

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. _____
	)	
THE UNITED ILLUMINATING CO., and	)	
THE FITCHBURG GAS AND	)	
ELECTRIC LIGHT COMPANY,	)	
	)	
Defendants.	)	
_____	)	

**CONSENT DECREE**

**I. BACKGROUND**

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a Complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the East Main Street Disposal Area Site located in Branford, New Haven County, Connecticut (“the Site”).

B. By entering into this Consent Decree, Settling Defendants do not admit liability to the United States arising out of the transactions or occurrences alleged in the Complaint or to any other person related to the Site.

C. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

## **II. JURISDICTION**

1. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9313(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying Complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

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

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them by CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or a federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.
- e. "Effective Date" shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.
- f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.
- g. "EPA Hazardous Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

j. "Parties" shall mean the United States, The United Illuminating Company and The Fitchburg Gas and Electric Light Company.

k. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, together with accrued interest, that the United States has paid or incurred at or related to the Site through and including the effective date of this Consent Decree.

l. "Plaintiff" shall mean the United States of America, including its departments, agencies and instrumentalities.

m. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

n. "Settling Defendants" shall mean The United Illuminating Company and The Fitchburg Gas and Electric Light Company.

o. "Site" shall mean the East Main Street Disposal Area Site, encompassing approximately 17 acres of land located between 483 – 545 East Main Street and 6 – 12 Business Park Drive in Branford, New Haven County, Connecticut.

p. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

#### **V. REIMBURSEMENT OF RESPONSE COSTS**

4. Reimbursement of Past Response Costs to EPA. Within thirty (30) days of entry of this Consent Decree, Settling Defendants shall pay the United States \$464,000, plus an additional sum for Interest on that amount calculated from the effective date of this Consent Decree through the date of payment by Settling Defendants to the United States. Payment shall be made in accordance with Paragraph 5.

5. Payment to the United States shall be made by FedWire Electronic Funds Transfer ("EFT") in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Connecticut, following lodging of this Consent Decree. Any payments received by Department of Justice after 4:00pm Eastern Time shall be credited on the next business day.

6. At the time of payment, Settling Defendants shall send notice that payment has been made in accordance with Section XII (Notice and Submissions). Such notice shall reference the EPA Region 1, Site Identification Number 01BL, DOJ Case Number 90-11-3-09917, and the civil action number.

7. The total amount to be paid pursuant to Paragraph 4 shall be deposited in the EPA Hazardous Substance Superfund.

8. Interest on Late Payments. In the event that any payment required under Section V (Reimbursement of Response Costs), or Section VI, Paragraph 9 (Stipulated Penalties), is not received when due, Interest shall accrue on the unpaid balance from the date payment was due through the date of payment. Settling Defendants shall be liable for any such Interest pertaining to the payments required under Section V (Reimbursement of Response Costs) and Section VI, Paragraph 9 (Stipulated Penalties).

#### **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

9. Stipulated Penalties.

a. If the amount due under Paragraph 4 is not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$2,500 per violation per day that such payment is late. If Settling Defendants do not comply with the requirements of Section XI (Retention of Records), Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, \$300 per violation per day for the first 14 days of such noncompliance and \$750 per violation per day for each subsequent day of such noncompliance.

b. Stipulated penalties set forth under this Section shall be due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to the United States under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substances Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making the payment, the names of the Sites, the EPA Region and Site Spill ID Number 01BL, DOJ Case Number 90-11-3-09917, and the civil action number. Settling Defendants shall send the check (and any accompanying letter) to:

US Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
PO Box 979076  
St. Louis, MO 63197-9000

c. At the time of each stipulated penalty payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions). Such notice shall reference the East Main Street Disposal Area Site

name, EPA Region 1, Site Identification Number 01BL, DOJ case number 90-11-3-09917, and the civil action number.

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

10. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

12. The obligations of Settling Defendants to pay amounts owed to the United States under this Consent Decree are joint and several. In the event of the failure of any one of the Settling Defendants to make the payments required under this Consent Decree, the remaining Settling Defendant shall be responsible for such payments.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

#### **VII. COVENANT NOT TO SUE BY PLAINTIFF**

14. Covenant Not to Sue by United States. Except as specifically provided in Section VIII (Reservation of Rights by the United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. §§ 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon Settling Defendants' satisfactory performance of their obligations under this Consent Decree. This covenant extends only to Settling Defendants and does not extend to any other person.

#### **VIII. RESERVATION OF RIGHTS BY THE UNITED STATES**

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to other matters, including but not limited to:

a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;

- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resources damage assessment.

**IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

16. Each Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or its current and former contractors or current and former employees with respect to the Past Response Costs or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Section 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision or law;
- b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, including but not limited to any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
- c. any claims against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, related to Past Response Costs.

Except as provided in Paragraph 21, the above covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 15 (other than Paragraph 15(a) and (d)), but only to the extent that Settling Defendants' claims, causes of action or defenses arise from the response action, response costs, or damages sought by the United States pursuant to the applicable reservation.

