

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL ELECTRIC CO.,

Defendant.

CIVIL ACTION NO. 1:05 CV-01270

CONSENT DECREE MODIFICATION No.1

WHEREAS, the United States and General Electric Company (“Settling Defendant”) hereby agree to this Consent Decree Modification No. 1 (“Modification”) with respect to the Consent Decree in this matter (“Consent Decree”), which was entered by this Court on November 2, 2006. Pursuant to the Consent Decree, Settling Defendant is required, among other things, to perform response actions to address sediments contaminated with polychlorinated biphenyls (“PCBs”) at the Hudson River PCBs Superfund Site (“Site”), and to reimburse the United States for certain Site-related response costs.

WHEREAS, on August 18, 2003, the U.S. Environmental Protection Agency (“EPA”) and Settling Defendant entered into an Administrative Order on Consent for Remedial Design and Cost Recovery (“RD AOC”) under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-9675, pursuant to which Settling Defendant agreed, among other things, to perform remedial design activities needed for the implementation of the remedy selected by EPA in the February 1, 2002, Record of Decision (“ROD”) for the Site.

WHEREAS, on June 23, 2006, EPA directed Settling Defendant to incorporate into the design of the remedy contingency measures for protection of the Waterford and Halfmoon municipal water supply systems, namely alternate drinking water supplies or additional treatment of drinking water, that would be implemented if, during dredging in the Upper Hudson River, certain criteria to be developed by EPA for protection of the water supplies (hereinafter, the “Water Supply Decision Criteria”) are triggered.

WHEREAS, on July 12, 2006, Settling Defendant initiated proceedings under the RD AOC to dispute, among other things, EPA's June 23, 2006, direction to Settling Defendant regarding such contingency measures.

WHEREAS, on November 9, 2006, EPA issued a final decision directing Settling Defendant to, among other things, prepare a Water Supply Options Analysis that would evaluate potentially applicable contingency measures and provide a recommended contingency measure(s) to EPA.

WHEREAS, on April 10, 2007, Settling Defendant, reserving all rights and legal positions, submitted to EPA a Water Supply Options Analysis evaluating potentially applicable water supply options and recommending certain drinking water technology as contingency measures for the Waterford and Halfmoon municipal water supply systems.

WHEREAS, Settling Defendant believes that its recommended contingency measures are protective of the Town of Waterford's and the Town of Halfmoon's (collectively, the "Towns") water supplies. However, in order to reach agreement with EPA on contingency measures for ensuring protection of the Towns' water supplies, Settling Defendant has agreed, as provided herein, to pay certain sums toward the capital and water usage costs of an alternate water supply for the Towns.

WHEREAS, on November 17, 2008, EPA directed Settling Defendant to implement or fund the installation and maintenance of a granular activated carbon system ("GAC System") for the Village of Stillwater's water supply wells (which also provide potable water to a portion of the Town of Stillwater) during Phase 1 of the Remedial Action.

WHEREAS, EPA developed the Engineering Performance Standard for Dredging Resuspension ("Resuspension Standard") in order to control the amount of PCBs that is resuspended into the water column during dredging, and to protect downstream water quality. Settling Defendant is required to comply with the Resuspension Standard, as provided in the Consent Decree.

WHEREAS, the Consent Decree requires Settling Defendant to perform certain water column monitoring for PCBs and other constituents. These monitoring requirements are set forth in the Remedial Action Monitoring ("RAM") Scope and the Performance Standards Compliance Plan ("PSCP") Scope, which are Attachments B and C, respectively, to the Statement of Work for Remedial Action and Operations, Maintenance and Monitoring ("SOW") (Appendix B of the Consent Decree).

WHEREAS, Settling Defendant will conduct extensive monitoring of dredging-related resuspension of PCBs and other constituents in the Hudson River. Such monitoring will include monitoring for PCBs at the Thompson Island Dam, Schuylerville, Stillwater, and near the Town of Waterford's water supply intake, as well as monitoring at other locations. In addition, EPA has awarded funding to the New York State Department of Health ("NYSDOH") for NYSDOH

to monitor raw and finished water at the water supply systems for, among other places, the Town of Waterford, the Town of Halfmoon, and the Village of Stillwater, during Phase 1.

