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New York State Department of Environmental Conservation

MEMORANDUM

TO: Michael J. O'Toole, Jr.
FROM: Charles E. Sullivan, Jr.
SUBJECT: Enforcement: Inactive Site: General Electric (Ft. Edward) (558004)
DATE: June 13, 1995

I attach duplicate originals of a consent order covering the further investigation of, and, if GE elects, implementation of any ROD we may issue, covering the subject site. The consent order also allows the Department to recover up to \$100,000 in State costs arising out of RI/FS oversight and up to \$50,000 of State oversight of any IRMs. (Walt Demick developed these cost limits.)

This order also resolves three Notices of Violation the Department issued against GE arising out of discharge of PCBs into the Hudson River from the Ft. Edward plant, if GE investigates and elicits to remediate the site.

I think that this is a good order both for GE and the Department. Accordingly, I respectfully request that you execute the document. Should you concur, please sign and return to me for further processing.

Please note that GE wishes to discuss all of its sites in a meeting between Commissioner Zagata and Steven Ramsey, a Senior GE Vice President, and one of the sites sought to be discussed will be this one.

Attachments

cc: Constance Kellogg-Barrella
James H. Ferreira

CES/eb/c
(GESig.ces)

JN 13 1995

STATE OF NEW YORK: 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 #A5-0316-94-06

General Electric Company,

Respondent.

Registry No. 5-58-004

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 the late 1940s and continuing to the present, Respondent has owned and operated a capacitor products manufacturing facility located on Upper Broadway, in the Town of Fort Edward, 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. In 1982, Respondent, with the approval and oversight of the Department, initiated a hydrogeologic study at and in the vicinity of the Site. The hydrogeologic study included a residential well sampling program conducted by Respondent with the approval and oversight of the New York State Department of Health ("DOH"). In conformity with recommendations of DOH, and without admission of liability, Respondent paid for and caused the installation of public water to a number of residences in the vicinity of the Site.

4. On April 19, 1985 the Department issued an Order on consent of Respondent (hereafter "Order on Consent #T032785"), which required Respondent to conduct a Remedial Investigation/Feasibility Study ("RI/FS") and then implement a Department approved Remedial Plan at the Site.

5. Respondent conducted the RI/FS with the approval and oversight of the Department. A Remedial Plan for the General Electric Fort Edward Off-Site Area ("Off-Site Remedial Plan"), dated March 1989, was approved by the Department and implemented

by Respondent with the approval and oversight of the Department. The Off-Site Remedial Plan included installation and operation of an off-site groundwater recovery system, off-site monitoring, and fencing and posting of off-site springs. The Off-Site Remedial Plan also provided for a remedial effectiveness review to be conducted after 5 years of operation of the groundwater recovery system ("5 Year Review"). The On-Site Remedial Plan, dated July 10, 1990, and Revised November 16, 1990, was approved by the Department and implemented by Respondent with the approval and oversight of the Department. The On-Site Remedial Plan included removal and proper disposal of discrete areas of contaminated soil, pumping and treating of ground water, and DNAPL recovery at and in the vicinity of the Site. Operation and maintenance, including the 5 year review, under the Remedial Plans will continue under this Order.

6. On March 11, 1994, the Department and the Department of Law ("DOL") issued Order on Consent, #A5-0313-93-12, (the "004 Order"), with Respondent's consent, which required Respondent to conduct a field investigation in the vicinity of the 004 Outfall and to implement an interim remedial measure ("IRM") at the Site consisting of laying new discharge pipe for Outfall 004 from above the cliff and extending to the Hudson River and excavating and disposing portions of the old discharge pipe and adjacent soils. The field investigations and IRM were implemented with the approval and oversight of the Department and DOL. A report describing the investigations and IRM was submitted to the Department and DOL on October 28, 1994. With the Department's approval, Respondent is conducting additional investigations and evaluations under the 004 Order.

