

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:
Hudson River PCBs Superfund Site

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

GENERAL ELECTRIC CO.,

Respondent.

U.S. EPA Region 2
CERCLA Docket No. 02-2007-2008

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C.
§§ 9604, 9606(a), 9607 and 9622

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and by General Electric Co. (“GE” or “Respondent”), a New York corporation. This Settlement Agreement provides for the performance of a removal action by Respondent and the reimbursement of certain costs incurred by EPA in connection with the Hudson River PCBs Superfund Site (“Site”), which is located in the State of New York.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Federal Register 2926, January 29, 1987), further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C, and redelegated in EPA Region 2 to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated November 23, 2004.

3. EPA has notified the New York State Department of Environmental Conservation (“NYSDEC”) of this Settlement Agreement pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any issues of law, fact or liability. By entering into this Settlement Agreement, Respondent does not admit any liability to EPA or any other person or entity, and Respondent retains the right to controvert in any proceedings of any kind, with any parties, other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement shall apply to and be binding upon EPA and 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 Settlement Agreement shall take all necessary steps to accomplish the performance of said Work in accordance with this Settlement Agreement. The signatory to this Settlement Agreement on behalf of Respondent certifies that he/she is authorized to execute and legally bind Respondent to this Settlement Agreement. No change in the ownership or corporate status or other control of Respondent or of its facilities or the Site shall alter Respondent’s responsibilities under this Settlement Agreement.

6. Respondent shall provide a copy of this Settlement Agreement to its Project Coordinator and all contractors, subcontractors, laboratories, and consultants which are retained to conduct any Work performed under this Settlement Agreement, within fourteen (14) days after the effective date of this Settlement Agreement or the date of retaining their services, whichever is later. Respondent shall condition any such contracts upon satisfactory compliance with this Settlement Agreement and all applicable laws and regulations. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Settlement Agreement and for ensuring that its Project Coordinator, employees, contractors, consultants, subcontractors and agents comply with this Settlement Agreement.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices 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. §§ 9601-9675.

b. "Consent Decree" shall mean the Consent Decree between the United States and GE which was lodged in October 2005 in the case, U.S. v. General Electric Co., Civil Action 05-CV-01270 (NDNY)(DNH/RFT), and entered by the Court on November 2, 2006.

c. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. 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.

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

e. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

f. "Implementation Plan" shall mean Respondent's "Short-Term Response Action Implementation Plan, Upper Hudson River Floodplain," dated June 14, 2007, and approved by EPA on June 19, 2007 (attached hereto and incorporated herein as Appendix C).

g. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, including any amendments thereto.

- h. "NYSDEC" shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.
- i. "NYSDOH" shall mean the New York State Department of Health and any successor departments or agencies of the State.
- j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.
- k. "Party" or "Parties" means the United States Environmental Protection Agency and/or Respondent.
- l. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on February 1, 2002 by the Administrator of EPA and the Regional Administrator of EPA Region 2, including all attachments thereto.
- m. "Removal Response Costs" shall mean the costs not inconsistent with the NCP, paid by EPA with respect to the Work Areas on or after the effective date of this Settlement Agreement, in connection with: (a) reviewing or developing plans, reports or other items pursuant to this Settlement Agreement, verifying or overseeing the Work, or otherwise implementing or overseeing this Settlement Agreement; (b) obtaining access for the Work required hereunder; (c) conducting activities pursuant to Paragraph 72 (Emergency Response); and (d) conducting any other activities related to the Work, including but not limited to community relations activities related to the Work. Removal Response Costs include all direct and indirect costs, including but not limited to, any time and travel costs of personnel, contractor costs (including annual allocation costs), costs of reviewing data submitted by Respondent under this Settlement Agreement, costs of compliance monitoring, including the collection and analysis of split samples, discussions regarding disputes that may arise as a result of this Settlement Agreement, and costs of redoing any of Respondent's tasks.
- n. "Respondent" shall mean General Electric Company.
- o. "Section" shall mean a portion of this Settlement Agreement identified by an upper-case Roman numeral and includes one or more Paragraphs.
- p. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Paragraph 107). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.
- q. "Site" shall mean the Hudson River PCBs Superfund Site, located in the State of New York.
- r. "State" shall mean the State of New York, including NYSDEC and NYSDOH.

s. “United States” shall mean the United States of America.

t. “Waste Material” shall mean (i) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any “pollutant or contaminant” under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (iii) any “solid waste” under Section 1004(27) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6903(27).

u. “Work” shall mean all activities Respondent is required to perform under this Settlement Agreement, except those required by Paragraph 65 (Record Preservation).

v. “Work Areas” shall mean the properties identified in the Work Plan at which the Work will be conducted under this Settlement Agreement.

w. “Work Plan” shall mean Respondent’s *Response Action Work Plan, Upper Hudson River*, dated December 2006, together with EPA’s January 22, 2007 comments and approval letter (attached hereto and incorporated herein as Appendix B).

IV. EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. 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.

9. 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 C.F.R. Part 300, Appendix B.

10. 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 determine if an upgrade or alteration of the facilities was needed.

11. 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 1990 consent decree.

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 (“RI”) and Feasibility Study (“FS”) 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 FS 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. On July 23, 2002, EPA signed Administrative Order on Consent Index No. CERCLA-02-2002-2023, pursuant to which Respondent agreed, *inter alia*, to conduct sampling, analysis, and geophysical characterization of Hudson River sediments.

16. On August 13, 2003, EPA signed Administrative Order on Consent for Remedial Design and Cost Recovery, Index No. CERCLA-02-2003-2027, pursuant to which Respondent agreed, *inter alia*, to perform remedial design activities needed for implementation of the remedial action selected in the ROD.

17. On October 6, 2005, the United States lodged a Consent Decree between the United States and GE, providing for, *inter alia*, GE’s performance of Remedial Action activities with respect to the Site. Following a public comment period regarding the Consent Decree, the United States requested that the district court enter the Consent Decree. Thereafter, the Consent Decree was entered by the United States District Court on November 2, 2006.

18. In addition to the requirements for dredging of PCB-containing sediments from the Upper Hudson River, the ROD at page 2 states that “[c]oncerns related to possible exposure of residents and ecological receptors to PCB contamination in the floodplains will be further evaluated concurrent with the design phase of this project in coordination with New York State.”

