

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA
and
THE STATE OF NEW YORK,

Plaintiffs,

vs.

GENERAL ELECTRIC COMPANY,

Defendant.

CIVIL ACTION NO. 1:15-CV-1431 (LEK/DJS)

COMPLAINT

Plaintiffs, the United States of America (“United States”), through its undersigned attorneys, and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of New York (“NYS”), through its undersigned attorneys and at the request of the Commissioner of the New York State Department of Environmental Conservation (“DEC”), for their complaint against General Electric Company (“GE” or “Defendant”), allege as follows:

I. NATURE OF ACTION

1. This is a civil action brought against GE pursuant to Sections 113(a) and (b) of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7413(a) and (b), and Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (referred to collectively as “RCRA”), 42 U.S.C. §§ 6928(a) and (g); seeking penalties for violations of the federally-approved provisions of NYS law, including Environmental Conservation Law

(“ECL”) Article 19, Titles 1 and 3; Article 27, Title 9; and Article 71, Title 27, and the implementing regulations in the New York Code of Rules and Regulations (“NYCRR”), Title 6, Parts 200-201 and 370-376.

2. The claims arise from GE’s ownership and/or operation of a rotary kiln incinerator (“Incinerator”) at a manufacturing facility located in Waterford, New York. GE owned and/or operated the Incinerator in a manner that violated the CAA and RCRA, those Acts’ implementing regulations, ECL Articles 19 and 27 and the NYS permits issued to GE pursuant to those statutes.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 6928(a), 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355.
4. Venue is proper in the Northern District of New York pursuant to 42 U.S.C. §§ 6928(a), 7413(b), and 28 U.S.C. §§ 1391 and 1395 because the violations alleged herein occurred in this District.

III. NOTICE

5. The United States has notified NYS of this action pursuant to 42 U.S.C. §§ 6928(a)(2) and 7413(b)(3) and the State is a plaintiff in this action.

IV. DEFENDANT

6. From 1947 until February 2007, GE owned and/or operated a manufacturing facility at 260 Hudson River Road in Waterford, New York (“Waterford Facility” or “Facility”).
7. GE manufactured various products at the Waterford Facility, including sealants made of silicone. The silicone-manufacturing process generated a significant amount of “hazardous waste,” a term of art defined in the CAA and RCRA regulations. GE employees were

authorized to dispose of the hazardous waste in the Incinerator, subject to compliance with the CAA and RCRA, which includes those Acts' implementing regulations and the NYS permits issued to GE pursuant to the CAA ("Title V Permit") and RCRA ("RCRA Permit") (collectively, "the Permits").

8. GE is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

GE as Owner/Operator of the Waterford Facility

9. In 2000, GE owned the Waterford Facility.
10. Also in 2000, GE Plastics (a division of GE) operated the Waterford Facility.
11. On November 14, 2000, GE Silicones, LLC ("GE Silicones") was incorporated in New York with GE as the initial managing member. GE held a 99.9% interest in GE Silicone's equities, and GE Silicones' tangible assets included the Waterford Facility.
12. Effective November 14, 2000, GE Silicones entered into an Operating Agreement with GE. According to the terms of the Operating Agreement, "[t]he business and affairs of the Company [GE Silicones] shall be managed by its Managers. The Managers shall direct, manage and control the business of the Company to the best of their ability. Except for situations in which the approval of the Members is expressly required by this Operating Agreement or by non-waivable provisions of applicable law, the Managers shall have full and complete authority, power and discretion to manage and control the business, affairs and property of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business. . . ." As set forth in the Operating Agreement, GE was the only "Manager" of GE Silicones and initially had a 99.9% membership interest in GE Silicones.

13. On December 20, 2000, GE Silicones, Inc. ("GESI") was incorporated and GE was its sole shareholder.
14. Eleven days later, on December 31, 2000, GE sold all of its equity in GE Silicones to GESI, and the latter became the managing member of GE Silicones. GE Silicones was a wholly-owned subsidiary of GESI.
15. On December 31, 2000, GE became the sole shareholder of GESI, which was the managing member and holder of the majority of the membership interests in GE Silicones.
16. On May 23, 2001, an application was submitted to DEC seeking to transfer, effective July 2, 2001, all Permits, licenses and registrations relating to the Waterford Facility from GE to GE's "new subsidiary" GE Silicones. The application was signed by the same person on behalf of both GE and GE Silicones.
17. On July 2, 2001, GE transferred its interest in the Waterford Facility to GESI, which in turn immediately transferred its interest in the Facility to GE Silicones.
18. As a result of the name change and the transfer of assets, GE Silicones became an "owner" of the Waterford Facility as those terms are used in 40 C.F.R. § 63.2 as well as in 6 New York Code Rules and Regulations ("N.Y.C.R.R.") § 370.2. Moreover, because GE Silicones continued to run the Facility, including the Incinerator, GE Silicones became an "operator" of the Facility under those same regulations.
19. GE Silicones entered into an Administrative Services Agreement with GE on July 2, 2001, under which GE agreed to provide GE Silicones with personnel to operate the Incinerator. According to that Agreement, the GE personnel who operated the Incinerator became employees of GE Silicones effective January 1, 2003.