7. In April and October 1994, the Department and the DOL transmitted to Respondent Notices of Violation ("NOV"s) pursuant to Articles 11 and 17 of the ECL concerning alleged discharges and releases from the Site.

8. In 1994, Respondent initiated the 5-Year Review provided for in the Off-Site Remedial Plan. One aspect of the 5-Year Review included a sampling program of drinking water wells in the vicinity of the Site that was conducted with the approval and oversight of DOH. 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.

9. On May 26, 1986, the United States Environmental Protection Agency ("EPA") issued a permit to Respondent for the Site to operate a hazardous waste storage facility pursuant to Section 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments ("HSWA"). An EPA Permit Modification is in progress in accordance with the provisions of HSWA that are not delegated to the State of New York.

10. On November 2, 1988, Respondent submitted to the Department a permit application pursuant to ECL Article 27, Title 9, and 6 NYCRR Part 373. Module III of the application proposed corrective action for some of the identified solid waste management

units and areas of concern. During the pendency of the application, Respondent, with Department approval and oversight, has undertaken several interim remedial measures, including the removal of capacitors from an underground vault and cleaning and sealing of the foil mill basement.

11. 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.

12. 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 ..."

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.

13. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement a revised inactive hazardous waste disposal site remedial and corrective action program ("Remedial Program") for the Site that shall include a Supplemental Remedial Investigation/Feasibility Study ("RI/FS") that includes an evaluation of the existing Remedial Program and that satisfies all corrective action requirements to conduct investigations and evaluations; (ii) and, if Respondent elects to undertake remedial activities as provided in Paragraph V 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 XIV of this Order.

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

I. Submission of the 5-Year Review Report

Within 30 days of the effective date of this Order, Respondent shall submit to the Department a report that describes the 5-Year Review of the drinking water well sampling program and related activities.

II. RI/FS Work Plan Contents and Submittals

Respondent has submitted to the Department an RI/FS Work Plan dated April 1995 for the investigation to be performed under this Order. The April 1995 RI/FS Work Plan has been found to be approvable by the Department and is hereby approved and is attached and incorporated into this Order as Appendix "B."

III. Performance and Reporting of Remedial Investigation

A. Respondent shall commence the Remedial Investigation provided for in this Order.

B. Respondent shall perform each Remedial Investigation in accordance with the Department-approved RI/FS Work Plan.

C. Within the time frame set forth in the 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, 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.

IV. Feasibility Study

A. On the schedule set forth in the RI/FS Work Plan, Respondent shall perform, prepare, and submit a Feasibility Study 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. The Feasibility Study shall be prepared by, and shall include a certification under the seal of a professional engineer, by the individual or firm with primary responsibility therefor that the Feasibility Study was prepared in accordance with this Order.

B. Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved 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, 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 in a Record of Decision ("ROD").

V. Election

Upon issuance of the ROD, the Department shall furnish a complete copy to Respondent. Respondent shall, after review of the ROD, notify the Department in writing within thirty (30) days of its receipt of the ROD from the Department whether or not it elects to undertake the remedial actions identified in the ROD. In the event Respondent elects not to undertake such remedial actions, the provisions of Paragraph VI ("Remedial Design Contents") and Paragraph VII ("Remedial Construction") of this Order shall become null and void and both parties shall retain whatever rights and remedies at law that may be available to them in any future proceedings, including the initiation of a Permit modification proceeding by the Department and the right of General Electric Company to contest any Permit modification proposal. Upon Respondent's notification of its election to undertake the remedial actions required under the ROD, Paragraphs VI and VII of this Order shall become operative and the ROD shall be incorporated into this Order and attached as Appendix "C."

VI. Remedial Design

A. Unless the ROD selects the "no action" alternative, within 120 days, if and after Respondent elects to undertake the remedial activities selected in the ROD, or a portion thereof, Respondent shall submit to the Department a remedial design to implement the remedial alternative for the Site selected by the Department in the 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 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 unplanned for circumstances and events;

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.

