

STATE OF NEW YORK: DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of
a Remedial Program for an Operable Unit
of 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 # A5-0509-09-04

Site # 5-58-013

General Electric Company,

Respondent.

WHEREAS,

1. A. ECL 27-1313.3.a states that whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous waste at an inactive hazardous waste disposal site constitutes a significant threat to the environment, she 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. 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 in pertinent part that "[a]ny person who...fails to perform any duty imposed by [title]...13 of article 27...shall be liable for" various civil, administrative and/or criminal sanctions set forth in that section.

C. ECL 71-2727.3 states that the "commissioner [of Environmental Conservation], 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 asserts 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.

2. General Electric Company's ("Respondent") capacitor products manufacturing facility located in the Village of Hudson Falls, County of Washington, State of New York (the "Site") is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2. The Department

alleges that it presents a significant threat to the public health or environment. The Site has been listed in the *Registry of Inactive Hazardous Waste Disposal Sites* in New York State as Site Number 5-58-013. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

3. Following a period of public comment, the Department selected a final remedial alternative for the Site in a Record of Decision dated March 15, 2004 (the "ROD"). The ROD is attached to this Order as Exhibit "A."

4. Respondent consents to the issuance of this Order to undertake the design of the Department-selected remedial action for Operable Unit 2A of the Site that is identified in that ROD.

5. The Department and Respondent agree that the goals of this Order are for Respondent to:

- A. undertake the design of the selected Remedial Program for Operable Unit 2A, and
- B. reimburse the State's administrative costs pursuant to Paragraph VI of this Order.

6. Respondent, having consented to the issuance and entry of this Order, agrees to be bound by its terms and to waive its right to a hearing with respect to its obligations under this Order. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms. Nothing in this Paragraph 6, however, shall affect or diminish Respondent's rights under the dispute resolution mechanisms set forth in Subparagraphs III.B of this Order, or any other legal rights not expressly waived herein.

NOW, having considered this matter and being duly advised, and upon the consent of Respondent, IT IS ORDERED THAT:

I. Remedial Design

A. Respondent shall commence and implement the Remedial Design Work Plan (Remedial Design Work Plan - Overburden Soil Remedy dated July 2004 and amended by GE on January 19, 2005 and resubmitted on May 26, 2005) attached to this Order as EXHIBIT "B" and made part of this Order (the "RDWP"), in accordance with its terms and schedule.

B. In accordance with the schedule set forth in the RDWP as approved by the Department, or other such Department-approved schedule as may be proposed by Respondent, Respondent shall submit to the Department a Remedial Design(s) as described in the ROD to implement the remedial alternative selected by the Department in the ROD pertaining to Operable Unit 2A (the "Remedial Design"). The Remedial Design shall be prepared by and have the signature and seal of a professional engineer selected by Respondent and approved by the Department in accordance with Subparagraph XI.A of this Order who shall certify that the Remedial Design was prepared in accordance with this Order and generally accepted technical and engineering principles.

C. Respondent shall also prepare and submit to the Department for approval a citizen participation plan that is consistent with the Department's publication "Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998 and any subsequent revisions thereto, and 6 NYCRR Part 375.

II. Progress Reports

Respondent shall submit to those persons designated in Paragraph X 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 all final results (whether validated or not) of sampling undertaken pursuant to this Order that Respondent or any of its contractors received during the previous month. 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 or objection. Nothing in this Order shall impair, diminish or affect: (i) the Department's rights to obtain information from Respondent to which it is otherwise entitled pursuant to law; or (ii) Respondent's obligations to make any reports required by law to the Department or any other governmental agency;

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

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

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

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

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

III. 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 of any such submittal, as well as the RDWP attached to this Order as Exhibit "B", shall constitute acknowledgment that the submittal and/or the RDWP fulfills Respondent's obligations under this Order for the development of that submittal. All Department-approved submittals shall be incorporated into this Order and the provisions of any Department approved submittals that require 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 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 in Subparagraph III.B of this Order. If Respondent does not invoke the dispute resolution mechanism within ten 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 and, subject to the provisions of Subparagraph VII.A of this Order, Respondent may assert any defenses it may have 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 GE's obligations under this Order with respect to such revised submittal. The provisions of any Department-approved revised submittals which require 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. Upon request, the Department shall meet with Respondent to discuss the Department's 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 in this Subparagraph III.B, 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 ten 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 by hand on the Department's Office of Hearings and Mediation Services 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"). An Administrative Law Judge shall thereafter be assigned to handle the matter ("ALJ"). The Department shall serve by hand its Statement of Position on the ALJ and Respondent no later than ten business days after receipt of Respondent's Statement of Position. In the event that these ten-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 in accordance with notice by the Department and as agreed to by Respondent. These time periods also may be extended by mutual agreement of the parties.

