

# EXHIBIT 4

Donohue



GEORGE E. PATAKI  
GOVERNOR

DENISE M. SHEEHAN  
COMMISSIONER

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
ALBANY, NEW YORK 12233-1010

DEC 14 2005

Honorable Sue Ellen Wooldridge  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

RE: United States v. General Electric Company,  
Civil Action No. 05-cv-1270,  
D.J. Ref. 90-11-2-529

Dear Attorney General Wooldridge:

The New York State Department of Environmental Conservation ("Department") appreciates the opportunity to comment on the proposed Consent Decree between the United States Environmental Protection Agency ("EPA") and the General Electric Company ("GE") which will govern GE's implementation of the Hudson River PCBs Superfund Site remedy. This agreement marks a significant milestone in the reclamation of the Hudson River as it requires GE to construct the land-based support facilities for the project and to implement Phase 1 of the dredging remedy and provides the legal and technical framework for Phase 2 of the remedy.

The goal shared by New York State and EPA of a cleaner, healthier Hudson River through implementation of the PCB remedy is another step closer to realization. GE's commitment to implement Phase 1 dredging moves the process forward, avoiding litigation and delay. However, the Department is concerned that this progress will only be meaningful if GE elects to complete Phase 2 of the remedy, and the Department remains committed to ensuring that the full remedy be implemented consistent with the Record of Decision ("ROD"). Because remedial work has already been significantly delayed from the timelines announced when the ROD was issued, it is essential that the Consent Decree provide a clear, predictable transition between the project phases. As written, the Consent Decree provides no protocols by which GE would make the decision to implement Phase 2, and does not require that such a decision be made early enough to ensure there is no delay between the phases. It is expected that evaluation of various performance criteria achieved during Phase 1 of the project will inform GE's decision on Phase 2. The Department believes that clear criteria should be established that will make clear the decision-making process GE will use in evaluating those criteria and deciding whether

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to implement Phase 2. We further suggest that EPA establish a qualified, impartial technical review board that provide an independent analysis of those criteria and the decision-making process. EPA and GE should specify, as soon as possible, the protocols by which GE intends to make a decision on committing to Phase 2.


The Department also expects that EPA will continue to ensure participation by the State in the remedial project as it is implemented. To that end, the Department will continue to serve as a technical support agency to EPA while also serving in the broader role as project watchdog to ensure that the remedial goals of the project are met and that the public and the environment are fully protected. The Governor's Hudson River Task Force will continue to convene during remedy implementation to provide a forum that will allow State officials to discuss critical project-related issues with local communities and other stakeholders, to share ideas and information, and to help convey these concerns and views to EPA, ensuring that the Hudson River cleanup is fully protective of Hudson River communities. Finally, the State will continue to review project plans and reports, and will comment on these and all future submissions by GE.

The Decree contains notable provisions which are of great importance to the State. One such provision requires GE to pay \$3 million to support the State's efforts to advise the public on consumption of fish from the Hudson River. The Decree also provides for an additional \$1 million in support of the Hudson River fish consumption advisories if GE elects to conduct Phase 2 of the remedy. This funding is essential to support the State's efforts to protect public health through public information and outreach activities designed to improve public understanding of the risks posed by consuming PCB contaminated fish from various sections of the Hudson River.

The Decree also calls for remedy implementation in accordance with the final remedial designs for Phases 1 and 2. The Department recognizes that for the remedy to be consistent with the ROD, the remedial design must also be consistent with the ROD. Although the final design documents for the remedy are not yet drafted and have not been submitted, the Department expects EPA to only approve final remedial design documents that are fully consistent with the selected remedy specified in the ROD. The State has identified several important issues in reviewing the Phase 1 Intermediate Design Report which must be considered by EPA and GE as the design effort moves forward. These issues include the State's recommendation that the project design minimize potential adverse community impacts, and that the design carefully consider the interaction between the remedial project and the operation of the Champlain Canal. The Department's comments on the Phase 1 Design Report were previously provided to EPA under separate cover, and have been the subject of additional meetings and discussions among the State agencies, EPA and GE.

The State's technical comments on the Decree are more fully set forth in the attachment to this letter. The New York State Department of Health, the New York State Canal Corporation and the New York State Department of Environmental Conservation all contributed to this effort. If you have questions on any of these issues, please feel free to contact me or Carl Johnson, Deputy Commissioner for Air and Waste Management, at (518) 402- 8549.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise M. Sheehan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Denise M. Sheehan

Enclosure

## Enclosure

December 7, 2005

### State comments on the Remedial Action Consent Decree

#### Attachment A - Critical Phase 1 Design Elements (near shore slope provision):

1. Section 2.4, page 2-7, paragraph 9: The bases for the 1:3 slope specification and 50 ppm total PCB criterion should be provided. How these criteria comport with the residuals engineering performance standard, the surface sediment PCB concentration and the PCB mass per unit area clean up targets from the Record of Decision should be described. We assume that this provision is intended to streamline the remedial design in near shore areas by providing a presumptive approach. However, a thorough analysis of site data should be conducted in order to determine if there is a significant difference between the inventory of PCB that would not be removed from the river by employing this provision compared to what inventory would remain using the dredge prism approach laid out in the final Phase 1 Dredge Area Delineation Report. The decree should provide for revisiting this provision in order to ensure that the final design is consistent with the Record of Decision in the event that the analysis indicates that a significant inventory of PCB would be left behind if the 1:3 slope provision were to be followed.

