

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:
HUDSON RIVER PCBS SUPERFUND SITE

GENERAL ELECTRIC CO.,

Respondent.

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMEDIAL
INVESTIGATION
AND FEASIBILITY STUDY

U.S. EPA Index No.
CERCLA-02-2013-2014

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.

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APPENDIX 1: RI/FS WORK PLAN

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and General Electric Co. ("GE" or "Respondent"), a New York corporation. The Settlement Agreement provides for the preparation and performance of a remedial investigation and feasibility study ("RI/FS") at the floodplain operable unit of the Hudson River PCBs Superfund Site ("Site"), located in New York State, and the reimbursement of certain Past Response Costs and Future Response Costs incurred by EPA, as defined below.

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, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9607, and 9622. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987). This authority was further delegated by the EPA Administrator to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division on 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 liability, and do not prevent the identification and inclusion of any additional Potentially Responsible Parties ("PRPs") in the CERCLA process for the Work Areas, as defined below, or the other parts of the Site. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact, 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 and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms in any action to enforce its provisions.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not 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.

7. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Respondent to this Settlement Agreement.

III. STATEMENT OF PURPOSE

8. The purpose of this Settlement Agreement is to: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of PCBs in the Floodplain, as defined below, by conducting and completing an RI as more specifically set forth in the RI/FS Work Plan which is attached as Appendix 1 to this Settlement Agreement; (b) to identify and evaluate remedial alternatives to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of PCBs in the Floodplain by conducting an FS as more specifically set forth in Appendix 1 to this Settlement Agreement; and (c) to recover certain response costs incurred and to be incurred by EPA with respect to the Floodplain and this Settlement Agreement.

9. The Work, as defined below, conducted under this Settlement Agreement is subject to approval by EPA. Respondent shall provide all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). 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

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, 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, as subsequently modified.

- c. “Day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. “Effective Date” shall be the effective date of this Settlement Agreement as provided in Section XXX.
- e. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- f. “Floodplain” shall mean the areas where flooding events could have transported PCBs within the following boundaries and areas:
 - i. Northern boundary – the pool at the base of Bakers Falls (at approximate River Mile [RM] 197.0);
 - ii. Southern boundary – the Federal Dam at Troy (at approximate RM 153.9);
 - iii. Outer boundaries (Eastern and Western) – the 100-year Floodplain as mapped by the Federal Emergency Management Agency or the extent of the highest-flow event in 2011 as mapped by Respondent, whichever extends further from the river;
 - iv. Inner boundary – the elevation corresponding to the minimum daily average flow with a probability of occurring once every three years (1Q3 flow) over the last 10 years, which is a river flow of approximately 2,000 cubic feet per second (cfs) at the Ft. Edward gaging station. The near-shore sediments between the 1Q3 flow and 5,000 cfs are considered a separate sub-area (referred to as near-shore sediments) of the Floodplain. This sub-area will be subject to an evaluation that is separate from the remainder of the Floodplain, as described in Section 2.4 of the RI/FS Work Plan;
 - v. The area between the Bakers Falls pool and the former dam at Fort Edward will be assessed and EPA and Respondent will discuss approaches to the assessment of these areas, and those areas will either be addressed using the approach discussed in the RI/FS Work Plan or by an alternative approach proposed by Respondent. Any alternate approach proposed by Respondent would require USEPA review and approval; and

- vi. Islands in the river that fall within the boundaries described above.

Areas excluded from the Floodplain because they are being addressed separately from the RI/FS are described below:

1. Shorelines – Locations on the Upper Hudson River shoreline that are dredged (or will be dredged) pursuant to the dredging Consent Decree in United States v. General Electric Co., Civ. No. 1:05-CV-1270 (N.D.N.Y.);
 2. Portions of Dredge Spoil Site Areas –These locations were identified in the *Hudson River Draft Environmental Impact Statement* (Malcolm Pirnie 1992). These dredge spoils are being investigated and/or remediated by the New York State Department of Environmental Conservation (NYSDEC) under the New York State Inactive Hazardous Waste Disposal Site Program at the following sites: 442033 – Newland Island (Lock 4); 546040 – Old Moreau Dredge Spoil Area; 546041 – Special Area 13; 546042 – Moreau Dredge Spoil Disposal Site; 558018 – Buoy 212; 558028 – Site 518; and any other NYSDEC-identified historic dredge spoil disposal sites. However, where existing data or data collected pursuant to the RI/FS indicate that the PCBs have been deposited by flooding, these areas will be included in the RI/FS; and
 3. Remnant Sites – Capped areas of Remnant Deposit Sites 2 through 5 that were remediated pursuant to EPA’s 1984 Record of Decision for the Hudson River PCBs Site.
- g. “Floodplain Removal Agreement” shall mean the Administrative Settlement Agreement and Order on Consent for Removal Action, Index No. CERCLA-02-2007-2008, which EPA issued to Respondent on July 11, 2007, with respect to the Floodplain, as amended.
 - h. “Floodplain Sampling Agreement” shall mean the Administrative Settlement Agreement and Order on Consent for Removal Action, Index No. CERCLA-02-2008-2019, which EPA issued to Respondent on September 8, 2008, with respect to the Floodplain, as amended.
 - i. “Future Response Costs” shall mean the costs EPA incurs, on or after the effective date of this Settlement Agreement, that are not inconsistent with the NCP with respect to the Floodplain 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, including costs and attorneys fees and any monies paid to secure access, including the amount of just compensation; (c) conducting activities pursuant to Paragraph 52 (Emergency Response and Notification of Releases); and (d) conducting any other activities related to the Work, including but not limited to community relations activities. Future 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), interagency agreement 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, costs of redoing any of Respondent's tasks, and costs of Work Takeover (Paragraph 101). In addition, to the extent that the State participates in any of the activities covered by items (a)-(d) above pursuant to a Cooperative Agreement or Superfund State Contract with EPA, the costs not inconsistent with the NCP that EPA incurs under such Cooperative Agreement or Superfund State Contract are included within the meaning of Future Response Costs. Future Response Costs shall also include all Interim Response Costs during the period from August 1, 2014, to the Effective Date.

