

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

In re:)	
)	
GENERAL ELECTRIC COMPANY)	RCRA Appeal No. 21-01
)	
Modification of RCRA Corrective Action)	
Permit No. MAD002084093)	
)	

**GENERAL ELECTRIC COMPANY’S MEMORANDUM IN SUPPORT
OF EPA REGION I’S MOTION TO STRIKE**

On April 7, 2021, EPA Region I (“EPA”) filed a motion to strike several attachments to the brief filed by petitioners, the Housatonic River Initiative (“HRI”) and the Housatonic Environmental Action League (“HEAL”), which are not part of the Administrative Record for the permit challenged in this proceeding. General Electric Company (“GE”), the permittee of that permit, submits this memorandum in support of EPA’s motion to strike.

The attachments subject to EPA’s motion are Attachments 5, 6, 8, 9, 10, 11, 13, 14, 15, and 17 to HRI and HEAL’s brief. Two of those attachments (Attachments 6 and 14) are also attached (as Attachments 1 and 2) to the brief filed on March 26, 2021 by certain groups as *amici curiae* in support of petitioners. These documents were not submitted to EPA in comments, are not in the Administrative Record, and are not subject to official notice by the Board.¹ As such, they are not properly before the Board and cannot be considered in the current appeal.

¹ Petitioners’ Attachments 5, 6, 8, 9, 10, 11, and 14 consist of written statements by a number of individuals or other non-governmental documents that have been presented for the first time in this appeal as purported support for certain factual allegations by petitioners and their supporting *amici* in their briefs. Petitioners’ Attachments 13, 15, and 17 are EPA guidance documents, but were not considered by EPA in its permit decision given that, as EPA shows in its motion to strike (at 4), they are not relevant to the subject permit.

The Board's rules provide that a final permit decision must be based on the administrative record, which "shall be complete on the date the final permit is issued," 40 C.F.R. § 124.18(a) & (c), and that attachments to a brief are to consist of "[p]arts of the record," *id.* § 124.19(c)(2). Those regulations make clear that parties cannot submit, as attachments to their briefs, documents that were not previously submitted to EPA and are not part of the administrative record. Indeed, in its 2018 decision on a prior version of the permit at issue here, the Board stated that it "will not consider studies" that are not in the administrative record and are "presented for the first time on appeal." *In re General Electric Co.*, 17 E.A.D. 434, 582 n.62 (EAB 2018). Thus, the extra-record documents attached to the briefs of petitioners and their supporting *amici* should be stricken.

WHEREFORE GE respectfully submits that the Board should grant EPA's motion to strike.

Respectfully submitted,

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Dated: April 8, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April 2021, I served one copy of the foregoing General Electric Company's Memorandum in Support of EPA Region I's Motion to Strike on each of the following by electronic mail:

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