

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development and
Implementation of a Remedial Program
for an Inactive Hazardous Waste Disposal
Site, Under Articles 11 and 17 and Titles 9 and 13
of Article 27 and Title 27 of Article 71 of the
Environmental Conservation Law of the State of New York
by

ORDER
ON
CONSENT

INDEX #D5-0002-96-06

General Electric Company,

Respondent.

Registry No. 5-58-013

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of, *inter alia*, Articles 11 and 17 and Article 27, Titles 9 and 13 of the Environmental Conservation Law of the State of New York. This Order is issued pursuant to the Department's authority under, *inter alia*, such Articles and Titles and under ECL 3-0301 with the consent of General Electric Company ("Respondent").
2. Respondent is a corporation organized and existing under the laws of the State of New York. Beginning in 1952 and continuing to the present, Respondent has owned and operated a capacitor products manufacturing facility located on John Street, in the Village of Hudson Falls, County of Washington, State of New York (the "Site"). A map of the Site is attached and incorporated into this Order as Appendix "A."
3. On July 10, 1986 the Commissioner of the Department issued an Order on Consent (Index No. C5-0001-85-06; the "July 10, 1986 Order") to Respondent under which Respondent agreed to develop and implement a field investigation at the Site. On February 21, 1989 the Commissioner of the Department issued an Amendment to the July 10, 1986 Order to Respondent under which Respondent agreed to conduct further investigation of the Site and then conduct a study "evaluating the feasibility of on-Site and off-Site remedial options to abate and/or eliminate any significant threat to the environment or public health posed by the presence of hazardous wastes at the Site."
4. Respondent conducted the investigations and the feasibility evaluation with the approval and oversight of the Department. After review of the results of the investigations and the feasibility evaluation, the Department identified three operable units (OU-1, -2, and -3) at the Site. On January 13, 1993 the Department issued a proposed Remedial Action Plan ("PRAP") for remediation of the contaminated soils (OU-1) at the Site for public review and comment. Following a period of public comment on the PRAP, the Department reviewed the public comments and selected a final remedial alternative for OU-1 in a Record of Decision ("ROD") on March 29, 1993. On October 14, 1993, the Department issued Order on Consent, Index No. A5-0927-93-03 (the "October 14, 1993 Order"),

with Respondent's consent, which required Respondent to implement the OU-1 ROD.

5. During implementation of the OU-1 ROD, GE and the Department concluded that the remedy selected for OU-1 may not be feasible or appropriate. Therefore, the Department determined by letter dated June 15, 1994 that further remediation activities for OU-1 should be held in abeyance.

6. On July 16, 1993, the Department issued Order on Consent, Index No. A5-0928-93-03 (the "July 16, 1993 Order"), with Respondent's consent, which required Respondent to conduct a remedial investigation/feasibility study ("RI/FS") for OU-2 and OU-3 and, at Respondent's election, Interim Remedial Measures ("IRMs") and remediation.

7. Prior to the effective date of the July 16, 1993 Order, Respondent began an investigation of PCB fate and transport in the Hudson River in the vicinity of the Site. Respondent reported the results of its investigations to the Department and the United States Environmental Protection Agency ("EPA"). The results of Respondent's investigation suggest that a continuing source of PCBs to the river existed in the vicinity of the Site. Respondent also undertook preliminary investigations of the Site prior to the effective date of the July 16, 1993 Order, the results of which were reported to the Department.

8. Since 1993, Respondent has been conducting the RI/FS under the July 16, 1993 Order with the approval and oversight of the Department. Respondent has also completed numerous IRMs at the Site, with the Department's approval and oversight, as described in Appendix "B."

9. Further, Respondent conducted, with the approval and oversight of the Department and the Department of Health ("DOH"), a drinking water well sampling program. In conformity with recommendations of DOH and without an admission of liability, Respondent paid for and caused the installation of public water to a number of properties in the vicinity of the Site. GE submitted to the Department a report dated January 1996 that describes the drinking water well sampling and public water hookup program conducted.

