

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:)

Hudson River PCBs Superfund Site)

General Electric Company,)
Respondent)

Proceeding Under Sections 104,)
107, and 122 of the Comprehensive)
Environmental Response, Compensation,)
and Liability Act, 42 U.S.C. §§ 9604,)
9607, and 9622.)
_____)

Index Number
CERCLA-02-2022-2020

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR
TESTING/INVESTIGATION
LOWER HUDSON RIVER**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and General Electric Company (GE or Respondent). This Settlement provides for the performance of testing and other investigative activities by Respondent in the Lower Hudson River and the payment of certain response costs incurred by the United States at or in connection with the Hudson River PCBs Site (Site), located primarily in New York State.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604, 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators. This authority was further redelegated by Region 2 Redelegation R-1200 to the Director of the Superfund and Emergency Management Division (this Division was formerly the Emergency and Remedial Response Division).

3. EPA and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of EPA's findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

4. This Settlement is binding upon EPA and upon Respondent and their heirs, successors, and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement.

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

6. Respondent shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing Respondent with respect to the Site or the Work, 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 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

7. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXIX.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 89 (Work Takeover), Paragraph 111 (Access to Financial Assurance), community involvement, including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include, all Interim Response Costs, and all Interest on those Past Response Costs Respondent has agreed to pay under this Settlement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from March 1, 2022 to the Effective Date.

“Hudson River PCBs Site Special Account” shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“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>.

“Interim Response Costs” shall mean all costs associated with this Settlement and the Work to be performed in the Lower Hudson River, including but not limited to direct and indirect costs, (a) paid by the United States in connection with the Site between March 1, 2022 and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.

“Lower Hudson River” shall mean the length of river between the Federal Dam at Troy and the Battery, and includes the area known as the “Mid-Hudson River.”

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“NYSDEC” shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.

“Paragraph” shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

“Party” or “Parties” shall mean EPA and/or Respondent.

“Past Response Costs” shall mean all costs associated with this Settlement and the Work to be performed thereunder in the Lower Hudson River, including, but not limited to, direct and indirect costs, that the United States paid through February 28, 2022, plus Interest on all such costs through such date.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Respondent” shall mean General Electric Company.

“Section” shall mean a portion of this Settlement identified by a Roman numeral.

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXVIII (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the Hudson River PCBs Superfund Site, encompassing a 200-mile stretch from the Village of Hudson Falls to the Battery in New York City, the Lower Hudson River portion of which is depicted generally on the map attached as Appendix A.

“State” shall mean the State of New York.

“Statement of Work” or “SOW” shall mean the document describing the activities Respondent must perform to implement the response activities pursuant to this Settlement, as set forth in Appendix B, and any modifications made thereto in accordance with this Settlement.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Upper Hudson River” shall mean the length of river between Hudson Falls and the Federal Dam at Troy, New York, which has been further divided for study purposes by EPA into three main sections known as River Section 1, River Section 2, and River Section 3.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any “hazardous waste” which appears on the list or satisfies the characteristics promulgated pursuant to New York State Environmental Conservation Law (“ECL”) Section 27-0903; and (e) any “hazardous substance” which appears on the list promulgated pursuant to ECL 37-0103.

“Work” shall mean all activities and obligations Respondent is required to perform under this Settlement except those required by Section XI (Record Retention).

IV. EPA’s FINDINGS OF FACT

8. GE is a New York corporation with corporate offices located at 41 Farnsworth Street, Boston, Massachusetts.

9. The Site includes a nearly 200 river-mile stretch of the Hudson River primarily in eastern New York State from the Village of Hudson Falls to the Battery in New York City. The Hudson River has been designated an American Heritage River because of its important role in American history and culture. The Site is divided into the Upper Hudson River and the Lower Hudson River. The Site also includes the floodplain of the Upper Hudson River and the five Remnant Deposits, which are areas of PCB-contaminated sediment that became exposed after the river water level dropped following removal of the Fort Edward Dam in 1973.

10. The Lower Hudson River portion of the Site includes 160 miles of a river and estuary system, bound at its northern extent by the Federal Troy Dam, and bound by the south by the Battery in New York City.

11. During an approximately 30-year period ending in 1977, manufacturing processes at GE facilities in Fort Edward and Hudson Falls, New York used polychlorinated biphenyls (“PCBs”) in the manufacture of electrical capacitors. PCB releases from these facilities caused significant subsurface contamination at the facilities which was directly discharged and migrated to the Hudson River.

