

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF
ROUTE 203 SUPERFUND SITE

GENERAL ELECTRIC COMPANY,
Respondent,

Proceeding under Sections 104, 106(a), 107, and
122 of the Comprehensive Environmental
Response, Compensation, and Liability Act of
1980, as amended, 42 U.S.C. §§ 9604, 9606(a),
9607, and 9622.

Index Number
CERCLA-02-2020-2008

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR A REMOVAL ACTION

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”) is entered into voluntarily by General Electric Company (“GE”) (hereinafter “Respondent”), and the United States Environmental Protection Agency (“EPA”) and requires Respondent to perform certain removal response activities, in particular, sampling investigation activities, and pay certain response costs in connection with the Route 203 Superfund Site, Town of Nassau, Rensselaer County, New York.
2. This Settlement Agreement is issued to Respondent by EPA pursuant to the authority vested in the President of the United States under Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622, and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Fed. Reg. 2926, January 29, 1987). This authority was further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-C and 14-14-D and redelegated within Region 2 to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated January 19, 2017. Effective April 28, 2019, the Emergency and Remedial Response Division has been renamed the Superfund and Emergency Management Division. All delegations to the Director of the Emergency and Remedial Response Division were conferred upon the Director of the Superfund and Emergency Management Division in a memorandum by the EPA Regional Administrator dated March 27, 2019.

3. EPA has notified the New York State Department of Environmental Conservation (“NYSDEC”) of this Settlement Agreement pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. Respondent’s participation in this Settlement Agreement shall neither constitute nor be construed as an admission of liability or an admission of EPA’s Findings of Fact or Conclusions of Law or Determinations contained in this Settlement Agreement. To effectuate the mutual objectives of EPA and Respondent, Respondent agrees to comply with and be bound by the terms of this Settlement Agreement. Respondent agrees not to contest the authority or jurisdiction of the Director of the Superfund and Emergency Management Division or his designee to issue this Settlement Agreement, and further agrees that it will not contest the validity of this Settlement Agreement or its terms in any proceeding to enforce the terms of this Settlement Agreement.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and Respondent and its successors and assigns. Any change in the ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter the responsibilities of Respondent under this Settlement Agreement.

6. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Respondent to this Settlement.

7. Respondent shall provide a copy of this Settlement Agreement to each contractor hired to perform the Work (defined below and as set forth in the attached removal sampling work plan, Appendix 2) required by this Settlement Agreement and to each person representing Respondent with respect to the Site (defined below) or the Work (defined below), and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Respondent or its contractors shall provide written notice of the Settlement Agreement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Settlement Agreement or in an attachment to this Settlement Agreement, the following definitions shall apply:

- a. “Day” means a calendar day unless otherwise expressly stated. “Working Day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business on the next working day.
- b. “Effective Date” means the date specified in Paragraph 132.
- c. “EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.
- d. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- e. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.
- f. “NYSDEC” shall mean the New York Department of Environmental Conservation and any successor departments or agencies of the State.
- g. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.
- h. “Party” or “Parties” means EPA and/or Respondent.
- i. “Removal Sampling Work Plan” or “RSWP” means the work plan which has been approved by EPA and attached hereto as Appendix 2.
- j. “Response Costs” means (1) all direct and indirect costs incurred by EPA at or in connection with the Site starting from August 16, 2019 plus Interest on all such costs accrued pursuant to 42 U.S.C. § 9607(a); (2) all direct and indirect costs incurred by EPA in overseeing Respondent’s implementation of the Work until the date of EPA’s written notification pursuant to Paragraph 129 of this Settlement Agreement that the Work has been completed; (3) all direct and indirect costs incurred by EPA in connection with obtaining access for Respondent in accordance with Paragraph 74, below; and (4) all other direct and indirect costs incurred by EPA in connection with the implementation of this Settlement Agreement.

- k. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, Index Number CERCLA-02-2019-2014, and all appendices attached hereto. In the event of conflict between the Administrative Settlement Agreement and Order on Consent and any appendix, the Administrative Settlement Agreement and Order on Consent shall control.
- l. "Site" shall mean what has been designated by EPA as the Route 203 Superfund Site, which includes the property located at 5225-5239 Route 203, Town of Nassau, Rensselaer County, New York and all areas to which Site-related contamination may have migrated. The Site is depicted generally on the map attached hereto as Appendix 1.
- m. "State" means the State of New York.
- n. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2), or (3) above.
- o. "Work" means all activities that Respondent is required to perform pursuant to this Settlement Agreement as set forth in the approved RSWP, Appendix 2.

IV. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. The Site includes property used for residential and commercial purposes located at 5225-5239 Route 203, Nassau, Rensselaer County, New York (hereinafter, "Property"). The Property is generally bordered by rural properties that contain residences located on Rudat Road to the west, Route 203 to the east and Sweets Crossing Road to the south. Wetlands, farmland, and a cemetery are found directly to the north of the Property. There are approximately 23 residences within 1,000 feet of the Site. The Valatie Kill is located 1,000 feet to the west of the Property. A map of the Site is generally depicted in Appendix 1 hereto.

10. Approximately 50 people live within a one thousand-foot radius of the Property. The Village of Nassau is located about one mile north of the Property. The Property contains four buildings including three garages and a residence, as well as a pond which was formed by the dredging of a wetland at the Property. One of the garages houses a tenant who operates a plastic extrusion business there.

11. From the 1950s through the 1970s, Richard and/or Dewey Loeffel operated various waste-hauling businesses including, but not limited to, Loeffel Refining Products, Inc., Loeffel's Waste Oil and Removal Service Company, Inc. and Marcar Oil, Inc. (hereinafter collectively

referred to as “Loeffel Companies”). While the Loeffel Companies were operational, Loeffel trucks were garaged at the Property.

12. Historical records from New York State indicate that the Property was permitted as a waste oil transfer facility in the 1970s and early 1980s.

13. From 1952 to approximately 1977, trucks from one or more Loeffel Companies reportedly picked up chemicals from various locations in the vicinity of Nassau, New York, and from approximately six manufacturing plants owned by Respondent including the Waterford, Corporate R&D, Schenectady, Selkirk, Pittsfield, and Hudson Falls/Fort Edward facilities. Waste containing polychlorinated biphenyls (“PCBs”) were reportedly picked up from one or more of the above-mentioned plants by one or more Loeffel Company trucks.

