

EXhibit C

**U.S. Environmental Protection Agency's April 12, 2007  
Notice of Intent to Terminate UIC Permits Issued to  
Environmental Disposal Systems, Inc., Romulus, Michigan**

**Comment of Environmental Geo-Technologies, LLC  
Proposed Transferee of Permit Nos. M1-163-C007 and M1-163-C008**

**June 21, 2007**

**U.S. Environmental Protection Agency's April 12, 2007  
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**INTRODUCTION**

Environmental Geo-Technologies, LLC ("EGT") provides this written comment in response to the April 12, 2007 U.S. Environmental Protection Agency's (the "EPA") Notice of Intent to Terminate the UIC Permits (the "Notice") issued to Environmental Disposal Systems, Inc. ("EDS"). The UIC permits allowed EDS to operate two Class 1 commercial injection wells at 28470 Citrin Drive, Romulus, Michigan (the "Facility"). The EPA issued the UIC permits (collectively, the "Permits") to EDS on September 6, 2005. EGT is the proposed transferee of the Permits.

On the same day that EPA issued its Notice, EPA also sent a letter to EGT stating it would no longer "consider or process" EGT's request to transfer the permits to it from EDS (the "Transfer Request"). (Bates no. 0127.)

We view the EPA's Denial of EDS' and EGT's joint permit Transfer Request and the EPA's concurrent Notice of Intent to terminate the Permits (the "Proposed Permit Termination") as interrelated agency actions because they relate

to the same facility, deal with the same permits, and involve the same parties.

Therefore, we believe that the EPA's proposed Permit Termination and simultaneous denial of further consideration of EGT's Permit Transfer Request should not be adopted by EPA because such action is not supported by the record submitted in this case.<sup>1</sup>

For the reasons set forth below, the EPA's denial of consideration of the Permit Transfer Request, in conjunction with its Proposed Permit Termination, particularly in light of RDD's and EGT's responsive and timely submittals to EPA prior to the Proposed Permit Termination, constitute arbitrary, capricious and erroneous actions by the agency and further constitute a denial of EGT's due process rights.<sup>2</sup>

The support for EPA's notice of intent to terminate the UIC Permits must be viewed in the context of multiple technical submittals by both the facility owner and current Facility manager RDD and by EGT. These numerous technical submittals were directly responsive to EPA's demands for information from EDS.<sup>3</sup>

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<sup>1</sup> EGT also filed an appeal on May 10, 2007 of the EPA's de facto final decision to deny the Permit Transfer Request.

<sup>2</sup> RDD is the current facility manager, as explained more fully below.

<sup>3</sup> See the index, at Appendix G, for a listing of numerous other submittals and communications by RDD and EGT with the EPA and the Michigan Department of Environmental Quality ("MDEQ"). These (footnote continued)

Moreover, during the months of December 2006 and January 2007, RDD on behalf of its operator, EDS, was in constant contact with representatives of MDEQ and EPA, keeping the agencies apprised of RDD's actions on behalf of EDS to address operational concerns as well as responding to the agencies' requests for information. RDD has continued to promptly respond to EPA requests throughout this process and has acted in good faith to resolve all alleged non-compliance issues. Indeed, , RDD and EGT met with EPA staff on January 31, 2007 to discuss permits transfers, RDD's efforts to address the EPA's continuing concerns about the Facility operations and the fact that RDD Operations, LLC had taken over control of the deep well facility.

EGT attaches to its Comments significant documentation chronicling the recent Facility history (the "Documents"). EGT requests that the EPA carefully review and evaluate these documents before determining that the Proposed Permit Termination is inappropriate. EGT also requests that EPA make such documents part of the Administrative Record in this matter. The Documents are in

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preliminary substantive submittals were made on December 7, 2006 (Detailed Interim Response to EPA), December 14, 2006, January 8, 2007 (Interim Status Report), January 30, 2007 (responding to EPA's requests of January 12, 2007), February 28, 2007 (Transfer Request), March 26, 2007 and April 12, 2007.

Appendix G to this Comment and are preceded by an index and summary of the Bates-stamped Documents, all of which are incorporated herein.<sup>4</sup>

EGT files its Comment to demonstrate why EPA's Notice of Intent to Terminate the Permits is inappropriate, and to justify the alternative action that is within EPA's prerogative, namely the transferring of the UIC permits from EDS to EGT. We believe the modification and transfer of the Permits is not only in the best interests of the parties and EPA, but is protective of the environment and will allow the continued operation of the facility by a well-qualified and funded entity, EGT.

### COMMENT

#### **EPA'S PROPOSAL TO TERMINATE THE UIC PERMITS IS NOT SUPPORTED BY THE EVIDENCE AND SUCH DECISION WOULD CONSTITUTE AN ARBITRARY AND CAPRICIOUS ACTION BY THE AGENCY**

#### **The EPA's Proposed Termination of the permits is the Most Severe Option Available to the Administrator and Should Not Be Approved**

The EPA's Proposed Permit Termination is the most severe sanction that EPA can adopt in this situation, and is inappropriate because less onerous options are appropriate in this situation, including transfer through a minor modification or

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<sup>4</sup> Citations to the Documents in App. G are in the form "Bates nos. \_\_\_ to \_\_\_."

revocation and reissuance of the permits. First, the EPA bases the Proposed Permit Termination on alleged violations of the Permits. It is without question, however, that nearly all of the alleged noncompliance issues cited in EPA's Notice have now been cured by the Police and Fire Retirement System of the City of Detroit (the "PFRS"), its wholly owned subsidiary, RDD Investment Corporation, and/or the current site owner and de facto manager of the Facility, RDD Operations, LLC (collectively, "RDD")<sup>5</sup>. The Facility's compliance status is detailed starting at page 23 of this comment, and set forth in additional submittal summaries at Appendices A, B and C (attached and incorporated herein).<sup>6</sup>

Second, the EPA alleges that EDS has "abandoned all interest in the site"; however, RDD has been managing the Facility since November 7, 2006 and has promptly responded to all of the EPA's and the Michigan Department of Environmental Quality (MDEQ) information requests and, in fact, even submitted to the EPA for comment and approval, drafts of the transfer documents from EDS to RDD. As of the date of this comment, RDD has continued to respond to both the State of Michigan and EPA requests for information and requests for remedial

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<sup>5</sup> References to responses, submittals, and/or correspondence from RDD include responses/submittals/correspondence from RDD's counsel. Ronald King of ClarkHill PLC submitted on behalf of RDD.