- j. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- k. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- l. "Interim Response Costs" shall mean all direct and indirect costs paid by EPA in connection with response actions relating to the Floodplain between August 1, 2014, and the Effective Date.
- m. "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, codified at 40 C.F.R. Part 300, and any amendments thereto.
- n. "NYSDEC" shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.
- o. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.
- p. "Party" or "Parties" shall mean EPA and/or Respondent.
- q. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that EPA (or the United States on behalf of EPA) paid in connection with response actions relating to the Floodplain through July 31, 2014. Past Response Costs include any unbilled Removal Response Costs as that term is defined in the Floodplain Removal Agreement, and any unbilled Sampling Response Costs as that term is defined in the Floodplain Sampling Agreement.
- r. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as

the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6991.

- s. "Respondent" shall mean General Electric Co., a corporation organized and existing under the laws of New York State.
- t. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- u. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, all appendices attached hereto, and all documents incorporated by reference into this document, including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by EPA. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.
- v. "Site" shall mean the Hudson River PCBs Superfund Site, located in the State of New York.
- w. "State" shall mean the State of New York, including NYSDEC and NYSDOH.
- x. "United States" shall mean the United States of America.
- y. "Upper Hudson River" shall mean the length of the Hudson River in New York State between Bakers Falls in Hudson Falls, New York and the Federal Dam at Troy, New York.
- z. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
- aa. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement, except those required by Section XV (Retention of Records).
- bb. "Work Areas" shall mean all locations in the Floodplain where Work will be conducted under this Settlement Agreement.

V. EPA'S FINDINGS OF FACT

11. 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.

12. In 1973, the Fort Edward Dam was removed due to its deteriorating condition. The removal of the dam resulted in significant downriver redistribution of PCB-contaminated sediment deposits previously held behind the dam.

13. 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.

14. 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.

15. 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.

16. 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.

17. In December 2000, EPA issued the Reassessment FS in which it evaluated potential remedial alternatives to address PCB contamination at the Site. Concurrent 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.

18. On February 1, 2002, EPA issued a Record of Decision ("2002 ROD") in which EPA selected a remedial action for the Site. The remedy selected in the 2002 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.

19. 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.

20. 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 2002 ROD.

21. 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.

22. In addition to the requirements for dredging of PCB-containing sediments from the Upper Hudson River, page 2 of the 2002 ROD 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.”

23. EPA developed a floodplain soil sampling program for areas of the Upper Hudson River known as River Section 1, River Section 2, and the upper portion of River Section 3 after reviewing the floodplain sampling data from previous investigations. The review included data from a series of sampling events on Rogers Island, an island in the Upper Hudson River, conducted by EPA and NYSDEC in the 1990s, and floodplain soil samples collected between Fort Edward, N.Y. and Stillwater, N.Y., as part of an investigation by the National Oceanic and Atmospheric Administration in association with NYSDEC in September and October 2000. Pursuant to the *Draft Field Sampling Plan for Floodplain Soil Sampling, Hudson River PCBs Site, New York* (Weston Solutions, Inc., 2004), 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 parts per million (“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.

24. After receiving the results of EPA’s 2004 floodplain sampling, GE advised EPA of its willingness to perform additional floodplain investigation and cleanup work. GE conducted floodplain data collection activities from June to November 2005, the results of which are detailed in the March 2006 *Data Summary Report, Floodplain Data Collection Activities, Upper Hudson River*. GE took a total of 542 samples and 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.

