

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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:
IN THE MATTER OF THE :
HUDSON RIVER PCBs SUPERFUND SITE :
: ADMINISTRATIVE ORDER ON
: CONSENT
GENERAL ELECTRIC COMPANY,;
Index No.
Respondent : CERCLA-02-2002-2023
:
Proceeding under Sections 104 and 122 of the :
Comprehensive Environmental Response, :
Compensation, and Liability Act, as amended, :
42 U.S.C. §§ 9604 and 9622. :
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I. INTRODUCTION

1. This Administrative Order on Consent ("Consent Order") is entered into voluntarily by General Electric Company (hereinafter, "GE" or the "Respondent") with the United States Environmental Protection Agency ("EPA"). This Consent Order concerns the performance of sediment characterization and other investigative activities which are part of the remedial design for EPA's February 2002 selected remedy for the Hudson River PCBs Superfund Site ("Site"), located in the State of New York. This Consent Order also addresses reimbursement by Respondent to EPA for certain costs which have been incurred by EPA in connection with the Site, as well as costs which will be incurred by EPA in connection with the work performed under this Consent Order.

II. JURISDICTION

2. This Consent Order is issued to Respondent by EPA pursuant to the authority vested in the President of the United States under Sections 104(a) and (b), 122(a) and (d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604(a) and (b), 9622(a) and (d)(3), which authority was delegated to the Administrator of EPA on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to the Regional Administrators of EPA on September 13, 1987, by EPA Delegation 14-14-C.

3. Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. Respondent consents to and agrees not to contest the authority or jurisdiction of the Regional Administrator of EPA Region II or her delegatee to issue or enforce this Consent Order, and also agrees not to contest the validity or terms of this Consent Order in any action to enforce its provisions.

III. PARTIES BOUND

4. This Consent Order shall apply to and be binding upon Respondent and its successors and assigns. Respondent agrees that its officers, directors, employees and agents involved in the performance of the work required by this Consent Order shall take all necessary steps to accomplish the performance of said work in accordance with this Consent Order. The signatory to this Consent Order on behalf of Respondent certifies that he/she is authorized to execute and legally bind Respondent to this Consent Order. No change in the ownership or corporate status of Respondent or of its facilities or the Site shall alter Respondent's responsibilities under this Consent Order.

5. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within fourteen (14) days after the effective date of this Consent Order or the date of retaining their services, whichever is later. For purposes of this Consent Order, "day" means calendar day unless otherwise noted in this Consent Order. Respondent shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Consent Order and for ensuring that its employees, contractors, consultants, subcontractors and agents comply with this Consent Order.

IV. STATEMENT OF PURPOSE

6. In entering into this Consent Order, the objectives of EPA and Respondent are: (a) to provide for the performance of sampling, analysis and geophysical characterization of sediments in the Hudson River; and (b) to provide for the reimbursement to EPA of certain response costs which have been incurred by EPA in connection with the Site, as well as costs which will be incurred by EPA in connection with the work performed under this Consent Order. The tasks required by this Consent Order are intended to provide useful information for the design and implementation of the remedial action selected in EPA's February 2002 Record of Decision for the Site.

V. EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. During an approximate 30-year period ending in 1977, manufacturing processes at two GE facilities, one in Fort Edward, New York, and the other in Hudson Falls, New York, used polychlorinated biphenyls (“PCBs”) in the manufacture of electrical capacitors. PCBs from both facilities were discharged into the Hudson River.
8. In September 1984, EPA placed the Site on the National Priorities List, established pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 CFR Part 300, Appendix B.
9. In September 1984, EPA issued a Record of Decision (the “1984 ROD”) for the Site which included: (i) an interim no action decision with regard to PCBs in the sediments of the Upper Hudson River; (ii) in-place capping, containment, and monitoring of exposed “remnant deposit” sediments, and stabilization of the associated riverbanks and revegetation of those areas; and (iii) a detailed evaluation of the Waterford Water Works treatment facilities, including sampling and analysis of treatment operations to see if an upgrade or alteration of the facilities was needed.
10. GE implemented the remedial action selected in the 1984 ROD for the remnant deposits pursuant to a 1990 consent decree with EPA. GE is conducting maintenance and long-term monitoring activities under the consent decree.
11. The New York State Department of Environmental Conservation (“NYSDEC”), with EPA funding, conducted a treatability study at the Waterford Water Works. The study was released in 1990 and found that PCB concentrations were below analytical detection limits after treatment and met standards applicable to public water supplies.
12. In 1989, EPA decided to reassess the interim no-action decision in the 1984 ROD with respect to PCB-contaminated Hudson River sediments. Beginning in 1990, EPA conducted a Reassessment Remedial Investigation and Feasibility Study which included, *inter alia*, analyses of the fate, transport, and human health and environmental risks associated with PCB contamination at the Site.
13. In December 2000, EPA issued the Reassessment Feasibility Study in which the Agency evaluated potential remedial alternatives to address PCB contamination at the Site. Concurrently with the Reassessment FS, EPA issued a Proposed Plan in which EPA identified its preferred remedial alternative for the Site. EPA held a public comment period on the Proposed Plan and supporting information from December 12, 2000 through April 17, 2001.
14. On February 1, 2002, EPA issued a Record of Decision (“ROD”) in which EPA selected a remedial action for the Site. The remedy selected in the ROD includes, *inter alia*, the targeted dredging and off-site disposal of approximately 2.65 million cubic yards of contaminated sediment from the Upper Hudson River.

15. Implementation of the selected remedy will require the performance of design activities including, but not limited to, sampling, analysis and geophysical characterization of sediments in the Hudson River.
16. Respondent has indicated a willingness to conduct the sampling, analysis, and geophysical characterization of sediments required by this Consent Order.
17. PCBs are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
18. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
19. Releases of hazardous substances have occurred at the Site, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). Such releases include, but are not limited to, PCBs that were discharged to the Hudson River from GE's Hudson Falls and Fort Edward facilities.
20. Respondent is a corporation organized and existing under the laws of the State of New York. Respondent therefore is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Respondent is a responsible party with respect to the Site under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
21. Respondent has been given an opportunity to discuss with EPA the basis for issuance of this Consent Order and its terms.
22. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, and are consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300.

VI. NOTICE

23. By providing a copy of this Consent Order to the NYSDEC, EPA is notifying the State of New York that this Consent Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response actions required by this Consent Order.