19. In preparing to conduct the floodplain evaluation called for in the ROD, as summarized below, EPA reviewed floodplain sampling data and other documents in EPA’s possession from a number of previous investigations that have occurred within the Upper Hudson River floodplain. The first group of floodplain sampling data stems from a series of sampling events on Rogers Island. Rogers Island is roughly 65 acres in size and is located in Fort Edward approximately one-quarter of a mile south of the former Fort Edward dam. The island’s northern end is residential while the southern end is largely undeveloped. Much of Rogers Island, particularly the southern portion, is within the 10- and 100-year floodplains. As a result, flooding occurs periodically.

20. Prior to and during the period of GE’s discharge of PCBs into the Hudson River, portions of Rogers Island were used for disposal of dredge spoils generated during navigational dredging. In

1963, material was dredged from the east channel and reportedly disposed of on the southern end and southeastern shore of Rogers Island.

21. In 1973, the Fort Edward Dam was removed due to its deteriorating condition. The removal of the dam resulted in significant downriver shifting of PCB-contaminated sediment deposits previously held behind the dam. In response to the inundation of the river channels east and west of Rogers Island due to the dam removal, dredging was conducted in 1974-75 and 1977-78. During these efforts, dredging operations occurred around the shoreline and dredged sediments were staged at several locations on and near the island prior to off-site disposal.

22. In 1990, NYSDEC collected and analyzed 56 soil borings from a number of low-lying shoreline areas along the perimeter of Rogers Island. Samples were found to contain PCBs ranging from non-detect to 100 parts per million (“ppm”). (All concentrations herein are in total PCBs). In 1992, NYSDOH collected surface soil samples (0-4"deep) on Rogers Island which indicated PCBs at varying levels. The results in the northern end ranged from 0.5 ppm to 8.5 ppm while samples along the south shore ranged from 4.5 ppm to 384 ppm.

23. In October 1998, EPA initiated a soil investigation on Rogers Island after a report that earthmoving activities may have been spreading PCB-contaminated soils. Over 2,000 soil samples were collected across the island. The sampling results indicated the presence of PCBs in soil at a limited number of residences on the northern portion of the island, and along the shoreline of the island’s southern portion. Results in the northern end ranged from non-detect to 367 ppm, while results in the southern end ranged from non-detect to 1,800 ppm. Lead was also found in soil at several residences. EPA developed a human health risk assessment to characterize the potential risk to human health posed by the presence of the PCBs and other constituents in soil and presented those findings in a Human Health Risk Assessment (“HHRA”) in July 1999. Because the HHRA considered only current land use, EPA determined that no removal activities were warranted in the southern, undeveloped portion of the island unless a change in land use occurred. A series of public outreach efforts were conducted with affected residents and local officials. From October 1999 to December 1999, EPA excavated and removed approximately 3,530 tons of PCB-impacted soil and 910 tons of lead-impacted soil from properties at the northern end of the island. The affected properties were restored during 2000 and 2001.

24. Floodplain soil samples were also collected by SEA Consultants, Inc. (“SEAC”) under contract to the National Oceanic and Atmospheric Administration (“NOAA”) and in association with the NYSDEC in September and October 2000. As part of this effort, a total of 179 floodplain soil samples (includes duplicates) were collected from 81 locations on 11 transects along the Upper Hudson River from Fort Edward to Stillwater, New York (i.e., within River Sections 1, 2, and 3, as designated in the ROD). At each location along the transects a surface soil sample was collected from the interval between ground surface and 15 cm below ground surface (“bgs”). At two locations along each transect (locations were selected in the field by SEAC personnel), the interval between 15 cm and 55 cm bgs was sampled at 10-cm intervals using a coring device. NOAA sampling sites focused on wooded and wetland areas of low

topographic relief. Soil samples were analyzed for PCBs, total organic carbon (“TOC”), and grain size. The results of the 2000 NOAA floodplain soil sampling ranged from non-detect to 360 ppm PCBs.

25. After reviewing the floodplain data referred to in Paragraphs 22-24 above, EPA developed a floodplain soil sampling program for River Section 1, River Section 2, and the upper portion of River Section 3. The objectives and approach of EPA’s sampling program were described in the October 2004 *Draft Field Sampling Plan for Floodplain Soil Sampling, Hudson River PCBs Site, New York* (Weston Solutions, Inc., 2004). The approach included 95 transects located along the Hudson River from Fort Edward to Schuylerville (48 on the west side of the river and 47 on the east side of the river). Fifty-eight of the 95 transects were located adjacent to sediment areas that have been historically referred to as NYSDEC sediment hot spots, and six were located on or near dredged material disposal sites. Samples were sought from a range of property types, though the majority of properties were zoned Residential or Public Service. Samples were targeted for collection from the 0- to 6-inch interval bgs at all locations, and from the 6- to 12-inch interval bgs at select locations (generally limited to the two transect positions nearest the river). Pursuant to this plan, EPA collected 688 floodplain soil samples in November 2004. The results of the sampling were described in the August 2005 *Floodplain Soil Sampling Summary Report, Hudson River PCBs Site, New York* (Weston Solutions, Inc., 2005). The PCB results ranged from non-detect to 860 ppm. Of the samples, 70% were below 1 ppm, 19% were within the range from 1 to 10 ppm, 8% were in the range from 10 to 50 ppm, and 2.5% were greater than 50 ppm.

26. During the summer of 2005, EPA conducted public outreach activities to provide information regarding its floodplain sampling efforts. Among other things, EPA met with owners of property on which sampling was conducted and also provided information to members of the Community Advisory Group (“CAG”) for the Site.

27. After being provided with the results of EPA’s 2004 floodplain sampling, GE advised EPA of its willingness to perform additional floodplain investigation and cleanup work. On June 15, 2005, GE provided a draft Floodplains Data Collection (“FDC”) Work Plan to EPA for review and comment. GE submitted a final FDC Work Plan to EPA on October 10, 2005 and EPA approved that work plan on October 13, 2005. As stated in the FDC Work Plan, the objectives were to collect additional data that can be used in conjunction with the existing EPA and NOAA data to: better understand the nature and extent of PCBs in select areas sampled by EPA; assess the current land use and the potential for human exposure pathways in a subset of the locations sampled by EPA; evaluate the mechanisms influencing the distribution of PCBs in areas sampled by EPA; provide supporting information to determine the need for, and focus the scope of, future investigation and/or response actions on the properties sampled; and provide additional data to focus the scope of future floodplain investigation activities.