<sup>6</sup> RDD's comment also contains a summary of the Facility's compliance status and a comparison of the response to the various EPA and MDEQ requests. See excerpts from RDD's comment at Appendix C.

actions, including the removal of accumulated wastes, implementation of a soil remediation plan and performance testing of the wells. The EPA has interacted extensively and directly with RDD and EGT, recognizing them as the *de facto* operators and encouraging them to continue with their compliance and remediation efforts. These extensive and significant actions undertaken by RDD on behalf of EDS are also detailed in the Comments of RDD submitted in response to EPA's Notice.

Third, EGT, RDD and EDS had a valid Permit Transfer request pending with the EPA Region V at the time the Notice of Proposed Permit Termination was issued on April 12, 2007 which should have been acted upon by EPA prior to taking the precipitous action of proposing to terminate the Permits. EGT, the proposed transferee of the Permits, has demonstrated that it is both financially and technically capable of owning and operating the Facility after the Permits are transferred, thus alleviating any EPA concerns about future compliance in operating the facility. (*See App. E, attached and prior submittals to EPA.*)

In proposing to terminate the Permits, EPA apparently did not consider the Facility's actual compliance status or the fact that RDD had promptly responded to EPA's information requests and undertook significant remedial actions. Indeed,

the pending Transfer Request between EGT, RDD and EDS, and the financial and technical ability of EGT to own and operate the Facility,<sup>1</sup> clearly demonstrate that EPA should have considered the Transfer Request and adopted the less onerous option available to it, namely to transfer the Permits as a minor modification. When EPA instead issued its Proposed Permit Termination on April 12, 2007, it acted in an arbitrary and capricious manner and RDD and EGT have been denied their rights to due process.

Moreover, EDS, EGT and RDD were all working in good faith with the EPA (and the MDEQ) to transfer the Permits after receiving the preliminary November 20, 2006 notices of non-compliance that the EPA sent to EDS.<sup>8</sup> The EPA responded to RDD's and EGT's good faith submittals by cooperatively seeking additional information, which RDD and EGT supplied to EPA (including Bates nos. 00046-47, and 0048-0074; 00103 – 00106, 00117 to 00202-00209.) As recently as May 10 and May 14, 2007, RDD supplied the EPA with the most recent calibrations records for both wells, stated that RDD replaced the injection

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<sup>1</sup> See Appendix E regarding EGT's financial and technical capabilities.

<sup>8</sup> RCRA, subchapter III Hazardous Waste Management, § 6924(a) and EPA's hazardous waste regulations, at 40 C.F.R. § 264.1(b) require "owners and operators" to comply.

gage on well #2 with a pre-calibrated unit and were re-connecting the audible/visual alarm in the plant, and asked how the EPA would like to verify that the alarm was working. RDD also forwarded calibration information from the new unit purchased in March 2007 for the injection pressure gage.<sup>9</sup> (See end note at page 40.)

An agency decision is arbitrary if it fails to consider important aspects of the problem, decides the matter on an erroneous legal or factual basis, offers an explanation for its decision that is contrary to the evidence, or fails to abide by its own rules<sup>10</sup> (reviewing court can consider whether there has been a "clear error of judgment."), 5 U.S.C. § 706(2)(A) Admin. Procedures Act.

Thus, we believe the Permit Termination would be an arbitrary and capricious action if the EPA does not consider important aspects relating to the Notice (*i.e.*, the Facility's compliance status, the RDD/EGT responsive submittals, the pending Transfer Request, and EGT's financial and technical abilities to operate under the transferred Permits), and proceeds to terminate nonetheless. A

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<sup>9</sup> RDD also continues to submit information to the MDEQ, including June 11, 2007 reports and a WRP mini update. (See Bates nos. 01259 - 01262.)

<sup>10</sup> See *Wyoming Workers Comp. Div. v. Brown*, 805 P.2d 830 (Wyo. 1991). See also *O'Keeffe's Inc. v. U.S. Consumer Prod. Safety Comm'n*, 92 F.3d 940 (9th Cir. 1996); *Sierra Club v. Hankinson*, 939 F. Supp. 865, 869 (N.D. Ga. 1996).

decision is arbitrary if the agency offers an explanation that runs counter to the evidence and fails to abide by EPA's own rules. The EPA's current explanation for the Permit Termination contained in the April 12, 2007 notice runs counter to the evidence, as detailed below. The EPA's Permit Termination may not comply with the EPA's own rules, at 40 CFR sections 144.39-41, which allow the EPA less onerous options when a financially and technically capable party requests a permit transfer. In that situation, EPA has the clear discretion to modify permits upon receipt of a request to transfer. The EPA's actions could be considered arbitrary because less onerous actions, *i.e.*, transfer or revocation and reissuance, not termination, are available to it (see 40 C.F.R. § 144.38 and § 144.39) and clearly the appropriate option in light of the facts and circumstances.<sup>11</sup>

1. **The EPA's April 12, 2007 Notice to EGT was inadequate and arguably a denial of due process.**

The EPA's April 12, 2007 letter stating that EPA would no longer consider the parties' transfer request denied EGT its due process as the EPA failed to give

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<sup>11</sup> Citations to the EPA's Administrative Record regarding the Notice are in the form "R. at Tab \_\_\_."

EGT an opportunity to be heard before issuing the de facto Denial of the Transfer Request, and because the EPA provided no basis for its Denial decision. EGT's property interest in the transfer of permits is protected by the 5th Amendment from deprivation without due process of law.

From mid-October 2006 through April 12, 2007, EGT and RDD worked cooperatively with the EPA to transfer the EDS permits to EGT. In fact, despite the Denial and the Proposed Permit Termination, EGT and RDD are still working cooperatively with the agencies. For example, on June 11, 2007, RDD provided to MDEQ additional requested technical information. (See Bates nos. 01259 - 01262). Previously, RDD made lengthy submittals of information to EPA on November 28, 2006, December 7, 2006, December 14, 2006, January 8, 2007, January 30, 2007, February 28, 2007, March 26, 2007, April 12, 2007, May 8, 2007, May 10, 2007 (email), May 14, 2007, and June 11, 2007. Additional agency requests, RDD/EGT submittals, and/or communications between the parties were made by e-mail and fax on other dates as summarized at the end note to this comment. All of these submittals were made in response to the EPA's (or MDEQ's) requests for information regarding the Facility, EDS' alleged violations, or financial assurance documents required for the Permit Transfer.