VII. WORK TO BE PERFORMED

24. All work performed under this Consent Order shall be under the direction and supervision of qualified personnel. Within seven (7) days of the effective date of this Consent Order, Respondent shall provide written notice to EPA of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories, to be used in carrying out the work required

under this Consent Order, including the work called for by the Design Support Sediment Sampling and Analysis Program Field Sampling Plan and attachments thereto (designated Exhibits A through F of that plan) (hereinafter collectively the “Sediment Field Sampling Plan”), attached hereto as Appendix 1, and any other deliverable that is to be approved by EPA pursuant to this Consent Order; provided, however, that if particular laboratories or other contractors or subcontractors have not been selected by that date, Respondent shall provide such written notice to EPA within seven (7) days of their selection. With respect to any proposed contractor, including laboratories (other than laboratories accredited under the National Environmental Laboratory Accreditation Program and New York State Environmental Laboratory Approval Program), and except as otherwise agreed to by EPA, Respondent shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs,” (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor’s Quality Management Plan (“QMP”) to EPA at the same time that Respondent sends EPA written notice of the selection of the contractor. The QMP should be prepared in accordance with “EPA Requirements for Quality Management Plans (QA/R-2),” (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the work for Respondent shall be subject to EPA’s review for verification that such persons meet appropriate technical background and experience requirements. The Consent Order is contingent upon Respondent’s demonstration to EPA’s satisfaction that Respondent is qualified to perform properly and promptly the actions required under the Consent Order, including but not limited to the work called for by the Sediment Field Sampling Plan. If EPA disapproves, in writing, of any person’s technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacement(s) within fourteen (14) days of the date of the written notice. If EPA subsequently disapproves of the replacement(s), EPA reserves the right to terminate this Consent Order, to conduct the work required hereunder, and to seek reimbursement for costs and penalties from Respondent. During the course of performing the work required by this Consent Order, Respondent shall notify EPA in writing of any changes in or additions to the personnel used to carry out such work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes in and additions to personnel as it has hereunder regarding the initial notification.

25. Prior to the effective date of this Consent Order, Respondent submitted to EPA, NYSDEC and the New York State Department of Health (“NYSDOH”) (hereinafter, NYSDEC and NYSDOH shall be collectively referred to as “the State”) a draft site-specific Health and Safety Plan (“HASP”) for the work to be conducted under this Consent Order. EPA will review the draft HASP and may request modifications thereto.

26. The HASP must specify employee training, protective equipment and medical surveillance requirements, standard operating procedures, and a contingency plan. The HASP shall satisfy the requirements of the *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities* (October 1985, DHHS NIOSH Publication No. 85-115), and any update thereto, and the following requirements:

- a. All Site activities shall be performed in such a manner as to ensure the safety and health of personnel so engaged. All Site activities shall be conducted in accordance with all pertinent general industry (29 CFR Part 1910) and construction (29 CFR Part 1926) U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”) standards, and EPA's *Standard Operating Safety Guides* (OSWER, 1988), as well as any applicable State laws. All Site activities shall comply with those requirements set forth in OSHA’s final rule entitled *Hazardous Waste Operations and Emergency Response*, 29 CFR § 1910.120.
- b. The HASP shall include, at a minimum, the following items:
 - i. Plans showing the location and layout of any temporary facilities to be constructed on or near the Site;
 - ii. Description of the known hazards and evaluation of the risks associated with the work at the Site and the potential health impacts related to the Site activities;
 - iii. List of key personnel and alternates responsible for Site safety and response operations;
 - iv. Description of levels of protection (based on specified standards) to be utilized by all personnel;
 - v. Delineation of work, decontamination, and safe zones, and definitions of the movement of zones;
 - vi. Description of decontamination procedures for personnel and equipment, and handling and removal of disposable clothing or equipment;
 - vii. Procedures that address emergency care for personnel injuries and adverse health effects from exposure, and containment measures. These procedures shall include evacuation routes, internal and external communications procedures for response to fire, explosion, or other emergencies, the name of the nearest hospital and the route to that hospital. Local agencies with the capability to respond to emergencies shall be identified and their capabilities shall be described. A description of the procedures for informing the community of these measures shall be outlined;

- viii. Description of the personnel medical surveillance program in effect;
 - ix. Description of monitoring for personnel safety; and
 - x. Description of routine and special personnel training programs.
- c. Respondent shall comply with the final HASP.

27. Prior to the effective date of this Consent Order, Respondent submitted to EPA and the State a draft site-specific Community Health and Safety Plan (“CHASP”).

28. The CHASP shall address the protection of public health and safety and the response to contingencies that could impact public health, safety, or the environment during implementation of the work required by this Consent Order, including but not limited to boater safety. The CHASP shall include, at a minimum, the following items:

- a. Plans showing the location and layout of any temporary facilities to be constructed on or near the Site;
- b. Description of the known hazards and evaluation of the risks associated with the work at the Site and the potential public health impacts related to the Site activities;
- c. List of key personnel and alternates responsible for protection of the public in connection with Site activities; and
- d. An outline of the procedures for notifying the appropriate response agencies of any emergency conditions, or measures taken or to be taken in response to such conditions.

EPA will either approve the draft CHASP, or require modifications in accordance with this Consent Order. Respondent shall comply with the approved CHASP.

29. Prior to the effective date of this Consent Order, Respondent submitted to EPA and the State for review a draft Quality Assurance Project Plan (“QAPP”). At the time of the issuance of this Consent Order, EPA is in the process of reviewing the draft QAPP.

30. The QAPP shall be consistent with *EPA Requirements for Quality Assurance Project Plans* (EPA QA/R-5, EPA/240/B-01/003, March 2001) and with the Sediment Field Sampling Plan. All sampling, analysis, and data assessment and monitoring shall be performed in accordance with this Consent Order and all attachments hereto, including the Sediment Field Sampling Plan, and the EPA-approved QAPP. All testing methods and procedures shall be fully documented and referenced to

established methods or standards. In addition to the information referred to in Paragraph 31, the QAPP shall include, at a minimum, the following items, which shall incorporate or be consistent with the comparable provisions of the Sediment Field Sampling Plan:

- a. A detailed description of the Data Quality Objectives (including why the data are being collected, how they will be used, what they will be compared to, and how they will be interpreted) to ensure that all data collected are relevant to the decision making process, as well as to ensure that appropriate analytical techniques are selected;
- b. A detailed description of sampling, analysis, and testing to be performed, including sampling methods, analytical and testing methods, sampling locations and frequency of sampling;
- c. A map depicting sampling locations; and
- d. A schedule for performance of specific tasks.

31. The QAPP shall address the following elements:

- a. Project Management
 - i. Title and approval sheet;
 - ii. Table of contents and document control format;
 - iii. Distribution list;
 - iv. Project/task organization and schedule;
 - v. Problem definition/background;
 - vi. Project/task description;
 - vii. Quality objectives and criteria for measurement data;
 - viii. Special training requirements/certification; and
 - ix. Documentation and records.
- b. Measurement/Data Acquisition

- i. Sampling process design;
 - ii. Sampling method requirements;
 - iii. Sample handling and custody requirements;
 - iv. Archival procedures for sediment samples and sample extracts;
 - v. Analytical method requirements;
 - vi. Quality control requirements;
 - vii. Instrument/equipment testing, inspection, and maintenance requirements;
 - viii. Instrument calibration and frequency;
 - ix. Inspection/acceptance requirements for supplies and consumables;
 - x. Data acquisition requirements (non-direct measurements); and
 - xi. Data management.
- c. Assessment/Oversight
- i. Assessments and response actions; and
 - ii. Reports to management.
- d. Data Validation and Usability
- i. Data review, validation, and verification requirements (e.g., acceptance criteria);
 - ii. Validation and verification methods; and
 - iii. Reconciliation with data quality objectives, including allocation frequency (*i.e.*, the number of performance evaluation (PE) samples that will be allocated respectively among Aroclor and homolog analyses); acceptance criteria for PE samples; and comparability criteria that will be used to develop correction factors (if necessary) for Aroclor and homolog analytical results.