28. In March 2006, GE submitted the draft *Data Summary Report, Floodplain Data Collection Activities, Upper Hudson River* (Data Summary Report). The report documents the results of the GE FDC activities conducted from June to November, 2005 in accordance with the EPA-

approved FDC Work Plan. The activities included field reconnaissance, floodplain soil sampling and laboratory analysis, and topographic mapping. A total of 542 samples were taken. The PCB results ranged from non-detect to 1,000 ppm. Of the samples, 63% were below 1 ppm, 17% were within the range from 1 to 10 ppm, 12% were in the range from 10 to 50 ppm, and 8% were greater than 50 ppm. In April 2006, EPA began conducting public outreach activities to update the public regarding the most recent floodplain sampling efforts. In particular, property owners were provided with sampling results and EPA and GE met with property owners where sampling results indicated that further work may be needed. Additional outreach was also conducted, including providing information to members of the CAG.

29. PCBs are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

30. The Site constitutes a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

31. 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 and the depositing of such PCBs onto floodplain soils.

32. 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).

33. Respondent has discussed with EPA the basis for this Settlement Agreement and its terms.

V. EPA’S DETERMINATIONS

34. EPA has determined that the conditions present at those floodplain areas which are the subject of this Settlement Agreement constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 C.F.R. Part 300. These factors include, but are not limited to, the following conditions:

- a. actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants;
- b. actual or potential contamination of drinking water supplies or sensitive ecosystems;
- c. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

- d. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; and
- e. the availability of other appropriate federal or state response mechanisms to respond to the release.

35. EPA has further determined that the actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

36. EPA has further determined that the actions required by this Settlement Agreement are necessary to protect the public health or welfare or the environment, are in the public interest, and are consistent with CERCLA and the NCP, 40 CFR Part 300.

VI. SETTLEMENT AGREEMENT AND ORDER

37. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and other information available to EPA, it is hereby ordered and agreed that Respondent shall undertake a removal action at the Site and reimburse EPA for Removal Response Costs in accordance with the requirements specified below.

Designation of Contractor and Project Coordinator

38. Respondent has designated the following individual as its Project Coordinator with respect to the Work Areas and the work required under this Settlement Agreement:

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. Respondent's Project Coordinator shall be responsible for administration of all actions for Respondent required by this Settlement Agreement. To the greatest extent possible, Respondent's Project Coordinator or designee shall be present on the Work Areas or readily available during field work under this Settlement Agreement. 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.

39. Respondent shall retain one or more contractors to perform the Work. Respondent shall notify EPA of the name and qualifications of any currently retained contractor(s) within fourteen (14) days of the effective date of this Settlement Agreement. Respondent shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform Work under this Settlement Agreement at least ten (10) days prior to commencement of such Work. With respect to any contractor retained by Respondent, Respondent shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E-4-1994, "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"). The QMP shall be prepared in accordance with specifications set forth in "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

40. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed by Respondent to conduct the Work. If EPA disapproves of any of Respondent's proposed contractors or subcontractors to conduct the Work, Respondent shall propose a different contractor or subcontractor within seven (7) days of EPA's disapproval.

Description of Work

41. Respondent shall complete all of the Work required by the Work Plan and Implementation Plan, in accordance with the terms set forth therein. The tasks set forth in the Work Plan and Implementation Plan shall be completed in accordance with the schedule contained therein, unless the schedule is modified with EPA's approval.

42. At the time of completion of all Work required by this Settlement Agreement, demobilization shall include proper disposal or decontamination of protective clothing, remaining laboratory samples taken pursuant to this Settlement Agreement, and any equipment or structures constructed to facilitate the Work performed under the Settlement Agreement.

On-Scene Coordinator, Other Personnel, and Modifications to EPA-Approved Work Plan

43. All Work required of Respondent under the terms of this Settlement Agreement shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, and local governments, and all Work conducted pursuant to this Settlement Agreement shall be performed in accordance with prevailing professional standards.

44. EPA has designated the following individuals as its Project Coordinators with respect to the Work:

Benny Conetta
U. S. Environmental Protection Agency Region 2
Emergency and Remedial Response Division

290 Broadway, 19th Floor
New York, New York 10007-1866
(212) 637-3030
Conetta.Benny@epa.gov

Dave Rosoff
On-scene Coordinator (“OSC”)
United States Environmental Protection Agency Region 2
Emergency Remedial and Response Division
Removal Action Branch
2890 Woodbridge Avenue, Building 209
Edison, New Jersey 08837
(732) 906-6879
(908) 420-4465 (cell)
(732) 906-6182 (fax)
Rosoff.David@epa.gov

45. EPA and its authorized representatives, including the OSC, will conduct oversight of the implementation of this Settlement Agreement. Under this Settlement Agreement, EPA's Project Coordinators shall have the authority lawfully vested in a Remedial Project Manager and On-Scene Coordinator by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other response action undertaken by EPA or Respondent at the Work Areas under this Settlement Agreement; provided, however, that any such other response actions do not expand the scope of the Work Plan to include property outside the Work Areas, unless mutually agreed to by EPA and Respondent. The absence of an EPA Project Coordinator from the areas where response actions are being taken pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of work.

46. As appropriate during the course of implementation of the Work required of Respondent pursuant to this Settlement Agreement, Respondent or its consultants or contractors, acting through Respondent's Project Coordinator, may confer with EPA concerning the required Work. Based upon new circumstances or new information not in the possession of Respondent or EPA on the date of this Settlement Agreement, Respondent's Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved Work Plan. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated into and an enforceable part of this Settlement Agreement and shall be implemented by Respondent.

