

GE



ENTERED UNITED STATES DISTRICT COURT ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT JUL 24 1989 DISTRICT OF NEW MEXICO

Handwritten signature and 'CLERK' stamp

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL ELECTRIC COMPANY,

Defendant.

ENTERED ON DOCKET

7-24-89

CIVIL ACTION NO. 87-1073-jb

CONSENT DECREE

WHEREAS, the United States of America, (United States) on behalf of the Administrator of the Environmental Protection Agency (EPA) has filed a complaint under Sections 3008(a), (c), (g), and (h) of the Resource Conservation and Recovery Act, as amended (Act or RCRA) 42 U.S.C. §6921 et seq, federal regulations promulgated pursuant to the Act, and New Mexico's Hazardous Waste Management Regulations.

WHEREAS, General Electric Company (GE) is a person within the meaning of the Act at 42 U.S.C. §6903 (15).

WHEREAS, GE neither admits nor denies the allegations in the complaint filed by the United States, except as GE's Answer admits to the allegations of the Complaint.

WHEREAS, the United States and GE agree that it is in the public interest and in the interest of the Parties for this case to be settled without protracted litigation.

- 2 -

WHEREAS, it is understood that Attachment A contains an outline of a procedure which can be used for corrective action of a site with very extensive contamination by high concentrations of pollutants of every kind. Without concession that any item of Attachment A is not required for remediation of the site, EPA and GE represent that they have no access to data which suggests that the site contains such extensive contamination by such concentration of pollutants. It is the intent of the parties to this consent agreement that the site shall be remediated in a fully adequate manner but without taking actions or making expenditures which are not reasonably required by that intention.

WHEREAS, each undersigned representative of the Parties to this Consent Decree certified that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

NOW THEREFORE, it is ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION

The Court has jurisdiction over the subject matter and the Parties in this action pursuant to 28 U.S.C. §§ 1331(a), 1345, and 1355 and 42 U.S.C. § 6928. The Parties shall not contest the jurisdiction of this Court to enter this Consent Decree or in any subsequent action to enforce the terms of this Consent Decree, to modify the Consent Decree upon the Parties'

- 3 -

consent or as a result of Dispute Resolution, or to terminate the terms of this Consent Decree. The complaint states a cause of action upon which, if the allegations were proved, relief can be granted.

II. PARTIES

The Parties to this consent Decree are the United States on behalf of the United States Environmental Protection Agency as the Plaintiff and General Electric Company as the Defendant.

III. BINDING EFFECT

A. This Consent Decree applies to and is binding upon GE and GE shall direct its officers and employees, who are to supervise and perform the work specified herein, to comply with the terms and conditions of this Consent Decree and will give its contractors copies of this Consent Decree and require the contractors to comply with the relevant portions of this Consent Decree.

B. GE shall perform the investigatory activities, and closure activities set forth in this Consent Decree.

IV. TRANSFER OF PROPERTY

If, prior to termination of this Consent Decree, GE conveys title, easement, or other interest, including a leasehold interest in GE's facility, GE shall notify EPA and New Mexico Environmental Improvement Division (NMEID) in accordance with applicable New Mexico hazardous waste regulations prior to the conveyance. GE shall include in any such conveyance a provision

- 4 -

notifying the Grantee of the existence and terms of this Consent Decree and requiring compliance by the Grantee with the terms and conditions of this Consent Decree or for adequate access to the facility for compliance by GE.

V. DEFINITIONS

Whenever the following terms are used in this Consent Decree and the attachments thereto, the definitions specified hereinafter shall apply.

"Attachment A" means the Corrective Action Plan attached hereto and incorporated herein as if set forth in the body of this document.

"HSWA" means the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616.

"Facility" means the property at - McLeod Road.

"Land disposal unit" means the area of land at the facility approximately 5-feet in diameter which was used by GE for disposal of industrial wastes containing materials classified as hazardous waste by RCRA and polychlorinated biphenyls.

"HWMR-2" and "HWMR-1" means the New Mexico Hazardous Waste Management Regulations;

"NMEID" means the New Mexico Environmental Improvement Division;

"RCRA" means the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq.;

"U.S. EPA" or "EPA" means the United States Environmental Protection Agency.

- 5 -

"Work Plan" means the description and schedule of activities developed pursuant to Attachment A and fully incorporated herein upon approval by EPA.

VI. PAYMENT OF PENALTY

GE shall pay a civil penalty in the amount of \$160,000 in settlement of all claims alleged in the U.S. complaint. Such penalty payment shall not be tax deductible. The judgment shall be satisfied by the payment of a draft, certified or cashier's check in the amount of \$160,000 made payable to the "Treasurer of the United States." The draft, certified or cashier's check shall be tendered to the United States Attorney for the District of New Mexico within 10 days from the date the Consent Decree is entered by the Court. A copy of the letter and payment shall be sent to EPA.