On April 12, 2007, with no specific prior notice to RDD or EGT, the EPA unexpectedly and simultaneously issued its Notice of Proposed Permit Termination and its de facto Denial letter to RDD and EGT which simply stated . . . "EPA will not consider or process your [transfer] request at the present time."

(See Bates no. 01207.)

The EPA's turn-about regarding continuing to process EGT's transfer request and its simultaneous decision to pursue permit termination and lack of notice to EGT and/or RDD is evidenced by, among other things, RDD's contemporaneous (also on April 12, 2007) filing of additional permit transfer related documents to respond to EPA's earlier requests. (Bates nos. 01164 – 01206.) The lack of notice and opportunity to be heard on the Permit Transfer Request and the EPA's decision to Notice the Proposed Permit Termination is especially unfair and inexplicable, when both RDD and EGT were actively cooperating with the agency by supplying requested information and RDD was continuing to implement remedial measures and maintain the Facility (in a "shut down mode" and in a manner protective of both human health and the environment) – and the fact that the EPA had the other alternatives of transfer by

permit modification or revocation with reissuance.<sup>12</sup> The sudden and abrupt termination of the Permits when a permissible and viable transfer request was pending, and being processed and encouraged by the EPA, effectively and unfairly denies EGT and RDD of their rights to seek a transfer of the Permits.

2. **EGT relied on EPA's good faith process of its Transfer Request.**

The EPA's actions denied EGT of its fundamental right to receive notice and an opportunity to be heard before the EPA's effective Denial of the Transfer Request, especially because EGT acted in reliance on the EPA's multiple pre-April 12, 2007 actions processing EGT's Transfer Request. The EPA received and processed EGT's and RDD's Transfer Request throughout a six-month period of correspondence and multiple follow-up meetings and submittals and then suddenly, without adequate notice, changed its course and refused further action on the Transfer Request.

Agency actions will not be sustained without a reasoned explanation supported by the record, and an opportunity to be heard.<sup>13</sup> The agency must

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<sup>12</sup> See *1902 Atlantic Ltd. v. Hudson*, 574 F. Supp. 1381, 1397 (E.D. Va. 1983) (agency decision must be rationally based and the decision process must be clearly disclosed and sustained by the record.)

<sup>13</sup> See *Amer. Tel. & Tel. Co. v. Fed. Comm'n Comm'n*, 974 F.2d 1351, 1354 (D.C. Cir. 1992).

examine the relevant data and articulate a satisfactory explanation for its actions.

EGT received neither, with respect to both the agency's decision to de facto deny processing the then active Transfer Request and the agency's decision to Terminate the Permits.

3. **EGT and RDD's property rights in the permits have been denied.**

EPA's letter of April 12, 2007 to RDD and EGT (Bates no. 0127) provided no opportunity for EGT to be heard on the Transfer Request . . . Rather EPA simply issued the transfer Denial by refusing to further process the Transfer Request. RDD owns the facility and has acquired a property interest in the EDS permits by contract with EDS. RDD acquired an equitable interest in the permits when EPA began to treat RDD as the operator and "de facto" permit holder. RDD spent over \$1.2 million to respond to EPA's requests for information and remedial actions, and to protect its financial interest in the Facility and Permits.

RDD has a property right in the permitting process, because the procedure is mandatory and it is the only way RDD has to protect its interest. Similarly, EGT as the proposed transferee of the Permits, has a recognizable property interest in both the transfer and permit termination procedures. EDS's permits and EGT's

contract to transfer the permits were "property rights" in a functional sense, because the facility can only be used to dispose of hazardous waste if it has an EPA issued UIC permits. RDD, as the site owner and de facto operator, and EGT, as the present transferee, have property rights in the EDS permits. The statutory and regulatory requirements for transfer have been met, and RDD has returned the Facility to compliance with applicable EPA regulations. If a benefit is a "matter of statutory entitlement for persons qualified to receive them, then the government has created a property interest in the benefit."<sup>14</sup>

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<sup>14</sup> See *Reed v. Village of Shorewood*, 704 F.2d 943, 948 (7th Cir. 1983) and *Goldenberg v. Kelly*, 397 U.S. 254, 262 (1970).

4. **The EPA should not have exercised its discretion to deny the**

**Transfer.**

Although the EPA has discretion to modify (transfer), revoke and reissue, or terminate Permits (40 CFR sections 144.38 – 144.41), the EPA must follow its own rules and regulations and cannot make decisions on a specious basis or no basis. The EPA's April 12, 2007 letter to EGT and RDD (Bates no. 01207) states no legal basis for EPA's decision to stop consideration of the Permit Transfer Request and proceed to termination of the Permits. EPA never mentions the less onerous option of revocation and reissuance or transfer via modification.<sup>15</sup> **EPA simply switched to termination of the permits, without recognition of the considerable efforts and expense incurred by RDD and EGT to effect the permit transfer and correct all alleged violations.**

The EPA's April 12, 2007 Denial contains no rational or legal basis for the agency's abrupt decision, without notice, to cease processing EGT's permit transfer request, to cease negotiating the Permit Transfer, and to change course and decide to terminate the EDS's Permits instead. Consequently, the EPA may have abused

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<sup>15</sup> Decisions that have a specious (or no) basis are clearly arbitrary on their face. See *Newman v. Apfel*, 223 F.3d 937, 943 (9th Cir. 2000) ("The fact that an agency has broad discretion in choosing whether to act does not establish that the agency may justify its choice on specious grounds.")

its discretion by failing to exercise its duty to adequately explain and document its analysis, and to consider all relevant factors.<sup>16</sup>

**EPA should consider the comments it receives and decide to modify and transfer, or revoke and reissue, the Permits to EGT. An agency decision to either modify and transfer or revoke and reissue would be fully supported by the facts and the record (including EGT's indexed and attached documents) and would be in the best interests of the permit holder, the proposed transferee (EGT), the equity owner and de facto operator (RDD) and the public. By contrast, termination ends the Permits and places the parties with significant property interest in the Permits, into a lengthy and contentious permitting process which must be started all over again. (See Aff. of Vilione at App. F.)**

**5. The EPA's Record does not include the substantial documentation reflecting the status of both the Permit Transfer Request nor RDD's remedial activities to cure alleged violations.**

**The record should reflect and EPA should consider the substantial documentation submitted by RDD and EGT in support of the related Permit**

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<sup>16</sup> See *Scenic Hudson Preservation Conference v. Fed. Power Comm'n*, 354 F.2d 608, 620 (2nd Cir. 1965).