Plans and Reports Requiring EPA Approval; Dispute Resolution

47. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement, Respondent shall have fourteen (14) days from the receipt of written notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written

document to EPA for approval, unless a shorter or longer period is specified in the notice, provided, however, that any such modifications do not expand the scope of the Work Plan to include property outside the Work Areas, unless mutually agreed to by EPA and Respondent. 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 statement to that effect.

48. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement is disapproved by EPA, even after being resubmitted following Respondent's receipt of EPA's comments on the initial submittal, Respondent shall be deemed to be out of compliance with this Settlement Agreement. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondent to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs from Respondent of doing so. Respondent shall implement any such item(s) as amended or developed by EPA.

49. Respondent may invoke the following dispute resolution procedures in the event of a dispute between Respondent and EPA regarding EPA's disapproval of, or required revisions to, the Work Plan, Implementation Plan, Final Report, a bill sent to Respondent pursuant to Paragraph 74, below, or a demand for stipulated penalties pursuant to Paragraph 81, below:

- a. Respondent shall notify EPA's Team Leader of the Hudson River Team, in writing, of its objections within fourteen (14) days of receipt of the disapproval notice or required revisions, or, in the case of a bill for Removal Response Costs or a demand for stipulated penalties, within twenty-one (21) days of receipt of the bill or demand. 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, or such further time as may be agreed to by EPA and Respondent, to reach agreement. If an agreement is not reached within that period, Respondent may, within seven (7) days of the conclusion of that period, request a determination on the matter in dispute by the Director of the Emergency and Remedial Response Division, EPA Region 2 (hereinafter, the "ERRD Director"). Such a request shall be made in writing. The ERRD Director will issue a determination on the matter in dispute, which determination is EPA's final decision.
- b. There shall be no judicial review of a final EPA decision under Paragraph 49.a., above. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute under Paragraph 49.a., 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 itself conduct the Work or any portion thereof and seek reimbursement from Respondent of the costs thereof, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

- c. Respondent shall not invoke the dispute resolution procedures of Paragraph 49.a. more than once regarding the same issue.
- d. The invocation of dispute resolution procedures under Paragraph 49.a. shall not extend, postpone or affect in any way any obligation of Respondent under this Settlement Agreement not directly in dispute, unless EPA agrees otherwise. In addition, the invocation of dispute resolution procedures under Paragraph 49.a. 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 Paragraph 49.a., 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 Paragraph 49.a., 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 ERRD Director under Paragraph 49.a., above, and ending when the ERRD Director issues her/his final decision.

50. All plans, reports and other submittals required to be submitted to EPA pursuant to this Settlement Agreement, upon approval by EPA, shall be deemed to be incorporated in and an enforceable part of this Settlement Agreement.

Reporting Requirements

51. During implementation of this Settlement Agreement and until all construction activities have been completed, Respondent shall provide bi-weekly written progress reports to EPA which fully describe all actions and activities undertaken pursuant to this Settlement Agreement. The progress reports shall, among other things, (a) describe the actions taken toward achieving compliance with this Settlement Agreement during the reporting period, (b) include all results of sampling and tests and all other data received by Respondent during that period in the implementation of the Work required hereunder, (c) describe all Work that is scheduled for the next reporting period, (d) provide other information relating to the progress of work as is customary in the industry, (e) and 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. Following completion of all construction activities, Respondent shall submit a maintenance and monitoring report annually as described in the Implementation Plan.

52. Respondent shall include in the progress reports required in Paragraph 51, above, a schedule for the field activities which are expected to occur pursuant to this Settlement Agreement during the upcoming period. Respondent shall, in addition, give EPA at least five (5) days advance notice of any change in that schedule; provided, however, that in a given instance, if it is impossible for Respondent to provide such notice, Respondent shall give 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.

53. Within sixty (60) days after completion of all removal activities required under this Settlement Agreement (other than monitoring and maintenance activities), Respondent shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Settlement Agreement. The Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP, entitled "OSC Reports." The Final Report shall include:

- a. a synopsis of all Work performed under this Settlement Agreement;
- b. a detailed description of all EPA-approved modifications to the Work Plan which occurred during Respondent's performance of the Work required under this Settlement Agreement;
- c. a listing of quantities and types of materials removed from the Work Areas or handled at the Work Areas;
- d. a discussion of removal and disposal options considered for those materials;
- e. a listing of the ultimate destination of those materials;
- f. a presentation of the analytical results of all sampling and analyses performed, including QA/QC data and chain of custody records;
- g. accompanying appendices containing all relevant documentation generated during the work, including manifests, if any; and
- h. the following certification signed by a person who supervised or directed the preparation of the Final Report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

54. EPA either will approve the Final Report or will require modifications thereto pursuant to Paragraphs 47 through 50, above.

55. The Final Report referred to in Paragraph 53 above, and other documents submitted by Respondent to EPA which purport to document Respondent's compliance with the terms of this Settlement Agreement shall be signed by a responsible official of Respondent or by the Project Coordinator who has been delegated this responsibility by Respondent and whose qualifications have been found by EPA to be acceptable pursuant to Paragraph 38 of this Settlement Agreement. For purposes of this Paragraph, a responsible official is an official who is in charge of a principal business function.

56. All plans, reports, notices and other documents required to be submitted to EPA pursuant to this Settlement Agreement shall be sent to the following addresses:

As to EPA:

Two (2) copies to:

United States Environmental Protection Agency, Region 2
Emergency and Remedial Response Division
Response and Prevention Branch
2890 Woodbridge Avenue, Building 209
Edison, New Jersey 08837
Attention: Dave Rosoff, On-scene Coordinator
Hudson River PCBs Site (Floodplain)

Three (3) copies (1 unbound) to:

Team Leader, Hudson River Team
Emergency and Remedial Response Division
United States Environmental Protection Agency, Region 2
290 Broadway, 19th Floor
New York, New York 10007-1866

One (1) copy to:

Director, Hudson River Field Office
U.S. Environmental Protection Agency, Region 2
421 Lower Main Street
Fort Edward, New York 12839

One (1) copy to:

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 (Floodplain)

As to the State:

Three (3) copies (1 unbound) to:

Director, Division of Environmental Remediation
New York State Department of Environmental Conservation

625 Broadway, 12th Floor
Albany, New York 12233-7011
Attn: Hudson River PCBs Superfund Site

Two (2) copies to:

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

As to GE: John G. Haggard
GE Project Coordinator
Hudson River Program General Electric Company
320 Great Oaks Office Park, Suite 319
Albany, New York 12203

Lewis S. Streeter
Floodplains Project Manager
General Electric Company
320 Great Oaks Office Park, Suite 319
Albany, New York 12203

Oversight

57. During the implementation of the requirements of this Settlement Agreement, Respondent and its contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondent under this Settlement Agreement, including inspections at the Work Areas and at laboratories where analytical work is being performed hereunder.