25. Pursuant to the Floodplain Removal Agreement, Respondent agreed, *inter alia*, to implement a specified short-term removal action for the Floodplain. Under the Floodplain Removal Agreement, Respondent has conducted response activities between 2007 and 2012, including installation of soil or stone covers, the installation of warning signs, and/or the inspection of existing surface soil conditions at 59 properties that are identified as human use areas and where PCB concentrations are greater than 10 parts per million. By letter dated March 5, 2008, EPA approved Respondent’s “Final Short-Term Response Action Documentation Report” for work performed by Respondent under the Floodplain Removal Agreement, and on April 10, 2012, EPA approved Respondent’s “Final Documentation Report for 2011 Short-Term Response Actions” conducted under the Floodplain Removal Agreement. In addition, Respondent submitted, and EPA approved, additional work plans and documentation reports submitted pursuant to the Floodplain Removal Agreement, in 2007, 2009, 2010, 2011, and 2012.

26. Pursuant to the Floodplain Sampling Agreement, which became effective September 11, 2008, Respondent agreed, *inter alia*, to conduct soil sampling at approximately

350 properties within the Floodplain to begin characterization of the PCB distribution there, investigate human use areas, and support the development of the RI/FS. EPA and GE modified the Floodplain Sampling Agreement by letter agreements, which became effective July 23, 2009, August 17, 2010, November 22, 2011, and November 2012, to provide for GE's performance of additional sampling work in the Floodplain during the 2009, 2010, 2011, and 2012 field seasons and payment of EPA's oversight costs.

27. Although not required as a deliverable pursuant to the Floodplain Sampling Agreement or the Floodplain Removal Agreement, on June 22, 2012, Respondent submitted to EPA an Initial Floodplain Characterization Report that summarized and evaluated data collected in the Floodplain.

28. EPA, the National Oceanic and Atmospheric Administration, and GE have collected over 7,000 soil samples on more than 500 properties in the Floodplain since 2000 and more samples are expected to be collected. Approximately 81% of samples collected were below 1 ppm (including non-detects) for PCBs. Approximately 14% of samples collected yielded PCB results from 1-10 ppm. Approximately 5% of samples collected had PCB concentrations greater than 10 ppm. The samples with the higher PCB concentrations were generally collected closer to the Hudson River, and PCB concentrations tended to decrease the farther from the River the samples were collected and with greater distance from the former GE plants in Hudson Falls and Fort Edward, NY.

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

VI. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

32. 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 within the Floodplain.

33. 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).

34. EPA has determined that the actions required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment, are in the public interest (42 U.S.C. § 9622(a)), are consistent with CERCLA and the NCP (42 U.S.C. §§ 9604(a)(1), 9622(a)), and are expected to expedite effective remedial action and minimize litigation (42 U.S.C. § 9622(a)).

35. EPA has 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

36. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, and other information available to EPA, it is hereby Agreed and Ordered 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.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

37. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within 30 days of the Effective Date of this Settlement Agreement, and before the Work outlined below begins, Respondent shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. EPA has pre-qualified the following contractors for the Work: Anchor QEA, LLC; ARCADIS; Integral Consulting Inc.; ENVIRON; and Behan Communications, Inc. With respect to any other proposed contractor, Respondent shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-2004, "Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use," (American National Standard, 2004). Respondent shall provide EPA with a copy of the proposed contractor's Quality Management Plan ("QMP"). Respondent shall prepare the QMP in accordance with the "EPA Requirements for Quality Management Plans" (reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Settlement Agreement is contingent on Respondent's demonstration to EPA's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Settlement Agreement. If EPA disapproves in writing of any person's technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacement within 30 days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondent. During the course of the RI/FS, Respondent shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing its names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

38. Designation of Contractors and Project Coordinator. 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 Streeter
GE Floodplains Project Manager
319 Great Oaks Blvd
Albany, NY 12203
518-862-2712
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 Work Areas or readily available during Work required by this Settlement Agreement. Respondent shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA ten (10) days before such a change is made and provide the new Project Coordinator's name, address, telephone number, and qualifications. 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.

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

Gary Klawinski
U. S. Environmental Protection Agency Region 2
Emergency and Remedial Response Division
Hudson River Field Office
421 Lower Main Street
Hudson Falls, NY 12839
518-747-4389
Klawinski.gary@epa.gov

Jennifer LaPoma
U. S. Environmental Protection Agency Region 2
Emergency and Remedial Response Division
290 Broadway, 20th Floor
New York, NY 10007
212-637-4328
Lapoma.jennifer@epa.gov

EPA will notify Respondent of any change of EPA's designated Project Coordinators. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions to the EPA Project Coordinators.

40. EPA's Project Coordinators shall have the authority lawfully vested in Remedial Project Managers and On-Scene Coordinators by the NCP. In addition, EPA's Project Coordinators shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Work Areas may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinators from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

41. EPA shall arrange for a qualified person(s) to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. Section 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the RI/FS Work Plan.

