

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Investigation/Feasibility
Study for an Inactive Hazardous Waste
Disposal Site, Under Article 27, Title 13,
and Article 71, Title 27 of the
Environmental Conservation Law
of the State of New York by:

ORDER
ON
CONSENT

INDEX #

(44-0336-95-69)

GENERAL ELECTRIC COMPANY,
Respondent.

(Site Code #447004)

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department" or "DEC") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13 and ECL 3-0301.

2. General Electric Company ("GE") owns and operates an industrial manufacturing facility (the "Main Plant" or the "Site") on approximately 640 acres of land that it owns in the City of Schenectady, and the Town of Rotterdam, New York. The Main Plant is located at 1 River Road, Schenectady, New York. A site location map is annexed as Appendix A.

3. Over the course of more than 100 years, GE conducted a variety of industrial manufacturing processes at the Main Plant involving some materials which the Department alleges are hazardous wastes according to the regulations for identifying and listing hazardous wastes and for inactive hazardous waste disposal facilities promulgated, respectively, at 6 NYCRR Parts 371 and 375. The Department has concluded that these materials were periodically spilled, disposed of or otherwise released into the environmental media on the Site during that time. Therefore, the Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301(2), and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 447004. The Department therefore alleges that the Site is a class "2" Site, presenting a "significant threat to the public health or environment - action required", pursuant to ECL 27-1305(4)(b)(2).

4. For the purpose of conducting the Remedial Investigation and Feasibility Study

that is described herein, the following definitions are given:

A. Sector: A sector is a geographic area of the Site for which GE will compile and synthesize factual information and data relevant to completion of the remedial investigation required by this Order. For example, a sector may consist of a group of buildings or could be outlined by roads, utilities or other physical features that delineate an area where related industrial activities or processes occurred. The sectors that have been identified and approved by the Department are shown on Appendix B, annexed hereto.

B. Area of Concern: An Area of Concern ("AOC") is an area of the Site where, based on the analysis of information compiled and synthesized in the Sector Reports, there is reason to believe there has been a disposal or release of hazardous wastes. An AOC may comprise a portion of a sector or sectors, depending on the known or suspected configuration of the hazardous wastes.

C. Zone: The Site has been divided into two Zones for the purpose of conducting the RI/FS, as illustrated by the Sector map in Appendix B. Zone 1 represents the area of influence of a hydrogeological trough running generally from south to north through the Site to the Mohawk River. It is delineated as a Zone because the trough is a potential pathway for contaminants to travel in groundwater through the Site to the River and therefore warrants investigation as a priority concern as a potential hazard to human health and the environment. The rest of the Site is not distinguished by such a distinct hydrogeological feature and is therefore included in Zone 2.

5. A. Pursuant to ECL 27-1313(3)(a), "whenever the Commissioner of Environmental Conservation 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. DEC alleges that any person under order pursuant to ECL 27-1313(3)(a) has a duty to carry out the remedial program committed to under such 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. DEC alleges that it also has the authority, inter alia, to provide for the

prevention and abatement of all water, land, and air pollution. ECL 3-0301(1)(i).

6. A. DEC and GE agree that the goals of this Order are for GE to:

(1) develop and implement a Remedial Investigation ("RI") and Feasibility Study ("FS") for the entire Main Plant, consistent with the statutes and other legal authorities referenced herein. The RI/FS scoping process will include the submission of a series of Sector Reports and AOC Reports. These will be used in the preparation of RI/FS Work Plans for each of the two Zones. GE will submit RI/FS Reports for each Zone after the Work Plans have been implemented. The milestone dates for the schedule for preparation and submittal of the above Work Plans and Reports are set forth in the schedule annexed as Appendix C and more fully described in the Paragraphs below regarding work plans, reports and other submittals; and

(2) reimburse the State's administrative costs pursuant to the provisions of this Order.

B. The Department will review and approve or disapprove GE's work plan schedule and each work plan according to Paragraph VII, below.

7. GE, having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. GE consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms. However, nothing contained in this Paragraph shall preclude GE from asserting any and all defenses it has to any claims that it has violated the terms of this Order, from contesting in any manner permitted by law any determination made by the Department pursuant to this Order, or from exercising any rights created by or reserved in this Order.

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

I. SCOPE OF WORK.

A. Within 30 days after the effective date of this Order, GE shall submit for the Department's approval a Proposed Scope of Work Plan that shall include a proposed schedule for the implementation of this Order, in which each Zone at the Site will be considered in the course of the RI/FS, consistent with the schedule annexed as Appendix C.

B. The Proposed Scope of Work Plan and schedule shall consist of:

1. a map or drawing depicting the boundaries of each sector and the

location and identification of surface water bodies and municipal well systems, as well as showing the division of the Site into two zones, the boundaries of which may be subject to revision, as proposed by the Department or GE (with the Department's approval), after review of relevant submittals and data;

2. a schedule consistent with the schedule annexed as Appendix C for submission of Sector Reports, Area of Concern Reports and RI/FS Work Plans:

a. Sector Reports: A Sector Report will be submitted to the Department for each of the designated Sectors. A Sector Report is a report that collects and synthesizes all available factual information with respect to the history of operations and facilities within a sector pertinent to the development and submission of a RI/FS Work Plan. Sector Reports shall include but not be limited to: (1) the location, use and characteristics of past and present plant buildings and structures, subsurface pipelines and tanks; (2) past and present manufacturing operations; (3) significant historic waste and raw material storage areas; and (4) known past spills, disposals and other releases of hazardous wastes. It shall include information obtained from interviews with past and/or present GE employees when appropriate and pertinent to the development and submission of a RI/FS Work Plan.

b. Area of Concern Reports: The information collected from the Sector Reports will be synthesized to identify potential AOCs in each Zone to be investigated during the RI. If the Department and GE agree that it is necessary, GE will perform limited studies to gather data to further identify potential AOCs needed to produce the RI/FS Work Plan. If the Department and GE so agree, the schedule for production of the RI/FS Work Plan, and for subsequent deliverables and milestones dependant on the RI/FS Work Plan, will be extended accordingly by the time needed to perform such limited studies.

