



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

APR 28 2014

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

REPLY TO THE ATTENTION OF:

Mr. Chris Bell  
Greenberg Traurig, LLP  
1000 Louisiana Street, Suite 1700  
Houston, Texas 77002

Re: Consent Agreement and Final Order  
General Electric Company  
Docket No: **TSCA-05-2014-0008**

Dear Mr. Bell:

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on April 28, 2014, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$52,495 in the manner prescribed in paragraph(s) 44-49 of the CAFO, and reference all checks with the docket number **TSCA-05-2014-0008**. Your payment is due within 30 calendar days of the effective date of the CAFO. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*. Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jose G. Cisneros".

Jose G. Cisneros, Chief  
Remediation and Reuse Branch

Enclosures

## **NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS**

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

IN THE MATTER OF:

GENERAL ELECTRIC COMPANY  
EVENDALE, OHIO

Respondent.

) Docket No.

)  
) Proceeding to Assess a Civil Penalty  
) Under Section 16 (a) of the Toxic  
) Substance Control Act  
) 15 U.S.C. § 1361(a)

)

)

TSCA-05-2014-0008



CONSENT AGREEMENT AND FINAL ORDER  
COMMENCING AND CONCLUDING A PROCEEDING

I. PRELIMINARY STATEMENT

1. This is an administrative proceeding commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 United States Code (U.S.C.) § 2615(a), and Sections 22.1(a)(5), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination of Suspension of Permits* (Consolidated Rules), as codified at 40 Code of Federal Regulations (C.F.R.) Part 22.
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. The Respondent is General Electric Company (Respondent or GE), a corporation doing business in the State of Ohio.
4. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
5. Respondent consents to the assessment of the civil penalty specified in this Consent Agreement and Final Order (CAFO), and to the terms of this CAFO.

## II. JURISDICTION AND WAIVER OF RIGHT TO HEARING

6. Respondent admits the jurisdictional allegation in this CAFO and neither admits nor denies the factual allegations in the CAFO.

7. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegation in this CAFO, and its rights to appeal this CAFO.

## III. ALLEGED VIOLATION

### A. Background

8. Respondent is the owner and operator of the GE Aviation Facility in Evendale, Ohio that designs, develops, manufactures, and tests jet engines for military and commercial customers.

9. Respondent operates an engine test facility known as the Altitude Test Facility (ATF) located at the GE Aviation Facility. The purpose of the ATF is to test jet engines in conditions that simulate the use of the engines at a wide range of altitudes.

10. The ATF is a free-standing building that contains two engine test cell compartments. Through the use of an air induction piping network, compressed air is introduced into the test compartments where the jet engines are mounted during testing to simulate speed or altitude conditions.

11. The air induction piping network consists of a series of primarily six-foot and eleven foot diameter piping constructed of ¼-inch thick and 3/8-inch thick specialty steel, including appurtenances (e.g., valves, flanges, fittings, etc.), that were pre-finished with paint on both the interior and exterior and installed in the late 1960s. The piping network spans a

total length of approximately 1,800 linear feet and is encapsulated with a multi-layered insulation barrier consisting of a metal mesh base layer, rigid asbestos-containing material (ACM) millboard and mineral wool, all that is covered by an aluminum jacket held in place with steel bands (“aluminum clad insulation”).

12. On November 1, 2012, Respondent voluntarily disclosed to EPA that paint coating the piping network contained more than 50 milligrams per kilogram (“mg/kg”) Polychlorinated Biphenyls (“PCB”). This disclosure was based on sampling data received by Respondent on October 26, 2012. Respondent stopped operational activities relating to testing jet engines at the ATF on October 26, and on November 16, 2012 petitioned EPA for an interim risk-based alternative cleanup solution to address the PCB-containing paint.

13. In response to Respondent’s petition for an interim risk-based alternative clean-up solution to address the presence of PCB containing paint discovered in Respondent’s air induction system, on December 19, 2012 EPA issued an Approval to Respondent to address the PCB contamination under 40 C.F.R. § 761.62 (c) for the limited purpose of conducting four engine tests in the ATF on behalf of the Department of the Navy. This Approval included a number of corrective measures to be completed by Respondent before testing could resume, including double washing, rinsing and painting the interior of the piping system, conducting indoor air testing, placing PCB M<sub>L</sub> markers in appropriate locations throughout the ATF, and conducting training and awareness sessions for ATF personnel.

