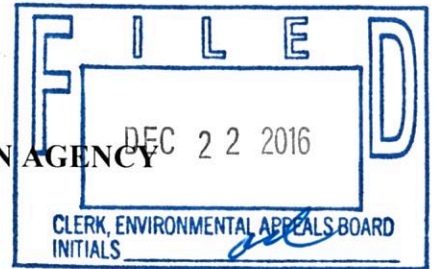


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____)
In re:)
) RCRA Appeal No. 16-01
General Electric Company)
))
Permit No. MAD002084093)
_____)

ORDER CONFIRMING DATE FOR RESPONSE

The General Electric Company petitioned for review of a modification of a corrective action permit that the U.S. Environmental Protection Agency, Region 1 issued under the Resource Conservation and Recovery Act (“RCRA”). *In re General Electric Co.*, RCRA Appeal No. 16-01. The Commonwealth of Massachusetts has filed a notice of appearance under 40 C.F.R. § 124.19(b)(4) in this proceeding. Section 124.19(b)(4) authorizes a “State or Tribal authority” where a permitted facility or site is proposed to be located to file a response to any petition challenging the permit before the Environmental Appeals Board. The Commonwealth is “one of the States of the United States,” 40 C.F.R. § 124.2; *see* U.S. Const. art. I, § 2; Mass. Ann. Laws, Const. app. pt. 2, and the challenged permit applies to the cleanup of the Housatonic River, a portion of which flows through Massachusetts.

Massachusetts has requested that the Board confirm that its response to General Electric’s petition is due on January 31, 2017, which is the current deadline for Region 1’s response to the petition. Under section 124.19(b)(4), a State or Tribal authority’s response to a petition is due “by the deadlines in paragraph (b)(1) or (2) of this section.” 40 C.F.R. § 124.19(b)(4). Those paragraphs provide that the EPA Regional Administrator has 30 days to respond to a petition challenging a permit other than certain permits under the Clean Air Act. *Id.* As Massachusetts

has noted, the Board has previously interpreted section 124.19(b)(4) as making the due date for a State's response identical to the Regional Administrator's deadline, irrespective of whether or not the Regional Administrator observes the prescribed deadline in section 124.19(b)(1) or (2), or the Board grants the Regional Administrator an extension of that prescribed deadline. *See In re Star Sewer & Water Dist. Wastewater Treatment Plant*, NPDES Appeal No. 15-07, at 1 (EAB May 28, 2015) (Order Granting Motion for the Extension of Time). The Board further held in *Star Sewer* that when the Board grants an extension to the response filing date to the Regional Administrator, States and Tribal authorities need not file a motion requesting a similar extension. *Id.* at 2. Rather, the extended date for filing a response automatically applies to States and Tribal authorities. Accordingly, Massachusetts' response to the petition filed by General Electric is due by January 31, 2017, the date the Board established for submission of the Region's response to that petition based on the Region's request for an extension. *See In re General Electric Co.*, RCRA Appeal Nos. 16-01 – 16-05, at 2 (EAB December 15, 2016) (Order Granting Motion for Extension of Time, Denying the Region's Request to File a Consolidated Response, and Clarifying that General Electric May File a Response).

So ordered.

ENVIRONMENTAL APPEALS BOARD¹

Dated: December 22, 2016

By: Kathie A. Stein
Kathie A. Stein
Environmental Appeals Judge

¹ The three-member panel deciding this matter is composed of Environmental Appeals Judges Aaron P. Avila, Kathie A. Stein, and Mary Beth Ward.

CERTIFICATE OF SERVICE

I certify that copies of the forgoing *ORDER CONFIRMING DATE FOR RESPONSE* issued December 22, 2016, in the matter of *In re General Electric Co.*, RCRA Appeal No. 16-01, were sent to the following persons in the manner indicated:

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DEC 22 2016
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Annette Duncan
Administrative Specialist