- e. In order to provide quality assurance and maintain quality control with respect to all samples to be collected, the Respondent shall ensure the following:
- i. Prior to the selection of any laboratory, PE samples must be analyzed by that laboratory to demonstrate its capability to conduct the required analysis; provided, however, that analysis of PE samples will not be required prior to the selection of a laboratory which has obtained National Environmental Laboratory Accreditation Program (“NELAP”) and New York State Environmental Laboratory Approval Program (“SELAP”) certification for the analytical method to be used. Respondent shall use laboratories that have obtained NELAP and SELAP certification for all analytical methods that are used pursuant to this Consent Order for which such certifications are available. For each laboratory that has obtained NELAP and SELAP certification for an analytical method to be used for analyses performed under this Consent Order, Respondent shall provide documentation to EPA which demonstrates that the laboratory has such certifications for the specific methods/matrices and analyses to be performed.
 - ii. All laboratories utilized for analyses of samples must perform all analyses in accordance with the Sediment Field Sampling Plan and the approved QAPP.
 - iii. All analytical data shall be verified, or verified and validated, upon receipt from the laboratory, as required by the Sediment Field Sampling Plan and the QAPP.
 - iv. Respondent shall submit to EPA, in each Data Summary Report referred to in the Sediment Field Sampling Plan, a data validation report or reports containing the information required by the Sediment Field Sampling Plan and the EPA-approved QAPP.
 - v. Unless indicated otherwise in the EPA-approved QAPP, Respondent shall require deliverables equivalent to CLP data packages from the laboratory(ies) for analytical data. EPA reserves the right to perform an independent data validation, data validation check, or qualification check on generated data.
 - vi. Respondent shall insert a provision in its contract(s) with the laboratory(ies) utilized for analyses of samples, which will require granting access to EPA personnel and authorized representatives of the EPA for the purpose of ensuring the accuracy of laboratory results related to the Site.

32.
 - a. EPA will either approve the draft QAPP, or require modifications in accordance with this Consent Order. Following EPA approval of the draft QAPP, Respondent shall implement the activities required by the QAPP in accordance with the requirements set forth therein.
 - b. If Respondent proposes to use any sampling, analytical test, or data validation method that is not approved for use under the Sediment Field Sampling Plan or approved QAPP, Respondent must obtain EPA approval for such proposed method before it may be used for samples collected under this Consent Order. Respondent should provide full documentation of the rationale for proposing the alternative method, how the method has been verified, why this method is more appropriate than standard methods or the previously approved methods, and what will be the benefit of using this method, as well as the Standard Operating Procedures (SOPs) for the proposed method.

33. Sediment Field Sampling Plan Schedule

- a. A detailed schedule for all tasks called for by the Sediment Field Sampling Plan is set forth in Exhibit F to the Sediment Field Sampling Plan. Respondent shall comply with that approved schedule.
- b. During the course of the work under this Consent Order, Respondent shall submit to EPA and the State proposed revisions or supplements to the approved schedule, as needed, to reflect any additional tasks to be performed or unanticipated or changed circumstances. EPA will approve such proposed revisions or supplements, or require modifications in accordance with the Consent Order. Respondent shall comply with any such approved revised or supplemental schedule.

34. Respondent shall conduct the work required hereunder in accordance with CERCLA, the NCP, *EPA Requirements for Quality Assurance Project Plans* (EPA QA/R-5, EPA/240/B-01/003, March 2001), and guidance documents referenced therein, as they may be amended or modified by EPA. The tasks that Respondent must perform (including future deliverables) and the scope of such work are identified in this Consent Order and/or the Sediment Field Sampling Plan (attached hereto as Appendix 1), which is incorporated into and is an enforceable part of this Consent Order. Each deliverable required by this Consent Order or the Sediment Field Sampling Plan shall be deemed incorporated into and an enforceable part of this Consent Order upon its approval by EPA. Respondent shall perform the work in accordance with the Sediment Field Sampling Plan (Appendix 1 hereto), and other deliverables approved by EPA under this Consent Order, as they may be amended pursuant to Section X below, and Respondent shall comply with all other requirements of this Consent Order.

35. EPA reserves the right to comment on, modify and direct changes for all deliverables, provided that any such modifications or changes do not materially expand the scope of the work required under this Consent Order or the Sediment Field Sampling Plan. If EPA disapproves or otherwise requires any such modifications to any plan, report, or other item required to be submitted to EPA for approval pursuant to this Consent Order, Respondent shall have fourteen (14) days from the receipt of such notice of disapproval or the required modifications, or a longer period if agreed to by EPA, to correct the deficiencies and resubmit the plan, report or other written document to EPA for approval. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondent shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondent a written notice to that effect.

36. Respondent may invoke the dispute resolution procedures set forth in Section XVI below in the event of a dispute between Respondent and EPA regarding EPA's disapproval of, or required revisions

to the Supplemental Field Sampling Plan (referred to in Exhibit F to the Sediment Field Sampling Plan), the QAPP, or the Sub-bottom Profiling Test Work Plan (referred to in Exhibit F to the Sediment Field Sampling Plan).

37. a. In the event that EPA determines that any activities performed or to be performed pursuant to this Consent Order pose a threat to human health or safety or to the environment, or that a significant change in conditions at the Site, emergency circumstances occurring at the Site, or errors or omissions of Respondent in complying with this Consent Order warrant the stoppage of any of the work required under this Consent Order, EPA, including but not limited to the EPA Project Coordinator(s), may direct Respondent to stop implementation of the activities that pose the threat, or which are potentially affected by the significant changes in conditions, the emergency situation, or Respondent's errors or omissions. EPA will consult with Respondent prior to issuing such a directive, except where EPA determines that under the circumstances, there is insufficient time for such consultation before the given activities must be stopped. Subsequent to the stoppage of activities pursuant to a directive under this subparagraph, recognizing that it is the objective of EPA and Respondent to complete work under this Consent Order promptly, EPA will notify Respondent if/when some or all of those activities should be resumed.
- b. In the case of any EPA directive under subparagraph a., requiring Respondent to stop implementation of activities required by this Consent Order, the schedule for completion of work under this Consent Order will be adjusted by EPA, as necessary, following consultation with Respondent.
- c. After stopping the given work activities pursuant to subparagraph a. above, Respondent may invoke the dispute resolution procedures set forth in paragraph 66 of Section XVI if Respondent believes that the stoppage or EPA's adjustment to the schedule is inappropriate.
- d. Notwithstanding anything in this Paragraph 37, EPA reserves the right to issue a separate administrative order to or initiate other legal action against Respondent to require the stoppage or resumption of any activities required by this Consent Order, whether or not circumstances identified in Paragraph 37(a) have occurred. Respondent reserves all its rights to contest any such administrative order or legal action.

38. Except as otherwise agreed to by EPA and Respondent, Respondent shall not proceed with the sediment sampling under this Consent Order until receiving EPA approval for the CHASP and QAPP. While awaiting EPA approval on these deliverables, Respondent shall proceed with all tasks and activities which may be conducted independently of the aforementioned deliverables in accordance with the schedule attached as Exhibit F to the Sediment Field Sampling Plan.

