unit (Massachusetts and Connecticut)." U.S. Geological Survey Circular 1155. Last modified 23 August 1998.

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There is no plan to clean up the "rest of the river" (read Connecticut), but instead there is an agreement for a "process." Pages 88 through 114 (#22) create a process that will ensure litigation over the Consent Decree itself, for years to come, rather than a focus on the clean up of PCBs.

In **the background** analysis, the intent of the Consent **Decree** is stated to **be** avoidance of prolonged and **complicated** litigation. No cost **benefit** analysis **has been** done to **determine** which is more expensive **and complex**; a **government remediation and** restoration of **the Housatonic and** billing of General Electric, or **implementing** the Consent Decree.

Why is **Connecticut** part of this package **deal**? Why is **Connecticut** a deal breaker **if it** backs out? Pittsfield is held hostage. the city won't be **remediated** unless Connecticut **signs** this outrageous document **If 1) you do not want Connecticut to be a party to this Consent Decree,** or 2) request a public hearing **and** six month extension **for** written **comments**. Please sign below **and** provide **your** name, address and contact numbers.

Print Name:

LEE FREEDMAN

Signature:

Lee Freedman

Address:

770 MT RD TORRINGTON

Contact/Telephone #

860 4892626

Date

1/13/2000

1) **Connecticut** not party to decree \_\_\_\_\_ OR, 2) Si month extension/public hearing ~~\_\_\_\_\_~~

CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP GENERAL ELECTRIC'S ACKNOWLEDGED PCP **CONTAMINATION** IN THE **HOUSATONIC** RIVER.

"Concentrations of polychlorinated biphenyls (PCBs) in streambed sediments and fish in the Housatonic River were among some of the highest detected in the National Water Quality Assessment Program (NAWQA). Concentrations of trace elements and organic contaminants in streambed sediment and fish were highest in the southern part of the Study "nil (Massachusetts and Connecticut)." U.S. Geological Survey Circular 1155. Last modified 23 August 1998.

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The Consent Decree limits the rights of Connecticut property owners and residents by absolving General Electric of criminal and partial civil liability. This is done without a formal public hearing in Connecticut.

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The baseline dates in the reports are arbitrary. Data available for Connecticut would push these back substantially in time.

Appendices G and J reflect the extent Connecticut is on afterthought. No provision is made for Connecticut to receive notice (no CT project coordinator) of a Corrective Measures Study (CMS), although these are required for the rest of the river. The "Peer Review Process" is to take place in Pittsfield only, with no consideration given to Connecticut participation.

There is no plan to clean up the 'Vest of the river'(read Connecticut), but instead there is on agreement for a "process." Pages 88 through 114 (#22) create a process that will ensure litigation over the Consent Decree itself, for years to come, rather than a focus on the clean up of PCBs. In the background analysis, the intent of the Consent Decree is stated to be avoidance of prolonged and complicated litigation. No cost benefit analysis has been done to determine which is more expensive and complex: a government remediation and restoration of the Housatonic and billing of General Electric, or implementing the Consent Decree.

Why is Connecticut port of this package deal? Why is Connecticut a deal breaker if it backs out? Pittsfield is held hostage ... the city won't be remediated unless Connecticut signs this outrageous document.

If 1) you do not want Connecticut to be a party to this Consent Decree, or 2) request a public hearing and six month extension for written comments. please sign below and provide your name, address and contact numbers.

Print Name: Barbara Smith Murray  
Signature: Barbara Smith Murray  
Address: 29 N Canton Rd N. Canton c c 06059  
Contact/Telephone # 860-379-4309 Date 1-13-00

1) Connecticut not party to decree BSM OR, 2) Six month extension/public hearing BSM

Mail to: Audrey Cole, 270 West Cornwall Road, West Cornwall. CT 06796 or Pax (860) 672-6557

CT-12

> "Concentrations of polychlorinated biphenyls (PCBs) in streambed sediments and fish in the Housatonic River were among some of the highest detected in the National Water Quality Assessment Program (NAWQA). Concentrations of trace elements and organic contaminants in streambed sediment and fish were highest in the southern part of the Study Unit (Massachusetts and Connecticut)." U.S. Geological Survey Circular 1155. Last modified 23 August 1998.

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If 1) you do not want Connecticut to be a party to this Consent Decree, or 2) request a public hearing and six month extension for written comments, please sign below and provide your name, address and contact numbers.

> Print Name: GERALD FALBEL

> Signature: *Gerald Falbel*

> Address: 472 Westover Road Stamford CT 06902

> Contact/Telephone # 203-348-8761 Date 1/13/2000

> 1) Connecticut not party to decree \_\_\_\_\_ OR, 2) Six month extension/public hearing

CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP  
GENERAL ELECTRIC'S ACKNOWLEDGED PCP CONTAMINATION IN THE  
HOUSATONIC RIVER

" Concentrations of polychlorinated biphenyls (PCBs) in streambed sediments and fish in the Housatonic River were among some of the highest detected in the National Water Quality Assessment Program (NA WQA). Concentrations of trace elements and organic contaminants in streambed sediment and fish were highest in the southern part of the Study Unit (Massachusetts and Connecticut). " U.S. Geological Survey Circular 1 155. Last modified 23 August 1998.

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- 7) In the background analysis, the intent of the consent decree is stated to be avoidance of prolonged and complicated litigation. No cost benefit analysis has been done to determine which is more expensive and complex; a government remediation and restoration of the Housatonic and billing of General Electric, or implementing the consent decree.

Why is Connecticut part of this package deal? Why is Connecticut a deal breaker if it backs out? Pittsfield is held hostage .. the city won't be remediated unless Connecticut signs this outrageous document.

If 1) you do not want Connecticut to be a party to this consent decree, or 2) request a public hearing and six month extension for written comments, please sign below and provide your name, address and contact numbers.

Print Name: DENNIS LOWRY Signature: 

Address: SHEFFIELD MASS.

Contact/Telephone # \_\_\_\_\_ Date: 1-1-2000

1) Connecticut not party to decree  OR. 2) Six month extension/public hearing

Mail to: Audrey Cole. 270 West Cornwall Road, West Cornwall. CT 06796 or Fax: (860) 672-6557



**CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP  
GENERAL ELECTRIC'S ACKNOWLEDGED PCP CONTAMINATION IN THE  
HOUSATONIC RIVER**

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- 2) A Natural Resource Damage Study (NRD) has not been performed on the Connecticut portion of the Housatonic River as required in Department of Interior regulations. No analysis includes the recent waterfowl contamination study. No appropriate contingent valuation study or use loss study has been performed for Connecticut. A tubing and swimming use-loss analysis is excluded. Recent data would substantially add to the highly speculative and conservative estimates suggested.
- 3) No flood plain or thorough PCB study has been performed in Connecticut.
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Why is Connecticut part of this package deal? Why is Connecticut a deal breaker if it backs out? Pittsfield is held hostage the city won't be remediated unless Connecticut signs this outrageous document.

If 1) you do not want Connecticut to be a party to this consent decree, or 2) request a public hearing and six month extension for written comments, please sign below and provide your name, address and contact numbers.

Print Name: PIETER MULDER Signature: *Pieter M. Mulder*

Address: P.O. B. 1 WEST CORNWALL CT 06796

Contact/Telephone # 860-672-0107 Date 1-14-2007

1) Connecticut not party to decree  OR, 2) Six month extension/public hearing

Mail to: Audrey Cole, 270 West Cornwall Road, West Cornwall, CT 06796 or Fax: (860) 672-6557

CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP  
GENERAL ELECTRIC'S ACKNOWLEDGED PCP CONTAMINATION IN THE  
HOUSATONIC RIVER

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Why is Connecticut part of this package deal? Why is Connecticut a deal breaker if it backs out? Pittsfield is held hostage the city won't be remediated unless Connecticut signs this outrageous document.

If 1) you do not want Connecticut to be a party to this consent decree, or 2) request a public hearing and six month extension for written comments, please sign below and provide your name, address and contact numbers.

Print Name: PORTER COLE Signature Porter Cole

Address: POB 481 GOSHEN, CT 06756

Contact/Telephone # 860-491-2547 Date 24 JAN 2000

1) Connecticut not party to decree X OR, 2) Six month extension/public hearing \_\_\_\_\_

Mail to: Audrey Cole, 270 West Cornwall Road, West Cornwall, CT06796 or Fax: (860) 672-6557

**CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP  
GENERAL ELECTRIC'S ACKNOWLEDGED PCP CONTAMINATION IN THE  
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- 6) There is no plan to clean up the "rest of the river"(read Connecticut), but instead there is an agreement for "process." Pages 88 through 14 (#22) create a process that will ensure litigation over the consent decree itself, for years to come, rather than a focus on the clean up of PCBs.
- 7) In the background analysis, the intent of the consent decree is stated to be avoidance of prolonged and complicated litigation. No cost benefit analysis has been done to determine which is more expensive and complex; a government remediation and restoration of the Housatonic and billing of General Electric, or implementing the consent decree.

Why is Connecticut part of this package deal? Why is Connecticut a deal breaker if it backs out? Pittsfield is held hostage the city won't be remediated unless Connecticut signs this outrageous document.

If 1) you do not want Connecticut to be a party to this consent decree, or 2) request a public hearing and six month extension for written comments, please sign below and provide your name, address and contact numbers.

Print Name: Theodora COLE Signature Theodora Cole

Address: POB 481 GOSHEN CT 06956

Contact/Telephone # 860 - 491 - 2547 Date 24 JAN 2000

1) Connecticut not party to decree X OR, 2) Six month extension/public hearing \_\_\_\_\_

Mail to: Audrey Cole, 270 West Cornwall Road, West Cornwall, CT 06796 or Fax: (860) 672-6557

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Print Name: Justine McCole Fl-D

Signature: Justine McCole

Address: 88 Cherniske Rd. New Britain, CT 06774

Contact/Telephone # 860 357-0882

Date 1/22/00

1) Connecticut not party to decree  OR , 2) Six month extension/public hearing

Mail to: Audrey Cole. 270 West Cornwall Road, West Cornwall, CT 06796 or Fax: (860) 672-6557

CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP  
GENERAL  
ELECTRIC'S ACKNOWLEDGED PCP CONTAMINATION **IN** THE HOUSATONIC RIVER.

" Concentrations of **polychlorinated** biphenyls (**PCBs**) in streambed sediments and fish in the Housatonic River were among some of the highest detected in the National Water Quality Assessment Program (NAWQA). Concentrations of trace elements and organic contaminants in streambed sediment and fish were highest in the southern part of the Study Unit (Massachusetts and Connecticut)." U.S. Geological Survey Circular 1155. Last modified 23 August 1998.

"Top Twenty Hazardous Substances" 1999 notice of the federal Agency for Toxic Substances and Disease Registry (ASTDR), has **PCBs** listed as the #6 hazardous substance in the country. See "Public Health **Implications** of Exposure to Polychlorinated Biphenyls" (1999). Both available at <http://www.atsdr.cdc.gov>

The Consent Decree:

The Consent Decree limits the rights of Connecticut **property** owners and residents by absolving General Electric of criminal and partial civil liability. This is done without a formal public hearing in Connecticut. A Natural Resource Damage Study (NRD) has not been performed on the Connecticut portion of the Housatonic River as required in Department of Interior regulations. No analysis includes the recent waterfowl : contamination study. No appropriate contingent valuation study or use loss study has been performed for Connecticut. A tubing and swimming use-loss analysis is excluded. Recent data would substantially add to the highly **speculative** and conservative estimates suggested. No flood plain or thorough PCB study **has** been performed in **Connecticut**. The baseline dates in the reports are arbitrary. Data available for Connecticut would push these back substantially in time. Appendices G and J reflect the extent Connecticut is an **afterthought**. No provision is made for Connecticut to receive notice (no CT project coordinator) of a Corrective Measures Study (CMS), although these are required for the "rest of the river." The "Peer Review Process" is to take place in **Pittsfield** only, with no consideration given to Connecticut participation.

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Why is Connecticut part of this package deal? Why is Connecticut a deal breaker if it backs out? Pittsfield is held hostage the city won't be remediated unless Connecticut signs this outrageous document.

If 1) you do not want Connecticut to be a party to this Consent Decree, or 2) request a public hearing and six month extension for written comments, please sign below and provide your name, address and contact numbers.

Print Name:

Thomas Ethier

Signature:

Thomas Ethier

Address:

121 Irving Ave / Torrington 06790

Contact/Telephone #

860-496-8947

Date Jan. 17, 2000

1) Connecticut not party to decree  OR, 2) Six month extension/public hearing

**CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP GENERAL ELECTRIC'S ACKNOWLEDGED PCP CONTAMINATION IN THE HOUSATONIC RIVER.**

\* Concentrations of polychlorinated biphenyls (PCBs) in streambed sediments and fish in the Housatonic River were among some of the highest detected in the National Water Quality Assessment Program (NAWQA). Concentrations of trace elements and organic constituents in streambed sediment and fish were highest in the southern part of the Study Unit (Massachusetts and Connecticut). \* U.S. Geological Survey Circular 1155. Last modified 23 August 1998.

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The baseline dates in the reports are arbitrary. Data available for Connecticut would push these back substantially in time.

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If 1) you do not want Connecticut to be a party to this Consent Decree, or 2) request a public hearing and six month extension for written comments, please sign below and provide your name, address and contact numbers.

Print Name: Tim Campbell

Signature: Tim Campbell

Address: 2 Orchard Hill, Canton, CT 06019

Contact/Telephone # 860-693-6777 Date \_\_\_\_\_

1) Connecticut not party to decree DO R 2) Six month extension/public hearing  
Mail to: Audrey Cole, 270 West Cornwall Road, War Cornwall, CT 06770 or Fax: (860) 672-6557

From: Judith Zaino <jzaino01@snet.net>  
 To: Lavoie Charlene <communitylawyer@snet.net>  
 Date: Wednesday, January 12, 2000 11:19 AM  
 Subject: cut/paste Extension Petition

---

CT-20

Charlene,

Has lost only minor formatting. Thanks, Judy

CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP  
 GENERAL  
 ELECTRIC'S ACKNOWLEDGED PCP CONTAMINATION IN THE HOUSATONIC RIVER.

" Concentrations of **polychlorinated** biphenyls (**PCBs**) in **streambed** sediments and **fish** in the **Housatonic** River were among some of **the** highest detected in the National Water Quality Assessment Program (**NAWQA**). Concentrations of **trace** elements and organic **contaminants** in **streambed** sediment and **fish** were highest in the southern part of the Study Unit (Massachusetts and Connecticut)." U.S. Geological Survey Circular 1155. Last modified 23 August 1998.

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1/13/00



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Why is Connecticut part of this package deal? **Why** is Connecticut a **deal** breaker if it backs out? Pittsfield is held hostage . **the** city won't be **remediated** unless Connecticut signs this outrageous document.

If 1) you do **not want** Connecticut to be a party to this Consent Decree, or 2) request a public **hearing** and six month extension for written **comments**, please sign below and provide your name, address and contact numbers.

Print Name:

\_\_\_\_\_

Signature: *Charlene LaVio*

\_\_\_\_\_

↳

Address: *P.O. Box 1044 Winsted CT 06098*

\_\_\_\_\_

Contact/Telephone # *860-738-1267* Date *1/13/00*

\_\_\_\_\_

1) Connecticut not party to decree \_\_\_\_\_ OR, 2) Six month extension/public hearing \_\_\_\_\_

Mail to: Audrey Cole, 270 West Cornwall Road, West Cornwall, CT 06796 or Fax: (860) 672-6557

1/13/00



# TOWN OF NEW MILFORD

Town Hall  
10 Main Street  
New Milford, Connecticut 06776  
Telephone (860) 355-6010 . Fax (860) 355-6002

Handwritten initials or signature.

Office of Arthur J. Peitler, Mayor

CT-21

January 12, 2000

Assistant Attorney General  
Environment and Natural Resources  
United States Department of Justice  
Box 7611  
Ben Franklin Station  
Washington, DC 20044

RE: GE Pittsfield/Housatonic River Consent Decree  
D/J #90-1 1-3-1479,90-1 1-3-14792

Dear Sir:

The Town of New Milford has approximately 30 miles of frontage on the Housatonic River and is vitally concerned about the pending GE PCB settlement. We have the following comments which we feel are important not only to New Milford but to the entire river valley.

1. Currently CL&P is being re-licensed under FERC. This is a one in fifty year event. It is vital that the GE settlement people communicate with the FERC licensing people. There is far too much overlap of interest and issues for these two events to occur simultaneously without intimate and complete cooperation. As an example, over the years PCBs have built up behind the various hydro dams along the river. For fear of stirring up the PCBs CL&P has resisted dredging these parts of the river even though it is a necessary maintenance item. Now is the time for the two agencies to communicate and arrange for this to be done under proper procedures with GE undertaking its obligations and responsibilities. This leads to two further points.
2. This settlement is being concluded too rapidly for the people of Connecticut to comment meaningfully. A six month extension is necessary in order to make the process work properly. if for no other reason it will require the six month delay so FERC and the GE settlement can communicate effectively and coordinate effectively.
3. Because of the deregulation of the power industry and the subsequent takeover of CL&P by ConEd in conjunction with the FERC re-licensing there is a unique opportunity for the GE settlement money to be applied to purchasing all the CL&P land along the Housatonic River. This would serve the purpose of preserving and protecting the river in perpetuity. Never again in our lifetime will we have the opportunity to acquire such a large amount of land and have the financial vehicle in place to do so and a willing seller at the table. This opportunity must not be lost. Any effort to divert the GE funds to another water body in the State of Connecticut, no matter how worthy or needy, is absolutely unacceptable.
4. GE responsibility is commensurate with its damage to the river. We expect that a fund be maintained so that if at any time in the future the technology is developed to remove all of the PCBs from the river without damaging the river that this will be accomplished. We say this keeping in mind that current remediation is limited by dredging techniques and therefore certain

low levels of **PCBs** may have to be endured as preferable to the damage incurred if dredging is undertaken.

5. Every day millions of gallons of water are pumped out of the **Housatonic** River and into **Candlewood** Lake for the **hydro** plant at Rocky River. The outlet for this water is directly adjacent to the New Milford Town beach. Before any settlement is reached it is imperative that thorough and complete testing of the lake bed, the suspended silts and the biological life in the lake be conducted. **After** the study has been completed if there is any pollution it must be completely cleaned up and adequate compensation to the lake provided.
6. No settlement that is reached will have any validity unless there is representation on the Board of Trustees and the peer review committees of citizen groups that are both concerned and knowledgeable. HVA is the most likely source of such individuals. We feel that without their participation on both committees the settlement and remediation actions will be suspect.
7. Finally Connecticut deserves no less than a complete and specific recitation of exactly what the **Housatonic** River will receive in the form of remediation, study and compensation. In this regard we feel 7.7 million dollars is a very small sum. We feel that the sum **required to** purchase **all** of the CL&P lands along the entire **length** of the river. what ever that may be, would be a good level of compensation.

Thank you very much for your attention in these matters.

~~Very truly yours~~

Arthur J. Peitler  
Mayor

cc: Tim **Connelly**, Senior Enforcement Counsel, EPA  
Richard Blumenthal, Attorney General  
Ed Parker, Chief, Bureau of Natural Resources, DEP  
Richard Velky, Chief, Schaghticoke Tribal Nation  
Ted Backer, Esq.  
HVA  
Jon Chew, HVCEO  
**Congresswoman** Nancy Johnson  
Congressman James Maloney  
Jeanne **Garvey**, Representative  
Dell Eads, Senator  
**Mary Ann Carson**, Representative  
Lou **DeLuca**, Senator  
Mayor Gene **Eriquez**  
Martin **J. Foncello** Jr., First Selectman Brookfield  
Donna Tuck, First Selectman **Sherman**  
Patricia Gay, First Selectman New Fairfield  
First Selectman Kent  
Northwestern Council of **Governments**  
Arthur Roque, Commissioner of DEP  
**Weantinogue** Heritage Trust  
Washington Environmental Trust  
Grassroots Coalition  
David P. **Boergers**, FERC  
Audrey Cole



**TOWN OF NEW MILFORD**

Arthur J. Peitler, Mayor  
Town Hall • 10 Main Street  
New Milford, Connecticut 06776



Assistant Attorney General  
Environment and Natural Resources  
United States Department of Justice  
Box 7611  
Ben Franklin Station  
Washington, DC 20044

200447611  
200447611





TOWN OF KENT, CONNECTICUT 06757

41 Kent Green Boulevard

P.O. BOX 678

Kent, CT 06757-0678

(860) 927-4627

FAX (860) 927-1313

January 13, 2000

Bryan Olson  
U.S. EPA  
One Congress Street (HBT)  
Boston, MA 02114

CT-22

Assistant Attorney General  
Environmental and Natural Resources Division  
U.s. Department of Justice  
P.O. Box 7511  
Ben Franklin Square  
Washington, DC 20044

RE: Proposed Consent Decree for GE and Housatonic River  
DJ#90-11-3-1479, 90-11-3-12792

Dear Sir or Madam:

Please enter the comments of the Town of Kent in the record of the above referenced proceedings.

First, the Town supports those portions of the Consent Decree which address clean up of the GE Plant Site and its vicinity and the 1½ Mile Reach. It recognizes that the sooner the contamination is remediated in those areas, the sooner the river as a whole benefits.

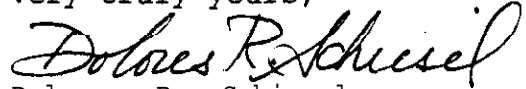
Second, the Town is concerned with the settlement's failure to specify GE's obligations in the lower portions of the Housatonic River or what is termed "Rest of the River". The town would like the final consent decree to include the following:

1. All compensatory restoration funds for the State of Connecticut be used for projects along the Housatonic River, and not for its tributaries or feeders in the watershed.
2. The peer review board and/or citizen coordinating council should include elected officials from municipalities in Connecticut that have river frontage and representatives(s) from the Housatonic River Commission (HRC).

3. The amounts designated as natural resource damages (NRD) is inadequate to fully compensate for the loss of enjoyment of the river due to actions of GE.
4. The trustees in charge of expenditure of NRD funds should be required to consult with municipalities and the HRC prior to expenditure.
5. If studies indicate primary restoration is necessary in the Rest of the River, municipalities and HRC should be provided with testing reports and consulted prior to issuance of the Statement of Basis.

The Town of Kent appreciates the efforts EPA has made toward resolution of this difficult environmental problem. We support resolution now rather than prolonged litigation, but ask that the concerns of the lower sections of the river be addressed.

Very truly yours,



Dolores R. Schiesel  
First Selectman

DRS/drs

cc: Richard P. Levy  
Edward L. Matson III  
NWCCOG (by e-mail)



HUBER

CT-23

130 Wallens Street  
Winsted, CT 06098  
January 14, 2000

Assistant-Attorney General  
Environment and Natural Resources Div.  
U.S. Dept. of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Dear Sir:

Please extend the deadline for ending public comments on the GE **Pittsfield/Housatonic** River Consent Decree listed as DJ#: **90-11-3-1479, 90-11-3-14792** for three to six months beyond the January 24, 2000 date.

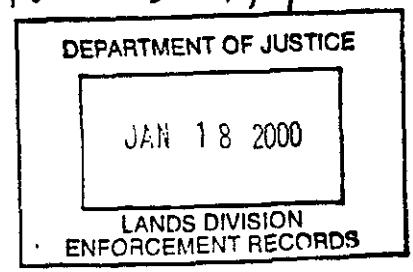
Such an extension of time would give the people of Massachusetts and Connecticut an opportunity to study the decree and to prepare for a knowledgeable discussion of its provisions which is so important to the health of the inhabitants and the environment of the river valley.

Thank you for your consideration.

Sincerely,

*Raymond T. Pavlak, Ph.D.*  
Raymond T. Pavlak, Ph.D.

90-11-3-1479







Dr. Raymond T. Paviak  
130 Walkens Hill  
Winsted, CT 06098



Assistant Attorney General  
Environment and Natural Resources Div.  
U.S. Dept. of Justice  
10 10 80

CT-24

Asst Attorney Gen.  
Civ. + Nat. Res. Div.  
U. S. Dept. of Justice

Jan. 20 '99

HTJSC

Dear Attorney Gen,

I hope the comment period on the  
H.C. - Housatonic consent decree can  
be extended. I haven't even seen a  
copy yet. (D. J. #: 90-11-3-1479, 90-11-3-1472)

Sincerely,

Thomas J. Doyle

THOMAS J. DOYLE

181 STERWOOD RD.

BRISTOL, CT.

06010-9013

9-13-1979

JAN 27 2000



Thomas J. Doyle  
181 Sherwood Road  
Bristol, CT 06010



Assistant Attorney General  
Environment & Natural Resources Division  
U.S. Dept. of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

CT-25

January 18, 2000

Assistant Attorney General  
Environmental & Natural Resources Div.  
US Dept. of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

RE: **DJ#:90-11-3-1479, 90-11-3-14792**

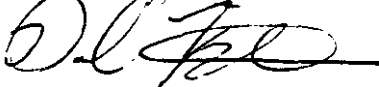
Dear Madam /Sir:

I am writing to ask for your assistance in extending the period for public opinion on the General Electric/State of Connecticut settlement regarding the Housatonic River.

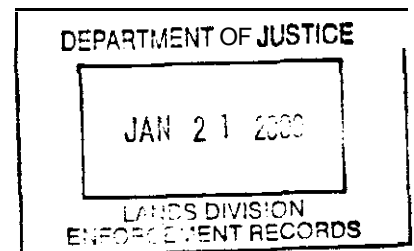
The period is for public review and comment is January 24, 2000 and that is not long enough for thorough review of concerned citizens. I am asking that the period please be extended for six (6) months.

Thank you for your assistance. Should you like to contact me on this issue I may be reached at (860) 738-9926.

Sincerely,

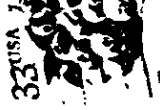


David Krayski



Krapeski  
55 E. Hurland Rd  
Barkhamsted CT  
06057

Assistant Attorney General  
Environmental and Natural Resources Div.  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044



Gabrielle Bernard  
Still River Commons  
2 Wallens Street #45  
Winsted, CT 06098



Brandeis University Usen Castle

Ryan Olsen  
U.S. Environmental Protection Agency  
Congress St. (HBT)  
Boston, Mass  
02114

1/14/2000

The question for those of us who have  
to drive or sit along the Housatonic is  
why is a criminal corporation like  
GE allowed to use the law to delay,  
obscure, and dodge paying for  
its outrageous contamination of a  
beautiful state resource? The government  
sits on the case + delays with 34.  
PLEASE extend this by at least 6  
months!

Gabrielle Bernard, C.N. ♀

PACE, Inc. . 101 Lawton Road, Canton, CT 06019-2209 • (860) 693-4813

Please extend the comment period  
for six months or least. This issue  
is serious and critical.

DJ # 90-11-3-1479,  
90-11-3-1479-2

Thank you, (Judi Friedman)

10000 2/10/00

# HOUSATONIC RIVER COMMISSION

**"to coordinate on a regional basis the local management and protection of the Housatonic River Valley in northwestern Connecticut"**

(203) 868-7341

17 SACKETT HILL ROAD • WARREN, CONNECTICUT 06754

January 17, 2000

Bryan Olson  
U.S. EPA  
One Congress Street (HBT)  
Boston, MA 02114

**CT-28**

Assistant Attorney General  
Environment and **Natural** Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben **Franklin** Station  
Washington, DC 20044

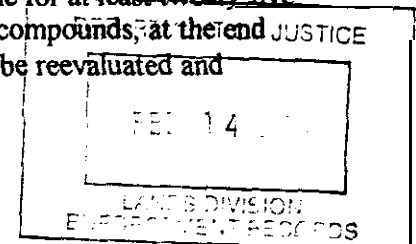
Re: **DJ#90-11-3-1479** and **90-111-3-1279Z**  
Consent Decree for PCB Remediation of the Housatonic River

Dear Sirs;

The Housatonic River Commission consists of representatives **from** the seven Northwestern Connecticut towns bordering the Housatonic River (**Salisbury**, North Canaan Canaan Sharon, Cornwall, Kent and New **Milford**). The Commission is responsible for **advising** member towns on issues involving the Housatonic River. The commission's objectives include monitoring development in the river corridor, preserving its free flowing and scenic character, protecting and improving water quality, preserving significant **ecological** areas, and monitoring and enhancing recreational uses of the river. To achieve these objectives the commission fosters consultation and cooperation between state agencies, the Towns, and local groups in Connecticut, Massachusetts, and New York, and Federal agencies concerned.