VII. WORK TO BE PERFORMED

A. Within sixty (60) days of the entry of the Consent Decree, GE shall submit the following documents related to the facility and its use of an onsite dry well as a disposal point for waste materials, to the EPA and the New Mexico Environmental Improvement Division in accordance with applicable NMEID rules:

1. A RCRA Part A permit application;
2. A RCRA Contingency Plan as in accordance with by 40 C.F.R. § 265 Subpart D;
3. The Closure Plan dated March 1985 as modified by NMEID; and,
4. Proof of Warning Signs posted in the immediate vicinity of the active portion of the facility.

B. Within thirty (30) days of entry of the Consent Decree and within thirty (30) days of approval of any amended closure and/or post-closure plan, GE shall submit to EPA, evidence of compliance with financial assurance requirements for one hundred (100) percent of the closure cost estimate and, if applicable, a post-closure cost estimate, by means of one of the mechanisms specified in the applicable New Mexico hazardous waste management regulations.

Within forty-five (45) days of submittal of the draft RCRA Facility Investigation (RFI) report to EPA as required by Attachment A or within thirty (30) days of receipt of any necessary NMEID approval, whichever is later, GE shall commence implementation of the approved closure plan for the land disposal unit, including the groundwater quality assessment.

If GE elects to clean-close by other than removal, within forty-five (45) days of submittal of the draft RFI report, GE shall submit an amended closure plan to EPA and NMEID for approval. The plan must be prepared in accordance with all applicable Federal and New Mexico hazardous waste management regulations. Upon approval or modification and approval by EPA and NMEID, GE shall implement the plan and complete closure activities in accordance with the provisions and schedules in GE's approved closure plan.

If GE elects to close with any wastes in place, within forty-five (45) days of submittal of the draft RFI report, GE shall submit an amended closure plan and a post-closure plan to

- 7 -

EPA and NMEID for approval, and shall provide post-closure care in accordance with applicable Federal and New Mexico hazardous waste management regulations. Upon approval by NMEID and EPA, GE shall implement the plans and conduct closure and post-closure activities in accordance with the provisions and schedules in GE's approved plans.

C. GE shall undertake and complete each of the following actions to the satisfaction of EPA in accordance with the terms, procedures and schedules which are set forth below and in Attachment A.

1. Within thirty (30) days after entry of this Consent Decree, GE may prepare and submit to EPA and NMEID for review and EPA's approval a Draft Interim Measures ("IM Workplan") containing detailed engineering drawings, construction plans and schedules ~~for implementation of a plan to remove some portion of the contaminated soils on the site.~~ Upon issuance of such EPA approval, GE shall undertake the interim measures concurrent with the RCRA facility Investigation required below and as detailed in Attachment A. Status of the Interim Measure Implementation and copies of any data generated shall be included in the progress reports required by Section XIII. Implementation of any interim measures shall not affect GE's performance of any portion of this Consent Decree. EPA shall review any draft or final submittals and notify GE in writing of EPA's approval or disapproval of the submittal of any part thereof. In the event of any disapproval, EPA shall specify in writing the deficiencies

- 8 -

and reasons for such disapproval. Within twenty (20) days of the receipt of EPA's disapproval of any IM report, GE shall amend and submit a revised report.

2. RCRA Facility Investigation -- GE shall undertake and complete the RCRA Facility Investigation program ("RFI") in accordance with the work plans developed pursuant to Attachment A and approved by EPA.

CMS
3. Corrective Measures Study -- GE shall undertake and complete the Corrective Measures Study ("CMS") in accordance with the Work Plans developed pursuant to Attachment A and approved by EPA.

4. After completion of the CMS and selection of a remedy(ies), the remedy shall be subject to a 30 day public comment period.

5. Corrective Measures Implementation -- GE shall undertake and complete the Corrective Measures Implementation ("CMI") that EPA deems necessary, in accordance with Attachment A and the standards, specifications, and schedule determined or approved by EPA.

D. EPA may determine that work in addition to that detailed in Attachment A, including investigatory work and/or engineering evaluation, is necessary as part of or in addition to the activities called for in Attachment A. Subject to the Dispute Resolution Provisions of the Consent Decree, GE shall implement any additional work which EPA determines to be necessary upon notification by EPA setting forth the reasons why

it believes that the additional work is necessary. The work shall be performed in accordance with the schedule set forth in such notification and shall be completed in accordance with the standards, specifications, and schedule determined or approved by EPA, consistent with the terms of this Consent Decree.

