

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	SETTLEMENT AGREEMENT FOR
)	RECOVERY OF PAST RESPONSE
)	COSTS
General Electric Rome Site)	
Rome, Floyd County, Georgia)	
)	U.S. EPA Region 4
)	CERCLA Docket No. <u>CER-04-2007-3756</u>
General Electric Company)	
SETTLING PARTY)	PROCEEDING UNDER SECTION
)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D. Authority to enter into or exercise Agency concurrence with this Settlement Agreement has been further re-delegated from the Regional Administrator through the Director of the Waste Management Division, through the Associate Division Director for the Office of Superfund and Emergency Response, to the Chief of the CERCLA Program Services Branch (renamed the Superfund Enforcement and Information Management Branch) by EPA Regional Delegation No. R-14-14-D.

2. This Settlement Agreement is made and entered into by EPA and the General Electric Company ("Settling Party"). Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the General Electric Rome Site ("GE Rome Site" or "Site") located in Rome, Floyd County, Georgia. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. In performing response actions, EPA has incurred response costs at or in connection with the Site.

6. EPA alleges that the Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred at the Site.

7. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith, and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

8. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets or real property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, 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. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

c. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

d. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVI.

e. "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.

f. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and Settling Party.

h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has incurred and paid at or in connection with the Site through the date of the public notice of this Settlement Agreement, including any accrued interest on all such costs through such date. Such costs shall also include costs incurred and to be incurred by EPA in connection with the Site after such date for preparation of the response to any comments on this Settlement Agreement and finalization of this Settlement Agreement, and any costs related to community relations associated with the above.

i. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

j. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

k. "Settling Party" shall mean the General Electric Company.

l. "Site" shall mean the GE Rome Site in Rome, Floyd County, Georgia

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

V. PAYMENT OF PAST RESPONSE COSTS

10. Within 30 days of the effective date of this Settlement Agreement, Settling Party shall pay to the EPA Hazardous Substance Superfund \$750,000.00 in reimbursement of Past Response Costs.

11. Payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check shall reference the name and address of Settling Party, the Site name, the EPA Region and Site/Spill ID Number A4T2, and the EPA docket number for this action and shall be sent to:

U.S. Environmental Protection Agency, Region 4
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15241-7099

12. At the time of payment, Settling Party shall also send notice that such payment has been made to the following persons:

Nadine Orrell
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency
61 Forsyth Street
Atlanta, Georgia 30303-8960

Paula Batchelor
USEPA-SEIMB
Waste Management Division
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

13. Interest on Late Payments. If Settling Party fails to make any payment required by Paragraph 10 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

14. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 10 are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 13, \$1,000 per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of

demand for payment of the penalties, unless an extension is granted by EPA. All payments to EPA under this Paragraph shall be identified as "Stipulated Penalties" and shall be made in accordance with Paragraph 11:

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party 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 Settlement Agreement.

15. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, if Settling Party fails or refuses to comply with the requirements of this Settlement Agreement, Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

16. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement.

VII. COVENANT NOT TO SUE BY EPA

17. Covenant Not to Sue Settling Party by EPA. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs as defined in Section IV, Paragraph 9(h). This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Past Response Costs) and any amounts due under Section VI (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. This covenant not to sue extends only to Settling Party and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

18. The covenant not to sue by EPA set forth in Section VII does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement

Agreement is without prejudice to, all rights against Settling Party with respect to all other matters, including but not limited to:

a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;

b. liability for costs 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 resource damage assessments.

19. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTY

20. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Settlement Agreement, including but not limited to:

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

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

21. This Settlement Agreement shall not be construed to preclude or limit the Settling Party from asserting the claims put forth by the Settling Party in *General Electric*

Co. v. Johnson (D.D.C.), Civ. No. 1:00 CV 02855(JDB), including any appeals from any decision in that case, or to affect in any way the Settling Party's assertion of such claims in other federal or state cases; provided, however, that nothing in this Paragraph or in the outcome of that litigation shall affect the enforceability of this Settlement Agreement or the covenants not to sue set forth in this Section (Covenants Not to Sue by Settling Party)."

22. Nothing in this Settlement Agreement 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

23. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. The Parties expressly reserve any and all rights (including, but not limited to, any right to 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 herein 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).

24. EPA and Settling Party agree that the actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than in proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II of this Settlement Agreement.

25. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Party is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are Past Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Settling Party has, as of the Effective Date, resolved its liability to the United States for Past Response Costs.

26. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify EPA in writing no

later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA 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 Settlement Agreement.

27. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party 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 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 EPA set forth in Section VII. Settling Party also shall not assert, plead, or raise against the United States in any fashion, any defense or claim concerning the timeliness of commencing an action for recovery of any costs in connection with the Site including a claim or defense based on the principles of laches, estoppel, or a statutory limitations period.

XI. RETENTION OF RECORDS

28. Until 10 years after the effective date of this Settlement Agreement, Settling Party shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

29. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, Settling Party shall deliver any such records to EPA. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA 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 privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records that it claims to be

privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's 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.

30. Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State.

XII. NOTICES AND SUBMISSIONS

31. Whenever, under the terms of this Settlement Agreement, 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 Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

As to EPA:

Nadine Orrell
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency
61 Forsyth Street
Atlanta, Georgia 30303-8960

As to Settling Party:

Patricia T. Barmeyer, Esq.
King & Spalding LLP
1180 Peachtree Street N.E.
Atlanta, Georgia 30309-3521

XIII. INTEGRATION

32. This Settlement Agreement constitutes the final, complete and exclusive Settlement Agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, Settlement Agreements or understandings relating to the

settlement other than those expressly contained in this Settlement Agreement.

XIV. PUBLIC COMMENT

33. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

XV. ATTORNEY GENERAL APPROVAL

34. The Attorney General or his designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

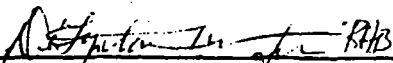
XVI. EFFECTIVE DATE

35. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 32 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:



Rosalind Brown, Chief
Superfund Enforcement and Information
Management Branch
Superfund Division

11/13/06
Date

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement relating to the GE Rome Site in Rome, Floyd County, Georgia.

FOR SETTLING PARTY: General Electric Company

By:



10-20-06
Date