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

**X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

18. Nothing in this Consent Decree shall be construed to create any rights in, or grant any causes of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to any right of contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter,

transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

19. The Parties agree, and by entry of this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2), and that Settling Defendants are entitled, as of the date of entry, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs.

20. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it after the entry of this Consent Decree for matters related to this Consent Decree, it will notify EPA and DOJ in writing not later than sixty (60) days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and ODJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

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

#### **XI. RETENTION OF RECORDS**

22. Until six (6) years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records and documents now in their possession or control, or which come into its possession or control thereafter, other than those records and documents obtained by Settling Defendants directly from the United States between the date when Settling Defendants were first issued a Notice of Potential Liability letter by EPA and through the effective date of this Consent Decree, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

23. After the conclusion of the six (6) year document retention period provided in the preceding Paragraph, Settling Defendants shall notify DOJ and EPA at least ninety (90) days

prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such records of documents to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. In Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm) and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privileged asserted. If a claim or privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

24. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State of the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 or RCRA, 42 U.S.C. § 6972.

## **XII. NOTICES AND SUBMISSIONS**

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

### **As to the United States**

#### **As to DOJ:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Divisions  
U.S. Department of Justice (D.J. # 90-11-3-09917)  
P.O. Box 7611  
Washington, D.C. 20044-7611

#### **As to EPA:**

United States Environmental Protection Agency  
Enforcement Coordinator – East Main Street Disposal Area Site



Office of Site Remediation and Restoration  
EPA Region 1  
5 Post Office Square - Suite 100 (OSRR02-2)  
Boston, Massachusetts 02109-3912  
Attn: East Main Street Disposal Area Site Attorney

United States Environmental Protection Agency  
Regional Financial Management Officer  
EPA Region 1  
5 Post Office Square – Suite 100 (OARM16-1)  
Boston, Massachusetts 02109-3912

**As to Settling Defendants**

**As to The United Illuminating Company:**

Linda L. Randell  
Senior Vice President, General Counsel & Corporate Secretary  
The United Illuminating Company  
157 Church Street  
P.O.Box 1564  
New Haven, CT 06506-0901

Bruce L. McDermott  
Wiggin and Dana LLP  
One Century Tower  
P.O. Box 1832  
265 Church Street  
New Haven, CT 06508-1832

**As to The Fitchburg Gas & Electric Light Company:**

Thomas Gatherum  
Loss Control Manager  
Unitil Service Corp.  
6 Liberty Lane West  
Hampton, NH 03842

**XIII. RETENTION OF JURISDICTION**

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

**XIV. INTEGRATION**

27. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

**XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

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

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

**XVI. EFFECTIVE DATE**

30. The effective date of this Consent Decree shall be the date upon which it is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

**XVII. SIGNATORIES/SERVICE**

31. The undersigned representative of each Settling Defendant and the Deputy Chief for the Environment and Natural Resources Division of the United States Department of Justice each certify that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

32. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports the entry of this Consent Decree.

33. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service.

**XVIII. FINAL JUDGMENT**

34. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. Accordingly, the Court enters this Consent Decree as a final judgment pursuant to Fed. R. Civ. P. 54(a) and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_.

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United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. The United Illuminating Company and The Fitchburg Gas & Electric Light Company, (D.Conn.), relating to the East Main Street Disposal Area Site.

**FOR THE UNITED STATES OF AMERICA**

Date: 1-11-2011

ELLEN M. MAHAN  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

MYRIAH V. JAWORSKI  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. The United Illuminating Company and The Fitchburg Gas & Electric Light Company, (D.Conn.), relating to the East Main Street Disposal Area Site.

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Date: 1/5/11

H. CURTIS SPALDING ✓  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 1, New England  
5 Post Office Square, Suite 100 (ORA01-4)  
Boston, MA 02109-3912

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RONALD A. GONZALEZ  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
5 Post Office Square – Suite 100 (OES04-3)  
Boston, MA 02109-3912

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. The United Illuminating Company and The Fitchburg Gas & Electric Light Company, (D.Conn.), relating to the East Main Street Disposal Area Site.

**FOR THE UNITED ILLUMINATING COMPANY**

Date: 12/17/10

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RICHARD NICHOLAS  
Executive Vice President, Chief Financial Officer  
The United Illuminating Company  
157 Church Street  
P.O. Box 1564  
New Haven, CT 06506-0901

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. The United Illuminating Company and The Fitchburg Gas & Electric Light Company, (D.Conn.), relating to the East Main Street Disposal Area Site.

**FOR THE FITCHBURG GAS & ELECTRIC LIGHT COMPANY**

Date: \_\_\_\_\_

*12/6/10*

TOM GATHERUM  
Loss Control Manager  
Unitil Service Manager  
6 Liberty Lane West  
Hampton, NH 03842

*CORP. T*