14. After receipt of this Approval and completion of the corrective measures required by the Approval, Respondent resumed testing activities at the ATF in accordance with the Approval, including the condition that such testing must be completed by July 31, 2013. After the jet engine testing was completed, Respondent then began implementing additional

remedial and corrective measures at the ATF. The Approval was amended on January 16, 2014 in order to allow GE to resume jet engine testing between January 1 and April 30, 2014 and to provide the parties opportunity to finalize negotiation of this CAFO.

15. Condition 17 of the attachment to EPA's December 19, 2012 Approval required Respondent to propose a long-term solution to EPA for the removal and disposal of the PCB containing paint in the air induction system. In December 2013, Respondent submitted a proposal (Attachment A) that EPA considered and that forms, in part, the basis for the long term measures addressed in Section IV of this CAFO.

#### B. General Allegations

16. The PCB Disposal and Marking regulations were lawfully promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), on February 17, 1978 (43 Fed. Reg. 7150). The PCB Manufacturing, Processing, Distribution in Commerce and Use Regulations (PCB Rule) were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the disposal and marking regulations. The PCB rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

17. The air induction piping in Respondent's ATF is not a "PCB Container," as defined at 40 C.F.R. § 761.3, because it is not a package, can, bottle, bag, barrel, drum, tank or other device that contains the PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs.

18. The air induction piping in Respondent's ATF is a "PCB Article," as defined at 40 C.F.R. § 761.3, because it is a manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs.

19. The air induction piping in Respondent's ATF is a "PCB Item," as defined at 40 C.F.R. § 761.3, because it is a PCB Article that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

20. On November 1, 2012, GE informed EPA that it had received sampling data indicating that the paint originally applied on the ATF air induction piping network by the manufacturer of the network before the enactment of TSCA contained greater than 50 mg/kg PCBs. The summary of the PCB sampling data GE provided to EPA on November 6, 2012 revealed the following concentrations of PCBs:

#### Interior Pipe Surfaces

- 53 wipe samples – results ranging from non-detectable (ND) to 10.0 micrograms per 100 square centimeters ( $\mu\text{g}/100\text{ cm}^2$ )
- 30 paint chip samples – results ranging from ND to 42,000 mg/kg.

#### Exterior Pipe Surfaces

- 42 wipe samples – results ranging from ND to 2,900  $\mu\text{g}/100\text{ cm}^2$ .
- 29 paint chip samples – results ranging from ND to 100,000 mg/kg.

#### Air Monitoring

- 2 locations inside the pipe – ND and 125 nanograms per cubic meter ( $\text{ng}/\text{cm}^3$ )
- 2 locations in the ATF – ND and 83.3  $\text{ng}/\text{cm}^3$ .

21. Respondent is not using the air induction piping in its ATF in a "totally enclosed manner," as defined at 40 C.F.R. § 761.3 because the air induction piping is not being used in a manner that will ensure no exposure of human beings or the environment to any concentration of PCBs.

### C. Specific Allegation: Unauthorized Use of PCBs

22. The General allegations above are incorporated by reference as though set forth here in full.

23. 40 C.F.R. § 761.20(a) provides that no person may use any PCB, or any PCB Item regardless of concentration, in any manner other than in a totally enclosed manner within the United States unless authorized under 40 C.F.R. § 761.30.

24. 40 C.F.R. § 761.30 does not authorize the use of paint that contains  $\geq 50$  mg/kg PCB, and thus Respondent is not authorized to use the air induction piping coated with paint containing  $\geq 50$  mg/kg in the ATF.

### IV. Conditional Long Term Use of the Air Induction System

#### A. General

25. Respondent has contracted with, and expects to be asked to contract with, various governmental defense agencies and corporate entities to test aircraft engines at Respondent's ATF. This CAFO prescribes the manner in which Respondent may use the ATF to conduct aircraft engine testing. Accordingly, Complainant has determined that activities in the ATF related to engine testing must be conducted in accordance with the following conditions, which are established to ensure there is no unreasonable risk of PCB exposure to the environment or to any personnel in the ATF during its use for aircraft engine testing.