20. The Administrative Services Agreement was signed on behalf of GE and GESI by the same individual.
21. In April 2001, a GE manager represented in writing to DEC that GE would “continue to remain responsible for demonstrating financial assurance for the [F]acility....”
22. In March 2002, GE provided financial assurances to New York State for the Waterford Facility.
23. In a letter dated March 20, 2003, GE’s Chief Financial Officer represented to New York State that GE was “an owner or operator” of the Waterford Facility.
24. GE provided New York State with a Guarantee for Liability Coverage and a Financial Guarantee for Closure and/or Post-Closure Care for the Waterford Facility in separate written agreements, each dated March 20, 2003 and each signed by GE’s Chief Financial Officer.
25. In a letter dated May 29, 2003 and sent by New York State to GE’s Corporate Environmental Programs, the State explained that it had reviewed corrections and amendments to GE’s financial assurance submittal. A lawyer, employed by GE’s Environmental, Health and Safety (“EHS”) section, was carbon copied on the letter.
26. In a letter dated March 18, 2004, GE’s Chief Financial Officer represented to New York State that GE was “an owner or operator” of the Waterford Facility.
27. Also in March 2004, an employee from GE’s Corporate Environmental Programs sent New York State documents relating to GE’s financial assurances of the Facility.
28. GE provided New York State with a Guarantee for Liability Coverage and a Financial Guarantee for Closure and/or Post-Closure Care for the Facility in separate written agreements, each dated March 18, 2004 and each signed by GE’s Chief Financial Officer.
29. In a letter dated November 4, 2004 and sent to GE’s Corporate Environmental Programs,

New York State noted that it had reviewed GE's financial assurance documents.

30. In a letter dated March 9, 2005, GE's Chief Financial Officer represented to New York State that GE was "an owner or operator" of the Waterford Facility.
31. Also in March 2005, an employee from GE's Corporate Environmental Programs sent New York State documents relating to GE's financial assurances of the Facility.
32. GE provided New York State with a Guarantee for Liability Coverage and a Financial Guarantee for Closure and/or Post-Closure Care for the Facility in written agreements dated March 9, 2005 and signed by GE's Chief Financial Officer.
33. In March 2006, GE once again provided a Guarantee for Liability Coverage and a Financial Guarantee for Closure and/or Post-Closure Care for the Facility to New York State.
34. In September 2006, GE, through its Senior Vice President in charge of Corporate Business Development, entered into a Stock and Asset Purchase Agreement ("SAPA") with Nautilus Holdings Acquisition Corporation ("Nautilus"), in which GE sold its global silicones business – including the Waterford Facility – to Nautilus.
35. The GE-Nautilus transaction included the merger of GESI into a Nautilus subsidiary, Momentive Performance Materials USA, Inc. ("MPM").
36. In December 2006, a certificate of merger was filed to notify New York State of the merger of GESI into MPM. This document was signed on behalf of GESI by a GE manager.
37. A number of high-level GE employees were involved in the merger of GESI into MPM.
38. In connection with the SAPA, GE, through its Senior Vice President, Corporate Business Development, entered into a Transition Services Agreement with Nautilus.
39. As a result of the merger of GESI into MPM, on December 4, 2006, MPM became the owner of 100% of the equity of GE Silicones, whose assets included the Waterford Facility.

40. GE Silicones subsequently changed its name to MPM Silicones. MPM Silicones filed a name change application with DEC requesting that the Permits be transferred from GE Silicones to MPM Silicones effective December 4, 2006. Also on this date, MPM Silicones became the “owner” of the Waterford Facility as that term is used in 40 C.F.R. § 63.2 and 6 N.Y.C.R.R. 370.2.
41. In connection with this SAPA, GE entered into a Services Agreement with Nautilus, under which GE agreed to provide personnel to operate the Incinerator for 60 days from the date of closing.
42. Pursuant to the Service Agreement, GE provided MPM Silicones with employees to operate the Incinerator from December 4, 2006 through February 7, 2007. According to the terms of this Agreement, GE employees operating the Incinerator during this period “shall not be considered, and shall not hold themselves out as, employees, representatives or partners” of MPM Silicones.
43. As a result of this Service Agreement, GE continued to be an “operator” of the Waterford Facility as that term is used in 40 C.F.R. § 63.2 and 6 N.Y.C.R.R. § 370.2.
44. When the Service Agreement ended, on or about February 7, 2007, the GE employees operating the Incinerator became employees of MPM Silicones. On this date, MPM Silicones became both the “owner” and “operator” of the Waterford Facility as those terms are used in 40 C.F.R. § 63.2 and 6 N.Y.C.R.R. § 370.2.

V. Rotary Kiln Incinerator

45. GE used the Incinerator to burn hazardous wastes generated onsite. The Incinerator consisted of a rotary kiln and a secondary combustion chamber. The Incinerator also included air-pollution control systems including a rapid quench chamber, a counter-current

packed scrubber, and two three-stage wet ionizing scrubbers ("Scrubbers"). Flue gas was pulled through the pollution control devices by two induced draft fans. The exhaust from these two fans was directed to a common stack.

46. If the Incinerator was ever inoperable, some operations at the Facility would shut down or be delayed.
47. The Facility was required by the Permits and CAA regulations to monitor 76 operating parameters relating to the Incinerator's operation. Each parameter was monitored using a monitoring device, *e.g.*, flow meters, pressure meters, and temperature monitoring devices. One-minute block averages and hourly rolling averages could be determined by using the same monitoring device.
48. The Incinerator system utilized several devices to gather and record operating parameter data generated by the monitoring devices. First, a monitoring device transmitted a digital value to the digital control system ("Provox"), which was the main computer control system for the Incinerator. Provox received data from the operating parameter monitoring devices at least once every 15 seconds. Some of the operating parameters were monitored based upon their instantaneous value (combustion chamber pressure), while others were monitored based upon an average value (either one-minute block averages or hourly rolling averages). Provox calculated any required averages from the instantaneous values it received.
49. Provox also sent signals to the various devices that operated the Incinerator and had a console. The Provox console provided the Incinerator operators with real-time operating data and allowed the operators to adjust various Incinerator devices, such as the waste feed pumps, valves, and air fans.