39. In the event that Respondent amends or revises a report, plan or other submittal upon receipt of EPA comments, if EPA in its discretion subsequently disapproves of the revised submittal or any portion thereof (consistent with Paragraph 35), or if subsequent submittals do not fully reflect EPA's directions for changes related to performance of the work required by this Consent Order (consistent with Paragraph 35), Respondent shall be deemed to be out of compliance with this Consent Order, and EPA may, in its sole discretion: (a) seek stipulated or statutory penalties; (b) again direct Respondent to revise the submittal; (c) itself amend or prepare the plan or other document and (subject to Paragraph 84, below) recover the costs of doing so from Respondent; and/or (d) seek any other appropriate relief. If EPA chooses option (c), Respondent shall implement the work plan or other document as amended or prepared by EPA, provided that EPA's version or modifications do not materially expand the scope of the work required under this Consent Order or the Sediment Field Sampling Plan. Respondent may invoke the dispute resolution procedures set forth in Section XVI below in the event of a dispute between Respondent and EPA regarding any EPA determination or action under this paragraph relating to the Supplemental Field Sampling Plan (referred to in Exhibit F to the Sediment Field Sampling Plan), the QAPP, or the Sub-bottom Profiling Test Work Plan (referred to in Exhibit F to the Sediment Field Sampling Plan), provided that the dispute resolution process under Section XVI was not previously conducted with respect to the same issue.

40. The failure of EPA to either expressly approve, disapprove, or comment upon Respondent's submissions within a specified time period(s) shall not be construed as approval by EPA.

41. Respondent shall assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures.

VIII. NOTIFICATION AND REPORTING REQUIREMENTS

42. All reports and other documents submitted by Respondent to EPA (other than the monthly progress reports referred to below) which purport to document Respondent's compliance with the terms of this Consent Order shall be signed by GE's Project Coordinator (designated in Paragraph 51 of this Consent Order) or another individual who has been delegated this responsibility by Respondent, whose qualifications have been found by EPA to be acceptable pursuant to Paragraph 24 of this Consent Order, and who will certify that he/she has been fully authorized by Respondent to submit such a document and to legally bind Respondent thereto. Notwithstanding such a delegation of responsibility, Respondent shall remain liable for the proper performance of the work required by this Consent Order.

43. Until the termination of this Consent Order, Respondent shall prepare and provide EPA and the State with written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Order during the previous month; (2) include all results of sampling, tests, and all other verified or validated data received or generated by or on behalf of

Respondent during the previous month in the implementation of the work required by this Consent Order; (3) describe all actions, data and plans which are scheduled for the next two months and provide other information relating to the progress of work as is customary in the industry; and (4) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays. These progress reports shall be submitted to EPA and the State by Respondent by the fifteenth (15) day of every month following the effective date of this Consent Order.

44. All work plans, reports, notices and other documents required to be submitted to EPA and the State under this Consent Order shall be sent by certified mail, return receipt requested, by overnight delivery or by courier to the following addressees:

3 copies: Director, Emergency and Remedial Response Division
(1 unbound) United States Environmental Protection Agency, Region 2
290 Broadway, 19th Floor
New York, New York 10007-1866

Attn: Project Coordinators, Hudson River PCBs Superfund Site

1 copy: Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866

Attn: Hudson River PCBs Superfund Site Attorney

3 copies: Director, Division of Environmental Remediation
(1 unbound) New York State Department of Environmental Conservation
625 Broadway, 12th Floor
Albany, New York 12233-7011

Attn: Hudson River PCBs Superfund Site

2 copies: Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
547 River Street
Troy, New York 12180

Attn: Hudson River PCBs Superfund Site

If agreed to in advance by EPA, specific notifications submitted by Respondent pursuant to this paragraph may be submitted by electronic mail. All responses, notices, and other communications from EPA to Respondent under or in connection with this Consent Order will be sent, at a minimum, to GE's Project Coordinator designated at Paragraph 51, below.

45. Respondent shall give EPA and the State at least fourteen (14) days advance notice of all field work or field activities to be performed by Respondent pursuant to this Consent Order; provided, however, that in a given instance, if it is impossible for Respondent to provide such notice, Respondent shall provide notice to EPA of all such field work or activities as far in advance of such work as is possible. In any event, any notification pursuant to this paragraph shall be given at least twenty-four (24) hours prior to the given field activities, unless EPA agrees otherwise.

IX. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

46. Upon the occurrence of any event during performance of the work required by this Consent Order which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Respondent shall immediately upon obtaining knowledge of such event orally notify one of the EPA Project Coordinators (or, in the event of the unavailability of an EPA Project Coordinator, the Team Leader, Hudson River Team, Emergency and Remedial Response Division, EPA Region 2) and the State, in addition to the reporting required by Section 103 of CERCLA, 42 U.S.C. § 9603. Within fourteen (14) days of the onset of such an event, Respondent shall also furnish EPA with a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. A copy of the report shall be sent simultaneously to the State. Notifications provided to the State by Respondent pursuant to this paragraph shall be provided to:

William Ports
Project Manager, Hudson River PCBs NPL Site
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7016
(518) 402-9774
wfports@gw.dec.state.ny.us

or, in event of the NYSDEC Project Manager's unavailability, to:

Director, Bureau of Central Remedial Action
New York State Department of Environmental Conservation
625 Broadway
Albany, New York

(518) 402-9768

The reporting requirements of this paragraph are in addition to, not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

47. In the event of any action or occurrence during Respondent's performance of the requirements of this Consent Order which causes or threatens to cause a release of a hazardous substance that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately, upon obtaining knowledge of such action or occurrence, notify one of the EPA Project Coordinators (or, in the event of the unavailability of an EPA Project Coordinator, the Team Leader, Hudson River Team, Emergency and Remedial Response Division, EPA Region 2), and the State. Notifications to the State pursuant to this paragraph shall be provided to the NYSDEC personnel identified in the preceding paragraph. In addition, in the event of any such action or occurrence that is related to Respondent's performance of the requirements of this Consent Order, Respondent shall immediately take all appropriate action to prevent, abate or minimize the threat. Respondent shall take such action in accordance with applicable provisions of this Consent Order including, but not limited to, the Health and Safety Plan and the Community Health and Safety Plan.

48. Nothing in the preceding paragraph or elsewhere in this Consent Order shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

X. MODIFICATION OF THE WORK PLAN

49. If at any time during implementation of the work required by this Consent Order, Respondent identifies a need for additional data to complete the work required by this Consent Order, other than data that already are required to be collected or generated under the Sediment Field Sampling Plan, Respondent shall submit a memorandum documenting the need for such additional data to the EPA Project Coordinators within twenty (20) days of identification, and not less than seven (7) days prior to the proposed commencement date of the data gathering. Pursuant to this Consent Order, EPA in its discretion will determine whether such additional data will be collected by Respondent and whether it will be incorporated into reports and deliverables.