WHEREAS, based on information known to EPA as of the date that this Modification is filed with the Court, EPA believes that (i) the Resuspension Standard, (ii) the extensive water column and water supply monitoring that will be performed during the dredging and the analytical and other procedures that will ensure that the water suppliers receive timely notice of any exceedances during times that the Waterford and Halfmoon water supply systems are drawing water from the Hudson River, (iii) the fact that the Phase 1 dredging and the first two years of Phase 2 dredging will occur more than 30 miles away from the Waterford and Halfmoon intakes, and PCBs that are released during the dredging in this area will be blended with river water from other tributaries and diluted before reaching the Towns' water supplies, (iv) the construction of water supply lines and associated facilities to convey water from the City of Troy, New York to the Towns of Waterford and Halfmoon (hereinafter, the "Water Lines"), (v) following completion of the Water Lines, the availability of Troy's water to the Towns of Waterford and Halfmoon during any times that the EPA-established Water Supply Decision Criteria are triggered, and (vi) the installation and maintenance of the GAC System for the Village of Stillwater's water supply wells during Phase 1, will, along with other factors, be protective of the water supplies of the Towns of Halfmoon and Waterford, and will be protective of the water supplies of the Village and Town of Stillwater during Phase 1, from conditions that may be caused by the Hudson River dredging.

WHEREAS, EPA and Settling Defendant have agreed, as provided herein, to modify certain of the water column monitoring requirements set forth in the RAM Scope and the PSCP Scope in order to improve the efficiency and cost-effectiveness of the monitoring program while maintaining the protectiveness of the program.

WHEREAS, this Modification:

(i) adds to the Consent Decree provisions regarding Settling Defendant's reimbursement of certain costs that are incurred by EPA and that relate to (a) the design and construction of the Water Lines for the Town of Waterford and Town of Halfmoon, and (b) the design, construction, installation and maintenance of the GAC System for the Village of Stillwater's water supply wells for Phase 1 of the Remedial Action;

(ii) adds to the Consent Decree provisions regarding Settling Defendant's reimbursement of certain costs that might be incurred by EPA for the provision of water to the Towns during Phase 2 of the Remedial Action;

(iii) modifies certain of the water column monitoring requirements set forth in the SOW, including the RAM Scope and the PSCP Scope; and

(iv) makes administrative changes to certain provisions of the Consent Decree.

WHEREAS, this Modification is made by agreement between EPA and Settling Defendant pursuant to Paragraph 132 of the Consent Decree.

WHEREAS, the United States maintains that this Modification does not fundamentally alter the basic features of the remedy selected in the ROD, within the meaning of 40 C.F.R. § 300.435(c)(2)(ii), and therefore, pursuant to Paragraph 132 of the Consent Decree, the Court's approval is not required with respect to this Modification. Settling Defendant does not object to the United States' position that the Court's approval of this Modification is not required. Settling Defendant's decision not to object to the United States' position shall have no precedential effect with respect to any other matter under this Consent Decree.

WHEREAS, the State of New York has been provided with a reasonable opportunity to review and comment on this Modification.

WHEREAS, although not required, the United States in its discretion will hold a 30-day public comment period with respect to this Modification. For purposes of this Modification only, Settling Defendant does not object to the United States' release of this Modification for public comment.

NOW, THEREFORE, the Consent Decree is modified as follows:

1. A new Paragraph 65A. is added to Section XVI of the Consent Decree, as follows:

65A. Payments for Water Supply Contingencies

- a. Design and Construction of Water Lines for Towns of Waterford and Halfmoon, and Design, Construction, Use and Maintenance of GAC System for Village of Stillwater's Water Supply Wells
 - i. Settling Defendant shall pay to the United States the lesser of (i) \$7,000,000, or (ii) any and all direct and indirect costs incurred or to be incurred by EPA relating to the design and construction of the Water Lines for the Towns of Waterford and Halfmoon, and the design, construction, use and maintenance of the GAC System for Phase 1 for the Village of Stillwater's water supply wells. EPA will send Settling Defendant one or more billings for these costs, until Settling Defendant has paid the amounts required by this subparagraph. Paragraphs 66 through 71 of the Consent Decree shall apply with respect to the billing and payment of these costs.
 - ii. EPA has designed and is constructing the Water Lines for the Towns of Waterford and Halfmoon and is designing and will install and maintain, during Phase 1, the GAC System for the Village of Stillwater's water supply wells. Settling Defendant will have no

liability, obligation or responsibility to the United States regarding design or construction of the Water Lines or design, construction, use and maintenance, during Phase 1, of the GAC System, other than the payment(s) under subparagraph a.i., above.