The primary concern of this Commission is that cleanup of PCB contamination originating **from** the General Electric plant in Pittsfield continue. To this end we applaud the efforts that have been made in moving the Consent Decree forward to this point. With this in mind **we would like** to make the following comments about the pending settlement in hopes **that** they **could** be incorporated into the final agreement.

Representatives **from** the Connecticut Department of Environmental **Protection** (CT DEP) have informed us that their PCB testing funded by General Electric will end in 2004. We **feel** that a regulatory agency, either the EPA or the CT DEP, **must** continue monitoring the **PCBs** in the Connecticut portion of the **Housatonic for at least twenty-five** years. As it has been established that **PCBs** are extremely stable **compounds**, **at the end** of **twenty-five** years, the PCB situation in the Housatonic should **be reevaluated and** testing should be continued if necessary.





For Connecticut, a significant aspect of the Consent Decree is the Natural Resource Damages component. We feel that the monies GE will be providing for this state is inadequate for decades of damage both past and into the future. In addition we would suggest that wording of the Consent Decree restrict spending of the Natural Resource Damages **fund** to the Housatonic River which has endured the PCB contamination.

Finally, as the governmental body charged **with** advising on river issues in Northwestern Connecticut, we would like to have the opportunity to assist and have input on both the EPA's rest of river evaluation and the spending of Natural Resource Damages **funds** in this state. To this second aspect we should be represented on the committee that the CT DEP proposes to establish to **determine** how the compensatory restoration **funds** will be spent.

Having been provided a period to comment on the proposed settlement between GE **and the** EPA and other governmental agencies, we appreciate your efforts in addressing the above issues. Our concern on this issue is that cleanup of contaminated sediments and the surrounding watershed continue and be as thorough as possible. As such we hope that our suggestions in no way delay this process, which offer the best hope for recovery of the river in years.

Sincerely,



**Jesse** Klingebiel, Chairman  
Housatonic River Commission

cc: HVA, CT DEP, Gov. Rowland



# HOUSATONIC COALITION

Husack

Bryan Olson  
US Environmental Protection Agency  
1 Congress Street (HBT)  
Boston, MA 02114

CT-29

Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Dept. of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

**DJ# 90-11-3-1479 and 90-11-3-1279Z**  
**Consent Decree for PCB Contamination of the Housatonic River**

Dear Sirs.

The Housatonic Coalition is comprised of eight angler/conservation organizations. We represent **over** 4,000 Connecticut residents who are concerned with the health of the Housatonic River and its trout fisheries. The Housatonic Coalition has been active in Housatonic River environmental issues since its formation in 1994. We have previously submitted comments to Industrial Economics, Inc. on the disposition of **Natural Resources Damage (NRD)** compensation in a possible PCB contamination settlement. Some of our member organizations have been active participants in the Housatonic River PCB contamination issue since PCB's were discovered in the Housatonic River in Connecticut.

The Housatonic River in Connecticut is seriously impaired by ongoing PCB contamination and water level fluctuations due to hydropower operations. Together, the Federal Energy Regulatory Commission's (FERC's) hydropower relicensing process and the PCB Consent Decree afford **us** an historic **opportunity** to restore the Housatonic River in Connecticut. Our hope is that the result of these processes will be a Housatonic River that is free flowing and is **free** of the damaging health and environmental effects of PCB **contamination**. We support the Consent **Decree** as a practical and timely solution to PCB contamination of the Housatonic River. If the Consent Decree is not approved, we are **concerned** that continuing litigation will delay **cleanup** for several years with no guarantee that **remediation** will take place and with no guarantee that Natural **Resources** Damage funds will be available to compensate for damaged fisheries and lost angling opportunities.

A main concern of the Housatonic Coalition is the disposition of the NRD funds. The primary damage done **by** PCB's in Connecticut is to the fisheries of the Housatonic River. According to a 1985 economic study of Housatonic River fisheries done by the Connecticut Department of Environmental Protection (DEP) and the **Connecticut Light & Power Company's** (CL&P's) assessment of recreational use of the Housatonic River (in their 1999 license application to FERC for their Housatonic River hydroelectric projects), the most intensively used fishery on the Housatonic is the 9 mile **long Housatonic** Trout Management Area (TMA) in **Salisbury, Sharon and Cornwall, CT**. Though impaired by both hydropower flow manipulation and PCB contamination, the TMA is a nationally recognized trout fishery. Unsafe levels of PCB's have been found in trout in the TMA.

NRD **funds** should be used to support projects and programs that will enhance Housatonic River fisheries, especially TMA fisheries. We recommend the following projects and programs:

9.

10.

11.

### **1. Biotelemetry Study of Trout Movement in the TMA.**

This study was proposed by DEP but was not completed due to lack of funding. This study will track trout movement and will help determine how trout avoid elevated mainstem Housatonic River temperatures during the crucial summer months. The primary factor influencing TMA trout survival is elevated water temperature combined with hydropower **water** releases. The knowledge gained from this study will allow DEP to **better** manage the TMA fishery so that trout survival **will be** enhanced.

### **2. Housatonic Survivor Trout Program**

This program was terminated by DEP. The Survivor Trout Program involved spawning Housatonic River brown trout and **putting** their progeny back into the TMA. This program will result in a strain of trout **uniquely** suited to Housatonic River conditions and will enhance trout survival.

### **3. Handicapped Fishing Ramp**

The Housatonic Fly Fishermen's Association (**HFFA**) has **long** advocated for a ramp in the **TMA** that would allow handicapped anglers to enjoy this fishery. The rugged terrain and volume of flow in the TMA **precludes** these anglers from using this area. NRD monies should **be** used to fund construction of a **handicap-accessible** fishing **ramp** in the TMA.

### **4. Streambank Restoration**

The health of **coldwater tributaries** is vital for trout survival in the TMA. These tributaries serve as thermal refuges and spawning and **nursery** areas for TMA trout. Some tributaries have degraded **streambanks** and are in need of restoration and enhancement. The HFFA is currently conducting a **streambank** restoration and tree planting project on **Furnace** Brook, a TMA tributary. More work is needed on Furnace Brook and additional work should be initiated on other tributaries.

### **5. Enforcement of Fishing Regulations/Monitoring of River Conditions**

The TMA suffers from inadequate enforcement of angling regulations. The TMA is a "catch-and-release" trout fishery where no trout may be kept, and its continued success is dependent on strict enforcement of angling regulations. In addition, the Housatonic River is a large and popular river and is subject to **all** the pressures of civilization. The potential for abuse of this river is great. We propose that a constable be **funded** to patrol the Housatonic River, especially the TMA section. The constable would be responsible for enforcement of angling regulations, public information and education, and monitoring of river conditions. In the **1980's**, a part time constable was **funded** by the DEP and private sources. This program **was very successful**. The constable should be a DEP employee and his activities should be restricted to the Housatonic River.

### **6. Protection of riverfront and watershed lands.**

The current rapid pace of residential and commercial development in Connecticut threatens the health and aesthetic quality of the Housatonic River. Many privately owned lands, **including those** owned by CL&P, are located on the **river** and its tributaries. Many of these properties are presently in a natural state, and ensuring their continued protection is important for access to the river and to maintain the quality of its waters. A portion of the NRD monies should be **used** to protect these lands through conservation easements or through purchase. The protection of CL&P owned riverfront lands in the TMA in Cornwall and Sharon should be given special consideration, especially if these lands are not protected in the FERC relicensing process.

### **7. Housatonic River Fisheries Biologist**

We propose the **hiring** of a Fisheries Biologist to oversee current Housatonic River fisheries programs as well as the projects proposed in this letter. This position should be a long term position within Connecticut DEP. The biologist's work should be restricted to Housatonic River fisheries issues.

The **Housatonic Coalition** and its member organizations have **been** involved in **Housatonic** River environmental issues, including PCB contamination, for many years. We represent thousands of Connecticut angler/conservationists who have **been** subject to the impacts of PCB contamination. We believe that the Consent Decree should be approved. While not an **ideal** settlement, it allows for timely remediation and some NRD compensation. We are strong advocates for directing NRD funds to the areas that were most directly affected by PCB contamination. Housatonic River fisheries, **especially** the Housatonic TMA trout fishery, were the most heavily impacted **resource** in the state of Connecticut. That is where the damage was done. and that is where the compensation should be targeted. Implementation of the projects and programs listed above will ensure that the NRD **funds** will be used to compensate for damages done. The **Housatonic** Coalition and its member organizations, because of their long standing involvement in this **and** other Housatonic River issues, should also be a part of the "**NRD** Restoration Plan Advisory Committee" that that will advise the trustees on where NRD **funds** are to be allocated in Connecticut. Thank you for the opportunity to comment on the Consent Decree.

Sincerely,



**Michael Piquette**  
Housatonic Coalition  
18 Lantern Hill Road  
Trumbull, CT 066 11  
1/24/2000

cc: Commissioner **Arthur Rocque**, CT DEP  
Bureau Chief Edward Parker, CT DEP  
CT **Attorney.General** Richard Blumenthal



# hffa

Established January 21, 1961

P.O. Box 5092, Hamden, Connecticut 06518-5092

Huber  
CT-30

Mr. Bryan Olson  
U.S. Environmental Protection Agency  
1 Congress Street (HBT)  
Boston, MA 02114

Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

DJ# 90-11-1479 mid 90-11-3-1279Z  
consent Decree for PCB Contamination of the Housatonic River

Dear Sirs,

The Housatonic Fly Fisherman's Association (HFFA) was founded in 1961 with the mission to "preserve and protect the trout fishery" and to "aid in the formulation and establishment of sound policies to conserve, restore and protect the Housatonic River for this and future generations." Our organization has been involved with the protection of the river prior to the time that PCB's were first discovered in the trout and other species that inhabit the Housatonic. The HFFA continues to provide guidance and assistance to both local and state agencies and volunteer organizations whose mission it is to maintain the scenic and environmental health of the Housatonic River and its fishery.

The Housatonic has been seriously and permanently damaged because of the PCB contamination caused by the General Electric Company at its manufacturing facility in Pittsfield, Massachusetts. Throughout the Housatonic River all species of fish have been found to be contaminated with PCB's, some at unsafe levels. Because of this contamination, a 7 mile portion of the Housatonic River has been designated a catch and release Trout Management Area (TMA) by the Connecticut Department of Environmental Protection (DEP). This section of the Housatonic River between the towns of Sharon and Cornwall is nationally recognized for its trout fishery.

The HFFA supports the Consent Decree as a manageable solution to the PCB contamination of the Housatonic River. It is imperative that the disposition of Natural Resources Damage (NRD) compensation provides for the current and future enhancement and improvement of the Housatonic River throughout its entire length.

The HFFA recommends that the following projects and programs be implemented with the NRD funds. It is our belief that these measures will substantially expand the benefits of the Housatonic River to all residents of Connecticut.

DEPARTMENT OF JUSTICE

FEB 28 2000

- **Handicapped Accessible Fishing Ramp**  
The HFFA has been an active proponent of a ramp that would allow anglers with physical disabilities to enjoy the Housatonic River. We recommend that NRD monies be used for the engineering and construction of this ramp.
- **Biotelemetry Study of Trout Movement in the TMA**  
This Department of Environmental Protection proposal has not been instituted because of a lack of funds. These studies would track trout movement and provide valuable information to determine how trout avoid elevated mainstem temperatures during the summer months on the Housatonic. The results of this study would aid DEP in better managing the TMA fishery.
- **Protection of Riverfront Lands**  
Throughout Connecticut and Litchfield County the pace of commercial and residential development and construction threaten the health and environmentally sensitive qualities of the Housatonic River. Large tracts of land owned by the Connecticut Light and Power Company (CL&P) are located along the length of the TMA and may be adversely affected with the advent of electricity deregulation and the upcoming relicensing of the Falls Village Hydro Electric facility. The NRD funds should be used for the purchase of land and/or conservation easements along the length of the TMA allowing angler access to the river.
- **Housatonic Survivor Trout Program**  
This DEP program has been discontinued because of a lack of funding. The survivor program involved the stocking of the strain of trout that has spawned from Housatonic brown trout. This would result in a strain of trout that is better able to survive the conditions of the Housatonic River.
- **Streambank Restoration and Tributary Enhancement**  
The mainstem of the Housatonic relies on the coldwater tributaries that are located throughout the length of the TMA. These tributaries provide ideal spawning habitat for TMA trout and require streambank restoration and erosion control measures to insure sufficient habitat and stream protection. In addition, many areas along the TMA suffer from bank erosion and require tree plantings and additional measures to restore the strength of the riverbank.
- **Monitoring of River Conditions and Enforcement of Fishing Regulations**  
The catch and release portion of the Housatonic River suffers from a lack of proper enforcement of fishing regulations. As a catch and release river, all trout must be released without avoidable injury and no trout may be kept. The TMA is a large and popular fishing destination for many anglers. It is imperative that current regulations are enforced and river conditions are monitored because of the potential for abuse of the river. We propose that a constable be hired with NRD funds whose full time responsibility would be the monitoring of the Housatonic and especially the TMA portion of the river. The constable should be a DEP employee and report to the fisheries department.

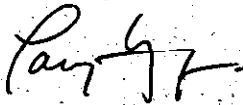
The damage sustained by the Housatonic River because of PCB contamination is incalculable. The settlement outlined in the Consent Decree is the direct result of the harm and injury caused by PCB contamination to this valuable and important river and trout fishery. We recommend that the NRD funds

that are available through the Consent Decree be allocated as compensation for the damage done to the Housatonic and provide for the enhancement of the TMA.

The Housatonic Fly Fisherman's Association has been a leading participant in the conservation and environmental issues that affect the Housatonic and the TMA. We have and will continue to work with the Connecticut DEP, local governments and various volunteer organizations for the betterment of the Housatonic River. It is because of this continuous and important service that we wish to take an active part and be involved in the "NRD Restoration Plan Advisory Committee" that will advise the trustees on where and how NRD funds are to be spent.

Thank you for the opportunity to comment on the Consent Decree and we look forward to participating in the development of a comprehensive plan for the restoration of the Housatonic River.

Sincerely,



Larry Yergeau  
President  
Housatonic Fly Fishermen's Association

Cc: Commissioner Arthur Roque, CT DEP  
Bureau Chief Edward Parker, CT DEP  
CT Attorney General Richard Blumenthal



MR. AND MRS. JOHN SLAIS  
444 CURTIS AVENUE  
STRATFORD, CT. 06615

CT-31

November 18, 1999

Dear Mr. Olsen:

I am most concerned about the continuing disregard by business corporations and utilities that pollute and contaminate our environment with unhealthy, hazardous, and toxic materials. I am requesting for the enclosed Connecticut Post article a comprehensive examination of the responsibility of I & other companies for the contamination of the Lower Housatonic River.

Corporations must be held fully accountable for their negative impact on our environment. They run the country through their soft money campaign contributions to politicians, please don't let them ruin it.

You are our defense against

corporate bottom-line mentality  
that violates our environment

Our land and the Earth are our  
heritage to be enjoyed by all and  
passed on for future generations

Your agency is our line of  
defense against those who disregard  
their responsibilities.

Could you please inform me  
of any future plans in your con-  
tinuing efforts to hold those  
responsible for continuation of the  
Nonsalonic and other Connecticut rivers.

Thank you for your consideration.

Sincerely,

John & Nancy Blair  
Members of P.Y.E.

## Closer look needed

It's shameful that Connecticut's rivers rank among the dirtiest in the nation. And it's no help that a recent cleanup pact between Fairfield-based General Electric and the federal Environmental Protection Agency all but ignores this state's section of the Housatonic River.

That's a pity, because the Housatonic's tidal flow is capable of sustaining a host of healthy organisms. Unfortunately, the ebb tide of the river churns up decades' worth of heavy metals, PCBs and other life-threatening pollutants, reducing the chances of thriving aquatic life.

Of course, GE has not been the only polluter of the Housatonic. And concentrations of the PCBs released by the company are said to be much lower in the Connecticut segment, relatively speaking, than in the Massachusetts portion of the river. The company is said to be studying what, if anything, it should do about the lower Housatonic.

### ► OUR POINT:

Closer scrutiny required of pollutants in Housatonic River.

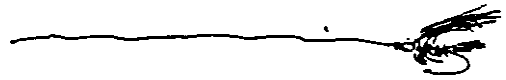
As matters now stand, Connecticut would get only a slice of a \$19 million fund that GE has earmarked to "restore, replace or acquire the equivalent of damaged resources." Whether that would be sufficient to put right even GE's share of the river pollution is anybody's guess.

It certainly won't put a dent in the 191,000 pounds of toxic chemicals that were dumped into the Housatonic by various factories and sewage treatment plants between 1992 and 1996, according to a study by the U.S. Public Interest Research Group. All told, that survey claims, a whopping 10 million pounds of pollutants found their way into Connecticut's rivers during that time. All that poison must have had definite sources, and those sources must be identified and held responsible!

Make no mistake: No one is suggesting that GE should have to pay for the environmental damage caused by other businesses, or the pollution in other Connecticut rivers, but a more comprehensive examination of the company's responsibility in the lower Housatonic seems to be in order. The EPA and the state Department of Environmental Protection owe that much to Connecticut residents.

Readers who wish to comment on the GE/EPA agreement may send their remarks to Bryan Olson, U.S. EPA, One Congress St. (HBT), Boston, MA 02114.

ROBERT S. GREGORSKI



Telephone 203-758-9166  
Fax 203-758-9166

P. O. Box 368  
Middlebury, CT 06762-0368

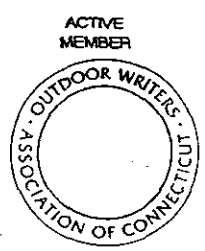
2-18-2000

Q -

FYI -

Appreciate any support re: GE # for  
other waters in the Housatonic River  
Watershed.

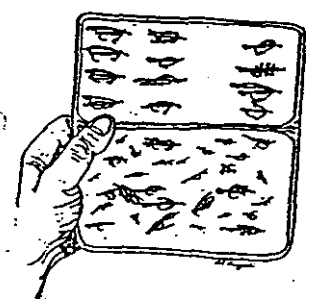
*BSJ*



RECEIVED

FEB 2 2000

BUREAU OF WILDLIFE





Scott Drugonis  
37 Kathy Drive  
Seymour, CT 06483  
203-888-1908

Ed Parker  
CT DEP  
Manager, Natural Resources  
79 Elm St.  
Hartford, CT 06106-5 127

February 12, 2000

Dear Ed,

I am writing you on behalf of the Naugatuck Valley chapter of Trout Unlimited and the Naugatuck River Watershed Association.

My concern is with the recent settlement involving the Housatonic River for PCB remediation with General Electric, EPA and CT DEP. This was for \$7.75 million for natural resources damages in Connecticut.

There have been several articles in area newspapers of late stating that Northwestern environmental groups oppose the use of this money for anything other than the Housatonic River.

The position of the organisations I represent is that the Naugatuck River is the largest tributary to the Housatonic. Any improvement to the Naugatuck results in a positive impact to the Housatonic watershed. On the Housatonic, there are 3 large impoundment's; Lake Lillinoah, Lake **Zoar** and Lake Housatonic. All are contaminated with **PCB's** and virtually impossible to remediate.

Please advocate using a portion of this money on the Naugatuck River. Much work has been done by the DEP and volunteer organisations. There could be plans for water quality monitoring, anadromous fish restoration, darn removals and park designs along riparian areas.

Please remember our watershed as being part of the Housatonic when making policy decisions.

Sincerely

Scott Drugonis

Director, Trout Unlimited Naugatuck Riverkeeper Volunteer Monitoring  
Director, Naugatuck River Watershed Association

RECEIVED

1 2000

ROBERT S. GREGORSKI

*Robert S. Gregorski*

0157  
0511  
*James V.*

P. O. Box 368  
Middlebury, CT 06762-0368

Telephone 203-758-9166  
Fax 203-758-9166

CT-33

*Lyone Namjian*  
U.S. EPA  
Boston, MA

*2-3-2000*

Dear EPA Director:

Enclosed is information that supports my position that a watershed program is the most effective and financially efficient way to improve water quality and develop the recreational and educational uses of waterways. The Naugatuck River is the major tributary of the Housatonic River; all improvements in the quality of life along the Naugatuck River are assets to the Housatonic watershed. Some of the G.E. money award to CT, should be used to develop the recreational and educational uses of the Naugatuck River and enhance the quality of life for fish and wildlife in the watershed.

ACTIVE MEMBER



Sincerely,

*Bob Gregorski*



ROBERT S. GREGORSKI

Telephone 203-758-9166  
Fax 203-758-9166

P. O. Box 368  
Middlebury, CT 06762-0368

2/3/2000

Brian Olson  
EPA  
Boston, MA

Dear Project Manager:

The enclosed information explains why some of the G.E. money awarded to CT should be spent improving the recreational and educational issues of the Naugatuck River. There is much need to develop habitat for fish and wildlife and parks along the river for handicap access, canoe, kayak and angler access.

All improvements to the Naugatuck River are improvements to the Housatonic Watershed and the people, fish and wildlife of Connecticut.

Sincerely,  
R. S. Gregorski



**'ROBERT S. GREGORSKI**

Telephone 203-758-9166  
Fax 203-758-9166

P. O. Box 368  
Middlebury, CT 06762-0368

2/3/2000

Susan Swersky  
U.S.A EPA  
Boston, MA 02214

Dear Project Manager:

The enclosed letter and publications should explain my strong conviction that the best approach to water quality and multiple uses for recreational and educational uses is a watershed developmental plan. The Naugatuck River's 39 mile length is the major tributary of the Housatonic Watershed. All improvements and developments to the Naugatuck River are most beneficial to the Housatonic Watershed and people of Connecticut.

ACTIVE  
MEMBER



ACTIVE  
MEMBER



Sincerely,  
Bob Gregorski

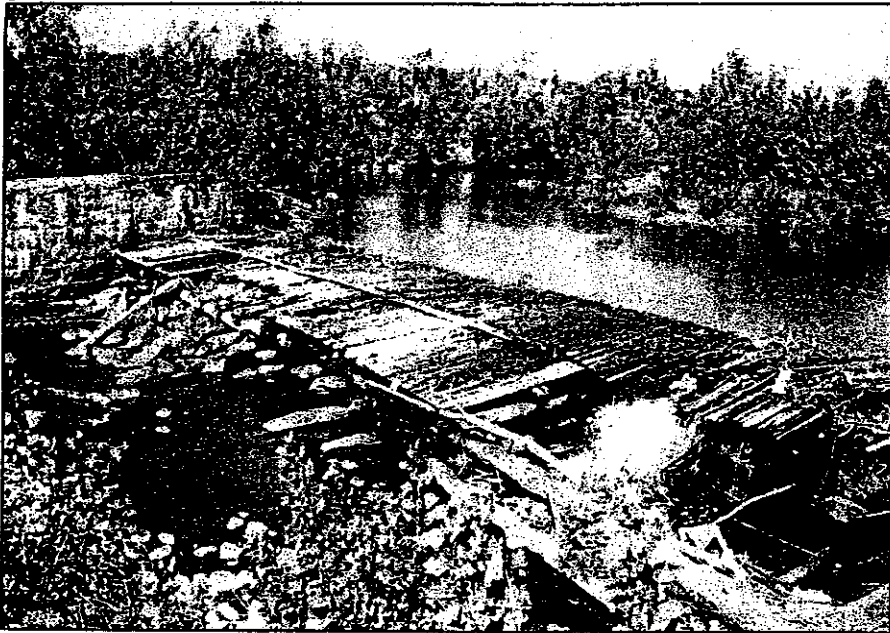




# RIVERSCAPE

The voice of the **Naugatuck** River Watershed Association, Inc.

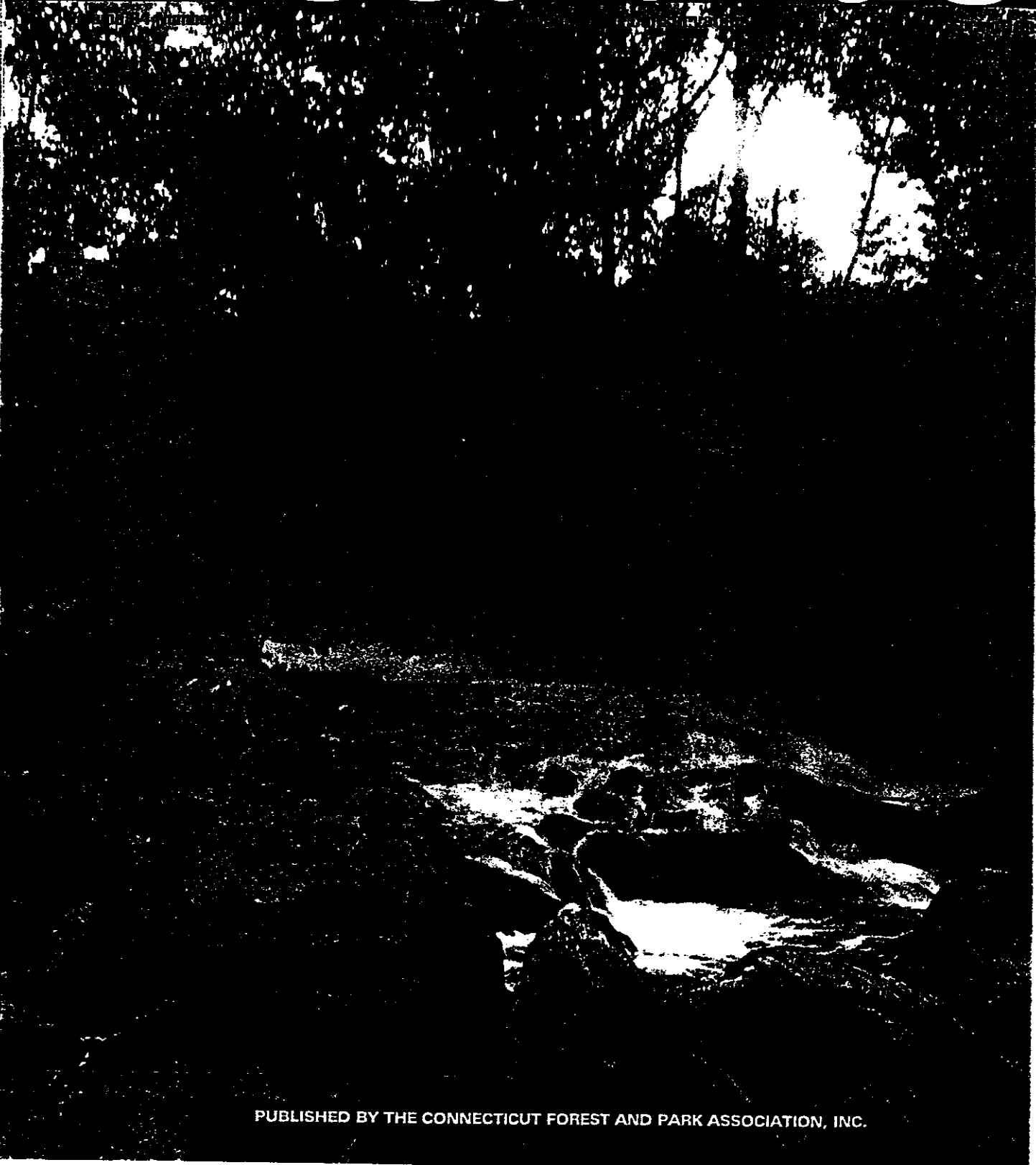
Winter 1999-2000



**Anaconda Dam (Waterbury)  
before and after complete  
removal**



# Connecticut Woodlands



PUBLISHED BY THE CONNECTICUT FOREST AND PARK ASSOCIATION, INC.

