

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

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**In the Matter of:** )  
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 ) **RCRA Appeal Nos. 16-01, 16-02, 16-**  
 ) **03, 16-04, and 16-05**  
**GENERAL ELECTRIC COMPANY** )  
**Modification of RCRA Corrective Action** )  
**Permit No. MAD002084093** )

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**REGION 1’S RESPONSE TO GE’S OPPOSITION TO COMBINED WORD LIMIT**

Pursuant to the Board’s Order of November 22, 2016, Region 1 of the United States Environmental Protection Agency (“the Region”) responds to the opposition by General Electric Company (“GE”) to the Region’s motion for a word limit of 56,000 words for a consolidated response to all five petitions filed in this matter.<sup>1</sup> GE’s proposal to allocate specific limits within that brief to the number of words used to respond just to GE’s petition is unworkable and unnecessary. (GE styles its opposition as “to [the] *expansion* of word limits;” however, the Region notes again that the Region’s request for a single limit for its consolidated brief represents fewer words than would otherwise be available under 40 C.F.R. 124.19(d)(3).) As discussed below, the Region requests that its motion be granted in full.

GE argues that the Region’s failure to agree to limit its response to GE’s petition to 17,000 words within the consolidated brief is not consistent with the Board’s Order of November 8, 2016; and is not consistent with 40 C.F.R. Section 124.19(d)(3).<sup>2</sup> Finally, GE argues that the

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<sup>1</sup> The five petitioners are: Housatonic River Initiative, Inc. (“HRI”), C. Jeffrey Cook (“Cook”); the Housatonic Rest of River Municipal Committee (“Municipal Committee”); the Berkshire Environmental Action Team, Inc. (“BEAT”); and GE.

<sup>2</sup> GE’s citation, 124.19(e)(3), contains a typographical error. GE Opposition at 2.

Region can easily allocate its words responding to GE's petition because "most of GE's arguments" were not made in any other petition. None of these points is accurate, as explained below.

First, the Region believes that the Board's Order of November 22, 2016, which GE did not mention, is more pertinent to this issue than the Board's Order of November 8, 2016. The November 22 Order, coming after the Region's November 16, 2016 Unopposed Motion for Extension of Time and Establishment of a Single Deadline for Responses to Petitions for Review, anticipated that, after all petitions were filed, Region 1, GE or any other party might file a motion "addressing such matters as the potential consolidation of Region 1's response(s) to the petitions...." The Order recognized that the Region might seek to consolidate its responses to all the petitions filed, and that the Region asserted that having one deadline would allow the Board to consider all the petitions "in setting an appropriate word limitation" for that brief. Thus the Region's present motion is entirely consistent with the November 22 Order.

Second, although 40 C.F.R. 124.19(d)(3) sets the same word limit for petitions and responses, it also gives the Board authority to increase a word limit where a party can demonstrate a compelling and documented need, given unusual circumstances. It says nothing about strictly allocating word counts in a brief that consolidates numerous responses in order to promote efficiency. Indeed, it would impose an unnecessary, and in the Region's view unworkable, administrative burden on the parties and the Board to enforce allocated word counts within a brief. Taken to its extreme, the benefits of consolidation would be undermined by the burden of artificially separating responses within the brief.

Third, the Region strongly disagrees that it can easily allocate its words that respond to GE's petition. There is considerable overlap among the elements of the permit that the five

petitioners are challenging, even though the *reasons* for their challenges differ. The following is a representative list of issues raised or permit provisions challenged by both GE and other petitioners:

- Legal standard of review: GE, Municipal Committee
- Off-Site disposal: GE, BEAT, HRI
- Woods Pond: GE, HRI, BEAT
- Rising Pond: GE, HRI
- Sediment Remedy: Reaches 5A, 5B, Backwaters, Woods Pond, Rising Pond, Reach 7 impoundments: GE, BEAT, HRI, Cook
- Floodplain and Vernal Pools: GE, BEAT, HRI, Cook
- Continuing Obligations: GE, BEAT, Municipal Committee

This list, which may not be exhaustive, covers the majority of substantive permit provisions. It illustrates the benefit of having a consolidated response, which will allow the Board more efficiently to consider the parts of the Administrative Record that address these provisions, regardless of the differing reasons for the challenges. It also illustrates the extreme difficulty of allocating words in the Region's response to GE alone.

The Region's request for the 56,000 words is also justified not only by the complexities of the overlapping issues raised by GE and other petitioners, but by the fact that the four other petitioners collectively raise other challenges not raised by GE. Some of these non-GE challenges include preemption, concerns about staging areas, and alternative treatment options, including thermal desorption. Indeed, GE has even requested the opportunity to separately respond to one such petition. Finally, as the Region stated in its motion, it will not object to

reasonable requests by the petitioners for additional time or word limits for their replies to the Region's response.

Respectfully submitted,

/s/ Timothy M. Conway

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Date

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## CERTIFICATE OF SERVICE

I, Timothy M. Conway, hereby certify that on December 13, 2016, true and correct copies of Region 1's Response to GE's Opposition to Combined Word Limit were served:

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