2. The ALJ 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 ALJ, 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 ALJ shall decide the dispute in writing and shall set forth the reasons for the decision. The decision of the ALJ shall be final and binding upon Respondent and the Department unless Respondent seeks judicial review.

4. Respondent may appeal the decision of the ALJ 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 III.C shall become null and void and both parties shall retain whatever rights and remedies that may be available to them.

IV. Penalties

A. The Department may determine that Respondent's failure to comply with this Order constitutes a violation of this Order and the ECL. In such event, Respondent shall be entitled to a notice and a hearing in accordance with the procedures set forth in 6 NYCRR Part 622.

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.

V. 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. Nothing in this Paragraph V shall require Respondent to permit access to meetings or discussions the substance of which involves privileged materials.

VI. Payment of State Costs

A. Respondent shall pay to the Department a sum of money in an amount not to exceed a total of \$300,000.00, which figure shall represent reimbursement for the State's expenses related to the implementation of this Order that are incurred in a manner not inconsistent with the National Contingency Plan including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for reviewing and revising submittals made pursuant to this Order (which review may have preceded the effective date of this Order), overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order

Such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7010.

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during

the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (*e.g.*, supplies, materials, travel, contractual) and shall be documented by expenditure reports.

B. Within 60 days of receipt of the Department's written statement of 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 21 days of the Department's receipt of Respondent's written objections, Respondent shall pay the undisputed amount of the expenses within 14 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 or disallowed during dispute resolution or any subsequent judicial review of the Agency's final decision regarding disputed costs under this Order nor Respondent's rights, subject to the provisions of Subparagraph VII.A of this Order, to assert any applicable statutory or common law defense.

VII. 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 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 or Respondent have 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 issue of fact, law 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 VI of this Order nor prohibit Respondent from asserting, subject to

the provisions of Subparagraph VII.A of this Order, any statutory or common law defense to which it may be entitled.

VIII. 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.

IX. 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.

X. 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:

William Daigle
Chief, Hudson River Unit
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7010

with copies to:

Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanagan Square
547 River St.
Troy, New York 12180-2216

Regional Director, Region 5
New York State Department of Environmental Conservation

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

Bureau Chief
Superfund and Environmental Restoration Bureau
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-5500

2. Communication from the Department shall be sent to:

Counsel, Northeast/Midwest Region
General Electric Company
Corporate Environmental Programs
320 Great Oaks Office Park
Albany, New York 12203

John Haggard
General Electric Company
Corporate Environmental Programs
320 Great Oaks Office Park
Albany, New York 12203

Edward LaPoint
Engineering Project Manager
General Electric Company
Corporate Environmental Programs
320 Great Oaks Office Park
Albany, New York 12203

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 Chief, Hudson River Unit.
2. Two copies to Director, Bureau of Environmental Exposure Investigation.
3. One copy to Regional Director, Region 5.

C. 1. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit, if requested, to Chief, Hudson River Unit, an electronic copy of the approved report using Adobe Acrobat or equivalent file format.

2. Within 30 days after its approval of the drawings and submittals described in Subparagraph I. of this Order, Respondent shall submit an electronic copy using AutoCAD or equivalent format of such Department-approved drawings and submittals, as well as all other Department-approved submittals. Such submissions shall be made to Chief, Hudson River Unit.

XI. 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.

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 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 shall make all reasonable efforts to notify the Department 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 90 days of the effective date of this Order, or within 90 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 VI, for 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 paragraph 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 issued to Respondent concerning implementation of that portion of the ROD dealing with Operable Unit 2A. 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.

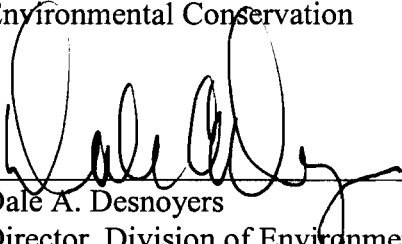
2. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought, with copies to the contact list.

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

DATED: Albany, New York
AUG - 8 , 2005

DENISE M. SHEEHAN
Acting Commissioner
New York State Department of
Environmental Conservation

by:


Dale A. Desnoyers
Director, Division of Environmental
Remediation

edms 80232

CONSENT BY RESPONDENT

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

By: _____

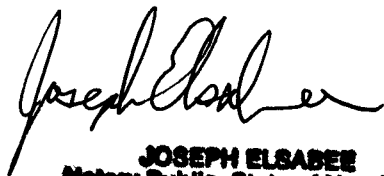
Title: _____

Date: _____

STATE OF

COUNTY OF

)
) s.s.:
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JOSEPH ELSABEE
Notary Public, State of New York
No. 01EL6114282
Qualified in New York County
Commission Expires 08/08/2012

EXHIBIT A

Record of Decision

EXHIBIT B

Remedial Design Work Plan