

GENERAL ELECTRIC/HOUSATONIC RIVER NATURAL RESOURCE RESTORATION

RESTORATION PLANNING STRATEGY HOUSATONIC RIVER WATERSHED NATURAL RESOURCE DAMAGE ASSESSMENT

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FOR :

**MASSACHUSETTS SUBCOUNCIL,
HOUSATONIC RIVER NATURAL RESOURCE TRUSTEES**

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Cover photo: Backwater area of the Housatonic River, upstream of Woods Pond. Lenox, MA.
Photo by Woodlot Alternatives, Inc.

ACRONYMS

CD	Consent Decree
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
C.F.R.	Code of Federal Regulations
C.M.R.	Code of Massachusetts Regulations
CTDEP	State of Connecticut Department of Environmental Protection
CWA	Clean Water Act
EA	Environmental Assessment
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
ENF	Environmental Notification Form
EOEA	Commonwealth of Massachusetts Executive Office of Environmental Affairs
FONSI	Finding of No Significant Impact
GE	General Electric Company
MA SubCouncil	Massachusetts SubCouncil
MADEP	Commonwealth of Massachusetts Department of Environmental Protection
MADPH	Massachusetts Department of Public Health
M.G.L.	Massachusetts General Laws
MEPA	Massachusetts Environmental Policy Act
MOA	Memorandum of Agreement
NCP	National Oil and Hazardous Substances Pollution Contingency Plan
NEPA	National Environmental Policy Act
NOAA	National Oceanic and Atmospheric Administration
NRD	Natural Resource Damages
NRDA	Housatonic River Natural Resource Damage Assessment
PCBs	polychlorinated biphenyls
PEDA	Pittsfield Economic Development Authority
RP	Restoration Plan
RP/EA	Restoration Plan/Environmental Assessment
RP/EIS	Restoration Plan/Environmental Impact Statement
RPS	Restoration Planning Strategy

Housatonic River Restoration Planning Strategy
Acronyms

Trustees	Housatonic River Natural Resource Trustees
Trustee Council	Housatonic River Natural Resource Trustees, non-voting advisors and appointed Ex-Officio delegates
U.S.C.	United States Code
USEPA	U.S. Environmental Protection Agency
USFWS	U.S. Fish and Wildlife Service

1.0 INTRODUCTION

This document provides a framework for state and federal natural resource trustees to plan and implement compensatory restoration actions as part of the Housatonic River Natural Resource Damage Assessment (NRDA) and Restoration process for Massachusetts. It contains information concerning:

- the Natural Resource Damages (NRD) regulatory framework and process;
- the roles and organization of the Housatonic River Natural Resource Trustee Council (Trustee Council) and the Massachusetts SubCouncil (MA SubCouncil);
- site-specific natural resource injury and damages, and;
- a description of the MA SubCouncil restoration planning strategy for Massachusetts.

The General Electric Company (GE) owns and operates a 254-acre facility in Pittsfield, Massachusetts where polychlorinated biphenyls (PCBs) were used in the manufacture of electrical transformers from the late 1930s to the late 1970s (Roy F. Weston 1998). During this time period, hazardous substances were released from the GE facility to the Housatonic River and Silver Lake in Pittsfield. These hazardous substances include PCBs, dioxins, furans, volatile organic compounds, semi-volatile organic compounds, and inorganic constituents (e.g., metals). In addition, a number of former oxbows along the Housatonic River that were filled when the U.S. Army Corps of Engineers straightened the Pittsfield reach of the Housatonic River to alleviate flooding were found to contain PCB-contaminated soils and fill. The Housatonic River stretches approximately 120 miles through western Massachusetts and Connecticut to Long Island Sound. The full extent of PCB contamination in the river, floodplain, and adjacent properties, and the risks to humans and ecological receptors is currently under investigation by the U.S. Environmental Protection Agency (USEPA).

As a result of the presence of PCBs, the Massachusetts Department of Public Health (MADPH) and the State of Connecticut issued fish consumption advisories for the Housatonic River in 1982 and 1977, respectively (USEPA 2004). The Massachusetts advisory was later amended to include frogs and turtles. The MADPH also issued a waterfowl consumption advisory in 1999 after receiving tissue analyses results conducted on mallard ducks (*Anas platyrhynchos*) and wood ducks (*Aix sponsa*) collected from Woods Pond (the first impoundment of the Housatonic River downstream of the GE facility) and upstream backwaters.

2.0 NRDA REGULATORY FRAMEWORK AND PROCESS

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. § 9601 *et seq.*, the Clean Water Act (CWA), 33 U.S.C. § 1251-1376, and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. ch. 21E, provide a mechanism for state and federal governments to address NRD. These acts provide that natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance covered under CERCLA or the CWA, and may seek to recover those damages.

Pursuant to CERCLA, NRDA regulations have been promulgated by the Department of the Interior, 43 C.F.R. § 11, to supplement the procedures established under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300, by providing a procedure for determining compensation for injuries to natural resources that have not been nor are expected to be addressed by response actions conducted pursuant to the NCP. These federal regulations are consistent with the Massachusetts Oil and Hazardous Material Release Prevention and Response Act.

CERCLA authorizes states, federally recognized tribes, and certain federal agencies to act as trustees on behalf of the public. The natural resource trustees can bring claims against responsible parties for damages in order to restore, replace, or acquire the equivalent of natural resources that have been injured or lost by the release of hazardous substances. Natural resources are broadly defined as including land, fish, wildlife, other biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any state or local government, any foreign government, or any Indian tribe.

2.1 Housatonic River Natural Resource Trustee Council

The Natural Resource Trustees (Trustees) for the GE/Housatonic River case consist of: the Commonwealth of Massachusetts Executive Office of Environmental Affairs (EOEA); the State of Connecticut Department of Environmental Protection (CTDEP); the U.S. Department of the

Interior (acting through the U.S. Fish and Wildlife Service [USFWS]); and the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce (NOAA).

On October 7, 1999, the USEPA; the U.S. Department of Justice; the Commonwealth of Massachusetts Department of Environmental Protection (MADEP), Office of the Attorney General, and the EOEa; the CTDEP and Office of the Attorney General; the U.S. Department of the Interior; the NOAA; the City of Pittsfield; the Pittsfield Economic Development Authority (PEDA); and GE reached a comprehensive agreement concerning the cleanup of GE's Pittsfield facility, certain off-site properties, and the Housatonic River, and concerning compensation for NRD.

The comprehensive agreement was lodged with the U.S. District Court of Massachusetts, Springfield, Massachusetts, and approved on October 27, 2000. The full text of the comprehensive agreement is contained in a Consent Decree (CD) and is available on the USEPA GE/Housatonic River cleanup website (www.epa.gov/region01/ge/cleanupagreement.html). Details on the restoration-focused components of the CD are discussed in Section 2.3 of this document.

A Memorandum of Agreement (MOA) among the U.S. Department of Interior, NOAA, EOEa, and CTDEP was executed in January 2002 to ensure the coordinated handling of activities relating to cleanup, remediation, and restoration activities in the Housatonic River environment (see Appendix 1). The MOA provides a framework for intergovernmental coordination among the Trustees and for implementation of their responsibilities as Trustees under CERCLA and other applicable federal, state, and common laws.

As described in the MOA, the federal and state Trustees form a Trustee Council having four voting members. Federal Trustees include representatives from the USFWS and NOAA. State Trustees include representatives from EOEa and CTDEP. State Trustees act on behalf of the public for natural resources within each state's boundaries. Contact information for the Trustee Council is presented in Appendix 2.

2.2 Trustee SubCouncil for the Geographic Region of Massachusetts

The MOA provides an opportunity for the Trustee Council to establish SubCouncils for Massachusetts and Connecticut. As described in the MOA, each SubCouncil is to have three voting members (the state-specific Trustee and the two federal Trustees) and may also have non-voting, ex officio delegates that are designated by unanimous agreement of each SubCouncil's voting members. In addition, the USEPA and MADEP may participate as non-voting advisors.

The MA SubCouncil currently includes only one federal Trustee and one state Trustee. NOAA has chosen to withdraw from its decision-making role on the MA SubCouncil pursuant to an October 2004 resolution to the MOA (see Appendix 1).

The MA SubCouncil currently consists of the following:

- Dale Young, EOEA (voting member, state Trustee)
- Veronica Varela, USFWS (voting member, federal Trustee)
- Rachel Fletcher, currently of Housatonic River Restoration (ex officio delegate)
- Tim Gray, currently of Housatonic River Initiative (ex officio delegate)
- Dean Tagliaferro, USEPA (non-voting advisor)

Upon reaching unanimous agreement of its voting members, the MA SubCouncil is responsible for authorizing the expenditure of NRD monies allocated to Massachusetts. Further details on this responsibility are found in Section 2.3 of this document.

2.3 Restoration Components of the Consent Decree

Major components of the CD pertinent to restoration activities include the processes that will be used to:

1. clean up contaminated areas (hereafter referred to as “primary restoration”), and
2. implement NRD-related restoration projects in the Housatonic River watershed, which will compensate for injured and lost natural resources and the services they provide (hereafter referred to as “compensatory restoration”).

Primary restoration activities will be administered by the USEPA and MADEP with oversight by the Trustee Council. These restoration activities will consist of the response actions agreed upon for the Housatonic River, Silver Lake, Unkamet Brook, and associated wetlands and floodplains. Details about the primary restoration actions at each area can be found on the USEPA GE/Housatonic River cleanup website [www.epa.gov/region01/ge/cleanup/gerrra.html] (see “Part 1: Cleanup of Contaminated Areas”).

Compensatory restoration activities will be administered by the Trustee Council. There are several components to the compensatory restoration portion of the settlement.

First, GE will perform or fund the following compensatory restoration activities in connection with the cleanup and remediation. The Trustee Council will coordinate with GE and the USEPA in the design, implementation, and maintenance plans for the following activities:

- (a) River and riparian habitat enhancement in the first Upper ½ Mile Reach following the removal of contaminated sediments and soil by GE.
- (b) River and riparian habitat enhancement in the next 1½ Mile Reach following the removal of contaminated sediments and soil by the USEPA.
- (c) Recreation and habitat enhancements at Silver Lake following the implementation of the remedial action.
- (d) Habitat enhancement in and adjacent to Unkamet Brook following remediation.
- (e) Stormwater drainage enhancement and creation of a well-vegetated riparian buffer on the East Street property.
- (f) Creation of native grassland communities in the former Newell Street Parking Lot, Lyman Street parking lot, and Hill 78 Consolidation Area.
- (g) Creation of 12 acres of riparian forested floodplain and wetland habitat in the Housatonic River watershed.
- (h) Protection of 10 acres of wetland through a conservation easement on the Unkamet Brook site.
- (i) Use of a \$600,000 payment from GE for wetlands mitigation.

In addition to the compensatory restoration activities listed above, GE provided \$15.5 million in NRD to the Trustees. By mutual agreement of the Trustee Council, \$7.75 million, plus earned

interest, has been allocated to restoration activities in each of the geographic regions of Massachusetts and Connecticut. These monies will be used to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and the services¹ they provide in accordance with CERCLA NRDA regulations that guide the allocation and expenditure of NRD recoveries for restoration² activities. 43 C.F.R. §§ 11.81–11.82 and 11.93. Decisions on the use and expenditure of these NRD funds shall be made only with the unanimous consent of the voting members of the relevant SubCouncil. The Restoration Planning Strategy provides the framework for spending the Massachusetts portion of the NRD recovery. Details of the methods for soliciting, selecting, and allocating the Massachusetts portion of the NRD recovery will be provided in the forthcoming document, Restoration Project Evaluation Criteria. A similar process is underway in Connecticut. More information on the Connecticut process is available on the website of the Connecticut SubCouncil of the GE/Housatonic River restoration (<http://projects.pirnie.com/projectsites/HousatonicRiver>).

