

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)	
)	

REGION 1’S MOTION FOR LEAVE TO FILE A SUR-REPLY

Region 1 of the United States Environmental Protection Agency (“the Region”) respectfully submits this motion in connection with the General Electric Company (“GE”) petition for review of the Region’s Modification of the RCRA Corrective Action Permit (“the Permit”) to GE. In light of newly-raised issues in GE’s March 27, 2017 Reply brief, the Region believes that the attached Sur-reply will assist the Board in its deliberations. Specifically, GE presents for the first time in its Reply two new contentions: first, a new argument to restrict agreed-upon Consent Decree authority to ensure protective cleanups, and, second, with respect to Future Work responsibilities, GE contradicts its agreement regarding responsibility for the polychlorinated biphenyls (“PCBs”) from its Pittsfield facility. Both these new arguments should be rejected both procedurally and substantively.

The Board has discretion to grant requests to file Sur-reply briefs, 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) (*Order Granting in Part EPA’s Motion to file Surreply, Denying Petitioner’s Request to Provide Additional Information, and Granting Oral*

Argument); see also, *In re D.C. Water & Sewer Auth.*, NPDES Appeal Nos. 05-02, 07-10 to 12 at 1-2 (EAB Aug. 3, 2007) (*Order Granting Leave to File Surreply and Accepting Surreply for filing*). Both factors apply here and counsel in favor of accepting the Region's attached Sur-reply in this matter.

The Region recognizes that the Board's regulations at 40 C.F.R. Part 124 do not call for Sur-reply as a matter of right and that the Board has scheduled oral argument in this matter.¹ The Region accordingly will reserve for oral argument other issues relating to GE's Reply. The Region has limited its request for Sur-reply to two topics where the Region believes its concise responses will significantly advance and clarify the Board's consideration.

The Region has consulted with GE regarding this motion, and GE said it will determine its position on the motion after it reviews EPA's motion.

Respectfully submitted,

April 12, 2017

/s/ Timothy M. Conway

Date

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¹ C.f., *In re Town of Concord Dept. of Public Works*, NPDES Appeal No. 13-08 (EAB Jan. 6, 2014) (*Order Scheduling Oral Argument and Denying Motion for Leave to File a Sur-reply*).

CERTIFICATE OF SERVICE

I, Timothy M. Conway, hereby certify that true and correct copies of EPA Region 1's

Motion for Sur-reply were served:

Via the EPA's E-Filing System on April 12, 2017 to:

Eurika Durr
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U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
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Via E-Mail (per agreement of the parties) on April 12, 2017 to:

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