50. The Facility was equipped with a data-historian system (the "PI system"), which was used to record the operating parameter data received by Provox. The PI system also recorded the date and time of each data point it received.
51. The Incinerator included an automatic waste feed cut-off ("AWFCO") system that was designed to automatically stop the waste feed to the Incinerator if one of the 76 operating parameters either exceeded or was below a set point established by performance testing or by standards set forth in regulations and the Permits. Operating parameter monitoring devices sent digital values to Provox. Provox then compared the value received (or, in the case of averaged parameters, the average value) to the AWFCO set point for that operating parameter. If the values exceeded the maximum or were below the minimum AWFCO set point, Provox automatically closed the waste feed system valves, thereby halting the flow of waste to the Incinerator. The PI system recorded the date, time, and relevant operating parameter for each AWFCO initiated by Provox. Provox continued to receive operating parameter values during the period in which the waste feed was halted.
52. The Permits required the Incinerator's monitoring devices to undergo routine calibrations. For instance, the carbon monoxide ("CO") and oxygen monitors were to be calibrated daily; Scrubber pH meters were to be calibrated weekly; and all remaining monitoring devices were to be calibrated monthly.
53. Incinerator operators had the ability to take operating parameters offline and place the monitoring equipment into calibration mode ("Cal-Mode"), which allowed GE employees to calibrate the Incinerator's monitoring devices without tripping the AWFCO system. The operators initiated Cal-Mode for the operating parameters by using the Provox console. The operators would have to take each operating parameter offline separately.

54. Additionally, Provox was connected to an event historian called Logmate, which recorded operator actions in the system. Logmate recorded the date and time when the operating parameters were placed into Cal-Mode, and by whom.
55. When an averaged operating parameter was placed into Cal-Mode, Provox held the last averaged operating parameter value calculated prior to the initiation of Cal-Mode. This allowed the averaged readings from operating parameter monitors to remain below, or above, the set point while the monitors were calibrated. While the averaged readings stayed below, or above, the set point, Provox would not send a signal to the AWFCO system to cut off the waste feed.
56. During Cal-Mode for averaged operating parameters, the PI system continued to record the instantaneous operating parameter values, including the date and time each value was received by the digital control system.
57. For operating parameters that were required to be monitored on an instantaneous basis by regulation and the Title V Permit (such as combustion chamber pressure), the signal from Provox to initiate the required AWFCO was interrupted during Cal-Mode.
58. When an operating limit was outside its permitted value, the AWFCO system was designed to automatically cut off the waste to the Incinerator until that parameter was again within the permitting limits. By cutting off the hazardous waste feed to the Incinerator, the AWFCO prevented additional hazardous waste from being incinerated while the Incinerator was operating outside permitted limits. The AWFCO system was designed to limit a release of hazardous waste to the environment.
59. The Provox system had a built-in Cal-Mode function for 14 of the monitoring devices. The function of this mode was to avoid AWFCOs during calibration of the monitoring devices.

60. On many occasions, GE Incinerator operators placed the Incinerator in Cal-Mode for instantaneously monitored and controlled parameters (*e.g.*, combustion chamber pressure), in order to avoid AWFCOs. By doing so, Incinerator operators prevented the signal from the Provox from activating the shut-off valve. When this was done, the continuous reading for average parameters (*e.g.*, CO concentration), was frozen at its average value prior to being placed in Cal-Mode. This allowed GE employees to continue to feed hazardous wastes into the Incinerator even when an operating limit was outside its permitted value, and prevented the AWFCO system from operating.
61. Cal-Mode was an original part of Provox – the digital control system. Cal-Mode had been used by GE since at least the 1990s. Using Provox, operators were able to place the Incinerator in Cal-Mode for a specific parameter from their console.
62. GE was aware, at least as early as 1998, that placing the Incinerator into Cal-Mode to avoid AWFCOs violated New York State law.
63. The Permits and regulations required the owners and/or operators of the Facility to submit monthly reports, annual compliance certification reports, and semi-annual compliance monitoring reports to DEC addressing the operation of the Incinerator.
64. The Permits and the CAA regulations required the owners and/or operators of the Facility to monitor and report to DEC whether the operation of the Facility was in compliance with the Permits and the CAA regulations.
65. GE's annual compliance reports for the years 2003 through 2005 affirmatively state that the Facility is in compliance with the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, 40 C.F.R. §§ 63.1200–1221 (Part 63, Subpart EEE).
66. Under its RCRA Permit, GE was required to submit to DEC “monthly reports summarizing

the operations of the rotary kiln incinerator for the calendar month.” In these monthly reports, GE, at a minimum, was required to list: (i) the total number of AWFCOs; (ii) the number of AWFCOs by operating parameter; (iii) for each AWFCO, the date and time of the incident, operating parameter causing the cutoff, the operating parameter’s AWFCO limit, maximum or minimum value that the operating parameter reached outside of the operating conditions (only for CO, combustion chamber temperature and combustion chamber pressure), duration that operating conditions were exceeded and any corrective measures taken; and (iv) ongoing efforts to reduce the number of automatic waste feed cut-offs.

67. GE failed to report all unauthorized uses of Cal-Mode in its annual and monthly compliance reports to DEC or to EPA as required by its Permits.
68. Since at least 1992 until February 2007, GE employees placed the Incinerator into unauthorized Cal-Mode thousands of times in order to bypass the AWFCO system and to continue to operate the Incinerator. As a result of its unauthorized use of Cal-Mode, GE released hazardous substances to the environment in violation of the conditions set forth in its Permits.
69. GE’s ongoing practice of using Cal-Mode to avoid AWFCOs continued until February 2007.
70. GE never disclosed to EPA or DEC its practice of using Cal-Mode to avoid AWFCOs.