58. Respondent and its employees, agents, contractor(s) and consultant(s) shall cooperate with EPA in its efforts to oversee Respondent's implementation of this Settlement Agreement.

Community Relations

59. Respondent shall cooperate with EPA in providing information relating to the Work required hereunder to the public. As requested by EPA, Respondent shall participate in the preparation of all appropriate information disseminated to the public; and participate in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Work Areas.

Access to Property and Information

60. EPA and New York State and their designated representatives, including, but not limited to, employees, agents, contractor(s) and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Settlement Agreement. Respondent shall at all times permit EPA, New York State, and their designated representatives full access to and freedom of movement at the Work Areas and any other premises where Work under this Settlement Agreement is to be performed for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Settlement Agreement, verifying the information submitted to EPA by Respondent, conducting investigations relating to contamination at the Work Areas, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Settlement Agreement.

61. To the extent that Work under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain access agreements from the owners or occupants by July 29, 2007. Such agreements shall provide access not only for Respondent, but also for EPA and its designated representatives or agents, as well as NYSDEC and its designated representatives or agents. Such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. If such access agreements are not obtained by Respondent by July 29, 2007, Respondent shall immediately notify EPA of its inability to obtain access and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondent, may perform those response actions with EPA contractors at the property in question, or may terminate the Settlement Agreement if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondent shall perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

62. Upon request, Respondent shall provide EPA with access to all records and documentation related to the conditions at the Work Areas, hazardous substances found at or released from the Work Areas, and the actions conducted pursuant to this Settlement Agreement except for those items, if any, subject to the attorney-client or work product privilege. Nothing herein shall preclude the Respondent from asserting a business confidentiality claim pursuant to 40 C.F.R. Part 2, Subpart B. All data, information and records created, maintained, or received by Respondent or its contractor(s) or consultant(s) in connection with the implementation of the Work under this Settlement Agreement, including, but not limited to, contractual documents, invoices, receipts, work orders and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this Paragraph. EPA shall be permitted to copy all such documents.

63. Upon request by EPA, 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 Settlement Agreement.

64. Notwithstanding any other provision of this Settlement Agreement, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statute or regulations.

Record Retention, Documentation, Availability of Information

65. Respondent shall preserve all information and non-identical, final documents relating to Work performed under this Settlement Agreement, or relating to Waste Materials found on or released from the Work Areas, for ten years after completion of the Work required by this Settlement Agreement. 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. At the end of the ten year period, Respondent shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information (except for privileged records). Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of the Settlement Agreement shall be withheld on the grounds that they are privileged.

66. All documents submitted by Respondent to EPA pursuant to this Settlement Agreement shall be available to the public unless identified as confidential by Respondent pursuant to 40 CFR Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to NYSDEC, and NYSDEC may make those documents available to the public unless Respondent conforms with applicable New York law and regulations regarding confidentiality. Respondent shall not assert a claim of confidentiality regarding any information specified under Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604 (e)(7)(F).

Off-Site Shipments

67. Any off-Site transfer, treatment, storage, or disposal of Waste Material from the Work Areas by Respondent must be in compliance with the applicable requirements of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6991, Section 121(d)(3) of CERCLA, 42 U.S.C.

§ 9621(d)(3), the Toxic Substances Control Act, 15 U.S.C. §§ 2601 - 2629, as well as their implementing regulations, and all other applicable laws, including, but not limited to, 40 C.F.R. Parts 262 and 263 and 6 NYCRR Part 372. Any and all off-Site disposal activities conducted by Respondent under this Settlement Agreement shall be performed in conformance with the NCP (including, but not limited to, 40 C.F.R. § 300.440) and any amendments thereto. Respondent shall notify EPA of the names and addresses of all waste treatment, storage, or disposal facilities selected by Respondent to receive Waste Material from the Work Areas. Respondent shall provide such notification to EPA at least five (5) days prior to off-Site shipment of such Waste Material. Following the ultimate disposal of Waste Material, Respondent shall provide to EPA valid Certificates of Disposal from the disposal facilities used for all Waste Material shipped off-Site.

68. If material containing hazardous substances (as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14)) or pollutants or contaminants (as defined in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33)) from the Work Areas is to be shipped to an out-of-state waste management facility, Respondent shall provide prior written notification of such shipment to the appropriate state environmental official in the receiving facility's state (with a copy to the EPA Project Coordinators). However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards. In addition, if material containing PCBs from the Work Areas is to be shipped to an off-site waste management facility within New York State, and if the total volume of all such shipments will be greater than 10 cubic yards, Respondent shall provide prior written notification of all such shipments to the State, with a copy to the EPA Project Coordinators. Respondent shall include in all written notifications pursuant to this Paragraph the following information: (i) the name and location of the facility to which the material is to be shipped; (ii) the type and quantity of the material to be shipped; (iii) the expected schedule for the shipment of the material; and (iv) the method of transportation. Respondent shall provide such notification to the receiving facility's state and to EPA in writing as soon as practicable, but in any event at least ten (10) business days prior to the said shipments. Respondent shall notify the receiving facility's state of major changes in its shipment plan, such as a decision to ship the material to another facility within the same state. Nothing in this Paragraph shall abrogate, supersede or otherwise affect any other obligations of Respondent under federal or state law with respect to the off-site shipment of Waste Material or PCB-containing material.

Compliance With Other Laws

69. All actions required pursuant to this Settlement Agreement shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), and 40 CFR § 300.415(j). In accordance with 40 CFR §300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. (See "Superfund Removal Procedures: Guidance on

the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

70. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work that is not on-Site requires a federal or state permit or approval, Respondent shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, nor shall it be construed to be, a permit issued pursuant to any federal or state statute or regulation.

