

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 Article 27, Title 13, and
Article 71, Title 27 of the Environmental
Conservation Law of the State of New York by

General Electric Company

Respondent.

ORDER
ON
CONSENT

INDEX #A5-0928-93-03
OUs #2 & #3

Site Code #5-58-013

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") 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 Section 3-0301.
2. General Electric Company ("Respondent") is a corporation organized and existing under the laws of the State of New York. Beginning in 1952 and continuing to the present, Respondent has owned and operated a capacitor products manufacturing facility located on John Street, in the Village of Hudson Falls, County of Washington, State of New York (the "Site"). A map of the Site is attached and incorporated into this Order as Appendix "A".
3. On July 10, 1986 the Commissioner of the Department issued an Order on Consent (Index# C5-0001-85-06) to Respondent under which Respondent agreed to develop and implement a field investigation at the Site. Based upon the results of

that field investigation and the conclusions contained in the investigative Report submitted to the Department in July of 1987, the Department determined that hazardous wastes at the Site pose a significant threat to the environment and classified the Site (#5-58-013) as a "2" in the Registry of Inactive Hazardous Waste Disposal Sites. Respondent disagrees with the Department's determination that the hazardous wastes at the Site pose a significant threat to the environment.

4. The July 10, 1986 Order on Consent provided for modification to the Order to include provisions for the development and implementation of additional field investigations by Respondent in the event a significant threat determination was made.

5. On February 21, 1989 the Commissioner of the Department issued an Amendment to the July 10, 1986 Order on Consent to Respondent under which Respondent agreed to conduct further investigation of the Site and then conduct a study "evaluating the feasibility of on-Site and off-Site remedial options to abate and/or eliminate any significant threat to the environment or public health (the "Study") posed by the presence of hazardous wastes at the Site."

6. After review of the results of the investigations, the Study and information supplied by Respondent the Department identified three (3) operable units (OU #1, #2 and #3). A description of OU #1, OU #2 and OU #3 is attached and incorporated into this Order as Appendix "B". On January 13, 1993 the Department issued a Proposed Remedial Action Plan ("PRAP") for remediation of the contaminated soils (OU #1) at the Site for public review and comment. Following a period of public comment on the PRAP, the Department reviewed the public comments and selected a

final remedial alternative for OU #1 in a Record of Decision ("ROD") on March 29, 1993.

7. The Department alleges that the Site is an inactive hazardous waste disposal Site, as that term is defined at ECL Section 27-1301.2, and presents a significant threat to the public health or environment.

8. A. Pursuant to ECL Section 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 Section 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 Section 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. 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 Section 3-0301.1.i.

9. Respondent undertook an investigation of PCB fate and transport in the Hudson River in the vicinity of the Site. Respondent alleges that it voluntarily reported the results of its investigations to the Department and the United States Environmental Protection Agency ("EPA"). The results of Respondent's investigation suggest that a continuing source of PCBs to the river existed in the vicinity of the Site. Respondent has also undertaken a preliminary investigation of OUs 2 and 3 prior to the effective date of this Order and has periodically reported its results to the Department.

10. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement a Remedial Investigation/Feasibility Study ("RI/FS") for OUs #2 and #3; (ii) if Respondent elects to undertake the remedial activities, or any portion thereof, identified in the RODs for OU #2 or OU #3 pursuant to Paragraph V of this Order, design and implementation of the selected remedial alternative, or portion thereof, including appropriate operation, maintenance and monitoring of the selected remedial alternative; and (iii) reimburse the Department's administrative costs pursuant to Paragraph XIII of this Order.

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

I. Respondent has submitted to the Department the data, reports, studies, surveys and other information described in Appendix "C" to this Order. In addition, Respondent shall, within 30 days of the effective date of this Order, submit a brief history and description of the Site, including the processes used and history of PCB use at the Site.

II. RI/FS Work Plan Contents and Submittals

Respondent has submitted to the Department detailed work plans ("RI/FS Work Plans") for OU #2 and OU #3. These RI/FS Work Plans, required under this Order, have been found to be approvable by the Department and are hereby approved, and are attached and incorporated into this Order as Appendix "D" and Appendix "E", respectively.

III. Performance and Reporting of Remedial Investigation

A. Respondent shall commence the Remedial Investigation provided for herein.

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

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

(1) include all data generated and all other information obtained during the Remedial Investigation for each OU:

(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, and, as appropriate, any subsequent revisions to any

appropriate guidance documents in effect at the time the RI/FS Work Plan is submitted.

