

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:
Hudson River PCBs Superfund Site

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT

GENERAL ELECTRIC CO.,
Respondent.

U.S. EPA Region 2
CERCLA Docket No. 02-2008-2019

Proceeding Under Sections 104, 107 and
122 of the Comprehensive Environmental
Response, Compensation, and Liability Act,
as amended, 42 U.S.C. §§ 9604, 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 Company (“GE” or “Respondent”), a New York corporation.
2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9604, 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 No. 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. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), EPA notified the U.S. Department of the Interior, the National Oceanic and Atmospheric Administration and the New York State Department of Environmental Conservation (“NYSDEC”) on June 13, 2006 of negotiations with potentially responsible parties regarding the release and threat of release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship.
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 V and VI of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement. Respondent consents to and agrees not to contest the authority or jurisdiction of the Director of the Emergency and Remedial Response Division, EPA Region 2 (hereinafter, the “ERRD Director”), or his delegatee, to issue or enforce 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. STATEMENT OF PURPOSE

7. The purpose of this Settlement Agreement is to (1) provide for Respondent to conduct floodplain sampling as part of a Remedial Investigation and Feasibility Study ("RI/FS") for designated floodplains that are within the Hudson River PCBs Superfund Site ("Site"); (2) to provide for Respondent to perform the preliminary mapping of human health and ecological use areas in those floodplain areas; and (3) to provide for Respondent's reimbursement of oversight costs incurred by EPA in connection with the work performed under this Settlement Agreement. Separately, EPA intends to review the resulting floodplain sampling data in connection with a Removal Site Evaluation.

8. The Work conducted under this Settlement Agreement is subject to approval by EPA. Respondent shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidances, policies, and procedures.

IV. DEFINITIONS

9. 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/DRH), 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. "Field Sampling Plan" or "FSP" shall mean Respondent's "Field Sampling Plan, Upper Hudson River Floodplain," dated September, 2008 (attached hereto and incorporated herein as Appendix A) and approved by EPA on September 3, 2008 (see the letter attached hereto and incorporated herein as Appendix B). The FSP includes Respondent's work plans for mapping human health and ecological use areas in the Study Area.

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

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. "Respondent" shall mean General Electric Company.

n. "Sampling Response Costs" shall mean the costs not inconsistent with the NCP, paid or incurred by EPA with respect to the Work on or after the effective date of this Settlement Agreement through the approval of a Final Report pursuant to Paragraph 48, 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 66 (Emergency Response); and (d) conducting any other activities related to the Work, including but not limited to community relations activities related to the Work. Sampling 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.

o. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Paragraph 101). In the event of a conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

p. "Site" shall mean the Hudson River PCBs Superfund Site, located in the State of New York.

q. "State" shall mean the State of New York, including NYSDEC and NYSDOH.

r. "Study Area" shall mean, for the purposes of this Settlement Agreement, those areas in the floodplains of the Upper Hudson River which are identified in the FSP.

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 61 (Record Retention).

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

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.”

21. On July 11, 2007, EPA signed Administrative Settlement Agreement and Order on Consent for Removal Action, Index No. CERCLA-02-2007-2008 (“the 2007 Removal Agreement”), pursuant to which Respondent agreed, *inter alia*, to implement a specified short-term removal action on designated floodplain properties within the Site. Respondent proceeded to implement that removal action. By letter dated March 5, 2008, EPA approved Respondent’s “Final Short-Term Response Action Documentation Report” for that removal action.

22. Data has previously been collected on floodplain properties within the Site under earlier investigations, as summarized by EPA in Section IV of the 2007 Removal Agreement.

23. Respondent has prepared a Field Sampling Plan, attached hereto as Appendix B, providing for the investigation of soils in designated floodplains that are within the Site and the preliminary mapping of human health and ecological use areas in those floodplain areas. This work is intended to, among other things, initiate the collection of data as part of an RI/FS for the floodplain areas.

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

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

26. 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.

27. 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).

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

VI. EPA’S DETERMINATIONS

29. EPA has 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, are consistent with CERCLA and the NCP, and will expedite effective remedial action.

30. EPA has further determined that Respondent is qualified to conduct the Work within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondent complies with the terms of this Settlement Agreement.