Following completion of these activities, GE will prepare AOC Reports for each of the two zones referenced above to summarize the collected information, identify possible AOCs, recommend initial project operable units, discuss conceptual response scenarios, remedial action objectives and potentially applicable technologies, identify potentially applicable federal and state applicable or relevant and appropriate requirements (ARARs), identify potentially applicable Standards Criteria and Guidance (SCGs) and identify initial data quality objectives for the RI/FS.

c. RI/FS Work Plans: Following completion of the Sector Reports and AOC Reports for each Zone, and as further described in Paragraph II, below, GE shall prepare and submit to the Department RI/FS Work Plans for each Zone, including a

proposed schedule for the implementation of this Order.

3. If the Department approves of the Proposed Scope of Work Plans and schedule ("Approved Scope of Work Plan(s)"), it shall so advise GE in writing and the Approved Scope of Work Plan(s) shall be incorporated into this Order and made an enforceable part hereof. If the Department disapproves the Proposed Scope of Work Plan(s) and schedule, the matter shall be dealt with pursuant to Paragraph VII, A, 2, and C herein. DEC, or GE with DEC's approval, shall be able to extend the schedule in the event a revision is necessary to ensure that the ultimate goals of this consent order are satisfied.

II. RI/FS Work Plan Contents and Submittals

A. Consistent with the Approved Scope of Work Plan and the schedule annexed as Appendix C, and any extension thereof agreed to by the parties, GE shall prepare and submit to the Department a RI/FS Work Plan for each of the two Zones, describing the methods and procedures to be implemented in performing a RI/FS for each Zone. RI activities will be implemented to develop the information needed to characterize the nature and extent of hazardous waste contamination at the Site as required by the statutes, rules and other authorities identified in Paragraph II, D, as well as the actual or potential impacts of hazardous waste contamination at or released or disposed of at the GE Main Plant, on both on-site and off-site media (such as ground water, surface water, soils, sediments and air), and to support the evaluation of potential remedial alternatives in the FS. RI activities will include an investigation and analysis of the nature and extent of actual or potential impacts of such contamination at or released or disposed of at the GE Main Plant upon the following:

- (1) the surface water bodies on or adjacent to or downstream of the Site (the Mohawk River, the Poentes Kill and the Poentic Kill, which are not circumscribed by sector lines),
- (2) the groundwater on-site and off-site, and
- (3) the City of Schenectady and Town of Rotterdam municipal well fields adjacent to the Site.

B. Each RI/FS Work Plan shall include, but not be limited to:

- (1) A brief description of the AOCs within the Zone cross-referenced to the pertinent AOC Report;
- (2) A chronological description of the anticipated RI/FS activities together with a schedule for the performance of these activities.

(3) A Sampling and Analysis Plan that shall include:

(a) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the project data quality objectives. This plan shall designate a data validation expert acceptable to the Department and must describe such individual's qualifications and experience.

(b) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987).

(4) A health and safety plan to protect persons at and in the vicinity of the Site during the performance of each RI/FS which shall be prepared in accordance with 29 CFR 1910 and all other applicable standards by a certified health and safety professional. If the Department reasonably determines it to be appropriate, GE shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

C. The Department will administer an overall Citizen Participation Plan for this Site, consistent with the "New York State Inactive Hazardous Waste Site Citizen Participation Plan", dated August 30, 1988, and any subsequent revisions thereto. Each RI/FS Work Plan shall be incorporated into the Citizen Participation Plan and the Department may require that GE provide assistance and/or information to supplement the data and information in the RI/FS Work Plans, to be used in the course of completing the Citizen Participation Plan.

D. Each RI/FS Work Plan shall incorporate all elements of a RI/FS as set forth in: (i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 U.S.C. 9601 et seq.], as amended, (ii) the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], (iii) the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time each RI/FS Work Plan is submitted, (iv) 6 NYCRR Part 375, (v) and applicable USEPA and Department technical and administrative guidance documents, including, but not limited to, the applicable items in the "List of DEC Policies and Guidance" attached as Appendix D and incorporated herein. The Department may require that the RI/FS Work Plan give consideration to additional guidance documents if they are determined, on the exercise of engineering judgment, to be applicable to the Site on a case-specific basis. The RI/FS Work Plan shall also include a plan

for the assessment of the potential risks to human health and the environment (both on and off site) arising from hazardous waste at or released or disposed of at the GE Main Plant.

E. Two phases of field investigation in each Remedial Investigation may be required to adequately characterize the Site:

(1) Phase I will characterize the presence/absence and/or nature and extent of surface and subsurface contamination associated with specified AOCs, consistent with the Approved RI/FS Work Plan.

(2) Upon completion of the first investigatory phase, and consistent with the schedule set forth in the Approved RI Work Plan, GE will submit a Phase II Work Plan for the Department's approval, based on the results of the Phase I investigatory work including a schedule according to which GE will perform further investigations required to eliminate Phase I investigation data gaps and/or collect information to assist in the evaluation of other remedial alternatives that may subsequently appear worthy of consideration.

III. Performance and Reporting of Remedial Investigation

A. Consistent with the schedule in the Approved RI/FS Work Plan, GE shall commence the Remedial Investigation for each Zone.

B. GE shall perform the RI in accordance with the respective RI/FS Work Plan. GE shall ensure proper, qualified supervision of the performance of the field work required to implement each RI.

C. Within the time frame set forth in the RI/FS Work Plan, GE shall prepare and submit a RI Report that shall:

(1) include all data generated and all other information obtained during the RI:

(2) provide all of the assessments and evaluations required for remedial investigation by CERCLA, the NCP, and the guidance documents identified in Paragraph II, D;

(3) identify any additional data that must be collected in order to satisfy the objectives of the RI; and

(4) include a certification by either the employee of GE with primary responsibility for day-to-day RI supervision or by the contractor hired to perform the work required by this Order that all activities that comprised the RI were performed in full accordance with the Department-approved RI/FS Work Plan.