50. In the event that EPA determines that unanticipated or changed circumstances at the Site, or conditions posing an immediate threat to human health or welfare or the environment, warrant changes in the Sediment Field Sampling Plan or other plan or deliverable which is required and approved under this Consent Order, EPA will initially discuss such changes with Respondent. If EPA and Respondent agree on such changes, the plan or other deliverable will be changed accordingly. If EPA and

Respondent are unable to agree on such changes, EPA may modify or amend, or direct Respondent to modify or amend, such plan or deliverable accordingly, provided that such modifications do not materially expand the scope of the work required under this Consent Order or the Sediment Field Sampling Plan. Respondent shall implement the work required under such plan or deliverable as modified or amended; provided, however, that Respondent may invoke the dispute resolution procedures set forth in Section XVI, below, in the event of a dispute between Respondent and EPA regarding EPA's modification or required modification of the plan or deliverable.

XI. PROJECT COORDINATORS, OTHER PERSONNEL

51. EPA has designated the following individuals as its Project Coordinators with respect to the Site:

Alison Hess/Doug Tomchuk
U. S. Environmental Protection Agency Region 2
Emergency and Remedial Response Division
290 Broadway, 19th Floor
New York, New York 10007-1866

(212) 637-3959 / (212) 637-3956
Hess.Alison@EPA.gov, Tomchuk.Doug@EPA.gov

Respondent has designated the following individual as its Project Coordinator with respect to the Site and the work required under this Consent Order:

John Haggard
General Electric Company
320 Great Oaks Office Park, Suite 323
Albany, New York 12203
(518) 862-2739
John.haggard@corporate.ge.com

Respondent's and EPA's Project Coordinators shall coordinate communications between EPA and Respondent. EPA and Respondent may change their respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing at least ten (10) days prior to the change where possible, and concurrently with the change or as soon thereafter as possible in the event that advance notification is not possible.

52. EPA's Project Coordinators shall have the authority lawfully vested in a Remedial Project Manager and On-Scene Coordinator by the NCP. The absence of an EPA Project Coordinator from

the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.

53. All activities required of Respondent under the terms of this Consent Order shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by applicable law.

XII. OVERSIGHT

54. During the implementation of the requirements of this Consent Order, Respondent and its contractors and subcontractors shall be available for such conferences and inspections with EPA as EPA may determine are necessary for EPA to adequately oversee the work being carried out and/or to be carried out.

55. Respondent and its employees, agents, contractors, representatives and consultants shall cooperate with EPA in its efforts to oversee Respondent's implementation of this Consent Order.

XIII. SAMPLING, ACCESS AND DATA AVAILABILITY/ADMISSIBILITY

56. In the event that access to any properties owned in whole or in part by parties other than Respondent is needed to carry out any of the work required by this Consent Order, Respondent shall use its best efforts to obtain access agreements from the present owners within twenty (20) days after the date that it is determined that access to such properties is needed. Such agreements shall provide access for EPA and the State and their contractors and oversight officials, and the Respondent and its authorized representatives, and agreements for such access shall specify that Respondent is not EPA's or the State's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA and the State upon request. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA of the failure to obtain access. EPA may, in its sole discretion, obtain access for Respondent or, with EPA contractors, perform those tasks or activities for which access was sought. In the event that EPA performs those tasks or activities with EPA contractors, Respondent shall, subject to Paragraphs 84, 85, and 87, below, reimburse EPA for all costs incurred in performing such activities, and Respondent shall perform all other activities not requiring access to the given property. Respondent additionally shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

57. At all reasonable times, EPA, the State and their authorized representatives shall have the authority to enter and freely move about all those portions of any property and other areas at the Site and off-Site areas where work under this Consent Order is being, has been, or will be, performed (including boats used by Respondent to perform work required by this Consent Order), for the purposes of, among other things, inspecting conditions or activities at the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA and the State by Respondent. The parties recognize that, for such property owned by Respondent, Respondent has adopted health and safety and security procedures for visitors, and they will work cooperatively to implement a mutually satisfactory means for EPA's and the State's employees and other representatives to comply

with those procedures. All parties with access to areas where field work is being performed pursuant to this Consent Order under this paragraph shall comply with all applicable health and safety plans.

58. All data, records, photographs, sediment samples, and other information created, maintained or received by Respondent or its agents, contractors or consultants in connection with implementation of the work under this Consent Order, including but not limited to quality assurance memoranda, raw data, sample extracts, field notes, laboratory analytical reports, work orders and disposal records, shall, without delay, be made available to EPA on request (except those documents and other information which are subject to the attorney-client privilege or are attorney work product). EPA shall be permitted to copy all non-privileged documents and other items.

59. Upon request by EPA or its designated representatives, Respondent shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Consent Order, or allow EPA or its designated representatives to take such duplicate or split samples.

60. Respondent may assert a claim of business confidentiality under 40 C.F.R. § 2.203, covering part or all of the information submitted to EPA pursuant to the terms of this Consent Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondent. Respondent agrees not to assert any business confidentiality or other confidentiality or privilege claims with respect to any data related to Site conditions, sampling, or monitoring that are collected or conducted in connection with the work required under this Consent Order.

61. Notwithstanding any other provision of this Consent Order, EPA hereby retains all of its information gathering, access and inspection authority under CERCLA, the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6991, and any other applicable statute or regulation.

62. In entering into this Consent Order, Respondent waives any objections to any data gathered, generated, or analyzed by or on behalf of Respondent in the performance of the work under this Consent Order, to the extent that such data have been verified according to the quality assurance/quality control (“QA/QC”) procedures specified in this Consent Order, the Sediment Field Sampling Plan, and the approved QAPP. In addition, Respondent waives any objections to any data gathered, generated, or analyzed by or on behalf of EPA in the oversight of Respondent’s work under this Consent Order, to the extent that EPA has followed appropriate QA/QC and chain-of-custody procedures with respect to the associated samples.

XIV. OTHER APPLICABLE LAWS

63. Respondent shall comply with all laws that are applicable when performing the work required by this Consent Order. No local, state, or federal permit shall be required for any portion of the work, including studies, required hereunder which is conducted entirely on-Site, where such work is carried out in compliance with Section 121 of CERCLA. For any work performed pursuant to this Consent Order which is not "on-Site", as defined in Sections 300.5 and 300.400(e) of the NCP, Respondent shall obtain all permits necessary under applicable laws and shall submit timely applications and requests for any such permits. This Consent Order is not, nor shall it act as, a permit issued pursuant to any federal or state statute or regulation.

XV. RECORD PRESERVATION

64. a. During the conduct of this Consent Order and for a minimum of ten (10) years after EPA's written approval of Respondent's certification of completion in accordance with Paragraph 101, below, Respondent shall preserve and retain all of the following records and documents now in Respondent's possession or control, or which come into its possession or control, regardless of any corporate retention policy to the contrary:

- i. The final versions of correspondence with and submittals made to EPA and to the State specifically discussing or otherwise related to the performance of the work required under this Consent Order;
- ii. The final versions of correspondence between Respondent (including Respondent's employees, agents, accountants, contractors, or attorneys) and the laboratories retained by Respondent that relates to analyses of samples collected by Respondent pursuant to this Consent Order;
- iii. Records and documents reflecting the collection, analysis and chain-of-custody of samples and the analytical reports of chemical or physical sampling (including but not limited to raw data, chromatograms, and QA/QC documentation) relating to the performance of the work required under this Consent Order;
- iv. Field notes and the final versions of technical reports relating specifically to Respondent's plans for or conduct of activities specifically related to the work required under this Consent Order;
- v. The final versions of records and documents documenting the protocols to be followed and/or in fact followed by Respondent in the performance of the work required under this Consent Order; and

- vi. Other records and documents necessary to document the activities performed and/or the data collected under this Consent Order.