**Transfer and the submitted documentation which controverts the Proposed Permit Termination.** Agency action which is based on a limited or erroneous record is based on erroneous facts and will not be sustained.<sup>17</sup> The agency acts beyond its statutory authority when it fails to comply with its own procedural rules. *See W.R. Grace & Co. v. U.S. Env'tl. Prot. Agency*, 261 F.3d 330, 338 (3rd Cir. 2001). ("[A reviewing court] will not search the record to find support for the agency's decision." If no reason is set forth for the decision, it is per se arbitrary.) EPA has failed to include in the record or consider substantial transfer and environmental compliance documentation submitted to EPA by RDD and EGT. Therefore, the EPA has not complied with agency requirements for handling the Transfer Request and the Proposed Permit Termination.

6. **The EPA exceeded its authority by its de facto denial of the transfer request even though the applicant demonstrated compliance with federal regulatory standards for the transfer.**

It is well established that a permitting authority's inquiry regarding issuance of a UIC permit (or by implication, transfer thereof) "is limited solely to whether a

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<sup>17</sup> *See Biscayne Fed. Savs. & Loan Assn. v. Fed. Stone Loan Bank Bd.*, 572 F. Supp. 997 (S.D. Fla. 1983) (rev'd on other grounds 720 F.2d 1499) (11th Cir. 1983). This case deals with the FSLIC not the EPA. However, in *Biscayne*, the Agency continued to receive information and negotiate with a member Savings & Loan, while it simultaneously decided to reject the relief sought by its member. The District Court found the agency utilized this process to deceive its regulated member: "The Board must take responsibility for the chasm it has created between its statutory mandate and its manner of operating when the victim of the chasm is being thrown from one cliff to another." *Biscayne* at 1045.

permit applicant has demonstrated that it has complied with federal regulatory standards for the issuance of the permit." The same standard should apply to a transfer of a previously issued permit. *See In Re Beckman Prod. Servs.*, 5 E.A.D. 10, 23 (E.A.B., 1994). EGT and RDD are in compliance with the EPA's transfer requirements. (See EPA memorandum, R. 37). Consequently, the April 12, 2007 denial of the Transfer exceeds the EPA's authority.

7. **The EPA's actions will effectively close the Facility.**

The EPA's options include transfer by modification, revocation and reissuance of the Permits or termination of the Permits, however its **actions** will most likely result in the termination and ultimate closure of the Facility.

Termination is the most drastic option available to the EPA, and it appears to be the least applicable option given the nature of EDS's violations (largely reporting), the curative actions taken by RDD, and the existence of a viable, qualified, well capitalized transferee (EGT). Termination ends all rights of EDS, RDD and EGT to the existing Permits and forces them to reapply and start the lengthy, contentious, and expensive permit process de novo.

The EPA's Proposed Termination is a denial of EDS', EGT's and RDD's property rights. Once the Permits were issued to EDS, it had significant property rights in the permits. RDD has also invested over \$1.2 million to remediate and protect the Facility and cure any defects in the recordkeeping cited by EPA or MDEQ.

EDS has significant property rights in the Permits for the Facility. EGT has jointly applied for transfer of the Permits and met EPA's requirements for the transfer, including providing significant financial assurance and posting letters of credit with EPA. EGT also has a binding agreement to acquire the facility once the Permits are transferred. (Bates nos. 01194-01203) RDD has acted to protect the property rights of EDS and EGT, by providing testing and operations information to EPA and maintaining the Facility while the transfer was pending. **Both EGT and RDD have fully complied with the legal requirements for Permit transfer and have altered their position and expended considerable funds to protect their respective interests in the Permits.** This gives them property rights in the Permits and a right to due process. Thus, in addition to the rights which EDS has in the current Permits, both EGT and RDD have equitable and legal property interests in the outcome of the Proposed Permit Termination and the transfer Denial, and a right to both due process and fair and equal treatment.

EPA's actions appear particularly unfair and arbitrary when compared to the EPA's actions regarding other TSD or UIC Class I facilities, including the Vickery, Ohio, facility. In the Vickery case (App. D, Echo report), despite significant operational defects which were cited by EPA and the fact the facility

has been in violation since 2004, no termination has occurred.<sup>18</sup> By contrast, almost all of the violations noted by EPA in the NON of November 20, 2006 to EDS, have been cured by RDD and EGT. Further, the violations related to reporting requirements, and none of the violations related to the integrity of the wells, which in fact has been confirmed. The wells are sound, safe and have passed all integrity tests. Thus, in comparing the EPA's actions at similar facilities, there is no rational basis for the unequal treatment. Consequently, the extreme financial consequences of the Proposed Permit Termination are not justified in the present situation. The alleged Facility violations were minor in comparison with similar regulated facilities and have now been corrected. EDS, EGT and RDD are entitled to the same level of fair treatment afforded other permit holders. **The result should be transfer, not termination, of the Permits.**

**8. RDD, EDS and EGT have fully complied and are ready, willing and able to move forward with the Permits Transfer and compliant operations.**

RDD, EDS and EGT have supplied all of the information EPA (and MDEQ) has requested. The attached Appendices A, B, and C evidence in great detail the information sought by the agencies and each document filed in response to EPA's requests. The EPA should not terminate the Permits, because the Transfer Request which EPA denied provided EPA with a solution that is supported by the law and is beneficial to the environment: (1) the permits can be

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<sup>18</sup> See ECHO reports for Comprehensive Environmental Solutions in Wyoming, Michigan, and EQ Resource Recovery in Romulus, Michigan, which was in violation from April 2004 to June 2006.

transferred to a financially-sound company, EGT, which is ready, willing and able to assume operation of the facility; (2) there is no need to permanently close the Facility, because EGT will remain compliant with the Permit conditions and any reasonable EPA modification thereto; and (3) the "white knight" (RDD) already "saved the day" by managing the Facility, providing information requested by EPA and remediating as necessary.<sup>19</sup> RDD has spent about \$1.2 million to monitor, remediate and maintain the site. (See Apps. A, B, and C.) RDD's good faith actions were conducted under the reasonable expectation that the Permits would be transferred, and EPA's sudden about-face Proposed Permit Termination violates RDD's property rights and interests, and the rights of EGT. The EPA's couching of the Proposed Permit Termination behind a noncompliance argument is in error, because RDD has brought the Facility into compliance (see next section for more detail) and further highlights EPA's real goal of closing this facility.