Naugatuck River Watershed Association, Inc.  
1 Kathy Drive  
Seymour, CT 06483  
**(203)-881-3018**

EXECUTIVE BOARD

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John F. Ploski, Jr.  
Jonathan Ploski  
Joseph Savarese

January, 2000

Fellow Conservationist:

**We need your** help. Your donation will help to: establish wildlife habitat and food sources, erect bluebird and wood duck nesting houses, reduce erosion and thermal pollution, beautify the environment, sponsor river clean-ups and support clean water and environment legislation. Wages/salaries paid out in 1994-99 to maintain NRWA, Inc. was \$0.00. Volunteers work for free; but, plants, tools, newsletters, postage, goods and services must be purchased. The NRWA, Inc. cannot exist without the financial support of individual, business and corporate patrons. Please help to support our work.

The Winter issue of *Riverscape* highlights accomplishments for 1999 and previous years and lists some of our projects for 2000. Please be a supportive conservationist.

Sincerely,

Robert S. Gregorski (Director, NRWA, Inc.)

-----  
YES, I WANT TO PROTECT OUR ENVIRONMENT. Enclosed is my contribution/donation of:

---\$20 Individual Member                      ---\$50 Friend  
---\$35 Family                                      ---\$100 Watershed Guardian                      --- Other

Please make your check payable to Naugatuck River Watershed Association, Inc. and return it to: **NRWA, Inc.** 1 Kathy Drive, Seymour, CT 06483

Name: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phones: (H)------(W)- \_\_\_\_\_ FAX \_\_\_\_\_ E-mail \_\_\_\_\_

\_\_\_\_\_ Please let me know if I can help in some other way.

The NRWA is a non-profit, tax exempt organization under IRS 501 (C)(3) and is committed to preserving and enhancing the quality of the watershed's environment.

YES, I WANT TO PROTECT OUR ENVIRONMENT. Enclosed is my contribution/donation of:  
---\$20 Individual Member                    ---\$ 50 Friend  
---\$35 Family                                    ---\$100 Watershed Guardian            ----- Other

Please make your check payable to Naugatuck River Watershed Association, Inc. and return it to: NRWA, Inc. 1 Kathy Drive, Seymour, CT 06483

Name: \_\_\_\_\_  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phones: (H) \_\_\_\_\_ (W) \_\_\_\_\_ FAX \_\_\_\_\_ E-mail \_\_\_\_\_

\_\_\_\_\_ Please let me know if I can help in some other way.

The NRWA is a non-profit, tax exempt organization under IRS 501 (C)(3) and is committed to preserving and enhancing the quality of the watershed's environment.

NRWA, inc. -- Telephone: 203-881-3018  
Naugatuck River Steward -- Telephone: 203-881-5030

---

Naugatuck River Watershed Association, Inc.  
1 Kathy Drive  
Seymour, CT 06483

Benjamin Silliman Gray  
14 Bolton Hill Road  
Cornwall, Connecticut 06753-181

February 7, 2000

CT-34

Mr. Brian Olson  
U.S. E.P.A.  
1 Congress St. (HBI)  
Boston MA. 02114

Assistant Attorney General, Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044

Re: DJ# 90-11-3-1479, 90-11-3-1297Z

Dears Mr. Olson et al:

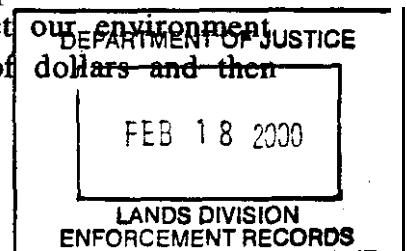
As a good parent I teach my children to be responsible for, themselves and there are consequences for our actions. Unfortunately, our government has treated our corporations to a reduced standard of responsibility. The shareowner's of nuclear power generators waste are not liable for the hazards, nor are the shareowner's of General Electric responsible for the full effects of their company's PCB dumping in the Housatonic River.

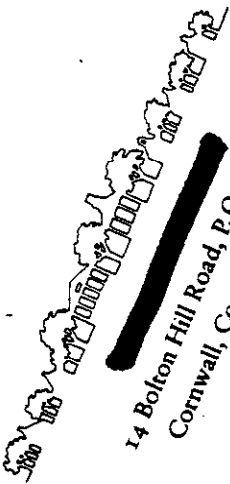
The settlement agreement does not provide for the complete, elimination of the contamination or the restoration of the river. Were my son to break a neighbor's window, does he only have to buy the glass or is he responsible for making it as good as it was? Will the river be safe to eat and drink from? What happens to justice when we the people see you, our government's employees, let the corporations off so easy, it is only money. There is no community service or physical clean up by the owners. The river will still be unsafe when the settlement is fulfilled or is their still further recourse?

I have heard "We bring good things to life", at least 10,000 times. I want those responsible to clean **the** entire river until there are no more **PCBs**. "No son, you only have to buy the glass and not repair the window". Please act on behalf of us, who depend on you, to **protect our environment**. You are only requiring the corporation spend X amount of **dollars and then** their responsibility is finished, regardless to the results.

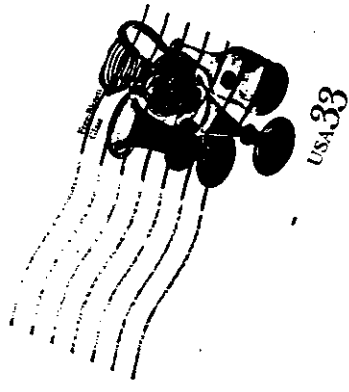
Thank you.

*B. S. Gray*





14 Bolton Hill Road, P.O. Box 181  
Cornwall, Connecticut 06753



Assistant Attorney General Resources Division  
Environment and Natural Resources Justice  
U. S. Department of Justice  
P.O. Box 7011 Ben Franklin Station  
Washington, DC 20540

02/04/88 FRI 14:36 FAX 860 672 8567

Allen C. Bushnell, III

12001

CT-35

**CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP GENERAL ELECTRIC'S ACKNOWLEDGED PCB CONTAMINATION IN THE HOUSATONIC RIVER.**

Concentrations of polychlorinated biphenyls (PCBs) in the oiled sediments and fish in the Housatonic River were among some of the highest detected in the National Water Quality Assessment Program (NAWQA). Concentrations of trace elements and organic contaminants in oiled sediment and fish were highest in the southern part of the study area (Massachusetts and Connecticut). U.S. Geological Survey Circular 1158, last modified 30 August 1998.

"Top Twenty Hazardous Substances" 1999 notice of the federal Agency for Toxic Substances and Disease Registry (ATSDR), has PCBs listed as the 46 hazardous substance in the country. See "Public Health Implications of Exposure to Polychlorinated Biphenyls" (1999). Both available at <http://www.atsdr.cdc.gov>

**The Consent Decree:**

The Consent Decree limits the rights of Connecticut property owners and residents by subjecting General Electric to criminal and penal civil liability. This liability will not be formal public hearing to Connecticut.

Cultural Resource Damage Study (CRDS) has not been performed on the Connecticut portion of the Housatonic River as required in Department of Interior regulations. The CRDS includes the recent waterfowl contamination study. No appropriate cultural resource study or wetlands study has been performed for Connecticut. A fishing and wildlife management study is being conducted. Recent CRDS would substantially add to the highly speculative and unproven estimates suggested for fiscal plan of thorough PCB study has been performed in Connecticut.

The baseline data in the report are arbitrary. Data available for Connecticut would provide the CRDS substantially in time.

Appendices G and J reflect the extent of Connecticut's contribution. No procedure is made by Connecticut to receive notice the CR project is completed. The Cultural Resource Study is used although these are required for the rest of the river. The CRDS is a process to take data on PCBs in fish, with no consideration given to Connecticut jurisdiction.

There is no plan to clean up the "rest of the river" and Connecticut, but instead there is an agreement for a "cleanup" PCBs throughout the CRDS. The CRDS will not be a maximum over the Consent Decree itself for years to come, rather than a focus on the cleanup of PCBs. In the background analysis, the intent of the Consent Decree is to avoid the assistance of prolonged and complicated litigation, no cost benefit analysis, no cost-benefit to determine whether more extensive and complex government remediation and operation of the Housatonic and liability of General Electric, or implementing the Consent Decree.

Why is Connecticut part of this package deal? Why is Connecticut's local residents of a bank in Pittsfield held hostage... the city won't be satisfied until CR project signs the subsequent document.

If you do not want Connecticut to be a party to this Clean Up, please request a public hearing and a month extension for written comments, please send copies and provide your name, address and contact numbers.

Print Name: ANNE HEATH  
Signature: *Anne Heath*  
Address: 322 HOOP POLE HILL, WOODBURY, CT 06798

Contact/Telephone # \_\_\_\_\_ Date 2/  
1) Connecticut not party to decree \_\_\_\_\_ 06/ 2) 10 month extension, public hearing \_\_\_\_\_

Mail to: Audrey Cole, 270 West Cornwall road, West Cornwall, CT 06796 or Fax: (860) 672-6867



# GRASSROOTS

Grassroots Coalition, Inc. P.O. Box 601 New Milford CT 06776

Grass Roots Coalition Of New Milford Opposes GE Consent Decree  
D/J #90-1 1-3-1479,90-1 1-3-14792

February 4, 2000

CT-36

An Open Letter To:

Bryan Olson, US EPA Region 1  
One Congress Street  
Boston, MA 02114

Assistant Attorney General, US Department of Justice  
Box 7611, Ben Franklin Station  
Washington, DC 20044

Richard Blumenthal, Connecticut Attorney General  
55 Elm Street P.O. Box 120  
Hartford, CT 06141-0120

Dear Sirs:

The New Milford Grass Roots Coalition, Inc. who represents 11 citizen action groups in New Milford, Connecticut stands strongly opposed to the proposed General Electric Consent decree for Connecticut. We find the consent decree to be inadequate on five basic points:

1. The 23 million dollars to be shared between Connecticut and Massachusetts for natural resource damages is woefully inadequate. This figure was developed from a preliminary report by the Industrial Economic Corporation that is based on a "lack of available data and information" to determine the financial impact on PCB pollution on Connecticut and Massachusetts. Their report acknowledges that their study does "not identify and quantify all the natural resource injuries likely to be present in the Housatonic River environment." Despite this they estimated the damages to be anywhere between 35 and 280 million. Thus, we believe that Connecticut should not be a party to this consent decree until such time as a complete and accurate assessment of financial damages to Connecticut and Massachusetts is completed.
2. The consent decree does not mandate that the 7.75 million Connecticut would receive under the consent decree would necessarily be spent on the Housatonic River. We believe that Connecticut should refuse to sign the consent decree until such a provision is detailed in the consent decree.



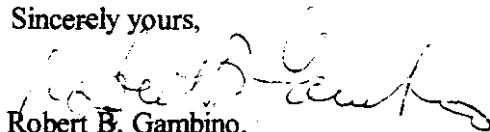
3. The consent decree does not give citizen environmental groups any role in determining how and where the money Connecticut is to receive under the consent decree is to be spent. We believe the consent decree should be rejected until provisions that mandate a **meaningful roll** for citizen environmental groups is **specified**.

4. The consent decree does not **clarify** the degree of testing or the form of testing to be carried out by the EPA on the Connecticut section of the Housatonic river. We believe that Connecticut should not be a party to the consent decree until adequate and extensive analysis of PCB's in the Housatonic River is delineated.


5. The consent decree does **not** specify the conditions under which the PCB's found in the Housatonic River shag be **remediated**. We believe that the consent decree should not be signed by Connecticut until it is agreed that General Electric will **mediate** any and **all** parts of the Housatonic River found to **have** levels of **PCB's** exceeding 2 parts per million, or equivalent biological markers.

We thus recommend that the deadline for signing the consent decree be extended by six months to negotiate these changes to the consent decree. If these changes are not made we recommend that Connecticut not sign the consent decree and instead initiate a class action law suit against General Electric. We make these recommendations with the understandii, contrary to public opinion, that Connecticut's failure to sign **the** consent decree will not stop the remediation of the **first** two miles of the Housatonic River below Pittsfield, Massachusetts.

Sincerely yours,



Robert **B.** Gambino,  
President, Grass Roots Coalition.

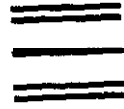



John R **Battista**, M.D.  
Board of Directors. Grass Roots Coalition

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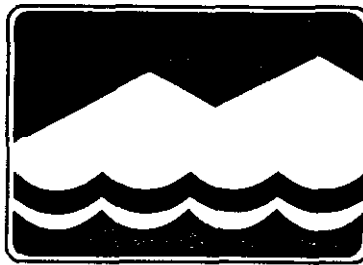
\* Citizens for Responsible Growth \* Common Sense \* Friends and Neighbors of Historic Merryall \* Long Mountain Residents' Association \* The New Milford Trust for Historic Preservation \* Northville Residents' Association \* The Pratt Center Rail Service Restoration Society \* Scenic Roads Preservation Organization \* The Stilson Hill Association \* Weantinoge Heritage, Inc.

4 Old Mill Road  
New Milford, CT 06776



  
Assistant Attorney General  
US Department of Justice  
Box 7611, Ben Franklin Station  
Washington, DC 20044

Bridgewater  
Brookfield  
New Milford



Newtown  
Roxbury  
Southbury

## Lake Lillinonah Authority

CT-37

Mr. **Bryan** Olson  
US Environmental Protection Agency  
One **Congress Street (HBT)**  
Boston, MA 02114

Assistant Attorney General  
Environment and **Natural** Resources Division  
US Department of **Justice**  
PO Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

February 10, 2000,

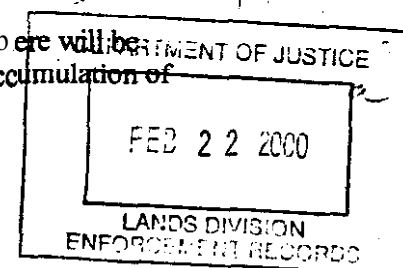
Re: DJ#90-11-3-1479 and 90-11-3-1279Z.  
Consent Decree for **PCB Remediation of the Housatonic River.**

Dear **Sirs**:

This letter is written on behalf of the Lake **Lillinonah** Authority who is **deeply** concerned **about the** on-going PCB contamination and the **future** health **of the** Housatonic River and Lake **Lillinonah** ecosystems.

While not **all** of our concerns are **fully** addressed by the Consent Decree, **we** support the approval of the Consent Decree. We have the following comments:

1. For the last several years, Lake Lillinonah has actively supported efforts by Housatonic Valley Association in strongly and publicly supporting the negotiated settlement process. We believe that moving ahead with the Consent Decree now is best for the **health of the** Housatonic River and Lake **Lillinonah** because:
  - The Consent Decree provides for the immediate and ongoing control and removal of heavily **contaminated sediments** that, **until** they are removed, **will** continue to be an ongoing **source of PCB threat** and **contamination to downstream** stretches of the River and Lake Lillinonah.
  - **If the** Consent Decree is not approved it is very **likely** that there will be significant delays in PCB cleanup resulting in continued **accumulation of PCBs in Lake Lillinonah** sediments.

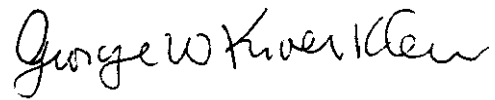


- . Under the terms of the Consent Decree EPA must, with public involvement, put together a cleanup plan **for** the ‘Rest of River’ that GE will be ordered to **carry** out, at GE’s expense. There is no cap on the amount of money GE may be required to spend on cleanup in lower Massachusetts and Connecticut Reaches of the River.
2. Perhaps **more** importantly is the concern about the fate of **PCBs** in Lake Lillinonah sediments that have accumulated behind the Shepaug Dam. The Consent Decree does not **specifically** address this concern. **We understand** that the Consent Decree requires additional sampling, data collection and risk assessments for the river below the first two miles in Pittsfield. However, the Consent Decree does not **specifically** address those areas **where** higher levels of **PCBs** have accumulated in the Lake Lillinonah sediments. We request that EPA **specifically** address the issue within the context of **the “Rest of River”** studies and cleanup plans. At a minimum these studies should include:
  - **Surfical** and deep core sediment sampling behind both the Shepaug Dam and the Robertson **Bleachery** Dam in New **Milford**.
  - Impact analysis on the unended aeration implementation in Lake Lillinonah on the **fate and transport of PCBs from** bottom sediments behind the Shepaug Dam.
  - **Surfical** and deep **core** sediment sampling in recently deposited sediments in **upstream** shallows of **Lake Lillinonah**.
  - Should **PCBs** be detected, an analysis **of how** hydropower operations and anticipated Robertson Bleachery Dam renovations might impact the resuspension and downstream transport **of PCB** contaminated sediments.
3. We support the **50:50** split **of Natural** Resource Damages between Massachusetts and **Connecticut**. We urge, in the strongest possible terms, that these **funds** be spent expressly within the Housatonic River ecosystem because it has been the Housatonic River that has **suffered** the ecological harm caused by the contamination **of PCBs**. Lake Lillinonah, as the **first** large impoundment downstream of the site of PCB discharge, has accumulated a large **fraction** of the material, at approximately 6440 pounds, or **29%**, **of the** total estimated **PCBs** in the river.
4. We recommend that EPA publicize and conduct regular public meetings in Connecticut because continued public involvement is crucial to the **ultimate** success **of this** cleanup **plan**.

Lastly, Lake Lillinonah Authority wishes to forward its appreciation to those in state and federal government agencies that have worked so hard to protect the future **of the** Housatonic River while achieving this negotiated settlement.

**Thank** you for this opportunity to comment.

Sincerely yours,



George W. Knoecklein, Ph.D.  
Director, Lake Lillinonah Authority

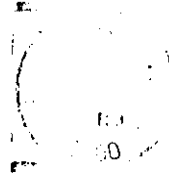
cc: Mr. **William** Stuart, Town of Bridgewater  
Mr. Martin Foncello **Town of Brookfield**  
Mayor Art **Peilter** Town of **New** Milford  
Mr. Herb Rosenthal **Town of Newtown**  
**Mrs.** Barbara Henry **Town of Roxbury**  
Mr. **Alfio Candido** Town of **Southbury**



**Lake Lillinonah Authority**

22 Hidden Brook Rd.  
Brookfield, CT 06804

Bridgewater  
Brookfield  
New Milford  
Newtown  
Roxbury  
Southbury



Assistant Attorney General  
Environment and Natural Resources Division  
US Department of Justice  
PO Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

20044+7611



CT-38

February 11, 2000

Mr. Bryan Olson  
US Environmental Protection Agency  
One Congress Street (HBT)  
Boston, MA 02114

Assistant Attorney General  
Environment and Natural Resources Division  
US Department of Justice  
PO Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Re: DJ#90-11-3-1479 and 90-11-3-1279Z  
Consent Decree for PCB Remediation of the Housatonic River

Dear Sirs:

This letter is written on behalf of the many organizations and elected officials who are deeply concerned about the on-going PCB contamination and the future health of the Housatonic River. These organizations include the Housatonic Valley Association (HVA), Housatonic Valley Council of Elected **Officials**, Valley Regional Planning Agency, Housatonic Coalition, Housatonic River Sports Alliance, Trails Committee of the Appalachian Mountain Club (CT Chapter), Candlewood Lake Authority, Lake Lillinonah Authority, Lake **Zoar** Authority, Lake Housatonic Authority, Audubon Council of Connecticut, Regional Plan Association Rivers Alliance of Connecticut and Down to Earth. Elected **officials** include U. S. Representative James H. Maloney (CT 5<sup>th</sup> District), U. S. Representative Nancy L. Johnson (CT, 6<sup>th</sup> District), State Senator M. Adela Eads (CT 30<sup>th</sup> District), State Representative F. Philip **Prelli** (CT 63<sup>rd</sup> District), State Representative Andrew W. Roraback (CT 64<sup>th</sup> District), State Representative Jeanne W. **Garvey** (CT 67<sup>th</sup> District) and individual members of the Housatonic River Commission.

While not **all** of our concerns are fully addressed by the Consent Decree, we support the approval of the Consent Decree. We offer the following comments:

1: For the, last several years, HVA and others have strongly and publicly **supported the** negotiated settlement process. We believe that moving ahead with **the Consent Decree now** is best for the health of the Housatonic River because:

- The Consent Decree provides for the immediate and ongoing control **and removal of** heavily contaminated sediments that, until they are removed, will **continue to be an on-**

ENFORCEMENT RECORDS

going source of PCB threat and contamination to downstream stretches of River in Massachusetts and Connecticut.

- **If the** Consent Decree is not **approved**, it is very likely that the only way to compel any future cleanup would be for the governments to seek legal remedies under the **Superfund** laws in what would probably be a long and contentious **court** battle. This would:
    - delay PCB cleanup where it is most urgently needed;
    - allow the continuing threat of on-going contamination to lower river reaches in Massachusetts and Connecticut;
    - possibly result in less cleanup and compensatory funds for the River than outlined in the Consent Decree; and
    - cost taxpayers many millions of dollars, with no guarantee of a more favorably perceived settlement.
  - Under the terms of the Consent Decree EPA must, with public involvement, put together a cleanup plan for the “Rest of River” that General Electric Company (GE) will be ordered to carry out, at GE’s expense. There is no cap on the amount of money GE may be required to spend on cleanup in lower Massachusetts and Connecticut reaches of the **River**.
2. At the same time, for more than fifteen years many of us have raised concern about the fate of PCB contaminated sediments that have accumulated behind dams downstream from Pittsfield. The Consent Decree does not specifically address this concern. We understand that the Consent Decree requires additional sampling, data collection, and risk assessments for the “Rest of River” (below the first two miles in Pittsfield) and provides EPA with the authority to order GE to clean up any portion of the Housatonic River where PCB levels are found to exceed levels protective of human health and the environment. However, because the Consent Decree does not explicitly call for testing behind impoundments in Massachusetts and Connecticut, areas where higher levels of **PCBs** are most likely to have accumulated, **we request** that EPA specifically address this issue within the context of the “Rest of **River**” **studies** and cleanup plans. At a minimum these studies should include:
- **Surficial** and deep core sediment sampling behind all Housatonic River impoundments, and in the canals and reservoirs associated with all the hydroelectric facilities such as those at Falls Village, Bulls Bridge and Candlewood Lake in Connecticut.
  - Should **PCBs** be detected, **an** analysis of how hydropower operations impact the resuspension and downstream transport of PCB contaminated sediments.
3. We are not alone in desiring a more **substantial** monetary settlement for the Natural Resource Damages (**NRD**) component. However, for the reasons stated in (1) above, we **support** the amount **established** in the Consent Decree as a minimum. We also **support** the **50:50** split of **NRD** funding between Connecticut and Massachusetts. We urge, in the strongest possible terms, that the **NRD funds** be spent along and within the Housatonic River only, and not for projects on other rivers. Many of us are also requesting, under separate cover **to** the Connecticut Department of Environmental Protection, that the CT DEP “**NRD** Restoration Plan Advisory Committee” announced on January 4, 2000 include representatives **from** the



entire Housatonic River community in **Connecticut**, **especially** those organizations that have monitored and participated in the resolution of this issue such as **HVA**, the Housatonic River Commission, the Housatonic Fly Fishermen's Association and other fishing organizations, the Lake Authorities, and riverfront communities.

4. Because of the substantial amount of misinformation that has circulated about this Consent Decree we **support** the extension of the public comment period to February **23<sup>rd</sup>** to enable interested parties to assess and comment on the facts.
5. Continued public **involvement** is crucial to the ultimate success of this cleanup plan. We recommend that EPA publicize and conduct regular public information meetings in both. Massachusetts and Connecticut, and provide written updates, perhaps through a newsletter and EPA's **website**, to all interested parties.

We appreciate the effort put forth by the state and federal government agencies that worked so hard, for so many months - even years - to protect the future of the Housatonic River while achieving this negotiated settlement. **While** not all of our **desires** are encompassed by the agreement, we believe **that** on balance this Consent Decree includes the actions most urgently needed to immediately reduce the threat of **PCBs** in the river system, and to restore the health of the Housatonic River over the long term.

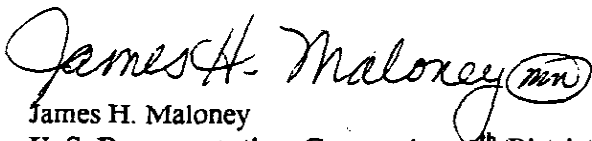
Thank you for this opportunity to comment.

Sincerely,




Lynn Werner  
Executive Director

**Housatonic Valley Association**, a tri-state, nonprofit organization of more than 3,500 members that works to protect the entire Housatonic River and its 1948 square mile watershed.