D. If, after the submission of the RI Report, the Department, or GE with the

Department's concurrence, determines on a reasonable technical basis that additional data and/or analysis is needed to satisfy the objectives of the RI, GE shall prepare and submit for the Department's approval a work plan and schedule for collecting the additional data and/or performing the additional analysis so identified. Subsequent milestone dates will be extended as appropriate. If it is the Department that has determined the need for additional data and/or analysis, GE shall prepare the work plan within 30 days after receiving written notice of the Department's determination. If GE has proposed the need for additional data and/or analysis, it shall submit the work plan within 30 days of the Department's concurrence. If the Department disapproves of the Work Plan or its schedule, or if GE objects to the Department's determination or its withholding of concurrence with GE's proposal, GE may seek review of the matter pursuant to the provisions in Paragraph VII, below. GE also reserves the right, upon the completion of the procedures set forth in Paragraph VII, below, to contest the Department's determination in any manner permitted by law, including a proceeding commenced under CPLR Article 78.

IV. Feasibility Study

A. Consistent with the Approved RI/FS Work Plan, GE shall perform, prepare, and submit a FS for each zone. The FS shall be performed in a manner consistent with CERCLA, the NCP and the statutes and authorities identified in Paragraph II, D. Each FS shall also include a thorough review of the effect of the potential remedial alternatives on

- (i) the Mohawk River, the Poentes Kill and the Poentic Kill,
- (ii) on-site and off-site ground water and
- (iii) the City of Schenectady and Town of Rotterdam municipal well fields adjacent to the site.

Each FS shall be prepared by and have the signature and seal of a professional engineer who shall certify that the FS was prepared in accordance with this Order.

B. GE shall cooperate and assist the Department in soliciting public comment on the RI/FS and the Department's proposed remedial action plan, in accordance with the requirements of 6 NYCRR Part 375 and any Department policy and guidance documents in effect at the time the public comment period is initiated. The Department shall issue a proposed remedial action plan and corresponding Record of Decision ("ROD") for each Zone. The ROD shall be the subject of negotiations between the Department and GE for a separate order for design and implementation of a remedial program.

V. Interim Remedial Measures

Before the effective date of the ROD, GE, with the Department's approval, may propose interim remedial measures ("IRMs") for specific AOCs at the Site. In proposing each IRM, GE shall submit to the Department a work plan which includes a schedule for its completion. Upon the Department's approval of such Work Plan, it either shall be incorporated into and become an enforceable part of this Order or be made the subject of a separate IRM Order, as the parties agree. GE shall then carry out such IRM in accordance with the requirements of the approved work plan and the applicable Order.

VI. Progress Reports

GE shall submit, to each of the parties set forth in Paragraph XVII, B, the designated number of copies of written monthly progress reports that:

(i) summarize the activities taken to implement this Order during the previous month, including but not limited to data collection, implementation of work plans and Citizen Participation Plan activities;

(ii) summarize analytical results from samples collected during the previous month pursuant to this Order. GE may satisfy this obligation by providing the summary of data it receives from its laboratory, rather than create a new summary;

(iii) summarize activities planned for the next month, including but not limited to data collection, implementation of work plans and Citizen Participation Plan activities;

(iv) identify scheduling issues, including but not limited to delays or modifications to deliverables that may affect the future schedule for implementation of GE's obligations under this Order;

GE shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order and make all source data and information available for inspection, review and copying by the Department.

VII. Review of Submittals

A. (1) The Department shall review each of the submittals GE makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done in accordance with:

(a) this Order,

(b) applicable statutes and other authorities identified in Paragraph II, D, and

(c) accepted engineering practice and scientific principles that are relevant or applicable to the tasks GE will conduct pursuant to this Order.

The Department shall notify GE in writing of its approval or disapproval of the submittal, except for the submittal described in Paragraph II, B, (4) (health and safety plan).

All Department-approved submittals shall be incorporated into this Order. Only the provisions of any Department-approved submittals that require any action or are the basis of any action by GE shall become an enforceable part of this Order.

(2) If the Department disapproves a submittal but does not propose to require additional work in accordance with subparagraph B, below, it shall so notify GE in writing and shall specify the reasons for its disapproval. Within 15 days thereafter, either GE or the Department may convene a meeting to discuss the issues raised by the Department's disapproval. Within 45 days after receiving written notice that GE's submittal has been disapproved, or within 30 days after the aforesaid meeting, whichever is later, GE shall make a revised submittal to the Department that addresses all of the Department's stated reasons for disapproving the first submittal.

B. (1) Except with respect to the submittals addressed in Paragraph III, C and D. herein, the Department may require GE to modify and/or amplify and expand a submittal if the Department determines on a reasonable technical basis, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work (for instance, data collection, evaluation and analysis) is necessary to complete the submittals required by this Order.

(2) If, following a review of a submittal, the Department requires that further work be conducted pursuant to Paragraph B, (1), above, it shall so notify GE in writing, identify the further work, and specify the reasons for requiring further work. Within 15 days thereafter, either GE or the Department may convene a meeting to discuss the issues raised by the Department's requirement of further work. Within 45 days after receiving the Department's notice requiring further work, or within 30 days after the aforesaid meeting, whichever is later, or such other time as agreed upon by the parties, GE shall submit a Work Plan for the Department's approval, containing a schedule for completion of the work, and GE shall conduct the work required by the Department in a manner consistent with the approved Work Plan. Upon completion of the work, GE shall submit a report to the Department, bearing the certification of

a licensed engineer, showing that the work was completed in accordance with the approved Work Plan.

C. After receipt of the revised submittal, the Department shall notify GE in writing of its approval or disapproval. If the Department disapproves the revised submittal, it may charge GE with a violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law, unless GE requests an opportunity to respond to the Department's reasons for disapproval pursuant to the Dispute Resolution Paragraph, *infra*. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

D. Dispute Resolution: If the Department disapproves a revised submittal, it may charge GE with a violation of this Order unless, within 10 days of receipt of the Department's notice of disapproval, GE requests a meeting with the Director of the Division of Hazardous Waste Remediation ("the Director") in order to discuss the Department's reasons for disapproval and GE is available to meet within a reasonably prompt time thereafter. At this meeting, GE shall be given an opportunity to present its responses to the Department's reasons for disapproval and the Director shall have the authority to modify and/or withdraw such reasons for disapproval. If the Director modifies and/or withdraws such reasons for disapproval GE shall submit a further revised submittal in response as appropriate. The period of time within which the further revised submittal must be submitted to the Department shall be as reasonably specified by the Director during the course of or after the meeting.

