

# Hudson River PCBs Superfund Site

Summary of Consent Decree with  
General Electric Company

# Remedial Action

- Record of Decision Issued Feb. 1, 2002
  - Targeted dredging of Upper Hudson River sediments to be performed in two phases
- Phase 1
  - Scheduled to begin in 2007
  - About 10% of sediment to be dredged
  - Estimated cost: \$100 million - \$150 million, including cost of construction of sediment processing/transfer facility
- Phase 2
  - Remainder of dredging, expected to take 5 years

# Consent Decree for Remedial Action

- Consent Decree (CD) between EPA and GE lodged with the court on October 6, 2005
- 30-day public comment period ends on November 14

# Highlights of Consent Decree

- CD commits GE to:
  - Construct sediment processing facility and perform Phase 1 of dredging, pursuant to design documents prepared under 2003 Administrative Order for Remedial Design and Cost Recovery, and consistent with Statement of Work (SOW) and other technical attachments to CD

# After the completion of Phase 1 Dredging

- EPA and GE will each prepare a Phase 1 Evaluation Report that will evaluate the Phase 1 dredging relative to the engineering performance standards
- EPA and GE will propose changes to those standards as appropriate
- The reports will be submitted to an independent peer review panel
- Peer review expected to take place in the winter and early spring of 2008

# CD identifies various aspects of Peer Review process

- Identifies topics to be considered by peer review panel
- Method of selection of panel members
- EPA will prepare final charge questions
- Panel will not evaluate whether remedy is expected to achieve ROD objectives, or whether Phase 2 should be implemented.

# After Peer Review

- EPA will notify GE of EPA's decision regarding changes, if any, to performance standards, the SOW and the scope of Phase 2
- If EPA provides that notification to GE by June 1, 2008 then GE must tell EPA by August 1, 2008 whether it will implement Phase 2 under the CD
- Otherwise GE has 90 days after it receives EPA's notification to make its Phase 2 opt-in/out decision

# Phase 2

- If GE opts in for Phase 2, it will perform Phase 2 under the CD.
- If GE opts out of Phase 2 under the CD, EPA's rights are reserved to issue a unilateral administrative order to GE directing it to implement Phase 2. EPA's rights also reserved to seek reimbursement from GE if EPA conducts Phase 2 using government funds.



# CD reduces Potential for delay between Phase 1 and Phase 2

- Requires GE to spend up to \$5,000,000 prior to its Phase 2 opt-in deadline "to undertake those activities necessary to efficiently prepare for the remobilization of contractors and equipment that will be needed to undertake Phase 2"

# Start of Phase 2 Dredging

- If GE opts in for Phase 2, the Phase 2 dredging would begin in 2008 (if EPA and GE agree on a discrete area(s) where Phase 2 dredging could be conducted that season) or upon the start of the 2009 construction season

# Evaluation of Progress

- If GE opts in for Phase 2, the CD allows GE, after it has completed at least two construction seasons of Phase 2 dredging, to submit a request to EPA to evaluate whether, “the project is making reasonable progress toward achieving its human health and environmental protection objectives, as set forth in the ROD.”
- EPA’s determination is not subject to dispute resolution.

# Phase 2

- If GE opts in for Phase 2, after it performs Phase 2, it will:
  - Perform operation, maintenance and monitoring (OM&M), including monitoring of PCBs in fish and water column, and monitoring and maintaining stability of any underwater caps installed during the remedy

# Five Year Reviews

- EPA will conduct Five-Year Reviews of the remedy to confirm that it remains protective, pursuant to CERCLA § 121(c).
- If GE opts in for Phase 2, GE has to conduct any additional data collection for the first or second Five-Year Review following completion of the remedy, up to a maximum expenditure of \$1.5 million.

# Payments

- CD requires GE to pay EPA up to about \$78 million for the Agency's past and future costs if GE opts in for Phase 2, and up to about \$43 million for EPA's costs if GE opts out of Phase 2.
- \$37 million has already been paid by GE pursuant to earlier settlements
- If GE opts in for Phase 2, GE ultimately will have paid a total of \$115,000,000 of EPA's site costs. This is separate from the funds that GE will pay to perform the remedy.

# Consumption Advisories

- New York State is not a party to CD
- GE is required to pay \$3 million to support the State's efforts to enhance and maintain public compliance with fishing advisories on the Hudson
- There will be further payment of \$1 million for such efforts if GE opts in for Phase 2

# Covenant

- Under the CD, the U.S. agrees, or “covenants”, not to sue GE for various issues relating to the Site.
- The covenant GE will receive under the CD depends on whether it opts in for Phase 2.



# Covenant

- If GE does not opt in for Phase 2, it will receive a covenant not to sue for:
  - the work that it performs under the CD
  - The performance of additional response actions at the specific locations in the Upper Hudson River that are dredged in Phase 1
  - EPA's past costs and Phase 1 RA Response Costs
  - Costs of outreach activities relating to the fish advisories

# Covenant

- If GE does opt in for Phase 2, it will also receive a covenant not to sue for:
  - “administrative or judicial injunctive-type relief with respect to PCB contamination in the Upper Hudson River, or for reimbursement of response costs in connection with the Upper Hudson River “

# Covenant

- Subject to several reservations of rights including GE's liability for:
  - Phase 2, if GE does not opt in
  - The Lower Hudson River
  - Response actions to address contamination in the Hudson River floodplain (except to the extent that such response actions are part of the work under the CD)

# Public Comment Period

- 30 day public comment period ends on November 14.
- Following comment period, the United States will consider public comments in determining whether to ask the court to approve, or “enter”, the CD.

# Entry of Consent Decree

- If U.S. determines that no changes to the CD are needed based on public comments, the U.S. will ask the court to enter the CD.
- GE would need to agree to any changes that are made to the CD.
- The CD becomes effective upon entry by the court.