12. In September 1984, EPA placed the Hudson River PCBs Superfund Site on the National Priorities List, established pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. Part 300, Appendix B.

13. As a result of the releases, PCBs were mobilized from the Upper Hudson River to the Lower Hudson River by flowing water and suspended sediment over the Federal Dam at Troy. Some of those PCBs continue to flow over the dam, and remain in the water column and sediments of the Lower Hudson River. In addition, there were sources of PCBs to the Lower Hudson River other than the releases from GE's facilities. PCBs have accumulated in fish through the process of bioaccumulation and biomagnification up the food chain from ecological receptors interacting with contaminated sediment and water.

14. PCB releases in the Upper Hudson River have been extensively documented, the cleanup of which has been the subject of decades of federal and state response actions. NYSDEC has been the lead agency with respect to response actions at the GE Hudson Falls and Fort Edward Facilities and certain adjacent properties, and EPA has been the lead agency with respect to the PCB remediation of the sediments and floodplain of the Upper Hudson River, as well as assessing impacts to the Lower Hudson River.

15. EPA is addressing the Site in discrete phases or components known as operable units ("OUs"). The 1984 Record of Decision ("ROD") for the first OU ("OU1") addresses areas, known as the Remnant Deposits, and in addition called for a treatability study of the Waterford Water Works to determine whether upgrades or alterations of that facility were needed, and provided for an interim no action decision with regard to PCBs in the sediments of the Upper Hudson River. EPA and Respondent entered into a 1990 consent decree whereby Respondent implemented the remedial action selected in the 1984 ROD for the remnant deposits. Respondent is currently conducting maintenance and long-term monitoring activities under the 1990 consent decree.

16. In 1989, EPA decided to reassess the interim no-action decision in the 1984 ROD with respect to PCB-contamination in the sediments of the Upper Hudson River. Beginning in 1990, EPA conducted a Reassessment Remedial Investigation ("RI") and Feasibility Study ("FS") which included, inter alia, analyses of the fate, transport, and human health and environmental risks associated with PCB contamination at the Site.

17. In December 2000, EPA issued the Reassessment RI/FS for the Hudson River, which included a Revised Baseline Ecological Risk Assessment and a Revised Human Health Risk Assessment for the Site.

18. The 2002 ROD (EPA, 2002) for the second OU ("OU2") selected as a remedy dredging to address PCB-contaminated sediments of the Upper Hudson River, as well as monitored natural attenuation ("MNA") of PCB contamination that remains in the river after dredging.

19. Respondent is implementing the OU2 remedy pursuant to a 2006 Consent Decree with the United States. Dredging was conducted in two phases and completed in 2015; in total, GE reported that 2.75 million cubic yards of sediment were dredged from the river, processed,

and shipped via train to approved landfills for disposal during the two dredging phases (Phase 1 and Phase 2). Demobilization of the sediment processing facility was largely completed in December 2016 although certain demobilization activities, including sampling associated with the filter presses and their removal, were not completed until April 2017. On April 11, 2019, EPA issued a “Certification of Completion of the Remedial Action” to GE. The project is currently in the Operation, Maintenance & Monitoring (“OM&M”) phase during the MNA period of the remedy.

20. From 2005-present, Respondent conducted Superfund response actions in the floodplain of the Upper Hudson River pursuant to several administrative consent orders with EPA. Under one administrative consent order, Respondent is currently performing an RI/FS of PCB contamination in the Upper Hudson River floodplain from upstream of one of the remnant deposit areas located from Hudson Falls, New York, to Troy, New York. EPA plans to issue a separate ROD for the floodplain following completion of the RI/FS.

21. The Lower Hudson River has been designated as the fifth OU for the Site.

22. GE’s Hudson Falls and Fort Edward former operations have been identified as a source of PCBs to the Lower Hudson River system. Past releases of PCBs from those operations impacted the Lower Hudson River, and some PCBs continue to flow over the Federal Dam at Troy. However, the dredging component of the OU2 remedy, combined with upstream source control, have reduced the amount of PCBs being transported from the Upper Hudson River to the Lower Hudson River and diminished the impact of PCBs from the Upper Hudson River on the Lower Hudson River.. Furthermore, the overall contribution of the Upper River PCBs to the Lower Hudson River declines further downstream, and there are other PCB sources not associated with GE that exist or existed within the Lower Hudson River. EPA has documented, and continues to evaluate, such other sources of PCBs to the Lower Hudson River system.

