

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

In re:)
)
)
GENERAL ELECTRIC COMPANY) RCRA Appeal No. 16-____
)
Modification of RCRA Corrective Action)
Permit No. MAD002084093)
)

**UNOPPOSED MOTION OF PERMITTEE GENERAL ELECTRIC COMPANY
TO EXCEED WORD LIMITATIONS**

The General Electric Company (“GE”) intends to file a petition for review of a final permit modification decision issued to GE by the U.S. Environmental Protection Agency (“EPA”), Region 1 (“the Region”) on October 24, 2016, under the Resource Conservation and Recovery Act (“RCRA”). This decision modifies RCRA Corrective Action Permit No. MAD002084093 to select a Remedial Action for an area of the Housatonic River known as the “Rest of River,” located downstream of GE’s facility in Pittsfield, Massachusetts. Pursuant to 40 C.F.R § 124(d)(3), GE hereby moves the Board for leave to file a petition that exceeds the 14,000 word limitation specified by that provision – specifically, a petition of 17,000 words – and, following the Region’s response, to file a reply of one-half that number of words.

Counsel for the EPA Region has advised GE that the Region has no objection to this GE request for expansion of the word limits. GE will not object to a request, if made by the EPA Region, for a comparable expansion of the word limits for the Region’s response to GE’s petition.

BACKGROUND

This is a unique case. It involves EPA’s modification of a RCRA corrective action permit pursuant to a Consent Decree (“CD”) executed by GE, the United States, the

Commonwealth of Massachusetts, the State of Connecticut, and other governmental entities in 1999 and entered by the U.S. District Court for the District of Massachusetts on October 27, 2000 in *United States et al. v. General Electric Company*, Civil Action No. 99-30225-MAP *et seq.* The CD established a multi-step process leading to the selection of a Remedial Action for the Rest of River. The CD provides that this process would be conducted in accordance with a RCRA Permit issued to GE, which was incorporated in the CD, culminating in EPA's issuance of a modification of that permit to select a Remedial Action for the Rest of River. It provides further that EPA's decision embodied in that permit modification is subject to review by this Board pursuant to 40 C.F.R. § 124.19, followed by an opportunity for appeal to the U.S. Court of Appeals for the First Circuit pursuant to RCRA Section 7006(b). It also provides that, following all appeals, GE will implement the remedy as a Remedial Action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

The Region issued a draft modification of the RCRA Permit in May 2014, proposing a Remedial Action to address the presence of polychlorinated biphenyls ("PCBs") in the river channel, riverbanks, impoundments, and floodplain of the Rest of River. GE submitted detailed comments on the draft permit modification on October 27, 2014. In September 2015, in accordance with the CD, the Region notified GE of its "intended final decision," and GE invoked administrative dispute resolution on it, as allowed by the CD. CD ¶¶ 22.0, 141.b(i). The EPA Regional Counsel (who was delegated the authority to make the administrative decision) issued a final decision for EPA in that dispute on October 13, 2016. The Region then issued its final permit modification ("Modified Permit"), comprising 127 pages, on October 24, 2016, accompanied by a Response to Comments of 461 pages and supported by a massive Administrative Record.

BASIS FOR MOTION

In its comments on the draft permit modification and its administrative dispute on the Region's intended final decision, GE challenged numerous provisions of the permit as contrary to the parties' agreement in the CD or otherwise arbitrary and unlawful. However, for its petition to this Board for review of the Modified Permit, GE has determined to limit its challenges to the most important conditions and aspects of the Modified Permit. GE has determined that, to fully present its position on those conditions and aspects, GE will need an expansion of the word limits to 17,000 words. GE's bases for this request include the following:

- The CD, including the Permit incorporated therein, constitutes a contract, which must be interpreted under normal contract principles. It is thus important for the Board to understand the relevant provisions of those documents and their relationship with CERCLA and RCRA.
- The Rest-of-River Remedial Action prescribed by the Modified Permit is complex and multi-faceted, including different response actions, some not yet specified, to address PCBs in the river and its floodplain. This Remedial Action includes a number of key requirements that GE believes violate the CD and/or are otherwise arbitrary, capricious, or unlawful, and thus are based on (a) "[a] finding of fact or conclusion of law that is clearly erroneous" and/or (b) "[a]n exercise of discretion or an important policy consideration that [this Board] should, in its discretion, review." 40 C.F.R. § 124.19(a)(4). It will require words to explain GE's position on each of those requirements.
- Some of the provisions of the Modified Permit that GE intends to challenge are themselves complicated and will need to be explained.
- GE will need to address the Region's positions in its lengthy Response to Comments.

RELIEF REQUESTED

For these reasons, GE requests leave to file a Petition for Review of up to 17,000 words and, following the Region's response, to file a reply of up to 8,500 words.

Respectfully submitted,

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Dated: November 1, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this first day of November, 2016, I served one copy of the foregoing Unopposed Motion To Exceed Word Limitations on each of the following by express commercial delivery service:

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