James H. Maloney  
U. S. Representative, Connecticut 5<sup>th</sup> District



Nancy L. Johnson  
U. S. Representative, Connecticut 6<sup>th</sup> District

*M. Adela Eads* (RM)

M. Adela Eads  
CT State Senator. 30<sup>th</sup> District

*F. Philip Prelli*

F. Philip Prelli  
CT State Representative, 63<sup>rd</sup> District

*Andrew W. Roraback* (RM)

Andrew W. Roraback  
CT State Representative, 64<sup>th</sup> District

*Jeanne M. Garvey*

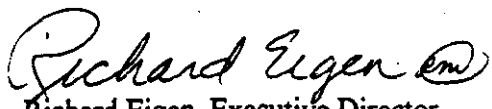
Jeanne Garvey  
CT State Representative, 67<sup>th</sup> District

*Helen P. Speck*

Helen Speck,  
Director Connecticut Office  
**Regional Plan. Association**

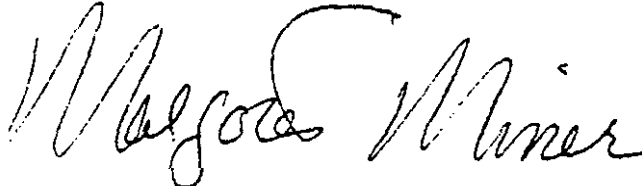
*Donna A. Tuck*

Donna Tuck, Chairman  
**The Housatonic Valley Council of Elected Officials** representing the chief elected officials of  
Danbury, Redding, Ridgefield, Bethel, Brookfield, New Fairfield, Sherman, New Milford,  
Bridgewater and Newtown



**Richard Eigen, Executive Director**

**Valley Regional Planning Agency** representing the chief elected officials of **Ansonia, Derby, Sevmour** and **Shelton**



**Margaret Miner**

**Executive Director**

**Rivers Alliance of Connecticut** a statewide coalition of residents, watershed and river groups and local businesses working together for river conservation



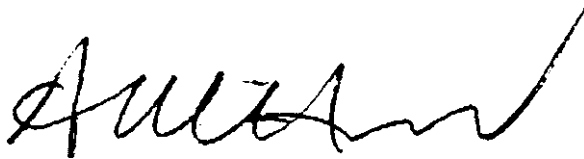
**Michael Piquette**

**Housatonic Coalition** representing over 4,000 CT fishermen, including members of the Housatonic Rainbow Club, the Connecticut Council of Trout Unlimited, the Federation of Fly Fishers, the Housatonic Fly Fishermen's Association and Housatonic River Outfitters



**Marcus G. Organschi**

**The Housatonic River Sports Alliance**, representing the river's boating community



**Ann Sherwood, Chairperson**

**Trails Committee**

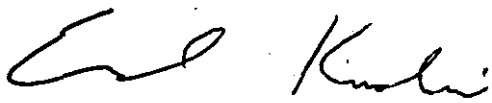
**Connecticut Chapter Appalachian Mountain Club**



**Hubert Hawkins, Chairman**

**The Candlewood Lake Authority**

Representing the towns of Danbury, New Fairfield, Sherman, **Brookfield** and New Milford



Ed **Kisluk**, Chairman  
**Lake Housatonic Authority**  
Representing the towns of Derby, Oxford, Seymour and Shelton



Ann **Schissel**, Chairman  
**Lake Lillinonah Authority**  
Representing the towns of Bridgewater, **Brookfield**, New Milford, **Newtown**, Roxbury and **Southbury**



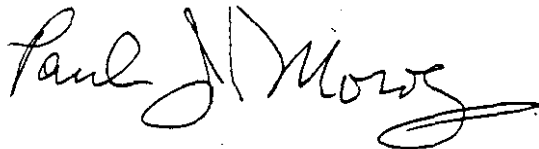
Howard **Saad**, Chairman  
**Lake Zoar Authority**  
Representing the towns of Monroe, **Newtown**, Oxford and Southbury



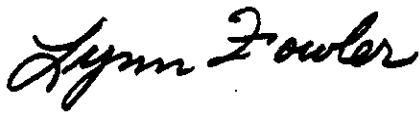
Jane Kerin-Moffat, President  
**The Audubon Council of Connecticut** representing the 14 chapters and 2 **affiliates** of the National Audubon Society



William R. Tingley  
Vice Chairman and Sharon Representative  
Housatonic River Commission



Paul J. Moroz  
Kent Representative, Housatonic River Commission



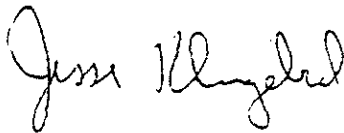
Lynn Fowler  
Cornwall Representative, Housatonic River Commission



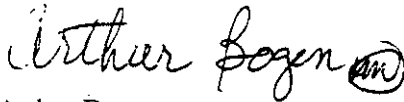
James Krissel  
Cornwall Representative, Housatonic River Commission



David Skovron  
Falls Village Representative, Housatonic River Commission



Jessie Khngabiel  
Teacher, kayaker, and aquatic ecologist



Arthur Bogen  
Down to Earth --

cc: All signatories

The Honorable John G. Rowland, Governor of Connecticut  
The Honorable Paul Cellucci, Governor of Massachusetts  
Richard Blumenthal, Connecticut Attorney General  
Bob Durand, Secretary, Massachusetts EOE  
Massachusetts EOE Housatonic Basin Team Leader Tom O'Brien  
Arthur Rocque, Commissioner, Connecticut Dept. of Environmental Protection  
Edward Parker, Bureau Chief, CT DEP Bureau of Natural Resources  
Charles Fredette, CT **DEP**, Bureau of Water Management  
Housatonic River Commission  
Northwestern Connecticut Council of Governments



P.O. Box 28, Cornwall Bridge, CT 06754-0028

Assistant Attorney General  
Environmental and Natural Resources Div.  
US Department of Justice  
PO Box 7611  
Ben Franklin Station  
Washington, DC 20044

**FIRST CLASS**



150 Kang Road • P.O. Box 28 • Cornwall Bridge, Connecticut 06754  
860-872-8678 • Fax: 860-872-0182 • E-mail: housatonic@anet.net

November 12, 1999

Mr. Brian Olsen  
United States Environmental Protection Agency  
1 Congress Street  
Suite 100(HBR)  
Boston, MA 02114

Dear Brian:

I hope this letter finds you well. I received word last week that the deadline for comments on the draft Consent Decree - including the draft Corrective Action Permit to be issued to GE by EPA under the Resource Conservation and Recovery Act - is December 27, 1999.

I am writing to ask you to consider providing a one-month extension of the comment period. Over the next few weeks, HVA will be organizing an information meeting between EPA officials and community leaders and groups along the Housatonic River in Connecticut who have an interest in PCB corrective actions. My discussions with Angela Bonarino, EPA Community Relations Coordinator, indicate that early to mid-December would be a good time for EPA to attend an informational meeting in Connecticut. Given the short turnaround time this would leave for public comment, HVA requests an extension of the comment period to the end of January. We believe that this will ensure that all interested parties have adequate time to review, assess and comment on the Consent Decree and draft Corrective Action Permit.

Thank you for considering our request. I look forward to hearing from you.

Warm regards,

Lynn Verner  
Executive Director

- c. Arlene Locque, Commissioner of the Connecticut Dept. of Environmental Protection  
George Wislocki, Berkshire Natural Resources Council  
CT Housatonic River Town Land Trusts, Lake Authorities, Regional Planning  
Agencies, fishing clubs, and environmental Groups





Scott Drugonis  
37 Kathy Drive  
Seymour, CT 06483  
203-888-1908

Ed Parker  
CT DEP  
Manager, Natural Resources  
79 Elm St.  
Hartford, CT 06106-5127

CT- 39

February 12, 2000

Dear Ed,

I am writing you on behalf of the Naugatuck Valley chapter of Trout Unlimited and the Naugatuck River Watershed Association.

My concern is with the recent settlement involving the Housatonic River for PCB remediation with General Electric, EPA and CT DEP. This was for \$ 7.75 million for natural resources damages in Connecticut.

There have been several articles in area newspapers of late stating that Northwestern environmental groups oppose the use of this money for anything other than the Housatonic River.

The position of the organisations I represent is that the Naugatuck River is the largest tributary to the Housatonic. Any improvement to the Naugatuck results in a positive impact to the Housatonic watershed. On the Housatonic, there are 3 large impoundment's; Lake Lillinoah, Lake Zoar and Lake Housatonic. All are contaminated with PCB's and virtually impossible to remediate.

Please advocate using a portion of this money on the Naugatuck River. Much work has been done by the DEP and volunteer organisations. There could be plans for water quality monitoring, anadromous fish restoration, dam removals and park designs along riparian areas.

Please remember our watershed as being part of the Housatonic when making policy decisions,

Sincerely

Scott Drugonis

Director, Trout Unlimited Naugatuck Riverkeeper Volunteer Monitoring  
Director, Naugatuck River Watershed Association





David Howard

## A River Reborn: Connecticut's Naugatuck

**J**ON PLOSKI HAS DISTINCT MEMORIES OF THE RIVER THAT RUNS THROUGH Seymour, the southwestern Connecticut town of his childhood. There, in what was once one of the world's leading industrial corridors, there are no idyllic tales of splashing after tadpoles or dangling off rope swings.

What he most associates with the Naugatuck River of his boyhood is disgust. "Growing up here, the last place in the world you'd want to be is near that river," said Ploski. At Seymour Middle School, which sits on the banks of the Naugatuck, he recalled, "We used to make the teacher shut the windows because it stunk."

That's all the folks of the Naugatuck Valley knew of the river dating back to the early 1800s, when pioneer industrialists dammed the Naugatuck and the valley thrummed with the prodigious production of brass, clocks, rubber, and other products. There were no environmental laws, and the river was a convenient place for massive factories to unload oils, acids and chemicals. Towns emptied their sewer lines into the current. Residents joked about sparring "lump fish"—raw sewage floating in the poisoned currents.

When Trout Unlimited's Naugatuck Valley Chapter formed in 1976, the river was still lifeless—a conservation long shot by any estimate. But the chapter has a philosophy about dead rivers: "Those are the ones," said chapter president Albin Weber, "where you can make the most difference."

**T**O DRIFT ALONG THE NAUGATUCK RIVER TODAY IS TO MARVEL AT AN aquatic renaissance.

Many of the dams are gone or slated for removal. One key fish ladder has been built, and several others are coming. Waste-treatment plants have been upgraded up and down the valley. Volunteers led by TU and the Naugatuck River Watershed Association have planted hundreds of white pines, hemlocks, and forsythia bushes along the banks. They've built bluebird boxes and hauled out tons of trash each year for the last decade as part of biannual river clean-up days.

The turning point can be traced as far back as the great flood of 1955, which ravaged many of the factories. The Clean Water Act of 1972 ensured that new plants constructed on the river would have to treat the Naugatuck much gentler.

In 1985, the Naugatuck Valley Chapter began to focus exclusively on the Naugatuck's plight. As a wildlife community crept tentatively back, the chapter successfully lobbied for many of the structural improvements, assigned itself as the chief steward, and set about bringing skeptics back to the river's banks.

By the late 1990s, the river was teeming with trout, smallmouth bass, beaver, blue heron, muskrat, osprey, and dozens of other species.

And in December 1998 came the biggest news yet: The chapter, working



CORNWALL CONSERVATION TRUST  
P.O. BOX 74  
WEST CORNWALL, CONNECTICUT 06796

10155  
CT-40

Mr. Bryan Olson  
US Environmental Protection Agency  
**OneCongress** Street (HBT)  
Boston, MA 02114

**Assistant** Attorney General  
Environment and Natural Resources Div.  
US Department of Justice  
PO Box 7611, Ben **Franklin** Station  
**Washington**, DC 20044

**Re: DJ#90-11-3-1479 and 90-11-3-1279Z**  
**Consent Decree for PCB Remediation of the Housatonic River**

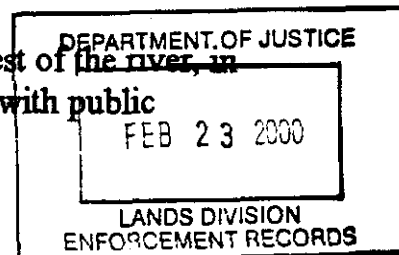
Dear Sirs:

I am writing to express the support of the Cornwall Conservation Trust for the letter submitted to you last week by Lynn Werner, Executive Director of the **Housatonic Valley Association.**

Ms. Werner's letter was mailed before I had **finished canvassing** the Trust's Board of Directors, but I can **now** report that our Board unanimously agreed with the position expressed by the **HVA**:

Although the settlement contained in the Consent Decree is by no means perfect, it should be accepted because

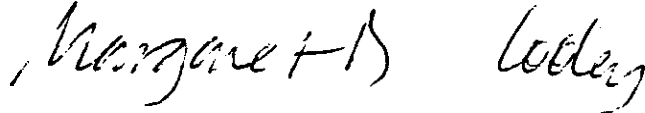
1. it offers immediate **remediation** for at least part of the **contamination**
2. it avoids the **alternative** of an arduous **lawsuit**, wasting money and causing needless delay, and
3. it mandates **an unlimited** sum to be spent on the rest of the river, in compliance with a clean-up plan to be drafted **with public** involvement.



We are also in **agreement** with the remainder of the letter, the concerns about the 'Rest of the River', the restriction of the settlement mount to **benefit** the **Housatonic** River alone, and the importance of continued public involvement.

**Thank** you for extending the period of comment, and for your attention to the feelings of those who wish to restore this damaged river to health.

Sincerely,

A handwritten signature in black ink that reads "Margaret D. Cooley". The signature is written in a cursive style with a large initial "M" and a long, sweeping tail.

Margaret D. Cooley, President  
Cornwall Conservation Trust

February 17, 2000



T H E C I T Y O F  
**SHELTON**  
C O N N E C T I C U T

H4B5E

February 18, 2000



Office of the Mayor

Mark A. Lauretti  
Mayor

Mr. Ryan Olson  
U.S. Environmental Protection Agency  
One Congress Street (HBT)  
Boston, MA 02114

CT-41

Assistant Attorney General  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

**RE: DJ#90-11-3-1479 and 90-11-3-12792**  
**Consent Decree for PCB Remediation of the Housatonic River**

Gentlemen:

This letter is written on behalf of the City of Shelton regarding the Consent Decree for PCB Remediation of the Housatonic River. While not all of our concerns are fully addressed by the Consent Decree, we support the approval of the Consent Decree. The City of Shelton will support the letter dated February 11, 2000 submitted by Lynn Werner, Executive Director of the HVA (attached).

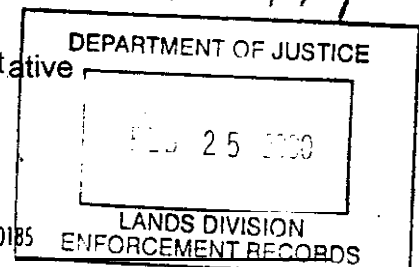
As Mayor of the City of Shelton, I am concerned that what happens upstream will have an absolute impact on communities like Shelton with nine miles of riverfront and with a whole host of recreational activities taking place on a daily basis. Every precaution should be taken to be sure that people are not put in harm's way.

Sincerely yours,

Mark A. Lauretti  
Mayor

chb  
Attachment

cc: Ruth Malins, Housatonic Valley Association  
David S. Carfo, Shelton's Long Island Sound Representative



February 11, 2000

Mr. Bryan Olson  
US Environmental Protection Agency  
One Congress Street (HBT)  
Boston, MA 02114

Assistant Attorney General  
Environment and Natural Resources Division  
US Department of Justice  
PO Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Re: DJ#90-11-3-1479 and 90-11-3-12792  
Consent Decree for PCB Remediation of the Housatonic River

Dear Sirs:

This letter is written on behalf of the many organizations and elected officials who are deeply concerned about the on-going PCB contamination and the future health of the Housatonic River. These organizations include the Housatonic Valley Association (HVA), Housatonic Valley Council of Elected Officials, Valley Regional Planning Agency, Housatonic Coalition, Housatonic River Sports Alliance, Trails Committee of the Appalachian Mountain Club (CT Chapter), Candlewood Lake Authority, Lake Lillinonah Authority, Lake Zoar Authority, Lake Housatonic Authority, Audubon Council of Connecticut, Regional Plan Association Rivers Alliance of Connecticut and Down to Earth. Elected officials include U. S. Representative James H. Maloney (CT 5<sup>th</sup> District), U. S. Representative Nancy L. Johnson (CT, 6<sup>th</sup> District), State Senator M. Adela Eads (CT 30<sup>th</sup> District), State Representative F. Philip Prelli (CT 63<sup>rd</sup> District), State Representative Andrew W. Roraback (CT 64<sup>th</sup> District), State Representative Jeanne W. Garvey (CT 67<sup>th</sup> District) and individual members of the Housatonic River Commission.

While not all of our concerns are fully addressed by the Consent Decree, we support the approval of the Consent Decree. We offer the following comments:

- 1: For the last several years, HVA and others have strongly and publicly supported the negotiated settlement process. We believe that moving ahead with the Consent Decree now is best for the health of the Housatonic River because:
  - The Consent Decree provides for the immediate and ongoing control and removal of heavily contaminated sediments that, until they are removed, will continue to be an on-

going source of PCB threat and contamination to downstream reaches of River in Massachusetts and Connecticut:

- If the Consent Decree is not approved, it is very likely that the only way to compel any future cleanup would be for the governments to seek legal remedies under the Superfund laws in what would probably be a long and contentious court battle. This would:
  - delay PCB cleanup where it is most urgently needed;
  - allow the continuing threat of on-going contamination to lower river reaches in Massachusetts and Connecticut;
  - possibly result in less cleanup and compensatory funds for the River than outlined in the Consent Decree; and
  - cost taxpayers many millions of dollars, with no guarantee of a more favorably perceived settlement.
- Under the terms of the Consent Decree EPA must, with public involvement, put together a cleanup plan for the "Rest of River" that General Electric Company (GE) will be ordered to carry out, at GE's expense. There is an cap on the amount of money GE may be required to spend on cleanup in lower Massachusetts and Connecticut reaches of the River.

2. At the same time, for more than fifteen years many of us have raised concern about the fate of PCB-contaminated sediments that have accumulated behind dams downstream from Pittsfield. The Consent Decree does not specifically address this concern. We understand that the Consent Decree requires additional sampling, data collection, and risk assessments for the "Rest of River" (below the first two miles in Pittsfield) and provides EPA with the authority to order GE to clean up any portion of the Housatonic River where PCB levels are found to exceed levels protective of human health and the environment. However, because the Consent Decree does not explicitly call for testing behind impoundments in Massachusetts and Connecticut, areas where higher levels of PCBs are most likely to have accumulated, we request that EPA specifically address this issue within the context of the "Rest of River" studies and cleanup plans. At a minimum these studies should include:

- Surficial and deep core sediment sampling behind all Housatonic River impoundments, and in the canals and reservoirs associated with all the hydroelectric facilities such as those at Fall Village, Bulls Bridge and Candlewood Lake in Connecticut.
  - Should PCBs be detected, an analysis of how hydro-power operations impact the resuspension and downstream transport of PCB contaminated sediments.
3. We are not opposed to seeking a more substantial monetary settlement for the Natural Resource Damages (NRD) component. However, for the reasons stated in (1) above, we support the amount established in the Consent Decree as a minimum. We also support the 50-50 split of NRD funding between Connecticut and Massachusetts. We urge, in the strongest possible terms, that NRD funds be spent along and within the Housatonic River only, and not for

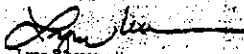
entire Housatonic River community in Connecticut, especially those organizations that have monitored and participated in the resolution of this issue such as HVA, the Housatonic River Commission, the Housatonic Fly Fishermen's Association and other fishing organizations, the Lake Authorities, and riverfront communities.

- 4. Because of the substantial amount of misinformation that has circulated about this Consent Decree we support the extension of the public comment period to February 23<sup>rd</sup> to enable interested parties to assess and comment on the facts.
- 5. Continued public involvement is crucial to the ultimate success of this cleanup plan. We recommend that EPA publicize and conduct regular public information meetings in both Massachusetts and Connecticut, and provide written updates, perhaps through a newsletter and EPA's website, to all interested parties.

We appreciate the effort put forth by the state and federal government agencies that worked so hard, for so many months - even years - to protect the future of the Housatonic River while achieving this negotiated settlement. While not all of our desires are encompassed by the agreement, we believe that on balance this Consent Decree includes the actions most urgently needed to immediately reduce the threat of PCBs in the river system, and to restore the health of the Housatonic River over the long term.

Thank you for this opportunity to comment.

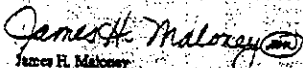
Sincerely,



Lynn Werner

Executive Director

Housatonic Valley Association, a tri-state, nonprofit organization of more than 3,500 members that works to protect the entire Housatonic River and its 1948 square mile watershed.



James H. Mahoney  
U. S. Representative, Connecticut 5<sup>th</sup> District



Nancy L. Johnson  
U. S. Representative, Connecticut 6<sup>th</sup> District

*M. Adela Eads*

M. Adela Eads  
CT State Senator, 30<sup>th</sup> District

*F. Philip Prelli*

F. Philip Prelli  
CT State Representative, 63<sup>rd</sup> District

*Andrew W. Roraback*

Andrew W. Roraback  
CT State Representative, 64<sup>th</sup> District

*Jeanne M. Garvey*

Jeanne Garvey  
CT State Representative, 67<sup>th</sup> District

*Helen P. Speck*

Helen Speck,  
Director Connecticut Office  
Regional Plan Association

*Donna A. Tuck*

Donna Tuck, Chairman  
The Housatonic Valley Council of Elected Officials representing the chief elected officials of  
Danbury, Redding, Ridgefield, Bethel, Brookfield, New Fairfield, Sherman, New Milford,  
Bridgewater and Newtown



*Richard Eigen* (RM)

Richard Eigen, Executive Director  
Valley Regional Planning Agency representing the chief elected officials of Ansonia, Derby,  
Seymour and Shelton

*Margaret Miner*

Margaret Miner  
Executive Director  
Rivers Alliance of Connecticut a statewide coalition of residents, watershed and river groups  
and local businesses working together for river conservation

*Michael Piquette* (MP)

Michael Piquette  
Housatonic Coalition representing over 4,000 CT fishermen, including members of the  
Housatonic Rainbow Club, the Connecticut Council of Trout Unlimited, the Federation of Fly  
Fishers, the Housatonic Fly Fishermen's Association and Housatonic River Outfitters

*Marcus G. Organschi*

Marcus G. Organschi  
The Housatonic River Sports Alliance, representing the river's boating community

*Ann Sherwood*

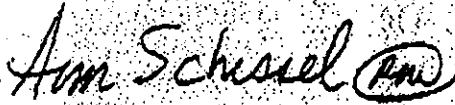
Ann Sherwood, Chairperson  
Trails Committee  
Connecticut Chapter Appalachian Mountain Club

*Hubert Hawkins* (HH)

Hubert Hawkins, Chairman  
The Candlewood Lake Authority  
Representing the towns of Danbury, New Fairfield, Sherman, Brookfield and New Milford

*Carl Kudva*

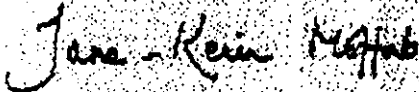
Lake Housatonic Authority  
Representing the towns of Derby, Oxford, Seymour and Shelton



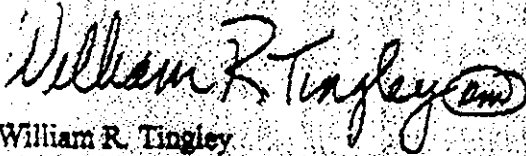
Ann Schissel, Chairman  
Lake Lillinonah Authority  
Representing the towns of Bridgewater, Brookfield, New Milford, Newtown, Roxbury and Southbury



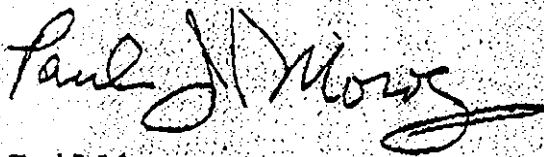
Howard Saad, Chairman  
Lake Zoar Authority  
Representing the towns of Monroe, Newtown, Oxford and Southbury



Jane Kerin-Moffat, President  
The Audubon Council of Connecticut representing the 14 chapters and 2 affiliates of the National Audubon Society



William R. Tingley  
Vice Chairman and Sharon Representative  
Housatonic River Commission



Paul J. Moroz  
Kent Representative, Housatonic River Commission

*Lynn Fowler*

Lynn Fowler  
Cornwall Representative, Housatonic River Commission

*James D. Krissel*

James Krissel  
Cornwall Representative, Housatonic River Commission

*David Skovron*

David Skovron  
Falls Village Representative, Housatonic River Commission

*Jessie Klingabiel*

Jessie Klingabiel  
Teacher, kayaker, and aquatic ecologist

*Arthur Bogen*

Arthur Bogen  
Down to Earth

cc: All signatories

The Honorable John G. Rowland, Governor of Connecticut  
The Honorable Paul Cellucci, Governor of Massachusetts  
Richard Blumenthal, Connecticut Attorney General  
Bob Durand, Secretary, Massachusetts EOEA  
Massachusetts EOEA Housatonic Basin Team Leader Tom O'Brien  
Arthur Rocque, Commissioner, Connecticut Dept. of Environmental Protection  
Edward Parker, Bureau Chief, CT DEP Bureau of Natural Resources  
Charles Fredette, CT DEP, Bureau of Water Management  
Housatonic River Commission  
Northwestern Connecticut Council of Governments



CT-42

### CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP GENERAL ELECTRIC'S ACKNOWLEDGED PCB CONTAMINATION IN THE HOUSATONIC RIVER.

"Concentrations of polychlorinated biphenyls (PCBs) in streambed sediments and fish in the Housatonic River were among some of the highest detected in the National Water Quality Assessment Program (NWQAP). Concentrations of trace elements and organic contaminants in streambed sediments and fish are the highest in the southern part of the Study Unit (Massachusetts and Connecticut)." U.S. Geological Survey Circular 1065, last modified 23 August 1997.

"Top Twenty Hazardous Substances:" 1997 notice of the Federal Agency for Toxic Substances and Hazardous Waste (ATSDR), has PCBs listed as the #6 hazardous substance in the country. See "Public Health Implications of Exposure to Polychlorinated biphenyls" (1999), from available at <http://www.atsdr.cdc.gov>

#### The Consent Decree

- 1) The consent decree limits the rights of Connecticut property owners and residents by absolving General Electric of criminal and partial civil liability. This is done without a formal public hearing in Connecticut.
- 2) A Natural Resource Damage Study (NRDS) has not been performed in the Connecticut portion of the Housatonic River as required in Department of Interior regulations. No analysis includes the recent waterfowl contamination study. No appropriate contingent valuation study or use loss study has been performed for Connecticut. A tubing and swimming use loss analysis is included. Recent data would substantially add to the highly speculative and conservative estimates suggested.
- 3) No flood plain or thorough PCB study has been performed in Connecticut.
- 4) The baseline dates in the reports are arbitrary. Data available for Connecticut would push these back substantially in time.
- 5) Appendices G and I reflect the opinion Connecticut is an afterthought. No provision is made for Connecticut to receive notice (no CT project coordinator) of a corrective Cleanups Study (1998), although these are required for the "rest of the river." The "Peer Review Process" is to take place in Hartford only, with no consideration given to Connecticut participation.
- 6) There is no plan to clean up the "rest of the river" (read Connecticut) but instead there is an agreement to a "process." Pages 88 through 114 (1-20) create a process that will ensure litigation over the consent decree itself for years to come, rather than a focus on the clean up of 1976.
- 7) In the bad ground analysis, the intent of the consent decree is stated to be avoidance of prolonged and complicated litigation. No cost benefit analysis has been done to determine which is more expensive and complex, a government remediation and restoration of the Housatonic and billing of General Electric, or implementing the consent decree.

Why is Connecticut part of this package deal? Why is Connecticut a deal breaker if it backs out? Hartford is held in a tight stage - the city won't be remediated unless Connecticut signs this outrageous document.

If you do not want Connecticut to be a party to this consent decree, or if you want a public hearing and six month extension for written comments, please sign below and provide your name, address, and contact number.

Print Name: **KEN CORNET**  
**JOE MUSTICH** \_\_\_\_\_ signature: *Joe Mustich*

Address: **404 Nettleton Hall Rd, WASHINGTON, CT 06793**

Contact Telephone: **@60-868-7355** Date: **2-19-00**

If Connecticut not party to decree  (circle 2) Sign to allow a public hearing.

Mail to: Audrey Cole, 270 West Cornwall Road, West Cornwall, CT 06786, Fax: (860) 677-0655

*A. J. H. B. R.*

# Review Appraisals, Inc.

270 West Cornwall Road, West Cornwall, CT 067%

860-672-2772

21 February 2000

**CT-43**

Bryan Olson  
U.S. EPA  
One Congress Street (HBT)  
Boston, MA 02114

DJ# 90-11-3-1479,90-11-3-1479Z  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044

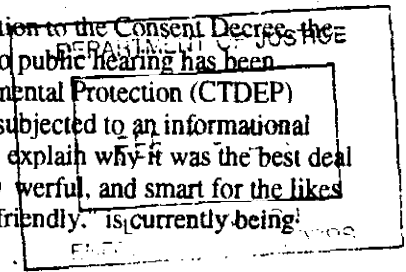
Re: "Consent Decree" between Connecticut and the General Electric Company regarding the polychlorinated biphenyl (PCB) contamination of the Housatonic River

Connecticut must withdraw from or renegotiate the "Consent Decree" that purports to remediate the Housatonic River and compensate us for more than fifty years of undisputed PCB contamination by the General Electric Company (GE). This document is a betrayal of the river, property owners, and people who live, work, and play in the western part of our state.

Since 1977 we have been patient while deferring to state and federal officials, believing that a fair and reasonable solution to this tragedy would eventually be achieved. As far back as 1981, the Housatonic River Commission (created by town officials of the Housatonic River Valley) addressed the PCB contamination issue by emphasizing in their management plan, "[w]hatever solutions are developed must be with the full cooperation and involvement of towns along the river."

Although some may confuse such patience with apathy, it is a reflection of our traditional faith in government.