E. The Project Coordinators can agree to schedule changes.

F. In the event a dispute arises over whether further sampling, testing, or analysis is required by the terms of this Consent Decree, including Attachment A or any of the approved Work plans, EPA's determination that such sampling, testing, or analysis is needed shall be binding unless GE invokes the dispute resolution procedures set forth in Section XIX of this Consent Decree.

VIII. QUALITY ASSURANCE

Throughout all sample collections and analysis activities, GE shall use EPA-approved quality assurance, quality control, and chain-of-custody procedures, as set forth in EPA documents available to GE which shall be part of proposed and approved plans.

In addition, GE shall:

1. Follow all applicable EPA guidance for sampling and analysis;
2. Consult with EPA in planning for, and prior to, field sampling and laboratory analysis;
3. Inform the EPA Project Coordinator in advance which laboratories will be used by Respondent and ensure that EPA personnel and EPA-authorized

- 10 -

representatives have access to the laboratories and personnel used for analysis;

4. Ensure that laboratories used by GE for analysis perform such analysis according to EPA methods (SW-846) or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used for analysis, GE shall submit those methods to EPA for approval thirty (30) days prior to the commencement of analysis; and
5. Use laboratories approved for the purpose by EPA or ensure that the laboratories used by GE participate in a quality assurance/quality control program equivalent to that which is followed by EPA. As part of such a program, upon the request of EPA, GE will cause a reasonable number of known samples provided by EPA to be analyzed to demonstrate the quality of the analytical data.

IX. PROJECT COORDINATOR

A. By the effective date of this Consent Decree, EPA and GE shall each designate Project Coordinators to monitor the progress of the activities required by this Consent Decree and to coordinate communication between EPA and GE. The EPA Project Coordinator shall have the power to exercise the authority vested in the On Scene Coordinator and or the Remedial Project Manager by 40 C.F.R. §300 et seq., as well as the authority to ensure that the work performed pursuant to this Consent Decree is performed in accordance with all applicable statutes, regulations, and this Consent Decree. The EPA Project Coordinator shall also have the authority to require a cessation of the performance of any activity at the Facility that, in the judgment of the EPA Project Coordinator, may present or contribute to an endangerment to public health, welfare, or the environment or cause or threaten to cause the release of

hazardous substances from the Facility. In the event the EPA Project Coordinator suspends any activity at the Facility, the parties shall, with the approval of the Court, extend the compliance schedule of this Consent Decree as appropriate for a period of time equal to the time of suspension of the activities plus reasonable additional time for resumption of activities. If the EPA Project Coordinator suspends the work or any other activity for any of the reasons set forth in this Paragraph A and those reasons are due to the acts or omissions of GE or its Contractor(s) (except those in compliance with this Consent Decree), then any extension of the compliance schedule shall be at the discretion of EPA unless the Dispute Resolution provisions are invoked by GE. The Project Contractors do not have the authority to modify in any way the terms of this Consent Decree, except in accordance with Section XXIII. However, the Project Coordinators do have the authority to interpret by agreement the terms of this Consent Decree. Interpretations of the terms of this Consent Decree do not constitute modification of the terms of this Consent Decree.

B. The absence of the EPA Project Coordinator from the Facility shall not be cause for stoppage of the work.

C. EPA and GE have the right to change their respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing at least seven calendar days prior to the change.

- 12 -

D. GE's Project Coordinator may assign other representatives, including other contractors, to serve as a Facility representative for oversight of performance of daily operations during remedial activities.

E. The EPA Project Coordinator may assign other representatives, including other EPA employees or contractors, to serve as a Facility representative for oversight of performance of daily operations. Prior to invoking formal Dispute Resolution procedures, any dispute arising between the EPA Facility representative and GE or their contractors which can not be resolved, shall be referred to the EPA Project Coordinator.

X. SITE ACCESS

A. No provision in this Section or this Consent Decree shall be deemed to limit the access authority of EPA, the United States or NMEID.

B. To the extent that access to or easements over property other than the Facility is required for the proper and complete performance of this Consent Decree, GE shall use its best efforts to obtain access agreements from the present owners or those persons who have control within 60 days of the effective date of this Consent Decree. Best efforts shall include, but not be limited to, requiring GE to pay reasonable rental costs and compensation for losses sustained by the owner or occupant of the realty. Access agreements shall provide reasonable access to GE, its Contractor(s), the United States, EPA, the State, and their representatives including contractors. In the event that

- 13 -

access agreements are not obtained within the 60 day period, GE shall notify EPA within 65 days of the effective date of this Consent Decree regarding both the lack of, and efforts to obtain, such agreements.