For purposes of this Paragraph, where no “final” version of a document or record was created, the last draft of such document or record shall be deemed to be the “final” version.

b. Respondent shall acquire and retain a copy of all documents of the types identified above that are in the possession of its employees, agents, accountants, contractors, or attorneys.

c. After the 10-year period referred to in subparagraph a., Respondent shall notify EPA at least ninety (90) days before any of the documents described in subparagraphs a. and b. above are scheduled to be destroyed. If Respondent so notifies EPA, and if EPA requests that the documents be saved, Respondent shall, at no cost to EPA, give the documents or copies of the documents to EPA (except for privileged documents). At any time prior to the end of this 10-year period, Respondent may elect to satisfy its obligation to preserve records and documents pursuant to this paragraph by providing EPA with a copy of such records or documents. Upon providing a copy to EPA of records or documents, Respondent shall no longer be obligated under this paragraph to retain those records or documents.

d. Nothing in this Consent Order shall constitute, or be construed as, an abrogation or waiver of (i) any of Respondent's obligations to maintain records under applicable law including, but not limited to, the Federal Rules of Civil Procedure, or (ii) any privilege afforded Respondent under applicable law including, but not limited to, the Federal Rules of Civil Procedure.

XVI. DISPUTE RESOLUTION

65. For all disputes regarding an EPA notice of disapproval or other determination made pursuant to this Consent Order that Respondent contends would have the effect of materially expanding the scope of the work required under this Consent Order or the Sediment Field Sampling Plan, the following procedures shall be used. Respondent shall notify EPA's Project Coordinators, in writing, of its objections within fourteen (14) days of receipt of the disapproval notice or determination. Respondent's written objections shall define the dispute, state the basis of Respondent's objections, and be sent to EPA by certified mail, return receipt requested, overnight delivery or courier. EPA and Respondent will then have an additional fourteen (14) days to reach agreement. If an agreement is not reached within the fourteen (14) days, Respondent may, within seven (7) days of the conclusion of the aforementioned 14-day period, request a determination by the Regional Administrator for EPA Region 2 (hereinafter, the "RA"). Such a request shall be made in writing by a Vice President (or more senior officer) of Respondent. The RA will issue a determination on the matter in dispute, which determination is EPA's final decision.

66. All disputes for which dispute resolution has been expressly provided for in this Consent Order other than disputes governed by Paragraph 65 shall be resolved as follows: if Respondent objects to an EPA notice of disapproval or determination made pursuant to this Consent Order, or a bill under Paragraph 84, and if the given dispute falls within a category of disputes for which dispute resolution has been expressly provided herein, Respondent shall notify EPA's Project Coordinators, in writing, of its objections within fourteen (14) days of receipt of the disapproval notice, determination or bill. Respondent's written objections shall define the dispute, state the basis of Respondent's objections, and be sent to EPA by certified mail, return receipt requested, overnight delivery or courier. EPA and Respondent then have an additional fourteen (14) days to reach agreement. If an agreement is not reached within the fourteen (14) days, Respondent may, within seven (7) days of the conclusion of the aforementioned 14-day period, request a determination by the Director of the Emergency and Remedial Response Division, EPA Region 2 (hereinafter, the "Director"). Such a request by Respondent shall be made in writing. The determination of the Director is EPA's final decision.

67. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute under Paragraph 65 or 66, regardless of whether Respondent agrees with the decision. To the extent necessary, all subsequent schedules for work shall be adjusted to reflect and be consistent with EPA's final decision on the dispute. If Respondent does not agree to perform or does not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself and seek reimbursement from the Respondent of the costs of that work, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

68. The invocation of dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Respondent under this Consent Order not directly in dispute, unless EPA agrees otherwise. In addition, the invocation of dispute resolution procedures under this Section shall not stay any accrual of stipulated penalties unless EPA agrees otherwise; provided, however, that: (a) during the pendency of the dispute resolution process under this Section, EPA will not issue a demand for stipulated penalties regarding an obligation that is directly affected by the dispute; (b) after the conclusion of the dispute resolution process under this Section, EPA will not issue a demand for stipulated penalties for noncompliance during the dispute resolution process with an obligation that was directly affected by the dispute if the final resolution of the dispute was one which comports with the position Respondent was taking during the dispute resolution process; and (c) stipulated penalties regarding an obligation that is directly affected by the dispute shall not continue to accrue during the period, if any, beginning on the 8th day after the date that the matter in dispute is fully presented to the EPA decisionmaker under Paragraph 65 or 66, above, and ending when said decisionmaker issues her/his final decision.

XVII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

69. For each day that Respondent fails to comply with any of the requirements of this Consent Order, EPA may assess, and if so, Respondent shall pay, stipulated penalties in accordance with the terms below. For purposes of this paragraph, the term "fails to comply" shall include, *inter alia*, failure by the Respondent to submit an original or revised deliverable to EPA in accordance with the terms of this Consent Order or within the time limits set forth in or established pursuant to this Consent Order, failure to revise a deliverable to fully conform with EPA's comments in accordance with the terms of this Consent Order, and submittal of an original deliverable which is of such poor quality as to not even qualify as a bona fide submission. Stipulated penalties begin to accrue on the day that performance is due or a violation occurs, and shall continue to accrue, except as provided in Paragraphs 68 and 75, until the noncompliance is corrected, or until EPA notifies Respondent in writing that EPA is assuming responsibility for the portion of work for which penalties are accruing, whichever occurs earlier. Where a revised submission by Respondent is required by EPA, stipulated penalties shall continue to accrue until a deliverable satisfactory to EPA is produced, except as provided in Paragraph 68. EPA will provide written notice of those violations for which it is assessing stipulated penalties; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within thirty (30) days of receipt of a demand letter from EPA or within 30 days of completion of dispute resolution under Section XVI (should the dispute resolution procedures be timely invoked by Respondent with respect to an EPA assessment of stipulated penalties), whichever is later.

70. Respondent shall pay interest on any unpaid balance of stipulated penalties, which shall begin to accrue at the end of the applicable 30-day period referred to in Paragraph 69, above, at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

71. Payment of any such penalty to EPA shall be made by Electronic Funds Transfer ("EFT") in the same manner as provided by Paragraph 83 below. Respondent shall provide notice of such payment by letter referencing the name of the Site ("Hudson River PCBs Site") and the index number of this Consent Order to the EPA addressees provided in Paragraphs 44 and 83.

72. For all violations of this Consent Order, except as provided in Paragraph 73 below, stipulated penalties shall accrue as follows:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1 st through 7 th day	\$1,000.00
8 th through 15 th day	\$2,000.00
16 th through 28 th day	\$3,000.00
29 th day and beyond	\$7,000.00

73. For the monthly progress reports required pursuant to Paragraph 43, above, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first week of noncompliance;

\$1,000 per day, per violation, for the 8th through 15th day of noncompliance; \$1,500 per day, per violation, for the 16th day through the 28th day of noncompliance; and \$4,000 per day, per violation, for the 29th day of noncompliance and beyond.

