

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

IN THE MATTER OF:)
General Electric Co.) Nos. RCRA 16-01, 16-02, 16-03, 16-04, 16-05
RCRA Permit No. MAD002084093)
)

REPLY IN SUPPORT OF MOTION FOR EXTENSION OF TIME
TO SUBMIT AMICUS BRIEFS

The Housatonic Rest of River Municipal Committee (“Municipal Committee”) respectfully submits this reply brief in support of its motion for an extension of the deadline to submit amicus briefs. This motion was assented to by the Region, the states of Massachusetts and Connecticut, the Massachusetts Audubon Society, and C. Jeffrey Cook. GE opposed.

Extension request is warranted. The extension request is warranted. GE does not deny the complexity of the matter, or that the Municipal Committee seeks to make the briefing process more efficient (by trying to coordinate the filing of one amicus brief by multiple amici), or that amicus briefs should take into account the response briefs submitted yesterday by the Region and the states.¹ Rather, GE’s primary arguments are that the Municipal Committee should have asked sooner, and that the Municipal Committee should have filed a brief responding to GE’s petition no later than when the Region and the states filed their responding briefs. GE Opp. at 2. On timeliness, extension motions are timely if filed sufficiently in advance of the due date to allow parties to oppose and to allow the Board to issue an order; GE does not contend that either condition is not met here, or even that it has been prejudiced by any delay. 40 C.F.R. §

¹ It has also come to the Municipal Committee’s attention that other entities, all of whom lack anything like the resources that GE can devote to these permit appeals, are considering an amicus filing, and may need until March 27 to prepare an amicus brief and/or to decide whether to join an amicus brief.

124.19(g). There also is nothing in the Board’s prior scheduling orders that forecloses the Municipal Committee’s request for an extension to submit an amicus brief – the Board’s prior order clarified that all response briefs were due February 14, and that all reply briefs are due on March 27, without addressing amicus briefs.

GE is also wrong to imply that there is anything unusual or unfair in the Municipal Committee’s joining other amici in filing an amicus brief, instead of filing a responding brief on February 14 or including amicus-type arguments in its original petition. The Board’s rules state that only challenges to the permit are to be included in a petition for review, and that only the Region, the permit applicant, and the states are entitled to file responding briefs. 40 C.F.R. § 124.19(a)(4) & (b). Joining an amicus brief is the Municipal Committee’s only clear option under the rules to support portions of the Region’s selected remedy. GE implies that an extension would amount to special treatment for the Municipal Committee, GE Opp. at 3, but this is not so: the Municipal Committee is seeking an extension that would apply to *all* parties interested in filing an amicus brief.²

GE’s request for a sur-response should be denied. Finally, GE seeks permission to file a response to any amicus briefs, which would delay the close of briefing in this matter. The Municipal Committee opposes this request. The rules clearly state that amicus briefs are to be submitted at the end of the briefing cycle, and do not authorize what is effectively a sur-response brief by a petitioner in support of its petition. Moreover, GE offers no reason that it, unlike other petitioners in other proceedings, should be entitled to respond to any amicus briefs, other than

² See Motion for Extension at 1 (seeking extension applicable to “all amicus briefs”). Similarly, the Municipal Committee’s January motion for clarification/extension requested that all deadline extensions applicable to GE’s reply brief “also be applied equally to any and all briefs that would otherwise be due on the same date (*i.e.*, within 15 days of the Region’s response brief under 40 C.F.R. § 124.19).” Municipal Committee Motion for Clarification and Motion for Extension of Time at 1 (Jan. 22, 2017).

the fact that this proceeding is generally large and complex.³ In its amicus brief, it is expected that the Municipal Committee and other amici will mainly offer a regional perspective on issues that have been raised in prior briefs. Oral argument should afford GE ample opportunity to address any new amicus arguments that GE has not previously addressed.

Conclusion. In sum, the Municipal Committee respectfully requests that the Board extend the deadline for the filing of amicus briefs to March 27, 2017.

February 15, 2017

Respectfully submitted,

Housatonic Rest of River Municipal Committee

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³ GE cites several cases where the Board has authorized a reply to an amicus brief, GE Opp. at 3 n.1, but it appears that most or all of these cases pre-date the current rule, which explicitly authorizes submission of amicus briefs at the end of the briefing cycle. See EAB Practice Manual (Aug. 2013), at 48 (“Part 124 states that any interested person may file an amicus brief, otherwise known as a ‘friend of the court’ brief, in any permit appeal pending before the EAB provided it is filed no later than 15 days after the permit issuer files its response brief”); *id.* at 48 n.50 (“Previously, Part 124 did not address non-party participation or non-party briefs in permit appeal proceedings except where a petition for review had been granted.”); EAB Practice Manual (June 2012), at 46 (old rule: “Part 124 does not specifically address non-party participation or non-party briefs in permit appeal proceedings, except where review has been granted.”).

CERTIFICATE OF SERVICE

I certify that a copy of this Reply in Support of Motion for Extension of Time to Submit Amicus Briefs has been sent to the counsel listed below.

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