C. If it is determined after the effective date of this Final Order that access to additional property owned by parties other than GE, is necessary, GE shall use best efforts to obtain access agreements from the property owners within thirty (30) days of the identification of the property. Such agreements shall provide access to EPA or its authorized representatives equivalent to Facility access. Any such access agreements shall be incorporated by reference into this Consent Decree. In the event that site access agreements are not obtained within thirty-five (35) days of the identification of the property, GE shall notify EPA regarding both the lack of, and efforts to obtain, such agreements. Nothing in this sub-section is intended to limit, affect or otherwise constrain EPA's rights to access to property pursuant to applicable law.

D. During the effective period of this Consent Decree, EPA and its representatives, including contractors, shall have access at all times to the Facility and any contiguous property owned or controlled by GE for purposes of conducting or observing any activity authorized by this Consent Decree, including but not limited to:

1. Monitoring the progress of activities taking place;

- 14 -

2. Verifying any data or information submitted to EPA;
3. Conducting investigations relating to contamination at the Facility or which may have been released from the Facility;
4. Obtaining samples at the Facility; and
5. Inspecting and copying records, operating logs, contracts, or other documents required to assess GE's compliance with the Decree. GE shall provide copies of any documents or records requested by EPA in accordance with the Notice provisions of this Consent Decree.

XI. FINANCIAL ASSURANCE FOR CORRECTIVE ACTION

A. Within sixty (60) days of the entry of this Consent Decree, GE shall submit a demonstration that GE passes a financial test as specified in this Section. To pass this test GE must meet the criteria of either Paragraph A.1 or A.2 of this Section:

1. GE must have:
 - a. Two of the following three (3) ratios
 - 1) a ratio of total liabilities to net worth less than 2.0,
 - 2) a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1, and,
 - 3) a ratio of current assets to current liabilities greater than 1.5; and,
 - b. Net working capital and tangible net worth each at least six (6) times the current corrective action cost estimate, or \$60 million, whichever is greater; and,
 - c. Assets located in the United States amounting to at least 90 percent of total assets or at least \$60 million.

- 15 -

2. GE must have:

- a. A current rating for GE's most recent bond issuance 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,
- b. Tangible net worth at least six (6) times the sum of the current corrective action cost estimate, or \$60 million whichever is greater; and,
- c. Assets located in the United States amounting to at least 90 percent of total assets or at least \$60 million.

B. To demonstrate that GE meets this test, GE must submit the following items to EPA:

1. A letter signed by GE's Chief Financial Officer (CFO) and worded as specified in 40 C.F.R. §264.151(f) substituting the words "corrective action" for "[closure or post-closure care]" (see also, 51 Fed. Reg. 37876, paragraph (f)), and;
2. A copy of the independent certified public accountant's report on examination of GE's financial statements for the latest completed fiscal year; and,
3. A special report from GE's independent certified public accountant to GE stating that:
 - a. He has compared the data which the letter from the CFO specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the accounts in such financial statements; and,
 - b. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

C. After the initial submission of items specified in Paragraph B of this Section, GE must send updated information to EPA within ninety (90) days after the close of each succeeding

- 16 -

fiscal year. This information must consist of all three (3) items specified in Paragraph B of this Section.

D. Within forty-five (45) days of the end of each fiscal quarter, the Finance Manager of GE's Apparatus Service Department shall submit a compliance certificate stating that he has reviewed the available financial information and that to the best of his information and knowledge GE continues to pass the financial test enumerated above.

If GE no longer meets the requirements of Paragraph A of this Section, GE must send notice to EPA of intent to establish alternative financial assurance as specified in Paragraph H of this Section. The notice must be sent by certified mail within forty-five (45) days after the end of the fiscal period (quarter or year) for which financial data show that GE no longer meets the requirements.

E. EPA may, based on a reasonable belief that GE may no longer meets the requirements of Paragraph A of this Section, require reports of financial condition at any time, in addition to those specified in Paragraph B, C, and D of this Section.

F. Current corrective action cost estimates shall be prepared by GE based on Attachment A and the workplan prepared and approved pursuant to Attachment A. The initial cost estimate must be submitted within sixty (60) days of entry of this Consent Decree and updated periodically. Updated cost estimates should be submitted with the submittals required by Paragraph C of this Section.

- 17 -

G. If EPA finds, on the basis of reports received from GE pursuant to paragraphs B, C, D, and E of this Section, or if an independent certified public accountant in his report upon examination of GE's financial statements includes qualifications or an adverse opinion or disclaimer as to the adequacy of GE's financial assurance, EPA may give notice to GE that its financial assurance mechanisms are deemed to be inadequate.