After receipt of the further revised submittal, the Department shall notify GE in writing of its approval or disapproval thereof. If it fails to address the Department's remaining reasons for disapproval and the Department disapproves it for this reason, the Department may determine that GE is in violation of this Order and the ECL. GE reserves its right to contest the determination of such violation in any manner permitted by law, including a proceeding commenced under CPLR Article 78.

The invocation of formal dispute resolution procedures under this Paragraph shall not of itself expand, postpone or affect any of GE's obligations under this Order except for those obligations subject to the dispute resolution or contingent upon the resolution of the dispute.

VIII. Dispute Resolution For Non-Submittal Issues

In the event the Department determines that GE is in violation of the terms of this Order

(other than in connection with submittals, which are addressed by Paragraph VII, D, above), the Department shall provide GE with preliminary written notice of the subject of the violation and, before issuing a Notice of Violation, will meet with GE to discuss issues arising from the Department's determination. Unless the preliminary notice is withdrawn at the conclusion of the meeting, GE shall have fourteen days after the meeting to cure the asserted violation and deliver to the Department a written statement showing evidence that it has done so or to explain in writing why it believes there is no such violation. If the asserted violation is cured within the fourteen day cure period, or if the Department determines that there was no violation, the Department will take no further action. If the violation is not satisfactorily cured, or if the Department does not accept GE's position that no violation occurred, it shall notify GE in writing and specify the reasons for its position. If the Department delivers such a notification to GE, the parties shall meet again thereafter. If, after that meeting, the Department's determination is not withdrawn or modified, the Department may issue a Notice of Violation or take whatever actions are permitted by law with respect to the claimed violation. GE reserves its right to contest any such violations or the determination of such violations in any manner permitted by law, including a proceeding commenced under CPLR Article 78.

IX. Compliance/Force Majeure

A. Compliance. The Department may determine that GE's failure to comply with any term of this Order constitutes a violation of this Order and the ECL. Any such violation shall not limit or interfere with GE's exercise of the dispute resolution provisions in Paragraphs VII and VIII herein, if applicable.

B. Force Majeure: GE shall not suffer any sanction or penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof or any compliance schedule established hereunder because of Act of God, war, riot, action or inaction of any nation, state or local government body or court or circumstances beyond its control which the exercise of ordinary human prudence could not have prevented. GE shall, within seven business days of when it obtains knowledge of any such condition, notify the Department in writing. GE shall describe in such notice the measures taken and to be taken by GE to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such seven business day period constitutes a waiver of any claim that a delay is not subject to penalties. GE shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this Paragraph.

X. Entry upon Site

A. GE hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under GE's control by any duly designated employee, consultant, contractor, or agent of the Department or any State agency during reasonable hours for purposes of inspection, sampling, and testing and to ensure GE's compliance with this Order. They shall enter through the Main Plant entry gate, unless another entry gate is agreed upon by the parties, and register with GE's security personnel there. The representatives of the Department or any other State agency shall seek to give GE advance notice of their plan to enter and their proposed activities. However, if they cannot do so before entering, they shall describe their proposed activities to GE's security personnel at the Main Plant entry gate. GE reserves the right to have its personnel accompany the Department's employees, consultants, contractors or agents but agrees that they shall not hinder or restrict the Department's representatives in the performance of their duties under this Order. The Department shall make a reasonable effort to notify GE at least 5 days in advance of any field activities to be conducted pursuant to this Order and will seek to provide GE with a reasonable opportunity to obtain split samples at the time of collection.

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

C. GE shall notify the Department at least 5 working days in advance of any field activities to be conducted pursuant to this Order.

XI. Payment of Department Costs

A. The Department shall periodically provide GE with an itemized invoice stating the expenses incurred by the State after the effective date hereof. Within 60 days after receipt of an itemized invoice from the Department, GE shall pay to the Department a sum of money which shall represent reimbursement for the State's reasonable expenses that are not inconsistent with the NCP (40 CFR Part 300 et seq.), including, but not limited to, direct labor, fringe benefits and indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative

expenses associated with this Order, subject to the provisions of Paragraphs B and C, below; provided, however, that GE shall not be obligated to make such reimbursement under this Order for RI/FS expenses incurred by the State in excess of a total of \$280,000.00. Expenses incurred by the State with respect to Interim Remedial Measures ("IRMs") performed for this site and incorporated into this Order pursuant to Paragraph V hereof shall be itemized on the invoices sent by the Department to GE and supported as provided for below, and shall not be made subject to the cost reimbursement limitation set forth in this Paragraph.

B. The Department shall include with its invoice an accounting of personal services. The invoice shall include: 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 letter 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 Zone and by Program Element (e.g., RI, FS, each IRM, or Remedial Design). This list of applicable Time and Activity Codes may be modified by agreement of the parties.

C. GE shall pay the sum indicated on the Department's invoice within 60 days of receipt thereof unless GE raises an objection as to any expense in the itemized invoice. GE agrees to limit any disputes concerning such expense 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. In the event GE objects to any expenses, it shall state the reasonable grounds for its objections, and may request the Department to produce additional justification to substantiate any expense item on the invoice. It shall pay only the undisputed expenses to the Department within the 60 day period. If GE's objections cannot be resolved by the parties within the aforesaid 60 day period all disputed expenses shall be reserved for future proceedings. Both parties reserve all rights available to them to raise in such proceedings any available claim or defense regarding disputed expenses.

D. Notwithstanding any other provision herein, the terms of this Order shall not be construed to bar, diminish, or in any way affect any of the Department's rights to bring an administrative or civil action against GE, its successors and assigns to recover:

- (1) any expenses related to this site that are not reimbursed under this Order, or
- (2) expenses incurred in connection with the site prior to the effective date of this Order.

GE reserves, on behalf of itself and its successors and assigns, all rights to contest any such action and to raise all available defenses therein.