14. From 1959 through approximately 1966, waste oil and other chemicals, including PCBs, were disposed of by the Loeffel Companies in lagoons, pits, and in a drum disposal area at a disposal facility (the “Landfill”) now known as the Dewey Loeffel Landfill Superfund Site, located approximately five miles from the Site. After approximately 1966, the Landfill was used by the Loeffel Companies as a waste transfer station.

15. Respondent is a contributor of PCBs to the Dewey Loeffel Landfill Superfund Site. The primary PCB Aroclor found at the Dewey Loeffel Landfill Site is Aroclor-1260.

16. The Site operator, Dewey Loeffel, reported to EPA that on at least one occasion in the 1960s, drums from the GE Waterford plant were reportedly off-loaded from a Loeffel Company truck at the Site. Remnants of drums remain on-Site today.

17. The Site operator, Dewey Loeffel, reported to EPA that in the early to mid-1960s, Loeffel Companies regularly pumped oil containing PCBs out of transformers at the GE Pittsfield plant and transported the transformer oil into the underground storage tank at the Site.

18. On July 25, 2018, EPA received a copy of amphibian sampling results collected by the New York State Department of Environmental Conservation (“NYSDEC”) in 1979 and 1980 that indicated elevated levels of PCBs in the tissue of amphibians collected from the pond at the Property. Upon information and belief, 55-gallon drums were brought to the Property in trucks of the Loeffel Companies when the trucks could not navigate to the Landfill due to inclement weather. Also, upon information and belief, there once were two lagoons at the Property that were used to siphon off oils containing PCBs, with an overflow spillway to the pond.

19. On October 16, 2018, EPA conducted a walk-through of the Site including a ground penetrating radar (“GPR”) survey in the area of the garages and pond on-Site. Several drum carcasses were observed in the woods, one of which contained some residual material with a chemical odor. The GPR survey indicated subsurface anomalies near two of the garages.

20. In December 2018, EPA performed environmental sampling on the Site as part of a removal site evaluation. Soil, sediment, surface water, solid waste and groundwater samples were collected and analyzed. EPA collected 30 sediment samples from the pond, 115 soil samples from near the shoreline of the pond and upland areas east of the pond, 6 surface water samples from the pond, 3 groundwater samples, and 3 solid waste samples from the drums at the Site. The samples were analyzed for volatile organic compounds (“VOCs”), semi-volatile organic compounds (“SVOCs”), PCBs, and for metals that constituted characteristic hazardous waste under the Resource Conservation Recovery Act (“RCRA”).

21. Analytical results showed concentrations of VOCs, SVOCs, PCBs, and RCRA metals exceeding both the EPA Removal Management Levels (“RMLs”) for residential soil and the NYSDEC Soil Cleanup Objectives for Restricted Use – Residential (“SCOs”) for protection of public health in soil, as follows:

- a. PCB Aroclor-1260 exceeded the NYSDEC SCO in 92 samples and the EPA RML in 49 samples at levels as high as 1,200,000 micrograms/kilogram (“µg/kg”);
- b. VOCs exceeded the NYSDEC SCOs and the EPA RML in numerous samples including nine samples containing toluene as high as 2,685,800 µg/kg, nine samples containing ethyl benzene as high as 375,900 µg/kg, nine samples containing m,p-xylenes as high as 2,263,400 µg/kg, nine samples containing o-xylene as high as 585,400 µg/kg, four samples containing 1,4-dichlorobenzene as high as 22,900 µg/kg, and one sample containing 1,2,4-trichlorobenzene at 94,000 µg/kg.
- c. The SVOC hexachlorobenzene exceeded the NYSDEC SCO in two samples as high as 470 µg/kg.
- d. RCRA metals exceeded the NYSDEC SCOs and the EPA RML in numerous samples including three samples containing barium as high as 374 milligrams/kilogram (“mg/kg”), three samples containing lead as high as 2000 mg/kg, and one sample containing mercury at 0.843 mg/kg.

22. Although there are no NYSDEC SCOs for pond sediment, contaminants in the pond sediment samples exceeded the NYSDEC SCOs for protection of ecological resources and/or EPA’s RMLs as follows: 1) PCB Aroclor-1016 (one sample at 14,000 µg/kg); 2) PCB Aroclor-1254 (four samples as high as 14,000 µg/kg); 3) PCB Aroclor-1260 (18 samples as high as 100,000 µg/kg); 4) toluene (two samples as high as 1,432,700 µg/kg); 5) m,p xylenes (16 samples as high as 1,660,600 µg/kg); 6) o-xylene (nine samples as high as 473,800 µg/kg); 7) acetone (one sample at 2,600 µg/kg); 8) chlorobenzene (one sample at 47,000 µg/kg); 9) 1,4-dichlorobenzene (four samples as high as 114,700 µg/kg); 10) barium (two samples as high as

576 mg/kg; 11); 11) lead (three samples as high as 134 mg/kg); and 12) mercury (two samples as high as .228 mg/kg).

23. Three samples from drum carcasses found on Site were analyzed for VOCs, SVOCs, PCBs, and RCRA metals. One of these samples contained Aroclor-1260 at 50,000 µg/kg.

24. Six surface water samples from the pond showed concentrations of two SVOCs exceeding the NYSDEC Surface Water Quality Standards (“SWQS”), including phenol (six samples as high as 4.9 micrograms/liter [“µg/L”]) and bis(2-Ethylhexyl)phthalate (six samples as high as 15.8 µg/L).

25. Groundwater well samples showed no exceedances of the federal Maximum Contaminant Levels (“MCLs”); however, low levels of trichloroethylene and PCB Aroclor-1260 were detected in the garage well on the Site.

26. Between March 18 and March 21, 2019, EPA sampled 26 drinking water wells on 24 residential properties south, west, and east of the Site. Samples were analyzed for VOCs, SVOCs and PCBs. Although there were no exceedances of the MCLs, Trichloroethene (“TCE”) was detected in the on-Site well at the garage and in two residential wells to the south along Route 203.