**THE EPA FAILED TO CONSIDER EGT'S  
AND RDD'S EXTENSIVE SUBMITTALS AND  
ENVIRONMENTALLY RESPONSIBLE REMEDIATION,  
RESULTING IN ERRORS OF FACT AND LAW**

EGT and RDD were negotiating and working in good faith with EPA staff on the Transfer Request when the EPA suddenly issued its April 12, 2007 Denial indicating that EPA would no longer consider the Transfer Request. (Bates

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<sup>19</sup> MDEQ staff noted a "release" event on October 26, 2007. This occurred during a test of the wells and the release was brine, *i.e.*, salt water, not hazardous waste.

no. 01207.) The EPA provided no prior notice or indication of its decision to pursue the Proposed Permit Termination, thus ending the process of transferring the Permits.

On the contrary, the EPA asked EGT for substantial additional documentation, including standby letters of credit, which were submitted to the EPA as part of the Permit Transfer process. (See February 28, 2007 and March 26, 2007 letters at Bates nos. 00117 – 00205 and 01086 - 01087.) In fact, on the same day (April 12, 2007) that the EPA sent the Notice to EDS and a letter to RDD and EGT containing EPA's Denial of the Transfer Request, RDD sent yet another responsive letter to the EPA containing extensive additional documentation requested by the agency. (See Bates nos. 01164 - 01165.)

Prior to that, a UIC permit transfer contract (with supporting documentation) signed by EGT and subsequently signed by EDS accompanied the February 28, 2007 Permit Transfer Request. On March 16, 2007, Dana Rzeznik, Environmental Engineer and the permit reviewer for U.S. EPA Region 5, the EPA sent a letter to RDD requesting additional information regarding the Permit Transfer Request. RDD responded to the March 16 request on March 26, 2007 and sent additional responsive information to the EPA on April 12, 2007,

including revised UIC transfer agreements signed by RDD Investment Corporation, EGT and EDS. (See Bates nos. 01164 - 01165.) Additionally, RDD has continued to respond to all EPA information requests such that the facility is now in compliance with the terms of the EDS permits.

In short, because EDS, EGT and/or RDD have met all of the requirements for the Proposed Transfer, the EPA has acted outside of its statutory and beyond its discretionary authority by refusing to timely consider the Transfer Request, and by abruptly terminating the transfer process by its letter of April 12, 2007.

**Consequently, the EPA should withdraw the Proposed Termination and proceed with transferring the Permits to EGT.**

**THE EPA FAILED TO CONSIDER EGT'S FINANCIAL  
AND TECHNICAL ABILITY TO ASSUME THE PERMITS  
AND OPERATE THE FACILITY**

RDD has spent about \$1.2 million for both remedial and operational costs. (See comment of RDD and attached description of expenses.) EPA has reaped the benefit of RDD's good faith efforts to maintain and remediate the Facility without acknowledging that RDD's efforts have made the facility compliant. EGT has filed substantial information with EPA and MDEQ establishing its technical and financial capabilities. (See Apps. A, B, C and E.)

## THE EPA FAILED TO CONSIDER THE FACILITY'S ACTUAL COMPLIANCE STATUS

The EPA erroneously based its Proposed Permit Termination on EDS' alleged noncompliance, because the agency failed to consider that RDD brought the Facility into compliance and that RDD submitted documentation sought by EPA. Specific examples of the Facility's actual compliance status follow. (Paragraphs reference the EPA's April 12, 2007 notice of termination and the EPA's allegations are *in italics*.) Complete lists of information sought by EPA and supplied by RDD demonstrating compliance status are attached hereto (Apps. A, B, and C).

1. I.E.7. Duty to Provide Information. The EPA alleges that: *EPA's letter of January 12, 2007 was not responded to by EDS.*

Comment: The EPA is technically correct when it states that **EDS** did not respond; however, **RDD** did respond. Consequently, because RDD provided the requested information, it is an error of fact and law for the EPA to claim that it received no response.

For example, on January 12, 2007, the EPA issued a written request for information to EDS. In that letter, the U.S. EPA stated that it was issuing its information request in order to determine, among other things, "whether cause exists for modifying, revoking, reissuing or terminating its permits." According to the Notice, "EDS response was due by March 4, 2007, but EDS has not responded." The EPA's statement that EDS did not respond is misleading, because

the information sought by the EPA was timely provided by EGT and/or RDD in support of the Application to Transfer the Permits that EDS and EGT jointly filed on February 28, 2007.<sup>20</sup> Additional information was supplied in the following months. Consequently, while EDS may not have specifically responded to the EPA and/or MDEQ information requests, RDD has made an exceptional effort to fully and completely respond to the EPA's requests. (See attached Apps. A and B.)

Another example of RDD's responsiveness involves the EPA's November 20, 2006 request for extensive information:

1. describe staffing and provide training records
2. describe staffing changes
3. identify employees who were at facility during leaks
4. identify current and former employees considered to be trained operators
5. describe circumstances of leaks
6. describe permit noncompliance notification procedures
7. provide specified records, describe procedures for record availability
8. describe why records were unavailable
9. describe why injection pressure gauges differed
10. describe why annulus gauges differed
11. state whether annulus system of each well contains gauge, describe
12. describe source and composition of rinse water that leaked
13. describe any change in facility ownership/operational control.

On December 7, 2006, RDD staff sent a preliminary response to the EPA's November 20 requests. RDD submitted additional responses on December 14, 2006 and April 6, 2007 (submittal of additional detailed information).

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<sup>20</sup> An Application to Transfer permit is considered a minor modification of a permit. See page one of the EPA's February 15, 2007 internal memo. (R. at Tab \_\_\_\_.)

In fact, RDD diligently responded to all of EPA's technical and remedial issues by its letters of December 7, 2006, December 14, 2006, January 8, 2007, January 30, 2007 and accompanying documents. Furthermore, in March 2007, RDD responded to EPA's January 12, 2007 letter to EDS. Additional responses were made by submittal including the RDD, January 30, 2007 Wonsack letter to EPA, RDD's May 10, 2007 e-mail to EPA, and RDD's letter of February 28, 2007 to EPA. (See attached Apps. A, B, and C.)

2. I.E.8. Inspection and Entry. The EPA alleges that: *the permittee shall allow the Director or an authorized representative, upon presentation of credentials or other documents as being required by law, to:*

(b) *Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit. . . .*

*At the time of the U.S. EPA inspection on November 2-3, 2006, the U.S. EPA inspector asked to review calibration and continuous monitoring records for the wells. EDS did not provide the requested records to the U.S. EPA inspector. . . .*

Comment: On December 14, 2006, RDD provided to the EPA a detailed operation submittal. (See Bates nos. 00046 - 0074), including the calibration and continuous monitoring records for the wells and an explanation of why the records

were not available previously.) Additionally, attachments to the February 28, 2007 application to transfer the permit included documentation regarding electronic recordkeeping. The most recent calibration records for both wells and verification for the operation of the audible/visual alarm were supplied by e-mail on May 10 and May 14. Thus, while EDS did not provide the requested records, RDD – the Site's present manager—did timely supply the requested records. (See Appendices A, B, and C, attached). The EPA's statement that the records were not supplied is an error of both fact and law.

