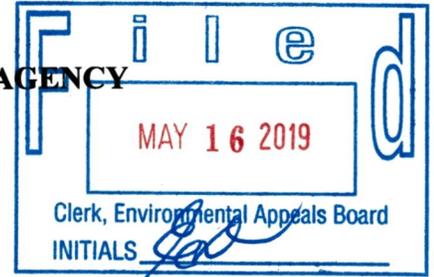


**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



In re:)	
)	
Jordan Development Co., L.L.C.)	
UIC Well Grove #13-11 SWD)	UIC Appeal Nos. 18-06, 18-07,
Gladwin County, Michigan)	18-08 & 18-09
)	
UIC Permit No. MI-051-2D-0031)	

**ORDER DIRECTING SUPPLEMENTAL BRIEFING
ON REGION 5's CONSIDERATION OF
ENVIRONMENTAL JUSTICE IN THIS PERMITTING ACTION**

Mr. Emerson Joseph Addison III has petitioned the Environmental Appeals Board ("Board") to review an Underground Injection Control ("UIC") Class II Permit ("Permit") that the U.S. Environmental Protection Agency ("EPA" or "Agency"), Region 5 ("Region") issued to Jordan Development Co., L.L.C. UIC Appeal No. 18-06. In his petition, Mr. Addison claims, among other things, that the Region's environmental justice screening was erroneous and that the Region failed to apply any meaningful environmental justice guidelines. Petition at 7-11.

The Board has determined that supplemental briefing on the environmental justice issue raised by Mr. Addison here would assist the Board in its deliberations in this case. Specifically, Executive Order 12,898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" ("Executive Order on Environmental Justice" or "Executive Order") gives permitting authorities discretion to determine how best to implement its mandate within the confines of existing law. The Executive Order does not, however, dictate any particular outcome in a permit decision, and a permit issuer's permitting role under the UIC program is limited to implementing the requirements of the Safe Drinking Water Act ("SDWA")

and the UIC regulations promulgated under the SDWA. *See In re Envotech, L.P.*, 6 E.A.D. 260, 280 (EAB 1996).

In its Response to Mr. Addison's Petition, the Region here cites *Envotech* and points out that the Board has recognized that a permit issuer has no authority to deny or condition a UIC permit where the permittee has demonstrated full compliance with the statutory and regulatory requirements. Region Response at 13. But, the Region's Response does not appear to acknowledge that there are two areas where a Region has the discretion to implement the Executive Order on Environmental Justice: the "public participation" procedures of 40 C.F.R. part 124 and the UIC regulatory "omnibus authority." *Envotech*, 6 E.A.D. at 281-82; *see also In re Muskegon Dev. Co.*, UIC Appeal No. 18-05, slip op. at 15-16 (EAB Apr. 29, 2019), 17 E.A.D. ___ (discussing *Envotech* and Region's discretion under SDWA to implement Executive Order).

Specifically, the Region discusses how it applied its environmental justice screening to this permitting action in the area of public participation by noting that it considered environmental justice concerns "when choosing a location and time for the information session and hearing and when designing outreach materials." Region Response at 12 (quoting Response to Comments at 12). But the Region's Response does not explain how it addressed its UIC regulatory omnibus authority with respect to the environmental justice concerns as set forth in *Envotech*.

The Board therefore requests that the Region address the following:

Whether and how, in accordance with the Executive Order on Environmental Justice and Board precedent, the Region exercised its discretion under the UIC regulatory omnibus authority in this permitting action to ensure the protection of the USDWs, including any USDWs upon which a minority or low-income community may rely.

The Region's Supplemental Brief shall be filed on or before **Monday, June 3, 2019**. The Region is directed to confer with EPA's Office of General Counsel to ensure that the Region's responses to these questions reflect the Agency's views. Mr. Addison may file a Supplemental Response Brief on or before **Tuesday, June 11, 2019**.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: MAY 16 2019

By: Mary Kay Lynch
Mary Kay Lynch
Environmental Appeals Judge