VI. CAA AND ECL ARTICLE 19 STATUTORY AND REGULATORY

BACKGROUND

1. National Emissions Standards for Hazardous Air Pollutants Regulations

71. Section 112 of the CAA, 42 U.S.C. § 7412, requires EPA to publish a list of hazardous air pollutants (“HAPs”), and further requires EPA to promulgate regulations establishing national emissions standards, referred to as National Emissions Standards for Hazardous Air

Pollutants (“NESHAPs”) for these pollutants. The Act also directs EPA to promulgate these emissions standards based on the maximum achievable control technology (“MACT”).

72. On March 16, 1994, EPA promulgated 40 C.F.R. §§ 63.1–.16 (Part 63, Subpart A), which set forth definitions and general requirements applicable to all sources subject to any NESHAP promulgated under 42 U.S.C. § 7412.
73. 40 C.F.R. § 63.2 defines “existing source” as any affected source that is not a new source.
74. 40 C.F.R. § 63.2 defines “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source; and defines “stationary source” as any building, structure, facility, or installation that emits or may emit any air pollutant.
75. 40 C.F.R. § 63.2 defines “major source” to include any stationary source that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of HAPs.
76. Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), authorizes EPA to require owners and operators of any emission source to provide specific information regarding their facilities; establish and maintain records; make reports; sample emission points; and install, use, and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the CAA.

2. Hazardous Waste Combustor NESHAP

77. On September 30, 1999, EPA promulgated the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (“Hazardous Waste Combustor NESHAP”), 40 C.F.R. §§ 63.1200–1221 (Part 63, Subpart EEE).

78. The Waterford Facility was subject to the CAA, the Hazardous Waste Combustor NESHAP, and ECL Article 19 because it was a major source of HAPs emitting 10 tons per year or more of a HAP or 25 tons per year or more of any combination of HAPs.
79. 40 C.F.R. § 63.1200 indicates that the provisions of the Hazardous Waste Combustor NESHAP applies to, *inter alia*, hazardous waste incinerators. The provisions of ECL § 19-0304 apply to burning hazardous waste in a hazardous waste incinerator.
80. The Incinerator at the Waterford Facility is a hazardous-waste incinerator within the meaning of the CAA and ECL Article 19.
81. Existing sources, such as the Waterford Facility, were required to comply with the Hazardous Waste Combustor NESHAP by no later than September 30, 2003. 40 C.F.R. § 63.1206(a).
82. The Hazardous Waste Combustor NESHAP sets specific limits for dioxins and furans; mercury; lead and cadmium; arsenic, beryllium and chromium; CO; hydrochloric acid and chlorine gas; and particulate matter that are emitted from existing sources into the atmosphere. 40 C.F.R. § 63.1203(a). For example, the limit for CO specifies that emissions must not be in excess of 100 parts per million (“ppm”) by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system (“CEMS”)).
83. 40 C.F.R. § 63.1207(b)(1) requires sources of such emissions to conduct a comprehensive performance test to demonstrate compliance with the emission standard(s) provided by the Hazardous Waste Combustor NESHAP, establish operating parameter limits for the operating parameters provided by Section 63.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

84. 40 C.F.R. § 63.1210(d), requires that a Notification of Compliance (“NOC”) include, *inter alia*, results of the comprehensive performance test, and be submitted to EPA and the state.
85. On July 22, 2004, GE submitted to EPA and DEC a NOC for the Incinerator. The NOC contained the results of the comprehensive performance test and established the operating parameters GE would use to determine continual compliance. Table B of the NOC contained the operating parameters (*i.e.*, negative pressure in the Incinerator’s combustion chamber shall not exceed -0.3 inches of water and the scrubber voltage shall not go below 17 kilovolts) that, if deviated from, should trigger AWFCOs.
86. 40 C.F.R. § 63.1206(c)(1)(i), required GE to operate the Incinerator in compliance with the operating parameters specified in the NOC.
87. 40 C.F.R. § 63.1203(a)(5)(i), prohibits owners and operators of emission sources such as the Incinerator, from causing combustion gases to be emitted into the atmosphere that contain CO in excess of 100 ppm over an hourly rolling average.
88. 40 C.F.R. § 63.1201, defines an AWFCO system as a system comprised of cutoff valves, actuator, sensor, data manager, and other necessary components and electrical circuitry designed, operated and maintained to stop the flow of hazardous waste to the combustion unit automatically and immediately when any operating parameter limit is exceeded.
89. 40 C.F.R. § 63.1206(c)(3)(i), required the Incinerator to have a functioning AWFCO system that immediately cut off hazardous waste feed when the Incinerator was operating outside the operating parameter limits.
90. Pursuant to 40 C.F.R. § 63.1206(c)(3)(iv), an owner or operator of the Incinerator has failed to comply with the AWFCO requirements set out in Section 63.1206(c)(3) if the AWFCO system fails to automatically and immediately cutoff the flow of hazardous waste upon

exceedance of a parameter required to be interlocked with the AWFCO.

91. 40 C.F.R. § 63.1209(a)(1)(i), requires owners or operators using an incinerator to use a CO CEMS to monitor compliance with the CO operating parameter contained in Section 63.1203(a)(5)(i).
92. 40 C.F.R. § 63.1209(a)(2) requires owners or operators using an incinerator to install, calibrate, maintain and continuously operate the CEMS in compliance with the quality assurance procedures provided in the Hazardous Waste Combustor NESHAP Appendix.
93. Pursuant to Condition 6.2 of the Hazardous Waste Combustor NESHAP Appendix, a facility may continue to burn hazardous waste for a maximum of 20 minutes while calibrating the CO CEMS.
94. 40 C.F.R. § 63.1209(b)(1), requires owners or operators using an incinerator to have continuous monitoring systems (“CMS”) (e.g., thermocouples, pressure transducers and flow meters), to document compliance with the applicable operating parameters under the Hazardous Waste Combustor NESHAP.
95. 40 C.F.R. § 63.1209(b)(3), requires an incinerator’s CMS to, *inter alia*, sample each operating parameter without interruption, and compute and record the average values every 60 seconds.
96. 40 C.F.R. § 63.1209(p), requires owners or operators using an incinerator to instantaneously monitor the combustion chamber pressure and the AWFCO system must be engaged when negative pressure is not adequately maintained in the combustion chamber.