3. I.E.9. Records. The EPA alleges that: *the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation. . . .*

*"During the U.S. EPA inspection on December 14-15, 2006, U.S. EPA inspectors were provided with some continuous monitoring records for Well #1-12 and Well #2-12. Several weeks of continuous monitoring records were not provided to the U.S. EPA inspectors and were not retained by EDS."*

Comment: RDD has supplied the records that were not available in December, and, as EPA notes above, RDD is performing the required record

keeping. (See Apps. A, B, and C for listing of records responses by RDD and EGT.) The Facility is also currently in "shut down" mode and no waste is being handled. Furthermore, as explained in EPA Region 5 Administrator Mary Gade's February 8, 2007, response letter to Michigan Congressional Representative John Dingell,

In your letter you expressed a concern about lost maintenance and calibration records. We are also concerned about the status of the missing records...However, it is important to note that while the absence of the records is of concern, the primary purpose of the continuous monitoring required by the UIC permits is to ensure the mechanical integrity testing pursuant to conditions of the federal UIC permits. **During the tests, both wells demonstrated internal mechanical integrity, indicating that there is no leak in the casing, tubing, or either packer of either well.**

(emphasis added).<sup>21</sup> (See R. at Tab 35.)

Therefore, the EPA's statement regarding missing records is an error of both fact and law, because the missing records have been supplied, RDD continues to perform the required record keeping, the wells are not leaking and internal mechanical integrity is not at issue.

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<sup>21</sup> EPA's February 15, 2007 internal memo notes that "none of the developments at the facility have called into question the suitability of the site geology or the integrity of the wells." (See R. at Tab 37.)

4. I.1.1. Financial Responsibility. The EPA alleges that: *the permittee shall maintain financial responsibility and resources to comply with closure and post-closure requirements. . . .*

EDS provided the first cost estimate for closure on May 5, 2004 and first cost estimate for post-closure on January 21, 2003. EPA asserts that adjusted cost estimates were due on June 4, 2005 and February 20, 2004, respectively, and that EDS did not adjust either cost estimate.

Comment: EGT has no direct information regarding EDS's alleged failure to provide these documents. However, at the time of the February 28, 2007 application for transfer, irrevocable standby letters of credit were submitted on behalf of both RDD (the present site manager) and EGT (the proposed transferee). These financial documents were based on adjusted cost estimates. Additional documentation was submitted via letters dated March 26, 2007 and April 12, 2007. In addition, RDD supplied a cost estimate for plugging the wells and abandonment of the Facility.

Thus, the specific information that the EPA sought from EDS has been supplied by RDD. EDS, EGT and RDD have all signed the EPA's required contracts for the Permit Transfer and provided the EPA's required cost estimate

and financial assurance. The EPA's refusal to acknowledge receipt of the appropriate financial information from the proposed transferees is an error of both fact and law.

5. II.B.4. Warning and Shut-Off System. The EPA alleges that: "*The permittee shall install an automatic warning and automatic shut-off system prior to the commencement of injection. . . . On October 22-23, EDS injected overnight with no trained deep well operator on-site. This conduct circumvents the safety precautions required by the permit.*"

Comment: EGT has no first hand knowledge regarding EDS's actions on October 22 and 23, 2006. However, subsequent to these events, the warning and automatic shut-off system was investigated with the following results.

RDD responded to the EPA on January 30, 2007, stating that it was conducting an investigation of the failure of the automatic warning system. On February 28, 2007, RDD submitted documentation of the records of the automatic warning/shut off system to the EPA. Consequently, the EPA's assertion that "this conduct circumvents the safety precautions that are required by the EPA" is an error of fact and law. This is particularly true since the Facility has been shut down and not processing waste since late October 2006. EGT has provided EPA

with an extensive submittal verifying the expertise of its proposed staff and their extensive experience with treatment and disposal of hazardous wastes. (See binders submitted to MDEQ on March 9, 2007 with a copy of cover letter submitted to EPA, Bates nos. 0213-00215 and Attachment 00216 with tabs 00217 through 00739 – 01044.)

6. II.B.4. Warning and Shut-Off System. The EPA alleges that: *"the permittee shall install an automatic warning and automatic shut-off system prior to the commencement of the injection. . . . The permittee must test the warning system prior to receiving authorization to inject. . . . U.S. EPA inspectors have observed successful demonstration of the automatic warning and shut-off system on June 30, 2004. The next demonstration was on June 8, 2006. EDS did not test the system within 12 months of the June 30, 2004 demonstration. . . ."*

Comment: Although EGT has no direct knowledge regarding EDS' actions in this regard, EGT observes that EDS did not receive its permits to operate until September 6, 2005, and the facility did not become operational until December 17, 2005. Thus, the system was not operating in the time period between the first and second tests. EDS' conduct did not circumvent the safety precautions, and the EPA's conclusion is an error of both fact and law.

Moreover, if the EPA believed the June 30, 2005 repeat of the demonstration was necessary, then the EPA would not have issued the permits on September 6, 2005. Currently, the Facility is in a shut-down mode, and RDD is maintaining the safety precautions and conducting analytical testing for the Facility. Thus, nothing is currently occurring which circumvents the safety precautions which are required by the permits. Again, the EPA's proposed conclusion on the issue is in error, both on the facts and law.

7. II.C.4. Ambient Monitoring. The EPA alleges that: *"At least every twelfth month, the permittee shall, pursuant to 40 C.F.R. § 146.68(3), monitor the pressure buildup in the injection interval, including, at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve. . . . The first 12-month period after issuance of the permits ended on September 5, 2006, EDS did not conduct an ambient reservoir pressure test, nor submit testing procedures to U.S. EPA for approval within 12 months of the issuance of the permits. . . ."*

Comment: EGT does not have information about why or if EDS conducted the required tests in the required time frame. However, this matter was addressed in RDD's February 28, 2007 submittal (including documentation of future

Ambient Reservoir Pressure tests) and subsequent documents. (See Appendices A, B, and C.) The fact that RDD has performed the tests should cure any concern by the EPA about the integrity of the continuing geological layers. The EPA's conclusion is erroneous as to both fact and law. The erroneous nature of the EPA's conclusion is further evidenced by Region 5 Administrator Mary Gade's February 8, 2007 statement that "both wells demonstrated mechanical integrity, indicating that there is no leak . . . . (See R. at Tab 35.)