E. Payment shall be made by check payable to the Department of Environmental Conservation and shall be sent to NYSDEC, Bureau of Program Management, Division of Hazardous Waste Remediation, 50 Wolf Road, Albany, NY 12233-7010.

XII. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, waiving, adjudicating, or in any way affecting any rights the Department has or may have at law which are not expressly barred, limited or waived by this Order, including, but not limited to:

1. the Department's right to enforce this Order against GE and/or any of GE's successors, and assigns if GE fails to satisfy any of the terms of this Order;
2. the Department's right to bring any action or proceeding against GE and/or any of GE's successors, and assigns with respect to claims for natural resources damages as a result of the release or threatened release of hazardous wastes at or from the Site or areas in the vicinity of the Site;
3. the Department's right to bring any action or proceeding against GE and/or any of GE's successors, and assigns with respect to hazardous wastes that are present at the Site or that have migrated from the Site, except that GE's full compliance with this Order fully resolves the Department's rights with respect to the performance of a RI/FS at the Main Plant for the hazardous wastes characterized therein and the recovery of costs relating thereto;
4. the Department's right to gather information and enter and inspect property and premises; and
5. the Department's authority, jurisdiction and right to administer and enforce the provisions of ECL Article 17 and the Regulations promulgated thereunder for the protection of the waters of the State with respect to this Site, and the provisions of the New York State Navigation Law.

Commissioner or his duly authorized representative from exercising any summary abatement powers pursuant to ECL 71-0301 and 71-1719.

XIII. GE's Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, waiving, adjudicating or in any way affecting whatever defenses GE and its successors and assigns have to any and all claims asserted by the Department, including those based on the claimed rights described in Paragraph XII herein. GE does not acknowledge that the Department has those claimed rights and reserves on behalf of itself, its successors and assigns, whatever rights it has to contest any proceeding commenced or determination made by the Department. By entering into this Order, GE does not agree to the correctness of any finding, determination or conclusion reached by the Department.

B. Nothing in this Order shall preclude or prevent GE from undertaking actions that are necessary for business operations at the Site, provided that the operation does not violate applicable State or federal legal requirements.

XIV. Indemnification

GE 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 ("liabilities") arising out of or resulting from the fulfillment or attempted fulfillment of this Order by GE and/or GE's successors, and assigns, provided that this indemnification shall not extend to any liabilities arising out of or resulting from any negligent or intentionally tortious acts or omissions of the Department, the State of New York, and their representatives and employees.

XV. This Order supersedes and entirely replaces Order on Consent R4-0328-85-09 [prior RI/FS Order] and Order on Consent R4-0672-89-06 ["Active" Landfill Closure for the so-called "West Landfill"]. Both Orders shall be considered vacated upon the effective date of this Order and the Department agrees that it will not assert any future claims based upon them. The Department and GE agree that compliance with this Order shall satisfy any obligations that GE (a) has or had under the aforementioned Orders or (b) has or might have under other New York State statutes, rules and regulations, to conduct or perform investigations, corrective measures studies or feasibility studies, or equivalent investigations and studies, with respect to the conditions at, or arising at the Main Plant.

XVI. Public Notice

XVI. Public Notice

A. Within 30 days after the effective date of this Order, GE shall file a Declaration of Covenants and Restrictions with the Schenectady County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

B. If GE proposes to convey the whole or any part of GE's ownership interest in the Site, GE 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 hand delivered as follows:

Communications from GE shall be sent to:

1. Walter Demick, P.E.
Division of Hazardous Waste Remediation
NYSDEC
Room 222
50 Wolf Road
Albany, New York 12233-7010
2. G. Anders Carlson, Ph. D.
Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. Anthony Adamczyk, P.E.
Regional Director
NYSDEC Region 4
1150 North Westcott Road
Rotterdam, NY 12306
4. NYSDEC Region 4
Central Field Unit
Attention: Field Unit Leader
1150 North Westcott Road
Rotterdam, NY 12306

B. Copies of work plans and reports shall be submitted to the following individuals at the addresses identified above:

1. Four copies (one unbound) to the Director, DHWR (Attention: Walter Demick, P.E.).
2. Two copies to the Director, Bureau of Environmental Exposure Investigation, NYSDOH.
3. One copy to the Regional Director, Region 4.
4. One copy to the Central Field Unit Attorney.

C. Within 30 days after the Department's approval of any report submitted pursuant to this Order, GE shall submit to Walter Demick a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

D. Communications to be made from the Department to GE shall be sent to:

1. Richard P. Lubert
Manager, Environment, Health & Safety
General Electric Power Systems
General Electric Company
One River Road
Building 37, Fifth Floor
Schenectady, New York 12345
2. Don W. Huckabay
Manager of Environment, Health & Safety
General Electric Company
One River Road
Building 41, Room 105
Schenectady, New York 12345
3. A. Jeffrey Mirarchi, P.E.
Project Manager
General Electric Company
One River Road
Building 37, Fifth Floor
Schenectady, New York 12345
4. Paul J. Lambert, Esq.

Bingham, Dana & Gould
1550 M Street, N.W.
Suite 1200
Washington, D.C. 20005

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

XVIII. Miscellaneous

A. GE 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 foregoing does not preclude GE from providing qualified personnel to perform work required by this Order provided that this work is done under the supervision of a Department-approved contractor. The experience, capabilities and qualifications of the firms or individuals selected by GE shall be submitted to the Department no less than 10 business days before the commencement of work by such firms or individuals. If the Department does not disapprove of these firms or individuals within an additional 10 business days after receipt of GE's submittal, GE shall commence said work, for which GE and such firms or individuals will be responsible. Notwithstanding the above, the Department has approved Dames & Moore as a contractor and consultant for GE.

B. GE shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform its obligations under this Order.

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

D. GE shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing GE with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order. GE or GE's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. GE shall nonetheless be responsible for ensuring that GE's contractors and subcontractors perform the work to be done under this Order in accordance with this Order.

E. 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. All references to "certified health and safety professional" shall mean a Certified Industrial Hygienist who is certified by the American Board of Industrial Hygiene based on experience, education and examination.

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

G. 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.

H. (1) The terms of this Order shall constitute the complete and entire Order between GE and the Department concerning the Site. 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 GE of GE's obligation to obtain such formal approvals as may be required by this Order.