27. Between May 6 and May 9, 2019, EPA collected 90 soil samples from a parcel owned by Niagara Mohawk Power Corporation, d/b/a National Grid (“Niagara Mohawk”) located immediately west of the pond on the Property. Another 48 soil samples were collected from a residential property located immediately south of the pond on the Property to evaluate the impact from an abandoned culvert leading from the pond to the backyard of the residential property and from a swale along Route 203 that connects the Property to this residential property. PCB Aroclor-1260 exceeded the NYSDEC SCO in 14 samples on the Niagara Mohawk property at levels as high as 20,000 µg/kg. PCB Aroclor-1260 exceeded the NYSDEC SCO in 18 samples in the culvert leading to the residential property and from the Route 203 swale on the residential property at levels as high as 5,000 µg/kg.

28. The PCBs, VOCs, SVOCs, and metals identified above are “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

29. The Site constitutes a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

30. Respondent is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

31. Respondent arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

32. The conditions described above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

V. EPA’S DETERMINATIONS

33. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”). These factors include, but are not limited to, the following conditions:

- a. Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants;
- b. Hazardous substances or pollutants or contaminants in drums, barrels, or other storage containers that may pose a threat of release;
- c. Weather conditions that may cause hazardous substances, or pollutants, or contaminants to migrate or be released;
- d. Actual or potential contamination of drinking water supplies or sensitive ecosystems;

34. EPA has determined that a removal action at the Site, particularly sampling investigation activities, is necessary to address the release or threat of release of hazardous substances, pollutants, or contaminants at or from the Site, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. Subject to any subsequent revision agreed to by the Parties under 46.g. below, the removal action activities required by this Settlement Agreement consist of further investigation of the nature and extent of contamination at the Site.

35. The actions required by this Settlement Agreement are necessary to protect the public health or welfare or the environment, are in the public interest, and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

36. Based upon the Findings of Fact and Conclusions of Law set forth above, and the administrative record supporting this removal action, EPA has determined that the actual or threatened release of hazardous substances at and from the Site may present an imminent and substantial endangerment to the public health, welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and it is hereby agreed and ordered that Respondent shall undertake a removal action at the Site, in particular sampling investigation activities, as set forth in Section VI (Work To Be Performed), below. All activities specified

below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

37. EPA has provided Respondent with opportunities to discuss the basis for issuance of this Settlement Agreement and its terms.

VI. WORK TO BE PERFORMED

A. Designation of Project Coordinator and Contractor

38. Respondent's approved Project Coordinator is:

Lewis Streeter
General Electric Company
1 River Road, Bldg. 5-7W
Schenectady, New York 12345

39. The Project Coordinator shall be responsible on behalf of Respondent for oversight of the implementation of this Settlement Agreement. The Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Settlement Agreement.

40. Selection of a new Project Coordinator shall be subject to approval by EPA in writing. If EPA disapproves a proposed Project Coordinator, Respondent shall propose a different coordinator and notify EPA of that person's name, address, telephone number and qualifications within fourteen (14) days following EPA's disapproval. Respondent may change its Project Coordinator provided that EPA received written notice at least fourteen (14) days prior to the desired change. All changes of the Project Coordinator shall be subject to EPA approval.

41. EPA correspondence related to this Settlement Agreement will be sent to the Project Coordinator on behalf of Respondent. To the extent possible, the Project Coordinator shall be present on-Site or readily available for EPA to contact during all working days and be retained by Respondent at all times until EPA issues a notice under Section XXVIII (Termination and Satisfaction) that the Work has been fully carried out in accordance with this Settlement Agreement. Notice by EPA in writing to the Project Coordinator shall be deemed notice to Respondent for all matters relating to the Work under this Settlement Agreement and shall be deemed effective upon receipt.

42. All activities required of Respondent under the terms of this Settlement Agreement shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by Federal, State, and/or local governments consistent with Section 121

of CERCLA, 42 U.S.C. § 9621, and all Work conducted pursuant to this Settlement Agreement shall be performed in accordance with prevailing professional standards.

43. Respondent shall retain at least one contractor to perform the Work. Respondent has notified EPA that it intends to use O'Brien & Gere Engineers, Inc. (OBG, as part of Ramboll) as its contractor for the Work and EPA has approved OBG. Respondent shall also notify EPA of the name and qualifications of any other contractor or subcontractor it retains to perform Work under this Settlement Agreement at least ten (10) days prior to commencement of such Work. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

44. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed by Respondent to conduct the Work. If EPA disapproves in writing of any of Respondent's proposed contractors to conduct the Work, Respondent shall propose a different contractor within seven (14) days of receipt of EPA's disapproval.

45. Respondent shall provide a copy of this Settlement Agreement to each contractor and subcontractor approved and retained to perform the Work required by this Settlement Agreement. Respondent shall include in all contracts or subcontracts entered into for Work required under this Settlement Agreement provisions stating that such contractors or subcontractors, including their agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Settlement Agreement and all applicable laws and regulations. Respondent shall be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Settlement Agreement.

B. Description of Work

46. Respondent shall perform the Work as outlined in the approved RSWP attached hereto as Appendix 2. The Work to be performed under the RSWP will identify the nature and extent of organic and inorganic contamination, including PCBs, on the Site sufficient to support the implementation of additional removal action, if necessary, to address releases on the Site that pose a threat to human health and the environment. The Work includes the following:

- a. Delineation of the vertical and horizontal extent of sediment contamination in the pond at the Site (see RSWP Section 2).

- b. Delineation of the vertical and horizontal extent of soil contamination surrounding the pond (near shoreline areas) at the Site including Site-related contaminants on the Niagara Mohawk Power Corporation, d/b/a National Grid, property (see RSWP Section 2).
 - c. Delineation of the vertical and horizontal extent of soil contamination in upland areas on the Site including, but not limited to, former containment areas, potential former lagoon areas, the drainage ditch along Route 203, and residential properties to the south of Sweets Crossing Road (see RSWP Section 2).
 - d. Identification and delineation of the nature and extent of contamination in and around the underground storage tank at the Site (see RSWP Section 2).
 - e. Identification and delineation of the nature and extent of contamination associated with drums on the Site (see RSWP Section 2).
 - f. Investigation of the potential impacts to groundwater from the release of hazardous substances on the Site including installing and sampling groundwater monitoring wells (see RSWP Section 2).
 - g. Such other investigations, studies, and response actions as may be agreed to by Respondent and EPA and thereupon implemented in accordance with this Settlement Agreement.
47. All deliverables to be submitted pursuant to the RSWP shall be submitted according to the following technical specifications:
- a. Sampling and monitoring data should be submitted in a manner that is consistent with the Region 2 Electronic Data Deliverable (“EDD”) format (information available at <http://www.epa.gov/superfund/region-2-superfund-electronic-data-submission>). Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
 - b. Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the Environmental Systems Research Institute (“ESRI”) File Geodatabase; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (“FGDC”) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the

EPA Metadata Editor, complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.