C. Within 30 days after the Department's approval of the Remedial Design, Respondent shall demonstrate in writing to the Department financial assurance for completing the Department-approved Remedial Design.

VII. Remedial Construction

A. Within such period of time after the Department's approval of the Remedial Design as the Department shall prescribe, but not less than 60 days, Respondent shall commence construction of the Department-approved Remedial Design.

B. Respondent shall implement the Remedial Design in accordance with the Department-approved Remedial Design.

C. Within 60 days after completion of the construction activities identified in the 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 the 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 the 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, 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.

F. If the Department concludes that any element of the Remedial Program fails to achieve its objectives or otherwise fails to protect human health or the environment and determines that additional action is necessary to achieve those objectives or to ensure that the Remedial Program otherwise protects human health and the environment within 30 days of receipt of the Department's written determination that action is required pursuant to this Subparagraph, Respondent shall notify the Department's Director of Hazardous Waste Remediation ("the Director") whether it elects to undertake such additional action. In the event Respondent elects not to undertake such additional action, this Subparagraph VII.F shall become null and void and both parties shall retain whatever rights and remedies at law that may be available to them in future proceedings, including the initiation of a Permit modification proceeding by the Department and the right of GE to contest any Permit modification proposal. 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.

VIII. Interim Remedial Measures

Before the effective date of the ROD, Respondent may propose, on its own initiative or upon the request of the Department, interim remedial measures ("IRMs") on an as-needed basis. In proposing each IRM, Respondent shall submit to the Department a work plan which includes time frames 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. Respondent shall then carry out such IRM in accordance with the requirements of the approved work plan and this Order.

IX. Progress Reports

Respondent shall submit to the Director of the Central Remedial Action Bureau of the Department's Division of Hazardous Waste Remediation designated in Paragraph XVIII 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. The provision of sampling results shall not be deemed a waiver of any evidentiary privilege. 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.

X. 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 Hazardous Waste 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 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 Subparagraph X.C shall become null and void 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.

XI. Relationship to Other Obligations

A. Upon the effective date of this Order, except for Subparagraph III.A.7 of such Order, Order #T032785 is hereby terminated.

B. The investigative and remedial obligations under this Order are intended to, and if implemented in accordance with this Order, shall, satisfy Module III of DEC Permit Number 5-5330-91347 (the "Permit"), should it be issued; and if Respondent elects to undertake the RD/RA obligation under this Order and does so in compliance with this Order, such undertaking shall also serve to satisfy implementation of RCRA corrective measures that the Commissioner shall have selected. When the Permit is issued, it shall contain the language set out in Appendix "D" to this Order. If Respondent elects not to modify and/or amplify and expand a submittal pursuant to Subparagraph X.C of this Order; or if Respondent elects not to undertake additional action pursuant to Subparagraph VII.F of this Order; or if Respondent elects not to implement the ROD pursuant to Paragraph V of this Order, both parties shall retain whatever rights and remedies at law that may be available to them in any future proceedings, including the initiation of a Permit modification proceeding by the Department and the right of GE to contest any Permit modification proposal.

C. 1. By Notice of Violation dated April 1994, the Department and the Department of Law ("DOL") placed Respondent on notice of the Department's and DOL's assertion that polychlorinated biphenyls ("PCB"s) from Respondent's Fort Edward plant site were being released into the Hudson River without a Department permit authorizing same, in violation of Article 17 of the Environmental Conservation Law. By Notice of Violation dated October 13, 1994, the Department and DOL placed Respondent on notice of the Department's and DOL's assertion that PCBs from Respondent's Fort Edward plant site were being released into the Hudson River in quantities as to be injurious to fish life and protected wildlife or waterfowl therein, without Department authorization, in violation of Article 11 of the Environmental Conservation Law. By Notice of Violation dated October 13, 1994, the Department and DOL placed Respondent on notice of the Department's and DOL's assertion that PCBs from Respondent's Fort Edward plant site were being released into the groundwater of the State of New York without Department authorization or permit, in violation of Article 17 of the Environmental Conservation Law.

