

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

_____)		
In the Matter of:))	
GENERAL ELECTRIC COMPANY,))	RCRA Appeal No. 16-01
Modification of RCRA Corrective Action))	
Permit No. MAD002084093))	
_____))	

COMMONWEALTH OF MASSACHUSETTS' MOTION FOR LEAVE TO FILE
SURREPLY

The Commonwealth of Massachusetts (Commonwealth) respectfully submits this Motion in connection with the General Electric Company's (GE) Petition for Review of the EPA's Modification of the RCRA Corrective Action Permit. Specifically, GE raises for the first time in its Reply three new issues or arguments: 1) that the Commonwealth has a controlling statutory duty under CERCLA § 104(c)(9) to assure that sufficient room exists for the disposal of hazardous wastes generated in-state and that EPA is allowing the Commonwealth to avoid this obligation; 2) the national disposal capacity of existing hazardous waste landfills; and 3) the Commonwealth's intention in promulgating 310 CMR 30.708, which prohibits a hazardous waste facility in an ACEC.

In light of newly raised issues in GE's March 27, 2017 Reply brief, the Commonwealth believes that a Surreply will assist the Board in its deliberations. The Board has discretion to grant requests to file a surreply, and has done so "in cases where new arguments are raised in

opposing reply briefs or where further briefing would assist the Board in resolving disputed issues.” *In re Arcelor Mittal Cleveland, Inc.*, NPDES Appeal No. 11-01 at 1 (EAB Dec. 9, 2011). In further support of this Motion, the Commonwealth states that GE’s discussion of these new issues is misleading or inaccurate, and the Commonwealth seeks the opportunity to point out and correct GE’s misleading or inaccurate discussion of the issues. The Board has also exercised its discretion to grant requests to file a surreply to address misleading or inaccurate statements. *FutureGen Industrial Alliance, Inc.*, UIC Appeal No(s) 14-68, 14-69, 14-70 & 14-71 at 1-2 (EAB Dec. 15, 2014).

On April 14, 2017, the Commonwealth filed a Motion to Strike these same three issues. The Commonwealth files this Motion for Leave to File Surreply in the alternative to its Motion to Strike, and an Order by the Board granting the Commonwealth’s Motion to Strike would obviate the need for the Board to rule on this Motion.

The Commonwealth has consulted with GE regarding this Motion, and GE, through its counsel, Jeffrey Porter, has indicated that GE will determine its position concerning this Motion after it is reviewed by GE. The Commonwealth has consulted with Connecticut regarding this Motion, and Connecticut, through its counsel, Lori D. DiBella, has assented to the Motion. The Commonwealth has consulted with EPA regarding this Motion, and EPA, through its counsel, Timothy Conway, has assented to the Motion.

Date: 4/14/17

RESPECTFULLY SUBMITTED

COMMONWEALTH OF MASSACHUSETTS

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2017, true and correct copies of the Commonwealth's Motion for Leave to File Surreply were served:

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