H. Within thirty (30) days of GE's receipt of a notice from EPA that GE's financial assurance mechanisms are inadequate, GE shall establish an irrevocable standby letter of credit or shall otherwise provide additional financial assurances as specified in 40 C.F.R. Part 264, Subpart H, in an amount equal to the current corrective action cost estimate or \$10 million, whichever is greater. Such additional financial assurance measures shall provide the means by which EPA or NMEID can perform such terms or conditions established pursuant to the Decree. Prior to drawing upon any such assurance measure, EPA shall notify GE, in writing, of GE's alleged failure to perform the requirements of this Consent Decree and provide GE with a reasonable period of time of not less than fifteen (15) calendar days within which to remedy the alleged non-performance.

This provision in no way negates GE's obligation to establish and/or maintain financial assurances for closure and post-closure care under 40 C.F.R. §§265.143 and 265.145.

- 18 -

XII. REIMBURSEMENT OF OVERSIGHT COSTS

At the end of each six (6) month period beginning from the effective date of entry of this Consent Decree, EPA shall submit a summary of all oversight costs incurred with respect to this Consent Decree by EPA during the previous six (6) month period. Within thirty (30) days of GE's receipt of each such summary, GE shall remit a check to EPA for the amount of such costs. Oversight costs are those costs incurred by the United States for EPA salary, travel, equipment, analysis and contractor costs related to the Facility.

Payment to EPA as reimbursement for all EPA oversight costs shall be made by draft, certified or cashier's check payable to the order of the "Treasurer of the United States," and shall be forwarded to the United States Environmental Protection Agency, Region VI, Regional Hearing Clerk, P.O. Box 265082M, Pittsburgh, PA 15251. Notification of all payments to EPA shall be made at the time of such payments to the EPA Project Coordinator in accordance with the notice provisions of this Consent Decree.

The United States reserves the right to bring an action against GE for recovery of any future costs incurred by the United States in connection with any response activities conducted or to be conducted at the Facility, other than those corrective actions which have been completed to the satisfaction and approval of EPA pursuant to this Consent Decree.

- 19 -

XIII. REPORTING AND PUBLIC ACCESS TO DOCUMENTS

Monthly progress reports

GE shall submit monthly progress reports to NMEID and EPA, to be post-marked by the 10th day of the following month, beginning with the first month after the entry of this Consent Decree. The monthly report shall summarize all activities performed pursuant to Attachment A and compliance dates achieved or missed, and shall provide justification for any deviation from the methodology or manner of investigating, testing or sampling outlined in the plan. The report shall also summarize results of Work Plan activities conducted and conclusions drawn from the data, including the need to modify any future tasks required by Attachment A or the Work Plans. During any necessary post closure period, the monthly reporting period may be modified by agreement of the parties.

All reports, plans, specifications, schedules, notifications, and attachments required by this Consent Decree shall be submitted in accordance with the Notice provisions of this Consent Decree and are subject to the public access provisions of 40 C.F.R. Part 2.

XIV. COMPLIANCE RESPONSIBILITY

A. Subject to the schedules set forth in this Consent Decree and beginning with the lodging of this Consent Decree, GE shall comply with all legally applicable provisions of the Federally authorized New Mexico Hazardous Waste Management Program as well as all legally applicable provisions of RCRA and

- 20 -

regulations promulgated pursuant thereto, with respect to this Facility.

B. The Parties agree that the entry of the Consent Decree will not interfere with the NMEID and EPA Part B permitting processes or any other applicable regulatory requirements, except insofar as the provisions of Sections VII and Attachment A provide otherwise, and provided that nothing in this agreement shall limit the right of GE to utilize any data, reports or other materials developed in connection with this Consent Decree for purposes of compliance with any applicable Part B permitting requirements.

C. The Corrective Measures Study and all plans and schedules required by the terms of this Consent Decree are incorporated into this Consent Decree upon approval by EPA, or following dispute resolution under Section XIX. Any noncompliance with such approved plans, reports or schedules shall be termed noncompliance with this Consent Decree.

XV. SUBMISSION OF DOCUMENTS, SAMPLING AND ANALYSIS

A. In the event of EPA disapproval of any draft or final plan or submission required by this Consent Decree, EPA shall specify the deficiencies in writing. GE shall modify the plan or submission to correct the deficiencies. The modified document shall be submitted to EPA in writing for review within thirty (30) days of receipt of EPA's disapproval, unless otherwise specified elsewhere in this Consent Decree.

- 21 -

B. GE shall submit a quality assurance report to EPA on a quarterly basis in accordance with the schedule in the applicable workplan.

C. Any written analytical or design data generated or obtained by GE related to the Site shall be provided to EPA within seven working days of any written request by EPA for such data.

D. EPA and EPA's authorized representatives shall have the right to take splits of any samples obtained by GE or anyone acting on GE's behalf at the Facility during the activities required by this Consent Decree.

E. EPA shall provide copies of any written analytical data obtained by it and related to the site within ten working days of any written request by GE for such data.