- c. Each file must include an attribute name for each site unit or sub-unit submitted. Consult <http://www.epa.gov/geospatial/policies.html> for any further available guidance on attribute identification and naming.
 - d. Spatial data submitted by Respondent do not, and are not intended to, define the boundaries of the Site.
48. a. Respondent shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement Agreement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the Quality Assurance Project Plan (“QAPP”), attached to the RSWP, for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency’s “EPA QA Field Activities Procedure,” CIO 2105-P-02.1 (9/23/2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement Agreement meet the competency requirements set forth in EPA’s “Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions” available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA’s Contract Laboratory Program (<http://www.epa.gov/clp>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<https://www.epa.gov/hw-sw846>), “Standard Methods for the Examination of Water and Wastewater” (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, “Air Toxics - Monitoring Methods” (<http://www3.epa.gov/ttnamti1/airtox.html>) and any amendments made thereto during the course of the implementation of this Settlement Agreement.
- b. However, upon approval by EPA Respondent may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (“QA/QC”) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement Agreement have a documented Quality System that complies with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs - Requirements with guidance for

use” (American Society for Quality, February 2014), and “EPA Requirements for Quality Management Plans (QA/R-2)” EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement Agreement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

49. Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent shall notify EPA not less than seven (7) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA’s oversight of Respondent’s implementation of the Work.

50. Respondent waives any objections to any data gathered, generated, or evaluated by EPA or Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by this Settlement Agreement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the Work, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within fifteen (15) days after the monthly progress report containing the data.

51. If performance of any subsequent phase of the work required by this Settlement Agreement requires alteration of the QA/QC Plan, Respondent shall submit to EPA for review and approval proposed amendments to the QA/QC Plan.

52. For any analytical work performed under this Settlement Agreement, including but not limited to that performed in a fixed laboratory, in a mobile laboratory, or in on-Site screening analyses, Respondent must submit to EPA, within thirty (30) days after acceptance of the analytical results, a “Non-CLP Superfund Analytical Services Tracking System” form with respect to each laboratory utilized during a sampling event. Each such form shall be submitted to the EPA On-Scene Coordinator, and a copy of the form and transmittal letter shall also be sent to:

Regional Sample Control Center Coordinator (RSCC)
U.S. Environmental Protection Agency, Region II
Division of Environmental Science and Assessment
2890 Woodbridge Avenue, MS-215
Edison, New Jersey 08837

53. Within five (5) days after the Effective Date, Respondent shall commence implementation of the EPA-approved RSWP. Respondent shall fully implement the RSWP in accordance with the terms and schedule therein and in accordance with this Settlement Agreement.

54. Respondent shall notify EPA of the names and addresses of all off-Site Waste treatment, storage, or disposal facilities selected by Respondent to receive Wastes from the Site. Respondent shall provide such notification to EPA for approval at least five (5) days prior to off-Site shipment of such Wastes. This requirement does not apply to investigation derived waste. Such investigation derived waste is addressed in the RSWP.

55. At the time of completion of all field activities required by this Settlement Agreement, demobilization shall include sampling if sampling tied to the demobilization is deemed necessary by EPA, and proper disposal or decontamination of protective clothing, remaining laboratory samples taken pursuant to this Settlement Agreement, and any equipment or structures constructed. Respondent shall insure that the Site is restored in accordance with the RSWP.

56. Respondent shall conduct the Work required hereunder in accordance with CERCLA and the NCP, and in addition to guidance documents referenced above, the following guidance documents: *EPA Region 2's "Clean and Green Policy"* which may be found at <https://www.epa.gov/greenercleanups/epa-region-2-clean-and-green-policy>, and Guide to Management of Investigation-Derived Wastes (OSWER Publication 9345.3-03FS, January 1992), as they may be amended or modified by EPA.

C. On-Scene Coordinator, Other Personnel, and
Modifications to EPA-Approved RSWP

57. All Work required of Respondent under the terms of this Settlement Agreement shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by the Federal government and the State of New York, and all work conducted pursuant to this Settlement Agreement shall be performed in accordance with prevailing professional standards.

58. The current EPA On-Scene Coordinator ("OSC") for the Site is: David Rosoff, On-Scene Coordinator, Removal Assessment and Enforcement Section of the Superfund and Emergency Management Division, U.S. EPA Region 2, 2890 Woodbridge Avenue, Building 205, Edison, New Jersey 08837, office telephone number 732-906-6879. EPA will notify Respondent's Project Coordinator if EPA designates a different OSC for the Site.

59. EPA, including the OSC, or his authorized representative, will conduct oversight of the implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other response action undertaken by EPA or Respondent

at the Site consistent with this Settlement Agreement. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

60. As appropriate during the course of implementation of the actions required of Respondent pursuant to this Settlement Agreement, Respondent or its consultants or contractors, acting through the Project Coordinator, may confer with EPA concerning the required actions. Based upon new circumstances or new information not in the possession of EPA on the Effective Date of this Settlement Agreement, the Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved RSWP. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated into this Settlement Agreement and shall be implemented by Respondent.

VII. PLANS AND REPORTS REQUIRING EPA APPROVAL

61. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement, Respondent shall have thirty (30) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondent shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondent a written statement to that effect.

62. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement is disapproved by EPA, even after being resubmitted following Respondent's receipt of EPA's comments on the initial submittal, Respondent shall be deemed to be out of compliance with this Settlement Agreement. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondent to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and bill Respondent for the costs of doing so pursuant to this Settlement Agreement. Respondent shall implement any such item(s) as amended or developed by EPA.

63. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Settlement Agreement. EPA may modify those documents and/or perform or require the performance of additional work unilaterally to accomplish the objectives set forth in this Settlement Agreement.

64. All plans, reports and other submittals required to be submitted to EPA pursuant to this Settlement Agreement, upon approval by EPA, shall be deemed to be incorporated into and an enforceable part of this Settlement Agreement.

VIII. REPORTING AND NOTICE TO EPA

65. Commencing on the fifteenth (15th) day of the month after the Effective Date of this Settlement Agreement, and continuing until the final report is submitted, Respondent shall provide monthly progress reports, except that during performance of field work, weekly updates will also be provided. All progress reports shall fully describe all actions and activities undertaken pursuant to this Settlement Agreement. Such progress reports shall, among other things: (a) describe the actions taken toward achieving compliance with this Settlement Agreement during the previous reporting period; (b) include all results of sampling and tests and all other data received by Respondent after the most recent progress report submitted to EPA; (c) describe all actions which are scheduled for the next reporting period; (d) provide other information relating to the progress of Work as is customary in the industry; and (e) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays. All progress reports may be transmitted electronically to the people identified in Paragraph 68 below.

66. Respondent shall provide EPA with at least one (1) week advance notice of any change in the schedule.

67. The Final Report referred to in Paragraph 69, below, and other documents submitted by Respondent to EPA which purport to document Respondent's compliance with the terms of this Settlement Agreement shall be signed by a responsible official of Respondent or by the Project Coordinator designated pursuant to Paragraph 38. For purposes of this Paragraph, a responsible official is an official who is in charge of a principal business function.

68. The Final Report, and other documents required to be submitted to EPA under this Settlement Agreement shall be sent to the following addresses:

Three hardcopies and one electronic copy to:

U.S. Environmental Protection Agency Region 2
Removal Action Branch, Superfund and Emergency Management Division
2890 Woodbridge Avenue, Building 205
Edison, NJ 08837
Attention: David Rosoff, On-Scene Coordinator, Route 203 Superfund Site
rosoff.david@epa.gov

One electronic copy to:

United States Environmental Protection Agency Region 2
Office of Regional Counsel
New York/Caribbean Superfund Branch
290 Broadway, 17th Floor

New York, New York 10007-1866
Attention: Sharon Kivowitz, Site Attorney, Route 203 Superfund Site
kivowitz.sharon@epa.gov

One hardcopy and one electronic copy to:

Kyle Forster
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7012
kyle.forster@dec.ny.gov

The original of any financial assurance document submitted pursuant to Section XXII of this Settlement Agreement, shall be sent to the following address, with copies to EPA at the addresses above:

Chief, Resource Management/Cost Recovery Section
Program Support Branch
Superfund and Emergency Management Division
290 Broadway – 18th Floor
New York, NY 10007-1866

69. Within sixty (60) days after completion of the Work required by the RSWP, or as otherwise agreed to by the parties, Respondent shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Settlement Agreement. The Final Report shall include:

- a. A synopsis of all Work performed under this Settlement Agreement;
- b. A detailed description of all EPA-approved modifications to the RSWP which occurred during Respondent's performance of the Work required under this Settlement Agreement;
- c. A presentation of the analytical results of all sampling and analyses performed, including QAPP data and chain of custody records;
- d. An accounting of expenses and an estimate of total costs incurred by Respondent in complying with the Settlement Agreement; and
- e. The following certification signed by a person who supervised or directed the preparation of the Final Report:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

70. EPA either will approve the Final Report or will require modifications thereto pursuant to Paragraphs 61-64, above.

IX. OVERSIGHT

71. During the implementation of the requirements of this Settlement Agreement, Respondent and its contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondent, including inspections at the Site and at laboratories where analytical work is being done hereunder.

X. COMMUNITY RELATIONS

72. Respondent shall cooperate with EPA in providing information relating to the Work required hereunder to the public. As requested by EPA, Respondent shall participate in the preparation of all appropriate information disseminated to the public; participate in public meetings which may be held or sponsored by EPA to explain activities concerning the Work; and provide a suitable location for public meetings, as needed.

XI. ACCESS TO PROPERTY AND INFORMATION

73. EPA, NYSDEC, and their designated representatives, including, but not limited to, employees, agents, contractor(s), and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Settlement Agreement. Respondent shall at all times permit EPA, NYSDEC, and their designated representatives full access to and freedom of movement at the Site and any other premises where Work under this Settlement Agreement is to be performed for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Settlement Agreement; verifying the information submitted to EPA by Respondent; conducting investigations relating to contamination at the Site; obtaining samples; assessing the need for planning, implementing, or monitoring response actions, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Settlement Agreement.

74. In the event that action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain access agreements from the present owners and/or occupants within twenty (20) days of the Effective Date of this Settlement Agreement for purposes of implementing the requirements of this Settlement Agreement. Such agreements shall provide access not only for Respondent but also for EPA and its designated representatives or agents, as well as NYSDEC and its designated representatives or agents. Such agreements shall specify, (i) that Respondent is not EPA's representative with respect to liability associated with Site activities, and (ii) that Respondent will refrain from using such property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action. If such access agreements are not obtained by Respondent within the time period specified herein, Respondent shall immediately notify EPA that it has not obtained access and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. Solely for purposes of this Settlement Agreement, best efforts do not include payment of money to the current owner and/or operator of the portion of the Site located at 5225-5239 Route 203, Town of Nassau, NY. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondent, may perform those response actions with EPA contractors at the property in question, or may terminate the Settlement Agreement if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondent shall perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables.

75. Upon request, Respondent shall provide EPA with access to all records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Settlement Agreement except for those items, if any, subject to the attorney-client or attorney work product privileges. Nothing herein shall preclude Respondent from asserting a business confidentiality claim pursuant to 40 C.F.R. Part 2, Subpart B. All data, information, and records created, maintained, or received by Respondent or its contractor(s) or consultant(s) in connection with implementation of the Work under this Settlement Agreement, including, but not limited to, contractual documents, invoices, receipts, work orders, and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this Paragraph. EPA shall be permitted to copy all such documents. Respondent shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondent or its contractor(s), or on Respondent's behalf, in connection with the implementation of this Settlement Agreement.