In addition to the \$15.5 million in NRD recovery described above, another NRD recovery of \$235,000 has been set aside for joint restoration projects in Massachusetts and Connecticut. Decisions on the use and expenditure of these funds shall be made only with the unanimous consent of the Trustee Council. Guidance on the allocation of these funds is provided in the MOA (see Appendix 1). The MOA states that the Trustees may either develop a joint restoration plan for the allocation of these funds, or may choose to undertake projects identified in the Massachusetts and/or Connecticut restoration plans. The selected approach has yet to be determined.

Another NRD recovery of up to \$4 million may be available from the PEDA in either in-kind services and/or a percentage of net revenues³. This revenue-sharing arrangement links the anticipated success of the economic redevelopment in Pittsfield with additional NRD

¹ The term “services” means the physical and biological functions performed by the resource including the human uses of those functions. These services are the result of the physical, chemical, or biological quality of the resource. 43 C.F.R. § 11.14(nn). “Services” includes provision of habitat, food and other needs of biological resources, recreation, other products or services used by humans, flood control, ground water recharge, waste assimilation, and other such functions that may be provided by natural resources. 43 C.F.R. § 11.71(e).

² The term “restoration” in this document encompasses all listed means of achieving benefits to injured natural resources and the services they provide (i.e., restoration, rehabilitation, replacement and acquisition of their equivalent).

³ See paragraph 124 of the CD.

compensation. These funds will be administered by the Trustees, with appropriate public input, for natural resource restoration projects in Massachusetts and/or Connecticut.

Further compensatory restoration activities outlined in the CD require Trustee Council involvement in an assessment of the integrity of the Woods Pond and Rising Pond dams and implementation of any measures necessary to ensure dam integrity. Per the CD, the Trustee Council retains the right to seek an additional NRD recovery in the event of a Woods Pond and/or Rising Pond dam failure and subsequent release of contaminated sediment.

2.4 Site-specific Natural Resource Damage and Injury Evaluation

CERCLA mandates that NRD monies be used to restore, replace, or acquire the equivalent of injured or lost natural resources and the services they provide. Under CERCLA, Trustees assess the extent of the injury and determine appropriate ways of restoring and compensating that injury. Two reports were prepared to describe the Housatonic River natural resource injuries and damages (Industrial Economics, Inc. 1997, Industrial Economics, Inc. 1998). The reports informed the Trustees for the case settlement. These reports evaluated categories of NRD including those associated with ecological injuries, recreational use impacts, and passive use values. Ecological injuries were deemed to have occurred in each of the 14 river segments between Pittsfield, Massachusetts and the downstream terminus of the Housatonic River at Long Island Sound in Connecticut. Habitat equivalency analysis modeling was used to establish preliminary estimates of ecological damages. Economic valuation techniques were used to estimate the recreational damages associated with lost or diminished recreational fishing and boating activities and diminution of passive use values (Industrial Economics, Inc. 1997).

A preliminary list of specific potential restoration projects, as well as general restoration project ideas, was developed for purposes of case settlement, and a broad range of potential restoration projects was also identified and described (Industrial Economics, Inc. 1997). Identified projects included resource-based restoration, which is the acquisition of key habitats and sensitive environments in the Housatonic River watershed, the enhancement of river and riparian habitat, and the enhancement of fish habitat and/or fish stocks. Also included were access-based projects, such as constructing riverbank trails, upgrading existing river facilities, and/or providing additional access to the river. Maintenance-based projects, such as the establishment of an

operation and maintenance program for acquired lands, were also identified as potential types of restoration activities.

Categories of injured resources and the potential restoration projects that could address those injuries are varied and wide-ranging. Examples of potential restoration projects include wetland restoration, recreational area enhancement or creation, water quality improvement, wildlife habitat enhancement, endangered species management, environmental education program development when affiliated with resource- or access-based projects, and land acquisition.

The examples of potential projects that are provided in this section are not meant to be comprehensive. Furthermore, they do not represent a MA SubCouncil decision on preferred projects, nor are they necessarily the alternatives that will be incorporated in the Restoration Plan. These examples are solely provided to illustrate potential types of projects.

3.0 RESTORATION PLANNING STRATEGY

Two primary federal statutes and one state statute apply to restoration planning in Massachusetts. The federal statutes are CERCLA and the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.* CERCLA requires that a Restoration Plan be developed before Trustees can allocate funds for the purpose of restoration, replacement, or acquisition of the equivalent of injured or lost natural resources and the services they provide. The Restoration Plan must then be adopted by the Trustee Council or the appropriate SubCouncil. NEPA requires that an environmental impact statement (EIS) or environmental assessment (EA) be prepared and approved before major federal actions are undertaken. Massachusetts also requires that the Massachusetts Environmental Policy Act (MEPA), M.G.L. ch. 30, §§ 61-62H, is followed when projects of a certain size involve state agency action, financial assistance or, in certain instances, dispositions of state land. In accordance with MEPA, these projects must file an environmental notification form (ENF) and may be required to file an environmental impact report (EIR). MEPA documentation and review may be coordinated or consolidated with other environmental review processes, such as NEPA. 301 C.M.R. § 11.09(4).

Therefore, the Trustees must develop the Restoration Plan to document and guide future restoration actions and insure that decisions on restoration projects are made after consideration of all reasonable alternatives and public comment. The Trustee Council and the MA SubCouncil

are committed to accomplishing this by developing and implementing processes for:

1) identifying and evaluating a range of potential restoration alternatives; and 2) ensuring public participation in the development and implementation of the Restoration Plan.

The Restoration Planning Strategy puts forth a process that helps meet the MA SubCouncil's obligations for the development of the Restoration Plan, as described in CERCLA and the MOA. The Restoration Plan will be implemented following its development by the MA SubCouncil, review by the public and approval by the MA SubCouncil. Steps that need to occur as part of this process include:

1. Develop and Finalize the Restoration Planning Strategy;
2. Develop and Finalize the Restoration Project Evaluation Criteria;
3. Identify, propose, and review potential projects;
4. Develop and Finalize the Restoration Plan/Environmental Assessment (RP/EA);
5. Prepare an EIS, if required under NEPA;
6. Implement Restoration; and,
7. Monitor Restoration Actions.

A draft of the Restoration Planning Strategy document has been reviewed by the MA SubCouncil and the public to ensure that Trustee Council obligations, as described in CERCLA and the MOA, are addressed. These comments were carefully considered in the finalization of the Restoration Planning Strategy. Electronic copies of the final document are available on the MA SubCouncil GE/Housatonic River restoration project website (www.ma-housatonicrestoration.org). Hard copies are available at public libraries within the Housatonic River watershed in Massachusetts (see Appendix 3).

The MA SubCouncil will conduct several rounds of funding and implement multiple projects throughout the Housatonic River watershed in Massachusetts over the next several years. The MA SubCouncil acknowledges that the status of remediation activities may affect the feasibility of potential restoration projects, and anticipates that some projects will require more time to evaluate and approve. A phased approach to soliciting restoration projects and disbursing NRD funds will enable the selection and implementation of both near-term and future restoration projects. This approach allows the MA SubCouncil to effectively administer a number of

projects, and to explore opportunities to enhance remedial actions by concurrently or subsequently implementing compensatory restoration projects.

During restoration planning and the implementation process, the MA SubCouncil will also track the USEPA cleanup process to avoid potentially compromising the effectiveness of a restoration action. For example, enhancing an area of river bank habitat adjacent to a section of river to be remediated may be compromised if, after restoration, remediation activities require the use of the restored area as a point of access for heavy equipment. A phased approach to project solicitation will allow the Trustee Council to hold some NRD funds in reserve until cleanup decisions on the Rest-of-River are complete.

The MA SubCouncil may also seek to identify additional sources of funding (e.g., grants and partnerships) for restoration opportunities to supplement NRD monies. The combination of additional funding with the previously allocated NRD monies will thereby provide for the funding of larger and/or more beneficial restoration projects. Similarly, coordinating restoration activities with other groups performing comparable projects in the Housatonic watershed may provide for the implementation of larger and/or more beneficial restoration projects. The MA SubCouncil will investigate opportunities to leverage dollars or volunteer services to accomplish more restoration work with the same amount of money.

3.1 Public Participation

Public participation is a required and important component of the restoration planning process. To ensure robust public participation during the restoration process, the MA SubCouncil will employ several different mechanisms to provide information to, and obtain information from, the public, including:

- A MA SubCouncil website (www.ma-housatonicrestoration.org) that has been established to assist the dissemination of draft documents for public review and comment, to post final documents, notices, and agendas for public meetings, to list contact information for MA SubCouncil members, to post a project schedule, and to provide links to other pertinent sites (e.g., the USEPA GE/Housatonic River restoration site, www.epa.gov/region1/ge/). This MA SubCouncil website will be updated monthly.

- The preparation and issuance of public reports and/or fact sheets regarding the work of the MA SubCouncil.
- The MA SubCouncil will hold regular public meetings and will invite active public participation. Many of these meetings will include discussion of draft reports and documents. As these meetings are scheduled, their times and locations will be posted on the website. These meeting dates will also be advertised in local newspapers and radio stations (see Appendix 4).

The purpose of the public participation process is to provide ongoing access to the MA SubCouncil and their work as part of the planning process. Documents developed during the planning process will be available to the public in draft form, and public comments on the draft documents will then be solicited and considered during the development of the final version of each document. Public meetings will also be used to provide a forum for soliciting comments on documents and proposed actions. Notices for all meetings will be posted in local newspapers and on the MA SubCouncil website.

3.2 Restoration Project Evaluation Criteria

The MA SubCouncil will consider restoration projects in the Massachusetts portion of the Housatonic River watershed and fund those deemed to provide the greatest benefit to the injured and lost natural resources and the services they provide. Processes and specific criteria for the development and evaluation of candidate restoration projects meeting the requirements contained in CERCLA, the NRDA regulations, the CD, and the MOA will be developed. The conceptual process for selecting candidate restoration projects is outlined below. The details of the process will be provided in the Restoration Project Evaluation Criteria, which will be made available for public review and comment.

The MA SubCouncil will consider how to best utilize planning processes that have already been conducted by entities in the Massachusetts portion of the Housatonic River watershed. Several such planning processes have engaged the citizens of Berkshire County by soliciting ideas for restoration projects. A list of existing plans is found in Appendix 5. These documents may contain ideas for restoration projects that could potentially be funded with NRD monies.

An important aspect of the Housatonic River restoration planning process is that the MA SubCouncil ensures that all members of the public will have the opportunity to present ideas for

restoration. This will be accomplished by implementing a public participation process as described above.

The MA SubCouncil will solicit restoration projects from interested parties (e.g., private entities; local, state, federal and tribal governments; academic institutions; and, other nonprofit and commercial organizations) through a written submission process for proposed projects. It is anticipated that proposed projects will be categorized as deemed relevant and useful by the MA SubCouncil in the review process. Within each category, proposed projects will be evaluated, and appropriate, feasible projects will be selected for implementation.

The MA SubCouncil envisions using a three-tiered evaluation of proposed projects.