(2) If GE desires that any provision of this Order be changed, GE shall make timely written application, signed by GE, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Central Field Unit Leader and Walter Demick.

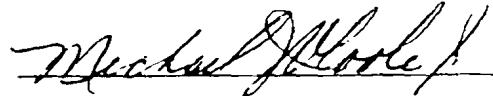
I. The effective date of this Order shall be the date it is signed by the Commissioner or his designee.

DATED: Albany, New York

9/4, 1995

MICHAEL ZAGATA
Commissioner
New York State Department
of Environmental Conservation

By:



Title:

Dir. Div. of Hazardous Waste Remediation

CONSENT BY RESPONDENT

General Electric Company hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: Dallas Silverthorne
(TYPE/NAME OF SIGNER)
Title: Dallas Silverthorne
General Manager

Date: 8/24/95

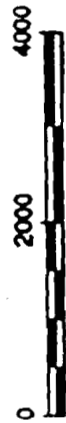
STATE OF NEW YORK)

) s.s.:

COUNTY OF Saratoga

On this 24th day of August, 1995, before me personally came DALLAS SILVERTHORNE, to me known, who being duly sworn, did depose and say that he/she resides in Saratoga County, New York; that he/she is the General Mgr. Steam Turbine Mfg. of the General Electric Company described in and which executed the foregoing instrument; that he/she knew the seal of General Electric Company and that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of General Electric Company and that he/she signed his/her name thereto by like order.

Gloria F. Blodgett
Notary Public
GLORIA F. BLODGETT
Notary Public, State of New York
Qualified in Saratoga County
My Commission Expires March 30, 1996
#4723108



APPROXIMATE SCALE IN FEET

BASE MAP SOURCE: USGS 7 1/2 minute topographic quadrangle map, Schenectady, New York 1954, unmodified 1980.