Nineteen years later, with no time to allowed to analyze and voice opposition to the Consent Decree, the people of the Housatonic River Basin have been egregiously betrayed. No public hearing has been scheduled in this state, because, as a Connecticut Department of Environmental Protection (CTDEP) official declared "we are not legally required" to do so. Instead, we were subjected to an informational meeting where public officials involved in this "negotiation" attempted to explain why it was the best deal they could get. It became evident at that meeting that GE is just too big, powerful, and smart for the likes of our "negotiators." This from a state agency that is known as "business friendly." is currently being



investigated by **both** our state attorney general and federal investigators for undue influence and corruption, and where their own staff employees describe this new policy as systematically dismantling the state's enforcement **programs** to the direct detriment of public health (see **The Washington Monthly** article *Asleep on the Beat: Why Aren't Our Environmental Laws Being Enforced?*. November 1999).

### 1) **Dissemination of information and Participation in the Process**

The Consent Decree was negotiated in secret, with no stakeholders present at the negotiating **table**. Not for profit organizations and interested parties made repeated requests that they have a place **at** the table. These requests were denied. Repeated efforts made by the Housatonic **Environmental** Action League (HEAL) eventually prodded the CTDEP to begrudgingly and halfheartedly participate and answer questions **during** this so-called comment period. It is evident that the policy of our state government is that the less **the public knows, the better**. This contempt for public participation has tainted the process, with state government officials presenting the Consent Decree as a "done deal," with any revisions or additions as deal breakers. What a fraud to then call this a public "comment period," the proper term being a public "venting period."

### 2) **Natural Resource Damage Assessment (NRD)**

A NRD study has not been performed for Connecticut. The CTDEP has attempted to **pass** off a preliminary **study** as an adequate substitute. This behavior borders on malfeasance, and exemplifies the current agency practice of withholding public documents as drafts, preliminary, or legal work product involved in negotiation, **and** thus not subject to disclosure. **In** April 1998, the Connecticut Freedom of Information Commission (**CTFOI**) denied GE access to a "preliminary" NRD study. This was wrong, if not illegal. GE chose not to appeal this decision. The end result was that GE and the public were denied the review of these documents as required by United States Department of Interior (**DOI**) regulations.

Although there are repeated references to Connecticut in **the** NRD **study**, **any** reading of the report would show that the compilers made repeated efforts to disclose what was not included because of insufficient data. A FOI request has been made of Massachusetts, and a one will shortly be made of Connecticut, to obtain information on the circumstances surrounding the creation of this document. I say "this" **document** because there are so many "drafts" that went back and forth between the compilers and CTDEP that it is difficult to **know** at present what **final** report is referenced.

The NRD study fails to mention the Schaghticoke Indian Tribe that has lived and fished the Housatonic for centuries, well before **our** country was founded. They were denied a seat at the negotiating table, a **specific** requirement of **DOI** regulations. The CTDEP seemed unaware that the **Schaghticoke**s even lived on the river when this was brought to their attention during this "venting period."

The NRD study fails to mention the Housatonic Meadows State Park in Cornwall Bridge. The CTDEP **has** had exclusive control over this property, where campers and swimmers have recreated for **years**. Inexplicably, no PCB **signage** or warnings exist in this area of the river. How **can** a purported NRD study not take this important state **property** into account?

No flood plain or thorough PCB contamination **study** has been done for Connecticut.

No analysis of waterfowl contamination was done.

No analysis of tubing and swimming was done.

If anything the report should be retitled "**Preliminary** Study of Housatonic River PCB Contamination **and** Impact on Fisheries in the Central **and Northern** Reaches of Connecticut and Lower Reaches of Massachusetts."

Even taken in a conservative light, the preliminary NRD **study** hints at a much larger dollar amount than the irrelevant **figure** reached in this secretive negotiating process. The compensation dollar amounts for both Massachusetts **and** Connecticut should be counted in **the** billions, not millions.

### 3) **The Consent Decree**

The Consent Decree unjustly **limits** the rights of Connecticut property owners and residents by absolving GE of criminal and civil liability. This has been done without a public hearing in our state. No adequate provision is made for Connecticut to receive notice of **Corrective Measure** Studies, and no provision has been made for Peer Review meetings to **be** held in Connecticut. Indeed, the process is so convoluted **as** outlined **for** the "Rest of the River," that the document ensures years of litigation over the Consent Decree itself, rather than the remediation of the river (which will apparently only take place in the Pittsfield region of the Housatonic).

### 4) **Payoffs, Rewards, Political Contributions.**

The political context in which this Consent Decree has been negotiated **can** not be understated. We have a Republican Governor, **and** in northwestern Connecticut our federal Congressional and **state** representatives are all Republican. GE and its employees have given large sums of money to the Republican Party. As of the Federal Elections Commission January 1, 2000 filing, General Electric's Political Action Committee has given Nancy Johnson \$4500, the second highest contribution to any member of **the** House of Representatives,

The reporter who originally broke the story in Pittsfield, Massachusetts regarding schoolyard contamination, was soon employed and silenced by GE.

In New York, in **fighting** GE's Hudson River PCB contamination, GE critics were hired (co-opted) by GE.

Here in Litchfield County, a beloved environmental organization has been quietly convened into a undisclosed lobbying **arm** of GE by persuading groups and individuals to endorse the Consent Decree without informing people that they have been accepting **\$35,000** to \$40,000 a year from GE.

In late January, I received **an** insidious recruitment letter from GE, **concluding** this to be another **typical** strategy employed to see if I too could be "bought."

### 5) **Call to Action**

in the months ahead, we will be vigilant in discovering what individuals are "rewarded" by GE for their participation in **this** betrayal.

A not for **profit** organization will be incorporated **to** directly address the PCB issue and related contaminates that pollute the Housatonic River in Connecticut.

An international boycott of all GE goods and services (**lightbulbs, appliances, financing, defense contracting, NBC, etc.**) will be mounted.

We request that a **final** and complete NRD **study** be performed for Connecticut.

We will **seek** to **have a** site area designated in Connecticut for all **PCB** related issues, notices, and meetings.

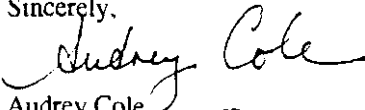
We ask that **all** interested **parties** in Connecticut be informed of **all PCB remediation** efforts and proposals performed in Massachusetts.

We will form a **coalition** with other national **and** international organizations to monitor and hold GE accountable for all their PCB or toxic contaminated rivers and properties.

Finally, it is now apparent how important it is for GE to **stifle and** control all debate **and** opposition to any significant cleanup of **the** Housatonic River or adequate compensation to **our** state for **natural** resource damage. Unlike many other contaminated sites in **the** country, the criminal PCB contamination in **our** river **can** be attributed solely to GE. Without dispute, GE has the resources to **clean** their mess up. This sell-out is precedent setting, and **will be** used **as** a farcical model for **the** 40 to 80 PCB cleanup sights that implicate GE throughout the country To that end, we ask that the Consent Decree be renegotiated in good faith; that serious, consistent, **and** independent PCB testing studies be performed for the "Rest of the River;" that stakeholders or their representatives be a party to all negotiations; and that GE compensate us adequately for the years of damage to **our** beloved Housatonic.

Attached are some of the petitions **that** have been forwarded on to me, urging that we not sign off on **the** Consent Decree or that **the** "venting period" be extended for six more months,

Sincerely,

  
Audrey Cole  
President

Connecticut Real **Estate** Broker License # 130272  
Massachusetts Real Estate Broker License **#RE** 139405-B  
Connecticut Certified General Real Estate Appraiser License **#0000129**

/Enclosures





The Commonwealth of Massachusetts  
 Executive Office of Environmental Affairs  
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January 20, 2000

Audrey Cole  
 270 West Cornwall Road  
 West Cornwall, CT 06796

Re: Public Records Request

Dear Ms. Cole:

*The \$251.06 FOI fee was  
 mailed immediately upon receipt.  
 Am still waiting for documents.  
 2/23/2000  
 Audrey Cole*

I write regarding your **request** dated January 9, 2000 and officially received **Monday**, January 10, 2000 for a copy of certain public records pursuant to the Public Records Law, section 7(26) of Chapter 4 and section 10 of Chapter 66 of the General Laws of **Massachusetts**, as well as the Public Records Access Regulations, 950 CMR 32.00, promulgated thereunder. I respond on behalf of the **Executive Office** of Environmental Affairs ("EOEA"). As mentioned in your request, **this** office recently provided you with a copy of a document described as the "Housatonic River Preliminary Natural Resource Damage Assessment" in response to your public records request made to this office on December 17, 1999. This document was mailed to you on December 27, 1999. Your current request seeks any "additional documentation from Industrial Economics (**IE**) of Cambridge, MA you have on file that falls under the purview of a **natural resource** damage assessment claim of the Housatonic River in Connecticut." In addition, your request asks for a copy of the following:

- (1) **The Statements of Work (SOW) requests made of IE of Cambridge, MA that you have on file. I believe one is referred to as the Proposed Technical Approach prepared under FWS Contract Number 14-48-0009-95-005, Delivery Order 1-001. Any addition, update, or amendment or new SOW order regarding the HRNRD [Housatonic River Natural Resource Damage Assessment] is also requested;**
- (2) **[T]he cover/transmittal letters that were sent by IE when the HRNRD study or any HRNRD studies were received, whether termed preliminary, draft or otherwise; and,**
- (3) **[T]he documentation of the qualifications of the individuals (not the company) who performed the HRNRD's that you have on file.**

EOEA is in the process of identifying documents, which may be responsive to your request. EOEA's initial search of its documents, conducted in response to your request, identified approximately six hundred and fifty pages of potentially responsive records. The Public Records Access Regulations,

Letter to **Audrey Cole**,  
Public **Records Request**,  
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particularly 950 CMR § **32.06(3)**, state that a “custodian shall provide a written, good faith estimate of the applicable copying, search time and segregation time fees to be incurred prior to complying with a public records request where the total costs are estimated to exceed ten dollars.” Accordingly, as the custodian of the identified records, EOEA estimates the total cost associated with complying with your request as **\$251.06**, which consists of 565.00 for copying charges (650 pages at SO.10 per page), \$76.50 for estimated search time’ fees (2 hours of Natural Resources Damages Coordinator time), \$101.56 for estimated segregation time’ fees (1 hour of attorney time and 2 hours of Natural Resources Damages Coordinator time), and approximately \$8.00 for the cost of postage as allowed by 950 CMR § **32.06(3)**. Please understand that this is a good faith estimate and is subject to revision based upon any additional search time or segregation time, which may prove necessary, and potential adjustments to the final copying and postage costs.

The ten-cent per page copying charge provides for a black and white reproduction of one-side of an 8.5” by 11” sheet of paper. Some of the documents, **identified** to date, are oversize (beyond the capacity of EOEA’s copying machine, e.g. site plans) and/or contain color. EOEA cannot copy oversize documents or make color copies through its ordinary means of reproduction. Such oversize and/or color documents must be reproduced **offsite** at a higher cost. Of course, black and white copies of non-oversize color documents can be made at a cost of ten cents per page, if you so choose. EOEA’s cost estimate did not include the actual cost associated with making any oversize or color copies.’ Such oversize **and/or** color reproduction costs would be in addition to this written estimate.

If, based upon this written estimate, you decide that you still want EOEA to proceed with complying with your request, please contact me and advise me of your approval to proceed and your acceptance of the costs as described. In addition, please forward **payment** for the estimated cost of \$251.06 to my attention by check or money order payable to the “Commonwealth of Massachusetts.” Once payment is received, this office will (1) complete identifying, consolidating and copying the responsive documents; (2) inform you of any additional costs associated with complying with your request; (3) inform **you** of whether this **office** will be withholding any of the documents as **exempt** from disclosure under the Public Records Law in accordance with 950 CMR **32.08(1)**; and, (4) forward the copies of the non-exempt records to you by mail. If you choose to challenge EOEA’s response to your public records request, including any decision made to withhold documents as exempt from disclosure, you may appeal to the Supervisor of Public Records, following the procedure set out in 950 CMR § 32.08.

Please note, our search did not include any documents that may be in the custody of the **Department of Environmental Protection (“DEP”)**, the Department of Fisheries, Wildlife and

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1 Search Time means “the time needed to **locate, pull from the** files, copy and **reshelve or refile** a public record. However, it shall not include the time expended to create the original record.” 950 CMR 32.03.

2 Segregation Time means “the time used to delete **or expurgate data** which is exempt under **M.G.L. c. 4, s. 7, clause 26** from non-exempt material which is contained in a paper public record.” 950 CMR 32.03.

Letter to Audrey Cole,  
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January 20, 2000; Page 3 of 3

Environmental Law Enforcement ("DFWELE"), **and** the Office of the Attorney General ("**OAG**"), as a request for copies of such records must be made directly to **DEP**, DFWELE or OAG, as applicable.

If you have any questions or require **further** assistance regarding this **matter**, please contact meat 617-626-1135.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas J. LaRosa". The signature is stylized with a large, sweeping initial "T" and a cursive "L" and "R".

**Thomas J. LaRosa**  
Assistant General Counsel

## G.E. Consent Decree Endangers Housatonic

By AUDREY A. COLE

On Nov. 16, a "public informational" meeting was held in Pittsfield, Mass., on the General Electric Corporation's agreement to clean up their acknowledged contamination of the Housatonic River, known as the "consent decree."

If you were looking for answers to questions from Connecticut officials that evening, none were available. Why? Because no town, no state representatives, no environmental protection officials, no Congressional representatives and no Connecticut news media were present.

Again, on Dec. 2, a "public hearing" was held in Pittsfield, and no Connecticut state or elected officials were there. This consent decree, signed off on by the state Department of Environmental Protection and Attorney General, commits Connecticut to a questionable process for the cleanup of polychlorinated biphenyls (PCB's) from the Massachusetts border in Canaan to the Long Island Sound in Stratford. At least 19 towns are directly affected, and nearly 100 miles of the Housatonic River.

The G.E. consent decree is forever binding, and lets one of the wealthiest corporations in the world (based in Connecticut) off the hook for years of pollution for a miniscule amount of dollars and absolves them of all liability, past, present and future.

How did this come about? By secret negotiations, carried on by a pro-corporations Federal Environmental Protection Agency director in Boston, and a Connecticut environmental protection department in disarray and demoralized by the ethically challenged officials running their agency. It behooves G.E. to strike while the iron (or PCB's) is cold, before there are any serious, unbiased, and thorough studies conducted on the health and economic destruction their years of unregulated river dumping have caused.

What is the consent decree and what impact will it have on health and resources of the Housatonic River? It is difficult to get answers. Time is short, so short that it is impossible to study the sections that pertain to our state in a

***The consent decree is a fait accompli. Jump up and down and scream all you will.***

reasonable manner. The public information session was unattended by any officials who could answer a Connecticut resident's questions. Most of the consent decree deals with the mammoth cleanup starting in and around Pittsfield. So why is Connecticut even included? The answer is reflective of G.E.'s traditional behavior. They hope no one is looking downriver, and so far they've succeeded.

With a few individuals protesting this "process," the E.P.A. has since announced that a public informational meeting will now be held in Connecticut, with the cutoff date for receiving written comments extended to Jan. 24. But be warned. These informational sessions are merely a facade for allowing the public to vent. The consent decree is a fait accompli. Jump up and down and scream all you will.

The process that has been agreed to for the "rest of the river" (read Connecticut) is convo-

luted and secret, successfully tying bureaucratic knots which codify G.E.'s well-developed stalling strategies into law. The decree will protect G.E. from the public, using our government representatives as its shield.

In Massachusetts, their law required G.E. to provide notice of the decree to the property owners affected. After mailing thousands of letters to these property owners, the Massachusetts Attorney General was forced to respond to questions the notice provoked. But since Connecticut law does not require notice of these activities, we are uninformed, and thus no questioning.

In a letter to the Massachusetts landowners, the attorney general had to acknowledge that the

***For more than 40 years we were advised to not eat its fish or swim its waters.***

contribution protection clause (cost recovery liability) was an unresolved area in the law, meaning if you are an aggrieved property owner and seek to fight Goliath, you must have deep financial pockets to pursue your case to our highest courts.

The decree doesn't take away your individual right to sue, but it takes away any assistance you may request from your own government, and in environmental lawsuits that means only the very wealthy are able to seek redress in our courts.

Connecticut must not sign off on this decree. Why? PCB's pollute the whole length of the Housatonic. For more than 40 years we were advised to not eat its fish or swim its waters. Now, this immense company that owns NBC and has abandoned its workers and lands in Pittsfield, is being given a "pass" in the night. Protest this.

Demand of our state and Federal officials that the whole of the Housatonic River in be put on the Federal Superfund List so that Government scientists can assess the damage, oversee the cleanup, and then bill the General Electric Corporation treble the damages if need be.

*Audrey Cole is a real estate broker, appraiser, and recent graduate of Quinnipiac College School of Law. Her home sits above the Housatonic River in Sharon.*

**The Post Office Sign**

Time is running out,  
In quick red pulses.  
The first too fast  
to change. The last  
Not much different  
Than the first, only  
Bills to pay.

Joseph DeVicario  
New Milford

**Housatonic and PCB's**

o the Editor:

It was disheartening to read comments made to your paper [The Litchfield County Times, Jan. 7] chastising those who spoke at the Jan. 4 meeting at Kent Town Hall regarding the polychlorinated biphenyl (PCB) contamination of the Housatonic River by General Electric. The remark made that opposition to the Consent Decree would speed or delay remediation of the Housatonic is simply wrong. That has been the role of General Electric and not us else. Remediation has already been and is continuing in Pittsfield, Mass. The obfuscation is this—there is no plan or intent to remediate the Housatonic River of PCB contamination in Connecticut.

Bryan Olson, Federal Environmental Protection Agency team leader from New Milford, has repeatedly stated that the Consent Decree is not a plan for cleanup of the Connecticut section, but an agreement to a process. At the meeting in Kent, Ed Parker, the Connecticut Department of Environmental Protection representative admitted, after repeated questioning on the planned remediation in Connecticut, that he could not give a definitive yes or no "but based on the information we have, it's probably not likely that's going to take place."

It is also disconcerting that attempts are being made to focus on how to end the \$7.75 million portion of National Resource Damages monies negotiated in the decree, instead of the merits of the decree itself. This is a diversionary waste of precious time. Two 1996 General Accounting Office reports summarized the difficulties associated with ceasing payments in past settlements and why monies had not been spent on areas that were harmed. For now, the monies must remain on the dollar counts and provisions (or lack thereof) in the Consent Decree itself.

We will be forever boxed into a corner if Connecticut is a party to this conscientious agreement...negotiated in secret and without proper public input and review. Please hold our public officials accountable for this fiasco.

Is \$115,194 for "Connecticut Past Response Costs" fair? Is \$90,000 for "Connecticut Future Costs" fair? Is it right to absolve General Electric of all criminal and partial civil liability without a public hearing? I don't understand who in their right mind could be for this. As is now reads, this Consent Decree is a simple, uneducated payoff to Connecticut. It's bad for the Housatonic, it's bad for our towns, it's bad for our state.

Audrey Cole  
Sharon

**Downed Animal Act**

To the Editor:

We are writing to urge readers of The Litchfield County Times to contact U.S. Representative Nancy Johnson and Senators Joseph Lieberman and Christopher Dodd and ask that the Senators co-sponsor S. 315, The Downed Animal Protection Act. Mrs. Johnson is already a co-sponsor of H.R. 443. Please thank her for that and express your support.

These bills would stop the agony of so many animals who are left to suffer for hours or days without receiving food, water or veterinary care at stockyards. If they do not die of neglect, they are dragged with chains or pushed with tractors and forklifts to their deaths.

Witnesses have seen a day-old calf, unable to walk, carried by his ears through an suction ring, an injured pig left to die in a holding pen, a cow too sick to stand covered with trash in a bin behind a stockyard and many, many other equally horrendous sights.

Presently, these animals are excluded from Federal laws and from many state anti-cruelty laws, which commonly exempt outrages such as the above considered to be "accepted agricultural practices." Therefore, downed-animal suffering is not only common, but considered legal in many states, despite the possible connection between downed animals and human health problems including Mad Cow Disease.

Please contact your Senate and Congressional representatives and urge them to support this very important bill.

Susan and Hubert van Wyck  
Kent

**Land Preservation**

To the Editor:

I applaud Patti Doran's recent letter [The Litchfield County Times, Jan. 7] regarding the need to permanently preserve open space for its multiple environmental and social benefits. I am also encouraged by the state of Connecticut's more recent attempts to purchase or assist in the preservation of critical

farmland, wetlands and forested land, with a booming economy and a surge in both commercial and residential development in the county, the state and the nation, the need to preserve what remains of America's wilderness and open space is more critical than ever before.

I must add, however, that the majority of undeveloped land in this state remains under the stewardship of private landowners. These owners have a clear choice: either conserve this land for future generations, or to destroy it in the name of short-term profit.

The recent economic boom has produced a record number of individuals (many of them living in Connecticut) with "money to burn."

I would like to make two suggestions: 1. If you are lucky enough to find yourself with stock-market earnings, year-end bonuses, or the like, how about using some of that money to buy land and permanently preserve it? Thanks to Federal tax laws, you can even get a significant tax deduction for your effort! You could also make a direct financial contribution to your local or regional land trust.

2. If you currently own land and are contemplating developing it, stop. Once it is another shopping mall or faceless housing development that blight can never be erased. Look into conservation easements, or donations of land to land trusts. You might end up with less money in your pocket, but your heart will be lighter and your surroundings greener.

If we want to hold on to what remains of the beauty around us, we cannot simply rely on government or "someone else" to do it for us. As one of the most economically fortunate states in the U.S., there is simply no good reason to not preserve what remains of Connecticut's wilderness and open space.

Joseph E. Struckus  
Cornwall

**The Cost of Freedom**

To the Editor:

In her article "Values for a New Millennium" [The Litchfield County Times, Jan. 7], Patricia Warburg Cliff disapproves of "the direction our country has taken us during the past hectic 20 years." She complains that "since the 1980 election of Ronald Reagan, values have taken a decidedly materialistic turn." Her concerns about corporate control of society may be valid, but this did not start with the election of a President who believed that freedom is America's greatest resource.

First, Ms. Cliff misuses the word "materialistic" to mean greedy, the desire to acquire things. "Materialistic" is pejorative but for another reason. Mate-

rialism is a political and economic philosophy that believes it is the duty of the government to take care of the material needs of the people. In such a society, though, freedom does not rank very high on the totem pole of values. What Ms. Cliff is actually complaining about is that too many Americans are free to buy BMW's and trips to Paris. Marx did not call his ideology (communism) dialectical materialism for nothing.

And does Ms. Cliff really believe that greed and the desire to acquire things began with Ronald Reagan? What about the 1960's, when college students had slogans like "Do Your Own Thing" and "Draft Beer, Not Students." That wasn't selfish? And what about the noble college students who, after having demonstrated for some great cause, went back to their dorms to drink beer, smoke pot, and engage in—yep—sex? I guess that wasn't selfish. People are selfish only when they buy their second BMW, not when they drink a bottle of Jack Daniels when they are underage.

Ms. Cliff thinks making money is a bad thing. Well, unless you want to live in a socialist or fascist society, where the government will make sure that you are clothed, housed, and fed, then making money is a way of moving upward in society.

True, America has not always been kind to Indians, blacks and other minorities. But they, too, should have the opportunity to move up. This is what Ronald Reagan stood for. If Ms. Cliff wants to ride a bicycle and light her house with candles, that is her choice. Freedom should be a goal, not something to smirk at.

William T. Barrantes  
Watertown



The Litchfield County Times devotes space on this page to letters from its readers. The Times requests that letters be addressed "To the Editor," include a home address or telephone number and not exceed 250 words. Letters may be sent by mail to 32 Main Street, New Milford, CT 06776, or by e-mail to editor@countytimes.com. The Times reserves the right to edit letters to meet its style and length requirements.

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## A River Runs Through It

### The battle to clean up General Electric's pollution of the Housatonic River heats up

By Janet Reynolds

Published: 02/17/00

For decades General Electric pump-ed PCBs into the Housatonic River, polluting nearly 140 miles of the river from ground zero at its Pittsfield, Massachusetts facility, down the river as it winds through Connecticut to the Long Island Sound.

For years environmentalists and government agencies battled the Fairfield-based corporate giant, trying to force it to clean up the toxic mess through federal Superfund laws and the threat of litigation.

Now the public has less than one week left to let federal and state agencies know their feelings about a deal on how to clean it up. The deal, negotiated by GE, the federal government and the states of Massachusetts and Connecticut, was first made public in November 1999.

This narrow time frame has critics desperate. So a coalition representing the Housatonic Environmental Action League (HEAL), the Green Party and the Grass Roots Coalition wrote Attorney General Richard Blumenthal last month requesting that he ask for a six-month extension so that changes can be negotiated. If those changes can't be negotiated, then the group wants Connecticut to withdraw from the deal.

The consent decree, which is open for public comment until Feb. 23, is unique in its breadth. It calls for GE to spend about \$250 million to clean up the first 1.5 miles of the river, the former GE site, groundwater, and former oxbows in the Massachusetts portion. (The river in Massachusetts used to be curvier than it is now. In straightening out the "oxbows" in places, PCB laden silt drifted downriver.)

And GE may have to come up with more money. The EPA estimates total cleanup costs could reach as high as \$500 million once the rest of the river beyond the first couple of miles is independently tested.

Whatever the final amount, Connecticut is due to get only \$7.75 million in damages, even though the river in this state is about 90 miles long.

Environmental groups say that the deal with GE doesn't go far enough. Their concerns are many. Among them: that the deal provides inadequate money, fears the money will not be spent only on the river, worries about a lack of independent testing and public input, and concerns that standards for remediation are not clear.

These activists, who have been joined by other groups in Litchfield County, say strong action is needed because the Connecticut DEP has not advocated adequately for the river's health. Even though the effects of the PCBs have prevented swimming in the Housatonic since the 1970s, and even though the fish caught in the river have been inedible for 30 years--and may continue to be so for generations to come--Connecticut came out of the deal with next to nothing.

At the same time, these critics say, one of the river valley's main defenders, the nonprofit Housatonic Valley Association, has been compromised in its fight by taking GE's funds.

The HVA, whose Cornwall headquarters are along the most picturesque strip of the river, has accepted over \$100,000 since 1993 from GE, and, critics say, has been restrained in its statements about the consent decree, even as it touts itself as one of the river's most fastidious advocates.



The Housatonic River's environmental clock started ticking over 60 years ago when General Electric began using polychlorinated biphenyls, or PCBs, as coolants and insulators in making electrical transformers at its Pittsfield plant. The 250-acre plant used PCBs until 1977, when the federal government, concerned about studies suggesting they are carcinogens, banned their use.

By then the damage was done.

There is no consensus on what a safe level of PCB contamination is, or whether such a thing even exists. But general cleanup around the site currently hovers at 2 parts-per-million (ppm) as an acceptable maximum level.

Depending on the test and when and where it was done, PCBs ranging from 2 ppm to thousands and thousands of ppms have been found from the site itself down to Long Island Sound. One small remediation effort two years ago at the plant, for instance, yielded about 19,000 pounds of PCBs, according to the Housatonic River Initiative, a Massachusetts environmental watchdog group. According to HEAL, PCB levels along the Connecticut part of the river range from 6 to 30 ppm. (The DEP disputes this notion. According to Ed Parker, DEP natural resources bureau chief, PCB levels are 2-3 ppm in Connecticut.)

The disparate information about PCB levels is further proof that the public has been badly served by this process, according to critics. And part of that blame, they say, lies directly with the DEP.

In contrast to Berkshire County, only one public informational hearing on the consent decree was held in Connecticut, and that only a few weeks before the comment period was first due to end. (After hue and cry at that Jan. 4 meeting about the unfairness of expecting people to digest a 500-plus page document that includes seven volumes of supporting evidence, the deadline was extended.) At first, copies were only available in Massachusetts and at the AG's office or at the DEP until HEAL members and others raised a stink. There are no public copies available south of Litchfield County.