2. Respondent's compliance with this Order's Remedial Investigation and Feasibility Study obligations, which include tasks intended to determine the nature and extent of PCB contamination emanating from Respondent's Fort Edward plant into the State's groundwater and into the Hudson River and to develop and evaluate options for remedial action, shall satisfy any obligation under ECL Article 11, 17, 27, or 71 that may arise out of the Notices of Violation identified in Subparagraph XI.C.1 of this Order to conduct an investigation to determine appropriate measures to cease to the extent feasible further alleged release of PCBs from Respondent's Fort Edward plant into the State's groundwater and into the Hudson River.

3. If Respondent elects under Paragraph V of this Order to implement the Department-selected final remedial alternative and does so in compliance with this Order, Respondent's compliance with this Order shall satisfy any obligation Respondent may have under ECL Article 11, 17, 27, or 71 that may arise out of the Notices of Violation identified in Subparagraph XI.C.1 of this Order to implement remedial or corrective actions to cease to the extent feasible further alleged release of PCBs from Respondent's Fort Edward plant into the State's groundwater and into the Hudson River.

XII. Penalties

A. The Department may determine that Respondent's failure to comply with this Order constitutes a violation of this Order and the ECL.

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.

C. Respondent shall not suffer any penalty under the Permit or this Order for any investigation, evaluation, remediation or related activities or with respect to any factual information obtained in the course of those activities undertaken pursuant to, and in compliance with, the terms and conditions of this Order.

XIII. 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. Respondent shall permit the Department access to all non-privileged records relating to matters addressed by this Order and job meetings.

XIV. Payment of State Costs

A. 1. Except for expenses identified in Subparagraphs XIV.A.2 and XIV.A.3 of this Order, Respondent agrees to reimburse the Department for reasonable expenses incurred by the State that are appropriate and not inconsistent with the NCP in connection with this Order subject to the limitations and conditions set forth in this Paragraph; provided, however, that Respondent shall not be obligated to make such reimbursement under this Order for response costs incurred by the State in excess of

\$100,000.

2. In addition to the reimbursements made under Subparagraphs XIV.A.1 and XIV.A.3 of this Order, Respondent 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 IRM proposals, and development and implementation of IRMs the Department shall have approved, under Paragraph VIII of this Order, and such reimbursements shall not be counted in the aggregate of reimbursements Respondent shall make under Subparagraph XIV.A.1 of this Order for purposes of the limitation on payments Respondent agrees to make under this Order set forth in that Subparagraph; provided, however, that Respondent shall not be obligated to make such reimbursement under this Order for response costs incurred by the State in excess of \$50,000.

3. If Respondent elects under Paragraph V of this Order to implement the Department-selected final remedial alternative, in addition to the reimbursements made under Subparagraphs XIV.A.1 and XIV.A.2 of this Order, Respondent 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, and such reimbursements shall not be counted in the aggregate of reimbursements Respondent shall make under Subparagraph XIV.A.1 of this Order for purposes of the limitation on payments Respondent agrees to make under this Order set forth in that Subparagraph; provided, however, that Respondent shall not be obligated to make such reimbursement under this Order for response costs incurred by the State in excess of an amount of money that the Department and Respondent shall mutually agree upon after the Department selects the remedial alternative for the Site.

B. The Department shall periodically provide Respondent with written statements of reasonable expenses incurred by the State with respect to this Order. Such written statement shall contain a detailed explanation of all costs incurred and claimed, including, without limitation, the following information:

1. Personnel expenses claimed shall be supported by a report summarizing such expense and include for each individual the name, job title, biweekly salary, and time and activity records;

2. Fringe benefits and indirect expenses claimed shall be supported by an explanation of the basis for each annual fringe benefit and indirect cost rate applied;

3. Travel expenses shall be supported by documentation of the expense incurred, the name of the traveler, and the purpose of the trip;

4. Equipment and supply expenses shall be supported by documentation of the expense incurred and the purpose of the acquisition; and

5. Contractor expenses shall be supported by the contract documents under which the work was performed, an explanation of the work performed and the costs of each work element, including, for any personnel, travel, equipment and supply, fringe benefit, and indirect cost expenses the information described in Subparagraphs XIV.B.1 through XIV.B.4 of this Order.