74. Respondent may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XVI herein. Penalties shall accrue (except as provided in Paragraphs 68 and 75) but need not be paid during the dispute resolution period. If Respondent does not prevail upon resolution, all accrued penalties shall be due to EPA within 30 days of resolution of the dispute, subject to the provisions of Paragraph 68. If Respondent prevails upon resolution, no penalties shall be paid.

75. If actions or inactions by an independent analytical laboratory retained by, but not affiliated with, Respondent prevent Respondent's compliance with a requirement of this Consent Order relating to the schedule for provision of analytical data to EPA, and Respondent demonstrates to EPA that it has exercised its best efforts to comply with that requirement, stipulated penalties for that noncompliance will not accrue under this Section for the first fourteen (14) calendar days of the delay, provided that the delay is due solely to the actions or inactions of the independent analytical laboratory. For purposes of this paragraph, "best efforts" includes best efforts to anticipate any such delay and cure or minimize any such delay.

76. A failure by Respondent to submit a particular deliverable, or provide a particular notification, to EPA and the State in accordance with this Consent Order or any schedule approved pursuant to this Consent Order shall constitute one violation rather than two separate violations of this Consent Order for purposes of calculating stipulated penalties.

77. The stipulated penalties provisions of this Consent Order do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondent's failure to comply with this Consent Order, including but not limited to taking over all or part of the work required by this Consent Order. Payment of stipulated penalties does not alter Respondent's obligation to complete performance under this Consent Order.

XVIII. FORCE MAJEURE

78. "Force majeure", for purposes of this Consent Order, is defined as any event arising from causes beyond the control of Respondent and of any entity controlling, controlled by, or under common control with Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order notwithstanding Respondent's best efforts to avoid the delay. The requirement that Respondent exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure events and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are

not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Consent Order or the financial difficulty of Respondent to perform such work.

79. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, Respondent shall notify by telephone the EPA Project Coordinators (or, in their absence, the Team Leader of the Hudson River Team, Emergency and Remedial Response Division, EPA Region 2), and the State, within forty-eight (48) hours of when Respondent or its agents, contractors or representatives knew or should have known that the event might cause a delay. Within five (5) business days thereafter, Respondent shall provide in writing, with a copy to the State: the reasons for the delay; Respondent's rationale for interpreting the circumstances as constituting a force majeure event (should that be Respondent's claim); the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Such written notice shall be accompanied by all available pertinent documentation, including, but not limited to, third-party correspondence. Respondent shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure.

80. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Consent Order that are directly affected by the force majeure event will be extended for a period of time, determined by EPA, not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation.

81. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event or if Respondent objects to the length of the extension determined by EPA pursuant to Paragraph 80, above, the issue shall be subject to the dispute resolution procedures set forth in Section XVI of this Consent Order. In order to qualify for a force majeure defense, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise or is exercising due diligence by using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraph 79 .

82. Should Respondent carry the burden set forth in Paragraph 81, the delay at issue shall not be deemed a violation of the affected obligation of this Consent Order.

XIX. REIMBURSEMENT

83. a. Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay to EPA \$5,000,000 in partial reimbursement of EPA's Past Response Costs. For purposes of this Consent Order, the term "Past Response Costs" shall mean all costs that EPA (or the U.S. Department of Justice on behalf of EPA) paid, prior to the effective date of this Consent Order, for response actions with respect to the Site, and all interest on such costs. Respondent's payment pursuant to this subparagraph shall be made by Electronic Funds Transfer to EPA at Mellon Bank, Pittsburgh, Pennsylvania. To make payment via EFT, Respondent shall provide the following information to its bank:

- . Amount of payment
- . Title of Mellon Bank account to receive the payment: **EPA**
- . Account code for Mellon Bank account receiving the payment: **9108544**
- . Mellon Bank ABA Routing Number: **043000261**
- . Name of Respondent: **General Electric Company**
- . Index number of this Consent Order: **CERCLA-02-2002-2023**
- . Site/spill identifier: **02-84**

Along with this information, Respondent shall instruct its bank to remit payment in the required amount via EFT to EPA's account with Mellon Bank. To ensure that Respondent's payment is properly recorded, Respondent shall send a letter to EPA within one week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the Consent Order Index Number, and Respondent's name and address. Such letter shall be sent to the EPA addressees listed in Paragraph 44 above and to:

Chief, Financial Management Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway, 29th Floor
New York, NY 10007-1866.

b. Upon EPA's receipt of Respondent's payment of \$5,000,000 in accordance with subparagraph a., Respondent's potential liability to the United States for Past Response Costs shall be reduced by \$5,000,000. The United States reserves all of its rights to seek recovery from Respondent of all Past Response Costs not reimbursed by Respondent, and Respondent reserves any defenses it has against such a claim.

84. Respondent also hereby agrees to reimburse EPA for all Future Response Costs paid by EPA for oversight and other activities conducted on or after the effective date of this Consent Order; provided, however, that Respondent is not obligated under this Consent Order to reimburse more than \$2,625,000 of Future Response Costs. EPA will periodically send billings to Respondent for Future Response Costs. EPA's billings will be accompanied by a printout of cost data in EPA's financial management system, as well as a brief narrative statement of the activities performed. For purposes of

this paragraph, "Future Response Costs" means costs paid by EPA in overseeing Respondent's implementation of the requirements of this Consent Order (and in paying for the State's participation in such oversight), and activities performed by EPA as part of the work required by this Consent Order, and community relations activities related to the work required under this Consent Order, as well as any costs incurred by the United States in obtaining access for the work required hereunder (provided that Respondent will not be required under this Paragraph to reimburse the United States for those amounts paid to a party from whom access is sought which, taking into account the transaction costs likely to be incurred in obtaining such access by judicial or other means, are out of proportion with the fair market value of the property interest or access rights obtained). Such costs will include both direct and indirect costs, including but not limited to, any time and travel costs of personnel, contractor costs (including annual allocation costs), cooperative agreement costs, costs of reviewing data submitted by Respondent under this Consent Order, costs of compliance monitoring, including the collection and analysis of split samples, discussions regarding disputes that may arise as a result of this Consent Order, and costs of redoing any of Respondent's tasks. Respondent shall, within thirty (30) days of receipt of each such billing, remit payment of the billed amount via EFT to EPA at Mellon Bank, Pittsburgh, Pennsylvania, in accordance with the EFT payment procedures set forth in Paragraph 83.a.. To ensure that Respondent's payment is properly recorded, Respondent shall send a letter to EPA within one week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the Consent Order Index Number, and Respondent's name and address. Such letter shall be sent to the EPA addressees listed in Paragraph 44 above and to:

Chief, Financial Management Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway, 29th Floor
New York, NY 10007-1866

85. As stated in Paragraph 84, above, under this Consent Order, Respondent does not agree to pay more than \$2,625,000 of Future Response Costs. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA for recovery of all response costs, including but not limited to Future Response Costs, not reimbursed by Respondent under this Consent Order. Nothing in this Consent Order is intended to, or does, affect the right of the State of New York to bring an action against Respondent under Section 107(a) of CERCLA for recovery of its costs. In addition, nothing in this Consent Order is intended to, or does, waive any right, benefit, or obligation that Respondent has under the September 8, 1976 Final Order and Agreement executed by NYSDEC and Respondent.