IX. WORK TO BE PERFORMED

42. Respondent shall conduct the RI/FS in accordance with the provisions of this Settlement Agreement, the RI/FS Work Plan, CERCLA, the NCP, and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01, October 1988 or subsequently issued guidance) (hereinafter "RI/FS Guidance"), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05, October 1990 or subsequently issued guidance), and guidance referenced therein, and guidances referenced in the RI/FS Work Plan, as may be amended or modified by EPA. The tasks that Respondent must perform are described in the RI/FS Work Plan. The RI/FS Work Plan, which is attached as Appendix 1 to this Settlement Agreement, is incorporated into and an enforceable part of this Settlement Agreement. Respondent shall perform the Work in accordance with the schedules, standards, specifications, and other requirements of the RI/FS Work Plan, as initially approved by EPA, and as it may be amended or modified by EPA, in accordance with Paragraph 49, prior to the completion of the RI/FS.

43. The RI/FS Work Plan sets forth general approaches to evaluating PCB contamination in the Floodplain. The focus of the investigation and evaluation is on PCBs, as defined in Section 1.3 of the RI/FS Work Plan.

44. The RI/FS Work Plan provides a schedule for submission of deliverables needed for the completion of the RI/FS. The RI/FS Work Plan describes the overall objectives of the RI/FS, which are to investigate the nature and extent of Floodplain-related PCB contamination, to conduct human health and ecological risk assessments, and to develop and evaluate remedial alternatives for such contamination. The RI/FS Work Plan specifies, among other things, the sample analyses to be performed by laboratory subcontractors, and it describes screening-level analyses that will be performed in the field.

45. Upon the Effective Date of this Settlement Agreement, Respondent shall initiate implementation of the Work described in the RI/FS Work Plan to characterize the nature, quantity, and concentrations of PCBs in the Floodplain. Respondent shall submit all plans, reports, and other deliverables, including those associated with the Baseline Human Health Risk

Assessment and Ecological Risk Assessment, in accordance with the schedules and deadlines set forth herein, in the RI/FS Work Plan, and in any plans and schedules approved by EPA pursuant to this Settlement Agreement. Respondent shall provide EPA with electronically verified analytical data in accordance with Paragraph 53, Monthly Progress Reports. Final validated data shall be in an electronic format required by EPA showing the location, medium, and results and shall be submitted as set forth in the RI/FS Work Plan. EPA's request, Respondent shall make a presentation to EPA on the findings of the field investigation and discuss EPA's preliminary comments and concerns associated with the field investigation results.

46. Respondent shall submit to EPA an RI Report within the time frame specified in the RI/FS Work Plan schedule, for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Respondent shall refer to the RI/FS Work Plan and the RI/FS Guidance for RI Report content and format. Within 20 days of submitting the RI Report, Respondent shall make a presentation to EPA at which Respondent shall summarize the findings of the RI Report and discuss EPA's preliminary comments and concerns associated with the RI Report.

47. Respondent shall submit a FS Report within the time frame specified in the RI/FS Work Plan schedule, for review and approval pursuant to Section XI (EPA approval of Plans and Other Submissions). Respondent shall refer to the RI/FS Work Plan and the RI/FS Guidance for FS Report content and format. Within 20 days of submitting the FS Report, Respondent shall make a presentation to EPA at which Respondent shall summarize the findings of the FS Report and discuss EPA's preliminary comments and concerns associated with the FS Report.

48. Community Involvement Plan. To the extent requested by EPA, Respondent shall provide information relating to the Work for EPA's use in developing and implementing a Community Involvement Plan. As requested by EPA, Respondent shall participate in the preparation of such information for dissemination to the public and participate in meetings with the public which may be held or sponsored by EPA to explain activities at or relating to the Floodplain.

49. Modification of the RI/FS Work Plan.

a. If at any time during the RI/FS process, Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the need for additional data to the EPA Project Coordinators within 21 days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondent and whether it will be incorporated into plans, reports, and other deliverables.

b. EPA may determine that in addition to tasks defined in the initially approved RI/FS Work Plan, other additional Work may be necessary to accomplish the objectives of the RI/FS. Respondent agrees to perform these response actions in addition to those required by the approved RI/FS Work Plan, including any modifications that EPA may require and that are not inconsistent with this Settlement Agreement, if EPA determines that such actions are necessary for a complete RI/FS. For purposes of the preceding sentence only, the term "Settlement Agreement" does not include the RI/FS Work Plan.

c. Respondent shall confirm its willingness to perform the additional Work in writing to EPA within 7 days of receipt of the EPA request. If Respondent objects to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondent may seek dispute resolution pursuant to Section XVI (Dispute Resolution). The RI/FS Work Plan shall be modified in accordance with the final resolution of the dispute.

d. Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan or written RI/FS Work Plan supplement. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions in the Floodplain.