- The first tier will screen out projects that are inconsistent with the federal regulations or other applicable federal, state, or local laws and regulations, and/or the MA SubCouncil's goals and policies for restoration (i.e., "Threshold Criteria"). It is important to note that a project's consistency with the Threshold Criteria does not guarantee that it will be funded, but merely establishes that the MA SubCouncil may consider the project for possible funding. Conversely, rejection of a proposed project based on these criteria means that the MA SubCouncil would not use NRD funds for that project, even though the proposed project may yield a restoration benefit to an injured natural resource.
- The second tier of project evaluations will provide a means of quantifying the merits of the projects based on "Evaluation Criteria." Such criteria will likely consist of a set of scores or ranks. Using this system, the MA SubCouncil will be able to focus on those projects that would provide the greatest benefits to injured or lost natural resources and the services they provide. This will lead to the MA SubCouncil's selection of the "Proposed Alternative(s)."
- The third tier of project evaluations involves analyses of the potential environmental and socioeconomic impacts from activities proposed in each project. This will fulfill the requirements of the NEPA, the MEPA and other similar requirements. It should be noted that some projects might be grouped together to form additional Proposed Alternatives if a combination of projects would better fulfill the needed level of restoration. Considering the results of the NEPA and MEPA compliance evaluation, the MA SubCouncil will ultimately decide which Proposed Alternative(s) is to be implemented. The chosen project(s) will be termed the "Preferred Alternative(s)."

The MA SubCouncil will seek public input throughout this process – from the development of the Threshold Criteria and Evaluation Criteria to the selection of Preferred Alternatives. Solicitation of public input will occur through a variety of media, including newspapers, public meetings, web pages, and radio announcements, the Massachusetts Environmental Monitor, and possibly the Federal Register.

3.3 NEPA and MEPA Compliance

NEPA was enacted in 1969 in part to ensure that federal agencies consider environmental factors along with technical and economic factors in their decision-making process. NEPA does not regulate the type of decisions that agencies make but regulates the procedures used for making those decisions. Two objectives of NEPA are that before decisions are made and actions are taken, federal agencies (i.e., USFWS in the case of the MA SubCouncil) must have available and fully-considered, detailed information regarding potential environmental effects; and agencies must make this information available to other agencies, organizations, and citizens.

MEPA requires that state agencies study the environmental consequences of their actions, including permitting and financial assistance. It also requires state agencies to take all feasible measures to avoid, minimize, and mitigate damage to the environment. Projects are subject to this requirement if they equal or exceed MEPA thresholds. 301 C.M.R. § 11.03. MEPA review is not a permitting process. It requires public study, disclosure, and development of feasible mitigation for proposed projects, and provides the mechanism through which information is collected and mitigation mandates are executed.

To ensure NEPA and MEPA requirements are met during restoration planning and implementation, the MA SubCouncil will incorporate NEPA and MEPA compliance into the restoration planning process; involve the public and consider environmental effects of each proposed action throughout the entire process; document the restoration planning process appropriately; and use an interdisciplinary approach during the process.

The MA SubCouncil intends to prepare a joint RP/EA document to assist in meeting NEPA and MEPA requirements and to provide a mechanism for disseminating information on restoration alternatives to the public, local, state and federal agencies, and organizations. The Draft RP/EA

will summarize the process used to solicit candidate restoration sites and will also present the MA SubCouncil's preliminary determination of the Preferred Alternatives for restoration projects, including the rationale for the selected alternatives. The Draft RP/EA will undergo a public review process. Public participation during development of the Draft RP/EA will include preparing and publishing a Notice of Intent, coordinating a public comment period, including a public scoping meeting, and compiling and responding to public comments. Following the public review process, the MA SubCouncil will finalize the RP/EA, which will include their final determination of the Preferred Alternatives.

If following the NEPA review of the RP/EA a Finding of No Significant Impact (FONSI) is issued, no additional NEPA compliance documentation is necessary on the Restoration Plan. The project implementation phase would then begin.

If a FONSI cannot be reached on the RP/EA, then an EIS will be prepared and published according to NEPA guidelines. An EIS evaluates potential impacts of proposed alternatives in greater detail than an EA. The Draft RP/EIS will then also undergo a public review that will include a hearing. When comments have been received and addressed on the Draft RP/EIS, the RP/EIS will be finalized and published. The MA SubCouncil will then need to approve the RP/EIS, which will contain the final determination of the Preferred Alternative(s) for restoration projects.

3.4 Coordination with Cleanup Activities

An important aspect of compensatory restoration is that work will be closely coordinated with ongoing and future cleanup actions to avoid potential cross-contamination of any restored sites downstream and to provide synergism among restoration activities to maximize ecological and public benefits. Coordination will occur by monitoring the status of ongoing cleanup actions through contact with the USEPA project manager. This coordination will also enable the MA SubCouncil to explore opportunities to enhance remedial actions by concurrently or subsequently implementing complementary restoration projects. For example, a remedial action, such as riverbank excavation, and a proposed restoration project, such as riverside trails for wildlife observation, may jointly benefit by integrating and coordinating the design and construction of the two projects.

4.0 LITERATURE CITED

Industrial Economics, Inc. 1997. Housatonic River Preliminary Natural Resource Damage Assessment, <http://www.epa.gov/region01/ge/cleanup/exhibit9.pdf> . Prepared by Industrial Economic, Inc., Cambridge, MA.

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USEPA 2004. GE/Housatonic River Site in New England, Site History. <http://www.epa.gov/region01/ge/sitehistory.html>.

Roy F. Weston, Inc. 1998. Upper Reach-Housatonic River Ecological Risk Assessment. Prepared under EPA Contract No. 68-W5-0009. Roy F. Weston, Inc., West Chester, PA.

5.0 APPENDICES

1. Legal Documents
 - a) Memorandum of Agreement Among The Commonwealth of Massachusetts Executive Office of Environmental Affairs, The State of Connecticut Department of Environmental Protection, The United States Department of the Interior, and the National Oceanic and Atmospheric Administration Concerning Natural Resource Damages in the Matter of *United States, et al. v. General Electric Company*, Civil Action Nos. 99-30225-MAP; 99-30226-MAP; and 99-30227-MAP.
 - b) Selected Resolutions of the Massachusetts SubCouncil of the Housatonic River Trustee Council.
2. Contact Information for Trustees, Massachusetts SubCouncil, and Project Personnel.
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Appendix 1

Legal Documents

Memorandum of Agreement

Among The Commonwealth of Massachusetts Executive Office of Environmental Affairs, The State of Connecticut Department of Environmental Protection, The United States Department of the Interior, and the National Oceanic and Atmospheric Administration Concerning Natural Resource Damages in the Matter of *United States, et al. v. General Electric Company*, Civil Action Nos. 99-30225-MAP; 99-30226-MAP; and 99-30227-MAP.

Selected Resolutions of the Massachusetts SubCouncil of the Housatonic River Trustee Council

Resolution # 1. Designation of Ex Officio Delegates

Resolution # 4. NOAA Withdrawal from MA SubCouncil.

Note: Copies of additional resolutions that are not directly relevant to the Restoration Planning Strategy can be obtained on the MA SubCouncil GE/Housatonic River restoration project website (www.ma-housatonicrestoration.org).

MEMORANDUM OF AGREEMENT

AMONG

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS,**

**THE STATE OF CONNECTICUT,
DEPARTMENT OF ENVIRONMENTAL PROTECTION,**

THE UNITED STATES DEPARTMENT OF THE INTERIOR,

AND THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

**CONCERNING NATURAL RESOURCE DAMAGES IN THE MATTER OF
UNITED STATES, ET AL. V. GENERAL ELECTRIC COMPANY,
CIVIL ACTION NOS. 99-30225-MAP; 99-30226-MAP; AND 99-30227-MAP (D. MASS.)**

I.

INTRODUCTION

In October of 1999, the United States, the Commonwealth of Massachusetts, the City of Pittsfield, the Pittsfield Economic Development Authority, and the State of Connecticut reached a comprehensive settlement agreement with the General Electric Company related to alleged violations of federal and state laws concerning releases of certain hazardous substances and materials, particularly polychlorinated biphenyls ("PCBs"), into the environment. The terms of this agreement are detailed in a Consent Decree approved by the United States District Court of Massachusetts in the matter of United States, et al. v. General Electric Company, Civil Action Nos. 99-30225-MAP; 99-30226-MAP; and 99-30227-MAP (D. Mass.) (hereinafter "U.S. v. G.E."). The Consent Decree provides for, among other things, the cleanup of the Housatonic River and certain associated areas, cleanup of the General Electric Plant facility, environmental restoration of the Housatonic River, compensation for natural resource damages, and government recovery of past and future response costs.

This Memorandum of Agreement (hereinafter "MOA") among the United States, acting by and through the Fish and Wildlife Service of the Department of the Interior (hereinafter "DOI") and the National Oceanic and Atmospheric Administration of the Department of Commerce (hereinafter "NOAA"), the State of Connecticut, acting by and through its Department of Environmental Protection, and the Commonwealth of Massachusetts, acting by and through its Executive Office of Environmental Affairs (hereinafter "Trustees") is entered into in recognition of the common interests of the Trustees in ensuring a coordinated handling of natural resource damages arising from the releases of PCBs and other hazardous substances by the General Electric Company into the Housatonic River and surrounding environments, of the common interest of the Trustees in the restoration, replacement, enhancement and/or acquisition of equivalent natural resources which have been injured, destroyed or lost as a result of such

releases, and of the common interests of the Trustees in working with the Environmental Protection Agency ("EPA"), the Massachusetts Department of Environmental Protection ("MADEP"), and the Connecticut Department of Environmental Protection ("CTDEP") in the coordinated and cooperative handling of cleanup, remediation, and restoration, activities relating to said releases, in connection with any settlement or other payments to the United States, the State of Connecticut or the Commonwealth of Massachusetts in the matter of U.S. v. G.E.

Pursuant to Section 107(f)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9607(f)(2)(A); Executive Order No. 12580 (January 23, 1987); and Subpart G of the National Oil and Hazardous Substance Pollution Contingency Plan ("NCP"), 40 C.F.R. part 300.600, the Secretaries of the United States Department of Commerce and the Interior have been designated as Federal natural resource trustees for purposes of CERCLA, and otherwise have statutory responsibilities related to the natural resources injured, destroyed or lost as a result of the release of hazardous substances and materials into the Housatonic River environment, the General Electric facility and certain associated areas. The Secretary of Commerce has delegated the Department's natural resource trustee authority under CERCLA to the Under Secretary of Oceans and Atmosphere of NOAA, a bureau of the United States Department of Commerce. The Secretary of the Interior has designated the Regional Director, United States Fish and Wildlife Service, Region 5, to act as the Authorized Official, and has delegated to the Regional Director authority to act as natural resource trustee under CERCLA for natural resource damages and restoration matters related to U.S. v. G.E. and the Housatonic River.

Pursuant to Section 107(f)(2)(B) of CERCLA, as amended, 42 U.S.C. § 9607(f)(2)(B), the Secretary of Environmental Affairs for the Commonwealth of Massachusetts has been designated as the Commonwealth's trustee for natural resources for purposes of CERCLA and state law, and otherwise has statutory responsibilities related to the natural resources injured, destroyed or lost as a result of the release of hazardous substances and materials into the Housatonic River environment, the General Electric facility and certain associated areas in Massachusetts. Pursuant to Section 107(f)(2)(B) of CERCLA, as amended, 42 U.S.C. § 9607(f)(2)(B), the Commissioner of Environmental Protection for the State of Connecticut has been designated as the State's trustee for natural resources for purposes of CERCLA and state law, and otherwise has statutory responsibilities related to the natural resources injured, destroyed or lost as a result of the release of hazardous substances and materials into the Housatonic River environment and certain associated areas in Connecticut.

II.

DEFINITIONS

For the purposes of this MOA,

- A. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.
- B. "CTDEP" means the Department of Environmental Protection of the State of Connecticut not in its role as a trustee under 42 U.S.C. § 9607(f)(2)(B) but in its role as

the state agency charged with administering, implementing or enforcing CERCLA and state laws and regulations concerning response, remedial and removal actions for releases of hazardous substances.