(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 applicable RI/FS Work Plan, Respondent shall perform, prepare, and submit the applicable Feasibility Study evaluating remedial actions to eliminate, to the extent practicable, any health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The Feasibility Study shall be prepared by and 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 each OU 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 each OU 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 for such OU in a Record of Decision ("ROD"). The Department is not bound by, nor limited in its review of relevant information, to the submissions made pursuant to this Order in its selection of the final remedial alternative.

V. 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 whether or not it elects to undertake the remedial actions, or any portions thereof, 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 and Reporting") hereof 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. Upon Respondent's notification of its election to undertake the remedial actions, or any portions thereof, 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 "F"; provided, however, that the Department shall have the right to reject Respondent's election to undertake portions of such remedial actions in which case Paragraphs VI and VII shall become null and void.

VI. Remedial Design Contents

A. Unless the ROD selects the "no action" alternative, within 120 days if and after Respondent elects to undertake the remedial activities, or a portion thereof, in the ROD, 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 and certified by a professional engineer, who shall certify that the Remedial Design was prepared in accordance with this Order.

B. The Remedial Design shall include, as 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 C.F.R. 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.

VII. Remedial Design Construction and Reporting

A. Within 60 days after the Department's approval of the Remedial Design, Respondent shall commence implementation of the 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 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 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 approved Remedial Design.

F. If the Department concludes that any element of the Remedial Program for OU #2 or OU #3 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. Upon Respondent's notification of its election to undertake such additional action, such election shall be incorporated into and become an enforceable part thereof.

VIII. Interim Remedial Measures

Before the effective dates of the RODs for OU #2 or OU #3, Respondent may propose, on its own initiative or upon the request of the Department, interim remedial measures ("IRMs") for OU #2 or OU #3 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 Bureau Director of Central Remedial Action, Division of Hazardous Waste Remediation designated in Paragraph XVII two copies of written monthly progress reports that, except as otherwise provided in the RI/FS work plans:

- (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month;
- (ii) All sampling results (whether preliminary or validated) generated in

the previous month by Respondent or on Respondent's behalf by its contractors pursuant to this Order; from the execution of this Order until either the issuance of an enforcement document by EPA implementing EPA's Record of Decision for the Hudson River RRI/FS or two years after the issuance of EPA's Record of Decision, whichever comes first, and except for data previously provided to the Department pursuant to permits, other orders or agreements, Respondent shall provide all non-privileged sampling results (whether preliminary or validated) generated in the previous month by Respondent or on Respondent's behalf by its contractors at and in the vicinity of OU#2 or OU#3 or in the Hudson River not conducted pursuant to this Order; all data which Respondent provides to EPA relating to the Hudson River RRI/FS and, on a quarterly basis, Respondent will provide to the Department all studies released and/or submitted for publication by Respondent relating to the existence, degradation, decomposition, movement or potential threat to the environment or human health in the Hudson River, and upon request by the Department, Respondent shall provide all underlying data supporting completed technical reports by Respondent or by its contractors about PCBs in the Hudson River, subject to claim of privilege or that the data is or contains trade secrets or confidential business information. In the event Respondent asserts that the data or information is privileged or contains trade secrets or confidential business information, Respondent shall describe the 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. Nothing in this Order shall impair, diminish or affect: (1) the Department's rights to obtain information from the Respondent to which it is otherwise entitled pursuant to law or; (2) Respondent's obligations to make any reports required by law to the Department or any other governmental agency;

(iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

(iv) 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;

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

(vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

(vii) describe all activities undertaken 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 it was prepared, and

whether the work done to generate the data and other information in the submittal was done, 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, the monthly progress reports and weekly activity reports. The Department's approval shall constitute acknowledgment that the submittal fulfills the conditions and requirements for the development of that submittal that are contained in this Order. The provisions of any Department-approved 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.

(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:

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,

including supporting documentation 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 the Respondent.

The Director shall review the Statements of Position of the Respondent and Department, respectively, and may request the 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.

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

The decision of the Director may be judicially reviewed by Respondent 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, 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, beyond the work 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 Department's Director of Hazardous Waste Remediation ("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. Penalties

A. 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.

XII. Entry upon Site

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

XIII. Payment of State Costs

A. 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 with respect to each OU.

B. The Department shall periodically provide Respondent with written statements of reasonable expenses incurred by the State with respect to each OU. 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 Paragraph B. 1-4.
- C. Within 90 days of receipt of the Department's written statement of reasonable expenses, the 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. If Respondent's objections cannot be resolved by the parties within 30 days of the Department's receipt of the 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 execution 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 the Respondent, its successors, and assigns to recover any response costs related to OU#2 or OU#3 that are not reimbursed under this Order.