50. Off-Site Shipment of Waste Material. Prior to any off-site shipment of Waste Material from the Work Areas to an out-of-state waste management facility, Respondent shall, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to EPA's Designated Project Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 100 cubic yards.

a. Respondent shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the RI/FS. Respondent shall provide the information required by Subparagraphs 50.a and 50.c as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

c. Before shipping any hazardous substances, pollutants, or contaminants from the Work Areas to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Work Areas to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

51. Meetings. Respondent shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the Work. In addition to discussion of the technical aspects of the Work, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

52. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence relating to performance of the Work which causes or threatens a release of Waste Material from or in the Work Areas that constitutes an emergency situation or 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 such release or endangerment caused or threatened by the release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the EPA Project Coordinators or, in the event of their unavailability, Respondent shall immediately notify the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA, Region 2, at (732) 321-6656 of the incident or Work Area conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIX (Payment of Response Costs).

b. 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 Site.

c. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Respondent shall immediately orally notify the EPA Project Coordinators (or, in the event of the unavailability of the EPA Project Coordinators, Respondent shall immediately notify the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA, Region 2, at (732) 321-6656 of the incident or Site conditions. Within fourteen (14) days of the onset of such an event, Respondent shall furnish EPA with a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. The reporting requirements of this Paragraph are in addition to, not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

X. NOTIFICATION AND REPORTING REQUIREMENTS

53. Monthly Progress Reports. In addition to the plans, reports, and other deliverables set forth in this Settlement Agreement, Respondent shall provide to EPA monthly progress reports by the 10th day of each month following the Effective Date of this Settlement Agreement. At a minimum, these progress reports shall (1) describe the actions which have been taken to comply with this Settlement Agreement during the previous month, (2) include all results of sampling and tests and all other data received by Respondent, (3) describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion, (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays, and (5) provide other information relating to the progress of Work as is customary in the industry.

54. All paper copies of work plans, reports, notices, and other documents required to be submitted to EPA under this Settlement Agreement shall be sent by certified mail, return receipt requested, by overnight delivery, or by courier to the following addresses.

One paper copy and one electronic copy to each of the EPA Project Coordinators identified in Paragraph 39, above.

One electronic 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)

When submitting any document or other written communication to EPA under this Settlement Agreement, Respondent shall simultaneously send electronic copies to the State and to the National Park Service at the following addresses:

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

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

Superintendent, Saratoga National Historical Park
National Park Service, U.S. Department of Interior
648 Route 32
Stillwater, NY 12170
Attn: Joe Finan

All electronic copies shall be in a copyable and searchable format. Upon EPA's request, Respondent shall submit additional hard copies of large, odd sized, or hard to reproduce files, figures, documents or other deliverables that Respondent is required to submit.

EPA will direct all notices to Respondent under this Settlement Agreement to Respondent's Project Coordinator, and to:

Eric S. Merrifield
Executive Counsel, Environmental Litigation
General Electric Company
319 Great Oaks Blvd.
Albany, NY 12203
518-862-2708
eric.merrifield@ge.com

55. Respondent shall give EPA at least 14 days advance notice of all fieldwork or field activities to be performed by Respondent pursuant to this Settlement Agreement, unless otherwise agreed to by EPA, in its sole discretion.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

56. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Settlement Agreement, EPA shall, in a notice to Respondent: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 21 days or as specified in the RI/FS Work Plan, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved because of material defects.

57. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraphs 56(a), (b), (c) or (e), Respondent shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA subject only to its right to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submission or portion thereof, Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 56(c) and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVII (Stipulated Penalties).

58. Resubmission.

a. Upon receipt of a notice of disapproval, Respondent shall, within 21 days or such longer time as specified by EPA, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVII (Stipulated Penalties), shall accrue during the 21-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 59 and 60.

b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise

directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XVII (Stipulated Penalties).

c. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

59. If EPA disapproves a resubmitted plan, report or other deliverable, or portion thereof, EPA may again direct Respondent to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report, or other deliverable. Respondent shall implement any such plan, report, or deliverable as corrected, modified, or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XVI (Dispute Resolution).

60. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately unless Respondent invokes the dispute resolution procedures in accordance with Section XVI (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a dispute resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XVI (Dispute Resolution) and Section XVII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during dispute resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified or superseded as a result of a decision or agreement reached pursuant to the dispute resolution process set forth in Section XVI, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVII.

61. In the event that EPA takes over some of the tasks, but not the preparation of the RI Report or the FS Report, Respondent shall incorporate and integrate information supplied by EPA into the final reports.

62. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

63. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondent's deliverables, Respondent is responsible for preparing deliverables acceptable to EPA.

XII. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

64. Quality Assurance. Respondent shall assure that Work performed, samples taken, and analyses conducted conform to the requirements of the RI/FS Work Plan, the Quality Assurance Project Plan ("QAPP"), and guidances identified therein. Respondent will 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.