- iii. The payment(s) by Settling Defendant under subparagraph a.i., above, will not count towards the cap on Phase 1 RA Response Costs set forth in Paragraph 62 of the Consent Decree, or towards the cap on Phase 2 RA Response Costs set forth in Paragraph 63 of the Consent Decree.

b. Water Usage Costs

- i. If Settling Defendant notifies EPA, pursuant to subparagraph 15.c. of the Consent Decree, that it will perform Phase 2 of the Remedial Action, and if at any time during Phase 2 of the Remedial Action, the EPA-established Water Supply Decision Criteria are triggered and the Town of Waterford, NY or the Town of Halfmoon, NY, or both, uses the alternate water supply during the period between the time when those criteria are triggered and the time when EPA determines that use of the alternate water supply is no longer necessary, then Settling Defendant shall reimburse EPA for fifty percent (50%) of any costs paid by EPA for water usage fees assessed upon such Town(s) by the City of Troy, NY, up to a total payment by Settling Defendant of \$750,000. EPA will send Settling Defendant one or more billings for these costs. Paragraphs 66 through 71 of the Consent Decree shall apply with respect to the billing and payment of these costs.
- ii. Except as provided in subparagraph b.i., above, and subparagraph 104.q. of the Consent Decree, Settling Defendant shall have no obligation, liability or responsibility to pay for any costs incurred by EPA for water usage fees assessed upon the Towns of Halfmoon and Waterford, NY during Phase 1 or Phase 2 of the Remedial Action.
- iii. Settling Defendant's payment(s) under subparagraph b.i., above, will not count towards the cap on Phase 2 RA Response Costs set forth in Paragraph 63 of the Consent Decree.

2. The following new subparagraphs i. and j. are added at the end of Paragraph 98 of Section XXI of the Consent Decree:

- i. for the design of, installation of, payment for, or reimbursement of the costs of alternative water supplies (within the meaning of Section 101(34) of CERCLA), or additional water treatment, for the Towns of Halfmoon and Waterford, New York during Phase 1 of the Remedial Action and (if Settling

Defendant notifies EPA, pursuant to Paragraph 15.c., above, that it will perform Phase 2 pursuant to this Consent Decree) during Phase 2 of the Remedial Action; and

j. for the investigation of the need for, and the design of, installation of, payment for, or reimbursement of the costs of alternative water supplies (within the meaning of Section 101(34) of CERCLA), or additional water treatment, during Phase 1 of the Remedial Action, for any other public water suppliers in the Upper Hudson River area that may be impacted by the Phase 1 dredging.

3. The following is inserted immediately after the second sentence of Paragraph 113 of the Consent Decree:

The “matters addressed” in this Consent Decree shall also mean (i) the design of, installation of, payment for, or reimbursement of the costs of alternative water supplies, or additional water treatment, for the Towns of Halfmoon and Waterford, NY during Phase 1 of the Remedial Action and (if Settling Defendant notifies EPA, pursuant to Paragraph 15.c., above, that it will perform Phase 2 pursuant to this Consent Decree) during Phase 2 of the Remedial Action; and (ii) the investigation of the need for, and the design of, installation of, payment for, or reimbursement of the costs of alternative water supplies, or additional water treatment, during Phase 1 of the Remedial Action, for any other public water suppliers in the Upper Hudson River area that may be impacted by the Phase 1 dredging.

4. The following new subparagraph q. is added at the end of Paragraph 104 of Section XXI of the Consent Decree:

q. liability for any costs that are paid by EPA for water usage fees that are assessed upon the Town of Waterford, New York and/or the Town of Halfmoon, New York by the City of Troy, New York during Phase 1 or Phase 2 of the Remedial Action, where such costs are paid by EPA because of Settling Defendant’s failure to comply with Attachment A to Consent Decree Modification No. 1, entitled “Modified Scope of Water Column Monitoring” (“Attachment A”).

5. In Paragraph 108 of Section XXII of the Consent Decree, the phrase “104.j. through 104.p.” is replaced with the phrase “104.j. through 104.q.”

6. Monitoring.

The SOW and its attachments, including the RAM Scope and the PSCP Scope, are modified as set forth in Attachment A hereto to set forth a revised scope of the water

column monitoring to be implemented by Settling Defendant during Phase 1 of the Remedial Action and in the period between Phase 1 and Phase 2. In addition, in the event that Settling Defendant notifies EPA, pursuant to Paragraph 15.c of the Consent Decree, that it will perform Phase 2 pursuant to the Consent Decree, the water column monitoring to be performed during Phase 2 will be governed by the revised scope of monitoring set forth in Attachment A, as it may be modified following the completion of Phase 1 and prior to Settling Defendant's notification to EPA as to whether it will perform Phase 2 pursuant to the Consent Decree.