3. NYS Title V Operating Permit Program

97. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), EPA promulgated regulations establishing the Title V operating permit program. The Title V operating permit program is

administered by State air pollution control agencies under EPA-approved state statutory programs. 57 Fed. Reg. 32250 (July 21, 1992); 40 C.F.R. Parts 70 and Part 71. DEC is the State agency that administers the EPA-approved NYS Title V Permit Program pursuant to New York's approved air pollution laws set forth in ECL Article 19 and 6 NYCRR Part 200 *et seq.*

98. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d) and 40 C.F.R. § 70.4 requires states to submit to EPA for approval its statutory permitting program, developed in accordance with Part 70. If EPA approves the state permitting program, the state is authorized to administer the Title V operating permit program.
99. On January 31, 2002, EPA approved NYS's Title V Operating Permit Program. The NYS Title V Operating Permit Program is set forth in ECL Article 19 and 6 N.Y.C.R.R. Part 201. In its Title V Operating Permit Program, NYS has incorporated by reference the federal CAA regulations in 40 CFR Part 60 *et seq.*, and has the authority to include those applicable requirements in operating permits. 6 NYCRR § 200.10
100. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), 40 C.F.R. § 70.6(6)(i), and 6 NYCRR Part 201 of the NYS Title V Operating Permit Program, make it unlawful for any person to operate a major source except in compliance with a Title V Permit.
101. 6 N.Y.C.R.R. § 201-6.5(c)(2) requires records of all monitoring data and support information be retained for at least five years from the date of the monitoring, sampling, measurement, report, or application. The provision specifies that support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, all quality assurance information and copies of all reports required by the permit.

102. 6 N.Y.C.R.R. § 201-6.5(e) requires that sources certify compliance with the Title V Permit annually and submit annual compliance certifications to DEC and EPA.

4. CAA Title V Permit

103. DEC received GE's Title V Permit application for the Facility on December 9, 1998.

104. On May 23, 2001, GE submitted to DEC an application to transfer the Title V Permit to GE Silicones. The same person signed this Permit application for both GE and GE Silicones.

105. On November 27, 2001, DEC issued Title V Permit No. 5-4154-00002/01743 to GE for the Facility. On September 1, 2002, DEC modified the Title V Permit transferring the Permit to GE Silicones. Both the initial Permit and the 2002 modification indicated that the contact for the Facility was GE. The initial Permit and the 2002 modification are referenced together for purposes of this Complaint as the "Title V Permit."

106. Condition 68 of the Title V Permit required GE to comply with 40 C.F.R. § 63, Subpart EEE by September 30, 2003. This Condition incorporated the requirements of the Hazardous Waste Combustor NESHAP into the Title V Permit, which included the CO emission standards, the AWFCO operating parameters, the comprehensive performance test requirement, the CO CEMS and CMS monitoring requirements, recordkeeping requirements and notification requirements.

107. Pursuant to Condition 1-4 of the Title V Permit, the Facility was required to submit a compliance certification annually that identified each term or condition of the Title V Permit that is the basis of the certification, the compliance status, whether compliance was continuous or intermittent, and the method(s) used for determining the compliance status of the Facility.

5. CAA and ECL Enforcement Authority

108. 42 U.S.C. § 7413(a)(3), provides that EPA may bring a civil action if EPA finds that any person has violated or is in violation of CAA requirements, including 40 C.F.R. Part 63, Subpart EEE, Title V of the CAA, any permit issued pursuant to Title V of the Act, and the NYS Title V Operating Permit Program. ECL § 71-2103 provides that DEC may bring a civil action against any person for violations of ECL Article 19 and/or the regulations promulgated thereunder, 6 NYCRR Part 201 or any permit issued pursuant to those provisions. The United States and the State, having undertaken to prosecute this matter jointly, do not seek to recover duplicative penalties under both federal and state law for the violations asserted herein.

109. 42 U.S.C. § 7413(b), authorizes EPA to initiate a civil enforcement action for injunctive relief and civil penalties of up to:

- a. \$27,500 per day for each violation that occurred from January 31, 1997 through March 15, 2004; and
- b. \$32,500 per day for each violation that occurred from March 16, 2004 through January 12, 2009.

110. ECL § 71-2103 authorizes DEC to initiate a civil administrative and judicial enforcement action for civil penalties, and provides that any person who violates any provision of ECL Article 19, or any regulation promulgated thereunder, shall be liable for a civil penalty as follows:

- a. From October 1998 to May 15, 2003, for a first violation: up to \$10,000 per violation, and \$10,000 per day for each day the violation continues; for a second and any subsequent violations: up to \$15,000 per violation, and \$15,000 per day

for each day the violation continues; and

- b. From May 16, 2003 to January 2009, for a first violation: up to \$15,000 per violation, and \$15,000 per day for each day the violation continues; for a second and any subsequent violation: up to \$22,500 per violation, and \$22,500 per day for each day the violation continues.

