

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

_____)
In the Matter of:)
) 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)
_____)

REGION 1’S PARTIALLY UNOPPOSED AND PARTIALLY OPPOSED MOTION FOR
EXTENSION OF TIME, CONSOLIDATION OF RESPONSES, AND SETTING WORD
LIMITS

Region 1 of the United States Environmental Protection Agency (“the Region”) respectfully submits this motion in connection with the five petitions for review of the Region’s Modification of the RCRA Corrective Action Permit (“the Permit”) to Permittee General Electric Company (“GE”). The Region requests the following: first, that the Board extend the time required for the Region’s submission of its response to the five petitions, the certified administrative record index, and the relevant portions of the administrative record; second, that the Board allow for the Region to submit a single consolidated response to the five petitions; and third, that the word limit for the Region’s consolidated response be greater than the word limit for a single response, but significantly less than the limit for five individual responses.

A total of five petitions for review of the Permit have been filed, including from the Housatonic River Initiative, Inc. (“HRI”); C. Jeffrey Cook; the Housatonic Rest of River Municipal Committee (“Municipal Committee”); the Berkshire Environmental Action Team, Inc (“BEAT”); and GE. On November 8, 2016, the Board, in granting GE’s motion for expansion

of the word limits of its petition, allowed the Region 17,000 words to respond to GE's petition of approximately 17,000 words.

On November 22, 2016, the Board extended the date for the Region's response(s), certified index to the administrative record, and relevant portions of the administrative record, until thirty days after the filing of the last timely-filed petition. The Board also allowed that following the filing of all petitions, the parties may file additional motion(s), addressing such matters as the potential consolidation of the Region's responses to the petitions and the timing for the Region's response(s) and/or the petitioners' reply briefs.

Based on its review of the five petitions, and following consultation with the five petitioners (and Massachusetts Audubon Society ("Audubon"), which filed a notice of status as an interested party with the Board), the Region respectfully requests the following:

1. that the Board extend the time required for the Region to submit its response to the five petitions, its certified Administrative Record index, and relevant portions of the Administrative Record from December 23, 2016 to January 31, 2017;
2. that the Board allow the Region to provide one consolidated response to the five petitions; and
3. that the word limit for the consolidated response be set at 56,000, which represents 17,000 fewer words than is allowed to respond separately to the five individual petitions (assuming that each individual response other than to GE would have been 14,000 words, and to GE would have been 17,000 words).

Additionally, in light of the complexity of this matter, the Region will not object to reasonable requests by the petitioners for additional time or word limits for their replies to EPA's response. Moreover, to the extent that Connecticut or Massachusetts seeks to respond to the

petitions pursuant to 40 C.F.R. Section 124.19(b)(4), the Region does not object to such State being afforded the same time for submittal as the Region.

The Region's three requests are justified as discussed below. First, the extended due date for the response will provide the Region with an adequate opportunity to respond to the issues raised by the five parties. The many issues raised within the five petitions illustrate the complexity of this matter, and the Region would be at a disadvantage attempting to respond to each unique issue in each petition over a time period already shortened from the usual 30-day period by the Thanksgiving weekend. While there is overlap among the issues raised in the petitions, each petition also raises issues not raised by others. Moreover, even where two parties discuss the same remedial component or issue, their positions are often opposed. To credibly respond to the five petitions, including necessary coordination with the EPA Office of General Counsel and other offices, will take considerably longer than the standard 30-day response date; the Region is essentially asking for an additional five-and-a-half weeks to respond to four additional petitions, with one of the weeks being the holiday week of December 26th-January 2nd.

Second, consolidating the responses creates efficiencies for all parties. The Region would be able to respond to the five petitions without excessive repetition of facts and issues. The parties and Board would not need to consult many different briefs for the entire story, and the Board's administrative work would likely be eased.

Third, the requested word limit is necessary for the Region to be able to respond to the many petitions and issues. None of the petitions will allow for a simple response, and the universe of petitions includes detailed presentations of a number of complex issues, each of which requires a complete and thoughtful response. The Region's request is not a "one-for-one"

replacement of the word limits for individual petitions it would have received in five separate petitions. Instead, the Region requests what the Region believes is the necessary word limit to respond to the five petitions on a consolidated basis.

The Region has consulted with the petitioners regarding this motion. Jane Winn of BEAT, Jeffrey Cook, and counsel for the Municipal Committee assented to the request. Benno Friedman of HRI does not oppose the request with the caveat that HRI would like to ensure that the comments HRI made are read, considered, discussed and responded to. In addition, counsel for Audubon assented to the request.

GE, per its counsels, does not oppose the extension of time but does oppose the consolidation and word limit in light of the absence of a word limit for the Region's response to GE's petition below the 56,000-word maximum. The Region and GE have attempted to work out a solution to the issue, but have been unsuccessful. The Region has no intention of devoting an unnecessary amount of detail to responding to GE's petition. At the same time, calculating a specific word limit as applicable to one of five petitioners would be difficult and defeat one of the objectives of consolidation; one of the benefits of a consolidated response is the applicability of a particular discussion or argument to all or multiple petitioners, and therefore attribution of specific words to each petitioner would be difficult in a consolidated response.

Respectfully submitted,

December 6, 2016

(s) Timothy M. Conway

Date

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CERTIFICATE OF SERVICE

I, Timothy M. Conway, hereby certify that on December 6, 2016, true and correct copies of EPA Region 1's Partially Unopposed and Partially Opposed Motion for Extension of Time, Consolidation of Responses, and Setting of Word Limits were served:

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