7. Recipients of Notices and Other Submissions.

- a. In Consent Decree Paragraphs 41 and 59, "Team Leader, Hudson River Team, Emergency and Remedial Response Division, EPA Region 2, (212) 637-3952" is replaced with "Chief, New York Remediation Branch, Emergency and Remedial Response Division, EPA Region 2, (212) 637-4288."
- b. In Consent Decree Paragraph 41, the parenthetical "(or, in the event that the Team Leader is not available, either the EPA Project Coordinator or the Alternate EPA Project Coordinator)" is replaced with the parenthetical "(or, in the event that the Chief of the New York Remediation Branch is not available, either the EPA Project Coordinator or the Alternate EPA Project Coordinator)."
- c. In Consent Decree Paragraph 59:
 - i. the parenthetical "(or, in the event of the unavailability of the Team Leader, the EPA Project Coordinator or the Alternate EPA Project Coordinator)" is replaced with the parenthetical "(or, in the event of the unavailability of the Chief of the New York Remediation Branch, the EPA Project Coordinator or the Alternate EPA Project Coordinator)"; and
 - ii. The phrase "Settling Defendant shall take such actions in consultation with EPA's Team Leader or the Team Leader's designee..." is replaced with the phrase "Settling Defendant shall take such actions in consultation with EPA's Chief, New York Remediation Branch, or the Chief's designee..."
- d. In Consent Decree Paragraph 125, the "Team Leader, Hudson River Team" and the associated address is replaced with:

Chief, New York Remediation Branch
Emergency and Remedial Response Division
United States Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, New York 10007-1866

- e. Also, in Consent Decree Paragraph 125, the following individuals and their associated addresses are added under the heading, "As to the Settling Defendant":

Sheri L. Moreno
Counsel, Hudson River Program
General Electric Company
320 Great Oaks Office Park, Suite 319
Albany, New York 12203

Timothy A. Kruppenbacher
Operations Manager
General Electric Company
381 Broadway, Building 40-2
Fort Edward, New York 12828

8. Payments to EPA.

- a. The wire transfer payment procedures in Consent Decree Paragraph 67 are revised so that such payments are directed to the Federal Reserve Bank of New York instead of Mellon Bank. The revised payment instructions are as follows:

To effect payment via EFT, Settling Defendant shall instruct its bank to remit payment in the required amount via Electronic Funds Transfer (EFT) using the following information, or such other updated EFT information that EPA may subsequently provide to Settling Defendant:

- i. Amount of payment
- ii. Bank: **Federal Reserve Bank of New York**
- iii. Account code for Federal Reserve Bank of New York account receiving the payment: **68010727**
- iv. Federal Reserve Bank ABA Routing Number: **021030004**
- v. SWIFT Address:
FRNYUS33
33 Liberty Street
New York, NY 10045
- vi. Field Tag 4200 of the Fedwire message should read: "**D 68010727 Environmental Protection Agency**"
- vii. Name of Remitter: **General Electric Company**

viii. Case number: **Civ. No. 1:05-CV-1270**

ix. Site/Spill identifier: **0284**

b. The text of Consent Decree Paragraph 69 is replaced with the following:

At the time of each payment made by Settling Defendant to the United States under this Section, Settling Defendant shall send notice to the United States that such payment has been made. Such notice shall reference the date of the EFT, the payment amount, the Site name, the civil action number of this case, and Settling Defendant's name and address, and shall be sent to the United States in accordance with Section XXVII (Notices and Submissions), and to:

- i. acctsreceivable.cinwd@epa.gov; and
- ii. U.S. Environmental Protection Agency
Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

9. Schedule for Resubmission of Insurance Certificates and Policies. The annual deadline provided in Paragraph 75 of the Consent Decree for Settling Defendant to resubmit copies of insurance certificates and policies is amended to require Settling Defendant to resubmit copies of such insurance certificates and policies by January 31 of each calendar year.

10. This Modification will be subject to a public comment period of not less than 30 days. The United States reserves the right to withdraw or withhold its consent to this Modification if public comments submitted during the comment period disclose facts or considerations which indicate that the Modification is inappropriate, improper, or inadequate.

11. The effective date of this Modification shall be the date on which the United States files this Modification with the Court. If for any reason the United States does not file this Modification with the Court, then the mutual obligations of the United States and Settling Defendant set forth in this Modification shall be voided.

12. The Consent Decree modifications set forth herein are incorporated into, and are an enforceable part of, the Consent Decree. Except as set forth expressly herein, the Consent Decree is unchanged.

THE UNDERSIGNED PARTY enters into this Modification No. 1 with respect to the Consent Decree in the matter of *United States v. General Electric Company*, Civ. No. 1:05-CV-1270 (N.D.N.Y.) relating to the Hudson River PCBs Superfund Site.


FOR THE UNITED STATES OF AMERICA

Date

Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

THE UNDERSIGNED PARTY enters into this Modification No. 1 with respect to the Consent Decree in the matter of *United States v. General Electric Company*, Civ. No. 1:05-CV-1270 (N.D.N.Y.) relating to the Hudson River PCBs Superfund Site.

1/14/09
Date



Walter E. Mugdan, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, N.Y. 10007-1866