XVI. RETENTION OF RECORDS

GE shall preserve and retain all records and documents now in its possession or control that relate in any manner to the subject matter of this Consent Decree regardless of any retention policy to the contrary, for six years after the termination of this Consent Decree.

Until completion of the work herein and termination of this Consent Decree, GE shall preserve, and shall instruct the Contractor, the Contractor's subcontractors, and anyone else acting on GE's behalf at the Site to preserve (in the form of originals or exact copies, or in the alternative, microfiche of all originals) all records, documents, and information or

- 22 -

whatever kind, nature, or description relating to the performance of the activities at the Facility. Upon the completion of the activities, copies of all such records, documents, and information shall be delivered to the EPA Project Coordinator. The foregoing does not require the retention of analyzed samples except as provided in the QA/QC plan.

XVII. STIPULATED PENALTIES

A. For deficient or late monthly progress reports, as called for in Section XIII and Attachment A herein, GE shall pay a stipulated penalty of \$1,000. For failure to submit a monthly progress report, by the due date for the next report, there shall be a penalty of \$10,000.

B. GE shall pay the following stipulated penalties for each failure to comply with the requirements of this Consent Decree, including but not limited to all implementation schedules and performance and submission dates:

<u>Period of Failure to Comply</u>	<u>Stipulated Penalty Per Failure Per Day</u>
1st through 14th day	\$ 1,500.00
15th through 44th day	3,000.00
45th day and beyond	10,000.00

If the required performance is one to fourteen days late, GE shall pay \$1,500 for each day of noncompliance. If compliance occurs before day 44 but after day 15, GE shall pay \$3,000 for each day of noncompliance. If compliance occurs after day 44, GE shall pay \$10,000 for each day of noncompliance. Stipulated penalties shall accrue from the date of violation until the violation is corrected.

- 23 -

C. Stipulated penalties under this Section shall be paid within thirty (30) calendar days of the date of violation. Such stipulated penalties shall be paid by draft, certified, or cashier's check made payable to the "Treasurer of the United States" and mailed to the Regional Hearing Clerk, EPA, Region VI, P.O. Box 365082M, Pittsburgh, PA, 15251. The check shall reference GE and case number. A copy of the check and letter forwarding the check shall be submitted in accordance with the Notice Provisions of Section XX.

D. The stipulated penalties set forth above shall be in addition to and shall not exclude any other remedies or sanctions available to the United States. However, in the event the United States decides to seek additional sanctions, GE shall receive credit for stipulated penalties that have been paid for the same violation.

XVIII. FORCE MAJEURE

A. "Force Majeure" for purposes of this Consent Decree is defined as any event arising from causes beyond the control of GE, which could not have been prevented or mitigated by the exercise of due diligence, that delays or prevents the performance of any obligation under this Consent Decree. Force Majeure shall not include increased costs or expense of the activities or failure to apply for any required approvals or to provide all required information therefore in a timely manner.

B. When circumstances are occurring or have occurred that delay the completion of any phase of this Consent Decree,

- 24 -

whether or not due to a Force Majeure event, GE shall promptly, (in no event later than 15 days from the time GE obtains information indicating a delay has been or will be encountered) supply a written notice as set forth herein which includes a detailed explanation of the reason(s) for and anticipated duration of any such delay; the measures taken and to be taken by GE to prevent or minimize the delay; and the timetable for implementation of such measures. Failure to notify in writing within the required fifteen days shall constitute a waiver of any claim of Force Majeure.

C. If the United States agrees that a delay is or was attributable to a Force Majeure event, the parties shall modify the applicable schedule to provide such additional time as may be necessary to allow the completion of the specific phase of the work and/or any succeeding phase of the work affected by such a delay, for a period equal to the actual duration of the delay plus reasonable additional time for the resumption of work.

D. If the United States and GE can not agree as to whether the reason for the delay was a Force Majeure event, then the dispute shall be resolved by reference to the Dispute Resolution clause of this Consent Decree and GE shall have the burden of demonstrating that the event was a Force Majeure event, that delay was caused by the Force Majeure event, and that the duration of the delay is or was warranted under the circumstances.

XIX. DISPUTE RESOLUTION

In the event that the Parties can not resolve any dispute arising under this Consent Decree or from the implementation of this Consent Decree, then the interpretation advanced by the United States shall be considered binding unless GE invokes the dispute resolution provisions of this Section by submitting a letter to EPA invoking the informal Dispute Resolution period.

Any dispute that arises with respect to the meaning or application of this Consent Decree shall in the first instance be the subject of informal negotiations between the United States and GE. Such period of informal negotiations shall not extend beyond 30 days, unless the parties agree otherwise. At the end of the informal negotiations period, EPA shall notify GE of its decision, the basis for its decision, and identify the documents EPA relied upon in making its decision.