23. As stated in the 2002 ROD, the Revised Human Health Risk Assessment indicated that PCBs contribute potential risk to humans through consumption of contaminated fish in the Mid-Hudson River, which is part of the Lower Hudson River. The Revised Baseline Ecological Risk Assessment indicated that PCBs contribute to a potential risk of adverse health effects to ecological receptors such as certain fish and mammals in the Lower Hudson River.

24. EPA’s Second Five Year Review Report for the Hudson River noted that, following the completion of dredging in the Upper Hudson River, although the PCB load to the Lower Hudson River needs to be continually monitored for the foreseeable future, data from limited sampling of fish collected in the Lower Hudson River indicated slower rates of recovery compared with fish collected in the Upper Hudson River with respect to PCB concentrations in tissue. The report also noted that certain fish species below the Albany/Troy area of the river indicate little to no recovery. However, the report stated that several years of additional data are needed before conclusions can be drawn about recovery of the PCB concentrations in fish.

25. The Lower Hudson River has complex sediment deposition and scouring dynamics which result from tidal influences. A salinity gradient extends as far north as Poughkeepsie from the Battery in NYC. Tidal inputs can create variable deposition settings along the estuary, depending on river inputs relative to tidal inputs.

26. Human activities along the river may also mobilize PCBs, causing potential exposure to receptors. River channel dredging, boat and barge traffic, and remedial work conducted adjacent to the river can resuspend sediment that may contain PCBs. Additionally, PCBs from other sources located along the Lower Hudson River may have contributed and be contributing to the PCB impacts described above.

27. The data collected under the Work to Be Performed as part of this Settlement will be used to improve the understanding of the Lower Hudson River system, as well as to inform the need for and scope of additional investigation and monitoring activities in the Lower Hudson River.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

28. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The Hudson River PCBs Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes [a] “hazardous substance(s)” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

e. The conditions described in EPA’s Findings of Fact 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).

f. EPA has determined that Respondent is qualified to conduct the Work within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondent complies with the terms of this Settlement.

VI. SETTLEMENT AGREEMENT AND ORDER

29. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTOR AND PROJECT COORDINATORS

30. Respondent shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within 30 days after the Effective Date. EPA has approved the following contractors for the Work: Anchor QEA, LLC, Arcadis of New York, Environmental Standards, Inc., and Behan Communications. Respondent shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 10 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 30 days after EPA's disapproval. With respect to any proposed contractor that has not yet been approved, 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.

31. Within 30 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent practicable, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 30. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 30 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent.

32. EPA has designated Gary Klawinski of the Superfund and Emergency Management Division, Hudson River Office, as its Project Coordinator. EPA and Respondent shall have the right, subject to Paragraph 31, to change their respective designated Project Coordinator. Respondent shall notify EPA 30 days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice. All deliverables, notices, notifications, proposals, reports, and requests specified in this Settlement must be in writing, unless otherwise specified, and be submitted by email to Gary Klawinski, Klawinski.gary@epa.gov.

33. EPA's Project Coordinator shall be responsible for overseeing Respondent's implementation of this Settlement. EPA's Project Coordinator shall have the authority vested in a Remedial Project Manager ("RPM") and On Scene Coordinator ("OSC") under the NCP. In addition, EPA's Project Coordinator shall have the authority, consistent with the NCP, to halt any Work required under this Settlement, and to take any necessary response action when she/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of EPA's Project Coordinator from the Work area under this Settlement shall not be cause for the stoppage or delay of Work.

VIII. WORK TO BE PERFORMED

34. Respondent shall conduct the Work in accordance with this Settlement, the attached Statement of Work ("SOW"), CERCLA, the NCP, and to the extent feasible, applicable EPA Sampling and Analysis Plan Guidance (<https://www.epa.gov/quality/sampling-and-analysis-plan-guidance-and-template-v4-general-projects-042014>). The attached SOW (Appendix B) specifies the activities that Respondent will be required to conduct under this Settlement.

35. The actions to be implemented include the following:

a. Sampling and Analysis Plan ("SAP"). Within 60 days of the Effective Date, Respondent shall submit an SAP to EPA for review and approval according to the schedule outlined in the attached SOW. The SAP and supporting documents outlined in this paragraph shall identify staff, contact information and qualifications, permits (if any) and notifications required prior to the start of the Work, and shall define in detail procedures the contractor will use to implement the Work outlined in the SAP. The SAP shall include:

(1) A description of any potentially applicable permitting requirements.