Emergency Response and Notification of Releases

71. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, telephone number (800) 424-8802, Respondent shall, immediately upon obtaining knowledge of such event, orally notify (a) EPA's Team Leader, Hudson River Team, Emergency and Remedial Response Division, EPA Region 2, (212) 637-3952 (or, in the event of the unavailability of the Team Leader, the EPA Project Coordinators); (b) the NYSDEC Project Manager, Hudson River PCBs Superfund Site, at (518) 402-9676 (or, in the event of the unavailability of the NYSDEC Project Manager, the Chief of NYSDEC's Hudson River Unit at (518) 402-9770); and (c) the NYSDOH Bureau of Environmental Exposure Investigation at (518) 402-7850. Respondent shall also immediately notify the EPA Project Coordinators in writing and shall submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this Paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 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.

72. In the event of any action or occurrence during Respondent's performance of the requirements of this Settlement Agreement 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 take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding Paragraph. Respondent shall take such action in accordance with applicable provisions of this Settlement Agreement including, but not limited to, the Health and Safety Plan. In the event that EPA determines that (a) the activities performed pursuant to this Settlement Agreement, (b) significant changes in conditions at the Work Areas, or (c) emergency circumstances occurring at the Work Areas pose a threat to human health or the environment, EPA may direct Respondent to stop further implementation of any actions pursuant to this Settlement Agreement or to take other and further actions reasonably necessary to abate the threat.

73. Nothing in the preceding Paragraph 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 Work Areas.

Reimbursement of Removal Response Costs

74. Respondent agrees to reimburse EPA for all Removal Response Costs. EPA will periodically send billings to Respondent for such costs. The billings will be accompanied by a printout of cost data in EPA's financial management system. Respondent shall, within thirty (30) days of receipt of each such billing, remit payment via electronic funds transfer ("EFT") 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 Co.**
- . Settlement Agreement Index number: **CERCLA-02-2007-2008**
- . Site/spill identifier: **0284**

The amounts to be paid by Respondent pursuant to this Paragraph shall be deposited in the Hudson River PCBs 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.

75. At the time of each payment, Respondent shall send notice that such payment has been made to the EPA representatives identified in Paragraph 56 and to:

U.S. Environmental Protection Agency
26 W. Martin Luther King Drive
Attention: Joe Doogan, FINANCE
MS: NWD
Cincinnati, Ohio 45268
E-mail (to both): Doogan.Joe@epa.gov
AcctsReceivable.CINWD@epa.gov

Said notice shall include the date of the EFT, the payment amount, the name of this Site, the Index Number of this Settlement Agreement, and the name and address of Respondent.

76. As indicated in Paragraph 49.a., above, Respondent may invoke dispute resolution with respect to a bill under Paragraph 74, above. However, Respondent agrees to limit any disputes concerning such costs to accounting errors and/or the inclusion of costs which are inconsistent

with the NCP or are outside the definition of Removal Response Costs in Paragraph 7.m., above. Respondent shall identify all contested costs and the basis of its objection to each contested cost item. All undisputed costs shall be remitted by Respondent to EPA in accordance with the schedule set forth above. For purposes of this Paragraph, Respondent shall not claim that any of the following constitutes an accounting error: (i) EPA's methodology for calculating indirect costs, as set forth at 65 Fed. Reg. 35341-35345 (June 2, 2000); (ii) any actual or provisional indirect cost rates which are set for EPA Region 2 by EPA's Office of the Comptroller (or similar office) based on the methodology referred to in clause (i); (iii) EPA's methodology for calculating contractor annual allocation costs; and (iv) EPA's use of a provisional annual allocation rate for EPA contractor costs if no final annual allocation rate has been established for a given year and contractor at the time that EPA issues a bill for such contractor costs. 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. Respondent bears the burden of establishing an EPA accounting error or the inclusion of costs which are inconsistent with the NCP or are outside the definition of Removal Response Costs in Paragraph 7.m., above. Within 15 days of the resolution of the dispute under Paragraph 49.a., above, Respondent shall remit to EPA, in the manner described in Paragraphs 74 and 75, the amount agreed upon by the parties under Paragraph 49.a., or, if no agreement is reached, then the amount (if any) directed by the ERRD Director, with accrued interest. The balance of the escrow account, if any, may be disbursed to Respondent.

77. Respondent shall pay interest on any amounts overdue under Paragraph 74 above. Such interest shall begin to accrue on the first day that 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.

Force Majeure

78. "Force majeure", for purposes of this Settlement Agreement, 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 Settlement Agreement notwithstanding Respondent's best efforts to avoid the delay. The requirement that Respondent exercises "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event 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 Settlement Agreement 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 Settlement Agreement, whether or not caused by a force majeure event, Respondent shall

orally notify the On-scene Coordinator or, in his absence, the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA Region 2 at (732) 321-6656 within 48 hours of when Respondent knew or should have known that the event might cause a delay. In addition, within seven (7) calendar days thereafter, Respondent shall notify EPA in writing of the circumstances which may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondent's rationale for interpreting such circumstances as being beyond its control (should that be Respondent's claim); (b) the actions (including pertinent dates) that Respondent has taken and/or plans to take to minimize any delay; and (c) the date by which or the time period within which Respondent proposes to complete the delayed activities. Such notification shall not relieve Respondent of any of its obligations under this Settlement Agreement. Respondent's failure to timely and properly notify EPA as required by this Paragraph shall constitute a waiver of Respondent's right to claim an event of force majeure. The burden of proving that an event constituting a force majeure has occurred shall rest with Respondent.

80. If EPA determines that a delay in performance of a required task under this Settlement Agreement is or was attributable to a force majeure, the time period for performance of that task shall be extended by EPA for such time as is necessary to perform that task. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Settlement Agreement which are not directly affected by the force majeure. Respondent shall use its best efforts to avoid or minimize any delay in the performance of its obligations under this Settlement Agreement.