10. Based on data collected and experience gained during implementation of the RI/FS, the IRMs, and the OU-1 ROD, the Department determined, and Respondent agrees, that the Operable Units must be redefined to facilitate efficient and effective implementation of the RI/FS and remedial activities at the Site. Accordingly, this Order, inter alia, replaces and supersedes the July 16, 1993 Order and the October 14, 1993 Order and provides for revised Operable Unit descriptions for new Operable Units 2A, 2B, 2C, and 2D (contained in Appendix "C").

11. In 1980, Respondent submitted to the EPA Part A of its permit application to operate a hazardous waste storage facility at the Site pursuant to Section 3005(e) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"). In 1986, it withdrew that Part A application and initiated implementation of its approved closure plan. Closure of Respondent's RCRA interim status storage facility was certified by C. T. Male on January 22, 1988 and by Respondent on January 27, 1988. On April 5, 1988, the Department confirmed receipt of the

Respondent and C. T. Male certification of RCRA closure and notified Respondent that the facility was officially closed. The Department also informed Respondent that EPA determined that the corrective action provisions of the Hazardous and Solid Waste Amendments ("HSWA"), RCRA §3008(h) apply at interim status storage facilities.

12. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and presents a significant threat to the public health or environment. Respondent disagrees with the Department's allegations.

13. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. The Department alleges that any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. Pursuant to ECL 71-2727.3, the "commissioner, after investigation, notice and an opportunity to be heard, may issue... orders requiring corrective action, including corrective action beyond the facility boundary where necessary to protect human health and the environment, for all releases of hazardous wastes or constituents from any solid waste management unit at any treatment, storage or disposal facility which is either permitted or seeking a permit under title 7 or 9 of article 27 [of the ECL]."

D. The Department alleges that it also has the power, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

14. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement an inactive hazardous waste disposal site remedial and corrective action program ("Remedial Program") for the Site that shall include a Remedial Investigation/Feasibility Study ("RI/FS") that satisfies any corrective action requirements to conduct investigations and evaluations that may be applicable; and (ii) if Respondent elects to undertake remedial activities as provided in Paragraph IV of this Order, undertake the design and implementation of the selected Remedial Program, including appropriate operation, maintenance, and monitoring of the selected Remedial Program; and (iii) reimburse the State's administrative costs pursuant to Paragraph XIII of this Order.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. RI/FS Work Plans

A. On August 24, 1995, the Department approved Respondent's RI/FS work plan for OU-2A and 2B, dated July 26, 1995, for the investigation of each of those Operable Units to be performed under this Order. On September 13, 1995, it approved Respondent's addendum to that work plan, dated September 12, 1995; and on June 4, 1996, approved a second addendum to that work plan, dated May 22, 1996. The work plan dated July 26, 1995 and its addenda dated September 12, 1995 and May 22, 1996 collectively constitute the approved RI/FS Work Plan for OU-2A and 2B. Such approved Work Plan is incorporated into this Order as Appendix "D-1" and made an enforceable part of it.

B. On March 4, 1996, the Department approved Respondent's RI/FS work plan for OU-2C and OU-2D, dated January 15, 1996, for the investigation of each of those Operable Units to be performed under this Order, with the condition that additional material had to be addressed to make the work plan complete. Respondent satisfied that condition by the submission of an Eastern Investigation Scope of Work dated April 15, 1996 and approved April 24, 1996. The work plan dated January 15, 1996 and Eastern Investigation Scope of Work dated April 15, 1996 collectively constitute the approved RI/FS Work Plan for OU-2C and OU-2D. Such approved Work Plan is incorporated into this Order as Appendix "D-2" and made an enforceable part of it.

II. Performance and Reporting of Remedial Investigations

A. Respondent shall continue to perform and shall complete the Remedial Investigation for each Operable Unit in accordance with that Operable Unit's Department-approved RI/FS Work Plan.