(2) A description of environmental sampling requirements as outlined in the SOW that details sampling of environmental media (supplemental sediment, Be-7 bearing sediment, high resolution sediment coring, water column, fish).

(3) The following supporting deliverables:

i. A Quality Assurance Project Plan ("QAPP") for sampling and analysis of fish, sediment, and water in the Lower Hudson River that meets the same requirements as the Remedial Action Monitoring QAPP prepared by GE and approved by EPA for the Upper Hudson River cleanup, but includes all of the sampling activities specified in the SOW. This QAPP may reference or incorporate sampling and analytical procedures described in Respondent's *Long-Term Operation, Maintenance, and Monitoring Plan for Water, Fish, and Sediment* in the Upper Hudson River (WFS OMM Plan; February 2022) that are applicable to the

Work; and it shall include Standard Operating Procedures for any other sampling and analytical activities.

- ii. A sample disposition plan (which may be included in the QAPP) describing how samples will be disposed once approval is given by EPA.
- iii. A Health and Safety Plan (“HASP”) for work performed as part of this Settlement. This plan shall be prepared in accordance with “OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-OIC (November 2002), available on the NSCEP database at <https://www.epa.gov/nscep>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at <https://www.epaosc.org/HealthSafetyManual/manual-index.htm>. The plan shall also comply with all currently applicable Occupational Safety and Health Administration (“OSHA”) regulations found at 29 C.F.R Part 1926 and 29 C.F.R. Part 1910 and shall include contingency planning in the event of a fire, hurricane, or flood, as well as an evacuation plan. If performance of any subsequent phase of the work required by this Settlement requires alteration of the HASP, Respondent shall submit any proposed amendments to EPA for review and approval.
- iv. An Emergency Response Plan that includes all plans for major emergencies such as fire, flood, and environmental release and that may be included in the HASP. The plan shall include response protocols for on-Site personnel, local emergency responders, and the surrounding community, and plans for coordination with local emergency response agencies specific to the type and location of the Work and consistent with the approach used by Respondent in the plan for the upper Hudson River.

b. EPA may approve, disapprove, require revisions to, or modify the SAP and its supporting documents, in whole or in part, provided that any modifications or required revisions to such documents do not materially expand the scope of activities specified in the attached SOW. If EPA requires revisions, Respondent shall submit a revised SAP within 30 calendar days of receiving EPA’s notification of the required revisions (or as otherwise agree upon with EPA). Within 15 calendar days after EPA’s approval or approval with modifications (or as otherwise agreed upon with EPA), Respondent shall implement the sampling work as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the sampling program, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under the Settlement.

Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval shall be reviewed and approved by EPA in accordance with this Paragraph.

36. In lieu of a Field Sampling Plan, a detailed description of the sampling procedures and the Data Quality Objectives for carrying out the sampling work described in the SOW will be included in either the SAP and/or the QAPP.

37. Respondent shall conduct the Work required hereunder in accordance with CERCLA, the NCP, and any other guidance documents referenced in this Settlement, as well as *EPA Region 2's "Clean and Green Policy"* which may be found at <http://www.epa.gov/greenercleanups/epa-region-2-clean-and-green-policy>. Respondent shall not commence or perform any Work except in conformance with the terms of this Settlement.

38. For any regulation or guidance referenced in this Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from EPA of the modification, amendment, or replacement.

39. At the time of completion of all Work required by this Settlement, demobilization shall include (as applicable) proper disposal, decontamination and deconstruction activities.

40. Submission of Deliverables

a. General Requirements for Deliverables

(1) Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the EPA Project Coordinator identified in Paragraph 32 above. Respondent shall submit all deliverables required by this Settlement, or any approved work plan to EPA in accordance with the schedule set forth in the attached SOW, as applicable.

