



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

VIA ELECTRONIC FILING

February 16, 2018

Ms. Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3334
Washington, DC 20004

RE: General Electric Company
Modification of RCRA Corrective Action Permit No. MAD002084093
RCRA Appeal No. 16-01

Dear Ms. Durr:

Please find EPA Region 1's Reply to GE's Opposition to EPA's Motion for Partial Reconsideration, and accompanying Certificate of Service, in connection with the appeal that is referenced above.

Respectfully submitted,

/s/ Samir Bukhari
Samir Bukhari
Assistant Regional Counsel
Mail Code OES 04-5
5 Post Office Square, Suite 100
Boston, MA 02109-3912
bukhari.samir@epa.gov
p: (617) 918-1095
f: (617) 918-0095

Enclosures

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)	
)	

**EPA’S REPLY TO GE’S OPPOSITION TO EPA’S MOTION FOR
PARTIAL RECONSIDERATION**

I. INTRODUCTION

Region 1 of the United States Environmental Protection Agency (“EPA”) filed its Motion for Partial Reconsideration (“Reconsideration Motion”) in this matter on February 5, 2018. EPA submits this Reply to General Electric Company’s (“GE’s”) Opposition to EPA’s Motion for Partial Reconsideration (“Opposition”), in accordance with the EPA Environmental Appeals Board’s (“EAB’s” or “Board’s”) February 6, 2018, *Scheduling Order on Motion for Reconsideration*.

II. ARGUMENT

GE’s Opposition does nothing to undermine the principal grounds for granting the relief requested in the Region’s Reconsideration Motion. Actually, the Opposition manages to accomplish the very opposite result:

1. GE contends that EPA waived its opportunity to make the argument included in its Reconsideration Motion because “GE clearly challenged the Additional Work Requirements as in conflict with the Consent Decree.” Opposition at 2, citing to Petition of the General Electric Company at 48, 45-46. But the arguments referenced by GE only

serve to make concrete EPA's original, dispositive objection. In making each of these arguments, GE presumed—fatally, for the purposes of its Opposition—the applicability of the Consent Decree. In this, its understanding is no different than EPA's, which is not at all surprising, because that is what the Permit and the CD on their face *unambiguously require*. If the presence of the phrase “in accordance with the Consent Decree” was sufficient for the Board to deny review of the Biota and Downstream Performance Standards, then the Board should deny review of the Additional Work Requirement on that same basis, because both provisions are subject to the identical limitation, by the express operation of the Permit and CD. Nowhere in any of the pages referenced by GE does the company claim that the Additional Work Requirement was ambiguous for want of the phrase “in accordance with the Consent Decree” or similar formulation. That specific rationale, as the Region correctly observed in its Motion, was invoked for the first time by the Board in its decision, precipitating this Reconsideration Motion.

2. GE declines to even acknowledge, much less distinguish, applicable EAB precedent cited by the Region as grounds for its Reconsideration Motion. In *Sun Pipe Line Co.*, 2002 EPA App. LEXIS 49, *22-23 (E.P.A. July 11, 2002), the Board determined that a permit provision was *not* ambiguous based on the “clear intent” of the permit; specifically, it concluded that two separate reporting provisions should both “be addressed to the Director,” even where only one provision contained that clause. The issue in the instant case is conceptually identical to *Sun Pipe Line*, and the reasoning in that decision, if applied here, must lead to the conclusion that the Additional Work Requirement provision is unambiguous. Any perceived ambiguity is illusory, and resolved as follows: by reading the Permit in its entirety, then fully and logically accounting for all its provisions.

Indeed, GE in its Opposition does not disagree with the substantive point the Region made in its Reconsideration Motion—that the Additional Work Requirement is to be implemented in accordance with the overall Consent Decree—an admission that renders remand proceedings on this point moot.

3. GE's Opposition does not challenge the Region's explanation of how the provisions in the Permit mandate that any Additional Work Requirements be carried out in accordance with the Rest of River Statement of Work. Reconsideration Motion at 5; 2016 Permit, at II.B.6.b.(2). Nor would GE have any basis to object, as the inter-operation of these aspects of the Permit and CD is straightforward. To the extent that the Board relied, in remanding the Permit, on an erroneous understanding of how these aspects of the Permit inter-relate, that decision was clearly erroneous.

III. CONCLUSION

The Region requests that the Board grant the Reconsideration Motion.

Respectfully submitted,

February 16, 2018

/s/ Samir Bukhari
Samir Bukhari
Tim Conway
Joanna Jerison
Counsel for EPA Region 1
Mail Code OES 04-5
5 Post Office Square, Suite 100
Boston, MA 02109-3912
bukhari.samir@epa.gov
p: (617) 918-1095
f: (617) 918-0095

CERTIFICATE OF SERVICE

I, Samir Bukhari, hereby certify that true and correct copies of EPA's Reply were served:

Via the EPA's E-Filing System on February 16, 2018 to:

Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
WJC East Building, Room 3334

Via E-Mail on February 16, 2018 to:

Jeffrey R. Porter
Andrew Nathanson
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.
One Financial Center
Boston, MA 02111

Kathleen E. Connolly
Louison, Costello, Condon & Pfaff, LLP
101 Summer Street
Boston, MA 02110

Jeffrey Mickelson
Deputy General Counsel
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108

Lori DiBella
Assistant Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0210

Richard Lehan
General Counsel
Massachusetts Department of Fish and Game
251 Causeway Street, Suite 400
Boston, MA 02114

Matthew F. Pawa
Benjamin A. Krass
Pawa Law Group, P.C.
1280 Centre Street
Newton, MA 02459

James R. Bieke
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

Robert D. Cox, Jr.
Jennifer Garner
Bowditch & Dewey, LLP
311 Main Street
P.O. Box 15156
Worcester, MA 01615

Richard M. Dohoney
Angela W. Haylon
Donovan O'Connor & Dodig, LLP
1330 Mass MoCA Way
North Adams, MA 01247

C. Jeffrey Cook
9 Palomino Drive
Pittsfield, MA 01201

Jane Winn
Berkshire Environmental Action Team, Inc.
29 Highland Ave.
Pittsfield, MA 01201-2413

Timothy Gray
Housatonic River Initiative, Inc.
P.O. Box 321
Lenoxdale, MA 01242-0321

/s/ Samir Bukhari