- C. **"Conn. Trustee"** means the Commissioner of Environmental Protection for the State of Connecticut or the Commissioner's designee.
- D. **"Ex Officio Delegate"** means a non-governmental citizen appointed by unanimous agreement of the Federal Trustees and either the Mass. Trustee (for matters pertaining to the geographic area of the Commonwealth of Massachusetts) or the Conn. Trustee (for matters pertaining to the geographic area of the State of Connecticut), as applicable, to participate in Trustee Council or SubCouncil proceedings as described in Section VI of this MOA; provided, however, that no such Ex Officio Delegate shall be considered a voting member of the Trustee Council or SubCouncil(s).
- E. **"Federal Trustees"** means the Secretary of Commerce acting through NOAA, and the Secretary of the Interior acting through the United States Fish and Wildlife Service.
- F. **"Housatonic River Environment"** means the Housatonic River in Massachusetts and Connecticut and the adjacent shore areas which have been or may be injured, destroyed or lost as a result of the releases of hazardous substances as described in the Consent Decree.
- G. **"LAT"** means the Lead Administrative Trustee as described in Section VI of this MOA.
- H. **"Letter of Understanding" or "LOU"** means a document titled "GE Pittsfield/Housatonic River Site Letter of Understanding among the Federal and State Natural Resource Trustees" and executed in October 1999 concerning allocation of natural resource damages between the separate geographic areas of the State of Connecticut and the Commonwealth of Massachusetts.
- I. **"MADEP"** means the Department of Environmental Protection of the Commonwealth of Massachusetts as the state agency charged with administering, implementing or enforcing CERCLA and state laws and regulations concerning response, remedial and removal actions for releases of hazardous substances.
- J. **"Mass. Trustee"** means the Secretary of Environmental Affairs for the Commonwealth of Massachusetts.
- K. **"Natural Resource Damage Recovery(ies)" or "NRD Recovery(ies)"** means any settlement or other payment, including interest thereon, to the Trustees which is received or controlled by any of the Trustees, individually or collectively, for or as a result of claims for natural resource damages under the Consent Decree involving the General Electric Company, including restoration work, protection, other actions or payments as described in section XXI of the Consent Decree, but excluding any such payment in reimbursement of natural resource damage assessment costs incurred by any of the Trustees or payment of Trustee Oversight Costs.
- L. **"Natural Resources"** shall have the same meaning as set forth in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).
- M. **"OSWER MOU"** means the Memorandum of Understanding between NOAA and EPA concerning the notification and coordination of activities pursuant to CERCLA, executed by the Under Secretary of Oceans and Atmosphere and the Assistant Administrator of EPA's Office of Solid Waste and Emergency Response (OSWER), and referred to as OSWER directive 9295.0-02.

- N. **“Oversight Expenses”** means any reasonable and appropriate costs associated with the participation of any Trustee in the restoration planning process, Trustee Council or Sub Council proceedings, costs associated with the use of consultants, coordinators or any other technical or administrative services associated with the development or implementation of a restoration plan, or any other costs reasonably related to the implementation of this MOA.
- O. **“Restoration”** means any actions undertaken by the Trustees pursuant to Section 107(f)(1) of CERCLA, 42 U.S.C. §9601(f)(1), and other applicable federal and state laws and regulations, including planning, implementation, administration and oversight, which serve to enhance, restore, replace, acquire the equivalent of, or provide substitutes for natural resources or natural resource services injured, destroyed or lost as a result of releases at the Site.
- P. **“Restoration Coordinator”** means a person, consultant, or firm appointed/hired by the Trustee Council, SubCouncils, or Federal or State Trustees to conduct activities as described in Section VII, Paragraph F, Duties, sub paragraph 7.
- Q. **“Site”** means the GE/Housatonic River Site, and encompasses and includes all areas of the Housatonic River and surrounding environs which have received PCBs or other hazardous substances released from GE facilities at or near the Housatonic River in Pittsfield, Massachusetts, together with any and all impacts to natural resources arising from said releases.
- R. **“SubCouncil”** means the council, consisting of three voting members (these are the two federal trustees and the Connecticut or Massachusetts trustee as appropriate) and may include the two non-voting advisers consisting of EPA, CT DEP or MA DEP, as appropriate and any appointed ex-officio delegate.
- S. **“Trustees”** means the Mass. Trustee, the Conn. Trustee, and the Federal Trustees.
- T. **“Trustee Council”** means the council consisting of four voting-members (these are: the Federal Trustees, the Conn. Trustee and the Mass. Trustee), and may include the three nonvoting advisers consisting of MADEP, CTDEP, EPA, and any appointed Ex-Officio Delegates.
- U. **“Trustee Representative”** means the designee of a particular Trustee authorized to act on behalf of that Trustee in all matters relating to that particular trusteeship.

All terms used in this MOA that are capitalized but not expressly defined shall have the same meaning as used in the Consent Decree approved by the Court in the matter of U.S. v. G.E.

III.

SCOPE & AUTHORITY

This MOA provides a framework for intergovernmental coordination among the Trustees, and for implementation of their activities in furtherance of their natural resource trustee responsibilities under CERCLA, and other applicable Federal law, and State statutory and common law, with respect to the Site and with respect to the assessment, development, implementation, and oversight of restoration activities appertaining to or relating to the Site. This MOA covers natural resources as defined under Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), (and as used in Section 5 of M.G.L. c. 21E or Conn. Gen. Stat. § 22a-6a, as applicable)

belonging to or managed by, controlled by, or appertaining to the Trustees in the vicinity of the Site. The Trustees enter into this MOA in accordance with the Natural Resource trustee authorities provided for each Trustee in Section 107(f) of CERCLA, 42 U.S.C. §9607(f); Section 311(f) of the Clean Water Act, 33 U.S.C. §1321(f); Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. § 2706(a)-(g), and other applicable Federal and State law and authority including, but not limited to, the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300.

In accordance with Section 107(f)(2) of CERCLA, 42 U.S.C. § 9607(f)(2), Subpart G of the NCP, 40 CFR, 300.600 through 300.615, the following officials or their designees shall act on behalf of the public as Federal and State Trustees for natural resources under this MOA:

- A. The Secretary of Environmental Affairs for the Commonwealth of Massachusetts.
- B. The Commissioner of Environmental Protection for the State of Connecticut.
- C. The Secretary of the Interior, for DOI.
- D. The Under Secretary for Oceans and Atmosphere, Administrator of NOAA, for the Secretary of Commerce.

IV.

ALLOCATION OF NRD RECOVERY

- A. Use of Natural Resource Damage Recovery allocated to the geographic regions of Connecticut and Massachusetts.
 - 1. The Trustees recognize, consistent with the LOU, which is attached and incorporated in this MOA as "Exhibit A," that the primary use of Natural Resource Damage Recovery allocated to the geographic regions of Connecticut and Massachusetts shall be to implement projects identified in each state's restoration plan and for necessary restoration planning and oversight costs.
 - 2. The Trustees recognize that said funding may also be utilized on joint projects having a beneficial impact in both states.
 - 3. The Trustees recognize that the Mass. Trustee will have no decision-making role in the utilization of that portion of the Natural Resource Damage Recovery allocated to the geographic area of Connecticut referred to in Table I. All decisions as to the use and expenditure of the Connecticut allocation of the NRD Recovery shall be made only with the unanimous consent of the Federal Trustees and the Conn. Trustee. The Conn. Trustee shall be responsible for developing and implementing a restoration plan for Natural Resource Restoration in Connecticut to utilize the NRD Recovery allocated to Restoration in Connecticut subject to the requirements of CERCLA (including, specifically, but not limited to 42 U.S.C. § 9611(i)) and other applicable federal and state laws and regulations.
 - 4. The Trustees recognize that the Conn. Trustee will have no decision-making role in the utilization of that portion of the Natural Resource Damage Recovery

allocated to the geographic area of Massachusetts referred to in Table I. All decisions as to the use and expenditure of the Massachusetts allocation of the NRD Recovery shall be made only with the unanimous consent of the Federal Trustees and the Mass. Trustee. The Mass. Trustee shall be responsible for developing and implementing a restoration plan for Natural Resource Restoration in Massachusetts to utilize the NRD Recovery allocated to Restoration in Massachusetts subject to the requirements of CERCLA (including, specifically, but not limited to 42 U.S.C. § 9611(i)) and other applicable federal and state laws and regulations.

Table I: Allocation of NRD Damage Recovery

<i>NRD Settlement Components</i>	<i>Overall Value</i>	<i>Allocation of Overall Value</i>		
		<i>Joint Allocation</i>	<i>Restoration in Connecticut</i>	<i>Restoration in Massachusetts</i>
GE/EPA Restoration Work	(non-cash)			
NRD Cash	\$15,000,000	\$235,000	\$7,750,000	\$7,015,000
Wetlands Mitigation	\$600,000			\$600,000
Silver Lake Restoration	\$75,000			\$75,000
Add'l Habitat Restoration	\$60,000			\$60,000
PEDA Obligation	\$4,000,000	\$4,000,000		
Total Value	\$19,735,000	\$4,235,000	\$7,750,000	\$7,750,000

B. Use of the Joint Allocation Natural Resource Damage Recovery allocated to the Trustees.

1. The Trustees shall develop, as necessary, a joint restoration plan (hereinafter the "Joint Plan") for the reasonable use of the funds allocated to the Trustees described as "Joint Allocation" in Table 1. The Trustees recognize consistent with the LOU, which is attached to and is incorporated in this MOA as "Exhibit A," that the use of Natural Resource Damage Recovery allocated to the Trustees may be used for:
 - (a) Restoration projects in either Connecticut or Massachusetts having no shared benefit;
 - (b) Restoration projects in Massachusetts having a shared benefit in Connecticut and Massachusetts;
 - (c) Restoration projects in Connecticut having a shared benefit in Massachusetts and Connecticut; and,
 - (d) Restoration planning and oversight costs.
2. In lieu of a Joint Plan, the NRD Recovery allocated to the Trustees may be utilized to undertake projects identified in the Connecticut or Massachusetts restoration plans prepared pursuant to Section VI, provided that there is unanimous consent of the Trustees pursuant to paragraph B.4 of this section.
3. The Mass. Trustee shall be responsible for implementing all restoration projects identified in the Joint Plan that are within the geographic area of Massachusetts, and the Conn. Trustee shall be responsible for implementing all restoration

projects identified in the Joint Plan that are within the geographic area of Connecticut.

4. The Trustees recognize that all decisions as to the use and expenditure of the Joint Natural Resource Damage Recovery allocated to the Trustees shall be made only with the unanimous consent of the Trustees.

C. Oversight Expenses.

1. Oversight Expenses for restoration planning to be funded by the NRD Recovery shall be subject to the unanimous approval of the voting members of the Trustee Council or the relevant SubCouncil. The Trustees shall make a good faith effort to minimize the total costs of Oversight Expenses from both the Joint Allocation NRD Recovery and the NRD Recovery allocated to any geographic area as described in this Agreement in furtherance of maximizing funds expended towards Restoration.

V.

**OVERSIGHT OF TRUSTEE-RELATED WORK REQUIRED
UNDER THE CONSENT DECREE**

1. Trustee-related work required under the CD and subject to Trustee oversight includes the following:

- (a) Restoration work to be funded or performed by GE or EPA as part of response actions;
- (b) Performance of other natural resource protection and restoration by GE, including dam integrity studies, conservation easements, and greenway/walkway projects;
- (c) Performance of Pittsfield Economic Development Authority (PEDA) obligations;
- (d) Performance of response actions to be undertaken or funded by GE or EPA that may have an impact on natural resources and restoration.