26. EPA has determined that there will be no unreasonable risk of PCB exposure to the environment or to any personnel in the ATF during these activities, based on the following activities:



- a. The results of air sampling data submitted prior to and in accordance with the December 19, 2012 TSCA Approval.
- b. The removal and replacement of up to 300 linear feet of air induction system piping.
- c. The removal of paint containing  $\geq 50$  mg/kg PCBs located on the interior of the remaining portions of the ATF's air induction system piping (approximately 1,500 linear feet of pipe).
- d. The removal by December 31, 2014 of paint containing  $\geq 50$  mg/kg PCBs on the portions of the exterior of the ATF's air induction system, including appurtenances (e.g., valves, flanges, fittings, etc.) that are not sheathed in the aluminum clad insulation.
- e. The existence of the aluminum clad insulation, which forms a barrier to exposure to any PCB-containing paint that might remain on the exterior of the pipe.
- f. The implementation of an operation and maintenance plan to periodically assess the condition of the piping including the aluminum clad insulation for the purpose of determining replacement needs over time. As this piping and/or aluminum clad insulation are replaced, any PCB-containing paint associated with the piping shall be managed properly and disposed of as PCB Bulk Product Waste in accordance with Paragraph 38.
- g. The inspection and maintenance of the PCB  $M_L$  markers pursuant to 40 C.F.R. §761.30(p)(1)(iii)(B) and as identified in Sections 4.4.2 and 7 of Attachment A.

h. The procedures regarding employee awareness and protection, and the management and disposal of PCB Bulk Product Waste as identified in Sections 5 and 7 of Attachment A.

i. The use of the ATF is: 1) limited to specific activities; 2) public access is restricted; and 3) the amount of time any person spends in the open internal space of the ATF is limited.

j. The additional conditions below will limit exposure further, and generate monitoring data and information for the ATF.

27. The conditions in Section B. through H, below, may be amended by written agreement between the Chief of EPA, Region 5, Remediation and Reuse Branch and Respondent under the authority of this Consent Agreement upon receipt and consideration of additional information.

#### B. Applicability

28. The conditions in this Consent Agreement apply to the use of the ATF for the testing of aircraft engines. The conditions do not apply to Respondent's use of facilities other than the ATF located at GE's Evendale, Ohio, plant.

#### C. Access to the ATF for Engine Testing Purposes

29. Access to the ATF shall be limited to authorized personnel only.

30. Access to the ATF shall be controlled and limited typically to: (a) personnel planning, executing and evaluating aircraft engine tests and (b) personnel conducting inspections, air sampling, remediation and/or maintenance. Authorized visitors, including government officials, vendors and others with a business purpose at the ATF, may be authorized to visit the ATF for short periods of time when accompanied by authorized

personnel, as long as indoor air sampling conducted under paragraph 34 demonstrate that PCB concentrations are below  $1 \mu\text{g}/\text{m}^3$ .

31. Respondent has installed PCB  $M_L$  markers at appropriate locations throughout the ATF, including all entrance points, which shall be maintained in place throughout the useful life of the ATF as long as PCBs remain present in the ATF as described below. The markers serve to inform personnel entering and/or performing work in the facility that there are PCBs present that require special handling and disposal in accordance with 40 C.F.R. Part 761. The  $M_L$  markers are posted at exterior entrances, access points, and exterior pipe locations (e.g., elevated stairways, catwalks, overhead doors, entrances, ductwork, etc.).  $M_L$  Marks will be used to designate ATF induction piping material that has yet to be decontaminated. Following the completion of any paint removal activities, the location and quantity of PCB  $M_L$  markers will be updated. Where PCB  $M_L$  markers are to remain, GE will continue to conduct monthly inspections of the markers to verify that each marker is intact, in good condition, and that all information, including contact name and phone number, is visible as described in Sections 4.4.2 and 7 of Attachment A. No later than February 9, 2015, Respondent shall provide to the PCB Coordinator, at the address provided in paragraph 36.c. a map identifying the location of  $M_L$  markers in the ATF as of January 15, 2015.

