



RCRA Permit Appeal Fact Sheet

1991

FACILITY: General Electric Company (GE)
Pittsfield, Massachusetts
MAD 002 084 093
RCRA Appeal No. 91-7

PETITIONER: GE

PETITION DATED: March 13, 1991

STATUS OF PETITION: See Permit Appeal Status Report

ISSUES:

- RFI conditions are too vague
- RFI conditions are not justified
- RFI conditions are technically inappropriate
- Definition of solid waste management unit
- Due process
- Procedural issues
- Joint permitting

Summary of Petition:

GE is petitioning for review of the RCRA permit issued to its facility in Pittsfield, Massachusetts. The petitioner contends that EPA failed to coordinate the permit requirements with State program requirements and claims that the inclusion of certain areas in the permit go beyond EPA's statutory authority. In addition, the petitioner argues that the permit denies its right to due process, contests the definition of certain units as solid waste management units (SWMUs), and argues that certain RFI conditions are too vague, not justified, or technically inappropriate.

- **RFI Conditions are too Vague.** GE argues that the permit is unclear with respect to a major modification to establish media protection standards (MPSs). The petitioner requests that the permit specify that the MPSs referred to in the permit are only preliminary "targets," which will be subject to modification when the corrective measures study (CMS) is completed.
- **RFI Conditions are not Justified.** GE maintains that a number of RFI conditions contained in the permit are not justified.



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- The petitioner argues that two areas covered by the permit do not fall within EPA's RCRA authority for off-site releases, because pollutants found in these two areas resulted from historic filling activities, not migration from the GE facility. GE contends that Section 3004(v) of RCRA, which gives EPA authority to require corrective action "beyond the facility boundary," necessarily requires that there must be a link between the off-site contamination and migration of releases from the facility. The petitioner contends that the "omnibus" provision in Section 3005(c)(3) of RCRA does not give EPA corrective action jurisdiction over areas not affected by migration from the facility.
 - The petitioner argues that the permit requirement to cease discharges to the groundwater recharge pond is beyond EPA's corrective action authority on the grounds that the pond is a regulated treatment, storage, and disposal (TSD) facility. As such, the unit is already subject to the applicable requirements of 40 CFR Parts 264 and 265, including the groundwater monitoring and closure requirements. The permit requirement to cease use of the pond would interfere with this regulatory scheme.
 - The petitioner contends that several of the interim measures contained in the permit are without foundation because they do not address imminent or substantial threats to human health or the environment.
 - GE contends that it is unwarranted to specify sampling, analysis, and other specific permit requirements for the RFI prior to reviewing the RFI proposal and the existing data that would be pertinent to RFI activities. The petitioner argues that such requirements should be specified in the permit only after EPA has reviewed the current assessment summary and the reports of ongoing investigations.
 - The petitioner argues that many of the submission deadlines contained in the permit are unrealistic and that it is arbitrary for the permit itself to prescribe specific deadlines for activities that have not yet been proposed.
 - The petitioner contends that the conditions set forth in 40 CFR Section 270.30 were written to apply to treatment, storage, and disposal TSD facilities and are not written for application in the corrective action context. GE maintains that in cases where a corrective action permit is issued for large sites such as the GE facility and associated off-site areas, EPA should modify 40 CFR Section 270.30 as appropriate.
- **RFI Conditions are Technically Inappropriate.** The petitioner argues that the requirement to "propose a plan to prevent downstream transport of contaminated sediment past Rising Pond Dam during high and low flow events" and "through one-hundred year storm events" is



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not technically feasible, because there is no method known to GE that would entirely prevent downstream transport of sediment past the Dam.

- **Definition of Solid Waste Management Unit.** The petitioner argues that two areas covered by the permit should not be defined as SWMUs, because the permit defines "SWMU" as "any unit at the facility which contains or contained solid and/or hazardous waste." The term facility, in turn, is defined as "all contiguous land, and structures, other appurtenances, and improvements on the land, under the control of the owner or operator on November 8, 1984." These areas were not under GE's control on November 8, 1984.
- **Due Process.** GE argues that the permit's failure to provide any procedure for review of subsequent Region 1 decisions implementing the permit is unlawful, unfair, and inconsistent with EPA policy. The petitioner states that Section 7006(b) of RCRA and 40 CFR Section 124.15(a) entitle the facility to judicial and administrative review of permit modifications. GE contends that EPA's Notice of Proposed Rulemaking (NPR) for its new corrective action rule clearly acknowledges that later decisions by EPA to specify particular requirements not contained in the original permit constitute "modifications" of the permit and, therefore, are subject to review.
- **Procedural Issues.** GE claims that Interim Measure No. 5 is legally defective, because new requirements were included in the permit without an opportunity for comment.
- **Joint Permitting.** GE claims that it is being required to undertake directly comparable full-scale investigative and remedial programs under both State authorities and the Federal corrective action permit. The petitioner argues that EPA has failed to adopt a mechanism to promote coordination with the State programs, and has failed to take account of the petitioner's obligation to meet State and local requirements.
 - The petitioner states that Region 1's failure to coordinate with the States was contrary to the policy of RCRA and an abuse of discretion. GE cites Section 1003(a)(7) of RCRA, which provides that it is an objective of RCRA to establish "a viable Federal/State partnership to carry out the purposes of this Act" by relying on State programs to minimize the duplication of effort.
 - GE objects to EPA's suggestion that it presents any plans based on its State proposals to EPA as part of its RFI proposal, because EPA's deadline for submittal of the RFI proposal would fall in the middle of the ongoing State-required investigations - before all of the data are obtained and evaluated. The petitioner requests that EPA adopt a phased RFI approach to coordinate with State processes in the future.