B. Within the time frame set forth in each Department-approved RI/FS Work Plan, Respondent shall prepare and submit to the Department a Remedial Investigation Report that shall:

1. include all data generated and all other factual information obtained during the Remedial Investigation;

2. provide assessments and evaluations that are consistent with CERCLA, the NCP, and appropriate USEPA and Department technical and administrative guidance documents for preparing such reports, including the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988;

3. identify, as appropriate, any additional data that must be collected; and

4. identify an individual or firm with primary responsibility for the day to day performance and supervision of the Remedial Investigation to certify that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan.

III. Feasibility Study

A. On the schedule set forth in the Department-approved RI/FS Work Plan for each Operable Unit, Respondent shall perform, prepare, and submit a Feasibility Study pertaining to that Operable Unit evaluating remedial actions to eliminate, to the extent practicable, any health and environmental hazards and potential hazards attributable to the disposal of hazardous wastes or hazardous waste constituents at the Site. Each Feasibility Study shall be prepared by and shall include a certification under the seal of the professional engineer with primary responsibility therefor that the Feasibility Study was prepared in accordance with this Order.

B. Respondent shall perform and prepare the Feasibility Study for each Operable Unit in accordance with that Operable Unit's RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and appropriate USEPA and Department technical and administrative guidance documents, including the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and, as appropriate, any subsequent revisions to any appropriate guidance documents in effect at the time each Feasibility Study is submitted.

C. Within 60 days after the Department's approval of the Feasibility Study for an Operable Unit, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS and the proposed remedial action plan identified therein, in accordance with CERCLA, the NCP, and appropriate USEPA and Department technical and administrative guidance documents, including the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to any appropriate guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for that Operable Unit in a Record of Decision ("ROD"). The Department is not bound by, nor limited in its review of relevant information, to the submissions made pursuant to this Order in its selection of the final remedial alternative. The ROD that addresses Operable Units 2A and 2B shall supersede the former Operable Unit 1 ROD issued March 29, 1993, and Respondent shall have no further obligations with respect to the implementation of the March 29, 1993 Operable Unit 1 ROD.

IV. Election

Upon issuance of the ROD for an Operable Unit, the Department shall furnish a complete copy of the ROD to Respondent. Respondent shall, after review of that ROD, notify the Department in writing within thirty (30) days of its receipt of that ROD from the Department whether or not it elects to undertake the remedial actions, or portions thereof, identified in that ROD. In the event Respondent elects not to undertake such remedial actions, the provisions of Paragraph V ("Remedial Design Contents") and Paragraph VI ("Remedial Construction") of this Order shall become null and void as to that Operable Unit, and both parties shall retain whatever rights and remedies at law that may be available to them in any future proceedings. Upon Respondent's notification of its election to undertake the remedial actions required under that ROD, or a portion thereof, Paragraphs V and

VI of this Order shall become operative as to that Operable Unit, and that ROD shall be incorporated into this Order and attached as part of Appendix "E."

V. Remedial Design

A. Unless the ROD for an Operable Unit selects the "no action" alternative, within 120 days, if and after Respondent elects to undertake the remedial activities, or portions thereof, selected in the ROD for that Operable Unit, Respondent shall submit to the Department a remedial design to implement the remedial alternative for that Operable Unit selected by that Operable Unit's ROD or such portion thereof (the "Remedial Design"), on a schedule to be agreed upon by the parties. The Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design for that Operable Unit was prepared in accordance with this Order.

B. The Remedial Design shall include, as the Department, in consultation with Respondent, determines appropriate, the following:

1. A detailed description of the remedial objectives and the means by which each essential element of the selected remedial alternative will be implemented to achieve those objectives, including, as appropriate, but not limited to:

- a. the construction and operation of any structures;
- b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;
- c. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;
- d. physical security and posting of the Site;
- e. health and safety of persons living and/or working at or in the vicinity of the Site;
- f. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Design; and
- g. monitoring during implementation of the Department-selected remedial alternative.