#### D. Health and Safety

32. Respondent will implement the PCB awareness program as described in Section 7 of Attachment A for GE employees and contractors working at the ATF. This program consists of notifying personnel of the presence of PCB-containing paint on the ATF air induction system piping and includes a training session for targeted personnel who perform work activities in and around the ATF (e.g., maintenance, inspections, etc.). The training

session includes an overview of PCBs, the regulatory considerations surrounding their use, and the nature and extent of PCB concentrations detected in the ATF. Furthermore, the training covers the Personal Protective Equipment (PPE) Standard Operating Procedure (SOP) and waste management SOP for the ATF. GE will continue its PCB awareness program as a preventative measure and for any future pipe maintenance and/or replacement with the potential to expose personnel to PCB-containing paint. Training sessions will be held for new employees and annual refresher training will be provided to existing workers who work within and in the vicinity of the ATF. GE will notify EPA of any updates or changes to this training.

33. This CAFO is not intended to relieve GE of its obligation to comply with all applicable regulations and requirements for health and safety administered by the Occupational Safety and Health Administration.

#### E. Monitoring During Engine Tests

34. Indoor Air (stationary) Monitoring: Respondent will conduct stationary air monitoring as described in the Air Monitoring Plan of the Long-Term Remediation Plan (Attachment A) during calendar year 2014.

35. Sample Collection and Analysis: All stationary air monitoring required by this CAFO must be conducted using USEPA Compendium Method TO-10A and as described in Section 3 of the Air Monitoring Plan of Attachment A. In particular, Respondent shall determine a sample volume by adjusting the flow rate and sampling time that will result in measurements in the operating range of the analytical instrument to be used.

36. Reporting Results of Monitoring:

- a. Respondent shall report the results of the indoor air monitoring for PCBs to EPA via letter report within ten (10) business days from receipt by GE of the report from the laboratory as described in Section 6 of the Air Monitoring Plan of Attachment A. The letter report must include the sampling time, the flow rate, the volume of air sampled, any sample breakthrough, the final extract volume, the injection volume, and the operating parameters of the analytical instruments used. In addition, Respondent must report the location of the monitors, the type of activity being conducted during monitoring, and the proximity of the monitors to the activity.
- b. Should any air monitoring event result show that air concentration of total PCB exceeds the NIOSH Recommended Exposure Limit (REL; 1 microgram per cubic meter (1  $\mu\text{g}/\text{m}^3$ ) Time Weighted Average (TWA); 1000 nanograms per cubic meter TWA), GE will notify EPA within 24 hours of receipt of analytical results, investigate the circumstances, and, where possible, identify and mitigate the source of the exceedance. GE also will undertake an evaluation of worker safety protections including the need for respirator protection, and implement any feasible changes in procedures or environmental controls necessary to reduce the potential for exposure at or above the NIOSH REL. In addition, GE will conduct follow-up monitoring events to demonstrate that air concentrations have been reduced below the REL, and report the results and actions taken to EPA in a follow-up letter report within ten (10) business days from receipt by GE of the results of such follow-up monitoring from the laboratory in accordance with Paragraph 36.a. Until such time

as air concentrations of PCBs have been demonstrated to be below the REL, personnel conducting activities in the ATF, including engine testing, must wear the personal protective equipment described in Paragraph 37. Outcomes of corrective actions, including the results of any air re-sampling, must also be included in the Annual Report developed per Attachment A.

c. Respondent must submit its reports to the PCB Coordinator, U.S. EPA, Region 5, mailstop LU-9J, 77 West Jackson Boulevard, Chicago, Illinois 60604. The reports of sampling events above  $1 \mu\text{g}/\text{m}^3$  should be reported to the PCB Coordinator within 24 hours. Complainant may designate another contact and will notify Respondent within 7 working days if such designation occurs.

#### F. Personal Protection Equipment

37. If there is any finding under Paragraph 36(b) that airborne PCB concentrations over  $1 \mu\text{g}/\text{m}^3$  are present in the air, personnel, involved in subsequent workshift activity of a kind that resulted in that finding, shall wear a half-face air purifying respirator (OSHA/NIOSH approved) with combination organic vapor and HEPA cartridges until it is demonstrated, through air testing, that airborne concentrations over  $1 \mu\text{g}/\text{m}^3$  are not present.