8. II.D. Reporting Requirements. The EPA alleges that: "*the permittee shall submit all required reports to the Director at the following address no later than the end of the month following the reporting period. . . . EDS was late in submitting a quarterly report for March 31, 2006 and did not submit a quarterly report for September 30, 2006. EDS did not submit an annual report for the period of September 6, 2005 to September 5, 2006. . . .*"

Comment: EGT does not have specific knowledge of EDS's alleged reporting errors or omissions. However, RDD provided the specified records and procedures for record availability to the EPA on December 14, 2006 and January 30, 2007, and RDD described why the records were not available on December 14, 2006. Subsequent to the Facility's shut down in late October 2006, RDD has

timely continued to supply the requisite recording documents to EPA. (See Apps. A, B, and C and documents attached.)

Summary. The EPA's statements regarding EDS' record keeping, reporting and maintenance of systems are erroneous, because they fail to take into consideration the fact that RDD submitted the requested documentation or its functional equivalent. EPA has in the past recognized that record keeping violations which are cured are less egregious than operation violations. A review of the records of other TSD facilities, and including a UIC facility at Vickery, Ohio (App. D), reflects numerous violations which did not result in permit termination. Here, minor paperwork violations which have been cured are used, unfairly, as a basis for the Proposed Permit Termination. EDS, EGT (as the transferee), and RDD are being subjected to unfair and unequal treatment for no justifiable reason. Despite EDS' various failures to respond, RDD has responded to the EPA's and the MDEQ's requests.

The EPA does not acknowledge that the Facility is in shut down mode and no longer receiving waste. Consequently, the EPA's Proposed Permit Termination and simultaneous Denial of the Transfer Request are arbitrary based on errors of fact and law. Because RDD, EGT and EDS have cured the defects in their

Transfer Request and Permit-related submittals, the EPA should not proceed with an unwarranted termination.

**THE EPA DOES NOT RECOGNIZE THE POLICY IMPLICATIONS OF ITS PROPOSED TERMINATION AND DENIAL**

The EPA does not recognize several important public policy implications of its Proposed Permit Termination and its permit transfer Denial:

1. **The EPA's actions could result in detriment to the environment.**

Termination of the Permits may make it more likely that no one will pursue re-issuance of the permits, thus making well abandonment likely. (See R. at 37.)

This contradicts the EPA's duty to protect the environment by preventing a situation where the wells must be abandoned and plugged. The EPA's goal appears to be permit termination – but modification and transfer is a better environmental solution.

2. **The EPA's punishment of RDD's good faith actions will deter future "white knights" from taking action.** RDD has expended over \$1.2 million to preserve the Facility, continue required monitoring and respond to the EPA information requests. These expenditures are largely for naught if the Proposed Termination becomes final. Thus, the EPA is punishing RDD for its

willingness to step into EDS' shoes and "do the right thing," because it will take at least two years to complete the process for terminating and reissuing the permits.

(See Aff. of Vilione regarding statements by EPA staff, App. F.)

3. **EPA's actions could delay resumption of open actions at the**

**Facility.** Meanwhile, though RDD's efforts have brought the Site into compliance and EGT is financially and technically willing and able to operate the Site, the EPA's actions are delaying operations by at least two years causing undue and unnecessary financial hardship to EGT, RDD, and the pension recipients and their families. Not only do these entities face financial hardship, the EPA's actions also deter future "white knights."

4. **The EPA's proposed action could erode confidence in agency**

**decision making.** Because other less drastic options, such as transferring of the licenses and permits, are available, if the EPA proceeds with the Proposed Termination it may be taking arbitrary action, which will erode the regulated community and the public's confidence in the agency decision-making process.

4. **Innocent parties may be harmed by the EPA's arbitrary and**

**erroneous actions.** EPA fails to recognize the impact of its Proposed Permit Termination and its Denial on the PFRS pension recipients: Detroit firefighters,

policemen and their families. The EPA's proposed actions and likely two year delay may cause financial harm to the pension fund recipients and their families.

5. **The extreme consequences of the EPA's actions are not justified.**

The alleged violations attributed to the Facility were primarily of a "de minimus" nature, including record-keeping and documentation issues. Other TSD and UIC facilities with much more serious operational malfunctions and notices of violation were allowed to continue in operation by EPA. There is no rational basis for such unequal treatment. Consequently, the extreme financial consequences of terminating the Permits is not justified by the minor nature of the corrected alleged record keeping violations.

### CONCLUSION

In its letter of January 12, 2007, EPA's J. Traub announced that EPA was seeking information from EDS to decide if transfer, revocation and reissuance or termination was the appropriate response for this site. (Bates nos. 00077 – 00078) Shortly thereafter, on January 30, 2007. (Bates nos. 00103 – 00106.) RDD filed extensive documentation answering many of EPA's inquiries. Extensive factual submittals by RDD have followed and RDD has performed the remedial work,

including waste removal, that EPA has requested. EPA treated RDD as the "de facto" site operator. RDD is the site owner. RDD and EGT continue to act in good faith, supplying all information sought by EPA as recently as June of 2007. EPA then abruptly announced its change in position – now seeking termination alone. The Proposed Permit Termination would be a denial of EGT and RDD's property rights in the permits, their good faith request for Transfer is a denial of due process.

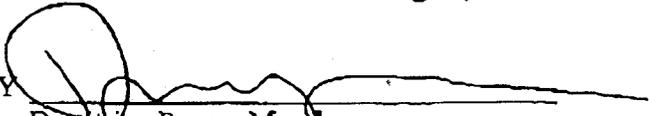
The EPA's Proposed Permit Termination and simultaneous Transfer Denial could be viewed as arbitrary, capricious, erroneous, beyond EPA's statutory authority and an unconstitutional denial of due process to EGT, and RDD. The Facility is in substantial compliance with applicable state and federal law<sup>i</sup>, and EGT, as transferee, is fiscally sound and technically able to operate the Facility pursuant to the Permit requirements. Therefore, EGT hereby requests that:

1. The EPA consider this Comment and the attached documents and add these documents to the Administrative Record for this matter.

2. The EPA either stay or dismiss the Proposed Permit Termination and continue to process and grant the Permit Transfer Request.