VII. CAA CLAIMS FOR RELIEF

- 111. Paragraphs 1 through 110 are realleged and incorporated herein by reference.
- 112. At all times relevant to this Complaint, GE was a “person” within the meaning of 42 U.S.C. § 7602(e) and ECL § 19-0107(1).
- 113. At all times relevant to this Complaint, GE was the “owner” and/or “operator” of the Facility within the meaning of 40 C.F.R. § 63.2 and the owner/operator of an air contamination source within the meaning of ECL § 19-0107(5) and (19).
- 114. At all times relevant to this Complaint, the Facility was an “existing source” within the meaning of 40 C.F.R. § 63.2.
- 115. At all times relevant to this Complaint, the Facility was a “major source” within the meaning of 40 C.F.R. § 63.2 and a “major air contamination source” within the meaning of ECL § 19-0107(19).
- 116. At all times relevant to this Complaint, GE was subject to the terms and conditions of the Title V Permit issued by DEC and to the statutory and regulatory requirements of the CAA, 40 CFR Part 63, ECL Article 19, and 6 NYCRR Part 201 *et seq.*

1. The Incinerator Emitted CO in excess of 100 ppm

- 117. Paragraphs 1 through 116 are realleged and incorporated herein by reference.
- 118. Condition 68 of the Title V Permit prohibited GE from causing combustion gases containing

CO in excess of 100 ppm from being discharged into the atmosphere from the Incinerator.

119. On at least October 7, 2006 and November 21, 2006, the Incinerator owned or operated by

GE discharged CO in excess of 100 ppm.

120. Each of these discharges constitutes a violation by GE of the CAA, the Hazardous Waste

Combustor NESHAP, Title V of the CAA, the NYS Title V Operating Permit Program, ECL

Article 19 and 6 NYCRR Parts 200 - 201, and the Title V Permit.

121. For each violation referenced in this claim, GE is subject to civil penalties as set forth in

Paragraphs 109 and 110.

2. Failure to Continuously Operate the Incinerator AWFCO System

122. Paragraphs 1 through 121 are realleged and incorporated herein by reference.

123. 40 C.F.R. §§ 63.1206(c)(3)(i) and (iv) and 6 NYCRR § 200.10, table 4, required GE to

continuously operate an AWFCO system at the Incinerator that would stop the flow of hazardous waste to the Incinerator automatically and immediately when any operating parameter was exceeded.

124. 40 C.F.R. 63.1209(p) requires, *inter alia*, that the AWFCO system be engaged when negative pressure is not adequately maintained in the combustion chamber.

125. From at least September 30, 2003 through February 7, 2007, GE placed the Incinerator monitors into unauthorized Cal-Mode on a number of occasions in order to avoid AWFCOs when operating parameters were exceeded. Those occasions included:

- a. When CO was emitted in excess of 100 ppm as set forth above, in paragraph 119;
- b. When negative pressure was not adequately maintained in the Incinerator's combustion chamber (-0.3 inches of water) on at least 28 occasions; and
- c. When the voltage for the Scrubbers fell below 17 kilovolts on at least two

occasions.

126. Each of these violations is a violation of the CAA, the Hazardous Waste Combustor

NESHAP, Title V of the CAA, the NYS Title V Operating Permit Program, ECL Article 19 and 6 NYCRR Parts 200 - 201, and the Title V Permit. For each violation referenced in this claim, GE is subject to penalties as set forth in Paragraphs 109 and 110.

3. Failure to Continuously Monitor Incinerator Operating Parameters

127. Paragraphs 1 through 126 are realleged and incorporated herein by reference.

128. 40 C.F.R. § 63.1209(b)(3) and 6 NYCRR § 200.10, table 4, require GE to continuously monitor the Incinerator's CMS to, *inter alia*, sample each operating parameter without interruption, and compute and record the average values every 60 seconds.

129. From at least September 30, 2003 through February 7, 2007, GE failed to monitor continuously the Incinerator operating parameters by placing the Incinerator monitors into unauthorized Cal-Mode and by continuing to feed hazardous waste into the Incinerator.

130. Each of these violations is a violation of the CAA, the Hazardous Waste Combustor NESHAP, Title V of the CAA, the NYS Title V Operating Permit Program, ECL Article 19 and 6 NYCRR Parts 200 - 201, and the Title V Permit.

131. For each violation referenced in this claim, GE is subject to penalties as set forth in Paragraphs 109 and 110.

4. Failure to Identify Noncompliance with Incinerator's Operating and Monitoring Parameters in GE's Annual Title V Certifications

132. Paragraphs 1 through 131 are realleged and incorporated herein by reference.

133. 6 N.Y.C.R.R. § 201-6.4(e) requires that sources certify compliance annually and submit annual certifications to DEC and EPA.

134. Condition 1-4 of the Title V Permit required the Facility to submit a compliance certification

annually to DEC that contained an identification of each term or condition of the Title V Permit that is the basis of the certification, the compliance status, whether compliance was continuous or intermittent, and the method(s) used for determining the compliance status of the Facility.

135. For years 2003, 2004, and 2005, GE submitted annual compliance certification reports that falsely reported its compliance status with the Hazardous Waste Combustor NESHAP, NYS's Title V Operating Permit Program, ECL Article 19 and 6 NYCRR Parts 200 - 201, and the Title V Permit.

136. Each of these submissions is a violation of the CAA, the Hazardous Waste Combustor NESHAP, Title V of the CAA, the NYS Title V Operating Permit Program, ECL Article 19 and 6 NYCRR Parts 200 - 201, and the Title V Permit.

137. For each violation referenced in this claim, GE is subject to penalties as set forth in Paragraphs 109 and 110.

VIII. RCRA AND ECL ARTICLE 27 STATUTORY AND REGULATORY

BACKGROUND

1. Federal and Federally-Authorized State Hazardous Waste Regulations

138. In 1976, Congress enacted RCRA, amending the Solid Waste Disposal Act, to regulate hazardous waste management. RCRA Subtitle C, 42 U.S.C. § 6921, *et seq.*, empowers EPA to identify and list hazardous wastes. It also authorizes EPA to regulate hazardous waste generators, transporters, and the owners and operators of hazardous waste treatment, storage, and disposal facilities. EPA has promulgated federal regulations to implement RCRA Subtitle C that are set forth at 40 C.F.R. Parts 260-279. Pursuant to 42 U.S.C. § 6926, EPA

may authorize a state to develop and administer its own RCRA hazardous waste management regulations in lieu of the federal regulations.