The reason, according to Parker of the DEP? No one asked.

The Schaghticoke Indians, who have a 400-acre reservation in Kent in the northwest corner of the state along the Housatonic, did not even know there was an environmental battle going on until they were notified by the Housatonic River Initiative in November 1999. Nor did tribal members realize that eating the fish was prohibited. (Fishing licenses, which include a warning, are not required to fish from tribal land, and although the river is supposed to be posted with warnings by the DEP, it is not.)

Now the tribe also wants Connecticut to wait before signing off on the decree.

"Unless you know the true level of contamination, how could you put a price on that," says tribe spokeswoman Beth Stewart. "More testing should be done so we know the true level of PCB contaminants."

Parker defends the DEP's public notification practices. "People have not asked for more information," he says. "I thought notice was okay."

The head of the EPA's GE/Housatonic team, Bryan Olson, assures that the public will be involved if the consent decree is signed. The EPA has until 2002 to perform a series of tests on the health of the river and to decide what further steps to take. "We plan on having the public involved in every step of this process," he says.

Perhaps, but in the meantime, some wonder how much more involved the public might have been if the Housatonic Valley Association, one of the state's oldest environmental groups and one that touts public education as part of its mission, had not been getting money from GE almost every year since 1993. According to the nonprofit's 990s, tax forms filed by exempt charities, HVA received \$165,000 in that time period. The group's total revenue for fiscal year 1999 was \$605,693. In 1997, HVA gave GE an environmental award for its efforts to restore the river.

HVA itself recognized the potential conflict of interest as early as 1994. An internal organization status report on PCB contamination of the Housatonic noted that it would not merge with the Housatonic River Initiative in part because "it was well known that HVA was partially funded by a GE grant and there was concern that HVA would not be sufficiently vigilant and confrontational in its efforts to demand more action from GE." The document further notes that a "de facto understanding" emerged in which HRI would take on PCB hassles while HVA "would assume leadership on most other river related issues."

"HVA has always been terribly reticent about dealing with the PCB problem," says Mickey Friedman of HRI. "Leave it to others to speculate if whether they take money from GE is the reason."

HVA Executive Director Lynn Werner bristles at the notion that HVA has been compromised. "HVA's record of involvement speaks for itself," she says, noting that the organization goes after money wherever it can.

HVA's support for the consent decree has more to do with practicality than funding, Werner says. "We have to deal with the big problems and then deal with the little problems," she says, expressing particular concerns about

contaminated sediment behind dams and NRD funding. "We need to move forward. Am I disappointed we don't have more money? Sure. Would I be more disappointed if we were prepping for a 20-year court battle? You bet."

The many problems with the decree are just further proof, naysayers insist, that the decree could have benefited from more public input.

Critics of the decree were vindicated in their call for independent testing when in December the EPA discovered high levels of PCBs in the west branch of the Housatonic in Massachusetts, a branch that the agency had intended to use as a clean control against remediation efforts in the east side that flows through the former GE plant. One test revealed PCBs in 7,630 ppm. Additionally, a test last summer revealed that mallard and wood ducks in Woods Pond had the highest levels of PCBs of any ducks tested in the country. Where the Food and Drug Administration PCB tolerance level for poultry is 3 ppm, these ducks averaged 648 ppm or 200 times higher.

Olson insists proper testing will occur. "We can't prejudge the remediation," he says. "If we didn't feel it was a problem we wouldn't spend millions of dollars to see what needs to be done. It's important for the public and for us to be in control of all these studies. The goal is to get the river clean enough for people to be able to use the river."

The DEP's Parker, the Connecticut liaison for any remediation, is less reassuring. After noting that the cleanup standard for Massachusetts property is 2 ppm and that the highest PCB level in Connecticut sediment found so far is 2.4 ppm, he says, "If we're going to clean up soil people walk on to 2 ppm, are we going to remediate a river already at 2.4 ppm? The answer is probably not.

"If you eliminate the source of pollution, you will go a long way to reducing the PCB load that goes into Connecticut," Parker adds. Based on current data, he says it's "a reasonable assumption" that no remediation will be needed in Connecticut.

Instead he might use the \$7.75 million coming to Connecticut as part of the \$25 million Natural Resources Damages Assessment to buy land for better access to the river. "The law does not limit the use of this money to the Housatonic River," he says.

HEAL members and other find talk like that disturbing because they question the data on which some of the consent decree is based—for years GE provided studies analyzing what was wrong—and the incomplete data used to determine the natural resources damages report. That report, done as part of the overall consent decree, repeatedly describes the inadequacy of the available data and notes that damages could range from \$35 million to \$180 million. The final report in the consent decree, however, calls for only \$25 million. "They're putting the cart before the horse," says Tom Sevigny of the Green Party. "The consent decree calls for more study."

Critics question as well the overall effectiveness of the remediation itself in and around Pittsfield. "There is no cleanup in Pittsfield," says Judy Herkimer of HEAL. "It's token." In particular they dispute the "capping" of the river bed, a process in which sediment is removed from the river bed and covered, alternately, by a plastic liner, at least one foot of sandy soil, followed by more plastic and one foot of gravel.

Olson of the EPA defends the process, noting that they have already removed one million gallons of oil from this section of the river, including 10,000 gallons, or two tanker trucks' worth, of PCB-contaminated produce in the first half mile in the last six months alone.

Parker, meanwhile, says it's important to look at the deal as a package. "We have to make the best decision we can for the river," he says. "The government team felt strongly this was a good package."

Not surprisingly, GE, which has nearly 50 Superfund sites around America, agrees. "We think the consent decree is good for the river, good for the residents of Pittsfield, and good for Berkshire County," says GE spokesperson Gary Sheffer. "We felt looking at the future was better than litigating the past."

Attorney General Richard Blumenthal, meanwhile, says his office can't do much at this point. "We've been involved in providing legal advice to DEP but dollar amounts and geographic remediation are really by statute the DEP's to make," he says.

Still, Blumenthal admitted he felt some of the concerns raised in the letter, in particular those about public input, money damages and adequate testing, were troubling. "All their points deserve to be seriously addressed," he says. "I will make sure their letter is part of the official record and receives a response on the merits."

The consent decree is available at [www.epa.gov/region1/consentdecree.htm](http://www.epa.gov/region1/consentdecree.htm). Comments on the consent decree may be sent to Bryan Olson, EPA, One Congress St., HBT, Boston, Mass. 02114 or to Cindy Huber, assistant attorney general, Environmental and Nature Resources Division, U.S. Dept. of Justice, PO Box 7611, Ben Franklin Station, Washington, DC 20044.



**BETSY GLASSMAN**

Assistant Attorney General, Environmental and Natural Resources  
US Department of Justice  
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Ben Franklin Station  
Washington, DC 20044  
re: **DJ# 90-11-3, 1479, 90-11-3-1479Z**

February 20, 2000

CT-44

Dear Assistant Attorney General,

I wish to express my grave reservations about the proposed Consent Decree between General Electric, the EPA, and the states of Connecticut and **Massachusetts** to cleanup the Housatonic River. I live in Connecticut's **Litchfield** County in the region of the Housatonic River, and regularly use the river for recreation. The river's PCB contamination problem has been ongoing and ignored for far too long. I was first made aware of it when I moved to the area in 19% and as yet, no improvements in PCB cleanup have been made. This is deplorable, especially considering **GE's financial** success as a publicly traded corporation. I don't know how many billions the company is worth but with all its assets, I'm sure it can afford to spend the appropriate amount of money to rectify the problems it caused when it dumped **PCB's** years ago. If **GE** is allowed to pay next to nothing to clean **up** the river in Connecticut, justice will not be served. It will be a clear case of a corporation earning and retaining obscenely large profits at the expense of the environment, and government collusion in allowing said corporation to evade its social, environmental and financial responsibility.

I believe the \$7.75 million Connecticut would receive under the Consent Decree is horribly inadequate to deal with the damage done to the Housatonic River by General Electric's pollution. As seen in Seattle last fall, there is **a growing** grassroots movement to end such bad behavior by corporations. A government which is of, by and for the **people** has the responsibility to ensure that its people, wildlife and environmental resources are not damaged by corporate behavior and if such behavior occurred in the past, government should enforce its laws and ensure that responsible parties make restitution. In short, the U.S. government must hold **GE** fully accountable for its past irresponsible and devastating actions.

Furthermore, I am in full agreement with a recent letter sent to **CT** Attorney General Richard Blumenthal by **the** Housatonic Environmental Action League, Grass Roots Coalition of New **Milford** and Green Party of Connecticut, outlining the position of these groups and their reservations, recommendations and proposed modifications to the present Consent Decree. I urge you to carefully read the letter from these groups and to act on their recommendations;

Thank you for extending the comment period on this matter.

Sincerely,

Betsy Glassman

38 TAPPING REEVE - LITCHFIELD, CT 06759 • PH: (860) 567-3347  
EMAIL: [bglassman01@snet.net](mailto:bglassman01@snet.net) • WEB ADDRESS: [www.wordsandpictures-ct.com](http://www.wordsandpictures-ct.com)

90-11-3-1479Z

DEPARTMENT OF JUSTICE
FEB 25 2000
LANDS DIVISION ENFORCEMENT RECORDS

**CONNECTICUT MUST NOT SIGN ANY AGREEMENT THAT FAILS TO CLEAN UP  
GENERAL ELECTRIC'S ACKNOWLEDGED PCP CONTAMINATION IN THE  
HOUSATONIC RIVER.**

*" Concentrations of polychlorinated biphenyls (PCBs) in streambed sediments and fish in the Housatonic River were among some of the highest detected in the National Water Quality Assessment Program (NAWQA). Concentrations of trace elements and organic contaminants in streambed sediment and fish were highest in the southern part of the Study Unit (Massachusetts and Connecticut)." U.S. Geological Survey Circular 1155. Last modified 23 August 1998.*

*"Top Twenty Hazardous Substances" 1999 notice of the federal Agency for Toxic Substances and Disease Registry (ASTDR), has PCBs listed as the #6 hazardous substance in the country. See "Public Health Implications of Exposure to Polychlorinated Biphenyls" (1999). Both available at <http://www.atsdr.cdc.gov>*

The **Consent** Decree:

- 1) The **consent** decree **limits** the **rights** of Connecticut **property owners** and residents by absolving **General Electric** of criminal and **partial** civil liability. **This** is done **without a formal public hearing** in **Connecticut**.
- 2) A **Natural Resource Damage Study (NRD)** has not **been** performed **on** the **Connecticut portion** Of the **Housatonic River** as **required** in **Department of Interior** regulations. No analysis includes the recent waterfowl contamination study. No appropriate contingent valuation study **or** use loss study **has** been performed for **Connecticut**. A **tubing** and **swimming** use-loss **analysis** is excluded. Recent data would substantially add to the highly speculative **and conservative estimates** suggested.
- 3) No **flood plain** **or thorough** PCB study has **been performed** in **Connecticut**.
- 4) The baseline **dates in the reports** are arbitrary. Data available for Connecticut **would push these back substantially in time**.
- 5) Appendices **G** and **J** reflect the extent Connecticut is **an** afterthought. No provision is made **for Connecticut** to receive notice (no CT project coordinator) of a Corrective Measures Study (**CMS**), although these **are** required for the "rest of the river." The "Peer Review **Process**" is to take place in **Pittsfield** only, with **no** consideration given **to** Connecticut participation.
- 6) There is **no** plan to clean up the "rest of **the river**"(read Connecticut), but instead **there is an** agreement for a "process." Pages 88 **through 114 (#22)** create a process that will ensure litigation over the **consent decree** itself for **years to come, rather than a focus on the** clean up of **PCBs**.
- 7) In the background analysis, the intent of the **consent** decree is stated to be avoidance of prolonged and complicated litigation. No **cost** benefit analysis has been **done to determine** which is more expensive and complex; a government **remediation** and restoration of the **Housatonic** and billing of **General Electric**. **or implementing the consent** decree.

Why is Connecticut **part** of **this** package deal? Why is Connecticut a deal breaker if it backs out? Pittsfield is held hostage **the** city won't be **remediated** unless Connecticut signs **this** outrageous document.

If 1) you do **not** want Connecticut to be a party to this consent decree, or 2) **request a** public hearing and six **month** extension for written comments, please sign below **and provide your name, address and contact numbers**.

Print Name: Charles Grivas Signature Charles Grivas  
 Address: 270 W. Cornwall Ct  
 Contact/Telephone # 860-672-0265 Date Feb 21, 2000

1) Connecticut not party to **decree** I--- OR, 2) **Six month extension/public hearing** \_\_\_\_\_

Mail to: **Audrey Cole, 270 West Cornwall Road, West Cornwall, CT 06796 or Fax: (860) 672-6557**

The Housatonic River is contaminated **with** GE PCBs.

Do not eat the fish or swim its waters.

CT-46

Call our public officials to cleanup this **crime**.

Oppose the "Consent Decree" that does **not** guarantee remediation in CT during your lifetime.

<http://www.epa.gov/region01/ge/sumpage.html>

**"GE, they bring good things fo HARM!"**

PRINT NAME: DENNIS C. GERO

ORGANIZATION: INDIVIDUAL

SIGNATURE: D.C. Gero

DATE: 2 21 00

ADDRESS: 674 Berkshire Trail  
Cummington MA 01026

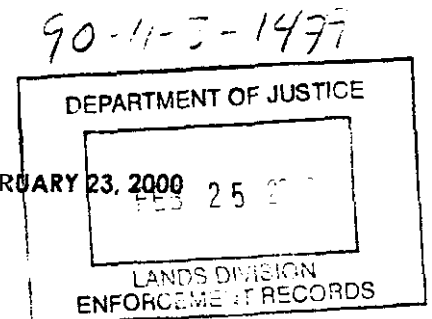
PHONE/EMAIL/FAX: 413-584-7653

ADDITIONAL COMMENTS: \_\_\_\_\_

MAIL TO BOTH. INCLUDING DJ# 90-11-3-1479, 90-11-3-1479Z:

1. Bryan Olson  
U.S. EPA  
One congress street (HBT)  
Boston, MA 02114
2. Cindy Huber  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611. Ben Franklin Station  
Washington, DC 20044

DEADLINE FOR COMMENTS TO BE POSTMARKED IS **WEDNESDAY, FEBRUARY 23, 2000**



HUBER

CT-47

February 22, 2000

Arthur Caisse  
River Committee  
Pomperaug Social Club  
C/O Edward Staib, President  
Pomperaug Social Club  
54 Old Hawleyville Road.  
Bethel. CT 06801  
(203) 792-9872.

Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Reference File # DJ#: 90-11-3-1479,90-11-3-1479Z

Dear Assistant Attorney General:

I am writing to you to make comment on the consent decree between General Electric and the Environmental Protection Agency as electronically posted on the web. Our membership is concerned that our river, the Pomperaug, may not be included in the remedies outlined in the consent decree and I am writing to request your written clarification.

The Pomperaug River is a major tributary to the Housatonic River at Southbury, Connecticut. Its mouth is situated just north of the interstate 84 crossing over the Housatonic.

Our members live on the banks of the lower Pomperaug River, very close to the Housatonic. We have artesian wells. The banks of the Pomperaug and our yards have had sediment and silt deposited on them because of the severe ice breaks that occur each spring. When the mild weather comes in spring, the frozen river breaks into automobile-sized blocks which roar and gouge the river bottom. Then, in an avalanching effect, the ice is fiercely catapulted onto our yards carrying with them the sediment from the bottom of the river.

Our concern is that the PCBs that have settled in the river bottom have found their way onto our land and into the wells. How, one might ask, is it possible for the PCBs from the Housatonic to get up the river of the Pomperaug? The answer is quite simple.

DEPARTMENT OF JUSTICE  
FEB 28 2000  
LANDS DIVISION  
ENFORCEMENT RECORDS

90-11-3-1479

Northeast Utilities **has** two hydroelectric plants. and dams nearby on the Eousatonic. The Shepaug dam is just north of the Pomperaug and the Stevenson dam is south of the Pomperaug. The Eousatonic River between these dams is **known** es Lake Zoar. These dams cycle the **Housatonic's** level and everyday (and night) the **Pomperaug's** current reverses direction and the Housatonic flows up past our dwellings. **PCBs** settle and, over the many years, have stratified. This has been happening since the dams were installed, perhaps 60 years or more. There can be no doubt **that** our river bottom **has been** infected by **PCBs**. That bottom is distributed onto our yards and nearby our wells, each spring.

Please help us. We have been working with Congresswoman Nancy Johnson, our First Selectman **Alfio A. Candido**, the Lake Zoar Authority and others to solve the problems of the Pomperaug River delta. Please do everything you can to include restorative measures from the GE settlement to include the **Pomperaug** River delta here in Southbury Connecticut.

Is the Pomperaug River in Southbury included in the, plan to implement the consent decree? How can we most effectively work with the authorities to help the situation here? We look forward to hearing from you at your earliest convenience.

Thank you.

Sincerely,



Arthur Caisse  
Pomperaug River Committee  
Pomperaug Social Club

February 23, 2000

CT-48

Lois J. Schiffer  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 761 1, Ben Franklin Station  
Washington; DC 20530-7611

Bryan Olson  
EPA Project Coordinator  
U.S. EPA Region 1  
One Congress Street (HBT); Suite 1100  
Boston, MA 02114-2023

RE: DJ# 90-I 1-3-1479.90-I 1-3-14792

Dear Atty. Schiffer and Mr. Olson,

The Housatonic Environmental Action League(HEAL) has reviewed the proposed Housatonic River Site Consent Decree and the Reissued RCRA permit between GE. the United States, the State of CT, and the Commonwealth of MA. Based upon our evaluation, HEAL offers the following comments and suggestions.

#### PUBLIC PARTICIPATION

In CT. there is very little public awareness and participation in the process: this minimization of public participation is as a direct result of the lack of publicity to the community surrounding the Housatonic River. On January 4. 1999, CT was granted the only public informational meeting to be held in this state pertaining to this Consent Decree. Despite our request, CT DEP neglected to issue an agreed upon press release prior to the Kent Town Hall meeting. The meeting **was** never listed on CT DEP's website. EPA acknowledged our requests for more press releases, but had no comprehensive listing on file for CT publications: an indication that CT has **historically** been kept unapprised and unaware of the Decree proceedings. Why do we have to ask for this information to be disseminated on such a monumental decision?

A formal public hearing was repeatedly requested of EPA. CT DEP. CT AG, and Senators Dodd and Lieberman, but none was ever granted. Since **early 1997**, HEAL representatives have been obligated to travel to Pittsfield and Lee to attend informational meetings and public hearings. At no time were any CT officials present to answer questions about CT concerns.

The Consent Decree was negotiated in an entirely **private**, behind-closed-door setting with no citizen representation at the table. Giving affected residents and businesses a seat, **early** and throughout any decision-making process, is imperative as they are the ones who, for **years**, will live with the ramifications of the Decree conditions. It isn't the public you need to **fear...fear** the polluter. Our federal agencies and elected officials must not allow GE to determine the fate of the **river**, the animal kingdom that depends on it, or the people that live and work by it without our voice being heard.

Public participation and input with the same **rights** afforded all other parties in **this** matter needs to be reevaluated. HEAL would like to be considered for any CT representation chosen in future engagement of the public **during** negotiations, reviews, and decisions.

#### COMMENTS AND COMMENT PERIOD

The public should be granted additional time to review and comment on the Consent Decree. It took years to create, and an ordinary **citizen is** expected to examine this immense, convoluted, and complicated document in a mere few months. This **is** a perfect example of the **parties** to the Decree creating an environment of inequity and lack of **sincerity** in addressing the **concerns** of the public. We deserve the opportunity to participate and comment on the development of activities such as permitting, remedy selection, and environmental assessment. For those citizens without law degrees or intimate knowledge of federal level environmental policy, a sufficient amount of time needs to be granted to allow intelligent and insightful response. HEAL recommends a 6 month public comment **period** if this Consent Decree should be presented again in an amended or renegotiated format. We also suggest a more extensive table of contents and index for better reference.

As is the case with other EPA regions, **oral** comments should be allowed into the formal record. A toll-free number to EPA should be designated and widely disseminated.

There should be a daily online log of comments being received by EPA. Other federal agencies (i.e., **FDA**) provides an online docket and actual presentation in PDF format of comments received on any given **day**.

#### INFORMATION AVAILABILITY AND DISSEMINATION

In CT, the Consent Decree was in short supply. **Prior** to HEAL requesting additional copies be **placed** in public repositories, it could only be found in the office of the Housatonic Valley Association in Cornwall, and in Hartford at the Attorney General's office and CT DEP office. Although EPA and CT's AG office responded to our pleas, it took precious weeks and numerous calls to obtain what was the responsibility of our government officials to coordinate. To this day, we have been unable to locate a copy in a public repository along the Housatonic River south of **Litchfield** County. Why do we have to ask for this information to be disseminated?

The Decree and its components are almost completely available on the EPA **website**. We applaud EPA for their efforts. Whatever appendices (i.e., maps) that could not be found, were overnight mailed to HEAL members. The **website** format for this vast document required **specific** amounts of computer memory availability and specific cutting-edge software in order to download and read the text. Not everyone online has the benefit of these exquisite requirements.

Although such documents can be easily implemented on the Web, we feel it's important not to rely on the Internet as the sole means of providing any information to the public. Despite predictions of eventual universality, differences in economics, culture, and education still keep vast numbers of people off the Internet. Differential access to the Web is a reminder that communities are not equally equipped to participate effectively in environmental oversight. Some are empowered, educated, and wealthy. Others are not. Public **participation** policies and information acquisition should address that gap **because** it perpetuates the disproportionate negative impacts experienced by **low-income** communities.

In Exhibit **3-4** of the Preliminary Natural Resource Damage Assessment, a perfect example is provided of the lack of available information for public consumption. A search of the Hartford Courant (the only CT publication listed) archives for articles that mention the Housatonic **River/PCBs** between 1991-96 revealed no articles were published. This is a serious lapse on the part of CT DEP and EPA which needs to be remedied. If the newspapers refuse **or** themselves are negligent in publishing releases and updates, it is incumbent upon these agencies to **write** periodic newsletters with circulation throughout the entire Housatonic River region in CT.

#### REPOSITORY OF DOCUMENTS

In Litchfield County, the repository for documents pertaining to the Housatonic River is housed at the Housatonic Valley Association in Cornwall. HVA is a private, non-profit organization that requires a fee for membership. HVA accepts tens of thousands of dollars from GE annually to their budget. **HVA's** own internal organization status report in the mid **1990's** states on their status as EPA/GE repository: "However, neither CT DEP nor MA DEP routinely provide copies of their reports/studies to HVA."

HVA's acceptance of moneys from GE constitutes a conflict of interest and may warrant further investigation. **Their** position as home to the only **repository** in **Litchfield** County needs to be reconsidered. We are requesting that a repository be created in a public arena that is not under the potential sway or influence of GE. The repository must closely monitor the organization, timely receipt, and indexing of documents. A setting such as a larger public library with sufficient resources to devote staff to provide informed assistance to the community at large would be one appropriate choice. We are unaware of any repository south of **Litchfield** County, and consideration should be given to designating additional sites along the river in CT due to the great distance.



#### BLACKBERRY RIVER. NORFOLK

In December, 1999 it was brought to the attention of HEAL that in the 1940's-1950's GE ran a small assembly operation along the banks of the Blackberry River in Norfolk. We were told switches were assembled and components for light fixture ballasts from Pittsfield were brought south to Norfolk for assembly. Our research found that ballast capacitors of that time each contained 1/2 ounce of PCB fluid. During the flood of 1955, a large portion of that building was washed downstream. The Blackberry River feeds directly into the Housatonic River. In October, 1999 HEAL members obtained numerous surficial river sediment samples for independent testing. One sample from the mouth of the Blackberry where it meets the Housatonic tested positive for quantifiable PCBs.

During the January 4, 2000 meeting in Kent, we approached EPA and CT DEP with this information. CT DEP stated the Blackberry River had not been previously tested for the presence of PCBs. We were assured EPA would follow-up with GE to confirm or deny our findings. No agency has contacted us as of this date. Before allowing the Decree and NRD to be presented back to the Court, it is imperative to determine if PCBs were ever present at that Norfolk site and if the Blackberry River was potentially insulted by the toxin.

#### NOTIFICATION OF CT STAKEHOLDERS.

in the Commonwealth of MA, property owners along the Housatonic south of Pittsfield were formally notified of this pending action and of the potential impact to their interests. GE was bound by MA statute to comply with this requirement. No such statute exists in CT, thus no CT property owner along the CT section was notified. At the January 4<sup>th</sup> meeting, HEAL requested of CT DEP that GE be approached to voluntarily notify the CT property owners. If GE refused, we requested of CT DEP's Ed Parker he investigate the possibility of the state providing the notification. Mr. Parker said he would follow-up and get back to us. To this date, we have not heard from Mr. Parker.

Despite no statute in place in CT, the Consent Decree should mandate GE provide equal notification to property owners along the CT section of the river providing the ramifications to their current and future legal rights.

#### NATURAL RESOURCE DAMAGES

How can NRD damages be determined with the paucity of available data? The NRD "Preliminary" Assessment and subsequent dollar designation is the quintessential "putting the cart before the horse".

The \$7.75 million Connecticut would receive under the Consent Decree is **woefully** inadequate to deal with the damage done to the Housatonic River by General Electric's egregious pollution. **This** figure was based on a preliminary **report** by Industrial Economics Inc. that consistently cites a lack of "readily available data and information" which limited their ability to complete a finalized analysis of the financial impact of **PCB** pollution on Connecticut and Massachusetts.

Industrial Economics clearly states their 'Injury assessment does not **identify** and quantify **all** the natural **resource injuries** likely to be present in the Housatonic River environment." We agree with this statement. **For** example, a recent study on ducks in Woods Pond found the highest level of **PCBs** ever detected in mallards and wood ducks. This alone should raise the NRD amount beyond the total of \$25 million. We believe comprehensive extensive testing should be done to the natural environment throughout the Housatonic River area, both in Connecticut and Massachusetts, before any NRD amount is established. Furthermore, holding the issue of the inadequacy of the study **aside**, the report by industrial Economic places the NRD amount anywhere between \$35 million and \$280 million. Thus, even in its own incomplete **terms**, the \$25 million dollar settlement is inadequate.

The current body of test data in CT is inadequate, provides little statistical confidence, and is clearly not representatively sampled. The NRD settlement should be tabled and renegotiated at **a** future date when **sufficient** testing is completed to better **determine** ACTUAL damages.

In addition, we have serious concerns about the manner in which decisions regarding how the NRD moneys **will** be spent in Connecticut. We believe this money should only be spent on the Housatonic River, and the NRD settlement should state this clearly.

### **FLOODPLAIN**

Delineation **and** testing of floodplain in CT has been inadequate. A thorough study of all floodplain areas along the CT section of the river is indicated and needs to be assessed prior to NRD settlement. Many floodplain areas in CT are utilized for agriculture and we need to know if **PCBs** are redeposited seasonally.

### **COMMUNITY RELATIONS (PG. 3941)**

All references to participation relate only to the State, which is defined as the Commonwealth of MA. No mention is made to CT or the development of a comparable Citizens' Coordinating Council which would be based in CT.

We request the creation of a Citizens' Coordinating Council in CT. and HEAL would like to participate.

## **SIGNS**

No signs were found by HEAL members in October, 1999 from Sheffield, MA to Kent, CT warning people of the dangers of fish consumption. A previous Consent Decree assigned GE the responsibility to place warning signs and monitor their presence. CT DEP was to oversee their compliance. They have both denied the public their right to be made aware of public health concerns. It is common knowledge that certain segments of the population continue to eat contaminated **fish** from the river.

