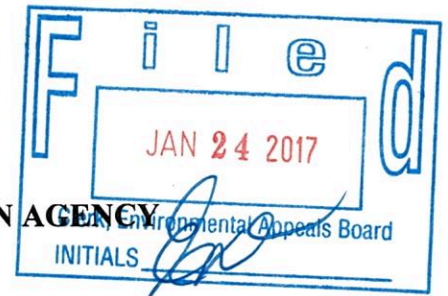


**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



In re:)
General Electric Company) RCRA Appeal Nos. 16-01, 16-02, 16-03,
Permit No. MAD002084093) 16-04, and 16-05

**ORDER GRANTING REQUEST FOR EXTENSIONS OF TIME
FOR RESPONSE AND REPLY BRIEFS**

U.S. Environmental Protection Agency, Region 1, has filed an unopposed motion requesting an extension of time for the filing of its responses to five petitions for review of a modification to a Resource Conservation and Recovery Act (“RCRA”) permit, *In re General Electric Co.*, Appeal Nos. 16-01, 16-02, 16-03, 16-04, and 16-05. The motion was electronically filed with the Board on January 18, 2017, and the responses are currently due on January 31, 2017. The Region requests a due date of February 14, 2017, for filing its responses as well as the certified administrative record index and the relevant portions of the administrative record.

Although no party opposed the Region’s motion, both the petitioner in RCRA Appeal No. 16-01, the General Electric Company, and the petitioner in RCRA Appeal No. 16-04, the Housatonic Rest of River Municipal Committee (“Municipal Committee”), have filed related motions. The Municipal Committee requests that the Board set a common deadline for reply briefs in the five permit challenges so that all parties have an equal amount of time to prepare and that no party receives an advantage by obtaining the last word. Further, the Committee requested a common deadline for reply briefs of March 14, 2017. In its motion, General Electric “assents” to the Municipal Committee’s request for a common due date for replies but argues

that it would be premature to establish such date prior to the filing of the responses. In the alternative, General Electric proposes that if a common due date is selected now it should be March 27, 2017. General Electric defends this date by citing the two extensions of time for responses sought by the Region, and arguing that a March 27th date would give petitioners one-half of the time the Region will have to respond to the petitions, assuming a February 14th due date for its responses. General Electric notes that the Board's regulations provide petitioners with one-half of the time that a permitting authority has to respond to a petition. 40 C.F.R. § 124.19(b), (c)(2) (establishing 30 days for a response and 15 days for a reply).

We find that a further extension of time for the Region's responses, certified record index, and relevant portions of the record, is appropriate and justified given the complexity of this matter and the large number of parties. Moreover, to ensure an orderly process and consistent with our prior orders in these cases, we now order that the due date for *all responses to all five petitions* shall be **February 14, 2017**. See *In re General Electric Co.*, RCRA Appeal No. 16-01 (EAB Dec. 22, 2016) (Order Confirming Date for Response); *In re General Electric Co.*, RCRA Appeal Nos. 16-01 – 16-05 (EAB Dec. 15, 2016) (Order Granting Requests for Extensions of Time). Further, for similar reasons, we grant the Municipal Committee's request for a common due date for *all replies in all five petitions* and set that date as **March 27, 2017**.¹

¹ If any petitioner chooses to file a consolidated reply to multiple responses rather than separate replies, that consolidated reply must not exceed the 7,000 word limitation at 40 C.F.R. § 124.19(d)(3), see *In re General Electric Co.*, RCRA Appeal Nos. 16-01 – 16-05, at 3 (EAB Dec. 15, 2016) (Order Granting Requests for Extensions of Time), except as to General Electric's reply to the Region's response. See *In re General Electric*, RCRA Appeal No. 16-01 (EAB Nov. 8, 2016) (Order Granting Request for Exceedance of Word Limitations) (granting an expansion of the word limitation for this reply to 8,500 words).

We note that General Electric’s argument that it should be granted a longer time period to prepare a reply because “[t]he Board’s regulations (40 C.F.R. § 124.19(c)(2)) grant a petitioner one-half the amount of time granted for a response to the petition to submit the petitioner’s reply to said response” carries little weight in our decision to extend the time for replies. The regulations establish a shorter time for reply briefs because the word limitation for a reply brief is one-half that of a response brief and a reply brief “may not raise new issues or arguments.” 40 C.F.R. § 124.19(c)(2); see *In re Knauf Fiber Glass GmbH*, 8 E.A.D. 121, 126 n.9 (EAB 1999) (“New issues raised for the first time at the reply stage * * * are equivalent to late filed appeals and must be denied on the basis of timeliness.”). More relevant to our decision are the complexity of the issues and the number of petitions/responses to which each party needs to respond/reply. Notably, these latter two considerations are not identical for the parties in this litigation. Nonetheless, our establishment of a common due date for reply briefs of March 27, 2017, is without prejudice to any party filing a motion for a further extension of time for reply briefs.

So ordered.

Dated: January 29, 2017

ENVIRONMENTAL APPEALS BOARD²

By: Kathie A. Stein

Kathie A. Stein
Environmental Appeals Judge

² 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 GRANTING REQUEST FOR EXTENSION OF TIME* issued January 24, 2017, in the matter of *In re General Electric Co.*, RCRA Appeal Nos. 16-01, 16-02, 16-03, 16-04, and 16-05, were sent to the following persons in the manner indicated:

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