C. Within 90 days of receipt of the Department's written statement of reasonable expenses, 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. 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, its successors, and assigns to recover any response costs related to the Site that are not reimbursed under this Order.

D. Payments made by Respondent under this Paragraph XIV shall be made by check payable to the Department of Environmental Conservation and shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010.

XV. 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 or liability of any kind in any action or proceeding brought by the Department or any other party. 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 XIV of this Order.

XVI. 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.

XVII. 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.

XVIII. 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 Hazardous Waste 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 400
Albany, New York 12233-5550

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

Jolene M. Haggard, Esq.
General Electric Company
Corporate Environmental Programs
1 Computer Drive South
Albany, New York 12205

Mark Herwig
EHS Manager
General Electric Company - ED&C
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

Jeff Sommer
EHS Manager
General Electric Company - ED&C
41 Woodford Avenue
Plainville, Connecticut 06062

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 VII.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, Central Remedial Action Bureau.

XIX. 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 "B."

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 XIV, 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. The terms of this Order shall constitute the complete and entire Order between Respondent 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 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 Central Field Unit, GE Fort Edward Project Attorney, 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: 6/13 , 1995

MICHAEL D. ZAGATA
Commissioner
New York State Department
of Environmental Conservation

by:

A handwritten signature in dark ink, appearing to read "Michael D. Zagata", 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.

By: Jeffrey A. Sommer
Title: Manager, Environmental Programs E&D&C
Date: June 8, 95

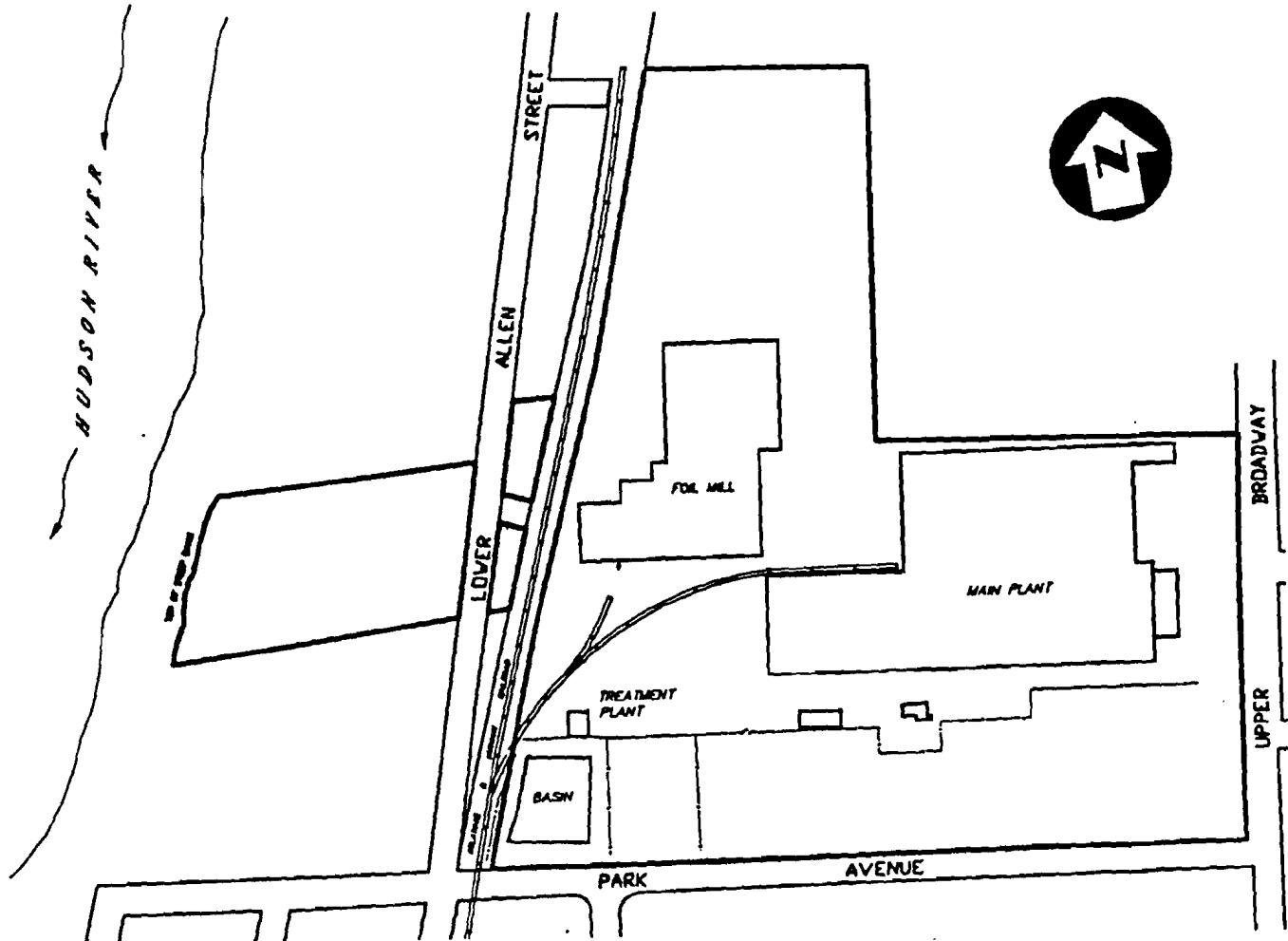
STATE OF Connecticut)
COUNTY OF Hartford) s.s.: Plainville