2. "Biddable Quality" engineering documents for the Remedial Design including,

but not limited to, plans and specifications prepared, signed, and sealed by a professional engineer. Subject to 6 NYCRR 375-1.7, these plans shall satisfy all applicable local, state and federal laws, rules and regulations;

3. A time schedule to implement the Remedial Design;
4. A conceptual description of the parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design;
5. A conceptual description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design, including an estimate of the number of years during which such activities will be performed;
6. A contingency plan applicable during implementation of the Remedial Design to address circumstances or events that might affect the project's schedule, result in a release of hazardous waste from the Site, or present a risk to human health or safety or to the environment;
7. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction, operation, maintenance and post construction monitoring. This plan shall be prepared in accordance with 29 CFR 1910 by a qualified health and safety professional; and
8. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto that may be appropriate.

VI. Remedial Construction

- A. Within such period of time after the Department's approval of the Remedial Design for an Operable Unit as the Department shall prescribe, but not less than 60 days, Respondent shall commence construction of the Department-approved Remedial Design for that Operable Unit.
- B. Respondent shall implement the Operable Unit's Remedial Design in accordance with that Operable Unit's Department-approved Remedial Design.
- C. Within 60 days after completion of the construction activities identified in that Operable Unit's Department-approved Remedial Design, Respondent shall submit to the Department a detailed post-remedial operation and maintenance plan ("O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification that the Remedial Design was implemented and all construction activities were completed in accordance with that Operable Unit's Department-approved Remedial Design. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer having responsibility for oversight of the implementation of that Operable Unit's Department-approved Remedial Design.

D. Upon the Department's approval of the O&M Plan, Respondent shall implement the O&M Plan in accordance with the requirements of the Department-approved O&M Plan.

E. After receipt of the "as-built" drawings, final engineering report, and certification for an Operable Unit, the Department shall notify Respondent in writing whether the Department is satisfied that all construction activities have been completed in compliance with the Department-approved Remedial Design for that Operable Unit.

F. If the Department concludes that any element of the Remedial Program for an Operable Unit fails to achieve the remedial objectives set forth in the ROD for that Operable Unit or otherwise fails to protect human health or the environment and determines that action in addition to that set forth in such ROD is necessary to achieve those objectives or to ensure that such Remedial Program otherwise protects human health and the environment, the Department shall notify Respondent of the additional action needed. Within 30 days of Respondent's receipt of the Department's written determination that action is required pursuant to this Subparagraph VI.F, Respondent shall notify the Department's Director of Environmental Remediation (the "Director") whether it elects to undertake such additional action. In the event Respondent elects not to undertake such additional action, this Subparagraph VI.F shall not require any such additional action, and both parties shall retain whatever rights and remedies at law that may be available to them in future proceedings. Upon Respondent's notification of its election to undertake such additional action, such election shall be incorporated into and become an enforceable part of this Order.

VII. Interim Remedial Measures

Before the effective date of the ROD for an Operable Unit, Respondent may propose, on its own initiative or upon the request of the Department, interim remedial measures ("IRMs") for that Operable Unit on an as-needed basis. As described in Paragraph 8 and in Appendix "B," Respondent has completed a number of IRMs at the Site with the Department's approval and oversight. In proposing each IRM, Respondent shall submit to the Department a work plan which includes timeframes for the completion of the IRM. Upon the Department's determination and Respondent's agreement that the proposal is an appropriate interim remedial measure and the Department's approval of such work plan, the work plan shall be incorporated into and become an enforceable part of this Order in Appendix "F." Respondent shall then carry out such IRM in accordance with the requirements of the approved work plan and this Order.

VIII. Progress Reports

Respondent shall submit to the Director of the Central Remedial Action Bureau of the Department's Division of Environmental Remediation designated in Paragraph XVII two copies of written monthly progress reports that:

A. Describe the actions which have been taken toward achieving compliance with this Order during the previous month;

B. Include

1. all results (whether preliminary or validated) of sampling undertaken pursuant to this Order that Respondent or any of its contractors received during the previous month; and

2. all non-privileged results (whether preliminary or validated) of sampling not undertaken pursuant to this Order that pertain to the Site or the Site's vicinity, or that were collected in the Hudson River, other than data provided, or to be provided, to the Department pursuant to permits, other orders, or agreements (and as to such data, Respondent shall copy the Director of the Department's Central Remedial Action Bureau on all correspondence transmitting such data to the Department).