76. Notwithstanding any other provision of this Settlement Agreement, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statutes or regulations.

XII. RECORD RETENTION, DOCUMENTATION, AVAILABILITY OF INFORMATION

77. Until ten (10) years after EPA provides Respondent with notice that all Work has been fully performed in accordance with this Settlement Agreement, Respondent shall preserve and retain all non-identical copies of records (including records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability, or the liability of any other person, under CERCLA with regard to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any records (including records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

78. At the conclusion of the document retention period, Respondent shall notify EPA and NYSDEC at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 75, Respondent shall deliver any such Records to EPA.

79. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: a) the title of the document, record, or information; b) the date of the document, record, or information; c) the name and title of the author of the document, record, or information; d) the name and title of each addressee and recipient; e) a description of the contents of the document, record, or information; and f) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

80. All documents submitted by Respondent to EPA in the course of implementing this Settlement Agreement shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to NYSDEC, and NYSDEC may make those documents available to the public unless Respondent conforms with applicable New York State law and regulations regarding confidentiality. Respondent shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific, or engineering data relating to the Work performed hereunder.

XIII. OFF-SITE SHIPMENTS

81. All hazardous substances, pollutants or contaminants removed from the Site pursuant to this Settlement Agreement for off-Site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), (b) Section 300.440 of the NCP, (c) the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q, (d) RCRA, (e) the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601-2692, and (f) all other applicable Federal and State requirements. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

82. If hazardous substances from the Site are to be shipped outside of New York State, Respondent shall provide prior notification of such Waste shipments to the appropriate state environmental official in the receiving facility’s state and to the OSC. At least five (5) working days prior to such Waste shipments, Respondent shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the Wastes are to be shipped; (b) the type and quantity of Waste to be shipped; (c) the expected schedule for the Waste shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste streams. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipment will not exceed ten cubic yards.

XIV. COMPLIANCE WITH OTHER LAWS

83. All actions required pursuant to this Settlement Agreement shall be performed in accordance with all applicable Federal and State laws and regulations except as provided in CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (“ARARs”) under Federal environmental or State environmental or facility siting laws.

84. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work that is not on-site requires a Federal or New York State permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondent may seek relief under the provisions of Section XVII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any Federal or New York State statute or regulation.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

85. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, telephone number (800) 424-8802, Respondent shall immediately orally notify the OSC of the incident or Site conditions, or in his absence, the Chief of the Removal Action Branch of the Superfund and Emergency Management Division of EPA, Region 2, at (732) 321-6658 of the incident or Site conditions. Respondent shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this Paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

86. In the event of any action or occurrence during Respondent's performance of the requirements of this Settlement Agreement which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding Paragraph. Respondent shall take such action in accordance with all applicable provisions of this Settlement Agreement including, but not limited to, the Health and Safety Plan. In the event that EPA determines that: (a) the activities performed pursuant to this Settlement Agreement; (b) significant changes in conditions at the Site; or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondent to stop further implementation of any actions pursuant to this Settlement Agreement or to take other and further actions reasonably necessary to abate the threat. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to the procedures in Section XVI (Reimbursement of Costs).

87. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XVI. REIMBURSEMENT OF COSTS

88. Respondent hereby agrees to reimburse EPA for all Response Costs in connection with the Site. EPA will periodically send billings to Respondent for Response Costs. The billings will be accompanied by a printout of cost data in EPA's financial management system. Respondent shall remit payment to EPA via electronic funds transfer ("EFT") within thirty (30) days of receipt of each such billing.

89. To effect payment via EFT, Respondent shall instruct its bank to remit payment in the required amount via EFT using the following information, or such other updated EFT information that EPA may subsequently provide to Respondent:

- . Amount of payment
- . Bank: **Federal Reserve Bank of New York**
- . Account code for Federal Reserve Bank account receiving the payment: **68010727**
- . Federal Reserve Bank ABA Routing Number: **021030004**
- . SWIFT Address: **FRNYUS33**
33 Liberty Street
New York, NY 10045
- . Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency
- . Name of remitter: **General Electric Company**
- . Settlement Agreement Index number: **CERCLA-02-2019-2014**
- . Site/spill identifier: **A28L**

At the time of payment, Respondent shall send notice by email that such payment has been made to acctsreceivable.cinwd@epa.gov, and by mail to:

U.S. Environmental Protection Agency
Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

David Rosoff, On-Scene Coordinator
U.S. Environmental Protection Agency, Region 2
Superfund and Emergency Response Division
Removal Action Branch
2890 Woodbridge Avenue, Building 205
Edison, NJ 08837
rosoff.david@epa.gov

Sharon Kivowitz, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel
290 Broadway, 17th Floor
New York, New York 10007-1866
kivowitz.sharon@epa.gov

Such notice shall reference the date of the EFT, the payment amount, the name of the Site, the Settlement Agreement index number, and Respondent's name and address.

90. The total amount to be paid by Respondent pursuant to Paragraph 88, above shall be deposited into the Route 203 Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

91. Respondent shall pay interest on any amounts overdue under Paragraph 88 above. Such interest shall begin to accrue on the first day that payment is overdue and accrue through the date of Respondent's payment. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

XVII. FORCE MAJEURE

92. "Force majeure," for purposes of this Settlement Agreement, is defined as any event arising from causes beyond the control of Respondent and of any entity controlling, controlled by, or under common control with Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Settlement Agreement notwithstanding Respondent's best efforts to avoid the delay. The requirement that Respondent exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (a) as it is occurring; and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not "force majeure" events include, but are not limited to, increased costs or expenses of any Work to be performed under this Settlement Agreement or the financial difficulty of Respondent to perform such Work.

93. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event, Respondent shall notify by telephone the EPA OSC or, in his absence, the Chief of the Removal Action Branch of the Superfund and Emergency Management Division of EPA Region 2 at 732-321-6658 within forty-eight (48) hours of when Respondent knew or should have known that the event might cause a delay. In addition, Respondent shall notify EPA in writing within seven (7) calendar days after the date when Respondent first becomes aware or should have become aware of the circumstances which may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondent's rationale for interpreting such circumstances as being beyond its control (should that be Respondent's claim); (b) the actions (including pertinent dates) that Respondent has taken and/or plans to take to minimize any delay; (c) a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and (d) the date by which or the time period within which Respondent proposes to complete the delayed activities. Such notification shall not relieve Respondent of any of its obligations under this Settlement Agreement. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Respondent's failure to timely and properly notify EPA as required by this Paragraph shall

constitute a waiver of Respondent's right to claim an event of force majeure. The burden of proving that an event constituting a force majeure has occurred shall rest with Respondent.

94. If EPA determines that a delay in performance of a requirement under this Settlement Agreement is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Settlement Agreement which are not directly affected by the force majeure. Respondent shall use its best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Settlement Agreement.

XVIII. STIPULATED AND STATUTORY PENALTIES

95. If Respondent fails, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Settlement Agreement, and such failure is not excused under the terms of Paragraphs 92-94 above (Force Majeure), Respondent shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

- a. For all requirements of this Settlement Agreement, other than the timely provision of progress reports required by Paragraph 65 stipulated penalties shall accrue in the amount of \$1,000 per day, per violation, for the first seven days of noncompliance, \$1,500 per day, per violation, for the 8th through 15th day of noncompliance, \$3,000 per day, per violation, for the 16th through 25th day of noncompliance, and \$7,000 per day, per violation, for the 26th day of noncompliance and beyond.
- b. For the progress reports required by Paragraph 65, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first seven days of noncompliance, \$1,000 per day, per violation, for the 8th through 15th day of noncompliance, \$2,000 per day, per violation, for the 16th through 25th day of noncompliance, and \$4,000 per day, per violation, for the 26th day of noncompliance and beyond.

96. Any such penalty shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected or EPA notifies Respondent that it has determined that it will perform the tasks for which there is non-compliance. Such penalty shall be due and payable thirty (30) days following receipt of a written demand from EPA. Payment of any such penalty to EPA shall be made via EFT in accordance with the payment procedures in Paragraph 89 above. Respondent shall pay Interest on any amounts overdue under this Paragraph. Such Interest shall begin to accrue on the first day that the respective payment is overdue.

97. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Settlement Agreement. Penalties shall accrue and may be assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of

noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement Agreement.

98. Notwithstanding any other provision of this Settlement Agreement, failure of Respondent to comply with any provision of this Settlement Agreement may subject Respondent to civil penalties of up to fifty-seven thousand, three hundred seventeen dollars (\$57,317) per violation per day, as provided in Sections 109 and 122(l) of CERCLA, 42 U.S.C. §§ 9609 and 9622(l), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 84 Fed. Reg. 25 [February 6, 2019]), unless such failure to comply is excused by EPA under the terms of Paragraphs 92 through 94 above. Respondent may also be subject to punitive damages in an amount at least equal to but not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Settlement Agreement, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Settlement Agreement or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622.

XIX. OTHER CLAIMS

99. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent or Respondent's employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Settlement Agreement. The United States or EPA shall not be held out as or deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

100. Except as expressly provided in Paragraph 119 (Waiver of Claims) and Section XXIII (Covenant Not to Sue by EPA), below, nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

101. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XX. INDEMNIFICATION

102. Respondent agrees to indemnify, save, and hold harmless the United States, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from or on account of acts or omissions of

Respondent, its employees, officers, directors, agents, servants, receivers, trustees, successors, assigns, or any other persons acting on behalf of Respondent or under its control, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Settlement Agreement by Respondent.

103. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of the Work, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work, including but not limited to, claims on account of construction delays. Further, the United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

104. Further, Respondent agrees to pay the United States all costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under their control, in carrying out activities pursuant to this Settlement Agreement.

XXI. INSURANCE

105. No later than seven (7) days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of notice to Respondent under Section XXVIII (Termination and Satisfaction) that the Work has been fully carried out in accordance with this Settlement Agreement, commercial general liability insurance with limits of \$10 million, for any one occurrence, and automobile insurance with limits of \$5 million, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement Agreement. In addition, for the duration of the Settlement Agreement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XXII. FINANCIAL ASSURANCE

106. In order to ensure completion of the Work, Respondent shall secure financial assurance, in the amount of \$250,000 (“Estimated Cost of the Work”), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondent may use multiple mechanisms if it is limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

- a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency
- c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;
- d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;
- e. A demonstration by Respondent that it meets the financial test criteria of Paragraph 107, accompanied by a standby funding commitment, which obligates Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or
- f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of Respondent or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with Respondent; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of Paragraph 107.

107. If Respondent is seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 106.e or 106.f it must, within thirty (30) days of the Effective Date:

- a. Demonstrate that:

- (1) Respondent or the guarantor has:
- i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
 - ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
 - iii. Tangible net worth of at least \$10 million; and
 - iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

- (2) Respondent or the guarantor has:
- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
 - ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
 - iii. Tangible net worth of at least \$10 million; and
 - iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

- b. Submit to EPA for Respondent or the guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

108. If Respondent provides financial assurance by means of a demonstration or guarantee under Paragraph 106.e or 106.f, it must also:

- a. Annually resubmit the documents described in Paragraph 106.b within ninety (90) days after the close of Respondent's or the guarantor's fiscal year;
- b. Notify EPA within thirty (30) days after Respondent or the guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and
- c. Provide to EPA, within thirty (30) days of EPA's request, reports of the financial condition of Respondent or the guarantor in addition to those specified in Paragraph 106.b; EPA may make such a request at any time based on a belief that Respondent or the guarantor may no longer meet the financial test requirements of this Section.

109. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify EPA of such information within seven (7) days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Respondent of such determination. Respondent shall, within thirty (30) days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed sixty (60) days. Respondent shall follow the procedures of Paragraph 111 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

110. Access to Financial Assurance

- a. If EPA issues a notice of a Work Takeover under Paragraph 116, then, in accordance with any applicable financial assurance mechanism and/or related standby funding commitment, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 110.d.
- b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least thirty (30) days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 110.d.
- c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 116, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraph 106.e or 106.f, then EPA is entitled to demand from Respondent an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondent shall, within thirty (30) days of such demand, pay the amount demanded as directed by EPA.
- d. Any amounts required to be paid under this Paragraph 110 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Route 203 Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.
- e. All EPA Work Takeover costs not paid under this Paragraph 110 must be reimbursed as Response Costs under Section XVI (Payments for Response Costs).