#### G. Pipe Removal and Disposal

38. The estimated 300 feet of piping identified for removal and replacement is located on the western side of the ATF and will be managed as per Sections 4.3 and 5 of the Long Term Remediation Plan for the ATF located in Attachment A.

39. All removed PCB containing paint or debris will be managed as described in Sections 4.3 and 5 of Attachment A.

40. All metal surfaces coated with PCB paint will be decontaminated to meet the Visual Standard No. 2 Near-White Blast cleaned surface finish of the National Association of Corrosion Engineers (NACE) referred to in 40 C.F.R. §761.79(b)(3)(B) prior to management as scrap metal.

#### H. Schedule For Future ATF Activities

41. Future pipe replacement efforts, including those arising from the inspections and recommendations described in Section 4.4.2 of Attachment A, will be overseen by GE Environmental Health & Safety personnel. GE will notify EPA of any pipe replacement project at least 60 days prior to the commencement of such project. Such a notification will identify the portions of the pipe intended to be replaced and the process for removing such pipe, including applicable measures to protect human health and the environment. In the event of an emergency condition requiring a major repair or replacement of pipe, the work will be conducted immediately; EPA will be notified of the work within 1-2 business days. All removed PCB-containing paint or debris will be disposed of in accordance with Paragraph 39. GE shall conduct indoor ambient air PCB monitoring upon the completion of each pipe replacement event for at least two engine tests, consistent with all the program elements set forth in Section 3 of Attachment C (Air Monitoring Plan) of GE's Long-Term Remediation Plan for the ATF (Attachment A of this CAFO), to confirm that ambient air levels of PCBs within the ATF do not exceed the NIOSH REL specified in Paragraph 36.b., above. Consistent with Section 3 of the Air Monitoring Plan, GE shall conduct three sampling events per jet engine test at two locations, and each sampling event will last eight hours. In addition, GE shall use the sampling methods and analytical methods prescribed in Section 3 of the Air Monitoring Plan. If any air monitoring event result demonstrates that air

concentrations of total PCBs exceed the NIOSH REL, GE will comply with the requirements set forth in Paragraph 36.b., above.

#### V. Civil Penalty

42. Section 16 (a)(2)(B) of TSCA, 15 U.S.C. § 2615 (a)(2)(B), requires the Administrator to consider the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, effect on ability to continue in business, any history of such prior violations, the degree of culpability and such other matters as justice may require.

43. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 16(a)(2)(B) of TSCA, Respondent's cooperation and willingness to promptly return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$52,495.

44. Within 30 days of the effective date of this CAFO, Respondent must pay the \$52,495 civil penalty for the TSCA violation. Respondent must pay the penalty by sending a check, payable to the "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

45. The check must note "In the Matter of General Electric Company" and the docket number of this CAFO.

46. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and the transmittal letter to:



Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Kendall Moore (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Susan Perdomo (C-14J)  
Office or Regional Counsel  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

47. This civil penalty is not deductible for federal tax purposes.
48. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount (plus interest at currently prevailing rates) by action in the appropriate United States District Court and in such an action, the validity, amount and appropriateness of the civil penalty are not reviewable, Section 16(a)(4)(B) of the TSCA, 15 U.S.C. § 2615(a)(4)(B).
49. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the day payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principle amount 90 days past due.

## VI. Stipulated Penalties

50. If Respondent fails to comply with any requirement of the CAFO, excluding the requirements under Section V (Penalty), Complainant may impose stipulated penalties as follows:

- a. Reports of Monitoring Results. For failure to submit to Complainant in a timely manner the results and reports required under paragraphs 36.a. through c. inclusive, above, Complainant may require Respondent to pay:

<u>Period of Noncompliance</u>	<u>Penalty per day</u>
i. Days 1-15 of noncompliance	\$500
ii. Days 16-30 of noncompliance	\$1,000
iii. Each day after day 30	\$5,000

- b. All other CAFO Requirements: For any other failure to comply with the requirements of Paragraphs 29 through 35, inclusive, above, and Paragraphs 37 through 41, inclusive, above, Complainant may require Respondent to pay:

<u>Period of Noncompliance</u>	<u>Penalty per day</u>
i. Days 1-15 of noncompliance	\$2,500
ii. Days 16-30 of noncompliance	\$5,000
iii. Each day after day 30	\$10,000

51. All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the non-compliance.

52. Respondent shall pay stipulated penalties in the amounts set forth in this Section upon demand by the Complainant if Respondent fails to comply with the requirements of the

CAFO specified above. All penalties to Complainant under this Section VI (Stipulated Penalties) shall be due within thirty (30) days of receipt of a demand letter from Complainant. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.