65. Sampling.

a. All results of Floodplain sampling, tests or other data (including raw data) generated by Respondent, or on Respondent’s behalf, during the period that this Settlement Agreement is effective, shall be submitted to EPA in the next monthly progress report as described in Paragraph 53 of this Settlement Agreement. If requested by EPA, Respondent also shall provide EPA with all modeling results generated by Respondent or on its behalf pursuant to this Settlement Agreement. EPA will make available to Respondent validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation. Data will also be available to EPA, upon receipt from the lab, if requested by EPA. Data will be submitted in a useable database format consistent with the Region 2 Electronic Data Deliverable (EDD) format (information available at www.epa.gov/region02/superfund/medd.htm).

b. At EPA’s verbal or written request, or the request of EPA’s oversight contractor, Respondent shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected in implementing this Settlement Agreement. All split samples from Respondent will be analyzed by the methods identified in the QAPP.

66. Access to Information.

a. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

b. Respondent may assert business confidentiality claims covering part or all of the 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, subject to the procedures in 40 C.F.R. Part 2, Subpart B. Respondent shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondent asserts business confidentiality claims.

c. 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 the Respondent asserts such a privilege in lieu of providing documents, they 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. Notwithstanding the above, no documents, reports, or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

d. No claim of confidentiality shall be made with respect to any data collected pursuant to this Settlement Agreement, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

67. In entering into this Settlement Agreement, Respondent waives any objections to any data gathered, generated, or evaluated by EPA or Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by this Settlement Agreement or any EPA-approved RI/FS Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the RI/FS, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the monthly progress report containing the data.

XIII. SITE ACCESS

68. To the extent that property at the Work Areas, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide EPA, and its representatives, including contractors, with access at all reasonable times to such property, for the purpose of conducting any activity related to this Settlement Agreement.

69. Where any action 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 timely access agreements so as not to delay implementation of the RI/FS. Respondent's best efforts shall include contacting property owners by telephone and by mail, but, solely due to the unique circumstances of this Site, shall not include provision of payment to property owners. If the property owner refuses access, seeks to require payment, or is non-responsive to Respondent's attempts to obtain access, Respondent shall notify EPA and describe in writing its efforts to obtain access. In its discretion, EPA may seek access from such property owners. EPA and Respondent shall cooperate in making further contacts with non-cooperative or non-responsive property owners. If access is not granted, Respondent may, subject to EPA's approval, conduct sampling at an alternate location to the extent practicable. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining access, in accordance with the procedures in Section XIX (Payment of Response Costs). If EPA performs those tasks or activities with EPA contractors, Respondent shall perform all other tasks or activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such tasks or activities. Respondent shall integrate the results of any such tasks or activities undertaken by EPA into its plans, reports and other deliverables.

70. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIV. COMPLIANCE WITH OTHER LAWS

71. Respondent shall comply with all applicable local, state, and federal laws and regulations when performing the Work. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-site and requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. RETENTION OF RECORDS

72. During the pendency of this Settlement Agreement and for a minimum of 10 years after commencement of construction of any remedial action, Respondent shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Work Areas, regardless of any corporate retention policy to the contrary. Until 10 years after commencement of construction of any remedial action, Respondent shall also instruct its contractors and agents to preserve all documents, records, and other information of whatever kind, nature, or description relating to performance of the Work.

73. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such documents, records or other information, and, upon request by EPA, Respondent shall deliver any such documents, records, or other information to EPA. 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 follow the procedures detailed in Subparagraph 66(c).

XVI. DISPUTE RESOLUTION

74. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally. Nothing in this section is intended to limit Respondent's ability to invoke dispute resolution under the Consent Decree for matters covered thereunder.

75. Notwithstanding any other provision of this Settlement Agreement, Respondent may not invoke the dispute resolution procedures more than once regarding the same issue. For example, if Respondent invokes the dispute resolution procedures with respect to an issue raised

by EPA's comments on the draft RI Report, and said issue is resolved under this Section, Respondent may not invoke the dispute resolution procedures with respect to the same issue later, in the context of EPA's comments on the draft FS Report.

76. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, Respondent shall notify EPA in writing of its objection(s) within 10 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 10 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing.

77. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Director of the Emergency and Remedial Response Division, EPA Region 2, will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement for matters not directly in dispute shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs, and regardless of whether Respondent agree with the decision.

XVII. STIPULATED PENALTIES

78. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 79 and 80 for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XVIII (Force Majeure). "Compliance" by Respondent shall include completion of the Work under this Settlement Agreement or any activities contemplated under any RI/FS Work Plan or other plan approved under this Settlement Agreement, in accordance with all applicable requirements of law, this Settlement Agreement, the RI/FS Work Plan, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

79. For all violations of this Settlement Agreement, except as provided in Paragraph 80, below, stipulated penalties shall accrue as follows:

| <u>Period of Non-compliance</u> | <u>Penalty Per Violation Per Day</u> |
|---------------------------------|--------------------------------------|
| 1st through 7th day | \$1,000.00 |
| 8th through 15th day | \$1,500.00 |
| 16th through 28th day | \$3,000.00 |
| 29th day and beyond | \$7,000.00 |

80. For the monthly progress reports required pursuant to Paragraph 53 above, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first week

of noncompliance; \$1000 per day, per violation, for the 8th through the 15th day of noncompliance; \$1500 per day, per violation, for the 16th through 28th day of noncompliance; and \$4000 per day, per violation, for the 29th day of noncompliance and beyond.

