UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

December 17, 2010

By Electronic Mail and Express Mail

Ann R. Klee, Esq.
Vice President
Corporate Environmental Programs
General Electric Company
3135 Easton Turnpike
Fairfield, CT 06828

Re: Hudson River PCBs Superfund Site;
EPA Decision Regarding Changes to the Phase 1 Engineering Performance Standards, the Phase 1 Quality of Life Performance Standards, the SOW, and the Scope of Phase 2

Dear Ms. Klee:

Pursuant to Paragraph 15.b. of the Consent Decree entered in *United States v. General Electric Co.*, No. 1:05-cv-01270 (N.D.N.Y.), this letter transmits the United States Environmental Protection Agency's "decision regarding changes, if any, to the Phase 1 Engineering Performance Standards, the Phase 1 Quality of Life Performance Standards, the [Statement of Work ("SOW")], and the scope of Phase 2" ("Phase 2 Decision"). In accordance with Paragraph 15.c. of the Consent Decree and our December 3 exchange of emails, GE shall, within 28 calendar days after EPA's issuance of this Phase 2 Decision, "notify EPA and the State, unequivocally and in writing, as to whether [GE] will implement, pursuant to [the] Consent Decree, Phase 2 of the Remedial Action."

The Phase 2 Decision is comprised of the following enclosed documents:

1. Revised Engineering Performance Standards for Phase 2;

2. Technical Memorandum, Quality of Life Performance Standards Phase 2 Changes;

3. December 2010 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.

In addition to enclosing clean versions of the December 2010 SOW and its attachments, we have enclosed redline/strikeout versions which identify EPA's changes to each of the 2005 versions of those documents (except for the Certification Unit Completion Approval/Certification Forms).

Also enclosed is an index to the administrative record for EPA's Phase 2 Decision. The majority of the documents listed on the index were either previously exchanged between EPA and GE, or are publicly available EPA guidance documents or published technical literature. EPA is in the process of placing the documents on DVDs, and will provide GE with copies of the DVDs when they are ready. We expect to complete this process shortly.

If GE notifies EPA, pursuant to Paragraph 15.c. of the Consent Decree, that it will implement Phase 2 under the Consent Decree, then EPA will work in good faith with GE to enter into a narrowly focused modification of the Consent Decree to allow GE to invoke dispute resolution pursuant to Consent Decree Section XIX regarding future changes that EPA may make to the Phase 2 Engineering Performance Standards or Phase 2 Quality of Life Performance Standards. You will see that Section 7.3 of the enclosed SOW sets forth certain limits on GE's right to invoke dispute resolution with respect to such changes. Such limits would need to be reflected in the Consent Decree modification as well. In addition, the Consent Decree modification would not allow GE to invoke dispute resolution over a refusal by EPA to make a GE-requested modification to a Phase 2 Engineering Performance Standard or Phase 2 Quality of Life Standard. The modification to the Consent Decree would, of course, be subject to the approval of the U.S. Department of Justice.

It should be noted that if GE chooses not to agree to perform Phase 2 under the Consent Decree, EPA reserves the right in any subsequent administrative or judicial enforcement action to establish requirements that differ from those set forth in the enclosed documents.

Consistent with Paragraph 15.a. of the Consent Decree, EPA and GE have had many detailed discussions regarding the changes that EPA believes are appropriate for Phase 2. Those discussions have informed the Agency's decision-making process for the Phase 2 Decision, which also reflects lessons learned from Phase 1 and recommendations of the Peer Review Panel. I believe that EPA's Phase 2 Decision will help ensure that the objectives of the Record of Decision are met while improving the efficiency of the project in Phase 2.

We look forward to receiving GE's decision under Paragraph 15.c. of the Consent Decree.

Sincerely,

Walter E. Mugdan, Director
Emergency and Remedial Response Division

Enclosures

cc: John Haggard, GE
Peter Iwanowicz, NYSDEC
Stuart Gruskin, NYSDEC
Brian Donohue, USDOJ
Peter Kautsky, USDOJ
Robert Haddad, NOAA
Wendi Weber, USFWS