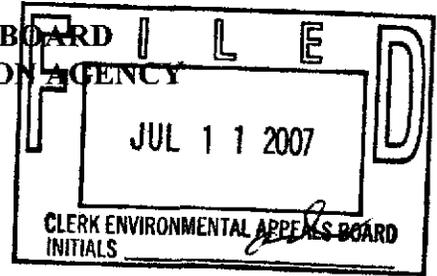


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____)
In re: _____)
_____)
Environmental Disposal _____)
Systems, Inc. _____)
_____)
UIC Permit Nos. M1-163-1W-C007 and _____)
M1-163-1M-2008 _____)
_____)

UIC Appeal No. 07-01

ORDER

On May 14, 2007, Environmental Geo-Technologies, LLC (“EGT”) filed an appeal under 40 C.F.R. § 124.5(b). The appeal concerned the U.S. Environmental Protection Agency (“EPA”) Region 5’s (“Region”) alleged denial of EGT’s February 28, 2007 request to transfer from Environmental Disposal Systems, Inc., (“EDS”) to EGT two Safe Water Drinking Act underground injection control (“UIC”) permits to operate Class I commercial hazardous waste injection wells in Romulus, Michigan. Upon consideration of EGT’s appeal and the Region’s response thereto, the Board declines to review the appeal because EGT’s petition is prematurely filed and therefore cannot be considered under 40 C.F.R. § 124.5.¹

¹ Although 40 C.F.R. § 124.5(b) does not require that the Board issue an order declining review of the denial of a request for permit modification or termination (i.e., pursuant to the regulation, the appeal is considered denied if the Board takes no action within 60 days of receiving it), the Board has chosen to issue this order to clarify for the parties the basis for its decision.

On April 12, 2007, the Region proposed termination of the UIC permits that are the subject of the transfer request. Because of the proposed termination, the Region decided “not [to] consider or process [the] request at the present time” and invited reapplication for the permits “in the event that U.S. EPA does ultimately terminate EDS’s permits.” Letter from Jo-Lynn Traub, Director, Water Division, U.S. EPA, Region 5, to RDD Investment Corp. and EGT (April 12, 2007). In its response to the Petition for Review, the Region has further clarified its intent to first render a decision regarding the proposed termination of the permits before deciding whether to grant the transfer request, as follows:

Once U.S. EPA decides (after considering and responding to public comments) whether to terminate the EDS permits, the Agency would then decide whether to deny the permit transfer request as moot. While EGT may fear such an outcome, that outcome is neither fore-ordained nor effectuated by U.S. EPA’s April 12, 2007 letter. On the other hand, if U.S. EPA decides not to terminate the EDS permits, it would then complete its substantive review of the pending transfer request.

Region’s Response to Petition for Review (“Region’s Response”) at 4. Consequently, at this time, the Region has not denied a request for modification or revocation and reissuance of the UIC permits; a denial of such a request is a prerequisite to filing an informal appeal to the Board under § 124.5(b) .

EGT argues that, while the April 12 letter on its face states that it is not final agency action, “[i]t is in effect final because no further action will be taken on the transfer request, pending the outcome of the hearing on termination * * * .” EGT Petition for Review at 2. Assuming without deciding that “effective denial” of a request for transfer would constitute a denial of the request within the meaning of § 124.5, this case does not in our view constitute effective denial of the request. To the contrary, the Region has made clear that following its decision on the termination of the permits, it will make a decision on the transfer request. Specifically, as to the proposed permit termination, the Region represents that it intends to “consider and respond to EGT’s comments [submitted during the public comment period] before making [EPA’s] final decision on permit termination.” Region’s Response at 7.² Further, there is no allegation or indication in the record that the Region is not moving forward in a timely manner to decide the termination issue or is otherwise using the proposed termination as a pretext to avoid deciding the transfer request. Should the Region decide not to terminate the existing UIC permits, and should the Region process and deny EGT’s transfer request as a modification or revocation and reissuance under 40 C.F.R. § 144.39, EGT may, at that time, appeal the denial to the Board under 40 C.F.R. § 124.5(b).³

² The public comment period on the termination closed on or about June 22, 2007.

³ The three-judge panel deciding this matter is comprised of Environmental Appeals Judges Scott C. Fulton, Edward E. Reich, and Kathie A. Stein

In sum, because EGT's petition is prematurely filed, the Board declines review.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: _____

7/11/07

By: _____



for Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order in the matter of *Environmental Disposal Systems, Inc.*, UIC Appeal No. 07-01, were sent to the following persons in the manner indicated:

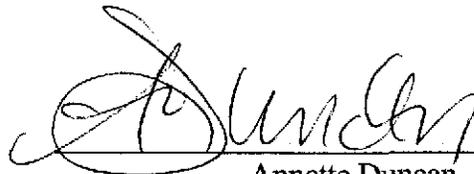
**By Certified U.S. Mail,
Return Receipt Requested:**

Donald P. Gallo
Pamela H. Schaefer
Reinhart Boerner VanDeuren SC
P.O. Box 2265
Waukesha, WI 53187-2265

By EPA Pouch Mail:

Thomas J. Kreuger
Associate Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Date: JUL 12 2007



Annette Duncan
Secretary