(2) Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 40.b. All other deliverables shall be submitted to EPA in the form specified by the EPA Project Coordinator. Respondent need only provide a paper copy of a specific deliverable if EPA determines that it is necessary and so notifies Respondent.

b. Technical Specifications for Deliverables

(1) Sampling and monitoring data contained in any deliverables should be submitted in standard Electronic Data Deliverable ("EDD") format consistent with the format that Respondent has used for submission of such data from the Hudson River to EPA since the completion of the dredging component of the OU2 remedy. . Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format 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 must be included and 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 (“EME”), complies with these FGDC and EPA metadata requirements and is available at <https://www.epa.gov/geospatial/epa-metadata-editor>.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

41. Quality Assurance, Sampling, and Data Analysis

a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with those previously approved by EPA and as specified in the SAP or QAPP to be approved by EPA.

b. Respondent shall ensure in its contractual agreements that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. If requested by EPA, in lieu of in person EPA laboratory visits, the Respondent shall provide virtual presentation of laboratory sample processing and analysis. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP 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 approved SAP and QAPP. Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement 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.

c. However, upon approval by EPA, Respondent may use other appropriate analytical method(s), as long as (i) 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 it utilizes for analysis of samples taken pursuant to this Settlement 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 are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

d. Upon request by EPA, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent shall notify EPA not less than seven 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, except for air samples, 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.

e. Respondent shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Settlement. Sampling results that Respondent obtains following execution of this Settlement will be submitted to EPA following Respondent’s receipt of final data packages and included as attachments to progress reports submitted to EPA under Paragraph 43.

f. Respondent waives any objections to any data gathered, generated, or evaluated by EPA, the State or Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work 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 15 days after the monthly progress report containing the data.

g. If performance of any subsequent phase of the Work required in the SOW requires alteration of the QAPP, Respondent shall submit to EPA for review and approval proposed amendments to the QAPP.

42. **Community Involvement Activities.** If requested by EPA, Respondent shall participate in community involvement activities, including participation in (1) the preparation of information and development of informational materials regarding the Work for dissemination to the public, with consideration given to the specific needs of the community, including translated materials and mass media and/or internet notification, and (2) if requested by EPA, participation in public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondent's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any community advisory groups, (2) any technical assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondent at EPA's request are subject to EPA's oversight.

43. **Progress Reports.** Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement on a monthly basis, by the 15th day of the following month, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the SAP until issuance of Notice of Completion of Work pursuant to Section XXVII, unless otherwise directed in writing by the EPA Project Coordinator. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

44. **Final Report.** Within 60 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 117 (Notice of Completion), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of the total costs of the Work completed under this Settlement, a listing of the number of sample locations, samples collected, analytical and field testing for each media (e.g., fish, sediment, and water). The data will be presented in reports as directed by EPA. All relevant documentation generated during the Work (e.g., field report, sample logs, analytical data, laboratory audit information shall also be provided in appendices to the final report as directed by EPA. Additional details regarding final report requirements will be described in the final SAP or other approved work plans. The final report shall also include the following certification signed by a responsible corporate official of Respondent or Respondent's Project Coordinator: "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."

45. **Off-Site Shipments**

a. Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. 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).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the Project Coordinator. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above and the Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

c. Respondent may ship Investigation Derived Waste from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992). Wastes shipped off-Site to a laboratory for characterization are not subject to 40 C.F.R. § 300.440.

IX. PROPERTY REQUIREMENTS

46. EPA and the State 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. Respondent shall at all times permit EPA and the State, and their designated representatives full access to and freedom of movement at the areas where Work under this Settlement is to be performed (to the extent Respondent controls such access or has obtained such access for itself) for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Settlement, verifying the information submitted to EPA by Respondent, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Settlement. All parties' employees, contractors, and other representatives with access to areas where Work is being performed pursuant to this Settlement shall comply with all applicable health and safety plans.

47. Beginning on the Effective Date of this Settlement, Respondent shall use its best efforts, as described in the FSP, to obtain access from the owners of all properties where sampling or any other field work under this Settlement is to be performed, within a period of time that will enable the sampling and other field work required by this Settlement to begin following EPA's approval of the SAP. Such access agreements shall also provide access for EPA

and the State and their contractors and oversight officials, and shall specify that Respondent is not EPA's or the State's representative with respect to liability associated with Site activities. Copies of such agreements, if in writing, shall be provided to EPA and the State upon request. Respondent's Project Coordinator shall provide EPA's Project Coordinator with regular updates regarding progress in obtaining access. EPA may, in its sole discretion, obtain access for Respondent or, with EPA contractors, perform those tasks or activities for which access was sought. In the event that EPA performs those tasks or activities with EPA contractors, Respondent shall, subject to Paragraph 62, reimburse EPA for all costs incurred in performing such activities, and Respondent shall perform all other activities not requiring access to the given property. Respondent additionally shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

48. **Best Efforts.** As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondent is unable to accomplish what is required through “best efforts” in a timely manner, it shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIV (Payment of Response Costs).