Stipulated and Statutory Penalties

81. If Respondent fails, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Settlement Agreement, and such failure is not excused under the terms of Paragraphs 78 through 80 above (Force Majeure), Respondent shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

- a. For all requirements of this Settlement Agreement, other than the timely provision of progress reports required by Paragraph 51 of this Settlement Agreement, stipulated penalties shall accrue in the amount of \$1,000 per day, per violation, for the first seven days of noncompliance, \$2,000 per day, per violation, for the 8th through 15th day of noncompliance, \$3,000 per day, per violation, for the 16th through 28th day of noncompliance, and \$7,000 per day, per violation, for the 29th day of noncompliance and beyond.
- b. For the progress reports required by Paragraph 51, 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 through 28th day of noncompliance, and \$4,000 per day, per violation, for the 29th day of noncompliance and beyond.

82. Any such penalty shall accrue as of the first day that performance is due or a violation occurs and shall continue to accrue until the noncompliance is corrected or EPA notifies Respondent that it has determined that it will perform the tasks for which there is non-compliance. Respondent may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures as provided in Paragraph 49.a. Penalties shall accrue (except as provided in Paragraph 49.d.), but need not be paid during the dispute resolution period. If Respondent prevails upon resolution of the dispute, no penalties shall be paid. If Respondent does not prevail in the dispute resolution process, all accrued penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondent does not timely invoke the dispute resolution procedures under Paragraph 49.a. with respect to a stipulated penalty demand, such penalty shall be due and payable thirty (30) days following receipt of the written demand from EPA. Payment of any such penalty to EPA shall be made via EFT in accordance with the procedures in Paragraph 74 above, and notice of such payment shall be provided in accordance with Paragraph 75, above. Respondent shall pay interest on any amounts overdue under this Paragraph. 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.

83. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Settlement Agreement. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement Agreement.

84. Notwithstanding any other provision of this Settlement Agreement, failure of Respondent to comply with any provision of this Settlement Agreement may subject Respondent to civil penalties of up to \$32,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7,121 (February 13, 2004)), unless such failure to comply is excused by EPA under the terms of Paragraphs 78 through 80 above. Respondent may also be subject to punitive damages in an amount at least equal to and not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Settlement Agreement, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Settlement Agreement or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

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

Covenant Not to Sue by EPA

86. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Removal Response Costs. This covenant not to sue shall take effect upon the effective date of this Settlement Agreement and is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Removal Response Costs pursuant to Paragraph 74. This covenant not to sue extends only to Respondent and does not extend to any other person.

Reservation of Rights by EPA

87. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

88. Nothing in this Settlement Agreement shall be construed to modify, amend or affect any of the terms of the Consent Decree or any of the rights and obligations that either EPA or Respondent may have under the Consent Decree.

89. The covenant not to sue set forth in Paragraph 86 above 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 Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Removal Response Costs;
- c. liability for performance of response actions other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Work Areas.

Covenant Not to Sue by Respondent

90. Respondent 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 the Work, Removal Response Costs, or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, 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 claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the New York State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 89 (b), (c), (e) and (f), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation. Nothing in this Paragraph shall be construed to preclude the claims asserted by Respondent in *General Electric Co. v. Johnson* (D.D.C.), Civ. No. 1:00CV02855 (JDB), including any appeals from the District Court's decisions in that case.

91. Respondent reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Respondent's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

Other Claims

92. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent or Respondent's directors, officers, employees, agents, representatives, contractors, or consultants in

carrying out any action or activity pursuant to this Settlement Agreement. The United States or EPA shall not be held out as or deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

93. Except as expressly provided in Paragraphs 86 and 90 above, nothing in this Settlement Agreement constitutes or shall be construed as a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Settlement Agreement for any liability that Respondent or other persons may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for injunctive relief, costs, damages, and interest under Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§ 9606(a) and 9607. Nothing herein shall constitute a finding by EPA that Respondent is the only responsible party with respect to the release and threatened release of hazardous substances at, on, and from the Site.

94. Nothing in this Settlement Agreement shall affect any right, claim, interest, defense, or cause of action of any Party hereto with respect to third parties.

95. Nothing in this Settlement Agreement shall be construed to constitute approval or preauthorization of a claim under Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 CFR § 300.700(d).

96. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

Indemnification

97. Respondent agrees to indemnify, save, and hold harmless the United States, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from or on account of negligent or wrongful acts or omissions of Respondent, its employees, officers, directors, agents, servants, receivers, trustees, successors, assigns, or any other persons acting on behalf of Respondent or under its control, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Settlement Agreement by Respondent.

98. Respondent waives all claims against the United States on behalf of EPA for damages or reimbursement or for set-off of any payments made or to be made to the United States on behalf of EPA, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Work Areas, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States on behalf of EPA with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Work Areas, including but not limited to, claims on account of construction delays.

99. Further, Respondent agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement.

100. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to Paragraphs 97-99, above. Prior to settling such claim, the United States shall consult with Respondent, providing information to Respondent regarding the amount of the proposed settlement and the reasons for why the United States believes that the proposed settlement is reasonable.

Insurance

101. Within seven (7) days following the Effective Date, Respondent shall submit to EPA a certification that Respondent has adequate insurance coverage or has indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Settlement Agreement. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Settlement Agreement.

Contribution Protection

102. a. 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 Respondent is entitled, as of the effective date of this Settlement Agreement, 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 the Work and Removal Response Costs.

b. The Parties 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 Respondent has, as of the effective date of this Settlement Agreement, resolved its liability to the United States for the Work and Removal Response Costs.

c. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not Parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 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).

Modifications

103. This Settlement Agreement may be amended by mutual agreement of EPA and Respondent. Such amendments shall be in writing and shall have as their effective date that date on which such amendments are signed by EPA.

104. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain such formal approval as may be required by this Settlement Agreement and to comply with all requirements of this Settlement Agreement unless they are formally modified.

Termination and Satisfaction

105. Upon a determination by EPA (following its receipt of the final annual maintenance and monitoring report referred to in Paragraph 51 and the Final Report referred to in Paragraph 53, above) that the Work required pursuant to this Settlement Agreement has been fully carried out in accordance with this Settlement Agreement, EPA will so notify Respondent in writing. Such notification shall not affect any continuing obligations of Respondent under this Settlement Agreement. If EPA determines that any Work has not been completed in accordance with this Settlement Agreement, EPA may so notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies.