Quadrangle Location

GENERAL ELECTRIC MAIN PLANT

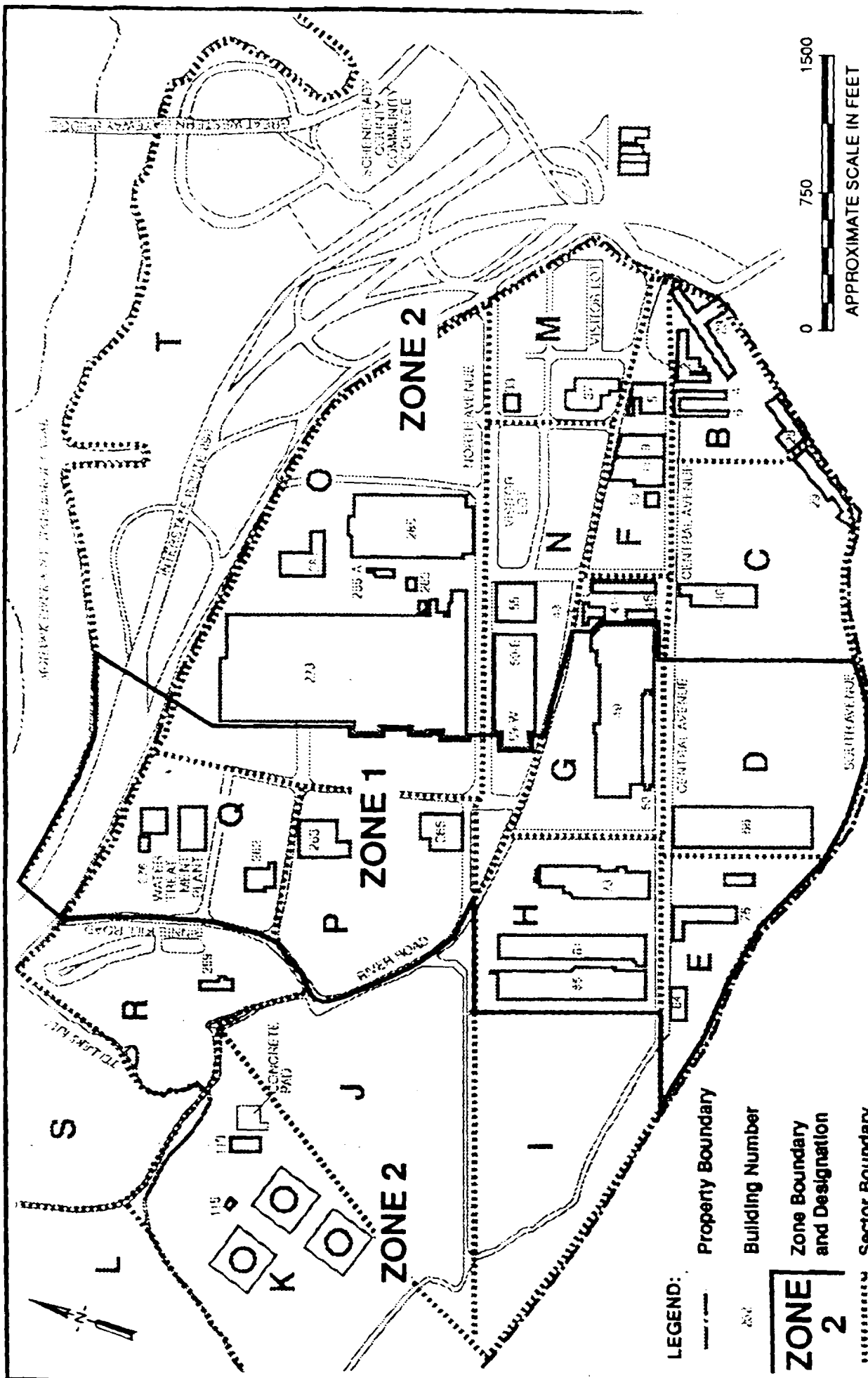
FIGURE 1

SITE VICINITY MAP

Job No. 28171-055-148

SCHENECTADY, NEW YORK

Dames & Moore



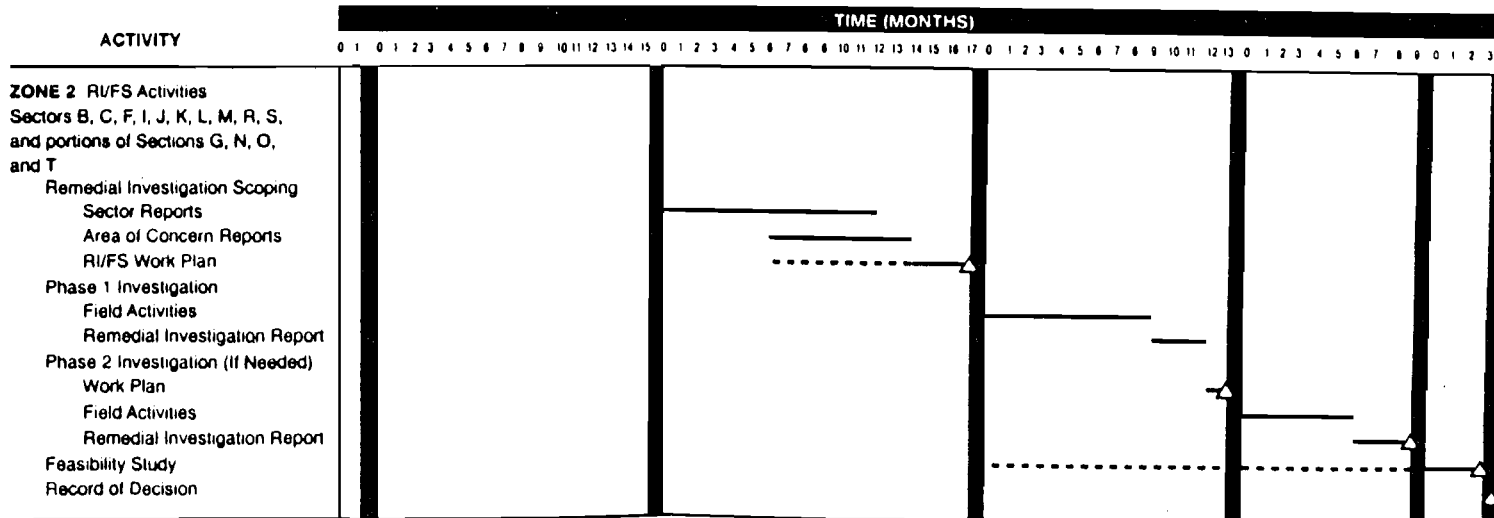
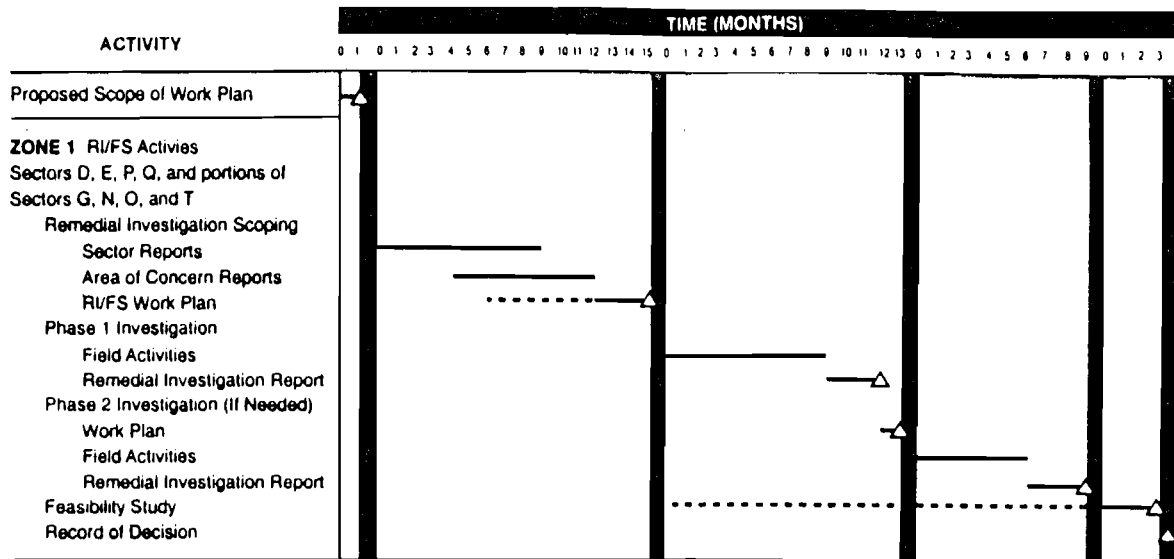
**GENERAL ELECTRIC
MAIN PLANT**

**SITE MAP SHOWING
PROPOSED ZONE
BOUNDARIES**

SCHENECTADY, NEW YORK

Dames & Moore

BASE MAP SOURCE: General Electric Co. Schenectady Works



LEGEND:

- Duration
- Intermittent Activity
- △ Milestone



NYSDEC Review and Approval (Assumes NYSDEC Review and Comment Period, 45 Day GE Response Period, and NYSDEC Review and Approval Period)

