



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 15 2008

ENVIRONMENTAL APPEALS BOARD.

VIA Certified Mail

Robert B. LeBlanc
9300 Island Drive
Grosse Ile, MI 48138

VIA Pouch Mail

Erik H. Olson
Asst. Regional Counsel
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Re: Core Energy, LLC
Appeal Number: UIC Appeal No. 07-02

Dear Mr. LeBlanc and Mr. Olson:

Enclosed is a corrected version of the Order Denying Motion for Reconsideration in this matter.

Please substitute this corrected version for the one sent on January 14, 2008.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eurika Durr".

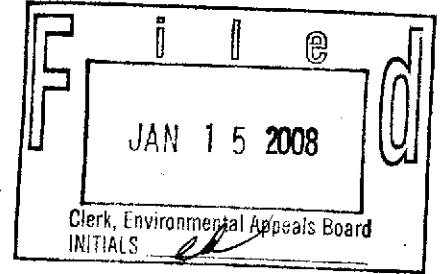
Eurika Durr
Clerk of the Board

Enclosure

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

In re:)
)
Core Energy, LLC)
)
Permit No. MI-137-5X25-0001)
)

UIC Appeal No. 07-02



ORDER DENYING MOTION FOR RECONSIDERATION

On September 21, 2007, Mr. Robert B. LeBlanc, on behalf of himself and his wife, Joan S. LeBlanc (“Petitioners”), filed a petition for review from U.S. EPA Region 5’s (“the Region”) decision to issue an Underground Injection Control (“UIC”) permit to Core Energy, LLC. The permit, issued pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300h to 300h-8, and EPA’s implementing regulations at 40 C.F.R. parts 124, 144, and 146-48, authorized the conversion of a pre-existing test well in Otsego County, Michigan, to a Class V injection well for the permanent storage, or “sequestration,” of carbon dioxide (“CO₂”). Petitioners raised two arguments in support of review by this Board. First, the Petition expressed concern about who might be liable for any damages that might result from operation of the injection well. Second, Petitioners argued that the permit violated the property rights of adjacent landowners under whose land the injection would occur and that a permit should not have been issued absent proof that the permittee actually owned all subsurface rights on this land. *Id.* at 1-3.

On December 19, 2007, the Board denied review in this matter. *See Order Denying Review (“Order”)* (Dec. 19, 2007). By motion filed on December 28, 2007, Petitioners seek

reconsideration of the Board's Order. *See* The Leblancs' Motion for Reconsideration of Signed 12-20-07 Order ("Motion for Reconsideration") (Dec. 28, 2007). The Motion for Reconsideration reiterates Petitioners' concerns regarding subsurface trespass. In particular, Petitioners assert that the permit improperly allows the permittee to "trespass on the sub-surface of the Leblancs' land (and adjacent landowners) and/or to convert any and all of the minerals from underneath the Leblancs' land (and other adjacent landowners) without any consent whatsoever of the LeBlancs' and to their detriment." Motion for Reconsideration at 2. As stated in the Board's Order, however, the Region responded to Petitioners' concerns in this regard. In particular, the Region stated:

The UIC program does not have authority to determine surface, mineral, or storage rights when issuing permit decisions. Issues relating to property ownership or lessee rights are legal issues between the permittee and property owners. Under federal UIC regulation, a permittee is not required to demonstrate ownership or legal access to all properties, only that the operation of the well will not allow contaminants into [an Underground Source of Drinking Water]. Issuance of a permit neither confers the right to trespass nor conveys property rights of any sort or any exclusive privilege; nor does it authorize any injury to persons or property, any invasion of other private rights, or any infringement of State or local law or regulations. This is the case with respect to all classes of wells, including those which inject CO₂ for permanent sequestration in an underground formation.

Order at 9. The Board denied review on this issue because Petitioners failed to demonstrate why the Region's response was clearly erroneous or otherwise warranted review. *Id.*

Petitioners' Motion for Reconsideration again fails to indicate why the Region's response to this concern was clearly erroneous. Further, the Motion fails to establish that the Board's Order resulted from a demonstrable error of law or fact. *See* 40 C.F.R. § 124.19(g)

(authorizing motions for reconsideration and requiring that such motions “set forth the matters claimed to have been erroneously decided and the nature of the alleged errors.”). Under these circumstances, Petitioners have failed to convince us that the Board’s Order Denying Review was in error. The Motion for Reconsideration is therefore denied.¹

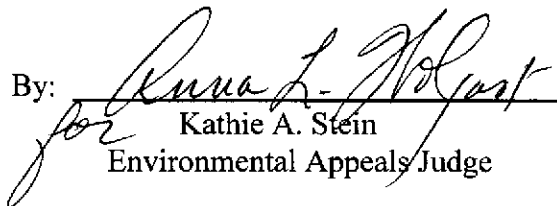
So ordered.²

Dated:

January 15, 2008

ENVIRONMENTAL APPEALS BOARD

By:


Kathie A. Stein
Environmental Appeals Judge

¹ Further, to the extent that the Motion for Reconsideration raises additional arguments not raised in the Petition for Review, we decline to consider such arguments. As the Board has recently stated, reconsideration is not an opportunity to reargue a case in a more convincing fashion. *In re Environmental Disposal Systems, Inc.*, UIC Appeal No. 07-01 (EAB July 27, 2007) (Order Denying Motions for Leave and for Reconsideration). Rather:

Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence. Such motions cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during the pendency of the [original] motion.*** Nor should a motion for reconsideration serve as the occasion to tender new legal theories for the first time.

Id. (quoting *Publishers Res., Inc. v. Walker-Davis Publ'ns, Inc.*, 762 F.2d 557, 562 (7th Cir. 1985)).

² The three-member panel deciding this matter is comprised of Environmental Appeals Judges Edward E. Reich, Kathie A. Stein, and Anna L. Wolgast. See 40 C.F.R. § 1.25(e)(1).

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Denying Motion for Reconsideration in the matter of Core Energy, LLC, UIC Appeal No. 07-02, were sent to the following persons in the manner indicated:

By Certified Mail
Return Receipt Requested:

Robert B. LeBlanc
9300 Island Drive
Grosse Ile, MI 48138

By Pouch Mail:

Erik H. Olson
Asst. Regional Counsel
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Dated:

1-15-08



Annette Duncan
Secretary