Respondent is not required, however, to provide product quality control/process related sampling results, wastewater treatment process control data, hazardous waste management data, industrial hygiene monitoring data, or asbestos abatement project data. In the event that Respondent asserts that particular data or information is privileged or contains trade secrets or confidential business information, Respondent shall describe such data or information and the nature of the privilege asserted with sufficient particularity to place the Department on notice of the basis of Respondent's claim. Respondent shall make no claim that the sampling results generated pursuant to this Order are privileged or are otherwise protected from disclosure. The provision of sampling results shall not be deemed a waiver of any evidentiary privilege or objection. Nothing in this Order shall impair, diminish or affect: (i) the Department's rights to obtain information from Respondent to which it is otherwise entitled pursuant to law; or (ii) Respondent's obligations to make any reports required by law to the Department or any other governmental agency;

C. Identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

D. Describe all actions that will be taken in the next month to comply with the Order, including but not limited to, data collection and scheduled work plan implementation activities;

E. Include information regarding the status of activities, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays;

F. Include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

G. Describe all activities undertaken at the request of the Department in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

IX. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether the submittal was prepared, and generation of the data and other information in the submittal was completed, in accordance with this Order. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the Health and Safety Plan and the monthly progress reports. The Department's approval shall constitute acknowledgment that the submittal fulfills the conditions and requirements for the development of that submittal contained in this Order. All Department-approved submittals shall be incorporated into this Order and the provisions of any Department approved submittals which require any action or are the basis for any action on the part of Respondent shall become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days, or such longer period of time as may be agreed to in writing by the Department, after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order, unless Respondent, within ten (10) business days of receipt of notification of disapproval or such longer time period as may be agreed to in writing by the Department, invokes the dispute resolution mechanism set forth below. If Respondent does not invoke the dispute mechanism within 10 business days of receipt of the Department's written disapproval of the revised submittal the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. The Department's approval of a revised submittal shall constitute acknowledgment that the revised submittal fulfills the conditions and requirements for the development of that revised submittal that are contained in this Order. The provisions of any Department-approved revised submittals which require any action or are the basis for any action on the part of Respondent shall be incorporated into and become an enforceable part of this Order.

B. If the Department disapproves a revised submittal, the written notification shall set forth the basis of the Department's objections. Respondent may seek to discuss with the Department its disapproval of Respondent's submittal but such discussions shall not extend the time period Respondent is allowed to invoke the dispute resolution mechanism set forth below, unless an agreement in writing by the Department specifically extends such time period. To invoke the dispute resolution mechanism set forth below, Respondent shall, within 10 business days following receipt of the Department's written notice of disapproval, serve a statement on the Department in accordance with the following procedures:

1. Respondent shall serve on the Department's Director of Environmental

Remediation (the "Director") a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and supporting documentation (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position, no later than ten business (10) days after receipt of Respondent's Statement of Position. In the event that these 10-day time periods for exchange of Statements of Position may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department and as agreed to by Respondent.

2. The Director shall review the Statements of Position of Respondent and Department, respectively, and may request Respondent to respond in writing, in accordance with a schedule reasonably determined by the Director, to the Statement of Position of the Department, or request Respondent and the Department to appear before him or her for negotiation, mediation, or oral argument.

3. Unless the dispute is resolved by negotiation or mediation, the Director shall decide the dispute in writing and shall set forth the reasons for the decision. The decision of the Director constitutes the decision of the Department and shall be final and binding upon Respondent and the Department unless Respondent seeks judicial review.

4. Respondent may appeal the decision of the Director by seeking judicial review of the decision in a proceeding commenced under Article 78 of the Civil Practice Laws and Rules within 30 days after Respondent's receipt of such decision.

