

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

IN THE MATTER OF:)	
General Electric Co.)	
RCRA Permit No. MAD002084093)	No. RCRA 16-04
)	

CLARIFICATION OF POSITION

On May 10, 2017, the Board issued a Corrected Order Establishing a Framework on Oral Argument. That order added to the list of topics to be addressed the issue of the relevance of paragraph 22.z of the Consent Decree (“CD”) to the Board’s review of the 2016 RCRA Permit Modification. The Housatonic Rest of River Municipal Committee (“Committee”), upon further consideration of its arguments in this appeal, respectfully submits this clarification of its position in order to avoid unnecessary expenditure of time and resources by the Board and the parties.

In its petition and reply brief, the Committee argued, *inter alia*, that the Rest of River remedy cannot benefit from the “permit” waiver in CERCLA § 121(e)(1) and paragraph 9.a of the Consent Decree, because this waiver is available only if the remedy was selected in accordance with the National Contingency Plan. PFR 29, Reply Br. 11. This argument, as set forth in the Committee’s briefing and in light of paragraphs 8.a, 9.a and 22.z of the CD, could fairly be construed as a challenge to the validity of the CD.

The Committee wishes to make clear at this time that it is not asking the Board to declare that paragraph 22.z or any other part of the CD is invalid or should not have been followed by the Region. To the extent the Committee contended otherwise in its briefs as an alternative basis for its petition, it now withdraws such position. The Board thus need not consider the argument presented in Argument Section I.B. of the Committee’s petition.

The Committee submits this clarification now in order that the Board and other parties may prepare more efficiently for oral argument and to avoid unnecessary expenditure of time at oral argument.

June 2, 2017

Respectfully submitted,

Housatonic Rest of River Municipal Committee

/s/ Matthew F. Pawa

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CERTIFICATE OF SERVICE

I certify that a copy of this clarification has been sent to the counsel listed below.

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