Now, GE is again being mandated in this Decree to provide warning signs. Will we again allow them to endanger the public health and safety? Tell CT DEP to do their job by posting and **monitoring** PCB warning signs along the river: don't depend on GE to comply.

## **CONFIDENTIALITY OF INFORMATION (RCRA PAGE 12)**

No information should be allowed to be claimed as confidential. All information should be made available to all parties including citizen representation and public repositories.

## **DAM INTEGRITY STUDIES (PAGE 273)**

GE should not be allowed to conduct an assessment of the integrity of Woods Pond Dam and Rising Pond Dam. HEAL has grave reservations of the polluter or its assigned contractors completing these dam integrity studies. We would rather have agency assigned studies ordered with public review. The thought of giving GE the task and responsibility of insuring the last **two** dams before CT that are holding back immense amounts of **PCBs** is frightening.

## **CT BORDER**

Immediate implementation of a **monitoring** station at the CT/MA border is recommended to determine the poundage of **PCBs** that continue to be transported downstream. It would be prudent for CT DEP to make the public aware of any spikes occurring during potential resuspension due to upstream disturbances.

## **FIRST 2 MILE REMEDIATION**

EPA must not allow GE to be released from liability after the completion of the **1<sup>st</sup>** 2 mile **remediation** in **Pittsfield**. Scraping off 2 feet of riverbed soil and laying a sheet of plastic on the river bottom is a sorely inadequate cleanup. Thinking these measures will no longer allow **PCBs** to enter the river from the additional **20-40ft.** layer of pollution further below is foolishness.

### DREDGING

Technology is now available to completely decontaminate **PCB** pollution. Dredging combined with on-site PCB removal seems to be an obvious choice of **remediation**. Dr. Milton Clark of EPA Region V wrote to HEAL stating: "Dredging has been highly effective in removing **PCBs** and, when measured, has shown to greatly reduce contaminants in fish and wildlife at sites including Sheboygan (WI), **Ruck Pond (WI)**, Manistique Harbor (MI), **Stowassee River (MI)**, Waukegan Harbor (IL), and the St. Lawrence River (NY)." Granted this form of remediation is expensive. As GE is the **2<sup>nd</sup>** wealthiest multinational corporation in terms of **capitalization**, we contend they can afford **it** and the Housatonic River and Pittsfield are all deserving of a complete and REAL cleanup.

### HILL 78

As it stands, Hill 78 is already **a** toxic dump with no liner. Additional contaminated soil will be allowed to increase its height up to **1000ft**. Hill 78 **is** within view and walking distance to Allendale Elementary School. Do you think you would get away **with** that in Litchfield County, CT? If the above on-site decontamination remedy was implemented, Hill 78 would no longer exist.

### TRANSPORTING PCB SOIL

The transport of contaminated waste to other communities for continued destruction of lives and **neighborhoods** is environmental racism. Incinerators along the southern Texas border are invariably found in impoverished communities. The PCB ash **is** then transported again for toxic landfilling to **a** different community. **PCB** laden soil is shipped to landfills throughout the US to communities desperate for the toxic revenues these facilities generate. If the above on-site dredging and decontamination remedy was implemented, this problem would also be gone.

### LAKE HOUSATONIC

Why does the Consent Decree end at Lake Housatonic when the entire length of the river including Long Island Sound has been affected? Why didn't NOAA bring the federal laws into play that affect estuaries and oceans? GE should be made accountable for their complete mess. If other polluters contributed to southern CT **PCB** contamination and can no longer be found, apportion the damages **as** we're certain GE's share of responsibility will be the greatest. We ask for the Consent Decree to cover the entire Housatonic River from Pittsfield to and including Long **Island** Sound.

### PEER REVIEW

No mention is made of CT being a part of the peer review process. We request inclusion wording for **clarity** that CT will indeed be part of the process.

### **SCHAGHTICOKE TRIBAL NATION**

No one told the **Tribe** about this action. In fact, CT DEP never told them that eating the **fish** was dangerous. Both CERCLA and **DOI** regulation stipulate that any **Tribe** living alongside an actionable area needs to be a Trustee at the negotiating table. The Consent Decree and NRD Settlement should have **Tribal** representation at the renegotiating. It is shocking, disrespectful, and probably illegal the Schaghticoke were not made a party to this action.

### **REST OF THE RIVER**

"Rest of the River" as it is defined in the Decree is only a process to create a plan for cleanup south of the **1<sup>st</sup>** 2 miles. We have grave misgivings about the lack of details in the Decree about future remediation of the "Rest of the River." Although we are pleased to see the Environmental Protection Agency will perform independent testing on **PCBs** on the "Rest of the" Housatonic in the years ahead, we are concerned that the Consent Decree does not delineate the frequency, location, **or** type of testing to be performed. Similarly, it does not delineate the levels of **PCBs** or other **criteria** that will be **utilized** to determine **if** PCB remediation in the "Rest of the River" is indicated. As it stands, neither Connecticut DEP officials or EPA **officials** expect remediation to be required in Connecticut. An actual plan of action needs to be developed prior to the Decree being approved.

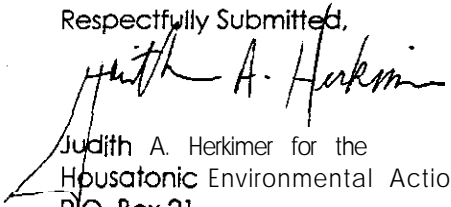
### **COST BENEFIT ANALYSIS**

It seems that having EPA coordinate and complete the studies and work required and subsequently charge GE might prove to be less expensive. What are the possibilities of **creating** such an analysis, and if it indeed comes back viable, implementing that course of action as WE DON'T TRUST GE **WITH** THE CLEANUP.

Although we are not opposed to a negotiated settlement, this polluter-friendly Consent Decree does not adequately or equitably address the concerns of all stakeholders. We need a comprehensive and expeditious cleanup of the extensive environmental damage caused by GE. The plan should not be approved until human and environmental health is assured. It should be withheld from presentation to the judge as there are indications that it is: "...inappropriate, improper, or inadequate." (page 397)

HEAL is pleased and grateful to have had the opportunity to provide comments. Our organization is fully prepared and willing to provide further input and clarification whenever required.

Respectfully Submitted,



Judith A. Herkimer for the  
Housatonic Environmental Action League(HEAL)  
P.O. Box 21  
Cornwall Bridge, CT 067540021  
860-672-6867 phone/fax  
aghill@snet.net

cc: Atty. Richard Blumenthal



150 Kent Road • P.O. Box 28 • Cornwall Bridge, Connecticut 06754

860-872-6678 • Fax: 860-872-0182 • E-mail: housatonic@ansl.net

November 12, 1999

Mr. Brian Olsen  
 United States Environmental Protection Agency  
 1 Congress Street  
 Suite 100(HBR)  
 Boston, MA 02114

Dear Brian:

I hope this letter finds you well. I received word last week that the deadline for comments on the draft Consent Dam - including the draft Corrective Action Permit to be issued to GE by EPA under the Resource Conservation and Recovery Act - is December 27, 1999.

I am writing to ask you to consider providing a one month extension of the comment period. Over the next few weeks, HVA will be organizing an information meeting between EPA officials and community leaders and groups along the Housatonic River in Connecticut who have an interest in PCB corrective actions. My discussions with Angela Bonarzo, EPA Community Relations Coordinator, indicate that early to mid-December would be a good time for EPA to attend an informational meeting in Connecticut. Given the short turnaround time this would leave for public comment, HVA requests an extension of the comment period to the end of January. We believe that this will ensure that all interested parties have adapted time to review, assess and comment on the Consent Decree and draft Corrective Action Permit.

Thanks for considering our request. I look forward to hearing from you.

Warm regards,

  
 Lynn Verner  
 Executive Director

- c. Arlene Locke, Commissioner of the Connecticut Dept. of Environmental Protection  
 George Wislocki, Berkshire Natural Resources Council  
 CT Housatonic River Town Land Trusts, Lake Authorities, Regional Plumbing  
 Agencies, fishing club, and environmental Groups





# CANDLEWOOD LAKE AUTHORITY

P.O. BOX 37 . SHERMAN, CONNECTICUT 06784-0037 . (860) 354-6928 • FAX (860) 350-5611

February 17, 2000

CT- s o

Mr. Bryan Olson  
US Environmental Protection Agency  
One Congress Street (HBT)  
Boston, MA 02114

Assistant Attorney General  
Environmental and Natural Resources Division  
us Department of Justice  
PO Box 7611  
Ben Franklin Station  
Washington, D.C. 2004

Re: DJ#90-11-3-1479 and 90-11-3-1279Z  
Consent Decree for PCB Remediation of the Housatonic River

Dear Sirs:

This letter is written on behalf of the Candlewood Lake Authority who represents the respective interests of the Towns of Brookfield, Sherman, New Fairfield and New Milford, and the City of Danbury as they all border the shores of Lake Candlewood.

We agree with the Housatonic Valley Association (HVA) and the many other agencies in their support of the Consent Decree and are deeply concerned about the on-going PCB contamination and the future health of the Housatonic River since Candlewood receives its water from the Housatonic.

We understand that the Consent Decree requires additional sampling, data collection and risk assessments for the "Rest of River" below the first two miles in Pittsfield, and provides EPA with the authority to order GE to clean up any portion of the Housatonic River where PCB levels are found to exceed levels protective of human health and the environment.

We would like to see further testing of the PCB content in the sediments and fish of Lake Candlewood. Specifically, we would like to see surficial and deep core sediment sampling at the Rocky River Hydro Electric intake and in the aqueduct and northern tip of the New Milford arm of the lake.

We also feel that the Natural Resource Damages funds should be spent along and within the Housatonic River only, and not for projects on other rivers.

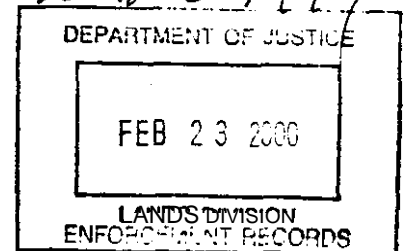
Thank you for this opportunity to comment

Sincerely,

CANDLEWOOD LAKE AUTHORITY

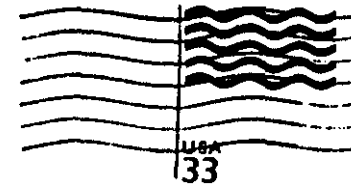
  
Bruce A. Lockhart, Executive Director

cc: CEO's Danbury, New Milford, Sherman, Brookfield, New Fairfield





**Candlewood Lake Authority**  
P. O. Box 37  
Sherman, CT 06784-0037



Assistant **Attorney** General  
Environmental and Natural Resources **Division**  
US Department of Justice  
PO Box **7611**  
Ben Franklin Station  
Washington, D.C. 2004

20044X7611



Assistant Attorney General, **Environment** and Natural Resources **Division**  
U.S. Department of Justice  
P.O. Box **7611**  
Ben **Franklin** Station  
Washington, D.C. 20044  
Re: US et al. v. General Electric Company, D.J. Ref. 90-1 **1-3-1479, 90-1 1-3-14792**

**CT-51**

November **29, 1999**

Dear Sirs,


I am writing this letter to express my concerns and questions regarding the proposed settlement among the General Electric Company (GE), the Commonwealth of Massachusetts, The United States, The State of Connecticut, et. al as announced in the "Notice of Proposed Settlement" recently released for circulation and comment.

From 1987 **until** 1994 I was the president **of New** England Log Homes Inc., a company which operated a log processing plant on the **Housatonic** River in Great Barrington, Massachusetts. Shortly **after** becoming President of NELHI, I commissioned an environmental study to determine what environmental conditions existed on the site and to review company procedures and record keeping for the handling of chemicals. **After** receiving the report, NELHI Sled appropriate notice as required by law with the DEP. Subsequently, the DEP requested additional site studies. **As** these studies developed, the DEP requested analyses be conducted for potential contaminants for which the site had no reported history. This provoked me to inquire why the DEP was interested in determining the presence of contaminants that had never been used on the property. **I was** told at that time (in the early **1990's**) that the NELHI property had been flooded periodically by the Housatonic River **and** that the contaminants in question had been released into the River from the GE plant upstream in Pittsfield, Massachusetts. I was advised that, if such contaminants were found on the property, NELHI potentially would have recourse to GE. **Unfortunately**, NELHI ceased operations in early 1994 before we could determine if any such GE associated contaminants were deposited on the property.

NELHI is now defunct, but still owns the Great Barrington property. It is my understanding that the DEP has conducted **further** site analysis of the NELHI property. I do not know if the DEP ever commissioned tests to determine the presence on the site of the contaminants released by GE into the River. The NELHI property is located in the heart of Great Barrington next to residential neighborhoods. Company resources **have been** exhausted.

I am expressing my concern and questions regarding the proposed settlement. How will the proposed settlement affect the liability of GE for contamination released by it and potentially deposited on properties abutting the Housatonic River, such as NELHI? What effort has been made to determine the extent of such **contamination** and how far down river it exists? Has the DEP established that such contamination exists on the NELHI property? If not, does it plan to make such determination? The "Notice of Settlement" mentions that "GE will be required to remediate residential properties in the floodplain (sic) of the River .", but seems to omit commercial properties that may have been **affected**, such as **NELHI's** Great Barrington property. This may leave many small businesses to fend for themselves in a "David **vs** Goliath" situation. **If our** government expects small businesses to clean their properties contaminated by GE originated pollution, shouldn't the interests of small business people all along the River be incorporated in this settlement?

Sincerely,

  
**Leonard F. Suzio, Jr.**,  
President, **NELHI**  
35 Lydale Place  
Meriden, **Conn** 06450

DEPARTMENT OF JUSTICE
DEC - 6 1999
LANDS DIVISION ENFORCEMENT RECORDS

  
**Michael T. Carroll**  
Manager, Pittsfield Remediation Programs

Corporate Environmental Programs  
General Electric Company  
100 Woodlawn Avenue, Pittsfield, MA 01201  
413 494-3500, DC: 8\*236-3500, Fax: 413 494-5024  
carrollm@corporate.ge.com

December 9, 1999

Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
Washington, DC 20530

Re: **United States v. General Electric Company**  
**Civil Action No. 99-30225-MAP**  
**D.J. Ref. 90-11-3-1479 and 90-11-3-1479z**

Dear Madam:

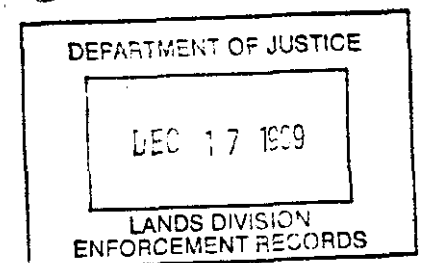
We have received the enclosed letter from Leonard F. Suzio, Jr., regarding the proposed Consent Decree in the above-entitled matter. We are forwarding it to you since all comments on the proposed Consent Decree are to be directed to you.

Yours truly,

*Michael T. Carroll*

Enclosure

cc: J. Lyn Cutler, MADEP  
Nancy E. Harper, MA AG  
Richard F. Webb, CT AG  
Jeffrey M. Bernstein, Esq.  
Leonard F. Suzio, Jr.



Michael T. Carroll, Manager  
Pittsfield **Remediation** Programs  
Corporate **Environmental** Program  
General Electric Company  
100 Woodland Ave  
Pittsfield, MA 0 1201

November 29, 1999

Dear Mr. Carroll,


I am writing this letter to express my concerns and questions regarding the proposed settlement among the General Electric Company (GE), the **Commonwealth** of Massachusetts, The United States, The State of Connecticut, et. al as **announced** in the "Notice of Proposed Settlement" recently released for circulation and comment.

From 1987 until 1994 I was the president of New England Log Homes Inc., a company which operated a log processing plant on the Housatonic River in Great Barrington, Massachusetts. Shortly **after** becoming President of NELHI, I commissioned an environmental study to determine what environmental conditions existed on the site and to review company procedures and record keeping for the handling of chemicals. **After** receiving the report, NELHI **filed** appropriate notice as required by law with the DEP. Subsequently, the DEP requested additional site studies. As these studies developed, the DEP requested analyses be conducted for potential **contaminants** for which the site had no reported history. This provoked me to inquire why the DEP was interested in determining the presence of contaminants that had never been used on the property. I was told at that time (in the early **1990's**) that the NELHI property had been flooded periodically by the Housatonic River and that the contaminants in question had been released into the River **from** the GE plant upstream in Pittsfield, Massachusetts. I was advised that, if such contaminants were found on the property, NELHI potentially would have recourse to GE. Unfortunately, NELHI ceased operations in early 1994 before we could determine if any such GE associated contaminants were deposited on the property.

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I am expressing my concern and questions regarding the proposed settlement. How will the proposed settlement **affect** the liability of GE for contamination released by it and potentially deposited on properties abutting the Housatonic River, such as NELHI? What effort has been made to determine the extent of such contamination and how far down river it exists? Has the DEP established that such contamination exists on the NELHI property? If not, does it plan to make such determination? The "Notice of Settlement" mentions that "GE will be required to remediate residential properties in the **floodplain** (sic) of the River .", but seems to omit commercial properties that may have been **affected**, such as NELHI's Great Barrington property. This may leave many small businesses to fend for themselves in a "David vs Goliath" situation. If our government expects small businesses to clean their properties contaminated by GE originated pollution, shouldn't the interests of small business people all along the River be incorporated in this settlement?

Sincerely,

  
Leonard F. Suzio Jr.,  
President, NE&  
35 Lydale Place  
Meriden, Conn 06450



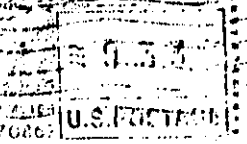
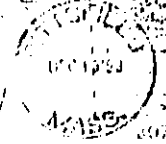


Corporate Environmental Programs.  
 General Electric Company  
 100 Woodlawn Avenue, Pittsfield, MA 01201

*EES  
1425*

*Ny...*

**Assistant Attorney General  
 Environmental and Natural Resources Division  
 U.S. Department of Justice  
 Washington, DC 20530**



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CT-52

Pam Reagan  
P.O.Box 22  
West Cornwall, CT 06796

Attorney General Blumenthal  
Attorney General  
55 Elm Street  
Hartford, CT 06106

February 15, 2000

Dear Attorney Blumenthal;

I am writing in response to the proposed Consent Decree between General Electric, the EPA, and the states of Connecticut and Massachusetts to clean up the Housatonic River. I feel strongly that the proposed \$7.5 million allocated to Connecticut within the natural **resource** damage assessment (**NRD**) of this decree is not nearly enough to reimburse our state for the harm **inflicted** on our river by General Electric.

My understanding is that this monetary figure was based on a preliminary report by Industrial Economics Inc. that consistently cited a lack of "readily available **data and information**". I believe comprehensive extensive testing should be conducted on the natural environment throughout the Housatonic River area, both in Connecticut and Massachusetts, before any NRD amount is set forth.

I would also like to express concerns pertaining to how the NRD moneys will be spent in Connecticut. I believe the Consent Decree should clearly state this money is only to be spent on the Housatonic River.

In addition, I strongly urge representation from environmental and citizens groups on the committee that makes these decisions.

I am urging you to consider these recommendations and continue advocating for our rights to a clean river.

Respectfully,  
*Pamela J. Reagan*  
Pamela J. Reagan



# TOWN OF NEW MILFORD

Town Hall  
10 Main Street  
New Milford, Connecticut 06776  
Telephone (860) 355-6081 • Fax (860) 210-2623  
www.newmilford.org  
E-Mail: NMEcDevDir@AOL.COM

CT-53

Community Planning & Economic Development Director

December 29, 1999

Richard Blumenthal  
Attorney General  
55 Elm Street  
Hartford, CT 06106

RE: General Electric PCB Settlement

Dear Attorney General Blumenthal:

The Town of New Milford is very concerned about the ultimate disposition of the General Electric PCB settlement money. We strongly feel those funds should be dedicated to helping the river which endured the insult which is the Housatonic River versus any other watercourse in the State.

Connecticut Light and Power owns thousands of acres of riverfront property in New Milford and other towns along the course of the Housatonic. We feel applying that settlement money to purchasing those properties as well as other privately held waterfront properties would be a step in preserving and enhancing this river. As always, we are sure you will bring the many powers of your office to bear to ensure a just and fair result for the State and this region.

On a separate matter I would like to extend the thanks and gratitude of the Town to you in our battle against Sempra Energy Resources. I feel we can all be proud and happy with the positive result.

Very truly yours,

David N. Hubbard  
Director

DH:vlw

cc: Mayor Peitler  
Conservation Commission  
Inland Wetland Commission  
Aquifer Protection  
HVA

January 26, 2000

CF-54

Attorney Richard Blumenthal  
Attorney General  
55 Elm Street  
Hartford, CT 06106

Dear Attorney Blumenthal:

On behalf of the organizations signed below, we would like to express our grave reservations about the proposed Consent Decree between General Electric, the EPA, and the states of Connecticut and Massachusetts to cleanup the Housatonic River.

We applaud your efforts throughout the negotiations to have Connecticut share in the natural resource **damage(NRD)** amount determined **as** result of General **Electric's** contamination of the Housatonic River. However, we believe the \$7.75 million Connecticut would **receive** under the Consent Decree is woefully inadequate to deal **with** the damage done to the Housatonic River by General Electric's egregious pollution. This figure **was** based on **a** preliminary report by Industrial Economics Inc. that consistently cites **a** lack of "readily available data and information" which limited their ability to complete **a** **finalized** analysis of the financial impact of PCB pollution on Connecticut and Massachusetts. Industrial Economics clearly states their 'injury assessment does not identify and **quantify** all the natural resource injuries **likely to be present** in the Housatonic **River environment.**" We agree with **this** statement.. **For** example, a **recent study on ducks in Woods Pond** found the **highest level of PCBs** ever detected in mallards and **wood ducks**. This alone should raise the NRD amount beyond the total of **\$25 million**. We believe comprehensive extensive **testing** should be done to the **natural** environment throughout the Housatonic River **area**, both in Connecticut and Massachusetts, before any NRD amount is **established**. Furthermore, holding the **issue** of the inadequacy of the study **aside, the report by Industrial Economic** places the NRD amount anywhere **between \$35 million and \$280 million**. Thus, even in its own incomplete terms, **the \$25 million dollar settlement is inadequate.**

**In addition, we have serious concerns about the manner in which decisions regarding how the NRD moneys will be spent in Connecticut. We believe this money should only be spent on the Housatonic River, and the Consent Decree should state this clearly.**

**We believe environmental groups and citizens groups should be represented on the body that makes these decisions. In Massachusetts, every property owner along the river was notified by GE of the pending action which could impact their interests. Not one property owner in Connecticut was formally notified of the Consent Decree by GE or any governmental agency. We feel**



**strongly** that **all** property owners along the Connecticut section of the Housatonic River be notified by certified mail of the pending Consent Decree and of its ramifications to their current and future legal **rights**.

Furthermore, we have grave misgivings about the lack of details in the Decree about future remediation of the "rest of the **river**." Although we **are** pleased to see the Environmental Protection Agency **will** perform independent testing on **PCBs** on the "rest of the" Housatonic in the years ahead, we are concerned that the Consent Decree does not delineate the frequency, location, or type of testing to be performed. Similarly, it does not delineate the levels of **PCBs** or other **criteria that** will be **utilized** to determine if PCB remediation in the "rest of the river" is indicated. As it stands, neither Connecticut DEP officials or EPA officials expect remediation to be required in Connecticut.

Yet, testing done to date has either been inadequate, **insufficient**, or has been conducted by the polluter, General Electric. Furthermore, we have seen independent data revealing PCB levels in the tens of parts per million in Lakes Zoar and **Lillinonah**. In our opinion, these **levels** require remediation. Thus, we **would** like to see the Consent Decree contain an agreement to require extensive testing and remediate any parts of the Housatonic with PCB levels greater than 2 parts per million. Keep in mind that scientific studies have shown observable impacts down to concentrations as low as parts per trillion.

Based on these reservations, we urge you to take the following steps to modify the Consent Decree:

- 1) increase the amount of the NRD moneys to **a** reasonable amount based on adequate study;
- 2) **Mandate** the NRD money be spent on the Housatonic River alone;
- 3) Insure **appropriate** and adequate **citizen** environmental involvement in determining how and where the money will be **spent**;
- 4) Formal notification to every property owner along the CT section of the **river**;
- 5) Insure extensive testing of the Housatonic River known in the Decree **as** the "rest of the **river**."
- 6) Establish clear standards for the **remediation** of the "rest of the river."

We therefore recommend a six month extension of the Consent Decree to negotiate these changes. If these changes cannot be negotiated, we recommend Connecticut withdraw from this Consent Decree and initiate a suit against General **Electric**. In November 1999, New York's Attorney General Eliot **Spitzer** sued GE contending the **PCBs** dumped into the Hudson River are detrimentally impacting the commercial and recreational **industries** along the river. As Attorney General **Spitzer** states: "Once we establish the legal theory, it will open GE up to damages that are vast, that will **apply** up and down the Hudson River and that **will** be monumental." The possibility also exists of exploring a **class** action suit against GE along with other states' Attorneys General.

Contrary to popular opinion, a refusal by Connecticut to enter into this agreement will not stop the **remediation** of the first two miles of the **river** in Pittsfield. In 1998, EPA conducted a Human Health Evaluation and Ecological **Risk** Assessment on the **first** two miles. It was determined from this study that the risk associated with the studied **PCBs** "presents an imminent and substantial danger to human health or the environment," as stated in **CERCLA (Superfund)** regulations. In June 1998, EPA issued to GE a Section **106** Enforcement Order, mandating immediate steps for remediation of the **first** two miles. In his letter to GE, EPA Regional Administrator John P. **DeVillars** stated: "If GE chooses not to comply with any portion of the order or if the order is delayed due to litigation, EPA is prepared to commit **Superfund** money to perform the response actions set forth in the scope of work..." We have recently been assured by EPA's Bryan Olson that the first two mile remediation work in Pittsfield will continue despite the status of the Consent Decree.

We do not support Connecticut being a party to the Consent Decree as it is currently stands. We urge you to consider our recommendations and continue to advocate for the citizens of Connecticut for their right to a **fishable** and swimmable Housatonic River.

Sincerely,

Housatonic Environmental Action **League**  
Grass Roots Coalition of New Milford  
Green **Party** of Connecticut

February 23, 2000

Lois J. Schiffer  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20530-7611

**Bryan** Olson  
EPA Project Coordinator  
U.S. EPA Region 1  
One Congress Street (HBT); Suite 1100  
Boston, MA 02114-2023

RE: DJ# 90-1 1-3-1479, 90-1 i-314792

Dear Atty. Schiffer and Mr. Olson,

The Housatonic Environmental Action League (HEAL) has reviewed the proposed Housatonic River Site Consent Decree and the **Reissued** RCRA permit between GE, the United States, the State of CT, and the Commonwealth of MA. Based upon our evaluation, HEAL offers the following comments and suggestions.

#### PUBLIC PARTICIPATION

In CT, there is very little public awareness and participation in the process; this minimization of public participation is as a direct result of the lack of publicity to the community surrounding the Housatonic River. On January 4, 1999, CT was granted the only public informational meeting to be held in this state pertaining to this Consent Decree. Despite our request, CT DEP neglected to issue an agreed upon press release prior to the Kent Town Hall meeting. The meeting was never listed on CT **DEP's website**. EPA acknowledged our requests for more press releases, but had no comprehensive listing on file for CT publications; an indication that CT has historically been kept **unapprised** and unaware of the Decree proceedings. Why do we have to ask for this information to be disseminated on such a monumental decision?

A formal public hearing was repeatedly requested of EPA, CT DEP, CT AG, and Senators Dodd and **Lieberman**, but none was ever granted. Since **early** 1997, HEAL representatives have been obligated to travel to Pittsfield and Lee to attend informational meetings and public hearings. At no time were any CT officials present to answer questions about CT concerns.