111. **Modification of Amount, Form, or Terms of Financial Assurance.** Respondent may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 106, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondent of its decision to approve or disapprove a

requested reduction or change pursuant to this Paragraph. Respondent may reduce the amount of the financial assurance mechanism only in accordance with EPA's approval. Respondent may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondent. Within thirty (30) days after receipt of EPA's approval of the requested modifications pursuant to this Paragraph, Respondent shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 106.

112. **Release, Cancellation, or Discontinuation of Financial Assurance.** Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA notifies Respondent under Section XXVIII (Termination and Satisfaction) that the Work has been fully carried out in accordance with this Settlement Agreement; or (b) in accordance with EPA's approval of such release, cancellation, or discontinuation.

XXIII. COVENANT NOT TO SUE BY EPA

113. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Response Costs. This covenant not to sue shall take effect upon the Effective Date of this Settlement Agreement and is conditioned upon the complete and satisfactory performance by Respondent of all its obligations under this Settlement Agreement, including, but not limited to, payment of Response Costs pursuant to Section XVI (Reimbursement of Costs), above. This covenant not to sue extends only to Respondent and does not extend to any other person.

XXIV. RESERVATION OF RIGHTS BY EPA

114. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

115. The covenant not to sue set forth in Section XXIII (Covenant Not to Sue by EPA), above, does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. Liability for failure by Respondent to meet a requirement of this Settlement Agreement;
- b. Liability for costs not included within the definition of Response Costs;
- c. Liability for performance of response action other than the Work;
- d. Criminal liability;
- e. Liability for violations of Federal or state law that occur during or after implementation of Work;
- f. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. Liability arising from the past, present, or future disposal, release or threat of release of Waste outside of the Site; and
- h. Liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Response Costs under this Settlement Agreement.

116. **Work Takeover.** In the event EPA determines that Respondent has ceased implementation of any portion of the Work; is seriously or repeatedly deficient or late in its performance of the Work; or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Response Costs that Respondent shall pay pursuant to Section XVI (Reimbursement of Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXV. COVENANT NOT TO SUE BY RESPONDENT

117. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Response Costs, or this Settlement Agreement, including, but not limited to:

- a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

- b. Any claim arising out of the Work, including any claim under the United States Constitution, the New York State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. Any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or New York State law relating to the Work.

Except as provided in Paragraph 119 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 115.a, d, and e, but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

118. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

119. **Waiver of Claims.** Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Work, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

120. The waiver in Paragraph 119 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

- a. That such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

- b. That the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

XXVI. CONTRIBUTION PROTECTION AND RIGHTS

121. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work and Response Costs; provided, however, that if EPA exercises rights under the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraphs 115.a (liability for failure to meet a requirement of the Settlement Agreement) or 115.d (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

122. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

123. Except as provided in Paragraph 119, nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XXV (Covenant Not to Sue by Respondent), above, nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action or demands against any persons not party to this Settlement Agreement for indemnification, contribution or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that provide contribution protection to such persons.

124. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

125. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XXIII (Covenant Not to Sue by EPA).

XXVII. MODIFICATIONS

126. The OSC may make modifications to any plan or schedule in writing or by oral direction which shall be consistent with the work as set forth in the RSWP. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

127. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 126.

128. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVIII. TERMINATION AND SATISFACTION

129. Upon a determination by EPA (following its receipt of the Final Report referred to in Paragraph 69, above) that the Work required pursuant to this Settlement Agreement has been fully carried out in accordance with this Settlement Agreement, EPA will so notify Respondent in writing. Such notification shall not affect any continuing obligations of Respondent. If EPA determines that any removal activities have not been completed in accordance with this Settlement Agreement, EPA may so notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

130. If EPA files an action to enforce this Settlement agreement and a court issues an order that invalidates any provision of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or excused by the court's order.

131. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

XXX. APPENDICES

Appendix 1 – Map of Site
Appendix 2 – RSWP

XXXI. EFFECTIVE DATE

132. This Settlement Agreement shall become effective five (5) days after execution of the Settlement Agreement by EPA. All times for performance of actions or activities required herein will be calculated from said Effective Date.

U.S. ENVIRONMENTAL PROTECTION AGENCY



Eric J. Wilson
Acting Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency Region 2



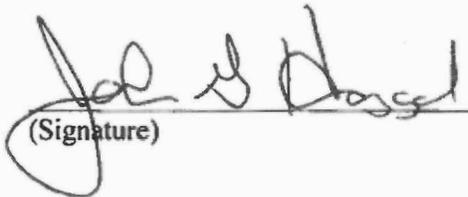
Date

In the Matter of the Route 203 Superfund Site, EPA Index No. CERCLA-02-2020-2008

CONSENT

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Settlement Agreement. The Respondent hereby consents to the issuance of this Settlement Agreement and to its terms. Furthermore, the individual signing this Settlement Agreement on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Settlement Agreement and to bind Respondent.

General Electric Company


(Signature)

2/25/2020
(Date)

John G. Haggard
(Printed Name of Signatory)

Director - Global Remediation
(Title of Signatory)

APPENDIX 1
MAP OF THE SITE

FIGURE 1-3



Note:
Rensselaer County parcel boundaries designated in white



LEGEND

- Loeffel Route 203 Property
- Existing Supply Well
- Former Aboveground Storage Tank / Potential Lagoon Area
- Pond and Pond Area
- Underground Storage Tank
- Upland Area
- Drum Area
- Approximate Pond Shoreline
- Ephemeral Stream
- Culvert

**LOEFFEL ROUTE 203 PROPERTY
NASSAU, NEW YORK**

INVESTIGATION AREAS



0 50 100 200
Feet
R12 1205A
OCTOBER 2014



O'BRIEN & GERE ENGINEERS, INC.

APPENDIX 2
REMOVAL SAMPLING WORK PLAN

<https://obrienandgere.sharefile.com/d-sde714bd59cf4502b>