

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

GENERAL ELECTRIC COMPANY,

CASE NO. 1:12cv484

Plaintiff,

Judge Michael R. Barrett

v.

UNITED STATES OF AMERICA,

Defendant.

**DECISION & ORDER**

Plaintiff General Electric Company ("GE") filed this action against Defendant United States of America ("United States") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, to recover costs that GE incurred in investigating and cleaning up the former United States Air Force Plant 36 site ("AFP 36") in Evendale, Ohio. The United States' alleged liability stems from its ownership of AFP 36 from 1940-1989 and the related manufacturing and overhauling of military aircraft engines through the use of government contractors from 1940 through 1989 at AFP 36. GE purchased AFP 36 in 1989 from the Air Force, and GE presently is conducting environmental response actions at and related to AFP 36 under oversight by the United States Environmental Protection Agency and the Ohio Environmental Protection Agency. The parties have filed a proposed Consent Decree along with their Joint Motion for Entry of Consent Decree ("Joint Motion"). (Doc. 2).

**I. THE CONSENT DECREE**

Pursuant to the proposed Consent Decree, the United States will pay GE the sum of Eleven Million Dollars (\$11,000,000.00) to settle past environmental response costs incurred by GE at and related to AFP 36. GE has alleged over Fifteen Million Dollars (\$15,000,000.00) in such past response costs. The proposed Consent Decree also requires the United States to pay 67% of all "future response costs" incurred by GE. The proposed Consent Decree further provides for various releases and covenants not to sue, contribution protections, procedures for allocating past response costs or future response costs recovered from third parties, and procedures for dispute resolution. The Court is to retain jurisdiction over the Consent Decree and of the parties so that the parties may apply for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of the Consent Decree, or to effectuate or enforce compliance with its terms.

**II. STANDARD OF REVIEW**

It is well settled that in reviewing a consent decree, a district court must satisfy itself that the proposed settlement is "fair, adequate and reasonable, as well as consistent with the public interest." *United States v. Jones & Laughlin Steel Corp.*, 804 F.2d 348, 351 (6th Cir. 1986). *Accord: United States v. County of Muskegon*, 298 F.3d 569, 580-91 (6th Cir. 2002). The decision "to approve or reject a settlement proposal is committed to the sound discretion of the trial judge." *S.E.C. v. Randolph*, 736 F.2d 525, 529 (9th Cir. 1984). *Accord: Jones & Laughlin Steel Corp.*, 804 F.2d at 351. However, in so reviewing the proposal, the district court should give the settlement considerable deference. *See Sam Fox Pub. Co. v. United States*, 366 U.S. 683, 689 (1961); *United*

*States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981); *United States v. Associated Milk Producers, Inc.*, 535 F.2d 1113, 1117 (8th Cir. 1981). The district court also should keep in mind the strong policy favoring voluntary settlement of litigation. *United States v. Lexington-Fayette Urban County Gov't*, 591 F.3d 484, 490 (6th Cir. 2010) (citing *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1436 (6th Cir. 1991)).

### III. **ANALYSIS**

Having reviewed the proposed Consent Decree, the Court finds that it is reasonable, fair and consistent with the public interest. The settlement is the product of what the parties characterize as long-term negotiations during which the parties extensively reviewed, analyzed and discussed the facts and the potential liabilities. The parties avow that the negotiations were conducted at arm's length by legal and technical representatives with experience in CERCLA-related matters. The parties reached the settlement after appearing before a mediator with special experience in CERCLA response cost claims involving the United States. Moreover, the settlement appears to be adequate given that it addresses all of the claims made by GE in the Complaint, resolves both past and future response costs, and considers, among other things, the parties' respective roles at the site, the substantial nature of the issues in dispute, the significant costs which have been and will be incurred at the site, and the length and expenses of litigation. It also assures that those responsible for the release of hazardous substances bear responsibility for remedying those conditions, which is consistent with the objectives of CERCLA. *Dedham Water Co. v. Cumberland Farms Dairy, Inc.*, 805 F.2d 1074, 1081 (1st Cir. 1986). *Accord: Walls v. Waste Resource Corp.*, 823 F.2d 977, 980-81 (6th Cir. 1987).

**IV. CONCLUSION**

For the reasons stated above, the Joint Motion (Doc. 2) is hereby **GRANTED**.

The Consent Decree will be entered by the Court forthwith.

**IT IS SO ORDERED.**

s/ Michael R. Barrett \_\_\_\_\_  
Michael R. Barrett, Judge  
United States District Court