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- The petitioner argues that the permit should be modified to take account of GE's obligation to obtain State and local approvals for activities at the site, and to provide extensions for meeting EPA permit requirements where necessary.



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FACILITY: General Electric Company (GE)
Pittsfield, Massachusetts
MAD 002 084 093
RCRA Appeal Nos. 91-8 and 91-9

PETITIONERS: - Connecticut Department of Environmental Protection (CT DEP)
- Massachusetts Department of Environmental Protection (MA DEP)

PETITIONS DATED: March 15, 1991

STATUS OF PETITION: See Permit Appeal Status Report

ISSUE: Joint permitting

Summary of Petitions:

CT DEP and MA DEP contend that the permit issued by Region 1 to the GE Pittsfield facility in Massachusetts is invalid, because it fails to establish a viable Federal-State partnership. The petitioners specifically object to permit provisions that address cleanup of PCB contamination in the Housatonic River, maintaining that the permit disregards ongoing proceedings to address PCB contamination in the River as implemented through orders and agreements by the Connecticut and Massachusetts DEPs. The petitioners also argue that the permit is based upon the incorrect assumption that RCRA corrective action preempts State approvals. CT DEP notes that it has specific authorities pursuant to State law to address water quality problems and water pollution.

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

_____	)	
In the Matter of:	)	
	)	
General Electric Company	)	RCRA Appeal Nos. 91-7, 91-8, 91-9
	)	
Permittee	)	
	)	
MAD 002084093	)	
_____	)	

ORDER GRANTING REVIEW

General Electric Company, the Commonwealth of Massachusetts, and the State of Connecticut have sought review of the corrective action portion of a permit issued by EPA Region I under the 1984 Hazardous and Solid Waste Amendments ("HSWA") to the Resource Conservation and Recovery Act of 1976 ("RCRA") for General Electric's facility in Pittsfield, Massachusetts. ^{1/} The HSWA portion of the permit (hereinafter the "HSWA permit") identifies 106 solid waste management units ("SWMUs") at G.E.'s facility and requires detailed investigations and the study of corrective measures for those SWMUs. It also requires investigations and studies of the Housatonic River, which flows past the facility, and Silver Lake, an off-site lake adjacent to the facility.

The Environmental Appeals Board has determined that review should be granted in this case, and that oral argument would be helpful in the Board's consideration of certain issues.

Accordingly, G.E., Massachusetts, and the Region are hereby

^{1/} The non-HSWA portion of the permit was issued by Massachusetts, an authorized State under RCRA's §3006(5), 42 U.S.C. §6926(b).

requested to participate in oral argument to begin at 10:00 a.m. on Tuesday, April 21, 1992, in the Hearing Room, Room M2409, EPA Headquarters, 401 M Street, S.W., Washington, D.C. ^{2/}

Massachusetts and G.E. will each have 20 minutes to present their arguments. Each may reserve up to 5 minutes for rebuttal. The Region will have 40 minutes in all to present its argument. G.E. will present its argument first, followed by Massachusetts, and then the Region. No later than April 17th, the parties should notify the Board of the names of counsel who will participate in the oral argument. The oral argument will be transcribed.

At oral argument, the parties should be prepared to address the following questions and issues:

1) What kind of conflicts between the obligations of G.E. under the HSWA permit and those under the State requirements may arise and what is the likelihood of their arising?

2) Is there any legal requirement that the HSWA permit provide a mechanism for addressing potential conflicts? If so, what is the legal basis for this requirement? If not, should EPA include such a mechanism as a matter of policy?

3) If a mechanism is not included, how will EPA and Massachusetts deal with any alleged conflict? If a mechanism

^{2/} The issues raised by Massachusetts to be addressed at oral argument were also raised in Connecticut's petition. Connecticut's brief, however, for the most part incorporates by reference the arguments made in Massachusetts' brief. The Board decided, therefore, that Massachusetts could fully address the basic issues in the oral argument.

were included, would the formulation suggested by G.E. be an acceptable means of addressing this issue?

4) Does the failure of the permit to identify State requirements that are more stringent than those imposed under RCRA constitute an abuse of discretion?

The Environmental Appeals Board believes that the issues raised in the petitions have been adequately briefed. The Board, therefore, does not believe that another round of briefing is necessary. Nevertheless, the parties may, if they choose, file additional briefs. To receive full consideration before oral argument, such briefs should be filed no later than April 14th.

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: 

Edward E. Reich
Environmental Appeals Judge

Dated: **MAR 13 1982**

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Review in the matter of General Electric Company, RCRA Appeal Nos. 91-7, 91-8, 91-9, were sent to the following persons in the manner indicated.

First class mail,

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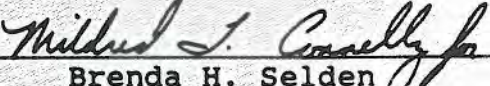
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Dated: MAR 13 1992