Subparagraph b should be revised to indicate that the slope to be provided will be 3 horizontal to 1 vertical (3:1). Although this may be the intended interpretation, it is not clear that a less steep slope would not be allowed. Specifying the 3:1 slope will help ensure that the maximum amount of PCB inventory will be removed within the constraints established by this subparagraph.

#### Attachment B – Remedial Action Monitoring Scope:

2. Section 2.6, page 2-24: The proposed water supply monitoring program is insufficient. The purpose of the public water supply monitoring program is to confirm that during dredging public water supplies do not incur a burden of additional treatment, do not have any drinking water standard violations, and have a mechanism to predict potential problems before they occur to allow for corrective actions. To achieve these objectives, water sampling must be conducted at public water supply intakes (before treatment), finished water from the water supply, and in-river locations. Analysis of the samples should include both congener specific and Aroclor methods. In-river sampling is needed to help identify any potential problems before they reach the water supply in-take. Understanding the relationship between in-river locations and water supply in-takes during dredging conditions is important so that in-river data may be used as early warning indicator of water quality conditions and proactive activities can be implemented to protect the public water supply. To establish a meaningful relationship, the monitoring at the water supply intake must be comparable to the monitoring conducted in the river.

This requires that monitoring of the water supply and the in-river locations be conducted at the same time, and use the same analytical methodology for PCB analysis.

3. Section 2.6, page 2-24: The public water supply sampling program must be included in the RA Community Health and Safety Plan Scope in accordance with the requirements of the ROD which states, "EPA will increase monitoring of water supply intakes during each project construction phase to identify and address possible impacts on water supplies drawn for drinking water. The locations, frequency and other aspects of monitoring of the water supplies in the Upper and Lower Hudson will be developed with public input and in consultation with New York State during remedial design (pg 98)." Inclusion of this sampling in the CHASP ensures that the public will have an opportunity to provide input, consistent with the ROD.
4. Section 4.4.1, page 4-8: An Aroclor-based PCB analysis for air samples is proposed. If data collected from GE's *Ambient PCB monitoring Method Study and Baseline Data Collection* program or from the NYSDEC's baseline air monitoring study, indicates that another type of analytical method is appropriate, a modification to the proposed analytical method may be warranted. The scope should allow for modification of the analytical method per mutual consent of the parties.
5. Section 4.4.1, page 4-8: The plan proposes to use a shorter turnaround time for 5 consecutive days during start-up of operations and during other special conditions. If the monitoring results indicate an increasing trend in PCB concentrations or the data fluctuate significantly, implementation of the shorter turnaround time for greater than 5 days may be necessary. The USEPA in consultation with the State should be provided the opportunity to determine if conditions are appropriate after 5 days to relax the analytical turnaround times.
6. Section 4.4.1, page 4-8. The scope calls for a 72-hour turnaround time for analyses of PCBs in air monitoring samples, which will be reduced to 48-hours under some circumstances (e.g., initial start-up or after an exceedance of the Concern Level for PCBs in air). The Quality of Life Performance Standards (QoLPS), issued by the US EPA in May 2004, requires the use of a shorter turnaround time for sample analysis during start-up of operations, changes in operations, and in situations where data are within the concern or exceedance level. In response to an exceedance of the control level or PCB air standard, the QoLPS requires that laboratory turnaround time be reduced to 24-hours. The New York State Department of Health (NYSDOH) strongly supported the use of a 24-hour turnaround time to attain PCB air monitoring results. The NYSDOH recognizes the potential for even a short-term violation of the PCB air standard to pose a concern, depending on the degree of a violation and other factors. Receiving data in a timely manner allows for immediate response to identify and mitigate unacceptable emissions. In addition, the NYSDOH recognizes the importance of timely data so that information can be communicated promptly to the public. The analytical turnaround time should be reduced to the maximum extent possible and the basis for turnaround times greater than

24-hours for air samples should be documented.

**Attachment C - Performance Standards Compliance Plan Scope:**

7. The discussion of “scheduling activities and use of locks” on page 6-2 states that “project related vessels shall be considered commercial vessels for purposes of navigation.” Final determinations as to how project related vessels will be considered for purposes of lock usage will be made by the New York State Canal Corporation.

**Attachment D – Remedial Action Community Health and Safety Program Scope:**

8. The Remedial Action Community Health and Safety Program (CHASP) must include a sampling program for routine monitoring at the public water supplies, non-routine monitoring requirements to address an exceedance of an action level, and mitigation/contingency actions for protecting public water supplies. The CHASP Scope does not provide for these provisions. The CHASP is the appropriate document to address these issues, in the first instance, since protection of the public water supply directly relates to public health. According to the CHASP Scope, the CHASP will “include a discussion of protection of water supplies and references to the attendant monitoring program.” However, Section 1.2 of the CHASP Scope excludes development of contingency plans and actions for responding to and mitigation adverse impacts to drinking water supplies. This suggests that such measures will not be developed as part of the remedial design. Potential contingency measures may include increased monitoring in the river and at the water supplies, in-river mitigation activities to reduce resuspension, and modifications to source water or processing at the Water Treatment Plants (WTPs). As contingency measures are considered for the WTPs, representatives from the water suppliers must be included in discussions.

In addition, the CHASP Scope indicates in Section 1.2 that where provisions addressing community health and safety are set out in other documents, this information will be “re-iterated” in the CHASP. This approach does not provide for meaningful community involvement in development of the CHASP since these provisions will not have been proposed and developed within the context of community health and safety. Protection of the public water supply is a critical community health and safety issue and must be addressed in a separate section within the CHASP similar to air quality protection.