The Consent Decree was negotiated in **an entirely** private, **behind-closed-door setting** with no citizen representation at the table. Giving affected residents and businesses a seat, **early** and throughout any decision-making process, is imperative as they are the ones who, for years, will live with the ramifications of the Decree conditions. It isn't the public you need to **fear...fear** the polluter. Our federal agencies and elected officials must not allow GE to determine the fate of the river, the animal kingdom that depends on it, or the people that live and work by it without our voice being heard.

Public participation and input with the same rights afforded all other parties in this matter needs to be reevaluated. HEAL would like to be considered for any CT representation chosen in future engagement of the public during negotiations, reviews, and decisions.

#### COMMENTS AND COMMENT PERIOD

The public should be granted additional time to review and comment on the Consent Decree. It took years to create. and an **ordinary citizen** is expected to examine this immense, convoluted, and complicated document in a mere few months. This is a perfect example of the parties to the Decree creating an environment of inequity and lack of sincerity in addressing the concerns of the public. We deserve the opportunity to participate and comment on the development of activities such as permitting, remedy selection, and environmental assessment. For those citizens without law degrees or intimate knowledge of federal level environmental policy, a sufficient amount of time needs to be granted to allow intelligent and insightful response. HEAL recommends a 6 month public comment **period** if this Consent Decree should be presented again in an amended or renegotiated format. We also suggest a more extensive table of contents and index for better reference.

As is the case with other EPA regions, oral comments should be allowed into the formal record. A toll-free number to EPA should be designated and widely disseminated.

There should be a daily online log of comments being received by EPA. Other federal agencies (i.e., **FDA**) provides an online docket and actual presentation in PDF format of comments received on any given day.

#### INFORMATION AVAILABILITY AND DISSEMINATION

In CT, the Consent Decree was in short supply. Prior to HEAL requesting additional copies be placed in public repositories, it could only be found in the office of the Housatonic Valley Association in Cornwall, and in Hartford at the Attorney General's office and CT DEP office. Although EPA and CT's AG office responded to our pleas, it took precious weeks and numerous calls to obtain what was the responsibility of our government officials to coordinate. To this day, we have been unable to locate a copy in a public repository along the Housatonic River south of Litchfield County. Why do we have to ask for this information to be disseminated?

The Decree and its components are almost completely available on the EPA **website**. We applaud EPA for their efforts. Whatever appendices (i.e., maps) that could not be found, were overnight mailed to HEAL members. The **website** format for this vast document required specific amounts of computer memory availability and specific cutting-edge software in order to download and read the text. Not everyone online has the benefit of these exquisite requirements.

Although such documents can be easily implemented on the Web, we feel it's important not to rely on the Internet as the sole means of providing any information to the public. Despite predictions of eventual universality, differences in economics, culture, and education still keep vast numbers of people off the Internet. Differential access to the Web is a reminder that communities are not equally equipped to **participate** effectively in environmental oversight. Some are empowered, educated, and wealthy. Others are not. Public participation policies and information acquisition should address that gap because it perpetuates the disproportionate negative impacts **experienced** by **low-income** communities.

In Exhibit B-4 of the Preliminary Natural Resource Damage Assessment, a perfect example is provided of the lack of available information for public consumption. A search of the Hartford **Courant** (the only CT publication listed) archives for articles that mention the Housatonic **River/PCBs** between 1991-96 revealed no articles were published. This is a serious lapse on the part of CT DEP and EPA which needs to be remedied. If the newspapers refuse or themselves are negligent in publishing releases and updates, **if is** incumbent upon these agencies to **write periodic newsletters** with circulation throughout the entire Housatonic River region in CT.

#### REPOSITORY OF DOCUMENTS

In **Litchfield** County, the repository for documents pertaining to the Housatonic River is housed at the Housatonic Valley Association in Cornwall. HVA is a **private**, non-profit organization that requires a fee for membership. HVA accepts tens of thousands of dollars from GE annually to their budget. **HVA's** own internal **organization** status report in the mid 1990's states on their status as EPA/GE repository: "However, neither CT DEP nor MA DEP routinely provide copies of their reports/studies to HVA."

**HVA's** acceptance of moneys from GE constitutes a conflict of interest and may warrant further investigation. Their position as home to the only repository in **Litchfield** County needs to be reconsidered. We are requesting that a repository be created in a public arena that is not under the potential sway or influence of GE. The repository must closely monitor the organization, timely receipt, and indexing of documents. A setting such as a larger public library with sufficient resources to devote staff to provide informed assistance to the community at large would be one appropriate choice. We are unaware of any repository south of **Litchfield** County, and consideration should be given to designating additional sites along the river in CT due to the great distance.

### BLACKBERRY RIVER, NORFOLK

In December, 1999 it was brought to the attention of HEAL that in the 1940's-1950's GE ran a small assembly operation along the banks of the Blackberry River in Norfolk. We were told **switches** were assembled and components for light fixture ballasts from Pittsfield were brought south to Norfolk for assembly. Our research found that ballast capacitors of that time each contained 1 ounce of PCB fluid. **During** the flood of 1955, a large portion of that building was washed downstream. The Blackberry River feeds directly into the Housatonic River. In October, 1999 HEAL members obtained numerous **surficial** river sediment samples for independent testing. One sample from the mouth of the **Blackberry** where it meets the Housatonic tested positive for quantifiable **PCBs**.

**During** the January 4, 2000 meeting in Kent, we approached EPA and CT DEP with this information. CT DEP stated the Blackberry River had not been previously tested for the presence of **PCBs**. We were assured EPA would follow-up with GE to confirm **or** deny our findings. No agency has contacted us as of this date. Before allowing the Decree and NRD to be presented back to the Court, it is imperative to determine if **PCBs** were ever present at that Norfolk site and if the **Blackberry** River was potentially insulted by the toxin.

### NOTIFICATION OF CT STAKEHOLDERS

In the Commonwealth of MA. **property** owners along the Housatonic south of Pittsfield were formally notified of this pending action and of the potential impact to their **interests**. GE was bound by MA statute to comply with this requirement. No such statute exists in CT, thus no CT property owner along the CT section was notified. At the January 4<sup>th</sup> meeting, HEAL requested of CT DEP that GE be approached to voluntarily notify the CT property owners. If GE refused, we requested of CT **DEP's** Ed Parker he investigate the possibility of the state providing the notification. Mr. Parker said he would follow-up and get back to us. To this date, we have not heard from Mr. Parker.

Despite no statute in place in CT, the Consent Decree should mandate GE provide **equal** notification to property owners along the CT section of the river providing the ramifications to their current and future legal rights.

### NATURAL RESOURCE DAMAGES

How can NRD damages be determined with the paucity of available data? The NRD "Preliminary" Assessment and subsequent dollar designation is the quintessential "putting the cart before the horse".

The \$7.75 million Connecticut would receive under the Consent Decree is woefully inadequate to deal with the damage done to the Housatonic River by General Electric's egregious pollution. This figure was based on a preliminary report by Industrial Economics Inc. that consistently cites a lack of "readily available data and information" which limited their ability to complete a finalized analysis of the financial impact of PCB pollution on Connecticut and Massachusetts.

**Industrial** Economics clearly states their "injury assessment does not identify and quantify all the natural resource injuries likely to be present in the Housatonic River environment." We agree with this statement. For example, a recent study on ducks in Woods Pond found the highest level of **PCBs** ever detected in mallards and wood ducks. This alone should raise the NRD amount beyond the total of \$25 million. We believe comprehensive extensive testing should be done to the natural environment throughout the Housatonic River area, both in Connecticut and Massachusetts, before any NRD amount is established. Furthermore, holding the issue of the inadequacy of the study aside, the report by **Industrial** Economic places the NRD amount anywhere between \$35 million and \$280 million. Thus, even in its own incomplete terms, the \$25 million dollar settlement is inadequate.

The current body of test data in CT is inadequate, provides little statistical confidence, and is clearly not representatively sampled. The NRD settlement should **be** tabled and renegotiated at a future date when sufficient testing is completed to better determine ACTUAL damages.

In addition, we have serious concerns about the manner in which decisions regarding how the NRD moneys will be spent in Connecticut. We believe this money should only be spent on the Housatonic River, and the NRD settlement should state this clearly.

### **FLOODPLAIN**

Delineation and testing of floodplain in CT has been inadequate. A thorough study of all floodplain areas along the CT section of the river is indicated and needs to be assessed prior to NRD settlement. Many floodplain areas in CT are utilized for agriculture and we need to know if **PCBs** are redeposited seasonally.

### **COMMUNITY RELATIONS (PG. 3941**

All references to participation relate only to the State, which **is** defined as the Commonwealth of MA. No mention is made to CT or the development of a comparable **Citizens'** Coordinating Council which would be **based** in CT.

We request the creation of a Citizens' Coordinating Council in CT, and HEAL would like to participate.

## **SIGNS**

No signs were found by HEAL members in October, 1999 from Sheffield, MA to Kent, CT warning people of the dangers of fish consumption. A **previous** Consent Decree assigned GE the responsibility to place warning signs and monitor their presence. CT DEP was to oversee their compliance. They have both denied the public their right to be made aware of public health concerns. It is common knowledge that certain segments of the population continue to eat contaminated fish from the river.

Now, GE is again being mandated in this Decree to provide warning signs. **Will** we again allow them to endanger the public health and safety? Tell CT **DEP** to do their job by posting and **monitoring** PCB warning signs along the river: don't depend on GE to comply.

## **CONFIDENTIALITY OF INFORMATION (RCRA PAGE 121)**

No information should be allowed to be claimed as confidential. All information should be made available to all parties including citizen representation and public repositories.

## **DAM INTEGRITY STUDIES (PAGE 273)**

GE should not be allowed to conduct an assessment of the integrity of Woods Pond Dam and Rising Pond Dam. HEAL has grave reservations of the polluter or its assigned contractors completing these dam **integrity** studies. We would rather have agency assigned studies ordered with public review. The thought of giving GE the task and responsibility of insuring the last two dams before CT that are holding back immense amounts of **PCBs is frightening.**

## **CI BORDER**

Immediate implementation of **a** monitoring station at the CT/MA border is recommended to determine the poundage of **PCBs** that continue to be transported downstream. It would be prudent for CT DEP to make the public aware of any spikes occurring during potential resuspension due to upstream **disturbances.**

## **FIRST 2 MILE REMEDIATION**

EPA must not allow GE to be released from liability after the completion of the 1<sup>st</sup> 2 mile **remediation** in Pittsfield. Scraping off 2 feet of riverbed soil and laying a sheet of plastic on the river bottom is a sorely inadequate cleanup. Thinking these measures will no longer allow **PCBs** to enter the **river** from the additional **20-40ft.** layer of pollution further below is foolishness.



### DREDGING

Technology is now available to completely decontaminate PCB pollution. Dredging combined with on-site PCB removal seems to be an obvious choice of **remediation**. Dr. Milton Clark of EPA Region V wrote to HEAL stating: "Dredging has been highly effective in removing **PCBs** and, when measured, has shown to greatly reduce contaminants in fish and wildlife at sites including Sheboygan (WI), **Ruck Pond** (WI), Manistique Harbor **(MI)**, **Stawasse** River (MI), **Waukegan** Harbor (IL), and the St. Lawrence River (NY)."

Granted this form of remediation is expensive. As GE is the **2<sup>nd</sup>** wealthiest multinational corporation in terms of **capitalization**, we contend they can afford it and the Housatonic River and Pittsfield are all deserving of a complete and REAL cleanup.

### HILL 78

As it stands, Hill 78 is already a toxic dump with no liner. Additional **contaminated** soil will be allowed to increase its height up to **1000ft**. Hill 78 **is** within view and walking distance to **Allendale** Elementary School. Do you think you would get away with that in Litchfield County, CT? If the above on-site decontamination remedy was implemented, Hill 78 **would no** longer exist.

### TRANSPORTING PCB SOIL

The transport of contaminated waste to other communities for continued destruction of lives and neighborhoods is environmental racism. Incinerators along the **southern** Texas border are invariably found in impoverished communities. The **PCB** ash is then transported again **for** toxic landfilling to a different community. PCB laden soil is shipped to landfills throughout the US to communities desperate for the toxic revenues these facilities generate. If the above on-site dredging and decontamination remedy was implemented, this problem would also be gone.

### LAKE HOUSATONIC

Why does the Consent Decree end at Lake Housatonic when the entire length of the river including Long Island Sound has been affected? Why didn't NOAA **bring** the federal laws into play that affect estuaries and oceans? GE should be made **...** accountable for their complete mess. If other polluters contributed to southern CT **PCB** contamination and can no longer be found, **apportion** the damages as we're certain GE's share of **responsibility** will be the greatest. We ask for the Consent Decree to cover the entire Housatonic River from Pittsfield to and including Long Island Sound.

### PEER REVIEW

No mention is made of CT being a **part** of the peer review process. We request inclusion wording for clarity that CT will indeed be part of the process.

### SCHAGHTICOKE TRIBAL NATION

No one told the **Tribe** about this action. In fact, CT DEP never told them that eating the **fish was** dangerous. Both CERCLA and **DOI** regulation stipulate that **any** Tribe living alongside on actionable area needs to be a Trustee at the negotiating table. The Consent Decree and NRD Settlement should have Tribal representation at the renegotiating. It is shocking, disrespectful, and probably illegal the Schaghticoke were not made o **party** to this action.

### REST OF THE RIVER

"Rest of the River" as it is defined in the Decree is **only a** process to create **a** plan for cleanup south of the **1<sup>st</sup>** 2 miles. We have grave misgivings about the lack of details in the Decree about future **remediation** of the "Rest of the River." Although we are pleased to see the Environmental Protection Agency will perform independent testing on **PCBs** on the "Rest of the" Housatonic in the years ahead, we are concerned that the Consent Decree does not delineate the frequency, location, **or** type of testing to be performed. Similarly, it does not delineate the levels of **PCBs** or other criteria that will be **utilized** to determine if PCB remediation in the "Rest of the River" **is** indicated. As it stands, neither Connecticut DEP officials or EPA officials expect remediation to be required in Connecticut. An actual plan of action needs to be developed prior to the Decree being approved.

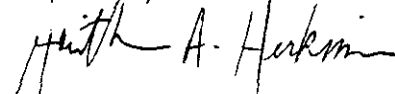
### COST BENEFIT ANALYSIS

It seems that having EPA coordinate and complete the studies and work required and subsequently charge GE might prove to be less expensive. What are the possibilities of **creating** such an analysis, and if it indeed comes back viable, implementing that course of **action as** WE DON'T TRUST GE WITH THE CLEANUP.

Although we are not opposed to a negotiated settlement, **this** polluter-friendly Consent Decree does not adequately or equitably address the concerns of all stakeholders. We need a comprehensive and expeditious cleanup of the extensive environmental damage caused by GE. The plan should not be approved until human and environmental health is assured. It should be withheld from presentation to the judge as there are indications that it is: "...**inappropriate**, improper, or inadequate." (page **397**)

HEAL **is** pleased and grateful to have had the opportunity to provide comments. Our organization is fully prepared and willing to provide further input and clarification whenever required.

Respectfully Submitted,



Judith A. Herkimer for the  
Housatonic Environmental Action League(HEAL)  
P.O. Box 21  
Cornwall Bridge, CT 067540021  
860-672-6867 phone/fax  
aghiiii@snet.net

cc: Atty. Richard Blumenthal

54 Elm Street  
Fairfield, Connecticut 06430

February 22, 2000

CT-56

Cindy Huber, Ass't. Attorney General  
Environmental and Natural Resources Div.  
U.S. Dept. of Justice  
P O Box 7611, Ben Franklin Sta.  
Washington, DC 20044

Re: GE Consent Decree for Housatonic River cleanup

Dear Ms. Huber,

As I've only just become aware of a comment period (thanks to no local coverage in our daily press), this letter is delayed. Since it should be postmarked February 23, I hope it will be included in the public input for this GE decree.

As a GE SHAREHOLDER, I particularly deplore GE's foot-dragging and resistance to cleanup of its many PCB-caused pollution problems. GE should have been spending its millions on testing and cleanup, not legal battles every step of the way.

If test results disagree on levels of PCBs in the river, further INDEPENDENT testing should be required to assess what's there.

If, as I read, the decree calls for more study, WHY is there already a dollar settlement on reparation? The consent decree amount of \$25 million, based on inadequate data, seems far too little compared to potential damage costs of well over \$35 million.



Pamela W Ritter

CC: Bryan Olson, EPA Boston

CT-57

Joseph Mustich 2-22-00  
404 Nettleton Hollow Road, Washington, CT 06793

Ref # 90-11-3-1479, 90-11-3-1492

OE/Housatonic River Consent Decree

IF we can't get a public hearing + 6 month extension for written comments, I don't want Connecticut to be party to this consent decree. I agree with the CT Green Party, HEAL, Brass Roots Coalition + others who have raised many issues re the proposed decree.

Sincerely Joe Mustich

The Housatonic River is contaminated with GE **PCBs**.

Do not eat the fish or swim its waters.

CT-58

Call our public officials to cleanup this crime.

Oppose the "Consent Decree" that does not guarantee remediation in CT during your lifetime.

"GE, **they** bring **BAD things** fo **HARM!**"

PRINT NAME:

JOHN B. DEARDEN

SIGNATURE:

John B. Dearden

DATE:

Feb 22, 2000

ADDRESS:

PO Box 45  
East Hartland, CT 06027

PHONE/EMAIL/FAX:

860 844-8455

ADDITIONAL COMMENTS:

The more I read about this issue the more disgusted I become towards General Electric, and what

MAIL TO BOTH. INCLUDING DJX 90-11-3-1479, 90-11-3-1479Z:

1. **Bryan Olson**

U.S. EPA

One Congress Sheet (HBT)

Boston, MA 02114

2. **Cindy Huber**

Assistant Attorney General

Environmental and **Natural Resources Division**

U.S. Department of **Justice**

P.O. Box 7611, Ben **Franklin Station**

Washington, DC **20044**

they're doing, actually not doing.

DEADLINE FOR COMMENTS TO BE RECEIVED IS WEDNESDAY, FEBRUARY **23, 2000**

CT-59



**SCENIC HUDSON INC**

9 VASSAR STREET • POUGHKEEPSIE, NY 12601 • (914) 473-4440 • FAX (914) 473-2648

**Statement to  
The United States Environmental Protection Agency  
and the  
Connecticut Department of Environmental Protection  
Public Information Meeting  
January 4, 2000  
Kent Town Hall, Kent CT.**

**Submitted by  
Scenic Hudson, Inc.**

Thank you for the opportunity to submit these comments. We apologize for not being able to attend in person and we have asked Judy Herkimer of Housatonic Environmental Action League to read these comments for the record.

Scenic Hudson is a 36-year-old non-profit environmental organization based in Poughkeepsie, New York, dedicated to protecting and enhancing the scenic, natural, historic and recreational treasures of the Hudson River Valley. For 20 years, Scenic Hudson has been a leader in advocating for a PCB cleanup of the Hudson River. As you are aware, the Hudson River is also heavily contaminated with General Electric PCBs. The Hudson River is arguably one of the nation's largest federal Superfund sites, with 200 miles of the River effected by the PCB contamination.

Residents of Connecticut have brought to our attention the grave concerns they have with the settlement between General Electric and the government on the Housatonic River PCB contamination.

**Request for Additional Review Time**

It is our understanding that this informational meeting is the first to be held in Connecticut, with previous public meetings being held in Pittsfield. Although the comment period has been open since October 26, 1999, we would request that the government agencies and the citizens of Connecticut be given additional time beyond the current January 24, 2000 deadline to review and comment on the Consent Decree and Reissued RCRA Corrective Action Permit. This additional time will afford Connecticut residents the opportunity to more fully understand the effects of the settlement on those that live downriver.

## **Need for Clear Characterization of Contamination**

While Scenic Hudson believes it is important to move forward with the cleanup of the first two miles of the Housatonic River, the health and ecological impacts of downriver contamination must not be overlooked and should be better understood and fully considered. In the Hudson River, the primary PCB contamination is in the Upper Hudson, yet EPA Region 2 has found that 50 percent of the PCBs in New York Harbor are GE PCBs carried downriver from upriver sources. GE PCBs have negatively effected the health of 200 miles of the Hudson River from Hudson Falls to the Battery in New York City. All fish species from all locations along the Hudson River are currently subject to an EAT NONE health advisory for women of childbearing age and children.

It is our understanding that the extent of downriver contamination in the Connecticut area of the Housatonic is not clearly documented. It is imperative that the impacts of PCB contamination on the biota and on human health are more clearly characterized for Connecticut residents who live near and use the Housatonic River. Downriver impacts of the cleanup efforts that take place along the first two miles of the Housatonic must also be analyzed. We recommend that EPA develop a downriver monitoring program to analyze the presence of PCBs in water, sediment, and fish and on the floodplains along the entire Housatonic River. This baseline analysis is critical to develop an adequate clean up plan and monitor the overall health of the River systems.

## **GE's Involvement in the Process for the Rest of the River**

An element of the Consent Decree that we found particularly disturbing is in Section 22c. Rest of the River (p. 88, EPA website version) that states that:

"Nothing herein shall prohibit Settling Defendant from conducting its own human health and/or ecological risk assessments and submitting reports thereon as a component of its comment to EPA on EPA's human health and ecological risk assessments."

We question why the above-cited language has been included and recommend that it be removed. Our experience on the Hudson has taught us that GE will use such opportunities to endlessly debate the need to remedy any downriver contamination of PCBs. GE has used the production of its own models such as the GE Upper Hudson River model to muddle the scientific information about Hudson River PCBs, mislead the public about the dangers of PCBs and delay the process by continually insisting that GE documents be peer reviewed side-by-side with EPA documents. This section and any others like it should be removed from the Consent Decree affording the EPA the opportunity to conduct the necessary scientific work along the Housatonic without interference by the polluter.

Prepared by  
Rich Schiafo  
Environmental Associate  
Scenic Hudson  
January 4, 2000





**Northeast  
Utilities System**

IO? Selden Street, Berlin, CT 06037

**Northeast Utilities Service Company**  
P. O. Box 270  
Hartford, CT 06141-0270  
(860) W-3214  
Fax (360) 665-5504

**Philip M. Small**  
Assistant General Counsel

December 27, 1999

**CT-60**

VIA FEDERAL EXPRESS

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

RE: United States vs. General Electric Company, Civil Action No. 99-30225-MAP,  
D.J. REF. 90-1 1-3-1479. and 90-11-3-1479z

Dear Sir,

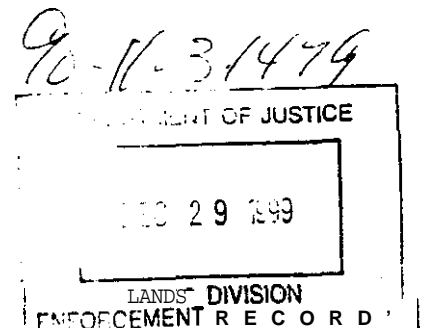
In response to the Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act in the above-captioned case, 64 F.R. 57654 (Oct. 26, 1999), Northeast Generation Company, ("NGC") is providing the enclosed comments on the proposed Consent Decree between the United States and General Electric Company. The enclosed NGC comments requests two changes to the Consent Decree with respect to the "Rest of River" segment as defined in the Consent Decree.

Thank you for consideration of these comments. Should you have any questions, please call me at (860) 665-3214.

Very truly yours,

Philip M. Small

PMS/ajl  
Enclosure



COMMENTS OF NORTHEAST GENERATION COMPANY ON 'CONSENT  
DECREE IN UNITED STATES V. GENERAL ELECTRIC COMPANY

Northeast Generation Company ("**NGC**") appreciates the opportunity to comment on the Consent Decree in United States v. General Electric Company, NGC is greatly interested in this Consent Decree, because NGC will shortly be acquiring hydroelectric projects in Connecticut on the Housatonic River from The Connecticut Light and Power Company. These hydroelectric projects are the Falls Village, Bulls Bridge, Rocky River, Shepaug and Stevenson Projects. Each of these projects holds a license from the Federal Energy Regulatory Commission ("**FERC**").

**NGC's** hydroelectric projects have been and will continue to be adversely affected by the disposal of **PCBs** by General Electric Company ("**GE**") in the Housatonic River in Pittsfield, Massachusetts. Specifically, GE operated an electrical equipment business in Pittsfield, Massachusetts, which used **PCBs** as insulating oil for their products. GE routinely disposed of **PCBs** in the Housatonic River in Pittsfield. There have been extensive studies to identify the impacts to the Housatonic River from this disposal. Studies show, over time, that the levels of **PCBs** in the river have diminished. However, high levels of **PCBs** still remain in sediments at each dam along the Housatonic River. Remediation of these "hot spots" has not been made a part of the current settlement between the EPA and GE. NGC believes that consideration of the PCB-laden sediments must be

included in the process for the “ Rest of the River Remediation **Action**”, as defined in the Consent Decree.

**PCBs** in the Housatonic River can potentially affect NGC operations at each of its hydroelectric facilities and creates adverse financial and operational exposures for NGC. There are numerous potential operation and maintenance activities for these projects that would disturb PCB -laden sediments, and likely trigger additional regulatory requirements. Federal and state environmental and natural resource agencies would undoubtedly require significant and costly measures to be taken to minimize the environmental impacts of disturbing this contaminated sediment.

For example, the areas immediately below each powerhouse may periodically need dredging to facilitate flow efficiency in the future. In certain situations, the FERC license can require that dredging be performed.

Also, **NGC's** hydroelectric facilities are relatively old and may in the future require intake renovations.. Additionally, FERC relicensing conditions, such as a requirement to install fish passage facilities at Stevenson and Shepaug, could require excavation of sediments near the dams.

Water quality concerns related to sediments, **PCBs**, and **peaking** operations also remain as exposures in the FERC relicensing process. In fact, in the FERC relicensing process for these projects, the United States Fish and Wildlife Service (“U.S. Fish **and Wildlife**”) is requesting an assessment of **PCB-**contaminated sediments be conducted. U.S. Fish and Wildlife further requests that unless the licensee is able to produce a “sediment transport study conducted

by another company” which indicates no significance suspension of **PCBs**, the licensee provide such a study itself. The Connecticut DEP is currently considering a natural flow regime at the Falls Village and Bulls Bridge facilities, creating a situation where sediment buildup may accelerate. This would impact our operations to the point where dredging would be necessary.

In each of these and other maintenance situations, the added burden of PCB handling and disposal will increase, the overall costs as compared to uncontaminated material. Finally, NGC would also incur extra costs from the additional time and effort to complete maintenance activities due to the burdens of complying with PCB rules. This would lengthen outages and result in lost electric sales revenue for NGC.

NGC submits that GE, as the party responsible for disposing of **PCBs** in the Housatonic River should bear the full cost of remediating **PCBs**. GE should also be required to compensate parties, such as NGC, whose costs increase as a result of **GE's** disposal of **PCBs**.

NGC recognizes that the Consent Order defers issues such as these under or the provisions dealing with the “Rest of the River”. To preserve its rights and the rights of similarly situated entities, NGC requests two **changes** to the Consent Decree: First, NGC requests that the Consent Decree explicitly state that it does not adversely affect or impair in any way, expressly or implicitly, the rights of any third parties against GE with respect to the “Rest of the River” segment as defined in the Consent Decree. This would include the rights of third parties to seek cost recovery from GE and with respect to any natural resources

damage discussed under Paragraphs 114-116 of the Consent Decree. Second, NGC requests that the Consent Decree explicitly recognize that there are third parties, such as NGC, with interests in the "Rest of the River Remediation Action", as defined in the Consent Decree, and that these parties shall be entitled to participate in any settlement negotiations or other process to resolve scope, **schedule, and** other issues relating to that remediation.