Severability/Integration/Appendices/Counterparts

106. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent has sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

107. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A = Site Map

Appendix B = Work Plan dated December 2006, with EPA approval letter dated January 22, 2007

Appendix C = Implementation Plan dated June 14, 2007, with EPA approval letter dated June 19, 2007.

Effective Date

108. This Settlement Agreement shall become effective on the second working day after EPA has provided to Respondent a copy of this Settlement Agreement, signed by the Director of the Emergency and Remedial Response Division of EPA Region 2 or his delegatee, and all times for performance of actions or activities under this Settlement Agreement shall be calculated from said effective date.

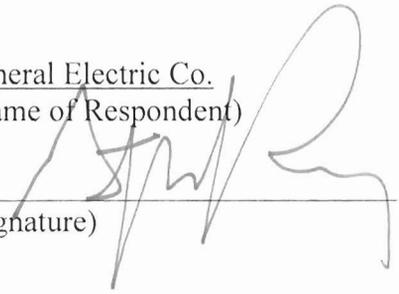
It is so ORDERED and Agreed this 11th day of July, 2007.

BY:  DATE: 7/11/07
George Pavlou
Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region 2

CONSENT

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Settlement Agreement **in the Matter of the Hudson River PCBs Superfund Site, CERCLA-02-2007-2008**. The Respondent hereby consents to the issuance of this Settlement Agreement and to its terms. Furthermore, the individual signing this Settlement Agreement on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Settlement Agreement and to bind Respondent.

General Electric Co.
(Name of Respondent)

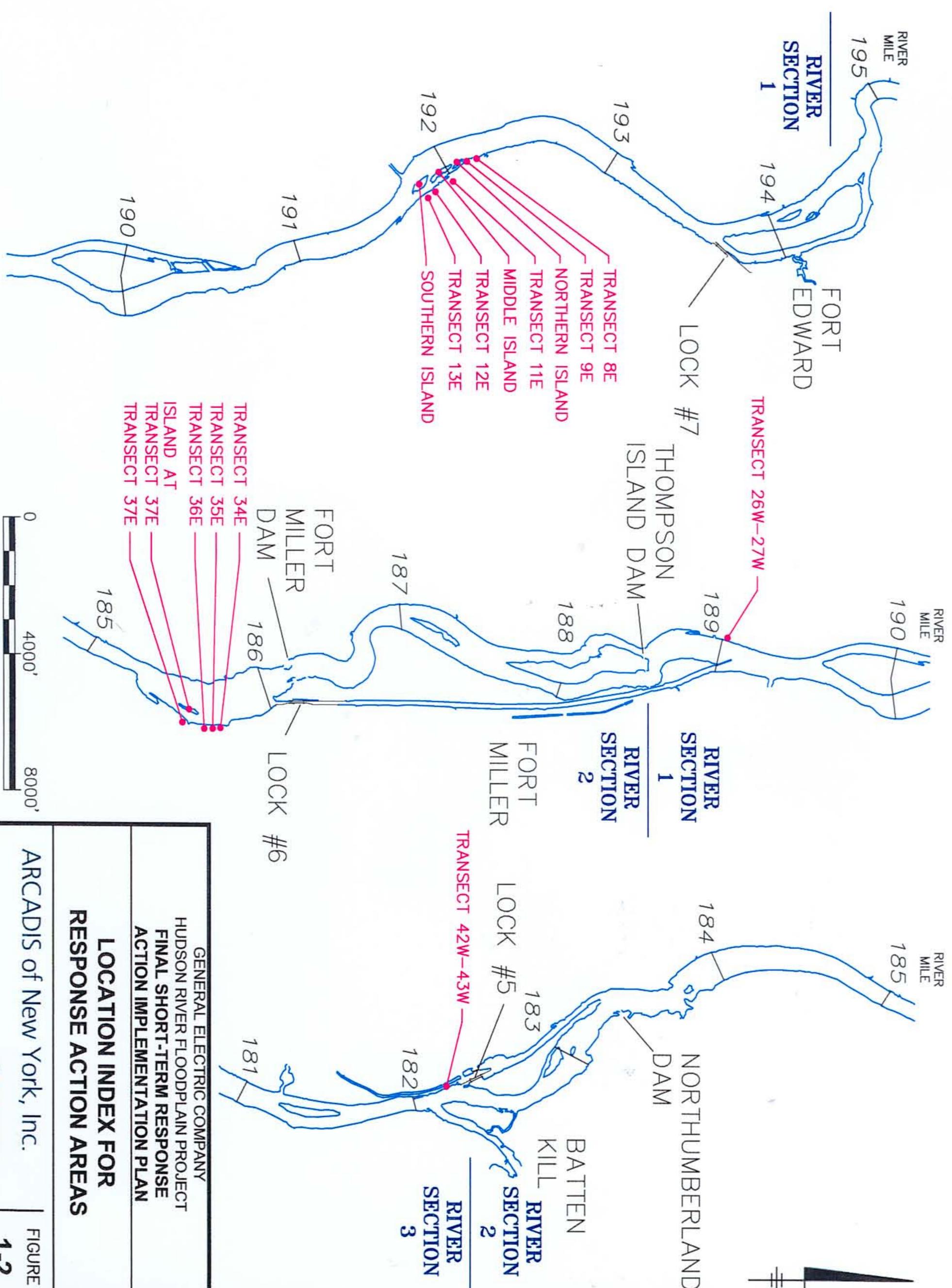

(Signature)

6/29/07
(Date)

Stephen D. Ramsey
(Printed Name of Signatory)

Vice Pres Corporate Environmental Programs
(Title of Signatory)

Appendix A - Site Map



GENERAL ELECTRIC COMPANY
 HUDSON RIVER FLOODPLAIN PROJECT
 FINAL SHORT-TERM RESPONSE
 ACTION IMPLEMENTATION PLAN

**LOCATION INDEX FOR
 RESPONSE ACTION AREAS**

ARCADIS of New York, Inc. FIGURE 1-2



Appendix B - Work Plan dated December 2006
and EPA approval letter dated January 22, 2007

Appendix C - Implementation Plan dated June 14, 2007
and EPA approval letter dated June 19, 2007