At the termination of the informal negotiation period, should GE choose not to follow EPA's position, GE shall immediately file a request for a conference with the EPA Regional Office, Region 6 which shall describe the nature of the dispute, a proposal for its resolution, the basis for the dispute, and identify the documents GE relied upon to support its position. The filing of a request shall not of itself postpone the deadlines for GE to meet its obligations under the Decree with respect to the disputed issue. Such filing shall stay the

- 26 -

payment of stipulated penalties until the dispute is resolved. However, the stipulated penalties shall continue to accrue. The EPA Project Coordinator shall have 30 days to respond to the Request. Within 30 days of the filing of the Response, a conference shall be held at the Region 6 offices. At the conference the Project Coordinators shall present their respective positions. GE shall have the burden of proving that EPA's position was arbitrary or capricious, in violation of constitutional, statutory, or regulatory provisions, or not supported by evidence in the record. EPA, Region 6 shall render a decision within 30 days of the conference. In the event that Region 6 affirms the United States' position upon resolving the dispute, GE shall pay stipulated penalties for each day of noncompliance with this Consent Decree beginning with the first day of noncompliance.

Should GE choose not to follow the United States' position after the formal negotiations, GE shall, within five days of receipt of the written decision by Region 6, file with the Court a petition which shall describe the nature of the dispute, a proposal for its resolution, and which identifies the documents GE relied upon to support its position. The filing of a petition asking the Court to resolve a dispute shall not of itself postpone the deadlines for GE to meet its obligations under the Decree with respect to the disputed issue. Such filing, however, shall stay the payment of stipulated penalties until the dispute is resolved. In the event that the Court

- 27 -

affirms the United States' position upon resolving the dispute, GE shall pay stipulated penalties for each day of noncompliance with this Consent Decree beginning with the first day of noncompliance.

The United States shall have 30 days to respond to the petition. In any such dispute, GE shall have the burden of proving that EPA's interpretation of the terms and conditions of this Consent Decree and applicable Federal and state laws and regulations was arbitrary or capricious, in violation of constitutional, statutory, or regulatory provisions, or not supported by evidence in the record.

XX. COVENANT NOT TO SUE

Upon the payment by GE of the civil penalty as provided in Section VI of this Consent Decree, and upon completion of the work provided for in this Consent Decree the United States covenants not to take civil judicial or administrative action against GE seeking penalties pursuant to 42 U.S.C. §6928(a), 42 U.S.C. §6928(g), 33 U.S.C. §1311, 42 U.S.C. §7413, for any violation alleged in the Complaint filed in this action.

XXI. NOTICES

All notices required by this Consent Decree shall be in writing unless otherwise expressly authorized and shall be deemed to have been made upon receipt of a letter to the persons specified below. Documents including reports, approvals, and other correspondence shall be sent by certified mail, return receipt requested or some equivalent delivery service to the

- 28 -

following addresses or to such other addressees as the Parties may hereafter designate:

An original and 2 copies to:

Section Chief, Region 6
RCRA Enforcement Section
United States Environmental
Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

One copy to:

Office of Regional Counsel
United States Environmental
Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

As to GE

One copy to:

William P. Thornton, Jr.
Legal Operation
General Electric Co.
1 River Road, Bldg 6
Schenectady, NY 12345

The original and one copy to:

John Harson
General Electric Co.
1 River Road, Bldg 6
Schenectady, NY 12345

All modifications or amendments shall be in writing and shall have as the effective date the date specified therein, and shall be incorporated into this Consent Decree.

XXII. RESERVATION OF RIGHTS

A. Except as specifically provided herein, the United States does not waive any rights or remedies available to the United States for any violation by GE at this Facility of Federal

- 29 -

or State laws, regulations, or permitting conditions following the lodging of this Consent Decree .

B. The United States does not waive any rights or remedies available to it for any claims against GE not raised in its complaint.

C. Except as specifically provided herein, GE does not waive any rights, remedies or defenses available to GE in any proceeding other than this civil action. Any admission or waiver made by GE in connection with this order is intended solely for the purpose of resolving the issues in this civil action. No such admission or waiver is intended to benefit any person or entity other than the parties hereto, and no such admission or waiver shall have any probative value on any issue in any proceeding other than this civil action.

XXIII. COSTS

Except as provided in Section XII., each party shall bear its own costs and attorneys' fees in the action covered by this Consent Decree.

XXIV. MODIFICATION

Except as provided for herein, there shall be no modifications of this Consent Decree without written approval of all parties to this Consent Decree and entry by the Court or pursuant to further order of the Court. All modifications or amendments shall be in writing and shall have as the effective date the date specified therein, and shall be incorporated into this Consent Decree.