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139. In September 1978, the New York Legislature passed hazardous waste laws set forth in ECL Article 27, Title 9, which from time to time were thereafter amended consistent with RCRA. On May 29, 1986, EPA granted New York State final authorization to administer certain State hazardous waste regulations in lieu of the federal regulations. *See* 51 Fed. Reg. 17737. On various later dates, EPA authorized New York State to administer additional hazardous waste laws and regulations. 40 C.F.R. § 272.1651. *See also* 67 Fed. Reg. 49864 (August 1, 2002), 70 Fed. Reg. 1825 (Jan. 11, 2005), 74 Fed. Reg. 31380 (July 1, 2009), and 78 Fed. Reg. 15299 (Mar. 11, 2013). The federally-authorized New York State hazardous waste regulations, are set forth at 6 N.Y.C.R.R. Parts 370–376.
140. The authorized New York State hazardous waste regulations are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA at 40 C.F.R. § 272.1651(c).
141. On or about August 18, 1980, GE, in accordance with the requirements of Section 3010 of RCRA, 42 U.S.C. § 6930, notified EPA that it conducted activities involving “hazardous waste” at the Waterford Facility. In response to that notification, EPA provided GE with EPA RCRA identification number NYD002080034.
142. GE thereafter submitted both its Part A and Part B permit applications to the DEC. On or about October 19, 1989, DEC, based upon GE’s Parts A and B permit applications, issued a RCRA Hazardous Waste Permit (NYD002080034) to GE (the “1989 Permit”) for the storage and disposal of hazardous waste by incineration and/or landfilling at the Waterford Facility. The 1989 Hazardous Waste permit became effective on December 18, 1989 and was to

expire on December 17, 1994.

143. Under the terms of the 1989 Permit, GE was the owner and operator of the Waterford Facility.

144. Pursuant to 6 N.Y.C.R.R. §§ 373-1.6(a)(2) and 373-1.8, if a permittee wished to continue an activity regulated by its permit after the permit had expired, that permittee had to timely submit a complete application for a permit renewal.

145. Prior to the expiration of the 1989 Permit, on or about October 18, 1993, GE submitted to DEC its RCRA Part B permit renewal application which, pursuant to the State Administrative Procedure Act § 401 and DEC's regulations, 6 N.Y.C.R.R. § 621.11(l), administratively extended the 1989 RCRA Permit. GE continued to operate the Incinerator at the Waterford Facility.

146. In or about January 1999, DEC issued a renewal of GE's RCRA Permit, for the operation of its Waterford Facility, including the Incinerator. The renewed RCRA Permit took effect on or about January 12, 1999 and was set to expire on January 12, 2004. From time to time thereafter, DEC issued minor modifications to the RCRA Permit. In or about November 2000, GE formed a limited liability company known as GE Silicones, LLC, with a principal place of business at the Waterford Facility. In or about June 2001, GE requested that DEC transfer the RCRA Permit to GE Silicones and DEC approved the substitution of GE Silicones as the named permittee on the RCRA Permit.

147. Under the terms of the RCRA Permit, GE, and thereafter GE Silicones, was the owner and operator of the Waterford Facility.

148. In accordance with the requirements of the RCRA Permit, GE Silicones, on or about July 14, 2003, submitted to DEC a timely and complete RCRA Part B permit-renewal application.

149. Since GE Silicones timely submitted a permit renewal request and was awaiting approval by DEC, GE Silicones was authorized pursuant to the State Administrative Procedure Act § 401 and DEC's regulations, 6 N.Y.C.R.R. § 621.11(l), to continue to operate the Waterford Facility under the terms and conditions of the RCRA Permit.

2. RCRA and ECL Enforcement Authority

150. 42 U.S.C. § 6928(a) authorizes EPA to commence a civil action to enforce the requirements of the federally-approved NYS hazardous waste program. ECL § 71-2705 authorizes DEC to enforce the requirements of NYS's hazardous waste program set forth in ECL Article 27, Title 9 and 6 NYCRR Parts 370-376, and to enforce the terms and conditions of hazardous waste permits. The United States and the State, having undertaken to prosecute this matter jointly, do not seek to recover duplicative penalties under both federal and state law for the violations asserted herein.

151. 42 U.S.C. § 6928(g) provides that any person who violates any requirement of a federal RCRA regulation, or any requirement of a federally-authorized state hazardous waste program, shall be liable to the United States for a civil penalty. This section authorizes the United States to initiate a civil enforcement action for civil penalties of up to:

- a. \$27,500 per day for each violation that occurred from January 30, 1997 through March 15, 2004; and
- b. \$32,500 per day for each violation that occurred from March 16, 2004 through January 12, 2009.

152. ECL § 71-2705 provides that any person who violates any provision of, or who fails to perform any duty imposed by New York's hazardous waste laws and regulations, ECL Article 27, Title 9 and 6 NYCRR Parts 370-376, or violates any term or condition of a RCRA

Permit, shall be liable for a civil penalty as follows:

- a. From January 30, 1997 through May 15, 2003, not more than \$25,000 for each initial violation, and \$25,000 for each day the initial violation continues; and not more than \$50,000 for the second and any further violation, and \$50,000 for each day the second and any further violation continues.
- b. From May 16, 2003 through February 5, 2007, not more than \$37,500 for each initial violation, and \$37,500 for each day the initial violation continues; and not more than \$75,000 for the second and any further violation, and \$75,000 for each day the second and any further violation continues.