GENERAL ELECTRIC
MAIN PLANT

JOB NO. 28171-055-148

SCHENECTADY, NEW YORK

FIGURE 1
PROPOSED RI/FS SCHEDULE

| Number | Date | Title | Bureau |
|--|----------------------------|--|-------------------------|
| 4014 | 9/27/88 | Protocol Between Division of Hazardous Waste Remediation and Division of Environmental Enforcement | Director's Office |
| 4015 | 9/30/88 | Policy Regarding Alteration of Groundwater Samples Collected for Metals Analysis | Western Remedial Action |
| 4016 | 10/20/88 | Health and Safety Training and Equipment | Construction Services |
| 4017 | 11/23/88 | Protocol Between DHWR and DHSR for Determining Lead Program for RCRA/CERCLA Title 13 Sites | Director's Office |
| 4018 | 11/25/88 | Phase I Investigations | Hazardous Site Control |
| 4019 | 11/21/90 REVISED | Phase II Investigation Oversight Note-Taking | Eastern Remedial Actio |
| 4020 | 12/12/88 | Guidelines for Responding to Freedom of Information Law (FOIL) Requests | Hazardous Site Control |
| 4021 | 3/4/91 REVISED | Start/End Definitions for Program Elements Within Funding Sources | Program Management |
| 4022 | 2/7/89 | Records of Decision for Remediation of Class 2 Inactive Hazardous Waste Disposal Sites - O&D Memo #89-05 | Eastern Remedial Actio |
| 4023 | 2/27/89 | Citizen Participation Plan | Director's Office |
| 4024 | 3/27/89 | NYSDOH Hazardous Waste Site Notification | Hazardous Site Contro |
| 4025 | 3/31/89 | Guidelines for Remedial Investigation/Feasibility Studies | Eastern Remedial Acti |
| <u>TAGM #4026 RESCINDED</u> -- Subject: Procedures for the Development and Maintenance of a List of Technically Acceptable Laboratories- Haz. Site Cont | | | |
| 4027 | 4/18/94 REVISED | Assistance for Contaminated Private and Public Water Supplies | Hazardous Site Contro |
| 4028 | 4/26/89 | Subcontracting under Hazardous Waste Remediation Contracts | Program Management |
| 4029 | 4/20/90 REVISED | Roles and Responsibilities of the Technology Section - Site-Specific Projects | Program Management |

| Number | Date | Title | Bureau |
|--------|---------------------------|--|--|
| 4030 | 5/15/90 REVISED | Selection of Remedial Actions at Inactive Hazardous Waste Sites | Program Management |
| 4031 | 10/27/89 | Fugitive Dust Suppression and Particulate Monitoring Program at Inactive Hazardous Waste Sites | Western Remedial Action |
| 4032 | 11/21/89 | Disposal of Drill Cuttings | Eastern Remedial Action |
| 4033 | 12/11/89 | Inactive Sites Interface with Sanitary Landfills | Hazardous Site Control |
| 4034 | 1/22/90 | Guidelines for Eligibility Determination for Work Performed Under the EQBA Title 3 Provisions | Eastern Remedial Action |
| 4035 | 3/26/90 | Project Manager and Contract Manager Responsibilities Under Standby Contract | Program Management |
| 4036 | 3/29/90 | Landfill Regulatory Responsibility | Eastern Remedial Action |
| 4037 | 4/9/90 | Major Milestone Dates for Tracking Remedial Projects | Program Management |
| 4038 | 4/26/90 | Remediation of Inactive Hazardous Waste Disposal Sites | Director's Office |
| 4039 | 10/22/90 | Contractor Appeals | Program Management |
| 4040 | 3/21/94 REVISED | Permitting Jurisdiction Over Inactive Hazardous Waste Site Remediation - O&D Memo #94-04 | Director's Office |
| 4041 | 2/6/91 | Releasing Sampling Data, Findings and Recommendations | Hazardous Site Control |
| 4042 | 6/1/92 REVISED | Interim Remedial Measures | Construction Services |
| 4043 | 2/3/92 | Procedures for Handling PRP-Funded PSAs | Director's Office |
| 4044 | 3/9/92 | Accelerated Remedial Actions at Class 2, Non-RCRA Regulated Landfills | Central Remedial Acti |
| 4045 | 7/15/92 | Enforcement Referrals | Hazardous Site Contro and Div. of Env. Enf. |
| 4046 | 1/24/94 REVISED | Determination of Soil Cleanup Objectives and Cleanup Levels | Program Management |

| Number | Date | Title | Bureau |
|--------|----------|---|------------------------|
| 4047 | 12/9/92 | Priority Ranking System for Class 2 Inactive Hazardous Waste Sites | Hazardous Site Control |
| 4048 | 12/9/92 | Interim Remedial Measures - Procedures | Construction Services |
| 4049 | 12/18/92 | Referral of Sites to the Division of Water | Hazardous Site Control |
| 4050 | 4/29/93 | Payment Review Process | Program Management |
| 4051 | 8/02/93 | Early Design Strategy | Program Management |
| 4052 | 8/30/93 | Administrative Records and Administrative Records File | Program Management |
| 4053 | 9/14/93 | Obtaining Property Access for Investigation, Design, Remediation and Monitoring/Maintenance | Program Management |
| 4054 | 11/17/94 | Contract Conceptual Approval Process | Program Management |
| 4055 | 11/17/94 | Contract Final Approval Process | Program Management |
| 4056 | 4/7/95 | Remedial Action by PRPs | Construction Services |

II. Division of Hazardous Substances: Technical and Administrative Guidelines (TAGMs).

3028 "Contained in" Criteria for Environmental Media (November 1992).

III. Division of Air Resources:

Air Guide 1 - Guidelines for the Control of Toxic Ambient Air Contaminants (1991; Appendix "B" rev'd. April 1994)

IV. Division of Spills Management: Spill Technology and Remediation Series (STARS).

Memo #1, August, 1992 - Petroleum-Contaminated Soil Guidance Policy.

V. Division of Fish and Wildlife: Technical Guidance For Screening Contaminated Sediments, November, 1993.

VI. Division of Water: Technical and Operations Guidance Series (TOGS)

| Number | Date | Title |
|---------|------------------|---|
| 1.1.1 | October 1993 | Ambient Water Quality Standards and Guidance Values |
| 1.2.1 | April 1990 | Industrial SPDES Permit Drafting Strategy for Surface Waters |
| 1.3.1 | May 1990 | Waste Assimilative Capacity Analysis and Allocation for Setting Water Quality Based Effluent Limits |
| 1.3.1,C | August 1991 | Development of Water Quality Based Effluent Limits For Metals Amendment |
| 1.3.2 | May 1990 | Toxicity Testing in the SPDES Permit Program |
| 1.3.4 | April 1, 1987 | BPU Methodologies |
| 1.3.4a | November 3, 1988 | BPU Methodologies/Amendments |
| 1.3.7 | July 1990 | Analytical Detectability and Quantification Guidelines for Selected Environmental Parameters |
| 2.1.2 | July 1990 | Underground Injection/Recirculation (UIR) at Groundwater Remediation Sites |
| 2.1.3 | October 1990 | Primary and Principal Aquifer Determinations |

GE/MAIN/SCHEN44
RI/FS.