VII. SETTLEMENT AGREEMENT AND ORDER

31. 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 comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

Designation of Contractors and Project Coordinator

32. Respondent has designated, and EPA has approved, the following individual as Respondent's Project Coordinator with respect to the Work required under this Settlement Agreement:

Lewis S. Streeter
General Electric Company
320 Great Oaks Office Park, Suite 323
Albany, New York 12203
(518) 862-2739
lewis.streeter@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 his designee shall be present at the Study Area or readily available during field work under this Settlement Agreement. Respondent shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall submit the designated Project Coordinator's name, address, telephone number, and qualifications. Respondent shall notify EPA 10 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 14 days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

33. All work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. 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 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 subsequently issued guidance) or equivalent documentation as determined by EPA. The qualifications of the contractors and persons undertaking the work for Respondent shall be subject to EPA's review for verification that such contractors and persons meet appropriate technical background and experience requirements. If EPA disapproves, in writing, of any person's or contractor'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 Settlement Agreement, 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 Settlement Agreement, Respondent shall notify EPA in writing of any changes in or additions to the personnel or contractors 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 or contractors as it has hereunder regarding the initial notification. Respondent has informed EPA that it may use the contractors QEA, LLC and Arcadis, Inc. to perform work required by this Settlement Agreement, and EPA has approved these contractors for this purpose, subject to submission of their QMP dates.

Description of Work

34. Respondent shall complete all of the tasks required by the FSP in accordance with the terms set forth therein. The tasks set forth in the FSP shall be completed in accordance with the schedules contained therein, unless any such schedule is modified with EPA's approval.

35. At the time of completion of all Work required by this Settlement Agreement, demobilization shall include proper disposal or decontamination of protective clothing, investigation-derived waste produced pursuant to this Settlement Agreement, and any equipment or structures constructed to facilitate the Work performed under the Settlement Agreement.

EPA Coordinators, Other Personnel, and Modifications to EPA-Approved Plans

36. 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.

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

Ben 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
U.S. Environmental Protection Agency Region 2
Emergency and Remedial 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

EPA will notify Respondent of any change of EPA's designated Project Coordinators.

38. EPA and its authorized representatives will conduct oversight of the implementation of this Settlement Agreement. Under this Settlement Agreement, EPA's Project Coordinators shall have the authority lawfully vested 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 Study Area under this Settlement Agreement; provided, however, EPA may direct Respondent to implement other response actions under this Paragraph only if such response actions do not expand, or materially alter the scope of, the FSP, unless mutually agreed to by EPA and Respondent. Subject to the preceding sentence, EPA and Respondent will cooperate to identify alternate properties where it might be appropriate to conduct sampling in the event that access issues impede sampling on properties identified in the FSP. 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.

39. 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 FSP. 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.

40. 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 Settlement Agreement and/or the Field Sampling Plan (attached hereto as Appendix B), which is incorporated into and is an enforceable part of this Settlement Agreement. Each deliverable required by this Settlement Agreement or the Field Sampling Plan shall be deemed incorporated into and an enforceable part of this Settlement Agreement upon its approval by EPA. Respondent shall perform the work in accordance with the Field Sampling Plan, and other deliverables approved by EPA under this Settlement Agreement, as they may be amended pursuant to Paragraphs 42-44 below, and Respondent shall comply with all other requirements of this Settlement Agreement.

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. Respondent shall only use laboratories which have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

Plans and Reports Requiring EPA Approval

42. 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 FSP 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.

43. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement is disapproved by EPA, 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, 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 68, 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 Settlement Agreement or the Field Sampling Plan.

44. 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.

Dispute Resolution

45. Respondent may invoke the following dispute resolution procedures in the event of a dispute between Respondent and EPA regarding EPA's disapproval of a modification to a work plan, a bill sent to Respondent pursuant to Paragraph 68, below, a demand for stipulated penalties pursuant to Paragraph 75, below, or an EPA notice of disapproval regarding the Final Report submitted pursuant to Paragraph 48, below.

a. Respondent shall notify EPA's Chief, New York Remediation Branch, in writing, of the matter in dispute within fourteen (14) days of receipt of the disapproval notice or required revisions, or, in the case of a bill for Sampling Response Costs or a demand for stipulated penalties, within twenty-one (21) days of receipt of the bill or demand. Respondent's written notification shall define the dispute, state the basis of Respondent's position, 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 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 45.a., above. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute under Paragraph 45.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 45.a. more than once regarding the same issue.

d. The invocation of dispute resolution procedures under Paragraph 45.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 45.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 45.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 45.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 45.a., above, and ending when the ERRD Director issues her/his final decision.