VIII. RCRA CLAIMS FOR RELIEF

153. Paragraphs 1 through 70 and 138 through 152 are realleged and incorporated herein by reference.
154. At all times relevant to this Complaint, GE has been a “person” as that term is defined in 42 U.S.C. § 6903(15) and 6 N.Y.C.R.R. § 370.2.
155. At all times relevant to this Complaint, GE has been the “owner” and/or “operator” of the Waterford Facility, as those terms are defined in 6 N.Y.C.R.R. § 370.2.

1. Failure to Maintain a Functioning Automatic Waste Feed Cut-Off System.

156. Paragraphs 1 through 70 and 138 through 155 are realleged and incorporated herein by reference.
157. Module IX Section D: OPERATING CONDITIONS, Item (12) of the RCRA Permit provides “the permittee must maintain the system specified in Table IX.4 of this permit module to automatically stop the flow of hazardous waste to the incinerator when the operating conditions are not within the limits established in Sections IX.C and IX.D of this

module.”

158. Pursuant to 6 N.Y.C.R.R. § 373-2.15(f)(5) “an incinerator must be operated with a functioning system to automatically cut off waste when operating conditions deviate from limits established under paragraph (1) of this subdivision.”
159. From September 2006, until on or about February 7, 2007, GE placed the Incinerator into unauthorized Cal-Mode at least 1,859 times.
160. Each time the Incinerator was placed into unauthorized Cal-Mode, GE’s failure to maintain a functional waste-feed system to automatically stop the flow of hazardous waste to the Incinerator when the operating conditions were not within the limits established by the permit constituted a violation of Module IX Section D: OPERATING CONDITIONS Item (12) of the RCRA Permit and 6 N.Y.C.R.R. § 373-2.15(f)(5).
161. For each violation referenced in this claim, GE is subject to penalties as set forth in Paragraphs 151 and 152.

2. Failure to Cease Operating the Incinerator when Operating Conditions Exceeded Limits Designated in the RCRA Permit

162. Paragraphs 1 through 70 and 138 through 161 are realleged and incorporated herein by reference.
163. Module IX Section D: OPERATING CONDITIONS, Item (14) of the RCRA Permit provides: “[t]he Permittee must cease operation of the incinerator when changes in ... operating conditions exceed[] limits designated in this permit as required by 6 N.Y.C.R.R. § 373-2.15(f)(6).”
164. Pursuant to 6 N.Y.C.R.R. § 373-2.15(f)(6) “[t]he Permittee must cease operation of the incinerator when changes in ... operating conditions exceed[] limits designated in this permit.”

165. From September 2006, until on or about February 7, 2007, GE failed to cease operation of the Incinerator when changes in operating conditions were outside the limits designated in the RCRA Permit on at least 1,859 occasions.
166. Each time the Incinerator was placed in unauthorized Cal Mode when changes in the operating conditions exceeded the limits designated in the RCRA Permit, GE failed to cease operation of the Incinerator which constituted a violation of Module IX Section D: OPERATING CONDITIONS Item (14) of the RCRA Permit and 6 N.Y.C.R.R. § 373-2.15(f)(6).
167. For each violation referenced in this claim, GE is subject to penalties as set forth in Paragraphs 151 and 152.

3. Failure to Obtain A RCRA Hazardous Waste Permit

168. Paragraphs 1 through 70 and 138 through 167 are realleged and incorporated herein by reference.
169. At all times relevant to this Complaint, GE has been a “person” as that term is defined 42 U.S.C. § 6903(15) and 6 N.Y.C.R.R. § 370.2.
170. At all times relevant to this Complaint, GE has been the “owner” and/or “operator” of the Facility as those terms are defined in 6 N.Y.C.R.R. § 370.2.
171. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6295, and 6 N.Y.C.R.R. Subpart 373-1.2(a) “no person shall operate an existing hazardous waste management facility without a permit issued pursuant to this Part.”
172. Each and every Day between December 5, 2006 and February 7, 2007, on which GE operated the Incinerator without first having obtained a hazardous waste permit to operate a hazardous waste storage, treatment and disposal facility constituted a separate violation of 42

U.S.C. § 6295 and 6 N.Y.C.R.R. § 373-1.2.

173. For each violation referenced in this claim, GE is subject to penalties as set forth in Paragraphs 151 and 152.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America and the State of New York, respectfully requests that the Court grant the following relief:

1. For violations of federal law, assess a civil penalty of:
 - a. \$27,500 per day for each violation occurring on or between January 31, 1997 and March 15, 2004; and
 - b. \$32,500 per day for each violation occurring on or between March 16, 2004 and January 12, 2009; and
2. For violation of New York law, assess a civil penalty:
 - a. Pursuant to ECL § 71-2103 (CAA)-from October 1998 to May 15, 2003, for a first violation: up to \$10,000 per violation, and \$10,000 per day for each day the violation continues; for a second and any subsequent violations: up to \$15,000 per violation, and \$15,000 per day for each day the violation continues; and from May 16, 2003 to January 2009, for a first violation: up to \$15,000 per violation, and \$15,000 per day for each day the violation continues; for a second and any subsequent violation: up to \$22,500 per violation, and \$22,500 per day for each day the violation continues; and
 - b. Pursuant to ECL § 71-2705 (RCRA)-from January 30, 1997 through May 15, 2003, not more than \$25,000 for each initial violation, and \$25,000 for each day

the initial violation continues; and not more than \$50,000 for the second and any further violation, and \$50,000 for each day the second and any further violation continues; and from May 16, 2003 through February 5, 2007, not more than \$37,500 for each initial violation, and \$37,500 for each day the initial violation continues; and not more than \$75,000 for the second and any further violation, and \$75,000 for each day the second and any further violation continues.

3. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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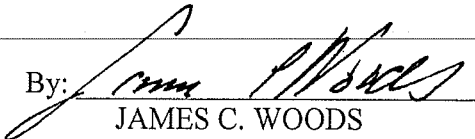
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