



U.S. Department of Justice

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ECF FILING

HONORABLE DAVID N. HURD
 509 James T. Foley U.S. Courthouse
 445 Broadway
 Albany, NY 12207-2936

Re: *United States v. General Electric Co.*, Civil Action No. 05-01270 (DNH - RFT)

Dear Judge Hurd:

The purpose of this letter is to inform the Court that the United States, on behalf of the U.S. Environmental Protection Agency ("EPA"), has today filed a second modification to the Consent Decree entered in this action on November 2, 2006. This modification, entitled "Consent Decree Modification No. 2" (and sometimes referred to herein as the "Modification") is not "material" under Paragraph 132 of the Consent Decree, and therefore, requires no action by the Court. Nonetheless, as we did with Consent Decree Modification No. 1, which the United States filed on March 20, 2009, we want to keep the Court apprised of significant events in this matter.

By way of background, the Consent Decree provides for General Electric Company's ("GE's") performance of the remedy selected by EPA to remove PCB contamination from the Upper Hudson River. Under the Consent Decree, GE agreed to construct a sediment processing/transfer facility needed for the project, and to perform the first year, or "Phase 1," of the dredging remedy. The Consent Decree requires that the Phase 1 dredging work would be evaluated by an independent peer review panel to consider whether to recommend changes to the Engineering Performance Standards¹ established by EPA for the project. Following EPA's receipt of the panel's recommendations, the Consent Decree provides that EPA notify GE of the changes to the Engineering Performance Standards, after which GE could opt-in to perform the remainder of the project, or "Phase 2."

GE completed construction of the sediment processing/transfer facility in 2009 and performed the Phase 1 dredging from May to November of that year. Beginning in February 2010, the peer review panel reviewed the Phase 1 dredging work and, in September 2010, issued a report containing

¹ The Engineering Performance Standards set limits for sediment resuspension and dredging residuals, and targets for dredging productivity. EPA also issued Quality of Life Performance Standards, which set standards for air quality, noise, odor, lighting, and navigation during dredging.

the panel's recommended changes for Phase 2. After review and discussion with GE and stakeholder groups, on December 17, 2010, EPA issued changes to the Engineering Performance Standards and other aspects of the project (the "Phase 2 Revisions"). On December 31, 2010, GE formally notified EPA that it would perform Phase 2.

The Phase 2 Revisions comprise the following documents, which are attached to Consent Decree Modification No. 2 at Appendix 1:

1. Revised Engineering Performance Standards for Phase 2;
2. Technical Memorandum, Quality of Life Performance Standards Phase 2 Changes;
3. December 2010 Statement of Work ("SOW") for Remedial Action and Operations, Maintenance and Monitoring, which includes the following attachments:
 - a. Attachment A: Critical Phase 2 Design Elements;
 - b. Attachment B: Phase 2 Remedial Action Monitoring Scope;
 - c. Attachment C: Phase 2 Performance Standards Compliance Plan Scope;
 - d. Attachment D: Phase 2 Remedial Action Community Health and Safety Program Scope;
 - e. Attachment E: Operation, Maintenance, and Monitoring Scope for Phase 2 of the Remedial Action; and
 - f. Attachment F: Certification Unit Completion Approval/Certification Forms.

The December 2010 SOW (including attachments) is a modified version of the Statement of Work (including attachments) set forth at Appendix B of the original Consent Decree entered in 2006. The December 2010 SOW defines the technical requirements for Phase 2

In response to a recommendation by the peer review panel, the Phase 2 Revisions incorporate the concept of "adaptive management," which the peer review panel recognized as an important factor in being able to adapt to new information. The Phase 2 Revisions allow changes to be made through adaptive management as the cleanup proceeds in order to achieve the expected benefits of the project.²

EPA and GE have worked together to finalize the work plans and other technical documents needed for Phase 2 dredging that began in the Spring of this year. During those discussions, EPA and GE have agreed to certain limited modifications to requirements of the Phase 2 Revisions, which modifications are incorporated into the approved work plans and other technical documents for the first year of Phase 2; and it is possible that EPA will approve additional changes through adaptive management as the project proceeds. Unless directed otherwise by the Court, the United States does not anticipate notifying the Court of such adaptive management changes made during the project.

Although the Consent Decree was originally written to apply to GE's performance of Phase 2 (in the event that GE agreed to perform that work), EPA and GE believe that certain narrow modifications of the Consent Decree are appropriate to account for certain aspects of the Phase 2 Revisions and GE's performance of Phase 2. The Modification revises Paragraph 20.b and certain

² The adaptive management provisions of the Phase 2 Revisions are set forth in Section 7 of the December 2010 SOW.

defined terms in Section IV of the Consent Decree to indicate that the Phase 2 Engineering Performance Standards and Phase 2 Quality of Life Performance Standards can be modified through adaptive management, and it updates the definition of "RA Performance Standards" to reflect the Phase 2 Revisions. The Modification also updates Paragraphs 20.b and 83 to allow GE to invoke dispute resolution over changes that EPA makes to the Phase 2 Engineering and Quality of Life Performance Standards through adaptive management, and adds to Paragraph 83 certain limitations on GE's ability to invoke dispute resolution. Consent Decree Modification No. 2 also revises the definition of "Appendix B" in Paragraph 129 to reflect that a new Scope of Work and attachments have been issued for Phase 2. Finally, the Modification provides for clerical changes to the distribution of technical plans, reports, etc.

Counsel for GE has indicated that GE concurs in this letter.

We appreciate the Court's continued interest in this matter. Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian Donohue", written in a cursive style.

BRIAN G. DONOHUE

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cc: Counsel of Record