- D. Payments made by Respondent under this paragraph shall be made by check payable to the Department and sent to the Bureau of Program Management Division of Hazardous Waste Remediation, NYSDEC, 50 Wolf Road, Albany, New York 12233.

XIV. Reservation of Rights

- A. Nothing contained in this Order waives any right, benefit or obligation Respondent has under the September 8, 1976 Order and Settlement

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

B. 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 as barring, diminishing, decreasing, increasing, creating, modifying, amending, ratifying, adjudicating, or in any way affecting any of Respondent's rights except that Respondent accepts full responsibility for compliance with the terms of this Order.

XV. Indemnification

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

XVI. Public Notice

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

XVII. Communications

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

Communication from Respondent shall be sent to:

1. Bureau Director of Central Remedial Action
Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010
2. Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

3. Regional Director, Region 5
Route 86, P.O. Box 296
Ray Brook, New York 12977-0296
4. Albany Field Unit, Project Attorney
Division of Environmental Enforcement
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-5501

B. Copies of work plans and reports shall be submitted as follows:

1. Four copies (one unbound) to Bureau Director of
Central Remedial Action
Division of Hazardous Waste Remediation.
2. Two copies to the Director, Bureau of
Environmental Exposure Investigation.
3. One copy to Regional Director, Region 5

4. One copy to Albany Field Unit, Project

Attorney

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

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

1. M. Peter Lanahan, Jr.

General Electric Company

Corporate Environmental Programs

1 Computer Drive South

Albany, New York 12205

2. Dr. William J. Vullo

Remedial Project Manager

General Electric Company

1 Computer Drive South

Albany, New York 12205

3. Bryce MacDonald
General Electric Company
1 River Road
Building 59E - Room 135
Schenectady, New York 12345

4. Robert J. Kafin, Esq.
Proskauer Rose Goetz & Mendelsohn
1585 Broadway
New York, NY 10036

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

XVIII. Miscellaneous

A. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 30 days after they are selected. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which the 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 Appendices D and E.

C. 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.

D. 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.

E. 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 the Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the

steps Respondent has taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the procedures in paragraph XIII, for reasonable expenses incurred by the Department in obtaining access, including, but not limited to, attorneys fees.

F. 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.

G. 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.

H. All references to "professional engineer" in this Order are to an individual or firm registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

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

J. 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.

K. (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 the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to:

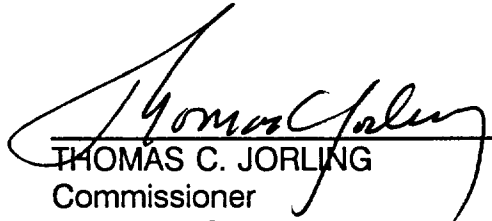
Albany Field Unit, GE Hudson Falls Project

Attorney, and Bureau Director of Central Remedial Action,

Division of Hazardous Waste Remediation

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

DATED: *albany*, New York
July 16, 1993


THOMAS C. JORLING
Commissioner
New York State Department
of Environmental Conservation

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.

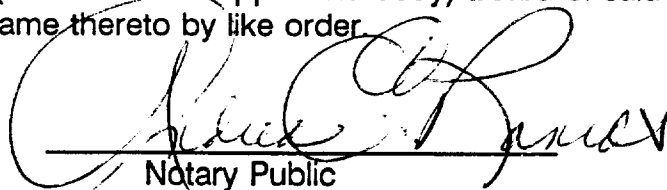
By: 
Stephen D. Ramsey

Title: Vice President, Corp. Env. Prog.

Date: 7-15-93

STATE OF Connecticut)
COUNTY OF Fairfield) s.s.: Fairfield July 15, 1993

On this 15th day of July, 1993, before me personally came Stephen D. Ramsey to me known, who being duly sworn, did depose and say that he resides in _____; that he is the Vice President, Corp. Env. Prog. of the General Electric Co. municipality described in and which executed the foregoing instrument; that he knew the seal of said municipality that the seal affixed to said instrument was such municipal seal; that it was so affixed by the order of the (Town or other applicable body) Board of said municipality and that he signed his name thereto by like order.


Notary Public

(CO#2 gehfira.630)

ANDREA E. RAMOS
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1994

31
ANDREA E. RAMOS
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1994