C. The Department may request Respondent to modify and/or amplify and expand a submittal if the Department determines, after reviewing data generated by an activity required under this Order or any other data or facts, that further work, beyond that set forth in the approved Work Plans, is necessary. Within 30 days of receipt of the Department's written determination that Respondent should modify and/or amplify and expand a submittal pursuant to this Subparagraph, Respondent shall notify the Director whether it elects to modify and/or amplify and expand the submittal. In the event Respondent elects not to modify and/or amplify and expand the submittal, this Order shall not require modification or expansion of the submittal and both parties shall retain whatever rights and remedies at law that may be available to them in future proceedings. Upon Respondent's notification of its election to modify and/or amplify and expand the submittal, such election shall be incorporated into and become an enforceable part thereof.

X. Relationship to Other Obligations

A. 1. Upon the effective date of this Order, except with respect to IRMs undertaken under authority of either of same, the July 16, 1993 Order, Index No. A5-0928-93-03, and the October 14, 1993 Order, Index No. A5-0927-93-03, are hereby terminated.

2. This Order's RI/FS objectives are to determine what hazardous waste and hazardous waste constituents, if any, are present at, and emanating from, the Site, and to what extent;

to determine what impacts such waste and constituents, if present, may have on human health and the environment; and to gather engineering data needed for the FS and, if needed, the Remedial Design, with all potential pathways and potential source areas for hazardous waste and hazardous waste constituent migration off-Site being identified and characterized. Respondent hereby agrees that the scope of work for each RI/FS Work Plan is based upon on-Site and off-Site conditions as presently understood. However, if the results of the ongoing investigations yield information that significantly influences such understanding, the scopes of work will be revised after mutual consultation and agreement.

B. The investigative and remedial obligations under this Order are intended to, and if implemented in accordance with this Order, shall, satisfy any applicable RCRA corrective action requirements under ECL Article 27, Titles 9 and 13 or Article 71, Title 27, and RCRA (including HSWA).

XI. Penalties

A. The Department may determine that Respondent's failure to comply with this Order constitutes a violation of this Order and the ECL. Nothing in this Order shall constitute a waiver of Respondent's right to contest such determination and assert such defenses as it may have under applicable law.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot or an unforeseeable event arising from causes over which Respondent has no control or which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays, and shall request an appropriate extension or modification of this Order.

XII. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Respondent, at reasonable times and after notice, by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing, and to ensure Respondent's compliance with this Order. If Respondent elects, pursuant to Paragraph IV of this Order, to undertake the Remedial Design, Respondent shall provide the Department with suitable office space near the Site, including access to a telephone, and shall permit the Department access to all non-privileged records relating to matters addressed by this Order and to job meetings.

XIII. Payment of State Costs

A. Within 30 days after the effective date of this Order, Respondent shall pay to the

Department the sum of \$256,517.62, which sum represents the balance of costs the State incurred on or before December 31, 1995, that as of the effective date of this Order, Respondent shall not have already reimbursed the Department.

B. 1. a. Respondent agrees to reimburse the Department for reasonable expenses incurred by the State that are appropriate and not inconsistent with the NCP and that are incurred during the period January 1, 1996 to the date of the Department's issuance of the last ROD to be issued for the Operable Units identified in this Order, such expenses including, but not being limited to nor exemplified by, those associated with the review of IRM proposals, development and implementation of IRMs the Department shall have approved under Paragraph VII of this Order, and review of the Remedial Action and Feasibility Studies, preparation of the Proposed Remedial Action Plan(s) ("PRAP"[s]), evaluation of comments received from the public's review of the PRAP, and the preparation and issuance of the ROD(s); provided, however, that such reimbursement shall not exceed \$200,000.

b. If Respondent elects under Paragraph IV of this Order to implement the Department-selected final remedial alternative, Respondent further agrees to reimburse the Department for reasonable expenses incurred by the State that are appropriate and not inconsistent with the NCP and that arise out of the review of the Remedial Design, oversight of the construction of the Department-approved Remedial Design, and oversight of the O&M of the Department-approved Remedial Design as constructed and approved by the Department, and other activities related to these activities.