On this 8th day of JUNE, 1995, before me personally came JEFFREY A. SOMMER, to me known, who being duly sworn, did depose and say that he is the Manager-Environmental Programs 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 Corporation to this Order, and that he signed his name hereto.

Michelle A. Carrasquillo
Notary Public MICHELLE A. CARRASQUILLO
MY COMMISSION EXPIRES: 4-30-97

SITE PLAN

GE FORT EDWARD PLANT
FORT EDWARD, NY



LEGEND

 SITE BOUNDARY

200 100 0 200
Approximate Scale in Feet

APPENDIX D

ORDER ON CONSENT, INDEX #A5-0316-94-06

The Module III - Corrective Action Provisions of Article 27, Title 9; 6 NYCRR Part 373: Hazardous Waste Management Permit to be issued for the General Electric Facility, No. 5-5330-91347 will contain the following language:

A. APPLICABILITY

1. Statute and Regulations. ECL 27-0913 and 6 NYCRR 373-2.6(1) require corrective action where necessary to protect human health and the environment for all releases of hazardous wastes, including hazardous waste constituents, from solid waste management units ("SWMUs") at a storage, treatment or disposal facility seeking a 6 NYCRR Part 373 permit. Pursuant to ECL 71-2727.3, the Commissioner may issue orders requiring such corrective action.
2. Summary of Corrective Action Process. The Department issued Order on Consent, Index #A5-0316-94-06, on consent of GE, which provides for a corrective measures investigation and evaluation for the Site, and compliance with the Order shall fulfill GE's obligation to undertake such investigation and evaluation under this permit. Following completion of the investigation and evaluation pursuant to the Order, the Department will select a remedial program in the Record of Decision ("ROD"). If GE agrees with the ROD, it will be implemented by GE under the Order. If GE elects not to modify and/or amplify and expand a submittal pursuant to Subparagraph X.C of the Order; or if GE elects not to undertake additional action pursuant to Subparagraph VII.F of the Order; or if GE elects not to implement the ROD pursuant to Paragraph V of the Order, the parties retain their respective rights and remedies at law, including the initiation of a permit modification proceeding by the Department and the right of GE to contest any permit modification proposal.