2. The Trustees agree that oversight expenses of the Trustees or individual Trustees associated with Trustee-related Work under the CD may be funded (i.e., transferred to a trustee(s) for the purpose of oversight) out of Joint Allocation Funds as determined by the Trustee Council, or out of the NRD cash allocations for Connecticut and Massachusetts as determined by the applicable SubCouncil for Connecticut or Massachusetts. Oversight expenses of the Trustees or individual trustees associated with Trustee-related Work under the CD may also be funded out of Oversight Costs recovered by individual Trustees as part of the CD at the sole discretion of the individual Trustee that recovered the Oversight Costs.

VI.

OBJECTIVES

The Trustees shall coordinate their efforts to meet their respective natural resource trustee responsibilities under CERCLA and other applicable Federal law and State statutory and common law. In pursuing these objectives, the Trustees shall remain cognizant of all relevant principles and concerns, including without limitation, the goals of CERCLA, the nature and extent of each Trustee's resource concerns, and general principles of equity. The Trustees agree to work together and coordinate their activities under this MOA to achieve their objectives which include, but are not limited to, the development of and implementation of a restoration plan subject to the requirements of 42 U.S.C. § 9611(i), the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, DOI assessment regulations, 43 CFR Part 11, and other applicable federal and state law. The Mass. Trustee and Conn. Trustee will be responsible for developing and implementing, for the NRD Recovery allocated for their respective jurisdiction, a comprehensive restoration plan that addresses Restoration of injured Natural Resources at, resulting from, or appertaining to the Site within their geographic jurisdiction. The Massachusetts restoration plan must receive unanimous approval by the Federal Trustees and the Mass. Trustee. The Connecticut restoration plan must receive unanimous approval by the Federal Trustees and the Conn. Trustee. The Joint Plan must receive unanimous approval of all Trustees.. The restoration activities identified in a restoration plan can not be implemented until approval of such restoration plan.

- A. The development of the restoration plans and, therefore, selected Restoration alternatives, shall include and ensure:
 - 1. identification, consideration and evaluation of a range of potential Restoration alternatives.
 - 2. public participation in the development and implementation of the Connecticut, Massachusetts and joint Restoration Plans as developed in accordance with Section IV.
- B. The Trustees recognize EPA, MADEP and CTDEP as the governmental agencies that administer and enforce CERCLA and the NCP and analogous state laws and regulations. For the purpose of furthering coordination of their actions, including planning and implementation, associated with "cleanup" of the Site and the Trustees' Restoration actions, including planning and implementation, the Trustees shall request that EPA, MADEP and CTDEP agree to work with the Trustees to coordinate activities and planning, and provide appropriate notification of activities and concerns so that Restoration planning and implementation will occur in an informed manner and coordinated with remedial or response actions undertaken pursuant to the Consent Decree. The Trustees may establish further procedures to achieve this objective with EPA, MADEP and CTDEP. As such, the Trustees may request that EPA coordinate with and provide notification to the Trustees, through the LAT, in accordance with the OSWER MOU as if the LAT were NOAA, as used in the OSWER MOU.

VII.

HOUSATONIC RIVER TRUSTEE COUNCIL AND SUBCOUNCILS

A. Trustee Council

1. Purpose: The Trustees recognize the importance of coordinating their efforts in order to effectively and efficiently address their respective natural resource concerns and responsibilities under applicable law and to ensure coordination of response actions with Restoration of Natural Resources. Accordingly, the Trustees hereby agree to create the Housatonic River Natural Resource Trustee Council ("Trustee Council").
2. Composition: The Trustee Council shall have four voting members. Each Trustee, as specified under Section III, shall designate one primary voting representative to the Trustee Council and one alternate representative to act in the absence of the primary voting representative. The Trustee Council may invite one representative from each of the state and federal remedial agencies, EPA, CTDEP and MADEP, to serve as a non voting advisor to the Trustee Council and one non voting alternate to act in absence of their primary advisor. The Trustee Council may also include any Ex Officio Delegates designated by the Trustee Council.
3. Authority: The Trustee Council shall authorize the expenditure of the Joint Allocation of Natural Resource Damage Recovery and shall coordinate and authorize trustee activities and matters under this MOA as described in paragraphs F, H, I, and J of this section.
4. Ex Officio Delegates: Designation of any individual as an Ex Officio Delegate on the Trustee Council does not mean or require that such Ex Officio Delegate be designated to serve on any SubCouncil

B. SubCouncils.

1. Purpose and Composition-Geographic Area of Massachusetts: For the purposes of developing and implementing a Restoration Plan for the recovery allocated to the geographic area of Massachusetts, the Mass. Trustee and Federal Trustees may establish a SubCouncil of the Trustee Council consisting of the three voting members (Mass. Trustee and the Federal Trustees, but not the Conn. Trustee) and any non voting Ex Officio Delegates as designated by unanimous agreement of the Mass. Trustee and the Federal Trustees. EPA and MADEP may participate on this SubCouncil as non-voting advisers, as described in paragraph A of this section.
2. Purpose and Composition- Geographic Area of Connecticut: For the purposes of developing and implementing a Restoration Plan for the recovery allocated to the geographic area of Connecticut, the Conn. Trustee and Federal Trustees may establish a SubCouncil of the Trustee Council consisting of three voting members (the Conn. Trustee and the Federal Trustees, but not the Mass. Trustee) and any non

voting Ex Officio Delegates as designated by unanimous agreement of the Conn. Trustee and the Federal Trustees. EPA and CTDEP may participate on this SubCouncil as non-voting advisers, as described in paragraph A of this section.

3. **Authority:** Subject to unanimous agreement among the relevant State Trustee and the Federal Trustees, a SubCouncil may authorize the expenditure of NRD Recovery allocated solely to the geographic area of the SubCouncil (e.g. restoration planning and implementation), and coordinate and authorize Trustee activities and matters as described in paragraphs F, H, I, and J of this section consistent with, and limited by, the requirements of this agreement pertaining to the Trustee Council. Decisions within the authority of a SubCouncil shall not be subject to review by the Trustee Council. The State Trustee of the relevant SubCouncil shall keep the LAT reasonably informed of matters and activities of the SubCouncil for the purpose described in paragraph G of this section.
4. **Ex Officio Delegates:** Designation of any individual as an Ex Officio Delegate on a SubCouncil shall not mean or require that such Ex Officio Delegate be designated to serve on another SubCouncil or the Trustee Council.

C. Communications. To the extent not designated herein, within thirty (30) days of the execution of this MOA each Trustee shall notify all of the other Trustees of the name(s), address(es), phone number(s), facsimile number(s), and electronic mail addresses of the Trustee's primary and alternate representatives to the Trustee Council and SubCouncils who shall receive, and shall be responsible for on behalf of that Trustee, all correspondence and communications on behalf of such party. In addition, the United States Department of Justice and the Office of the Attorneys General for the Commonwealth of Massachusetts and the State of Connecticut shall be directly and contemporaneously provided copies of all significant and relevant documents, notices and notifications.

D. Decision making. The voting members of the Trustee Council or relevant SubCouncil shall have equal authority, and all decisions under this MOA shall be made by unanimous agreement of all voting members of the Trustee Council or relevant SubCouncil. The Trustees agree that all selected Restoration projects or alternatives, whether funded or undertaken directly by the Trustees or otherwise, must not:

1. be otherwise required by an independent legal obligation to perform the project pursuant to statute, regulation, ordinance, consent decree (excluding the consent decree that is the subject of this MOA), judgement, court order, permit condition or contract or if otherwise required by federal, state, or local law. Regardless of whether a governmental body or agency has elected to exercise its discretion to enforce a provision of law, if any governmental body or agency has the authority to order a party to commence certain work or activities subject to enforcement actions then the Trustee Council or relevant SubCouncil will consider the project "otherwise required" and not appropriate to be considered for funding.
2. be inconsistent with any ongoing or anticipated remedial action.

E. Dispute Resolution. In the event of a dispute involving any decisions under this MOA, the Trustee Council or SubCouncils shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining consensus among the voting members involved in the dispute and consensus by the Trustee Council or SubCouncils as a whole. In resolving any such disputes, the voting members shall remain cognizant of all relevant principles and concerns, including without limitation, the goals of CERCLA, the nature and extent of each Trustee's resource concerns, and general principles of equity. If unanimous consent cannot be reached, the matter shall be elevated to the Trustees for decision or further instructions.

F. Duties. In accordance with applicable law, the Trustees hereby authorize the Trustee Council and SubCouncils to carry out the following duties. In addition, the Trustees hereby authorize the Trustee Council or SubCouncils to empower the individual Trustees to carry out the following duties:

1. share information with and consult the other members on the Trustee Council or SubCouncils as is appropriate and consistent with this MOA.
2. conduct or oversee the conduct of scientific and technical studies, sampling, and other activities to the extent appropriate as part of the restoration planning and implementation process.
3. working with the state Trustee, oversee the development and implementation of a restoration plan when said plan is conducted by a state Trustee in accordance with Section VI of this MOA; or conduct and /or oversee the development and implementation of a restoration plan when said plan is not conducted by a state Trustee.
4. reach agreement, as described in Paragraph D of this Section, on all decisions relating to Restoration activities or the use of NRD Recovery(ies) for achieving the objectives of this MOA; provided that no money allocated to the Trustees may be expended for any purpose without first obtaining the approval of the Trustee Council or SubCouncil
5. provide for the management and disbursement of any NRD Recovery(ies) allocated to the Trustees, including any interest accrued thereon, for Restoration (and associated administrative or other costs) as described in this Agreement that the Trustee Council or SubCouncil finds reasonable and necessary.
6. carry out any other actions and make any decisions reasonably necessary to the fulfillment of the purposes and objectives of this Agreement or required under applicable law.
7. approve the expenditure of NRD Recovery and work activities to be undertaken by a Restoration Coordinator. Said activities may include but not be limited to:

- a. preparation of a Restoration Plan for the NRD Recovery allocated to the Trustees;
 - b. coordination, management, reporting and monitoring of the Natural Resource Restoration process;
 - c. preparing and issuing, from time to time, public reports on the work of the Trustee Council or appropriate SubCouncil;
 - d. conducting public outreach and fostering public participation in the development and implementation of the Restoration Plan;
 - e. to the extent permitted by applicable law, identify and secure, wherever possible, other financial resources such as, but not limited to, grants that may be available to the Trustee Council for Restoration consistent with this MOA;
 - f. schedule meetings of the Trustee Council or Sub-Councils and preparation of agendas for those meetings;
 - g. maintain records and other relevant documents for the Trustee Council or Sub-Councils for development of restoration plans; and,
 - h. such other duties as are agreed upon by the Trustee Council or appropriate SubCouncil.
8. procure or approve the procurement of professional services, such as consultants, to assist or advise the Trustees in furtherance of the objectives of this MOA.

G. Lead Administrative Trustee. The Trustees shall designate a Trustee to act as Lead Administrative Trustee ("LAT") under this MOA. The LAT shall fully coordinate its activities with and act only under the direction of the Trustee Council. The LAT may delegate its responsibilities to the Restoration Coordinator(s) with the prior approval of the Trustee Council. Initial responsibilities of the LAT include:

- 1. acting as central contact point and spokesperson for the Trustee Council with respect to activities under the MOA;
- 2. scheduling meetings of the Trustee Council and preparation of agendas for those meetings;
- 3. maintaining records and relevant documents for the Trustee Council and circulation of documents among the Parties;
- 4. serving as liaison for the Connecticut and Massachusetts Sub-Councils, but

not official record keeper for such Sub-Councils. Whereas, the Sub-Councils shall be responsible for maintaining records and relevant documents for development of their respective restoration plans.

