

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

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In re:)	
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Muskegon Development Company)	UIC Appeal No. 19-02
)	
UIC Permit No. MI-035-2R-0034)	
)	

ORDER DIRECTING CLARIFICATION

Mr. Emerson Joseph Addison III filed with the Environmental Appeals Board (“Board”) a petition for review of a decision by the U.S. Environmental Protection Agency, Region 5 (“Region”), to reissue an Underground Injection Control (“UIC”) Class II permit to Muskegon Development Company (“Muskegon”) after the Board partially remanded the UIC permit that the Region issued to Muskegon in a prior case. *See In re Muskegon Dev. Co.*, 17 E.A.D. 740 (EAB 2019). Based on the parties’ filings in the current matter, the Board seeks clarification from the Region on the permitting proceedings on remand.

The Board issued an Order to Show Cause Why Petition Should Not Be Dismissed for Lack of Jurisdiction and in the briefing on that order, the Region asked the Board to dismiss Mr. Addison’s petition for lack of jurisdiction because Mr. Addison’s response “failed to ‘reference or attach’ any new permit decision made by the Region, despite the Board’s clear direction to do so.” EPA Region 5’s Reply to Petitioner’s Response to Order to Show Cause Why Petition Should Not be Dismissed for Lack of Jurisdiction 1 (Nov. 20, 2019). The Region maintained that Mr. Addison’s response “attaches and references only the revised Response to Comments (RTC) that supported the Reissued Permit, but does not attach or clearly reference the Reissued Permit itself.” *Id.* at 2. The Region asserted that “the Board should find that

[Mr. Addison] has failed to demonstrate that the Board has jurisdiction to review the Reissued Permit.” *Id.*

In its subsequently filed response to Mr. Addison’s petition for review, the Region attached a document it titled, “Copy of Reissued September 26, 2019 Permit No. MI-035-2R-0034.” EPA Region 5’s Response to Petition for Review at vi & attach. 2 (Nov. 25, 2019). That document, however, is not a copy of the reissued permit. Instead, it is a two-page letter from Ms. Joan M. Tanaka of Region 5 to “Commenters.” *Id.* attach. 2 (Letter from Joan M. Tanaka, Acting Dir., Water Div., EPA Reg. 5, to Commenters (Sept. 26, 2019) (“Tanaka Letter”). The Tanaka Letter states that “[t]his action constitutes issuance of a UIC Class II permit” and specifies a date on which the permit will be effective unless it is timely appealed. *Id.* at 1. The Tanaka Letter states that there are “Enclosures” and discusses “[t]he enclosed ‘Revised Response to Comments.’” *Id.* at 1-2. The Tanaka Letter does not mention any other enclosed documents and does not include a list of enclosures. The copy of the Tanaka Letter that the Region filed with the Board does not include any “Enclosures.” Finally, neither the Tanaka Letter nor its “Enclosures” are specified in the certified index to the Amended Administrative Record (dated September 26, 2019) that the Region filed with the Board. A reissued final permit (dated September 26, 2019) *is* listed in the Amended Administrative Record index as Document #98.

In his pleadings, Mr. Addison states that it is his understanding that the Region did not issue a “new” permit (or reissue the permit) on remand, and that the Region issued two documents: (1) a revised Response to Comments and (2) a document stating that “[t]his action constitutes issuance of a UIC Class II permit.” Petitioner Surreply to EPA Region 5’s Reply to Petitioner’s Response to Order to Show Cause 5, 9 (Dec. 2, 2019). The latter document appears to be the Tanaka Letter. Mr. Addison maintains, however, that “the substance, contents, and


conditions of the ‘Reissued Permit’” are not presented in the latter document or “any of the documents [the Region] has issued during the course of these proceedings.” *Id.* at 9-10.

To assist the Board in resolving this matter, and mindful that this permitting action involves an environmental justice community and a self-represented petitioner, the Board directs the Region to provide, on or before **Friday, February 21, 2020**, a brief explanation (and any appropriate supporting documentation) of: (1) to whom and by what method(s) the Region sent the Tanaka Letter; (2) all the enclosures that accompanied the Tanaka Letter, including whether the final reissued permit (listed in the Amended Administrative Record index as Document #98) was an enclosure to the Tanaka Letter; and (3) if the final reissued permit was not an enclosure to the Tanaka Letter, how the public could have accessed the final reissued permit.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: **Feb 11 2020**

By: 

Aaron P. Avila
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Directing Clarification** in the matter of *Muskegon Development Company*, UIC Appeal No. 19-02, were sent to the following persons in the manner indicated:

By Electronic Mail:


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Date: **Feb 11 2020**


Eurika Durr
Clerk of the Board