



United States Environmental Protection Agency - Region 2

HUDSON RIVER OFFICE

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April 11, 2019

Mr. John Haggard
General Electric Company
33-41 Farnsworth Street
Boston, MA 02210

Re: Certification of Completion of Remedial Action under 2006 Consent Decree

Dear Mr. Haggard:

On January 3, 2017, EPA received GE's Remedial Action Completion Report (RA Report) regarding the dredging remedy for the Upper Hudson River portion of the Hudson River PCBs Superfund Site (Site), in which GE requested EPA's Certification of Completion of the Remedial Action. On December 26, 2018, we sent you comments on the RA Report, requesting certain edits to that report and that certain additional items be submitted. On March 6, 2019, we received GE's revised report, including the requested additional items.

We have now completed our review of GE's RA Report, as revised. Throughout the review process, EPA has considered comments on the RA Report from the National Oceanic and Atmospheric Administration, the U.S. Fish & Wildlife Service, the New York State Department of Environmental Conservation, the New York State Office of the Attorney General, and other stakeholders.

Paragraph 57.d of the Consent Decree (CD) entered in 2006 under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) states that if EPA concludes that "the Remedial Action has been performed in accordance with this Consent Decree, EPA will so certify in writing to Settling Defendant."

"Remedial Action" is a term specifically defined in Section IV of the CD to include only –

“...those activities, *except for Remedial Design and Operation, Maintenance and Monitoring*, to be undertaken to implement the ROD [Record of Decision], in accordance with the SOW [Statement of Work], the final Remedial Design plans and reports, the Remedial Action Work Plans, and other plans approved by EPA.” *[Emphasis added.]*

EPA hereby certifies that the activities comprising the Remedial Action, as specifically defined, have been performed in accordance with the Consent Decree.

As we issue this certification, it is appropriate to note that significant further work is required of GE pursuant to the CD, including continued implementation of the Operation, Maintenance and Monitoring (OM&M) program. As you know, the OM&M program requires, among other things, regular monitoring of water quality, sediment, and fish tissue; monitoring and, where necessary, maintenance of the integrity of the caps that were placed during the dredging project; and monitoring and, where necessary, maintenance of habitat restoration work carried out after the dredging. GE has already commenced work under the OM&M program, and that work will continue for many years to come.

EPA has, as required by Section 121 of CERCLA, carried out Five-Year Reviews for the Site and will continue to do so in the future. These reviews will take into consideration the available data, including the data that will be gathered through the ongoing OM&M program. If EPA determines in any of these Five-Year Reviews, or at any other time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site, for which GE will bear responsibility.

Only after all the OM&M and any other work required by the Consent Decree has been completed by GE will EPA consider issuance of the final Certification of Completion called for by the Consent Decree, called the “Certification of Completion of the Work.” See Consent Decree Paragraph 58.

As you know, the Consent Decree contains various reservations of rights, including the post-certification reservations (sometimes referred to as “reopeners”) set forth in Paragraph 101.b., which allow EPA to require GE to perform additional work in the Upper Hudson under specified circumstances, as well as other provisions relating to GE’s performance of such further work. Paragraph 101.b. provides that:

.... the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel [GE] to perform further response actions relating to the Upper Hudson River, or to reimburse the United States for additional costs of response relating to the Upper Hudson River, if, subsequent to the Certification of Completion of the Remedial Action:

- (1) conditions at the Upper Hudson River, previously unknown to EPA, are discovered, or information, previously unknown to EPA, is received; and
- (2) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment;

provided that such further response actions address or respond to EPA’s determination that the Remedial Action is not protective of human health or the environment.

An example of “information, previously unknown to EPA” would be any data that EPA generates or receives on or after the date of this letter, and an example of “other relevant

information” would be any data EPA generated or received before the date of this letter. See CD Paragraph 102.

Other important work, not part of the 2002 Record of Decision and the 2006 Consent Decree, is also underway at the Site. Under our 2014 Administrative Settlement Agreement and Order on Consent, GE is currently performing the Remedial Investigation and Feasibility Study for the Hudson River Floodplains (designated as Operable Unit # 04 of the Hudson River PCBs Superfund Site). That extensive project will inform EPA’s subsequent decision regarding a remedial action to address PCB contamination that may be found in some 6,000 acres of floodplains on either side of the Upper Hudson River between Fort Edward and Troy.

In addition, EPA has commenced an assessment of the Lower Hudson River to determine whether additional, more detailed study and possibly additional cleanup is necessary in this portion of the river.

We appreciate GE’s diligent performance of the Remedial Action activities required under the CD. We look forward to working with GE in the years ahead on the various above-referenced further actions that, taken together with the past activities referenced above, will contribute to the continuing improvement of the Hudson River.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary J. Klawinski".

Gary Klawinski, Director
U.S. EPA Hudson River Office