5. serving as the contact representative of the Trustees, consistent with Paragraph 113 of the Consent Decree ("CD") for all Trustee-related matters under the CD including:
 - (a) oversight of Restoration Work to be performed or funded by GE or EPA,
 - (b) performance of other natural resource protection and restoration actions to be undertaken by GE, including dam integrity studies, conservation easements, and greenway/walkway projects,
 - (c) performance of PEDAs obligations, and
 - (d) performance of response actions to be undertaken or funded by GE or EPA.
6. coordinating the development of a Joint Restoration Plan if undertaken by the Trustees.
7. such other duties as are agreed upon and assigned to the LAT by the Trustee Council.

H. Meetings. Any member of the Trustee Council (or a member of a SubCouncil), except Ex Officio Delegates, may, upon reasonable notice through the LAT, call a meeting of the Trustee Council (or such SubCouncil) to be conducted either in person or by telephone conference call. Meetings of the Trustee Council or SubCouncils shall be generally held open to the public, except for telephone conference calls. The Trustees may invite members of the public or other governmental entities to attend a meeting of the Trustee Council or a SubCouncil. The Trustee Council, or a SubCouncil, may, by unanimous vote, decide to enter into a private executive session, subject to applicable law, if the Trustees determine that the subject of the meeting is privileged for the purposes of litigation or that public disclosure of the Trustee Council's (or SubCouncil's) work would prejudice the effectiveness of the Trustee Council (or SubCouncil). The Trustees may exclude all non-Trustees, including Ex Officio Delegates, from any executive session.

I. Advisory Groups or Public Meetings. The Trustee Council, SubCouncil, or any individual Trustee, acting either separately or collectively, may organize and convene public meetings or establish and use an Advisory Group to provide review, technical comment, guidance and recommendations on proposals for Natural Resource Restoration, the restoration plan, work in progress or that has been completed under contract or other agreement (to ensure satisfactory compliance with such contract or other agreement), or other technical matters relating to the objectives of this MOA. An Advisory Group may include members from Federal, state or local governmental agencies, non-profit

organizations, citizens or private businesses who agree to voluntarily participate. Any Advisory Group "established" and "used" solely by either the Mass. Trustee or the Conn. Trustee (or both) shall not be considered a Federally "established" or "used" advisory committee within the meaning of the Federal Advisory Committee Act ("FACA"), 5 U.S.C. app. 2 §§ 1-15, by virtue of the fact that either the Mass. Trustee or Conn. Trustee provides or shares the comments or work product of the Advisory Group with other members of the Trustee Council or SubCouncil or that such comments or work product is considered in informing decisions of the Trustee Council. The reasonable costs of any Trustee in convening such a public meeting or Advisory Group shall be considered a cost of restoration planning.

- J. **Public Participation.** The Trustee Council or SubCouncil as appropriate shall approve procedures and mechanisms for public participation subject to the requirements of CERCLA pertaining to the development and implementation of any Restoration Plan.

VIII.

GENERAL

- A. **Limitation of Authority.** Nothing in this MOA shall be construed as obligating any of the Trustees to expend any funds in excess of appropriations or other amounts authorized by law.
- B. **Third Parties.** This MOA is not intended to, nor shall it, vest rights in persons who do not represent the Trustees to this MOA or who are not parties to this MOA.
- C. **Effective Date/ Amendment and Termination.** This MOA shall be effective when executed by all of the Trustees and may not be amended except by written agreement of all the Trustees. This MOA can be executed in one or more counterparts, each of which will be considered an original document. This MOA shall continue in effect until the restoration plans implemented under this MOA have been completed or funds have been depleted unless terminated before that time or extended beyond that time by written agreement of all the Trustees. However, any Party may terminate its participation in the MOA upon giving sixty (60) days written notice to all other Trustees or as otherwise provided for herein, but only after efforts have been made to resolve any dispute in accordance with Paragraph D of Section VI.
1. the withdrawal of any signatory to this MOA for whatever reason, shall not affect the subsequent validity of this MOA among the remaining Trustees.
 2. in the event a Trustee withdraws from this MOA, disposition of any unobligated Natural Resource Damage Recover(ies), including interest thereon, shall be determined by further agreement of the Trustees, or if an agreement can not be reached, by allocation of such recoveries and interest by the United States District Court for the District of Massachusetts, in accordance with applicable law. In making

a fair and reasonable allocation of recoveries among the Trustees, the Trustees agree that the Court primarily should consider the need to achieve, to the maximum extent practicable, the objectives of this MOA and of Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1), to restore the injured, destroyed or lost Natural Resources that are the subject of the Consent Decree. If such a division and allocation occurs, the Trustees expressly agree that they will continue to coordinate their activities to the greatest extent practicable to Restore the Natural Resources that are the subject of the Consent Decree, and that they will be guided by the objectives of this MOA.

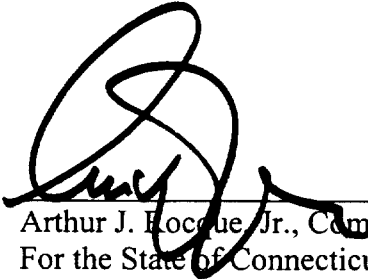
IN WITNESS WHEREOF the Trustees have executed this Agreement on the dates attested to below.

Signing the Memorandum Of Agreement among the Commonwealth of Massachusetts, the State of Connecticut, the United States Department of the Interior, and the National Oceanic and Atmospheric Administration concerning natural resource damages in connection with the GE/Housatonic River Site, consisting of 19 pages including all signature pages, as **Trustee for the U.S. Department of Commerce**,

CRAIG R O'CONNOR BY: Att. P. G. H
Craig R. O'Connor, Acting General Counsel SENIOR ATTY-ADVISOR
National Oceanic and Atmospheric Administration N/OAA
U.S. Department of Commerce

1/30/2002, 2001

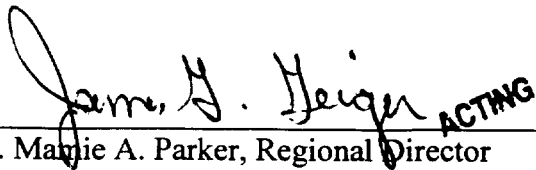
Signing the Memorandum Of Agreement among the Commonwealth of Massachusetts, the State of Connecticut, the United States Department of the Interior, and the National Oceanic and Atmospheric Administration concerning natural resource damages in connection with the GE/Housatonic River Site, consisting of 19 pages including all signature pages, **as Trustee for the State of Connecticut,**



Arthur J. Rocque Jr., Commissioner
For the State of Connecticut
Department of Environmental Protection

December 3, 2001

Signing the Memorandum Of Agreement among the Commonwealth of Massachusetts, the State of Connecticut, the United States Department of the Interior, and the National Oceanic and Atmospheric Administration concerning natural resource damages in connection with the GE/Housatonic River Site, consisting of 19 pages including all signature pages, **as Trustee for the United States Department of the Interior,**

 **ACTING**

Dr. Marjie A. Parker, Regional Director
Northeast Region, U.S. Fish and Wildlife Service
United States Department Of The Interior
Natural Resource Trustee
Authorized Official

December 31, 2001

Signing the Memorandum Of Agreement among the Commonwealth of Massachusetts, the State of Connecticut, the United States Department of the Interior, and the National Oceanic and Atmospheric Administration concerning natural resource damages in connection with the GE/Housatonic River Site, consisting of 19 pages including all signature pages, as **Trustee for the Commonwealth of Massachusetts**,



Bob Durand, Secretary
Executive Office of Environmental Affairs
Trustee for the Commonwealth of Massachusetts

12/13, 2001

MA SUBCOUNCIL
of the
HOUSATONIC RIVER TRUSTEE COUNCIL

RESOLUTION # 2002- 01

DESIGNATION OF EX OFFICIO DELEGATES

United States, et al., v. General Electric Company,
CIVIL ACTION NOS. 99-30225-MAP; 99-30226-MAP; AND 99-30227-MAP (D. MASS.)

1. Whereas, the United States Department of Commerce, acting by and through the National Oceanic and Atmospheric Administration ("NOAA"), the Commonwealth of Massachusetts, acting by and through its Executive Office of Environmental Affairs ("EOEA"), the State of Connecticut, acting by and through its Department of Environmental Protection ("CTDEP"), the United States Department of the Interior, acting by and through the United States Fish and Wildlife Service ("USFWS"), are the four natural resource trustee agencies (the "Trustees") responsible for restoration in the Housatonic River Environment with respect to the above-referenced case; and
2. Whereas, the Trustees have entered into a Memorandum of Agreement ("MOA") effective January 30, 2002, to coordinate activities for the above-referenced case;
3. Whereas, pursuant to Section VII Paragraph B (1) of the MOA, a SubCouncil shall be established for the purpose of developing and implementing a Restoration Plan for the recovery allocated to the geographic area of Massachusetts; and such SubCouncil shall be composed of the three voting members from the Mass. Trustee and the Federal Trustee agencies: EOEA, NOAA, and USFWS (hereinafter the "MA SubCouncil");
4. Whereas, pursuant to Section VII Paragraph B (1) of the MOA, the MA SubCouncil may designate by unanimous agreement non-voting Ex Officio Delegates to participate on the MA SubCouncil;
5. Whereas, pursuant to the above-referenced terms of the MOA, at its April 8, 2002 meeting, the MA SubCouncil Trustee Representatives for EOEA (Dale Young), USFWS (Veronica Varela), and NOAA (Tony Giedt) unanimously resolved to designate the following two individuals as non-voting Ex-Officio Delegates to the MA SubCouncil: 1) Rachel Fletcher, Executive Director, Housatonic River Restoration, Inc., and 2) Tim Gray, Director, Housatonic River Initiative.

NOW, THEREFORE: By their signatures below, the Trustee Representatives of the MA SubCouncil hereby certify that this Resolution was adopted with the decision-making procedures agreed to by the Trustees in the MOA.

CONCURRED IN by the following who are duly authorized MA SubCouncil Trustee Representatives.

MA SUBCOUNCIL
of the
HOUSATONIC RIVER TRUSTEE COUNCIL

RESOLUTION # 2002- 01

DESIGNATION OF EX OFFICIO DELEGATES

United States, et al., v. General Electric Company
CIVIL ACTION NOS. 99-30225-MAP; 99-30226-MAP; AND 99-30227-MAP (D. MASS.)

FOR THE U.S. DEPARTMENT OF THE INTERIOR

11/25/02

Date

Veronica W. Varela

Veronica Varela, NRDAR Specialist
U.S. Fish and Wildlife Service
New England Field Office
700 Commercial Street, Suite 300
Concord, NH 03301-5087

MA SUBCOUNCIL
of the
HOUSATONIC RIVER TRUSTEE COUNCIL

RESOLUTION # 2002- 01

DESIGNATION OF EX OFFICIO DELEGATES

United States, et al., v. General Electric Company
CIVIL ACTION NOS. 99-30225-MAP; 99-30226-MAP; AND 99-30227-MAP (D. MASS.)

FOR THE COMMONWEALTH OF MASSACHUSETTS

22 November 2002

Date

Dale C. Young

Dale Young, NRD Program Director
Executive Office of Environmental Affairs
Suite 900
251 Causeway Street
Boston, MA 02114

MA SUBCOUNCIL
of the
HOUSATONIC RIVER TRUSTEE COUNCIL

RESOLUTION # 2002- 01

DESIGNATION OF EX OFFICIO DELEGATES

United States, et al., v. General Electric Company
CIVIL ACTION NOS. 99-30225-MAP; 99-30226-MAP; AND 99-30227-MAP (D. MASS.)