Reporting Requirements

46. During the period from the effective date of this Settlement Agreement through the submission of the Final Report pursuant to Paragraph 48, Respondent shall provide monthly 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.

47. Respondent shall include in the progress reports required in Paragraph 46, 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.

48. Within ninety (90) days after completion of all sampling and mapping activities required under this Settlement Agreement, Respondent shall submit to EPA a Final Report summarizing the actions taken to comply with this Settlement Agreement and containing the information required by the FSP. The Final Report shall include 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.”

49. EPA either will approve the Final Report or will require modifications thereto pursuant to Paragraphs 42-44, above.

50. The Final Report referred to in Paragraph 48 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 32 of this Settlement Agreement. For purposes of this Paragraph, a responsible official is an official who is in charge of a principal business function.

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

As to EPA:

Two (2) copies to:

U.S. 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, EPA Coordinator
Hudson River PCBs Site (Floodplain)

Three (3) copies (1 unbound) to:

Hudson River Team
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 19th Floor
New York, New York 10007-1866
Attention: Ben Conetta, EPA Coordinator

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:
Lewis S. Streeter
Floodplains Project Manager
Hudson River Program
General Electric Company
319 Great Oaks Office Park
Albany, New York 12203

John G. Haggard
GE Project Manager
General Electric Company
319 Great Oaks Office Park
Albany, New York 12203

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Oversight

52. 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 Study Area and at laboratories where analytical work is being performed hereunder.

53. 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

54. 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 the Work.

Access to Property and Information

55. 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 Study Area 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, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Settlement Agreement. All parties' employees, contractors, and other representatives with access to areas where Work is being performed pursuant to this Settlement Agreement shall comply with all applicable health and safety plans.

56. Beginning on the effective date of this Settlement Agreement, Respondent shall use its best efforts, as described in the FSP, to obtain access from the owners of all properties where sampling or any other field work under this Settlement Agreement is to be performed, within a period of time that will enable the sampling and other field work required by this Settlement Agreement to be completed during calendar year 2008. Such access agreements shall also provide access for EPA and the State and their contractors and oversight officials, and 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, if in writing, shall be provided to EPA and the State upon request. Respondent's Project Coordinator shall provide EPA's Project Coordinator with regular updates regarding progress in obtaining 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 Paragraph 45, 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. a. All data, records, photographs, 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 Settlement Agreement or evidencing conditions in the Study Area, including but not limited to quality assurance memoranda, raw data, sample extracts, field notes, chain of custody records, laboratory analytical reports, work orders, disposal records, correspondence, or other documents or information related to the Work, 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.

b. Subject to subparagraph d. below, Respondent may assert business confidentiality claims covering documents or information submitted to EPA under this Settlement Agreement, to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent. Respondent shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondent asserts business confidentiality claims.

c. Subject to subparagraph d. below, 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 in lieu of providing documents, 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 contents of the document, record, or information; and (6) the privilege asserted by Respondent.

d. No documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld from EPA on the grounds that they are privileged. In addition, Respondent agrees not to assert a claim of business confidentiality with respect to any sampling data generated or obtained in connection with the Work or otherwise evidencing conditions in the Study Area.

58. 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 Settlement Agreement, or allow EPA or its designated representatives to take such duplicate or split samples.

59. 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.

60. In entering into this Settlement Agreement, 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 Settlement Agreement, to the extent that such data have been verified according to the quality assurance/quality control (“QA/QC”) procedures specified in this Settlement Agreement and the FSP. 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 Settlement Agreement, to the extent that EPA has followed appropriate QA/QC and chain-of-custody procedures with respect to the associated samples.

Record Retention

61. 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 Study Area, 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).

Off-Site Shipments

62. Any off-Site transfer, treatment, storage, or disposal of Waste Material from the Study Area 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 Study Area. 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.

63. 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 Study Area 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 Study Area 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 (with a copy 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

64. Respondent shall comply with all laws and regulations that are applicable when performing the work required by this Settlement Agreement. 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 Settlement Agreement 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 Settlement Agreement is not, nor shall it act as, a permit issued pursuant to any federal or state statute or regulation.

