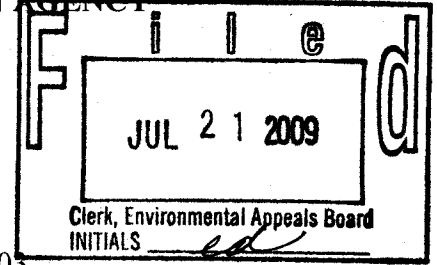


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC



In re:)
)
)

Environmental Disposal Systems, Inc.)

UIC Permit Nos. MI-163-1W-C007 and)
MI-163-1W-C008)
_____)

UIC Appeal No. 07-05

ORDER DECLINING TO EXTEND STAY

In a joint status report dated June 17, 2009, the Police and Fire Retirement System of the City of Detroit, RDD Investment Corporation, and RDD Operations, LLC, (collectively, "PFRS/RDD") requested an additional four-month stay, through October 19, 2009, of the effective date of the Environmental Appeals Board's ("Board") order denying review of U.S. Environmental Protection Agency ("EPA"), Region 5's ("Region") decision to terminate the above-captioned permits. Joint Status Report (June 17, 2009); *see In re Env'tl. Disposal Sys., Inc.*, UIC Appeal No. 07-03, slip op. (EAB July 18, 2008), 14 E.A.D. ____ ("Order Denying Review"). The Region did not oppose the request, and the parties represented that the Region's decision on a third-party's – Environmental Geo-Technologies, LLC – application for permits to operate the wells at issue in this case was "unavoidably delayed [but that] EPA * * * expect[ed] to issue a decision on the permit application in the very near future." Joint Status Report at 2. The extension of the stay was sought to "allow the EPA to complete its review of the permit application and issue a decision that may affect [the above-captioned] proceedings." *Id.* On

June 24, 2009, the Board granted a one-month stay, through July 19, 2009, and requested that the Region file a status report regarding the projected timing of the aforementioned permit application review and decision. Order Granting Third Stay and Requesting Region 5 to File Status Report (June 24, 2009). The Board further stated that it would determine whether an additional stay and of what duration would be appropriate upon receipt of the Region's status report. *Id.* at 2.

The Region's July 9, 2009 status report states that "[i]t is no longer clear whether U.S. EPA will be in a position to issue a proposed decision on the pending permit applications from Environmental Geo-Technologies, LLC in the near future. As a result, there is no reason to further extend the stay of the effective date of the EAB's July 18, 2008 Order Denying Review based on the potential impact of such a proposed decision on this matter." Region 5 Status Report (July 9, 2009). PFRS/RDD responded to the Region's status report on July 13, 2009, and stated "EPA provided no information explaining its statement that it may not issue a proposed decision on [Environmental Geo-Technologies, LLC's] complete UIC permit application in the near future. * * * Should the EPA grant complete [sic] [Environmental Geo-Technologies, LLC's] UIC permit application, this appeal may be rendered moot." PFRS/RDD Response to Region 5 Status Report 2 (July 13, 2009). PFRS/RDD then requested an extension of the stay beyond the date requested in the Joint Status Report, through November 19, 2009. *Id.* at 2-3.

Upon consideration of the Region's status report and PFRS/RDD's response, the Board determines that PFRS/RDD have not demonstrated good cause to further extend the stay of the


effective date of the Order Denying Review. The sole basis for the stay was the expectation that a decision on the permit application from Environmental Geo-Technologies, LLC would be made shortly. While the Region does not explain its change in position from that set forth in the Joint Status Report, the Board has no choice but to accept the Region's current characterization of the state of the permit proceedings. Accordingly, the Board declines to extend the current stay beyond July 20, 2009,¹ and the effective date of the Order Denying Review is July 21, 2009.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: July 21, 2009

By: _____


Edward E. Reich
Environmental Appeals Judge

¹ The Board's June 24, 2009 order extended the stay to July 19, 2008; however, when, as here, "the final day of any time period falls on a weekend * * *, the time period shall be extended to the next working day." 40 C.F.R. § 124.20(c).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Declining to Extend Stay in *Environmental Disposal Systems, Inc.*, UIC Appeal No. 07-03, were sent to the following persons in the manner indicated:

**By Certified U.S. Mail,
Return Receipt Requested (and facsimile):**

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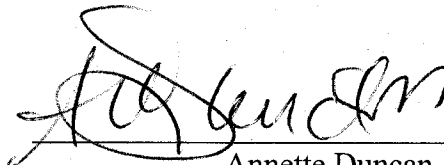
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Date: JUL 21 2009



Annette Duncan
Secretary