FOR THE U.S. DEPARTMENT OF COMMERCE

11/25/02

Date

K. Finkelstein

Kenneth Finkelstein, Ph.D., Trustee Representative
National Oceanic and Atmospheric Administration
c/o U.S. Environmental Protection Agency, Region 1
Mail Code HIO
1 Congress Street
Boston, MA 02114

**MASSACHUSETTS SUBCOUNCIL
of the
HOUSATONIC RIVER TRUSTEE COUNCIL**

RESOLUTION # 4

NOAA Withdrawal from MA SubCouncil

United States, et al., v. General Electric Company.

CIVIL ACTION NOS. 99-30225-MAP; 99-30226-MAP; AND 99-30227-MAP (D. MASS.)

1. Whereas, the United States Department of Commerce, acting by and through the National Oceanic and Atmospheric Administration ("NOAA"), the Commonwealth of Massachusetts, acting by and through its Executive Office of Environmental Affairs ("EOEA"), the State of Connecticut, acting by and through its Department of Environmental Protection ("CTDEP"), the United States Department of the Interior ("DOI"), acting by and through the United States Fish and Wildlife Service ("USFWS"), are the four natural resource trustee agencies (the "Trustees") responsible for restoration in the Housatonic River Environment with respect to the above-referenced case;
2. Whereas, the Trustees have entered into a Memorandum of Agreement ("MOA") effective January 30, 2002, to coordinate activities for the above-referenced case; and pursuant to Section VII Paragraph B (1) of the MOA, a SubCouncil has been established, consisting of three voting members from the Mass. Trustee and the Federal Trustee agencies, EOEA, NOAA, and USFWS, and non-voting Ex Officio Delegates (hereinafter the "MA SubCouncil"), for the purposes of developing and implementing a Restoration Plan for the recovery allocated to the geographic area of Massachusetts; and
3. Whereas, per letter dated September 14, 2004, NOAA has submitted to the MASubCouncil its resignation and thus withdraws its associated decision-making responsibilities on the MA SubCouncil.
4. NOW, THEREFORE IT IS HEREBY RESOLVED: The MA SubCouncil shall hereafter consist of two voting members (the Mass. Trustee and the Federal Trustee USFWS) and non-voting Ex Officio Delegates. The withdrawal by NOAA from the MASubCouncil terminates its status as a voting member of the MASubCouncil but has no such affect on other Trustee responsibilities as outlined in the MOA, including but not limited to those per Paragraph V "OVERSIGHT OF TRUSTEE-RELATED WORK REQUIRED UNDER THE CONSENT DECREE".

By their signatures below, the Trustee Representatives of the MA SubCouncil hereby certify that this Resolution was adopted with the unanimous decision-making procedures agreed to by the Trustees in the MOA. CONCURRED IN by the following who are duly authorized MA SubCouncil Trustee Representatives.

**MA SUBCOUNCIL
of the
HOUSATONIC RIVER TRUSTEE COUNCIL**

**RESOLUTION #4
NOAA Withdrawal from MA SubCouncil**

United States, et al., v. General Electric Company
CIVIL ACTION NOS. 99-30225-MAP; 99-30226-MAP; AND 99-30227-MAP (D. MASS.)

FOR THE COMMONWEALTH OF MASSACHUSETTS

Oct. 5, 2004

Date

Dale C. Young

Dale Young, NRD Program Director
Executive Office of Environmental Affairs
Suite 900
100 Cambridge Street
Boston, MA 02114

**MA SUBCOUNCIL
of the
HOUSATONIC RIVER TRUSTEE COUNCIL**

**RESOLUTION #4
NOAA Withdrawal from MA SubCouncil**

United States, et al., v. General Electric Company
CIVIL ACTION NOS. 99-30225-MAP; 99-30226-MAP; AND 99-30227-MAP (D. MASS.)

FOR THE U.S. DEPARTMENT OF THE INTERIOR

10/4/04

Date

Veronica W. Varela

Veronica Varela, NRDAR Specialist
U.S. Fish and Wildlife Service
New England Field Office
700 Commercial Street, Suite 300
Concord, NH 03301-4901

OCT-04-2004 13:08

USE EPA

617 918 1291

P.01/01

MA SUBCOUNCIL
of the
HOUSATONIC RIVER TRUSTEE COUNCIL

RESOLUTION #4
NOAA Withdrawal from MA SubCouncil

United States, et al., v. General Electric Company
CIVIL ACTION NOS. 99-30225-MAP; 99-30226-MAP; AND 99-30227-MAP (D. MASS.)

FOR THE U.S. DEPARTMENT OF COMMERCE

OCT 4, 2004
Date

K S
Kenneth Finkelstein, Ph.D., Trustee Representative
National Oceanic and Atmospheric Administration
c/o U.S. Environmental Protection Agency, Region 1
Mail Code HIO
1 Congress Street
Boston, MA 02114

TO: Doyle Young

Appendix 2
Contact Information for Trustees, Massachusetts SubCouncil,
and Project Personnel

NATURAL RESOURCE TRUSTEES

Ellen Roy Herzfelder

Secretary, Massachusetts Executive Office of Environmental Affairs
100 Cambridge, 9th floor
Boston, Massachusetts 02114

Jane Stahl

Acting Commissioner, Connecticut Department of Environmental Protection
79 Elm Street
Hartford, Connecticut 06106-5127

Marvin Moriarty

Regional Director, U.S. Fish & Wildlife Service, Northeast Region
300 Westgate Center Drive
Hadley, Massachusetts 01035-9589

National Oceanic and Atmospheric Administration

14th Street & Constitution Avenue, NW
Room 6217
Washington, D.C. 20230

TRUSTEE SUBCOUNCIL FOR MASSACHUSETTS

I. Voting Members:

Veronica Varela

U.S. Fish and Wildlife Service, New England Field Office
70 Commercial Street, Suite 300
Concord, New Hampshire 03301
Phone: (603) 223-2541 ext. 16
Fax: (603) 223-0104
E-mail: Veronica_Varela@fws.gov

Dale Young

Massachusetts Executive Office of Environmental Affairs
100 Cambridge Street, Suite 900
Boston, Massachusetts 02114-2524
Phone: (617) 626-1134
Fax: (617) 626-1181
E-mail: Dale.Young@state.ma.us

II. Non-voting Ex Officio Delegates:

Rachel Fletcher (ex officio)

Currently of:
Housatonic River Restoration, Inc.
P.O. Box 472
Great Barrington, Massachusetts 01230
Phone: (413) 528-3391
E-mail: rfletch@bcn.net

Tim Gray (ex officio)

Currently of:
Housatonic River Initiative
Box 321
Lenoxdale, Massachusetts 01242
Phone: (413) 243-3353
E-mail: timgray@berkshire.net

Dean Tagliaferro (non-voting advisor)

United States Environmental Protection Agency-Region 1
10 Lyman Street
Pittsfield, Massachusetts 01201
Phone: (617) 918-1282
E-mail: tagliaferro.dean@epamail.epa.gov

PROJECT PERSONNEL

Robert Unsworth

Industrial Economics, Inc.
2067 Massachusetts Avenue
Cambridge, Massachusetts 02140
Phone: (617) 354-0074
Fax: (617) 354-0463
E-mail: unsworth@indecon.com

Patrick Field

The Consensus Building Institute, Inc.
131 Mt. Auburn Street
Cambridge, Massachusetts 02138
Phone: (617) 492-1414
Fax: (617) 1919
E-mail: pfield@cbuilding.org

John Lortie

Michael Chelminski

Stephanie Lindloff

Woodlot Alternatives, Inc.
30 Park Drive
Topsham, Maine 04086
Phone: (207) 729-1199
Fax: (207) 729-2715
E-mail: jlortie@woodlotalt.com
mchelminski@woodlotalt.com
slindloff@woodlotalt.com

Appendix 3

Public Outreach

Public libraries where documents can be accessed

Great Barrington Mason Library
231 Main Street
Great Barrington, MA 01230-1604
(413) 528-2403

Lee Public Library
100 Main Street
Lee, MA 01238
(413) 243-0385

Lenox Public Library
18 Main Street
Lenox, MA 01240
(413) 637-0197

Berkshire Athenaeum
One Wendell Avenue
Pittsfield, MA 01201-6385
(413) 499-9488

Bushell-Sage Library
48 Main Street
Sheffield, MA 01257-0487
(413) 229-7004

Stockbridge Library
Main Street
P.O. Box 119
Stockbridge, MA 01262-0119
(413) 298-5501

Appendix 4

Public Outreach

Newspapers and radio and television stations used for public announcements

Newspapers used for public outreach include:

- Berkshire Eagle, Pittsfield, MA
- Berkshire Record, Great Barrington, MA
- Pittsfield Gazette, Pittsfield, MA
- Springfield Union, Springfield, MA
- Republican, Springfield, MA
- The Advocate, Williamstown, MA
- The Advocate, Lenox, MA
- Pennysaver, Lee, MA
- Yankee Shopper, Pittsfield, MA
- Shoppers Guide, Great Barrington, MA
- North Adams Transcript, North Adams, MA
- Lakeville Journal, Lakeville, CT
- Litchfield County Times, Litchfield, CT

Radio stations used for public outreach include:

- WBEC 1420 AM, Pittsfield
- WAMQ 105.1 FM, Great Barrington
- WCFM 91.9 FM, Williamstown
- WNAW 1230 AM, North Adams
- WSBS 860 AM, Great Barrington
- WUPE, Pittsfield
- WBEC, Pittsfield
- WSBS, Great Barrington
- WBRK, Pittsfield
- WAMC, Albany N.Y.
- WAMQ, Great Barrington
- WCFM, Williamstown
- WNAW, North Adams
- WKZE, Litchfield, CT

Television stations used for public outreach include:

- Channel 22, Springfield, MA
- PCTV, Pittsfield, MA
- CTSB, Lee, MA
- WRGB, Albany
- WNYT, Albany
- News Channel 40, Springfield, MA
- WTEN, Albany

Appendix 5

Existing Plans in the Housatonic River Watershed

(NOTE: List is not comprehensive)

Housatonic River Restoration Plan. 1999. Updated 2003. Housatonic River Restoration, Inc. Available on-line at: www.restorehousatonic.com. Or, call: (413) 528-3391.

Housatonic River: 5-Year Watershed Action Plan. 2002-2007. Executive Office of Environmental Affairs. Commonwealth of Massachusetts. Available on-line (19.4 MB) at: www.mass.gov/envir/water/housatonic/housatonic.htm. Or, call: (617) 626-1000.

Upper Housatonic Valley Natural Heritage Area: Feasibility Study and Environmental Assessment. 2002. National Park Service – Boston Support Office. Available on-line (2 MB) at: www.upperhousatonicheritage.org/user/upperhousatonicFeasibilityStudy.pdf. Or, call the Boston Support Office of the National Park Service: (617) 223-5051.

Regional Plan for the Berkshires. 2000. Berkshire Regional Planning Commission. Purchase (\$25) at: www.berkshireplanning.org. Or, call: (413) 442-1521.

Stormwater Assessment in the Hoosic and Housatonic Watersheds. 2000. Berkshire Regional Planning Commission. Available on-line (21 MB): www.berkshireplanning.org/download/4_3_stormwater.pdf. Or, call: (413) 442-1521.

Stream Team Reports. 2000. Housatonic Valley Association. Available on-line at: <http://www.hvathewatershedgroup.org/SPStream.htm>. Or, call: (413) 394-9796.

Assessment of Land Use Activities and Nonpoint Source Pollution in the Housatonic River Watershed. 1999. Berkshire Regional Planning Commission. Purchase (\$25) at: www.berkshireplanning.org. Or, call: (413) 442-1521.