Emergency Response and Notification of Releases

65. 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 Chief, New York Remediation Branch, Emergency and Remedial Response Division, EPA Region 2, (212) 637-4288 (or, in the event of the unavailability of the Branch Chief, 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.

66. In the event of any action or occurrence arising from Respondent's performance of the Work 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 (which is part of the FSP). In the event that EPA determines that (a) the activities performed pursuant to this Settlement Agreement, (b) significant changes in conditions at the Study Area, or (c) emergency circumstances occurring at the Study Area 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.

67. 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 Study Area.

Reimbursement of Sampling Response Costs

68. Respondent agrees to reimburse EPA for all Sampling 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 the Federal Reserve Bank of New York. To make payment via EFT, Respondent shall provide the following information to its bank:

- . Amount of payment:
- . Bank: **Federal Reserve Bank of New York**
- . Account code for Federal Reserve Bank of New York account receiving the payment: **68010727**
- . Federal Reserve Bank of New York ABA Routing Number: **021030004**
- . SWIFT Address: **FRNYUS33**
33 Liberty Street
New York, NY 10045
- . Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency
- . Name of Respondent: **General Electric Co.**
- . Settlement Agreement Index number: **CERCLA-02-2008-2019**
- . 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.

69. At the time of each payment, Respondent shall send notice that such payment has been made to the EPA representatives identified in Paragraph 51 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.

70. As indicated in Paragraph 45.a., above, Respondent may invoke dispute resolution with respect to a bill under Paragraph 68, 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 Sampling Response Costs in Paragraph 9.n., 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 Sampling Response Costs in Paragraph 9.n., above. Within 15 days of the resolution of the dispute under Paragraph 45.a., above, Respondent shall remit to EPA, in the manner described in Paragraphs 68

and 69, the amount agreed upon by the parties under Paragraph 45.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.

71. Respondent shall pay interest on any amounts overdue under Paragraph 68 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

72. "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.

73. 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 EPA Coordinator or, in his absence, the Chief of the New York Remediation Branch of the Emergency and Remedial Response Division of EPA Region 2 at (212) 637-4288 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.

74. 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

75. 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 72 through 74 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 46 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 46, 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.

76. 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 45.a. Penalties shall accrue (except as provided in Paragraph 45.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 45.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 electronic funds transfer ("EFT") to EPA in accordance with the procedures in Paragraph 68 above, and notice of such payments shall be provided in accordance with Paragraph 69, 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.

77. 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.

78. 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 (or such higher amount as may be established pursuant to the Debt Collection and Improvement Act of 1996 ("DCIA"), as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the DCIA (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 72 through 74 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.

79. 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

80. 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 Sampling 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. This covenant not to sue extends only to Respondent and does not extend to any other person.

Reservation of Rights by EPA

81. 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.

82. 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.

83. The covenant not to sue set forth in Paragraph 80 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 Sampling 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 Study Area.

Covenant Not to Sue by Respondent

84. 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, Sampling 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 83(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.

85. 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

86. 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.

87. Except as expressly provided in Paragraphs 80 and 84 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.

88. 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.

89. 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).

90. 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

91. 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.

92. 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 Study Area, 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 Study Area, including but not limited to, claims on account of construction delays.

93. 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.

94. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to Paragraphs 91-93, 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

95. 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

96. 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 Sampling 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 the Sampling 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

97. This Settlement Agreement, including the FSP attached hereto, 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.

98. 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

99. Upon a determination by EPA (following its receipt of the Final Report referred to in Paragraph 48, 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

100. 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.

101. 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:

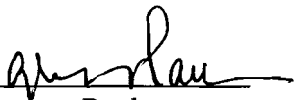
Appendix A = Field Sampling Plan dated September, 2008

Appendix B = EPA Field Sampling Plan approval letter dated September 3, 2008.

Effective Date

102. 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 8th day of September, 2008.

BY:  DATE: 9/8/08

George Pavlou
Acting 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 Docket No. 02-2008-2019**. 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 Company
(Name of Respondent)

ARKL
(Signature)

9/3/08
(Date)

Ann R. Klee
(Printed Name of Signatory)

V.P. Environmental Health & Safety
(Title of Signatory)