2. The Department shall periodically provide Respondent with written statements of reasonable expenses incurred by the State with respect to this Order that encompass the expenses described in Subparagraph XIII.B.1 of this Order. Such written statement shall contain an accounting of personal services consisting of the following: the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period as identified by assigned Time and Activity Code (using: T & A Summary Report - Sun Server, and T & A Detail Report - Sun Server or comparable substitutes). The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personal service expenses shall be summarized by category of expense, such as supplies, materials, travel and contractual expenses, and shall be documented in expenditure reports (e.g., VOU 670 - Sun Server and BUD 60 Sun Server). In addition, contractual costs will be documented by the contractor's application for payment form with cost control report or the standard voucher with invoice, depending on the mode of payment. Vehicle mileage will be documented by a separate monthly computer report. Time and Activity Codes for the Site shall be broken down by Program Element (e.g., RI/FS, each IRM, or Remedial Design, Remedial Construction, etc.). This list of applicable Time and Activity Codes may be modified by agreement of the parties.

3. Within 90 days of receipt of the Department's written statement of reasonable expenses under this Subparagraph XIII.B, Respondent shall either pay the sum set forth in the statement or notify the Department in writing of any expenses to which it objects. Respondent reserves its right to dispute or contest any expenses claimed by the State but agrees to limit any

disputes concerning such expenses to accounting errors and the inclusion of expenses that are unreasonable, inconsistent with the NCP, inconsistent with or outside the scope of this Order, or not supported as required by this Order. If Respondent objects to any such expenses, it shall state the grounds for its objections, and may request the Department to produce additional documentation to substantiate any expense item in the statement. The Department shall make available any such additional documentation that is generated during the normal course of business at the Department and is reasonably available. If Respondent's objections cannot be resolved by the parties within 30 days of the Department's receipt of Respondent's written objections, Respondent shall pay the undisputed amount of the expenses within 45 days thereafter, and all disputed expenses shall be reserved for future proceedings. Both parties reserve all rights to raise in such proceedings any available claims or defenses regarding such disputed response costs as well as any unreimbursed State response costs incurred prior to the issuance of this Order. Nothing contained in this Order shall be construed as barring, diminishing, or in any way affecting any of the Department's rights to bring an administrative or civil action against Respondent or its successors or assigns to recover any response costs related to the Site that are not reimbursed under this Order. Respondent reserves, on behalf of itself and its successors and assigns, all rights to contest any such action and to raise all available defenses therein.

D. Payments made by Respondent under this Paragraph XIII shall be made by check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010

XIV. Reservation of Rights

A. Nothing contained in this Order waives any right, benefit, or obligation Respondent has under the September 8, 1976 Order and Settlement Agreement between the Department and Respondent; provided, however, that Respondent shall not assert the September 8, 1976 Order and Settlement Agreement as a defense in or a bar to any judicial or administrative enforcement proceeding initiated by the State with respect to any obligation Respondent has under this Order.

B. Nothing in this Order waives or diminishes any right the State has or may have at law except as expressly provided for in this Order.

C. Respondent's consent to and compliance with this Order does not constitute, and shall not be construed as, an admission of any fact, liability, or issue of law of any kind in any action or proceeding brought by the Department or any other party. Except as expressly provided in this Order, nothing in this Order shall be construed to affect any of Respondent's rights or defenses.

D. Nothing in this Order shall be construed to prohibit the Department from taking any actions outside of this Order to recover administrative costs incurred by the Department not recovered under Paragraph XIII of this Order.

XV. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns. Said indemnification and hold harmless agreement shall not include indemnification or an agreement to hold harmless for negligence or willful misconduct on the part of the State of New York, the Department or their representatives and employees.