49. Notwithstanding any provision of the Settlement, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

50. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within Respondent’s possession or control or that of its contractors or agents relating to Lower River activities or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondent shall also make available to EPA for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

51. **Privileged and Protected Claims**

a. Respondent may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 51.b. and except as provided in Paragraph 51.c.

b. If Respondent asserts such a privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement.

52. **Business Confidential Claims.** Respondent may assert that all or part of a Record provided to EPA under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records that Respondent claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

53. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

54. Until ten (10) years after EPA provides Respondent with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, 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.

55. At the conclusion of the document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 51 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA.

56. Respondent certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Lower River since the notification of the need for the Work in the Lower Hudson River required in this Settlement and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. COMPLIANCE WITH OTHER LAWS

57. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.400(e).

58. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or 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 XVI (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 is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

59. **Emergency Response.** In the event of any action or occurrence relating to performance of the Work which causes or threatens a release of Waste Material from or in the Work areas that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, contain, and/or minimize such a release or endangerment caused or threatened by the release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to the Health and Safety Plan and the Emergency Response Plan. Respondent shall also immediately notify the EPA Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at 732-906-6850 of the incident or Site

conditions. 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 Section XIV (Payment of Response Costs).

60. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the EPA Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at (732) 906-6850, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 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.

61. For any event covered under this Section, Respondent shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIV. PAYMENT OF RESPONSE COSTS

62. **Payment for Response Costs.** Respondent shall pay to EPA all Past and Future Response Costs not inconsistent with the NCP. Within 30 days of the Effective Date, Respondent shall pay to EPA \$491,181.97 for Past Response Costs. For Interim and Future Response Costs, EPA will periodically send Respondent a bill requiring payment that includes a SCORPIOS Report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice (if applicable). Respondent shall make all payments within 45 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 65 (Contesting Future Response Costs).

a. Respondent shall make payments to EPA at <https://www.pay.gov> to the U.S. EPA Hudson River PCBs Site Special Account in accordance with instructions to be provided to Respondent by EPA.

b. At the time of each payment, Respondent shall send notice that payment has been made to EPA's Project Coordinators and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov.

c. Such notice shall reference Site/Spill ID Number 02-84 and the EPA docket number for this action.

63. **Deposit of Response Costs Payments.** The total amount to be paid by Respondent pursuant to Paragraph 62 shall be deposited by EPA in the Hudson River PCBs Site Special Account 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, provided, however, that EPA may deposit a Future Response Costs payment directly

into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Hudson River PCBs Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Respondent agrees not to challenge any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund and agrees that such a decision will not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

64. **Interest.** In the event that any payment for Future Response Costs is not made by the date required, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs that are not timely paid shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondent's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

65. **Contesting Future Response Costs.** Respondent may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 62 (Payments of Response Costs) if it determines that EPA has made a mathematical error, included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such a dispute, Respondent shall submit a Notice of Dispute in writing to EPA's Project Coordinator within 30 days after receipt of the bill or such longer time as approved by EPA. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall, within the same period and also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 62, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC") and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to EPA's Project Coordinator a copy of the transmittal letter and proof of payment of the uncontested Future Response Costs and a copy of the correspondence that documents the establishment of and placement of funds into the escrow account, including information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 10 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 62. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it does not prevail to EPA in the manner described in Paragraph 62. Respondent shall receive any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

66. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

67. **Informal Dispute Resolution.** If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within 20 days after such action. EPA and Respondent shall have 20 days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

68. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the EPA Project Coordinator. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, a Deputy Director in the Superfund and Emergency Management Division, Region 2, or at the sole discretion of EPA, someone occupying a higher position, will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

69. Except as provided in Paragraph 65 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement that is not directly involved in the dispute. Except as provided in Paragraph 79, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

70. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force

majeure” does not include financial inability to complete the Work or increased cost of performance.

71. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intend or may intend to assert a claim of force majeure, Respondent shall notify EPA’s Project Coordinator orally or, in his or her absence, the Regional Duty Officer at (732) 906-6850, within 7 days of when Respondent first knew that the event might cause a delay. Within 10 days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent’s rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. 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. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 70 and whether Respondent has exercised its best efforts under Paragraph 70, EPA may, in its unreviewable discretion, excuse in writing Respondent’s failure to submit timely or complete notices under this Paragraph.

72. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

73. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA’s notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 70 and 71. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

74. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondent from

meeting one or more deadlines under the Settlement, Respondent may seek relief under this Section.