Massachusetts Natural Heritage & Endangered Species Program

Planning Documents

The following documents are produced by the Massachusetts Department of Fisheries, Wildlife and Environmental Law Enforcement - Division of Fisheries and Wildlife - Natural Heritage and Endangered Species Program (NHESP). Additional information about the documents is available at: <http://www.mass.gov/dfwele/dfw/nhesp/nhpubs.htm>. Or, call: (508) 792-7270 ext. 200.

BioMap Publications

- BioMap: Guiding Land Conservation for Biodiversity in Massachusetts. 2001.
This report describes the groundbreaking biodiversity mapping project conducted by NHESP. It describes major findings and includes eco-regional maps with highlights from each eco-region.
- BioMap Technical Appendix. 2001. This companion to the BioMap report covers the technical details of the project. It covers the criteria used to select species and natural communities for consideration, as well as details of the GIS analyses and a comprehensive list of references.
- Town Core Habitat Maps.

Living Waters Publications

- Living Waters: Guiding the Protection of Freshwater Biodiversity in Massachusetts. This report describes the creation of NHESP's conservation plan for the state's freshwater plants, fish, and invertebrates. It provides detailed watershed-based maps with species highlights from each region.
- Living Waters Technical Report. 2003. This companion to the Living Waters report details the scientific and GIS methods used in creating the conservation plan. This document is intended for a technical audience.

Comprehensive Town Planning in the Housatonic River Watershed

[NOTE: The following information was obtained from the Berkshire Regional Planning Commission (BRPC) web site.]

Comprehensive Master Planning

Massachusetts General Laws ch. 41, § 81D provides the legal basis for the creation of Master Plans. The process of creating a master plan is the responsibility of the Town Planning Board and includes multiple public meetings. The following nine elements are included in a Master Plan:

- Goals and Policies
- Land Use and Development Patterns
- Housing
- Economic Development
- Resource Protection
- Open Space and Recreation
- Services and Facilities
- Transportation and Circulation
- Implementation

The following towns in the Housatonic River watershed have adopted master plans recently or are planning to adopt master plans in the near future:

- Town of Egremont* (2003)
- Town of Dalton* (2001)
- Town of Great Barrington (1999)
- Town of Lee* (1999)
- Town of Lenox* (1999)
- Town of Stockbridge (1996)
- Town of Sheffield (Estimated completion 2003)

*Developed in conjunction with BRPC

Open Space Planning

An Open Space and Recreation Plan is a community planning document which defines a town's goals and objectives toward protecting and preserving important natural and scenic resources, land for conservation, and adequate outdoor recreation activities. The Plan, informed by public participation, is a compilation of research and analysis related to community setting, land use, natural resources, challenges, needs and future action steps.

The following towns in the Housatonic River watershed have adopted or are in the process of developing open space and recreational plans:

- Town of Alford (under development)
- Town of Becket* (1999)
- Town of Egremont* (2002)
- Town of Great Barrington (1998)
- Town of Hinsdale* (1999)
- Town of Lee* (2001)
- Town of Lenox* (1999)
- Town of Monterey* (update 2003)
- Town of Mount Washington* (under development)
- City of Pittsfield (under development)
- Town of Savoy (2003)
- Town of Stockbridge (Estimated Completion 2003)
- Town of Tyringham (update 2003)
- Town of West Stockbridge (Estimated Completion 2003)

*Developed in conjunction with BRPC

To obtain copies of comprehensive planning documents, contact the appropriate town or city office. Plans developed in conjunction with the Berkshire Regional Planning Commission may also be available through their office at (413) 442-1521.

Appendix 6
Public Comments Received and MA SubCouncil Response

Public Comments Received and MA SubCouncil Response

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)⁴ requires that funds recovered as part of the Housatonic River Watershed Natural Resources Damages (NRD) claim be retained by the Housatonic River Trustee Council (Trustee Council) to restore, replace, or acquire the equivalent of injured or lost natural resources and/or the services they provide to other natural resources and to the public. Before these funds can be used, a Restoration Plan must be developed and adopted by the Trustee Council through a process of incorporating public notice, public meetings, and the consideration of public comments.

The Massachusetts SubCouncil (MA SubCouncil) of the Trustee Council has prepared a Restoration Planning Strategy (RPS). The RPS lays out a procedural framework that helps the Trustee Council meet its obligations for the development of the Restoration Plan. The Draft RPS was made available for public review and comment on October 22, 2004. Public notices announcing the availability of the document were placed in the North Adams Transcript and the Berkshire Eagle. Press releases and public service announcements on the document's availability were submitted to several additional newspapers, radio stations and television stations (see RPS, Appendix 4). The MA SubCouncil held a public meeting to present the Draft RPS at the Lee Town Library in Lee, Massachusetts on October 25, 2004. The MA SubCouncil provided copies of the Draft RPS to five public libraries in the Housatonic River watershed (see RPS, Appendix 3). Finally, the MA SubCouncil posted a copy of the Draft RPS on the MA SubCouncil GE/Housatonic River restoration project web site (www.ma-housatonicrestoration.org).

⁴ Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

The public comment period closed on November 15, 2004. Written comments were received from three individuals and organizations:

- Tom Matuszko, Berkshire Regional Planning Commission
- John F. Berndtson
- Dennis Regan, Housatonic Valley Association

Copies of the written comments received during the comment period are included in the Administrative Record.

The following comments were submitted. The MA SubCouncil response to the comments is provided below.

Comment: *There is a risk that if project implementation takes many years the inflation rate or the overall cost of the implementation activity could increase greater than the interest rate the NRD funds are earning. It is recommended that the project selection process includes a criterion that considers the inflation rate or change in property values so that projects will be selected sooner if either one of those indices are significantly higher than the interest rate.*

Response: It is recognized that property values and costs of services potentially associated with project implementation are escalating in the Housatonic River watershed. Incorporating the suggested indices as a project selection criterion could inadvertently result in a disproportionate selection of high cost projects and/or projects that do not provide a greater restoration benefit than comparable projects. To address the concern about increasing property values and inflation rates, the MA SubCouncil will work to select and implement projects as expeditiously as possible. There will be no changes to the RPS in response to this comment.

Comment: *There should be flexibility to modify the restoration project evaluation criteria to respond to potential, unforeseen future circumstances.*

Response: The purpose of the restoration project evaluation process is to identify and fund restoration projects in the Massachusetts portion of the Housatonic River watershed that are deemed to provide the greatest benefit to the injured natural resources and the services provided by those natural resources. This is required through CERCLA Natural Resource Damage Assessment (NRDA) regulations. The MA SubCouncil agrees it is important to retain the option of modifying project selection criteria; however, we intend to develop criteria that are inherently capable of responding to unforeseen future circumstances while ensuring the realization of

restoration benefits to the injured natural resources and their services. There will be no changes to the RPS in response to this comment.

Comment: *A number of existing comprehensive plans include project ideas that should be explored to the fullest. This would expedite project selection. Notably, projects listed in the Housatonic River Restoration Plan developed by Housatonic River Restoration, Inc. should be used as a starting point for project selection.*

Response: The MA SubCouncil agrees that existing comprehensive plans (e.g., restoration plans, watershed plans, town master plans) contain ideas for restoration projects that would provide benefits to the injured natural resources and the services they provide. A partial list of existing plans has been provided in Appendix 5 of the Final RPS. Prospective applicants are encouraged to consider existing plans, and project ideas contained in such plans, when developing their response to a solicitation for restoration projects.

Comment: *Since NOAA has withdrawn from its role as a voting member of the Trustee Council, all references to their membership should be deleted and information added indicating their prior membership and reason(s) for their withdrawal.*

Response: NOAA remains a member of the Housatonic River Natural Resource Trustee Council. However, NOAA has chosen to withdraw from its decision-making role on the MA SubCouncil, pursuant to the MA SubCouncil Resolution #4 to the Memorandum of Agreement. A copy of this October 2004 resolution has been added to the RPS (see Appendix 1). It is also provided on the MA SubCouncil GE/Housatonic River restoration project web site (www.ma-housatonicrestoration.org/library). Upon the request of the MA SubCouncil, NOAA will participate in the review of proposed projects.

Comment: *The document makes reference to “PCBs and other substances.” If these “other substances” have been determined to cause natural resource damage, they should be identified. Otherwise, the term “other substances” should be deleted.*

Response: The reference to “other substances” has been clarified in the RPS. The following sentence has been added to the document: “These hazardous substances include PCBs, dioxins, furans, volatile organic compounds, semi-volatile organic compounds, and inorganic constituents (e.g., metals)” (see RPS, p. 1).

Comment: *The document identifies two components of the restoration phase: “primary restoration” and “compensatory restoration.” The document also describes what are called “primary restoration and enhancement activities.” However, it is unclear if enhancement activities are part of “primary restoration” or something else.*

Response: The MA SubCouncil has clarified this discussion in the RPS.

Comment: *The document provides a list of restoration and enhancement activities that are not part of compensatory restoration. Further information on these activities is recommended.*

Response: The list of restoration activities provided in the Draft RPS was incorrectly titled “primary restoration.” This list of activities is a component of the “compensatory restoration” and has been corrected in the RPS.

Comment: *The document describes several sources of funding that were established through the Consent Decree. It is not clear if the Trustee Council is responsible for determining the use of all of these funds, and what criteria will be applied to determine the allocation of these funds. Furthermore, a summary of the direction provided in cited CERCLA regulations would add to reader’s understanding of what is allowed.*

Response: Additional detail has been provided on the three sources of funding established by the Consent Decree that are described in the RPS. This detail includes information on the entity that is responsible for determining the use of these funds. A brief summary of the cited CERCLA regulation has been included in the RPS.

Comment: *The document implies that the Trustees can still recover damages in the Housatonic River watershed. Are there additional damaged natural resources for which damages could or will be recovered?*

Response: Per the Consent Decree, the Housatonic River Natural Resource Trustees retain the right to seek additional NRD recoveries in the event of the failure of the Woods Pond and/or Rising Pond dams and the subsequent release of contaminated sediment impounded by those dams. This clarification has been added to the RPS.

Comment: *The document states that the MA SubCouncil will fund projects deemed to have the greatest benefit to the public and the injured natural resources. This language implies there will be a tradeoff between the public and natural resources. Deletion of the phrase “and the natural resources” is recommended.*

Response: CERCLA mandates that NRD recoveries are used to restore, replace, or acquire the equivalent of injured natural resources and/or the services they provide to other natural resources and the public. Rather than causing a “tradeoff” between the public and natural resources, CERCLA NRD regulations emphasize the value of implementing restoration activities that provide the greatest good to both the injured natural resources and to the public that has experienced a loss in services provided by the injured natural resources. Therefore, the phrase “and the natural resources” shall not be deleted.

Comment: *There are serious concerns pertaining to potentially toxic stormwater runoff from the GE facility, particularly in area of Hill 78. These concerns are critical enough to warrant a review by the MA SubCouncil to assess the possibility of their direct assistance with this problem. It is recommended to pursue the development of a drainage system that would filter runoff from Hill 78 into the GE Wastewater Treatment Plant.*

Response: The MA SubCouncil recognizes these concerns specific to Hill 78 and to the site in general. The remediation of Hill 78 is the responsibility of the USEPA. Therefore, any work associated with Hill 78 will be overseen by the USEPA. The MA SubCouncil closely coordinates with the USEPA and is confident that compensatory restoration efforts funded through the NRD recovery will be consistent with remediation activities being carried out by the USEPA. To ensure this consistency, pertinent data regarding the natural resource impacts of remediation activities and the potential for adverse interaction between remediation and restoration projects will be incorporated into the process of evaluating and selecting restoration projects for implementation.