53. All stipulated penalties shall be made payable by check to “Treasurer, the United States of America,” and shall be remitted to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

54. Respondent shall provide a transmittal letter, stating Respondent’s name, complete address and the case docket number with the stipulated penalty payment. Respondent must write the case docket number on the face of the check.

55. Respondent must also provide a copy of the check and the transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA – Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604 – 3590

Kendall Moore (LC-8J)  
U.S. EPA – Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604 – 3590

Susan Perdomo (C-14J)  
U.S. EPA – Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604 – 3590

56. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.

57. Payment of stipulated penalties as set forth above shall be in addition to any other rights or remedies that may be available to the United States or its agencies by reason of Respondent's failure to comply with requirements of this CAFO, or all applicable federal, state, or local laws, regulations and permits. The payment of such stipulated penalties shall not be construed to relieve Respondent from specific compliance with this CAFO, nor shall it limit Complainant's authority to require compliance with such laws.

#### VII. Dispute Resolution

58. The dispute resolution provision will not apply in the event of an imminent threat to human health or the environment as determined by Complainant. For all other disputes, the parties agree to use their best efforts to informally and in good faith resolve all disputes relating to this CAFO.

59. Any dispute that arises with respect to the meaning, application, implementation, amendment or modification of this CAFO, or with respect to Respondent's compliance herewith or any delay hereunder, the resolution of which is not expressly provided for in this CAFO, shall in the first instance be the subject of informal negotiations. If Respondent believes it has a dispute with Complainant, it shall notify Chief, RCRA Corrective Action Section 1 at the address identified in Paragraph 36.c. of the matter(s) in dispute. Respondent's project coordinator and Chief, RCRA Corrective Action Section 1 shall attempt to resolve the dispute informally. Such period of informal negotiations shall not exceed 30 days from the date the Respondent provided notice of dispute, unless the Parties

agree otherwise. At the end of this time period, Chief, RCRA Corrective Action Section 1 shall provide an informal written decision to Respondent's project coordinator.

60. If the informal dispute resolution negotiations are unsuccessful, Respondent may request formal dispute resolution by submitting written objections to Complainant's counsel. The written objection(s) must be sent to Complainant within 20 days of receipt of the communication from Chief, RCRA Corrective Action Section 1. The written objection shall describe the nature of the dispute and the proposal for its resolution.

61. The parties shall attempt to resolve Respondent's formal request for dispute resolution within 30 days from the date Complainant receives Respondent's written request. During this time period, Respondent may request to meet with the Director of the Land and Chemicals Division, EPA Region 5 to discuss Respondent's dispute and/or objections.

62. Within 30 days of the conclusion of the formal discussion under Paragraphs 60 and 61, the Director of the Land and Chemicals Division shall provide to Respondent in writing Complainant's decision of the pending dispute, which will constitute the Agency's final decision under the dispute resolution provisions of this CAFO. The written decision shall be sent to Respondent by facsimile transmission and by certified mail.

63. Stipulated penalties with respect to any disputed matter (and interest thereon) shall accrue in accordance with Paragraphs 50 and 51; however, payment of stipulated penalties shall be stayed pending resolution of the dispute. When the dispute is resolved, either formally or informally, accrued penalties (and interest), if any, determined to be owing shall be paid within 60 days of receipt of Complainant's informal or formal position in writing.

64. Complainant and Respondent may, upon mutual written agreement, extend any of the time periods provided for the dispute resolution process.

#### VIII. Settlement of Claims/Reservation of Rights

65. Complainant and Respondent, having sought to informally settle this matter, have agreed to the terms of this Consent Agreement in order to resolve this action without trial or other litigation. 40 C.F.R. §§ 22.18 (b) and (c).