Dated this 21st day of June, 2007.

Environmental Geo-Technologies, LLC

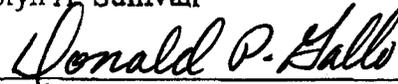
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Dimitrios Papas, Member

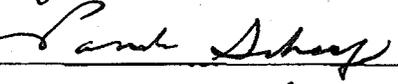
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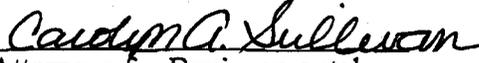
Reinhart Boerner Van Deuren s.c.  
W233 N2080 Ridgeview Parkway  
Waukesha, WI 53188  
Telephone: 262-951-4500  
Facsimile: 262-951-4690

Mailing Address:  
P.O. Box 2265  
Waukesha, WI 53187-2265

Donald P. Gallo  
Pamela H. Schaefer  
Carolyn A. Sullivan

BY 

BY 

BY   
Attorneys for Environmental  
Geo-Technologies, LLC

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<sup>i</sup> Additionally, several submittals and responses to EPA or MDEQ requests have been made via email, including, but not limited to the following: December 6, 2006 email from R. Blayer (MDEQ) to R. King regarding EDS permit application (including previous emails back and forth between R. King and R. Blayer), at Bates Nos. 00042-00044; December 27, 2006 email from P. Wonsack (RDD) to D. Rzeznik (EPA) regarding calibration settings for three chart recorders, at Bates No. 00074i; January 4, 2007 email from P. Wonsack (RDD) to D. Rzeznik (EPA) regarding mailing address, well testing results (including December 26, 2006 emails), at Bates Nos. 00074j – 00074k; January 4, 2007 email from D. Rzeznik (EPA) to P. Wonsack (RDD) regarding mailing address, temperature logs data, at Bates Nos. 00074l – 00074m; January 10, 2007 email from T. Sampson (MDEQ) to R. King regarding Romulus Facility - Update, at Bates No. 00075; January 10, 2007 email from T. Sampson (MDEQ) to R. King regarding EDS Quit Claim Deed (responding to R. King email), at Bates No. 00076; January 16-18, 2007 emails from L. Patterson (EPA) to R. King regarding Romulus facility meeting (some responding to R. King email(s)), at Bates Nos. 00079 - 00083; January 31, 2007 email from L. Patterson (EPA) to R. King regarding Letter of Credit (responding to R. King email), at Bates Nos. 00107 - 00198; February 20, 2007 email from D. Rzeznik (EPA) to R. King regarding Permit transfers, at Bates No. 00111; February 23, 2007 email from P. Wonsack (RDD) to L. Patterson (EPA) regarding pressure test, at Bates No. 00111a; March 7, 2007 email from L. Patterson (EPA) to R. King regarding former EDS facility compliance, at Bates Nos. 00206 - 00209; March 7, 2007 email from L. Patterson (EPA) to R. King regarding former EDS facility compliance, at Bates No. 00210; March 13, 2007 email from D. Rzeznik (EPA) to R. King regarding Transfer of UIC permits from EDS to EGT, at Bates No. 01045; March 19, 2007 email from R. King to D. Rzeznik and R. Harvey (EPA) regarding Transfer of UIC permits from EDS to EGT; March 23, 2007 email from P. Wonsack (RDD) to L. Patterson (EPA) responding to L. Patterson email responding to P. Wonsack email (regarding annulus pressure alarm system), at Bates Nos. 01050h – 01050i; March 23, 2007 email from L. Patterson (EPA) to R. King regarding Complaint filed against EDS, at Bates No. 01051; March 27, 2007 email from G. Tuma (MDEQ) to R. King regarding March 27, 2007 correspondence and status, at Bates Nos. 01120d – 01120h; March 29, 2007 email from R. King to D. Rzeznik (EPA) regarding executed documents attached (also attached is February 26, 2007 email to D. Rzeznik from R. King regarding permit transfers), at Bates Nos. 01121 - 01137; March 30, 2007 email from J. Hoeh (MDEQ) to P. Wonsack regarding Air permit conversation (with attachment), at Bates Nos. 01138 - 01139; April 17, 2007 email from G. Tuma (MDEQ) to R. King regarding Summary of Meeting on April 11, 2007, at Bates Nos. 01219 - 01220; May 7, 2007 email from P. Wonsack (RDD) to D. Rzeznik and L. Patterson (EPA) regarding annulus tank level sight glass marks (with attached

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photographs), at Bates Nos. 01223a – 01223e; May 8, 2007 email from P. Wonsack (RDD) to D. Rzeznik and L. Patterson regarding Corrosion Prevention Plan for your review, at Bates No. 01223f; May 9, 2007 email from J. Stropkai (Michigan) to R. King regarding EDS/RDD, at Bates No. 01225a; May 10, 2007 email from P. Wonsack (RDD) to L. Patterson and D. Rzeznik (EPA) regarding calibrations, at Bates Nos. 01251 - 01254; May 10, 2007 email from L. Patterson (EPA) to P. Wonsack (RDD) regarding alarm (responding to P. Wonsack May 10, 2007 email), at Bates Nos. 01255 - 01256; June 11, 2007 emails from P. Wonsack (RDD) to R. Vugrinovich (MDEQ) regarding System Reports for 3rd quarter of 2006 (without attachments) and reports for February, March and April of 2007 (without attachments), at Bates Nos. 01259 - 01260; and, June 11, 2007 email from P. Wonsack (RDD) to T. Sampson (MDEQ) regarding WRP Mini update, at Bates Nos. 01261 - 01262.

## **LIST OF APPENDICES TO**

### **U.S. Environmental Protection Agency's April 12, 2007 Notice of Intent to Terminate UIC Permits Issued to Environmental Disposal Systems, Inc., Romulus, Michigan**

### **Comment of Environmental Geo-Technologies, LLC Proposed Transferee of Permit Nos. M1-163-C007 and M1-163-C008**

- A. R. Powals I (EPA Issues) and R. Powals II (MDEQ issues).
- B. Responses to EPA April 10, 2007 Memo Bulleted Issues (prepared by R. Powals) (as of June 15, 2007).
- C. Chronology (prepared by Ronald King).
- D. Enforcement & Compliance History Online (ECHO) for Vickery, Ohio facility (as of June 14, 2007).
- E. Financial/Technical Information and Resumes (EGT).
- F. Affidavit of Michael C. Vilione (dated June 19, 2007).
- G. Index of Bates-stamped documents and Bates-stamped documents.