XVII. STIPULATED PENALTIES

75. Except for the monthly progress reports required pursuant to Paragraph 43, Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 76 for failure to comply with any of the requirements of this Settlement, unless excused under Section XVI (Force Majeure). “Comply” as used in the previous sentence shall include completion of the Work under this Settlement or any activities contemplated under any SAP, QAPP, or any other plan approved under this Settlement, in accordance with all applicable requirements of law, this Settlement, the SAP, QAPP, and any plans or other documents approved by EPA pursuant to this Settlement and within the specified time schedules established by and approved under this Settlement.

76. For all violations of this Settlement, except as provided in Paragraph 77, below, stipulated penalties shall accrue as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$4,000	15th through 30th day
\$6,000	31st day and beyond

77. For the monthly progress reports required pursuant to Paragraph 43, above, stipulated penalties shall accrue as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 st through 7 th day
\$2,000	8th through 15th day
\$3,000	16 th through 28th
\$4,000	29th day and beyond

78. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 89 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of one million dollars (\$1,000,000). Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 89 (Work Takeover) and 111 (Access to Financial Assurance).

79. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA’s decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section VIII (Work To Be Performed), during the period, if any, beginning on the 31st day after EPA’s receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by a Deputy Director in

the Superfund and Emergency Management Division or higher, under Paragraph 68 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA designated official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

80. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

81. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. Respondent shall make all payments at <https://www.pay.gov> using the link for "EPA Miscellaneous Payments Cincinnati Finance Center," including references to the Site Name, docket number, Site/Spill ID Number, and the purpose of the payment. Respondent shall send to EPA, in accordance with Paragraph 62, a notice of this payment including these references.

82. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 79 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 81 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

83. The payment of penalties and Interest, if any, shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement.

84. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 89 (Work Takeover).

85. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XVIII. COVENANTS BY EPA

86. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and /or 107(a) of CERCLA, 42 U.S.C. §§ 9606 and/or 9607(a), for the Work, Past Response Costs, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement. These covenants extend only to Respondent and do not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

87. Except as specifically provided in this Settlement, nothing in this Settlement 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 in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, 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.

88. The covenants set forth in Section XVIII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement 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;
- b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;
- c. liability for performance of future response actions in the Lower Hudson River other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the 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; and

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site.

89. Work Takeover

a. In the event EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Respondent. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of 20 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 20-day notice period specified in Paragraph 89.a, Respondent has not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 89.b. Funding of Work Takeover costs is addressed under Paragraph 111 (Access to Financial Assurance).

c. Respondent may invoke the procedures set forth in Paragraph 68 (Formal Dispute Resolution) to dispute EPA’s implementation of a Work Takeover under Paragraph 89.b. However, notwithstanding Respondent’s invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 89.b until the earlier of (1) the date that Respondent remedies, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 68 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANTS BY RESPONDENT

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

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through 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 claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Past Response Costs, Future Response Costs, and this Settlement;

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the New York Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

91. 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 any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 88.a (liability for failure to meet a requirement of the Settlement), 88.d (criminal liability), or 88.e (violations of federal/state law during or after implementation of the Work), 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.

92. Nothing in this Settlement 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).

93. Respondent reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

XXI. OTHER CLAIMS

94. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be 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.

95. Except as expressly provided in Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, 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.

96. 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).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

97. 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. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 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 give rise to contribution protection pursuant to Section 113(f)(2).

98. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States 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. The “matters addressed” in this Settlement are the Work, Past Response Costs, and Future Response Costs.

99. The Parties further agree that this Settlement 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).

100. 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 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 10 days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

101. 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 XVIII (Covenants by EPA).

102. Effective upon signature of this Settlement by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Respondent the payment(s) required by Paragraph 62 (Payment for Past Response

Costs) and, if any, Section XVII (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 98 and that, in any action brought by the United States related to the “matters addressed,” Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XXIII. INDEMNIFICATION

103. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as EPA’s authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent’s behalf or under its control, in carrying out activities pursuant to this Settlement. 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 negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement. 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. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

105. Respondent covenants not to sue and agrees not to assert any claims or causes of action 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 on or relating to the Site, 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 on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

106. No later than 30 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability

insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, 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. In addition, for the duration of the Settlement, 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, Respondent shall satisfy, or shall ensure that its 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. 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. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Hudson River Site, New York and the EPA docket number for this action.