66. Respondent neither admits nor denies the factual allegations contained in this CAFO, 40 C.F.R. § 22.18 (b), and nothing herein shall be construed as an admission of liability by Respondent.

67. The terms of this CAFO constitute a settlement by Complainant for all claims for civil penalties to Section 16 of TSCA, 15 U.S.C. § 2615, for the alleged violations of TSCA specified in Section III of this CAFO.

68. This CAFO shall become effective on the date that it is filed with Regional Hearing Clerk.

**Except as it relates to those matters resolved by this Consent Agreement and attached Final Order:**

69. Compliance with this CAFO shall not be a defense to any other actions commenced pursuant to Federal, state and local environmental laws and it is the responsibility of Respondent to comply with all applicable provisions of TSCA and any other Federal, state or local laws and regulations.

70. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability.

71. Complainant hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CAFO at Section IV. This CAFO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, which Complainant has under TSCA or any other statutory, regulatory or common law enforcement authority of the United States.

72. Respondent reserves all rights it may have under Federal, state or local statute, regulation or common law, except those rights they have expressly waived under Paragraph 5 through 7 of this CAFO.

73. The entry of this CAFO and Respondent's consent to comply shall not limit or otherwise preclude Complainant from taking additional enforcement action should Complainant determine that such actions are warranted, except as it relates to those matters resolved by this CAFO.

74. This CAFO is not intended to be nor shall it be construed as a permit. This CAFO does not relieve Respondent of any obligation to obtain and comply with any Federal, state or local permits.

75. Nothing in this CAFO shall constitute or be construed as a release from any other claim, cause of action or demand on law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of the relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous waste, pollutants, or contaminants found at, taken to, or taken from the ATF.

76. Each party agrees to bear its own costs and attorneys' fees in the action resolved by this CAFO.

77. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

78. This CAFO constitutes the entire agreement between Complainant and Respondent.

#### IX. Termination

79. This CAFO shall terminate when the paint containing PCBs > 50 mg/kg is removed from the ATF, or ten years from its effective date of this CAFO, whichever comes earlier. No earlier than two years prior to termination, Respondent may petition EPA to amend this CAFO to extend the termination date. Respondent shall provide a detailed explanation to EPA describing why the extension is necessary, including the projected future military and commercial customer needs for the testing capability that the ATF provides. It shall be within EPA's sole discretion to grant such extension. EPA's decision whether or not to grant an extension is not subject to Dispute Resolution under Section VII of this CAFO.




IN THE MATTER OF:

General Electric Company  
Evendale, Ohio

GENERAL ELECTRIC COMPANY, RESPONDENT

27-MAR-2014  
Date

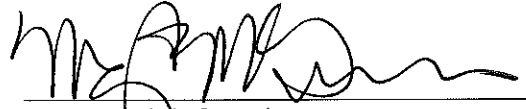
  
\_\_\_\_\_  
Tony Aiello  
Vice President & General Manager  
Assembly, Test & MRO

IN THE MATTER OF:

General Electric Company  
Evendale, Ohio

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, COMPLAINANT

4/29/2014  
Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division


IN THE MATTER OF:

General Electric Company  
Evendale, Ohio  
Docket No. **TSCA-05-2014-0008**

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.3. IT IS SO ORDERED.

4-25-2014  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

CASE NAME: General Electric  
DOCKET NO: TSCA-05-2014-0008

### CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the **Consent Agreement and Final Order** and this **Certificate of Service** was filed with the office of the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590 on April 28, 2014.

I further certify that I then caused true and correct copies of the filed document to be mailed via Certified Mail, Return Receipt Requested to the following:


Mr. Chris Bell  
Greenberg Traurig, LLP  
1000 Louisiana Street, Suite 1700  
Houston, Texas 77002

Return Receipt # 70091680000076638074

And forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Susan Perdomo, ORC/C-14J  
Kendall Moore LCD/CMB/LC-8J  
Peter Ramanauskas LCD/RRB/LU-9J

Dated: April 28, 2014

  
\_\_\_\_\_  
Angela Jackson  
Administrative Program Assistant  
United States Environmental Protection Agency  
Land and Chemicals Division-RRB  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590  
(312) 353-8973