XVI. Public Notice

During the period of time for which any of the terms of this Order apply, if Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XVII. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or by hand delivery as follows:

1. Communication from Respondent shall be sent to:

Director, Central Remedial Action Bureau
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

with copies to:

Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

Regional Director, Region 5

Route 86, P.O. Box 296
Ray Brook, New York 12977-0296

Charles E. Sullivan, Jr., Esq.
New York State Department of Environmental Conservation
50 Wolf Road, Room 410A
Albany, New York 12233-5550

2. Communication to be made from the Department to Respondent shall be sent
to:

Melvin S. Schweiger
Manager, Hudson River Project and New York State
Environmental Health and Safety Affairs
General Electric Company
1 Computer Drive South
Albany, New York 12205

John G. Haggard
Engineering Project Manager Hudson River
General Electric Company
1 Computer Drive South
Albany, New York 12205

Bryce MacDonald
EHS Manager
General Electric Company - IPS
1 River Road
Building 59E - Room 135
Schenectady, New York 12345

The Department and Respondent reserve the right to designate additional or different addressees for communication upon written notice to the other.

- B. Copies of work plans and reports shall be submitted as follows:
1. Four copies (one unbound) to Director, Central Remedial Action Bureau.
 2. Two copies to Director, Bureau of Environmental Exposure Investigation.
 3. One copy to Regional Director, Region 5.

4. One copy to Mr. Sullivan.

C. 1. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit, if requested, to Director, Central Remedial Action Bureau a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

2. Within 30 days after the Department's approval of the RI/FS, Respondent shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of the Department-approved RI/FS. Within 30 days after its approval of the drawings and submittals described in Subparagraph VI.C of this Order, Respondent shall submit one microfilm copy (16 millimeter roll film M type cartridge) of such Department-approved drawings and submittals, as well as all other Department-approved submittals other than the Department-approved RI/FS. Such submissions shall be made to:

Director, Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

XVIII. Miscellaneous

A. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 30 days after they are selected. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent. The Department hereby approves the firms and individuals identified in Appendix "G."

B. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent and the Department shall make available to each other the results of all validated sampling and/or tests or other data generated by Respondent or the Department with respect to implementation of this Order, Respondent shall submit these results in the progress reports required by this Order, and the Department shall submit such results to Respondent as they become available.

C. Respondent and the Department shall make all reasonable efforts to notify each other at least 5 working days in advance of any field activities to be conducted pursuant to this Order.

D. Respondent shall use best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order. If any access required to perform this Order is not obtained despite best efforts within 45 days of the effective date of this Order, or within 45 days of the date the Department notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the procedures in Paragraph XIII, for reasonable expenses incurred by the Department in obtaining access, including, but not limited to, attorneys fees.

E. Respondent and its successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Order.

F. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

G. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

H. All references to "days" in this Order are to calendar days unless otherwise specified.

I. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

J. 1. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

2. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Mr. Sullivan and to Director, Central Remedial Action Bureau.

K. The effective date of this Order shall be the date it is signed by the Commissioner or his designee.

DATED: 7/7, 1997

JOHN P. CAHILL
Acting Commissioner
New York State Department
of Environmental Conservation

by:

A handwritten signature in cursive script, appearing to read "John P. Cahill", is written over a horizontal line.

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing prior to the issuance of this Order herein as provided by law, and agrees to be bound by this Order.

GENERAL ELECTRIC COMPANY

By: Melvin B. Schweiger
Title: Mgr., Hudson River Project
Date: 10/14/96

STATE OF)
) s.s.:
COUNTY OF)

On this 14th day of OCTOBER, 1996, before me personally came MELVIN B. SCHWEIGER, to me known, who being duly sworn, did depose and say that he is the MANAGER, HUDSON RIVER PROJ. of General Electric Company, the corporation described herein and that he executed the foregoing instrument on behalf of General Electric Company, that he represents that he has the authorization to bind the General Electric Company to this Order, and that he signed his name hereto.

Amy V. Cooke
Notary Public

Amy V. Cooke
Notary Public, State of New York
Qualified Albany County
Reg. No. 01005044628
Commission Exp.: 6/97