- 30 -

XXV. STATEMENT OF SEVERABILITY

All provisions of this Consent Decree are intended to stand independently. The nullification of any one provision, either by judicial decree or agreement of the parties will not affect the validity or effectiveness of the remaining provisions.

XXVI. ADMISSIBILITY OF DATA

In the event that the Court is called upon to resolve a dispute concerning implementation of this Consent Decree, the parties waive any evidentiary objection only to the admissibility into evidence of data gathered, generated, or evaluated pursuant to this Consent Decree. The parties may challenge the weight or credibility of the data once it is introduced.

XXVII. EFFECTIVE DATE

This Consent Decree is effective upon the date of its entry by the Court.

XXVIII. LIABILITY

GE shall indemnify the United States and hold the United States harmless for any claims arising from any injuries or damages to persons or property to the extent resulting from any acts or omissions of GE, its officers, employees, agents, receivers, trustees, successors, assigns, contractors, subcontractors, or any other person acting on their behalf in carrying out any activities pursuant to the terms of this Consent Decree.

XXIX. CONTINUING JURISDICTION

The Court specifically retains jurisdiction over both the subject matter of and the Parties to this action for the duration of this Consent Decree for the purposes of issuing such further orders or direction as may be necessary or appropriate to construe, implement, modify, enforce, terminate, or reinstate the terms of this Consent Decree or for any further relief as the interest of justice may require.

XXX. TERMINATION AND SATISFACTION

The provisions of this Consent Decree shall be deemed satisfied upon notification to the Court by the United States that GE has demonstrated to the satisfaction of EPA that all of the terms and conditions of this Consent Decree have been satisfactorily fulfilled. If GE requests in writing that the United States provide the Court with notice that the terms and conditions of this Consent Decree have been fulfilled and the United States does not provide such notification within ninety (90) days, then GE shall have the right to invoke dispute resolution.

XXXI. PUBLIC NOTICE

This Consent Decree is subject to the public notice provisions of 28 C.F.R. § 50.7, which requires that it be subject to a thirty (30) period for public comment prior to its being entered by this Court.

SIGNED AND ENTERED this 21st day of July, 1989.

James B. ...
UNITED STATES DISTRICT COURT JUDGE

FOR THE UNITED STATES

Donald A. Carr
DONALD A. CARR
Acting Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice

[Signature]
CRAIG E. JOHNSON
Trial Attorney
Environmental Enforcement Section
Land and Natural Resources Division
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

WILLIAM L. LUTZ
United States Attorney
District of New Mexico
Raymond Hamilton
ASSISTANT UNITED STATES ATTORNEY
United States Courthouse
Room 12020
500 Gold Ave., S.W.
Albuquerque, New Mexico 87103

BY:

- 32a -

FOR THE UNITED STATES - continued



EDWARD E. REICH, Acting
Assistant Administrator
Office of Enforcement and
Compliance Monitoring
U.S. Environmental Protection
Agency
401 "M" Street, S.W.
Washington, D.C. 20460

- 33 -

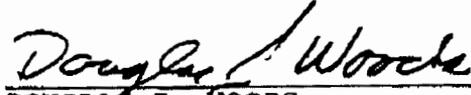


ROBERT E. LAYTON, JR.
Regional Administrator
United States Environmental
Protection Agency
Region VI



PAMELA PHILLIPS
Assistant Regional Counsel
EPA- Region VI
1445 Ross Ave.
Dallas, Texas 75202

FOR THE DEFENDANT GENERAL ELECTRIC COMPANY



DOUGLAS J. WOODS
General Manager-Apparatus Service
Department
General Electric Company
1 River Road
Schenectady, New York 12345



377th Air Bas Wing
Environmental Management
2050 Wyoming Blvd SE, Suite 119
Kirtland AFB NM 87117-5270

Fax: 846-0403

DSN: 246-0403

To: John Kieling

Fax: _____ SEP 2002

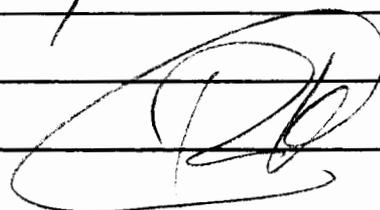
From: Rich Kilbury

Date: 9/6/02

Phone: 846-0053

Pages: 35

REMARKS: GE Consent Decree
- This is a ~~set~~ of a fax... I do
not have a good copy
- let me know if you can't
read this and I will mail
you a copy



WARNING!! - DO NOT TRANSMIT CLASSIFIED INFORMATION OVER
UNSECURED TELECOMMUNICATIONS SYSTEMS. OFFICIAL DoD
TELECOMMUNICATIONS SYSTEMS ARE SUBJECT TO MONITORING
AND USE OF DoD TELECOMMUNICATIONS SYSTEMS CONSTITUTES
CONSENT TO MONITORING.