XXV. FINANCIAL ASSURANCE

107. In order to ensure completion of the Work, Respondent shall secure financial assurance for the benefit of EPA. Within 45 days of the Effective Date of this Settlement, Respondent shall submit to EPA an estimate of the cost of the Work ("Estimated Cost of the Work") and financial assurance in that amount. EPA will inform Respondent if it believes that this initial Estimated Cost of the Work needs to be adjusted, in which case Respondent will, within 30 days of notification by EPA, either so modify the financial assurance or provide documentation substantiating its initial or an alternative estimate of the cost. Any dispute regarding such modification of the initial amount of financial assurance shall be subject to the Dispute Resolution procedures under Section XV (Dispute Resolution). 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 they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies. Respondent shall submit such mechanisms and documents to Chief, Resource Management/Cost Recovery Section, Superfund and Emergency Management Division, US EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007-1866. Respondent shall send copies by email to Chief, Resource Management/Cost Recovery Section, currently at Keating.Robert@epa.gov, and additional copies by email to EPA's Project Coordinator.

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 108; 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 108.

108. If Respondent seeks to provide financial assurance by means of a demonstration or guarantee under Paragraph 107.e or 107.f, Respondent must, within 45 days of the Effective Date:

a. Demonstrate that:

(1) the Respondent or 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 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 the Respondent or 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/>.

109. If Respondent seeks to provide financial assurance by means of a demonstration or guarantee under Paragraph 107.e or 107.f, Respondent must also:

a. Annually resubmit the documents described in Paragraph 108.b within 90 days after the close of Respondent's or guarantor's fiscal year;

b. Notify EPA within 30 days after Respondent or 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 30 days of EPA's request, reports of the financial condition of Respondent or guarantor in addition to those specified in Paragraph 108.b; EPA may make such a request at any time based on a belief that Respondent or guarantor may no longer meet the financial test requirements of this Section.

110. 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 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 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 60 days. Respondent shall follow the procedures of Paragraph 112 (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.

111. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 89.b, then, in accordance with any applicable financial assurance, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 111.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 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 111.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 89.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraph 107.e or 107.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondent shall, within 7 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 111 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA, the State, 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 Hudson River PCBs 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 111 must be reimbursed as Future Response Costs under Section XIV (Payments for Response Costs).

112. **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, 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, after a reasonable opportunity for review and comment by the State, 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: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (Dispute Resolution). 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 pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, 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 Section XXVII (Financial Assurance).

113. **Release, Cancellation, or Discontinuation of Financial Assurance.** Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXVIII (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XV (Dispute Resolution).

XXVI. MODIFICATION

114. The EPA Project Coordinator may modify any plan, schedule or SOW in writing or by oral direction, provided that any such modification does not materially expand the scope of activities specified in the attached SOW. If the Parties do not agree on whether a given modification constitutes such a material expansion, Section XV of the Settlement Agreement (Dispute Resolution) will guide the resolution of the matter. In accordance with Paragraph 69, any disagreement by the Parties on a portion of a plan, schedule, or SOW will not prevent the other Work in such deliverables from moving forward. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the EPA Project Coordinator's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

115. If Respondent seeks permission to deviate from any approved work plan or schedule or the SOW, 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 EPA Project Coordinator pursuant to Paragraph 114.

116. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding any deliverable submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVII. NOTICE OF COMPLETION OF WORK

117. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including Future Response Costs and record retention, EPA will provide written notice to Respondent of such completion. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the SAP if appropriate and consistent with the attached SOW in order to correct such deficiencies. Respondent shall implement the modified and approved SAP and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified SAP shall be a violation of this Settlement.

XXVIII. INTEGRATION/APPENDICES

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

- a. "Appendix A" is the description and/or map of the Site.
- b. "Appendix B" is the SOW.

XXIX. EFFECTIVE DATE

This Settlement shall be effective upon receipt by Respondent after it has been executed by the duly designated representatives of the Parties.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

09/13/22

Dated

Pat Evangelista Digitally signed by Pat Evangelista
Date: 2022.09.13 12:23:13 -04'00'

Pat Evangelista
Director, Superfund and Emergency Management Division

Signature Page for Settlement Regarding Hudson River PCBs Superfund Site

FOR Roger Martella
[Print name of Respondent]

9/13/2022
Dated

A handwritten signature in black ink, appearing to read 'Roger Martella', written over a horizontal line.

Roger Martella
Chief Sustainability Officer
General Electric Company
600 14th Street, NW, Suite 900
Washington, DC 20005