81. In the event that EPA, pursuant to Paragraph 101 of Section XXI (Work Takeover), assumes performance of all remaining Work, Respondent shall be liable for a stipulated penalty in the amount of \$725,000.

82. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 22nd day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (2) with respect to a decision by the EPA Management Official designated in Paragraph 77 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

83. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the same and describe the noncompliance. EPA may send Respondent a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

84. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures in accordance with Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference stipulated penalties, Site/Spill ID Number 0284, and the EPA docket number for this action. At the time of payment, Respondent shall send notice that payment has been made as provided in Paragraph 92, below.

85. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

86. Penalties shall continue to accrue as provided in Paragraph 82 during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

87. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 83.

88. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XXI (Reservations of Rights by EPA), Paragraph 101. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVIII. FORCE MAJEURE

89. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, *force majeure* is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to perform the Work or increased cost of performance.

90. 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 notify EPA orally within 48 hours of when Respondent first knew or should have known that the event might cause a delay. Within 7 days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

91. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. However, EPA shall take into consideration the effect of the extension of time granted in connection with Respondent's performance of their overall obligations under the RI/FS Work Plan, and shall modify as warranted, if necessary. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XIX. PAYMENT OF RESPONSE COSTS

92. Payment of Past Response Costs. Respondent shall pay to EPA \$3,500,000 in partial reimbursement of Past Response Costs, to be paid with Interest within 30 days of the Effective Date. Upon EPA's receipt of Respondent's payment of \$3,500,000 in accordance with this Paragraph, Respondent's potential liability to the United States for Past Response Costs shall be reduced by that amount. Respondent shall make such payment by Electronic Funds Transfer ("EFT") to EPA at the Federal Reserve Bank of New York, New York, New York. To make payment via EFT, Respondent shall provide the following information to its bank:

- Amount of payment: **\$3,500,000**
- EFT to be directed to: **Federal Reserve Bank of New York**
- ABA Routing Number: **021030004**
- Federal Reserve Bank of New York account number: **68010727**
- SWIFT address: **FRNYUS33**
- Address: **Federal Reserve Bank of New York**
Liberty Street
New York, NY 10045
- Field Tag 4200 of the Fedwire message to read: **D68010727, Environmental Protection Agency**
- Name of Respondent: **General Electric Co.**
- Settlement Agreement **Index Number: 02-2013-2014**
- Site/spill identifier: **0284**

Along with this information, Respondent shall instruct its bank to remit payment in the required amount via EFT to EPA's account with the Federal Reserve Bank of New York. To ensure that Respondent's payments are properly recorded, Respondent shall send a letter to EPA within one week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the Index Number of this Settlement Agreement, and Respondent's name and address. Such letter shall be sent to the EPA addressees listed in Paragraph 54 above and to:

Chief, Financial Management Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway, 22th Floor
New York, New York 10007-1866

93. Payments of Future Response Costs. Respondent shall reimburse EPA for all Future Response Costs incurred by EPA not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a printout of cost data in EPA's financial management system. Respondent shall make all payments within 30 days of receipt of each such billing, remit the payment of the billed amount via EFT to EPA in accordance with the payment procedures set forth in Paragraph 92, above.

94. The total amount to be paid by Respondent pursuant Paragraphs 92 and 93, above 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.

95. If Respondent does not make any payment referred to in Paragraph 92, above, when due, or does not pay Future Response Costs within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on that payment, and/or Future Response Costs, respectively. The Interest on the Past Response Costs payment referred to in Paragraph 92 shall begin to accrue on the due date, and shall continue to accrue until the date of payment. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including, but not limited to, payments of stipulated penalties pursuant to Section XVII. Respondent shall make all payments required by this Paragraph in the manner described in Paragraph 92.

96. Respondent may contest payment of the Future Response Costs under Paragraph 93 if it believes that EPA has made a mathematical error, has included costs which are outside the scope of the definition of Future Response Costs, or has incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 14 days of receipt of the bill and must be sent to the EPA representatives listed in Section X above. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30 day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 92. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered bank or trust company and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send the EPA Project Coordinators a copy of the transmittal letter and check paying the uncontested Future Response Costs, and 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. Simultaneously with establishment of the escrow account, Respondent shall initiate the dispute resolution procedures in Section XVI (Dispute Resolution).