86. All payments by Respondent pursuant to Paragraphs 83 and 84 shall be deposited in the Hudson River PCBs Site Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

87. Within fourteen (14) days of receipt of a bill under Paragraph 84, Respondent may invoke the dispute resolution procedures of Section XVI of this Consent Order with respect to the bill. However, Respondent agrees to limit any disputes concerning such costs to mathematical errors and the inclusion of costs which are inconsistent with the NCP or are outside the scope of Paragraph 84, above. Respondent shall identify all contested costs and the basis of its objection. All undisputed costs shall be remitted by Respondent to EPA in accordance with the schedule set forth above. All disputed costs shall be paid by Respondent into an interest-bearing escrow account at the time of invocation of dispute resolution by Respondent. Respondent shall send to EPA a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Within 15 days of the resolution of the dispute under Section XVI above, Respondent shall remit to EPA, in the manner described in Paragraph 84, the amount agreed upon by the parties under Section XVI or, if no agreement is reached, then the amount directed by the Director (with accrued interest). The balance of the escrow account, if any, may be disbursed to Respondent. Respondent bears the burden of establishing an EPA mathematical error or the inclusion of costs which are inconsistent with the NCP or are outside the scope of Paragraph 84.

88. Respondent shall pay interest on any amounts overdue under Paragraphs 83, 84 or 87. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).

XX. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

89. EPA reserves the right to bring an action against Respondent (and/or any other potentially responsible parties) under Section 107 of CERCLA for recovery of all response costs that have been or will be incurred by the United States in connection with the Site that are not reimbursed by Respondent, including, but not limited to, Past Response Costs, Future Response Costs, any costs incurred in the event that EPA performs the work required by this Order or any part thereof, and any other future costs incurred by the United States in connection with response activities pertaining to the Site.

90. EPA reserves the right to bring an action against Respondent to enforce the requirements of this Consent Order, to collect stipulated penalties assessed pursuant to Section XVII of this Consent Order, and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, or any other applicable provision of law.

91. Except as expressly provided in this Consent Order, each party reserves all rights and defenses it may have. Nothing in this Consent Order shall be construed to limit, in any way, EPA's response or

enforcement authorities including, but not limited to, the right to issue other administrative orders to Respondent regarding additional sediment sampling or any other activity, or to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages. Respondent is not released from liability, if any, for the performance of the design or implementation of EPA's February 2002 selected remedy for the Site.

XXI. DISCLAIMER

92. Respondent's consent to this Consent Order, participation in this Consent Order, and performance of actions under this Consent Order shall not constitute or be construed as an agreement with or an admission of the Findings and Conclusions of Law contained in Section V herein or of any fault, fact, or liability with respect to the Site. The participation of Respondent in this Consent Order shall not be admissible in evidence against Respondent in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Consent Order or a judgment relating to it. Subject to Paragraph 93, Respondent retains its rights to assert claims against other parties with respect to the Site. However, Respondent agrees not to contest the validity or the terms of this Consent Order in any action brought by the United States, including EPA, to enforce its terms.

XXII. OTHER CLAIMS

93. In entering into this Consent Order, Respondent waives any right to seek reimbursement, under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), for any of the costs incurred by Respondent in carrying out this Consent Order. Respondent also waives any right to present a claim with respect to such costs under Section 111 or 112 of CERCLA, 42 U.S.C. § 9611 or § 9612, or under any other provision of law for costs incurred in the performance of this Consent Order. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Respondent further waives all other statutory and common law claims against EPA, including, but not limited to, contribution claims and counterclaims, regarding implementation of the work required under this Consent Order.

94. Nothing in this Consent Order shall constitute or be construed as a release from, or as otherwise affecting, any claim, cause of action, or demand in law or equity that Respondent or EPA may have against any person not a signatory to this Consent Order for any liability that such person may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site, or otherwise relating in any way to the Site.

XXIII. INSURANCE AND INDEMNIFICATION

95. For the duration of this Consent Order, Respondent shall satisfy, and shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and worker's compensation insurance for all persons performing work on behalf of Respondent, in furtherance of this Consent Order.

96. Respondent agrees to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees, agents, servants, receivers, successors, or assignees, or any other persons acting on behalf of Respondent, including, but not limited to, firms, corporations, parents, subsidiaries and contractors, in carrying out activities under this Consent Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondent in carrying out activities under this Consent Order.

97. Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions by Respondent or Respondent's officers, directors, employees, agents, contractors, consultants, receivers, trustees, successors or assigns in carrying out any action or activity pursuant to this Consent Order.

XXIV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

98. The effective date of this Consent Order shall be the third (3rd) business day after the date that it is signed by the Regional Administrator of EPA Region 2 or her delegatee, after having been executed by Respondent.

99. This Consent Order may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA.

100. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligations to obtain such formal approval as may be required by this Consent Order.

XXV. TERMINATION AND SATISFACTION

101. Upon completion of all activities required under this Consent Order, Respondent shall submit to EPA a written certification, with a supporting demonstration, that all activities required under this Consent Order - including payment of costs in accordance with Section XIX of this Consent Order, and payment of any stipulated penalties demanded by EPA - have been performed. EPA will make

best efforts to respond to Respondent's submission within ninety (90) days after its receipt. If EPA disapproves the certification, it will, in writing, identify each activity that it considers to be incomplete and the reasons for considering the activity incomplete. EPA will not in such notice require Respondent to perform activities outside the scope of this Consent Order. In the event that EPA notifies Respondent that it considers an activity incomplete, Respondent shall complete such activity (subject to its right to invoke dispute resolution under Section XVI of this Consent Order), and upon completion thereof, shall submit another certification of completion, which shall be subject to the same procedures specified above. This Consent Order shall terminate upon EPA's written approval of Respondent's certification of completion. EPA's written approval shall not, however, terminate Respondent's obligation to comply with any of Respondent's remaining obligations under this Consent Order, including record preservation and the payment of any costs specified in Section XIX of this Consent Order which, at the time of such approval, have yet to be paid by Respondent.

102. The certification referred to in Paragraph 101, above, shall be signed by an authorized representative of Respondent. Such representative shall make the following attestation:

"I certify that under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

Hudson River PCBs Superfund Site
Administrative Order on Consent Index No. CERCLA-02-2002-2023

U.S. ENVIRONMENTAL PROTECTION AGENCY

JANE M. KENNY
Regional Administrator
U.S. Environmental Protection Agency
Region 2

Date

CONSENT

The Respondent identified below has had an opportunity to confer with EPA regarding this Consent Order. Respondent hereby consents to the issuance of this Consent Order and to its terms. The individual executing this Consent Order on behalf of the Respondent certifies under penalty of perjury under the laws of the United States that he or she is fully and legally authorized to agree to the terms and conditions of this Consent Order and to bind such Respondent thereto.

GENERAL ELECTRIC COMPANY

By: _____
Signature

Date: _____

Printed Name

Title

APPENDIX 1