If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 92. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 92. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XX. COVENANT NOT TO SUE BY EPA

97. 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 performed under this Settlement Agreement, for recovery of \$3,500,000 of Past Response Costs, and for Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XIX of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XIX and XVII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Past Response Costs and Future Response Costs pursuant to Section XIX. This covenant not to sue extends only to Respondent and does not extend to any other person.

XXI. RESERVATIONS OF RIGHTS BY EPA

98. 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 Floodplain. Further, except as specifically provided in this Settlement Agreement, 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.

99. 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.

100. The covenant not to sue set forth in Section XX 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 definitions of Past Response Costs or Future Response Costs, and for all Past Response Costs in excess of \$3,500,000;
- c. liability for performance of response action 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;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Floodplain; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Floodplain.

101. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by EPA in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XIX (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANT NOT TO SUE BY RESPONDENT

102. 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, Past Response Costs, Future 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 the Work or arising out of the response actions for which the Past Response Costs or Future Response Costs have or will be incurred, 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 Work or payment of Past Response Costs or Future Response Costs.

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

XXIII. OTHER CLAIMS

104. 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.

105. Except as expressly provided in Section XX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

106. 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).

XXIV. CONTRIBUTION PROTECTION

107. The Parties agree that this Settlement Agreement constitutes and administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled to, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs.

108. 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 resolved its liability to the United States for the Work performed under this Settlement Agreement and for Future Response Costs and Past Response Costs.

109. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands against any person not a party is to this Settlement Agreement for indemnification, contribution, or cost recovery. 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) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that provide contribution protection to such persons.

XXV. INDEMNIFICATION

110. Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, 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 other 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. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

111. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

112. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, 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. In addition, Respondent shall indemnify and hold harmless the United States 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.

XXVI. INSURANCE

113. At least 30 days prior to commencing any on-site Work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit, naming EPA as an additional insured. Within the same period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVII. FINANCIAL ASSURANCE

114. EPA has reviewed financial documentation dated March 13, 2014 previously supplied by Respondent to EPA and is satisfied that, through March 31, 2015, Respondent has sufficient financial resources to conduct the Work. By no later than March 31, 2015, Respondent shall reestablish and maintain financial security for the benefit of EPA in an amount of b \$20,500,000 in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;
- e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Respondent, or by one or more unrelated companies that have a substantial business relationship with Respondent; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or
- f. demonstration of sufficient financial resources to pay for the Work made by Respondent, which shall consist of a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

115. If Respondent elects to utilize the forms provided in Paragraphs 114.e. and/or 114.f. and Respondent or guarantors have provided similar demonstration at other RCRA, CERCLA, TSCA, or other federally-regulated sites, the amount for which Respondent is providing financial assurance at those sites should be added to the estimated cost of the Work for purposes of determining the total dollar amount required to satisfy the requirements of 40 C.F.R. Part 264.143(f).

116. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 114, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

117. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA.

118. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section.

XXVIII. INTEGRATION/APPENDICES

119. This Settlement Agreement and its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement 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 1” is the RI/FS Work Plan.

XXIX. ADMINISTRATIVE RECORD

120. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondent shall submit to EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Upon request of EPA, Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Upon request from EPA, Respondent shall additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondent and state, local or other federal authorities concerning selection of the response action. At EPA’s discretion, Respondent shall establish a community information repository at or near the Site, to house one copy of the administrative record.

XXX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

121. This Settlement Agreement shall become effective 5 days after the Settlement Agreement is signed by on behalf of the Director of the Emergency and Remedial Response Division of EPA Region 2. All times for performance of actions or activities required herein will be calculated from said Effective Date.

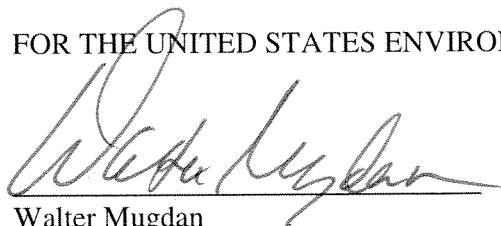
122. This Settlement Agreement may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Settlement Agreement.

123. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinators or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXXI. NOTICE OF COMPLETION OF WORK

124. When EPA determines that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to payment of Future Response Costs or record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the RI/FS Work Plan if appropriate in order to correct such deficiencies, in accordance with Paragraph 49 (Modification of the RI/FS Work Plan). Failure by Respondent to implement the approved modified RI/FS Work Plan shall be a violation of this Settlement Agreement.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



Walter Mugdan
Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region 2

September 30, 2014
Date

Hudson River PCBs Superfund Site, Floodplain
Administrative Settlement Agreement on Consent for Remedial Design and Feasibility Study,
Index No. CERCLA-02-2013-2014

CONSENT

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

GENERAL ELECTRIC COMPANY

 A. R. KLEE

Signature

 SEPT. 30, 2014

Date

 A. R. KLEE

Printed name

 VP, EHS

Title

